

Fraud

This file contains directions for;

- Fraud by false representation;
- Fraud by abuse of position.
- Possession of articles for use in fraud

Fraud by false representation

A person is guilty of fraud by false representation if he—

- (a) dishonestly makes a false representation, and
- (b) he intends, by making that representation—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

The word representation is an ordinary English word with no special legal meaning. A representation may be express or implied.

In this case, you may think that it is simply a statement that something is true or has happened – e.g. putting forward an internal invoice or contract stating that someone has ordered and paid for goods is a representation that they have done so.

A representation is made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

A representation is false if—

- (a) it is untrue or misleading, and
- (b) the person making it knows that it is, or might be, untrue or misleading.

In this case, if the goods referred to in an internal invoice or contract were not ordered or sold to the customer named in the invoice or contract, the representation was false.

The word "dishonestly" bears its ordinary meaning. You should decide whether you are sure that, according to the ordinary standards of reasonable and honest people, what D** did was dishonest. If you are sure that it was, you must also consider whether you are sure that he himself knew that what he was doing was dishonest. If you are not sure that he was acting dishonestly, he is not guilty.

with a view to gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

Again, these are ordinary English words with no special legal meaning.

The prosecution case is that ***

D**denies this. He ****.

So, the key questions for you to answer separately in relation to each count, having regard to all the evidence and the directions which I give you, are these

Was the *** false?

Was D*** dishonest?

Did he by *** intend to cause loss to the company?

If you are sure that the answers to all three questions are “yes”, he is guilty of the count you are considering. If the answer to any question may be “no”, he is not guilty.

Fraud by abuse of position

A person is guilty of fraud by abuse of position if —

- (a) while occupying a position in which she was expected to safeguard or not act against the financial interests of someone;
- (b) she dishonestly abused that position; and
- (c) intended thereby to make a financial gain.

There is no doubt that, while acting as a carer for C**, D** was expected to safeguard or not act against his financial interests.

So, the only issues in this case are whether she dishonestly abused her position and whether she intended to make a financial gain.

The word "dishonestly" bears its ordinary meaning. You should decide whether you are sure that, according to the ordinary standards of reasonable and honest people, what she did was dishonest. If you are sure that it was, you must also consider whether you are sure that she herself knew that what she was doing was dishonest.

The prosecution have to prove that D** intended to make some financial gain. The prosecution do not have to prove either that D** made all of the withdrawals in the schedule, or that she herself pocketed all of the money which she withdrew. They simply have to make you sure that she intended to make some financial gain by dishonestly using the bank card and pin number.

The prosecution case is that D** ***.

If that is what she did, she is guilty.

D**denies that she acted dishonestly and denies that she benefitted financially ***.

She says that D**.

If she did not dishonestly abuse her position with an intent to make gain, she is not guilty.

So, the key question for you to answer, having regard to all the evidence and the directions which I give you, is this

Did D dishonestly use C**'s bank card and pin number to withdraw money which she herself kept?**

If you are sure that the answer is “yes”, she is guilty. If the answer to any question may be “no”, she is not guilty.

Fraud – Possession of articles for use in fraud

A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.

There are two parts of this offence – and I am going to deal with the second part first.

articles for use in the course of or in connection with any fraud

Neither defendant has disputed that the items which the police found in **, our exhibits ** - ** - are items which someone would use in connection with fraud. No one has suggested that they had any legitimate purpose. So, it may be that you do not need to consider this part of the offence in any detail.

he has in his possession or under his control

There are two aspects to this.

Firstly, possession or control. These are ordinary English words with no special legal meaning.

The prosecution do not have to prove that a defendant owned items, or that they belonged to him – simply that he had possession or control of them.

A defendant may have possession or control of something if it is in his ***.

The second aspect is “knowledge.” It is not possible for a defendant to have possession or control of something if he does not know that it is there. To be found guilty each defendant must have known that the *** were in **. Knowledge, or lack of knowledge, is perhaps the most important issue in this case.

D1 gave evidence that he knew nothing about any of the items in the exhibits list. D2, when arrested, told the police that the items in the *** were not his.

So, the key questions for you to answer separately in relation to each defendant, having regard to all the evidence and the directions which I give you, are these

(i) Did the defendant, either individually or jointly, have possession or control of any of the items **?

and

(ii) Did the defendant know that any of those items was in the **?

If you are sure that the answer to both questions is “yes”, he is guilty. If the answer to either question may be “no”, he is not guilty.