

Deceptive Fraud from the Perspective of Criminal Law

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Abstract

Crimes of fraudulent deception are considered forms of crimes against property, representing an organized offense within ancient, complex, and simultaneously evolving criminal activities. They are among the most significant traditional crimes due to the behavioral elements and foundations they rely upon. These crimes convey personal traits associated with criminal conduct. Fraudulent deception is a distinctive and focused crime that utilizes sophisticated methods in creative mental processes. It involves deceptive techniques and an evolving mastery of fraudulent persuasion, integrating criminal intent with the ability to gain the victim's trust through several factors, including human interactions and advanced capabilities possessed by the perpetrators to bypass laws or regulations through their daily behavior. The ultimate goal is misappropriation through deceit and cheating. This study sheds light on one form of offenses against individuals' assets, namely the crime of fraudulent deception, covering the following aspects: The definition of fraud from the perspectives of jurisprudence and judiciary. Explanation of the characteristics of fraudulent deception as a financial crime with an intellectual nature. This crime involves distorting the truth and is deliberate in nature. The victim's will plays a fundamental role, and distinctions are made between fraudulent deception and forgery, as well as between fraudulent deception and associated crimes. The study delves into the components of the crime of fraudulent deception, encompassing the material component by reviewing the methods used in deception, including adopting fake identities. It becomes evident that lying is at the core of fraudulent deception, yet it requires external supportive appearances to function effectively. Furthermore, the study elucidates the relationship between the criminal act of fraud and its result. To establish this relationship, it is essential for the victim to make an erroneous decision due to the deception inflicted upon them. The loss suffered by the deceived individual should be the result of the deception, and the delivery of money to the swindler must occur after the occurrence of the fraudulent deception. The study also explores the second component of the crime of fraudulent deception, which is the moral aspect. In addition to the general intent, which includes knowledge of the deception and the intent to commit it, there must be a specific intent, namely directing the perpetrator's goal towards acquiring the item received from the victim. When both the general and specific intents are present, justifying fraudulent deception is impossible, even if the motive behind the act is noble.

Keywords: *Fraudulent deception - offender - victim - attempted crime - fraud - fraud - deception.*

Introduction

One of the primary topics of positive law pertains to criminal law due to its provisions and articles addressing human behaviors that deviate from the principles of collective life.

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These behaviors impact society, its diverse systems, especially the political and economic aspects. Criminal activities in this context are seen as attacks on legal interests, and their protection under criminal law influences societal stability and individual behavior within social and economic domains.

Crimes encompassed by criminal law hold particular significance within positive law. Their provisions cover human actions that deviate from communal principles and the preservation of societal systems, particularly in politics and economics. Such behaviors conflict with legal interests, which criminal protection safeguards, ensuring both stability and justice. Criminal law also delineates legitimate actions and behaviors within social and economic life. Crimes involving financial infringement relate to attacks or threats against individuals' financial rights, tied to the general legal framework of transactions and currency.

Fraudulent activities are familiar but unique within customary cases. They rely on intellectual and creative factors, adapting to technological advancements, economic and social conditions, as well as cultural and civilizational influences. Victims of such crimes fall prey to manipulators driven by greed and the promise of easy wealth. Skillful deception, supported by outward appearances, lures victims into willingly parting with their money without coercion or pressure. This is particularly true when victims possess goodwill and positive intentions.

Research Problem:

The main problem of this study lies in the fact that legal provisions criminalizing fraudulent deception do not address the value of money and its role in determining the punishment. All sentences are equal regardless of the amount involved. In other words, legal texts do not specify a monetary threshold for issuing an appropriate judgment. Non-movable assets are absent from legal provisions, as laws have not categorized them as elements subject to fraudulent deception. Laws do not mention the consequences of fraudulent deception, such as monitoring and dissemination, nor do they impose penalties for these actions. There is a lack of clear distinction between fraudulent deception and other crimes that lead to theft of property.

