

**FRAUD – s 192E**

- Definitions in **ss 192B-192D**
  - **s 192B** – deception
  - **s 192C** – obtaining property belonging to another
  - **s 192D** – obtaining financial advantage or causing financial disadvantage
- All forms of fraud must be committed by D engaging in deception (defined in s 192B)
- **Dishonesty** defined in s 4B which applies the test by **Ghosh**: dishonesty to the standard of ordinary people
- **Deception** is different from dishonesty: must be proven, cannot be negligent, must be subjective
- Fraud is a result based, consequence offence. Prosecution must prove that the accused ‘obtained by deception’ and the deception caused V to part with their property or services. Deception may not be the only cause for the loss of property, but it must be a factor that substantially contributed to V’s decision.

- (1) A person who, by any deception, dishonestly:
  - (a) Obtains property belonging to another, or
  - (b) Obtains any financial advantage or causes any financial disadvantage is guilty of fraud.
- (2) A person’s obtaining of property belonging to another may be dishonest even if the person is willing to pay for the property.
- (3) A person may be convicted of the offence of fraud involving or any part of a general deficiency in money or other property even though the deficiency is made up of any number of particular sums of money or items of other property that were obtained over a period of time.
- (4) A conviction for the offence of fraud is an alternative verdict to a charge for the offence of larceny, or any offence that includes larceny, and a conviction for the offence of larceny, or any offence that includes larceny, is an alternative verdict to the charge for the offence of fraud.

AR	MR
<ol style="list-style-type: none"> <li>1. <b>Voluntariness</b> (<b>Falconer</b>)</li> <li>2. <b>Deception</b> (defined in <b>s 192B</b>)           <ul style="list-style-type: none"> <li>▪ Means any deception, by words or conduct, as to the fact or as to law</li> <li>▪ Including a deception as to the intentions of D or any other person</li> <li>▪ Including conduct by a person that causes a computer, machine or nay electronic device to make a response the person that the person is not authorised to cause it to make</li> <li>▪ Includes deceptions as to the past, present and future (<b>Freeman 1981</b>)</li> <li>▪ Exaggeration will not amount to a deception (<b>John Bryan 1857</b>)</li> <li>▪ Silence and conduct without words can amount to a deception (<b>Benli 1998</b>)</li> </ul> </li> <li>3. <b>Caused an obtaining of property, financial advantage or disadvantage</b> <ul style="list-style-type: none"> <li>▪ ‘obtaining’ defined in <b>s 192C</b> as ownership, possession or control for D or another person</li> <li>▪ ‘property’ defined in <b>s 4</b> and <b>s 192C(3)</b> as belonging to another person where they have possession, control, property right or interest in the property</li> <li>▪ <b>s 192D</b> defines obtaining financial advantage (ordinary meaning: <b>Vasic 2005</b>) (this includes blank cheques: <b>Matthews v Fountain</b>) and causing financial disadvantage (relevant to the failure to repay debts</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. D was <b>intentionally or recklessly deceptive</b></li> <li>2. <b>Deception caused that consequence</b> (D will not be dishonest if he had a claim of right)</li> <li>3. IF D is charge of with the prohibited consequence of <b>obtaining property</b>, then the prosecution must prove an additional mens rea requirement of an <b>intention to permanently deprive</b>.           <ul style="list-style-type: none"> <li>▪ Includes an intention to treat the property as D’s own to dispose of regardless of the other’s right (<b>s 192C</b>)</li> <li>▪ Includes borrowing/Lending of the property if the period or circumstance makes it equivalent to an outright taking or disposal.</li> </ul> </li> </ol>
TC ( <b>DPP v Ray 1974</b> )	

- Definition in common law, penalty in s 61.
- Assault defined by Giles JA in *Darby v DPP (2004)*: an act by which a person intentionally or perhaps recklessly causes another person to apprehend the immediate infliction of unlawful force upon him; a batter is the actual infliction of unlawful force.

