

SPECIFIC REPORTS B-

For Criminal Actions.

31. Circumstances in which specific report is required: Indian Penal code (Offences) The following are the offences which auditors of co-operative societies generally come across during the course of their audit: - Sr.no. Nature of offence IPC section Instances / explanation Draft audit remarks

1 Theft 378 Theft of valuables belonging to society by outsiders where FIR is not lodged by the society During the audit, we observed that the stock / cash / valuable of society for Rs..... has been stolen. But the society has not filed any FIR.

2 Theft by clerk or servant of property in possession of master 381 Theft of valuables belonging to society by employee or any directors of society whether FIR has been lodged or not lodged During the audit, we observed that the stock / cash / valuable of society for Rs..... has been stolen by the following employees / directors by using the modus operandi. But the society has filed FIR on date and investigation is on. / the society has not filed any FIR.

3 misappropriation – misappropriation as dishonest appropriation or conversion for a person's own use of property belonging to another. It also covers subsequent wrongful or fraudulent retention of property . 403 1) Debiting excess amount than the voucher amount / bill amount. 2) Withdrawing the amount from bank but not crediting in cash book

3) Debiting the bank account without depositing the amount in bank

4) disbursing loans without sanction / without security / without loan documents / using forge documents

5) any other transaction with the intention to defraud the society by any person. During the period under audit misappropriation of Rs.----- is detected. The said misappropriation has been committed by using ----- modus operandi (without security / fabricated documents / false security, etc.). The following persons are responsible for misappropriation. 1.... 2... 3... 4 Criminal breach of Trust - whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or dispossess of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal 405

1) The cashier who is entrusted the custody of cash, misappropriates the cash.

2) The go-down keeper who is entrusted with the stock / inventory of society, misappropriates the same. During the period under audit, we have detected that, the cashier has misappropriated cash of Rs.....

Co-operative Societies Audit Manual 216 contract, express or imply, which he has made touching the discharge of such trust, or willfully suffer any other person so to do, commits "criminal breach of trust

5 Criminal breach of trust by clerk or servant - 408

6 Criminal breach of trust by public servants, bankers, by merchant or agent etc 409

7 Cheating 415

8 Cheating by personation 416

9 Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect

10 Cheating and dishonestly inducing delivery of property 420

11 Dishonest or fraudulent removal and concealment of property 424

12 Use of forged document or electronic record as genuine 471

13 Forged document or electronic record 470

14 Forgery 463

15 Making a false document 464

16 Forgery of 467 Co-operative Societies Audit Manual 217 valuable securitywill etc.

17 Forgery for purpose of cheating 468

18 Forged document 470 19 Falsification of accounts 477-A

32.Criminal misappropriation- the offence most commonly met with in co-operative societies is the misappropriation of its funds. Section 403 defines "misappropriation as dishonest appropriation or conversion for a person's own use of property belonging to another. It also covers subsequent wrongful or fraudulent retention of property though innocently come by. The dishonest intention to appropriate the property of another is common both in theft and misappropriation.

33. Misapplication and misappropriation distinguished. -Where the funds of a society have been misapplied, but there was no intention to derive any personal benefit, the misapplication of the money, though illegal will not amount to misappropriation and hence no criminal action will lie against the wrong-doers, even though loss has been occasioned to the society. Thus, for example, when loans have been advanced in excess of the limits specified in the byelaws or loans have been made to non-members or against inadequate security, no offence is committed. The remedy in such cases is to invoke the provisions of section (88) and not institute criminal proceedings. Similarly, when transactions have been entered into in a negligent manner or against the provisions of the Act, Rules or the byelaws of the society, the remedy is to institute proceedings under section (88) and claim damages. A person can be held liable for criminal misappropriation, only if he dishonestly misappropriates or converts for his own use, money, goods or other moveable property, which has come into his possession. As in the case of theft, dishonest intention to appropriate illegally is the basis for institution of criminal proceedings. To sustain a charge of misappropriations, therefore the prosecution has to prove that the accused deprived the complainant of his property and wrongfully misappropriated it or retained it with dishonest intention. However, mere retention of money would not warrant a conviction unless there is evidence to prove that the accused used or retained the money dishonestly. It is, no doubt, impossible for the prosecution to follow the money in the hands of the accused person and to prove that he spent certain specific amount in any particular manner. The prosecution must stop when it is proved that the accused has received the money, has acknowledged the receipt of the money and has failed to pay it to his master or show it in his master's account. Where it is the duty of the accused to pay the moneys received by him, this non-payment is prima facie evidence that he has wrongly appropriated them for himself. Non-payment coupled with false account either as to the receipt of the money or its disposal is conclusive evidence. On a charge of misappropriation, it is sufficient for the prosecution to prove that some of the money mentioned in the charge has been misappropriated by the accused even though it may be uncertain as to what is the exact amount so misappropriated. Evidence has accordingly to be led that the accused retained, misappropriated or converted for his own use, money, goods or other property of the society and that he did so dishonestly. Evidence may have to be led to establish that the accused received the money, but did not Co-operative Societies Audit Manual 218 credit the amount in his cashbook or pay it over to his society and was in financial difficulties at the time. The mere fact that the accused was given time to make up his account and pay the balance due, does not vitiate a conviction for criminal misappropriation or show that the matter is one for a Civil Court only. Separate offences. -Misappropriation of separate items of money on different dates constitutes distinct items and the facts connected with each item should be subject matter of separate inquiry. Where moneys are dishonestly misappropriated and false accounts or vouchers are prepared for the purpose of screening the misappropriation, the offence of