Significance of the Study:

This study sheds light on all aspects related to fraudulent deception, aiming to mitigate and prevent it and raise awareness among the public to avoid falling victim to it, given its prevalence in our societies. It defines deception methods used as a means to commit fraud, even though there is no explicit text referring to them. The uniform punishment for this act, regardless of the amount of money involved, is insufficient. There is a need to establish a financial threshold to distinguish and define appropriate punishments.

Research Objectives:

Define fraudulent deception and differentiate it from other crimes related to financial assault, such as theft and embezzlement. Explain the elements of fraudulent deception and its methods. Discuss deterrent penalties for fraudulent deception, cases of mitigation and aggravation of penalties.

Research Methodology:

This study adopts an analytical methodology. It involves analyzing legal texts related to the study's topic, examining legal interpretations, analyzing them, and understanding the legal principles they are based upon.

1. Nature of Fraudulent Deception.

Fraudulent deception is the act of acquiring money owned by others through deceiving them and compelling them to hand over their money (Hassani, 1984: 211). It is also defined as the criminal use of one of the known fraudulent methods, leading the deceived person to give the criminal movable property belonging to others (Abd al-Sattar, 1982: 186). Additionally, it is recognized as the unlawful appropriation of movable property belonging to others by utilizing one of the fraudulent means to gain possession of it (Abu Khutua, 1994: 194).

1.1. Definition of fraudulent deception linguistically and legally.

Definition of deception linguistically: cheating, deception, fraud. For instance, someone deceives another person by cheating or tricking them for a specific purpose hidden behind the act of deception. The origin of this word implies not revealing something, as deception is displaying something contrary to what is concealed. It is said: "He deceived him, deceiving him with deception," meaning he misled him. The intention is to harm where the party is unaware.

Fraudulent deception linguistically refers to (claiming something through trickery and cunning, and whoever intends an action through trickery has diverted it). Ibn Manzur also sees that deception linguistically means skill and the quality of having control over behavior.

The Jordanian Court of Cassation defined fraudulent deception as the act of deceiving the victim by the offender to induce them to deliver money, allowing the offender to seize it.

The Egyptian legislator did not provide a definition for fraudulent deception, but Islamic jurisprudence defined it as appropriating property through deception (Wazir, 1993: 156).

Legal definition of fraudulent deception: Fraud can be defined as a behavior exhibited by one of the contracting parties or a third party characterized by deception, lying, or illusion, creating an error in the mind of the other contracting party, causing them to enter into the contract. This means that the contract would not have been entered into without it.

As for the legal definition of the crime of fraud, laws have varied in their terminology. Some legislations termed it as the crime of "fraud" as in the Egyptian Penal Code, Algerian Penal Code, Bahrain Penal Code, and Moroccan Criminal Code of 1963. Other laws used the term "fraudulent deception," as in the Iraqi Penal Code and the Code of Criminal Procedure, which holds that:

1. Anyone who gains possession, transfers, or takes possession of movable property belonging to others or to themselves or to another person through one of the following means: a) by using deceptive methods, b) by assuming a false name or untrue quality, or stating a false matter about a specific event when this could deceive the victim and induce them to surrender.
2. The same penalty is imposed on anyone who, through one of the above-mentioned means, induces another to surrender, transfer ownership, dispose of a document showing a debt, or deal with property or discharge it, or any other document that can be used to prove ownership rights or any other real right. It is also imposed on anyone who, through one of the aforementioned means, induces another to sign, cancel, falsify, or amend such a document. Similarly, it involves a specific individual intentionally lying to another person about something they desire to obtain, making it seem real and tangible, while in reality, it is nonexistent.

1.2. Fraudulent Deception in Islamic Jurisprudence

"Surely the hypocrites seek to deceive Allah, but He outwits them. When they stand up for prayer, they do it half-heartedly only to be seen by people—hardly remembering Allah at all." (An-Nisa, 142)

Those who are skilled in deceit, betrayal, and deception believe themselves to be clever in this world, thinking they understand transactions and sales. However, their ultimate destination is Hell (Al-Munthiri, n.d.: 66). Therefore, we will understand the subject as trickery, fraud, deceit, and manipulation in order to achieve a goal unknown to those who fall victim to the act of deception. We will have a new concept, which is fraudulent deception, and it can be defined from various perspectives.

