

A new lawyer has three clients, all of whom are indigent. To improve the appearance of his office, he decided to purchase some new furniture and to pay for it out of future earnings. Wearing an expensive suit borrowed from a friend, the lawyer went to a furniture store and asked to purchase on credit a desk and various other items of furniture. The lawyer told the store owner that he was a very able lawyer with a growing practice and that he expected to do very well in the future. The store owner agreed to sell him the items on credit, and the lawyer promised to make monthly payments of \$800.

The lawyer has never had an income from his practice of more than \$150 a month. The lawyer's business did not improve, and he did not make any payments to the furniture store. After three months, the store owner repossessed the items.

If the lawyer is charged with obtaining property by false pretenses, what is his best argument for being NOT guilty?

- A. Even if he misled the store owner, he intended to pay for the items.
- B. He did not misrepresent any material fact.
- C. The store owner could have asked for payment in full at the time of the purchase.
- D. The store owner got his property back and so suffered no harm.

Explanation:

Misrepresentation

(false pretenses & larceny by trick)

Type	Definition	Liability
Statement of fact	Relates to <i>past or present</i> fact victim would reasonably consider in deciding whether to transfer property	All jurisdictions
False promise	Promise made with no intention of keeping it	Most jurisdictions
Future event	Relates to something that will take place in the future	No liability
Opinion	Sales talk or puffery	

The crime of **false pretenses** requires proof that the defendant:

knowingly misrepresented a past or existing **material fact**

did so with the specific intent to defraud *and* thereby obtained title to the property of another.

A material fact is a fact that a person would **reasonably consider** in deciding whether to transfer the property. Therefore, a **misrepresentation cannot stem** from an **opinion** or a prediction about a **future event**.

Here, the lawyer told the store owner that he was a very capable attorney (opinion) with a growing practice and expected to do very well in the future (future event). And the store owner may have considered this statement when he agreed to sell the furniture to the lawyer on credit. But if the lawyer successfully argues that his statements were not misrepresentations of material fact, he would not be found guilty of false pretenses.

(Choice A) In most jurisdictions, liability for false pretenses can stem from a false promise—ie, a promise made with no intent to keep it. Therefore, arguing that the lawyer did intend to pay for the items would show that he did not make a false promise. But this is an incomplete defense since he could still be liable if his other statements were deemed misrepresentations of material fact.

(Choice C) A victim is not required to take affirmative action to prevent a crime. Therefore, an argument that the store owner could have asked for an upfront payment in full (thereby preventing the alleged crime) would fail.

(Choice D) "No harm, no foul" is no defense to false pretenses. And here, the store owner *was* harmed because he was deprived of his property for three months.

Educational objective:

False pretenses requires a misrepresentation of a past or existing material fact—not opinions or predictions of future events.

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