falsification becomes part and parcel of the offence of misappropriation and the whole transaction must be practically considered as one offence consisting of criminal misappropriation according to the Mumbai High Court.

34.Criminal breach of trust. -Section 405 defines criminal breach of trust and section 406 prescribes punishment for criminal breach of trust. Under section 407, criminal breach of trust by carriers, wharfingers, warehouse keeper, etc., who have been entrusted with goods for transport or for other purposes is punishable with seven years' imprisonment and/or fine. Section 408 deals with criminal breach of trust by clerk or servant, while section 409 groups' together public servants, bankers, merchants, factors, brokers, attorneys and agents for purposes of prescribing higher punishment of ten years. Section 405 defines criminal breach of trust as, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or dispossess of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or imply, which he has made touching the discharge of such trust, or willfully suffer any other person so to do, commits "criminal breach of trust" To constitute the offence of criminal breach of trust, there must be dishonest misappropriation by person in whom confidence is placed as to the custody or management of the funds or property, in respect of which the breach of trust is alleged. There must be an entrustment; there must be misappropriation or conversion to one's own use or use in violation of any legal direction or of any legal contract and thirdly, the misappropriation or conversion or use must be with a dishonest intention. Trust: Section 3 of the Indian Trust Act, 1882, defines trust an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. The word trust is comprehensive expression and has been used in section 405 as covering not only the relationship of trustee and beneficiary but also that of bailer and bailee, master and servant, pledger and pledgee and all other relation which postulate the existence of a fiduciary relationship between the complainant and the accused. (J.R.D. Tata Chairman T.I. and S. Co. Ltd. V. Payal kumar, 1987) Directors of a Company are not only agents but they are in some sense to some extent trustees or in the position of trustees. (R.K. Dalmiya v. Delhi Administration.(AIR 1962)

35.Criminal misappropriation and criminal breach of trust distinguished. -In a criminal misappropriation, the property comes into the offender by some causality or otherwise and he afterwards misappropriates it. In the case of criminal breach of trust, the offender is Co-operative Societies Audit Manual 219 lawfully entrusted with the property and he dishonestly misappropriates the same of willfully suffers any other so to instead of discharging the trust attached to it.

36. Misfeasance, misappropriation and breach of trust distinguished. - Every breach of trust gives rise to a suit for damages, but it is only when there is evidence of a mental Act, or intention of fraudulent misappropriation that the commission of any embezzlement of money becomes a penal offence punishable as a criminal breach of trust. Every offence of a criminal breach of trust involves a Civil Court, but every breach of trust in the mens rea (mental Act, or intention of fraudulent misappropriation), cannot justify a criminal prosecution. The terms of the section are very wide. It applies to one who is in any manner entrusted with property or dominion over property and provides inter alia that if such a person dishonestly misappropriates or converts to his own use, the property entrusted to him, he commits criminal breach of trust. This part of the definition is complete in itself and has no reference to the provisions as to disposal in violation of a directive of law or of a legal contract. A necessary element of criminal breach of trust is that there should be entrustment of property to the accused. The entrustment may be in any manner. Section 405 embraces the cases of all offences, which are not covered by sections 407, 408 and 409. Offences committed by trustees with regard to trust property and of directors of companies and committee members of co-operative societies, who do not come within the purview of section 408, are covered by this section.

37. Dishonest Intention: To establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he had dominion, where the entrustment of money is admitted or proved. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may, in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Where the accused is unable or fails to account for the money or property received by him or interested to him or renders an explanation of his failure to account, which is untrue, an inference of misappropriation with dishonest intention may readily be made. Dishonest intention is a necessary element for criminal offence under Section 406. Subsequent conduct in repudiating the transaction during the trial has no bearing on dishonest intention at the time of the alleged transaction (*Kaushalya V. State AIR 1964*) IN case of criminal breach of trust, failure to account for the money proved to have been received by the accused or giving a false account as to its use is generally considered to be a strong circumstance against the accused. This however, is a piece of evidence pointing to dishonest intention and is not conclusive. (*Puran Chandra v. State AIR 1966*) Mental act of fraudulent misappropriation is the essential ingredient of the offence of criminal breach of trust, the prosecution must prove the existence of the dishonest intention beyond reasonable doubt, it will not suffice for the prosecution merely to prove the circumstances which may be consistent either with the dishonest intention of the accused or the absence of such intention. Dishonest

intention cannot be directly proved and has to be inferred from the conduct of the accused both before and after the date of alleged entrustment. Mere difficulty in proving is no excuse. (*Amrutlal v. Bajaranglal*, 1963 CR.L.J.)