Fraudulent deception in Islamic jurisprudence: Islamic Sharia demands good intentions in transactions, clarity in contracts and deals, avoiding any distortion or concealing of demands, and refraining from lies or displaying false intentions with hidden objectives. Allah says, "O believers! Do not devour one another's wealth illegally, but rather trade by mutual consent. And do not kill each other or yourselves. Surely Allah is ever Merciful to you." (An-Nisa, 29). Islamic jurisprudence confirms that deceptive manipulation is prohibited according to the verse, "Do not grieve for them, nor be distressed by their schemes." (An-Naml, 70).

The term "deception" refers to the intentional action of one or more individuals that results in taking someone else's property through deceit and persuading them to give away that property. Similarly, fraudulent deception refers to the criminal use of specific means of deception to induce the victim to deliver movable property to the criminal. Some argue that fraud involves a deliberate action by one or more members of management who are responsible for oversight or employees or another party to engage in fraud for unlawful gain (Wazir, 1993: 79).

1.3. Characteristics of Fraudulent Deception Crime:

- Fraud is considered a financial crime because it occurs on both movable and immovable property. Anything that is not money cannot be subject to fraudulent deception, as the perpetrator deceives the victim to hand over money. Any crime that does not result in the victim handing over money to the perpetrator cannot be considered deception.
- Fraudulent deception has a mental aspect because this type of crime relies on the intelligence of the perpetrator in committing it without resorting to the use of violence. Therefore, the perpetrators of these crimes are characterized as having sharp intelligence, allowing the perpetrator to address the victim in a convincing manner (Hassani, 1982: 565).
- Fraudulent deception relies on altering the truth. The perpetrator relies on lies to deceive his victim and distort the facts in his mind, pushing him to hand over his money. If the victim knew the truth of the matter, he would not have committed this act (Al-Qahhaji, 1995: 356).
- Fraudulent deception crimes are generally prevalent in cities and areas characterized by industrial and economic activity, where transactions are characterized by trust and speed. The swindler exploits these characteristics to carry out fraudulent and deceptive operations.
- In this type of crime, the will of the victim plays an important role in the occurrence of the deception process. The perpetrator directs him to hand over his own money, but it is an unhealthy will (Ma'moun, Al-Shanawi, 2007: 17).

2. Characteristics of the crime of fraudulent deception

The process of fraudulent deception requires a material element, which is the deception through one of the methods specified by the law. It also necessitates the outcome resulting from the deception, which is the delivery of money from the victim to the perpetrator. There is a connection between the act, which is the deception, and the result, which is the money transfer. Additionally, the process of deception requires a mental element, which is the criminal intent.

2.1. The Material Aspect

As is the case in most crimes, it involves committing an act prohibited by the law (Aaliya, 1998: 200). However, in cases of fraudulent deception, three essential elements must be present: the criminal act, the outcome, and the link between the act and the outcome.

2.1.1. The Criminal Act

Some refer to it as fraud, while others call it deception (Al-Saeed, n.d.: 225). However, the difference in terminology does not imply a difference in meaning or intent. In jurisprudence, this act is defined as distorting the truth to cause someone to fall into error. Some laws have specified deceptive acts, such as using a false name or false qualities and using deceptive methods. For instance, the French legal code in Article (405), followed by the Algerian code in Article (372), and the Palestinian code in Article (353). The Egyptian legal code added another method, which is deception through acting with movable or immovable property belonging to others, in Article (336).

To establish the material aspect of fraudulent deception, there must be an utterance or act by the deceptive individual, involving cheating or trickery, supported by external appearances, to gain control over the victim's money. Most of these methods are agreed upon and include:

- Using one of the deceptive methods.
- Dealing with someone else's property.
- Assuming a false identity.