<b>BATTERY</b>	
<b>AR</b>	<b>MR</b>
<p>1. <b>Application of unlawful contact</b> (<i>Fagan 1969</i>)</p> <ul style="list-style-type: none"> <li>▪ Must be a positive act, not an omission (<i>Fagan 1969</i>)</li> <li>▪ Mere touching is enough (<i>Collins v Wilcock 1984</i>)</li> <li>▪ Lawful force (such as self-defence) will relieve D of liability</li> <li>▪ Includes spitting (<i>DPP v JWH, unreported NSWCCA 17 Oct 1997</i>)</li> </ul> <p>2. <b>Without consent of the victim</b></p> <ul style="list-style-type: none"> <li>▪ People can consent to common assault where no ABH is inflicted (<i>Wilson 1997</i>: consensual branding of husband’s initials on wife’s butt)</li> <li>▪ People can consent to ABH based on public interest/general social approval (in sports, provided that it was not done in hostility/anger, only regular force incidental to the game was applied: <i>Pallante</i>; not every player is expected to play strictly by the rules: <i>Re Jewell and Crimes Compensation Tribunal 16/01/1987</i>; D guilty if sports contact causing ABH was intentional: <i>Stanley 29/03/1995</i>)</li> <li>▪ Consent is immaterial in unlawful situations or situations which the degree of harm is very severe (<i>Brown 1994</i>)</li> <li>▪ Consent is implied for normal contact during ordinary social intercourse (<i>Boughey 1986</i>)</li> </ul>	<p>1. <b>Intentionally applying unlawful conduct</b> (<i>MacPherson v Brown 1975</i>)</p> <ul style="list-style-type: none"> <li>▪ Does not have to be hostile, but hostility can turn what would otherwise not be battery into battery (<i>Boughey 1986</i>: Doctor who applied pressure on artery for ppp and caused death)</li> </ul> <p>2. <b>Recklessly applying unlawful conduct</b></p> <ul style="list-style-type: none"> <li>▪ D indulges in conduct that D knows could possibly give V reasonable grounds for apprehending imminent unlawful contact</li> <li>▪ Prosecution must prove foresight of the possibility (not probability) of inflicting physical contact (<i>MacPherson v Brown 1975</i>)</li> </ul>
<b>PSYCHIC ASSAULT</b>	
<b>AR</b>	<b>MR</b>
<p>1. <b>Threatened application of unlawful contact</b> (whether by D or another person at D’s behest)</p> <p>2. <b>V reasonably apprehends/fears...</b> (<i>Barton v Armstrong</i>)</p> <ul style="list-style-type: none"> <li>▪ Test in case above: reasonable person would also be in fear</li> <li>▪ Where V’s fear is unreasonable (he may be of unusual timidity) and D is <u>unaware</u> of this, D will not have the mens rea.</li> <li>▪ If he is aware of V’s unreasonable fear/unusual timidity, he will have the mens rea (<i>MacPherson v Brown</i>)</li> </ul> <p>3. <b>...imminent unlawful contact</b> (<i>Zanker v Vartzokas 1988</i>)</p> <ul style="list-style-type: none"> <li>▪ Threats of future violence do not count (<i>Knight 1988</i>)</li> <li>▪ Phone calls count if V apprehended imminent violence (<i>Barton v Armstrong 1969</i>)</li> <li>▪ Includes false imprisonment with continuing threat of injury (<i>Zanker v Vartzokas 1988</i>)</li> <li>▪ D’s ability/intention to carry out the threat is irrelevant if D induced V to have the reasonable belief of the threat (<i>Everingham 1949</i>)</li> <li>▪ Conditional threats may constitute an assault if it was a condition that D could not lawfully impose (<i>Rozsa v Samuels 1969</i>)</li> </ul>	<p>1. <b>Intentionally creating</b> apprehension of imminent unlawful contact (<i>Barton v Armstrong 1969</i>)</p> <ul style="list-style-type: none"> <li>▪ V must be aware of the threat, cannot be unconscious or asleep (<i>Pemble 1971</i>)</li> <li>▪ V must fear the contact (<i>Ryan v Kuhl 1979</i>: idiot who testified he was not frightened)</li> </ul> <p>2. <b>Recklessly creating</b> apprehension of imminent unlawful contact (<i>MacPherson v Brown 1975</i>)</p> <ul style="list-style-type: none"> <li>▪ Prosecution must prove foresight of the possibility (not probability) of inflicting apprehension of imminent unlawful contact (<i>MacPherson v Brown 1975</i>)</li> </ul>
<b>TC</b>	
<p>- For an assault involving a ‘continuing act’ the MR does not need to be present at the time of the commencement of AR but can be superimposed onto an existing (and continuing act) (<i>Fagan 1969</i>)</p>	

