

Sri away by the
employment of
means prohibited



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Sri Hari Singh Gaur in his book: 'The Penal Code of India' has pointed out three essential elements of dishonesty in law, namely; (a) intention, (b) employment of unlawful means, and (c) acquisition of property to which one has no right. The intention may be to cause wrongful gain or wrongful loss and it may or may not actually mature into such gain or loss of property but such gain or loss must be the intention with which an act is done before such act can be called dishonest.

Dishonesty in law is confined to those matters in which property is involved as the subject-matter to which the act or the series of acts constituting dishonesty relates. There can be no dishonesty unless property is involved. There can be dishonesty without deception.

It is necessary that the means employed must be unlawful, i. e., illegal or prohibited by law. Examples: (i) A destroys the crops belonging to B in broad daylight. He commits this mischief in the presence of B with the object of causing wrongful loss to B, but B fails to prevent him from doing so as he finds A more powerful. There is no question of deceit or secrecy but the act is unlawful and the intention behind it is to cause wrongful loss to B. The act is dishonest.

(ii) A snatches away by force a fountain-pen from the pocket of B and tells him that he shall not return until B gives him some money and with such intention retains the fountain-pen with him. The act is dishonest as the fountain-pen has been taken away by the employment of means prohibited by law and with the intention of causing wrongful loss to B. There may be dishonesty through deceit as well but deceit is not the essence of the matter.

The definition given in Section 25 does not give much help as it is used tantologically. The word “ fraud” or “ fraudulently” must be understood in the general or popular sense. It involves two elements, namely: (1) deceit, and (2) injury caused or likely to be caused to the person deceived or someone else in consequence of the deception. If a person by deceiving another derives any advantage from it, which he could not have had, if the truth had been known, and thereby causes injury to the body, mind or reputation of the deceived, he commits fraud. In all cases where an advantage has been obtained, there will invariably be an equivalent disadvantage in loss or risk of loss to the deceived or to someone else.

There is no definition of the word “ defraud” but courts in India have followed the well-known analysis of the word by Sir James Stephen in his ‘ History of the Criminal Law of England’, in which he points out two essential elements which constitute fraud;: (i) deceit or an intention to deceive or in some cases, mere secrecy, and (ii) either injury or possible injury or an intent to expose some person to any such injury by such deceit or secrecy. We may summarise these two elements and define a fraudulent act as an injurious deception. “ Injury” is a more comprehensive term than “ wrongful loss of property”. Though such loss is an injury, there are other forms of injury in which such loss is not involved. The word “ injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation or property (Section 44). It is the infringement of a legal right.

In practice people seldom deceive each other for a purpose which is not to their own advantage. The Allahabad High Court, taking this aspect into view, has laid down that where there is an intention to deceive and by means of <https://assignbuster.com/sri-away-by-the-employment-of-means-prohibited/>

the deceit to obtain an advantage there is fraud. The Bombay High Court has laid emphasis on deception pointing out that it is immaterial whether such deception is from an expectation of advantage to the party himself or from ill-will towards the other. The Supreme Court of India has observed a clear distinction between dishonestly and fraudulently in the case of *Vimla Devi v. Delhi Administration* 1. In the act of fraudulently, the element of deceit is always present while in case of dishonestly it is always necessary.

2. Dishonestly requires an intention to cause wrongful gain or loss to the property while such act is not material for the act of fraudulently.