Let's explore some of the most commonly used deceptive methods employed by criminals in such types of crimes:

- **Lying:** This involves altering the truth, whether spoken or written. Deception requires lying to be complete or partial (Al-Saeed, n.d.: 178; Najm, n.d.: 189). Lying is the fundamental element among the components of fraudulent deception. Without lying, there would be no deception, and therefore, no crime.
- **External Appearances:** This is the second crucial element among the components of fraudulent deception. It serves as evidence of the truth behind the lie. These external appearances give strength to persuasion and are referred to as deceptive methods. These appearances can take various forms, including:
 - Assistance from a third party (Othman, 1974: 532).
 - Misuse of a valid quality (Al-Mursifawi, 1978: 430).
 - Alleging specific circumstances (Hassani, 1982: 344).
 - Utilizing false documents (Najm, n.d.: 156).

Let's also explore the main objectives of fraudulent deception methods as stated in laws:

- Implying the existence of a false project (Al-Qahhaji, 1995: 3).
- Implying the occurrence of a forged incident (Numur, n.d.: 252).
- Implying the attainment of false profits (Al-Saeed, n.d.: 19).
- Implying the return of a taken amount through deception (Obeid, 1960: 353).

2.1.2. Delivering the Money (the outcome)

This is the second element of the material aspect of the crime of fraudulent deception, which involves delivering the money to the perpetrator, i.e., the outcome that the perpetrator has achieved by committing the crime of fraudulent deception.

2.1.3. The Causal Relationship in Fraud

It's not sufficient for the commission of the fraud crime that the perpetrator deceives the victim and the latter hands over the money to the perpetrator. There must be a connection between the action carried out by the perpetrator, which is the fraudulent deception, and the action performed by the victim, which is handing over the money to the perpetrator. In other words, a causal link between the act of deception and the transfer of money must be established. To achieve this connection, the following conditions must be met:

- The act of deception by the perpetrator must lead to the victim falling into error (Hassani, 1984: 248).
- The occurrence of the victim's error must prompt them to hand over the money.
- The victim must hand over the money to the perpetrator after the occurrence of the fraudulent deception (Numur, n.d.: 254).

2.1.4. Attempting Fraudulent Deception

Initiating such a type of crime is subject to the same criteria as other crimes. Legally, initiation involves commencing an action. In cases where money is handed over to the perpetrator based on a fraudulent deception, it warrants punishment for the perpetrator. However, if money is not handed over, this does not imply that the perpetrator won't be penalized. Initiating the execution of the crime is considered, even if the transfer wasn't completed due to circumstances beyond their control. Therefore, the crime of fraudulent deception is divided into:

- Acts and preparations for fraud (Hassani, 1984: 283).
- Commencing the execution (Hassani, 1984: 275).

2.2. The Moral Aspect

2.2.1. The General Intent in the Crime of Fraudulent Deception

The True Meaning of General Intent in the Crime of Fraudulent Deception consists of being aware of the crime and having a directed intention to commit it.

Knowledge of the Crime of Fraudulent Deception: The perpetrator must be aware, at the time of committing the crime of deception, of the benefits to be gained from this crime and the means they will employ to achieve these gains. They should know that the methods and actions they undertake are intended to deceive the victim into making a mistake that results in handing over money to the perpetrator. For example, if someone establishes a company with a firm belief that the company will generate substantial profits, and they invite others to invest in the company, they wouldn't be intending fraud if the company fails and doesn't yield the expected profits (Hassani, 1984: 280).

Genuine Intention to Commit the Crime of Fraudulent Deception: Merely possessing knowledge of the crime of deception isn't enough to fulfill the criminal intent in the crime of fraudulent deception. The perpetrator's intention must be directed towards committing this crime, and this intention should be complete, free from any flaws, and the perpetrator must be fully aware of their actions (Al-Saeed, n.d.: 220).