**COMPLICITY: JCE AND EXTENDED JCE** – ss 93S(2)(B) and 93T (a person can be convicted as a member of a criminal group even though ‘only some of the people involved in the group are involved in planning, organising or carrying out any particular activity so long as the person knows or ought to reasonably know that it is a criminal group’ and their participation contributes in the occurrence of any criminal activity).

	What does this mean?	Presence / Agreement?	Liability
<b>P1 / JCE</b> In JCE, all participants are treated as P1s	An agreement between two or more people to perpetrate a crime ( <a href="#">Osland</a> )	Both needed ( <a href="#">Prochilo</a> ; <a href="#">Likiadopoulos</a> )	Liable to punishment for actual offence. Primary liability ( <a href="#">Osland</a> )
<b>P2</b> Present and aided, abetted, counselled, or procured the crime ( <a href="#">Phan</a> , <a href="#">Clarkson</a> )	Where a person aids, abets, counsels, procures (‘ABCP’) (requires causation) the commission of the crime by P1 ( <a href="#">Giorgianni 1985</a> )  MR – knowing all the essential facts that make up the crime; intention to aid or abet the crime	Agreement is needed  Presence (actually or constructively – being close enough to help) is needed ( <a href="#">McCarthy v Ryan</a> )	Liable to the same punishment as P1 under s 345.
<b>Accessory Liability</b> <b>ABF</b> (encouraged the crime but not present at its commission) <b>AAF</b> (assisted after the crime)	Elements at CL ( <a href="#">Giorgianni 1985</a> ) TEST: MR level, intentionally ABCP with knowledge of all essential facts of the crime (what are the essential facts that make it a crime?)  AR – took part in the preliminary stages of the crime by ABCP, but was not present  P1 need not be aware of acts of assistance ( <a href="#">Beck 1989</a> )	Presence not needed	Liable for the same punishment as P1 under s 346.  Derivative liability (if P1 is not found guilty, they are also not guilty)
<b>Doctrine of Innocent Agency</b>	D uses an innocent agent (lacking knowledge or capacity) D must procure (cause) the innocent agent to commit the crime Has MR but instructs another to do AR elements Elements in <a href="#">Cogan and Leak and Hewitt</a> .	Agreement not necessary Presence needed	Liable to punishment for actual offence  Primary liability ( <a href="#">Pinkstone 2004</a> )

**Agreement** – does not have to be formal ([Kanaan 2006](#)), can be an unspoken understanding ([Tangye 1997](#)), can be spontaneous ([Hawi 2014](#)).

**Withdrawal** – intention must be TIMELY communicated, take reasonable steps to prevent the commission of the crime ([White v Ridley 1978](#))

**EXTENDED JCE / DOCTRINE OF COMMON PURPOSE** (One or more members commit an additional crime)

The group will be held liable for all foreseeable crimes even if not agreed upon resulting from the JCE ([McAuliffe](#))

- D must have had the foresight to both AR and MR of additional crime ([McAuliffe](#))
- Prosecution can only rely on EJCE where there is evidence of a JCE to commit the foundational crime ([Taufahema 2007](#))

1. D must have formed a common intention to prosecute an unlawful purpose;
2. Principal offence must have been committed in the pursuance of, in furtherance of, or for the purpose of, the common design
3. D need only contemplate the incidental crime as no more than a possible incident of the JCE ( <a href="#">Johns 1980</a> )
4. Test is not particularly demanding, requiring only that D foresaw the possibility, rather than the probability of the incidental crime (subjective standard)

