

Fraud: Dishonestly obtaining property

- The Defendant has been charged with fraud under section 192E of the *Crimes Act 1900* (NSW) ('The Act')
- The Prosecution ('P') must prove all elements of the offence beyond reasonable doubt ('BRD') (*Woolmington*)
- D can be charged with more than one type of fraud offence

Actus Reus ('AR')

The P must prove that the D voluntarily engaged in deceptive conduct to obtain property belonging to another

a) Voluntariness

The P is entitled to presume that the D's conduct was 'conscious and willed'
(*Ryan v The Queen*)

***Ryan v The Queen*
(1967)**

b) Accused engaged in deception:

i) Deceiving others

- 1) Making of a false statement
 - (a) Difference between deception and exaggeration
- 2) Omission of material facts
- 3) Conduct and silence

Section 192B of *Crimes Act 1900* (NSW)

ii) Conduct by a person that causes a computer, a machine or any electronic device to make a response that the person is not authorised to make

c) The D obtained property if:

- i) D obtained ownership, possession or control of the property for himself or herself or for another person

OR

- ii) D enabled ownership, possession or control of the property to be retained by himself or herself or by another person

OR

- iii) D induced a third person to do something that results in the D or another person obtaining or retaining ownership, possession or control of the property

Section 192C(1) of *Crimes Act 1900* (NSW)

d) Property belongs to a person if:

- i) The person has possession or control of the property

OR

- ii) The person has a proprietary right or interest in the property

Section 192C(3) of *Crimes Act 1900* (NSW)

e) Property includes every description of real and personal property:

<ul style="list-style-type: none"> - Money - Valuable securities - Debts - Legacies - Deeds and instruments relating to, or evidencing the title or right to any property - Deeds and instruments giving a right to recover or receive any money or goods - Includes property originally in the possession or under the control of any person - Includes property that has been converted or exchanged, whether immediately or otherwise - Intangibles and fungibles 	Section 4 of Crimes Act 1900 (NSW)
e) D obtained property through deception	
<u>The P will be successful/unsuccessful in proving BRD that the D satisfied the AR elements of fraud by/through...</u>	
Mens Rea ('MR') The P must prove that the D dishonestly obtained property belonging to another through intentional or reckless deception with an intention to permanently deprive.	
a) Intentional or reckless deception <ul style="list-style-type: none"> i) Must have knowledge of falsity of statements ii) Must have intent to defraud 	Section 192(B)(2) of Crimes Act 1900 (NSW)
b) Intention to permanently deprive <ul style="list-style-type: none"> i) The P must prove that the D had intent to deprive the V of the property 	Section 192C(2) of Crimes Act 1900 (NSW)
c) Dishonesty <ul style="list-style-type: none"> i) Defined as: Dishonest means dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people. 	Section 4B of Crimes Act 1900 (NSW) Applies test from R v Ghosh [1982]
<u>The P will be successful/unsuccessful in proving BRD that the D satisfied the MR elements of fraud by/through...</u>	
Conclusion The D will be charged with fraud as the P can successfully prove BRD that the D satisfies the AR and MR elements of fraud <u>OR</u> The D will not be charged with fraud as the P cannot successfully prove BRD that the D satisfies the AR and/or MR elements of fraud	