From the above, it is evident that three factors must be present to ascertain the existence of a general intent in the crime of fraudulent deception:

1. The perpetrator must be aware that the method they are employing is a deceiving one and will lead the victim to hand over their money.
2. The perpetrator must be aware that the money they will receive is owned by someone else.

3. The perpetrator's intention must be positively directed towards employing these methods to achieve deception.

2.2.2. Specific Intent in the Crime of Fraudulent Deception

The concept of specific intent revolves around the perpetrator's intention to take possession of the item given to them by the victim. The perpetrator exhibits signs of control over this item and deprives the victim of its utilization. Therefore, if the perpetrator lacks the intention of possession, the specific intent is not present in their crime (Wazir, 1993: 437; Najm, n.d.: 220). Furthermore, having the intention of possession is sufficient to establish the specific intent, even if the crime does not result in harm to the victim.

2.2.3. The Motive Behind Committing the Crime of Fraudulent Deception

It is the collection of factors or reasons that drive the perpetrator to commit the crime in order to achieve their goal. These factors could be base, such as greed or revenge, or they could be noble, like debt collection or funding a charitable project.

When both the general and specific criminal intent are present, the motive for the crime of fraudulent deception is not considered, because no matter how noble the motive may be, it does not negate the occurrence of the crime of fraudulent deception (Najm, n.d.: 189; Hassani, 1984: 286).

3. Punishment for the Crime of Fraudulent Deception

In this section, we will discuss the punishment for fraudulent deception, as well as the punishment for attempting this crime.

3.1. Punishment for the Complete Crime:

In this requirement, we will study the punishment for fraudulent deception in various laws, which is categorized into simple fraudulent deception and aggravated fraudulent deception, along with the circumstances that lead to mitigating the sentence or granting clemency.

3.1.1. Punishment for Simple Fraudulent Deception:

Legislators have differed in determining the penalty for this type of crime. The Palestinian legislator settled for imprisonment without specifying the minimum or maximum sentence. The sentence must not be less than one week and not exceed three years of imprisonment. The law does not mention the circumstances that warrant harsher punishment and does not mention any fine for this crime.

In this type of crime, we find that the Egyptian law in Article (336) merely specifies that the punishment is imprisonment. Similarly, the UAE law in Article (399) and the Bahraini law in Article (391) do the same, leaving the judge with the freedom to assess the appropriate punishment to impose on the offender within a two-year period.

Consequently, many legislators have increased the penalty for this type of crime to five years of imprisonment, as is the case with the Tunisian legislator in Article (291) and the Algerian legislator in Article (372), treating perpetrators of this type of crime similarly to those committing felonies (Hassani, 1984: 288).

3.1.2. Penalty for Aggravated Fraudulent Deception:

To begin with, we need to specify the situations in which fraudulent deception is considered a crime deserving of a more severe penalty:

1. Fraudulent deception for securing a public sector job: This type is limited to the public sector and does not apply if the fraud occurs in the private sector (Ja'far, n.d.: 342). The justification is that such crimes undermine trust in public sector appointment procedures.

2. Fraudulent deception in the issuance of bonds or shares: This includes all companies and projects that sell fake bonds. The penalty has been increased to protect investors.

3. Fraudulent deception causing harm to the state or any public sector institution: Any fraudulent activity involving public funds, regardless of ownership.

4. Fraudulent deception by an authorized signatory: This occurs when a person takes advantage of their granted authority to deceive the victim and take their money. The penalty is increased in this case due to the loss of trust in authorized signatories (Al-Qahhaji, 1995: 421).

The penalty for aggravated fraudulent deception varies from one jurisdiction to another. It could range up to ten years of imprisonment, as in the Algerian Penal Code Article (372) and the German law Article (264), or up to five years of imprisonment, as is the case with the Kuwaiti law Article (235) and the Libyan law Article (461).

From the above, we find that aggravated fraudulent deception transforms into a felony, and its perpetrator is treated similarly to a felon.

