CL631: Criminal Law II

Larceny Variants: False Pretenses

Video Transcript

1. In this presentation, we will discuss the crime of false pretenses.
2. This is the second of three presentations in this module that will deal with variants of larceny. In the prior presentation, we talked about embezzlement, and then in the next presentation, we will summarize and highlight the key distinctions between larceny and its variants.
3. Let's begin with an overview of false pretenses, to help explain why the crime event exists.

   We've seen that the common law definition of larceny left gaps. Because it doesn't cover situations where the wrongdoer has lawful possession, the separate crime of embezzlement was created. Larceny by trick, a subvariant of larceny, addresses the particular set of situations where the wrongdoer obtains possession through deceit. But neither crime covers situations where the wrongdoer manages to get not merely possession but title.

   Instead of simply expanding the definition of larceny, or larceny by trick, to include situations where the wrongdoer manages to get title through deceit, legislatures responded by creating a separate crime: fraud by false pretenses, or simply, "false pretenses."

4. Now let's turn to the essential elements of false pretenses. While as with many crimes, they vary differently by jurisdiction, and could logically be framed differently, the three basic elements of false pretenses are:

   One, a material misrepresentation regarding a past or present fact.

   Two, with knowledge of its falsity and intent to defraud.

   And three, which causes the victim to pass title to the wrongdoer.

   Let's examine each of these elements in more detail.

5. The first element is a material misrepresentation of a past or present fact. By material, we mean important.

   As an initial matter, the representation must actually be false. If the wrongdoer makes a representation believing it is false but it is actually true, you might consider attempted fraud, but it is not actual false pretenses. Of course, if you have the inverse -- the defendant believes it is true when it is in fact false -- then the scienter or intent requirement would be missing.

The representation may be written or oral, or even by conduct, although this will be rare.

It also has to be an actual misrepresentation, meaning that not only lying but even conduct like actively hiding or destroying information counts.

However, merely failing to disclose information does not count as the requisite misrepresentation, unless one has a duty to disclose. This is somewhat analogous to the more general principle that one cannot be liable for a failure to act unless one has a duty to act. Ordinarily, in what we could call "arm's length transactions," parties do not have a legal obligation to disclose facts to the other side.

However, where one acts in a fiduciary capacity, meaning a role of heightened responsibility and care, they may have a duty to disclose, such that they can be liable for failing to do so. A lawyer may owe a fiduciary duty to a client, an investment advisor to a customer, and so on. One might also have a duty to disclose where they created the misimpression in the first place, regardless of the nature of the relationship.

The caption says that the misrepresentation must be regarding a past or present fact. Here, we mean fact as opposed to opinion. You may have noted in your contracts course, torts course, or both by this point, that a seller who makes claims about how great his product is may be deemed to be engaging in mere "puffery"--a kind of cool legal term that just means boasting, but which legally is not treated like a factual representation that customers should rely on. If I say, "buy this car, it's great!" that's obviously just my opinion, there's no objective definition of great. Even if I say, "buy this car and all of the ladies are going to want to date you," that sounds more factual, something that can be measured objectively. But it's still not something that's really a representation about the quality of the car, it's just salesman talk. But if I say, "This car is not going to have any engine trouble whatsoever for at least the first three years," and a month later the whole engine explodes, that's a factual representation. And if you knew it was false when you made it, it could be fraudulent.

However, the one area where statements of opinion could be deemed representations is where it concerns a matter within the specialized knowledge of the seller. So if I as the seller say, "Look, I was involved in designing the engine, and I can tell you that you're going to be pleased with it," and it explodes a month later, even though I didn't make a specific claim as to how or why you would be pleased or for how long, if I knew it could tend to explode but made that claim, that's not mere puffery.

Note that because claims of fraud often occur in the context of commercial transactions, there is often the potential for overlap of contract issues and criminal or tort issues. One of the most common is where one of the parties claims they were fraudulently induced to enter into a contract. You should recall from your contracts course that where a contract is fully integrated, that is, where there is a written provision that provides that it is a full and final reflection of the parties' agreement, or where a court otherwise finds that it was intended to be, then a court will refuse to

consider parole evidence, extrinsic evidence, to vary or contradict the terms of the written agreement. So how does that tie into criminal law? Well, imagine I tell you that the car is not going to have engine trouble for three years, and in reliance on that you decide to buy. You sign a written agreement which doesn't specifically mention the three-year engine warranty, and in fact contains a clause where the buyer affirms that they are not relying on any prior representations not included in the written agreement. Generally, courts will uphold such clauses. However, if the claim is that the salesman knew the representation was false when made, and made it--and then tried to disclaim it in writing--to cover up the fraud, a civil court would still allow a tort claim for fraud, and the salesman could still potentially be prosecuted criminally for fraud.

6. The next requirement for false pretenses is that there be knowledge of the falsity of the representation, and intent to defraud the victim.

   The actor must know that their statement is false. We know from last semester that knowledge means actual knowledge with substantial certainty.

   In the context of knowledge of the truth or falsity of a statement, belief that the statement is false suffices.

   We also know that since knowledge, like intent, is subjective, if the actor honestly believes that the statement is true, even if that belief is unreasonable, that negates the mens rea for false pretenses.

   We said on the last slide that if a statement is false but the actor believes it is true at the time it is made, that negates intent. But even then, if the actor learns of the falsity of the statement after it is made, he may have a duty to correct it, and the failure to do so constitutes fraud by false pretenses.