**INTOXICATION** (*Crimes Act Part 11A*) – evidence of intoxication may be adduced to cast doubt on the prosecution’s level of MR and AR (*O’Connor 1980*); **not a defence but may negate elements of a crime**; may be basis of plea for automatism (arguing involuntariness) + defence of insanity (if intoxicant triggered an underlying DOM). D will bear evidentiary burden to raise intoxication as it relates to involuntariness or insanity;

- **s 428F: reasonable person** must be made in comparison to someone who is not intoxicated;
- **s 428C:** Intoxication cannot be taken into account if used as **dutch courage** where D forms MR and becomes intoxicated to commit the offence (*Gallagher 1963*);
- **s 428A:** Intoxication will be deemed **self-induced** unless it was involuntary, due to fraud, sudden emergency, accident, reasonable mistake, duress or force, or where a prescription or non-prescription drug was taken in accordance with instructions.

	Not self-induced	Self-induced
<b>AR</b>	Negatives voluntariness ( <i>s 428G(2)</i> )	Not available for involuntariness, including automatism ( <i>s 428G(1)</i> )
<b>MR</b>	Negatives MR for specific intent ( <i>s 428C</i> ) and basic intent ( <i>s 428D(b)</i> )	Negates MR for specific intent ( <i>s 428C</i> ) UNLESS <b>dutch courage</b> ( <i>s 428C(2)</i> ) + <i>Gallagher 1963</i> NOT AVAILABLE FOR BASIC INTENT ( <i>s 428D(a)</i> ) + <i>Lipman 1970</i> )

Specific Intent (MR done with view of achieving particular outcome) (full list at <i>s 428B</i> )	Basic Intent (unlawful contact but no specific intention when committing that unlawful contact) ( <i>s 428D</i> )
<i>s 33</i> – wounding or GBH with intent to cause GBH <i>s 117</i> – larceny <i>s 192C(1)(a)</i> – fraud (obtain property by deception) All attempted crimes (except attempted sexual assault) All accessories to crimes (ABFs and P2s)	<i>s 61</i> – sexual assault <i>s 61</i> – common assault <i>s 59</i> – assault occasioning ABH <i>s 35</i> – reckless wounding/GBH <i>s 192(E)(1)(b)</i> – fraud (obtain financial advantage)

Defence bears evidentiary burden to raise the defences, thereafter the prosecution must negate BRD.

<b>Duress</b> (elements in <i>AG v Whelan 1934</i> ) (not available for murder/attempted murder: <i>Brown</i> )	<b>Necessity</b> (elements in <i>Loughnan</i> ) (available everywhere but murder: <i>Dudley and Stephens 1884</i> )
<ul style="list-style-type: none"> <li>• Under threat of imminent death or GBH (<i>Hurley &amp; Murray</i>) (detention: <i>Lawrence</i>; torture causing pain but without residual injury: <i>Goddard v Osborne</i>; harm to a third person: <i>Abusafiah 1991</i>)</li> <li>• Objective test in <i>Lawrence</i>: Person of ordinary firmness would have yielded + no way to avoid (battered wife syndrome is taken into account) (failure to call police due to reasonable belief it is ineffective will not exclude the defence: <i>Brown</i>)</li> <li>• Does not have to be real, but D had the reasonable apprehension that the threat would be carried out (<i>Graham</i>)</li> <li>• D did not expose himself to the threat (defence not available for voluntarily joining a gang: <i>Sharp</i>)</li> </ul>	<ol style="list-style-type: none"> <li>1. Act done in order to avoid imminent consequences which would have inflicted irreparable harm (GBH/Death)</li> <li>2. D must honestly believe (subjective) on reasonable grounds (objective) that there was immediate peril and unlawful conduct was needed to avoid it</li> <li>3. Acts done to avoid peril must be proportionate to the peril avoided                         <ul style="list-style-type: none"> <li>• Not available as response to homelessness or hunger (<i>Southwark LBC Williams and Anderson</i>)</li> <li>• Available for abortion (on economic grounds), escape from prison (<i>Loughnan; Rogers</i>), strict liability traffic offences (<i>Re Appeal of White</i>)</li> </ul> </li> </ol>

## JOINT CRIMINAL ENTERPRISE

### ***Osland v R (1998)***

**F:** Mom and son murdered husband/stepfather; son was abused by V; Mom and son both agreed to kill; Mom laced dinner so V is sedated and son bashed him to death with a pipe. Both raised provocation and self-defence.