3.1.3. Pardon or Mitigation of the Penalty for Fraudulent Deception:

1. Most legislations have not specified any cases in which pardon is granted to perpetrators of fraud, except for the Palestinian and Jordanian legislations. Article (324) of the Palestinian Penal Code states that those who commit fraud causing harm to their spouse, husband, wife, or close relatives shall not be prosecuted unless the victim requests it.

Similarly, the Jordanian legislator, in Article (425), exempts perpetrators of fraud if the victim is one of the spouses and if they are not divorced. If the perpetrator repeats the crime within three years and the victim files a complaint, the penalty is reduced by two-thirds.

2. As for the mitigation of the penalty for fraudulent deception, the Jordanian law, in Article (427), mitigates the penalty if the harm caused by the fraud is insignificant or if the harm is remedied before the accused appears before the judge in court.

3.2. Penalty for Attempting Fraudulent Deception

In this section, we will discuss the penalty for attempting this type of crime and the specific penalties outlined in the legislations.

3.2.1. Penalty for Attempted Fraud:

Some legislations do not explicitly mention the penalty for attempted fraud, while we find the opposite in the Palestinian, Jordanian, Syrian, Lebanese, Emirati, Egyptian, Bahraini, and other legislations (Zaid, n.d.: 389).

3.2.2. Penalty Amount:

Some legislators have treated attempted fraud with the same penalty as completed fraud, as is the case with the Syrian, Lebanese, and Jordanian legislations. Others have specified the penalty for attempted fraud as imprisonment for a period not exceeding two years, as in the case of the Emirati legislator. Meanwhile, the Egyptian legislator has stipulated a penalty of imprisonment for up to one year, and the Bahraini legislator has set the penalty at half the penalty for the completed crime.

Conclusion

Through this study, we have discussed the crime of fraud and deception, which is considered one of the significant crimes involving financial matters. It has become one of

the most common crimes in our modern days within our societies. In the conclusion, we will highlight the most important points covered in this study.

In the first section, we discussed the linguistic and jurisprudential distortions of fraud and deception. Many definitions were found, and legislators differed in unifying the name of this crime, with various terms ranging from "fraud" to "deception" to "cheating."

We also addressed the characteristics of this crime, emphasizing its intentional nature, where the intent of the perpetrator plays a fundamental role in fulfilling the material element.

Furthermore, we mentioned the common features shared between the crime of fraud and deception and other crimes. All these crimes involve encroachment on others' property. We also discussed the distinctions between this crime and theft, as well as issues of trustworthiness.

Additionally, we explored the elements of the crime of fraud and deception, which include both material and moral aspects. In cases where the criminal result is not achieved, we encounter attempted fraud and deception. We discussed this type as well as the penalties imposed and the circumstances under which pardon or mitigation of penalties can occur for this type of crime.

Results

From the foregoing, it can be inferred that legislators have differed in determining the appropriate penalties for this type of crime, and they have also varied in defining the elements of the crime of fraud and deception.

Furthermore, the legislator has distinguished between the crime of fraud and deception and its attempt. Legislators have differed in specifying the penalties for attempting fraud, with some granting exemption and others opting to mitigate the penalties.

Recommendations

1. Most laws do not provide a clear and precise definition of the crime of fraud and deception, as this type of crime evolves with changing times.
2. The term "fraud and deception" is a more accurate designation than the term "embezzlement" used by some legislators, as the latter term encompasses several meanings that differ from the intended meaning of this crime.
3. Despite the notable similarities between the crime of fraud and deception and theft and breach of trust, it should be emphasized that there is a significant difference between them in terms of outcome and the role of the victim.
4. The result of the crime of fraud and deception is the transfer of money from the victim to the perpetrator through deceit. The crime is only complete upon the transfer of money.
5. Many legislators have not explicitly addressed the attempt to commit fraud and deception, even though it is of equal importance to the crime itself.
6. All laws have not established a specific monetary threshold for determining the applicable penalty for committing such crimes.

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