   As to the intent to defraud--

   This can usually be inferred by the knowledge of the falsity of the statement and the transfer of title itself. While it is theoretically possible that I knew I made a false statement, and you transferred title, but I didn't make the false statement intended that it would cause you to transfer title, as a practical matter that's a stretch.

   Also, just as we saw with larceny and embezzlement, in any situation that would negate intent to defraud another of their property--such as where the actor genuinely believes the property is already theirs, that they have permission to take title, or that they have the right to take title in order to collect on a debt--that would provide a defense.

7. The third requirement is that the false representation actually causes the victim to transfer title. This may be stated alternatively that the victim acted in reliance on the false representation.

   Thus, if the defendant intentionally made a false statement hoping to induce reliance

by the victim, and the victim disbelieved the statement and transferred title, then the transfer obviously could not be in reliance on the misrepresentation, so the crime of false pretenses did not occur.

Alternatively, if the victim would decide to transfer title regardless of the representation in question, then again, there's not a causal connection between the statement and the transfer.

But the misrepresentation need not be the sole basis for the transfer of title. If you tell me three things, two of which are true and one of which is false, and each is part of the reason why I agreed to transfer title, you could still be guilty of false pretenses.

8. When it comes to the transfer of title, there may also be a question as to when title actually is transferred. We've seen that there can be many situations where possession, but not title, transfers to the wrongdoer, as when he borrows or rents an item, or others finds himself in physical control of it.

   But when title does transfer, it is usually, but not always, accompanied by possession.

   In the relatively rare case where title transfers but possession does not, the crime of false pretenses can still occur. So, for example, if I tell you that I have $10,000 at my house and will pay it to you if you sell me your car, knowing full well that I don't have the money and don't intend to pay it, and you sign the title deed for the car over to me, even if you haven't yet handed me the keys and I haven't actually gotten behind the wheel and driven away, I've committed the crime of false pretenses.

   Also, just as we saw that larceny or embezzlement could be committed against someone who was not the owner, false pretenses may be committed against someone who lacks full title to property.

   Thus, if I am a co-owner of property and you trick me into transferring my portion of title, that's still false pretenses. Or if I still owe payments on property, and won't own it outright unless and until I make all the payments, if you trick me into transferring my ownership interest, that's false pretenses.

   However, if I truly don't have any ownership interest, no portion of title whatsoever, and you get me to hand over the property, then that's larceny by trick, not false pretenses. So, for example, if I'm merely renting a car, I don't have any ownership interest, just the right to temporarily possess. If you trick me into giving you the car, then that's larceny by trick.

9. When we consider whether title transfers, it can be helpful to distinguish between cases where the item in question is property other than money, and cases where we're talking basically cash.

   When we're talking about a property transfer--

If I induce you to sell it to me based on a lie, upon the sale I have taken title, so the crime is false pretenses.

If I induce you to lease it to me under false pretenses, I've taken possession, not title, so the crime is larceny by trick.

But if I induce you to make a partial transfer of title, that's sufficient for it to be false pretenses.

If we're talking about a situation where I deceive you into handing over money to me--

The recipient of money is usually deemed to have title to that money, and so the crime is false pretenses.

Even if I deceive you into agreeing to lend me funds, the borrower of funds is considered the owner of those funds, even though he has a contractual obligation to pay them back, and so the crime is false pretenses.

But if I trick you into handing me money for a specific purpose, that's not false pretenses because the law only recognizes me as taking possession of the property, not ownership. Ownership implies that I have the right to transfer it to others or generally do with it as I please. But if I only have the right to use it for a designated purpose, that is deemed inconsistent with my having received title for purposes of false pretenses. Note, by the way, that these concepts of title and possession will be explored in more detail in your property course next term.

10. Although the defenses we learned about last semester that can generally apply to crimes, like insanity, duress, and so on, could apply to false pretenses as well, there are several potential defenses that get raised in the context of false pretenses by defendants from time to time, which have generally been held not to be a defense.

    First, if the defendant claims that the victim's reliance on the representation was unreasonable, that is not a defense. If you tell me the battery of the car I buy will not need changing for 25 years, and anyone who knows a bit about cars knows that, at least given the current state of technology, that is simply not plausible, the fact that I am ignorant about cars and believed you is no defense. Of course, just as with the defendant's own belief in the truth of the representation the less reasonable it is to rely on it, the less likely a jury would find that I honestly relied on it. But if I did, my being gullible is no defense.

    Second, the fact that I as the victim was engaged in illegality is no defense. While this may come up in a variety of contexts, false pretenses is one area where it may tend to come up more often. Let's say I'm trying to buy drugs, and you tell me that the baggie with white powder you have is cocaine, knowing full well it's baking soda. I part with my $50, and get nothing useful in return. Granted, I was attempting an illegal purchase of controlled narcotics. But you still induced me to transfer title to my money with a lie.

Third, if it turns out that the victim didn't suffer any economic harm as a result of your lie, that's no defense to the crime of false pretenses, since damages to the victim are an essential element of a civil tort but not a criminal prosecution. If you lie to me and tell me that GM stock is going to go through the roof, because you want to unload stock that you think is going to be worthless, and then GM has an unexpected turnaround and I end up making a profit, your intentional misrepresentation could still constitute false pretenses.

11. To summarize, false pretenses involves knowingly making a false representation with intent to defraud, and which does in fact induce the victim to transfer title.

    They key factor that distinguishes false pretenses from larceny by trick is that with false pretenses, actual title must transfer, whereas with the latter only possession is transferred.

    That concludes this presentation on false pretenses. In the next presentation, we will summarize and highlight key distinctions between larceny and its variants.

Please email your professor with any questions.