**H:** Mom convicted of murder. Jury could not reach verdict for son, but court held that mother would still be liable because JCE is a primary liability.

### ***Cogan and Leak [1975]***

**F:** L convinced C to rape L's wife saying her resistance was a kink. Leak could not be tried for rape due to marital immunity. Leak could be charged with being an accessory instead.

**H:** C was not guilty of rape (innocent agent). Leak is guilty because primary liability.

## EXTENDED JCE

### ***MacAuliffe and McAuliffe (1995) 130 ALR 26***

**F:** Two brothers convicted of murder and assault and robbery offences; they decided with a friend to go to a park to commit the crimes; one man ended up seriously injured and another died from falling from a cliff due to altercation. Friend and one of the brothers armed themselves.

**H:** Because common purpose was to rob someone, there was a tacit understanding that victims will be attacked with intent to inflict GBH. Party to JCE will be held for all foreseeable crimes, even if not agreed upon.

### ***Bainbridge [1960]***

**F:** D bought equipment to open safes and gates on behalf of someone else who used equipment to break into bank. D argued he did not know the nature of the robbery, only suspected it could be but did not know details.

**H:** Enough that D had suspicion.

## MENTAL ILLNESS

### ***Woodbridge [2010]***

**F:** D convicted of manslaughter for V1 and aggravated dangerous driving occasioning GBH for V2 (left him profoundly disabled). Blood alcohol reading of 0.269g/100mL. D raised sane automatism: driving vehicle was not a willed or voluntary act, instead it arose from dissociative state caused by psychological blow from two abusive phone calls from ex-husband earlier, compounded to excessive alcohol.

**H:** Trial judge was correct to decline to allow jury to consider sane automatism – it was a situation where an unhealthy mind reacted to external stimuli.

## INTOXICATION

### ***R v O'Connor (1980) 146 CLR 64***

**F:** D charged with stealing and wounding with intent to resist arrest. D was observed pilfering from a car owned by a police officer. When confronted, D attempted to run away and stab the police officer during arrest. D gave evidence that he had been taking drugs and alcohol and could not remember what had occurred.

**I:** Trial judge directed the jury that intoxication was not relevant for considering unlawful wounding as per *Director of Public Prosecutions v Majewski [1977] AC 443* where lack of mens rea due to self-induced intoxication could not be relied upon for charges with basic intent.

**H:** HC rejected Majewski and held that intoxication was relevant to any offence unless charges required actual intent (absolute offences).

**S:** *R v Martin (1984) 58 ALJR 217*

<b>197(1)</b>	<p>A police officer may give direction to a person in a public space if the police officer believes on reasonable grounds that the person's behaviour or presence in the place:</p> <ul style="list-style-type: none"> <li>(a) is obstructing another person or persons or traffic, or</li> <li>(b) constitutes harassment or intimidation of another person or persons, or</li> <li>(c) is causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness, or</li> <li>(d) is for the purpose of unlawfully supplying, or intending to unlawfully supply, or soliciting another person or persons to unlawfully supply, any prohibited drug, or</li> <li>(e) is for the purpose of obtaining, procuring or purchasing any prohibited drug that it would be unlawful for the person to possess.</li> </ul>
<b>202(1)</b>	<p><b>Information provided to persons when exercising powers:</b>  A police officer who exercises a power to which this Part applies must provide the following to the person subject to the exercise of the power:</p> <ul style="list-style-type: none"> <li>(a) Evidence that the police officer is a police officer (unless the police officer is in uniform)</li> <li>(b) The name of the police officer and his/her place of duty</li> <li>(c) The reason for the exercise of the power</li> </ul>
<b>230</b>	<p><b>General provision on force</b>  It is lawful for a police officer exercising function under this Act or any other Act or law in relation to an individual or thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the function.</p>
<b>231</b>	<p><b>Specific provision on force</b>  A police officer or other person who exercises a power to arrest another person may use such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.</p>