38.Entrustment:The word “entrustment” when used in respect of money means that the money has been transferred to the accused under circumstances which show that Co-operative Societies Audit Manual 220 notwithstanding its delivery to be accepted, the property in it continues to vest in the prosecutor and the money remains in the possession or control of the accused as a bailer and in trust for the prosecutor as bailer, to be restored to him or applied in accordance with his instructions. The terms of this section are wide enough to include trustees of every kind, i.e. those who are employed and receive remuneration for acting as trustees, but also by reason of some trust constituted by express deed or even by implication of law, though the office (as in the case of membership of committees of co-operative societies) may be gratuitous and they may not be receiving any remuneration for the services rendered by them. If there is no trust, there can be no offence under the section. Thus, a person who takes a sum of money by way of loan is not entrusted with the property. However, where an officer of the society having custody of the cash balance retains large sums of money for considerable period and subsequently enters them as an advance or loan taken by him, he commits criminal breach of trust. Similarly, when a servant receives large sums of money, which he has obtained from his employer on the false pretext that they were required to pay wages, it was held that he was guilty of criminal breach of trust although the criminal intent to misappropriate was present at the time of receipt of the money by him. Where a public servant entrusted with money for purchasing certain articles, purchases the articles, he does not commit any offence under section 406 merely because he does not produce the supporting vouchers along with the bills for the purchase of the articles. (*State of H.P. v Nandlal* 1983 Cr. L.J.). Where accused person not legally entitled to carry on banking business. Fail to repay the amount deposited with them by the members of the public; they are guilty of the offence of criminal breach of trust. (*A.G.Abhidham v. State of Kerala* 1987 Cr. L.J.). Where the Secretary of a Society was dealing with the cash and did not make over the cash to the President of the Society while handing over the charge of the post, he was held guilty of misappropriating the amount and convicted under section 406 (*Uday Narayan Panda v. State* 1978 Cr. L.J.) Where entrustment of the property is proved, burden lies on the accused to account for the money/property, burden does not lie on the prosecution to prove how the accused misappropriated the property. (*Uday Narayn Panda v. State* 1978 Cr. L.J.) The word ‘entrusted’ itself conveys and includes that the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship as between them. If the property is obtained by trick or by any other unlawful means, then there cannot be any entrustment. ‘Entrustment ‘ means the handing over of the property by lawful means. Where the property is acquired by trick or ‘ in any other manner’ by false representation to the owner thereof offence under Section 420 is committed.

Where the goods were pledged by the complainant debtor with the accused creditor as security for payment of the debt and the agreement further provided that if the debt was not paid within the stipulated period with the 15 days clear notice, and accused disposed of the goods pledged without notice to the debtor, the accused was held guilty of the offence of criminal breach of trust. (Jaswantrao Maniclal Akhney v. state of Bombay, AIT 1956)

39. Property: As regards the meaning of the term "property", it has been held that it includes the sale proceeds of the goods entrusted to the accused and also goods purchased with the moneys provided by the employer and entrusted to the accused for making the purchases. The property in the section 405 includes the property, purchased with the money entrusted in view of the words "in any manner" occurring in Section 405. The offence of Co-operative Societies Audit Manual 221 criminal breach of trust cannot be committed in respect of one's own property; the property must belong to another person. The worked property is not restricted to movable property; the funds of a company do amount to property within the meaning of section 405. The section does not contemplate that the property in respect of which the offence of criminal breach of trust is committed must belong to the complainant.

40. Dominion over property-The accused hypothecated to the complainant under a written contract, all his claims against Government in respect of work done and materials supplied to the Executive Engineer and undertook regularly to make over to the complainant all cheques drawn by the Executive Engineer in his favors and subsequently in violation of the said contract cashed two such cheques and appropriated the proceeds. It was held that the accused had committed criminal breach of trust. Even where a person has not been entrusted with the property comes to have a dominion over it can be guilty of misappropriation, in order to establish entrustment of dominion over property to an accused person, the mere existence of that person's dominion over property is not enough, it must be further shown that his dominion was the result of entrustment. Directors of a company are not trustees of the due to the company, and any wrongful dealing by the director with the funds of the company does not amount to criminal breach of trust.

41. Hire Purchase Agreement. -One 'C' agreed to purchase a motor lorry, paying the price by installments. Meanwhile, he signed an agreement with the owner by which describing himself as the hirer, he undertook to pay certain installments, to ensure the vehicle hired and not to deal with it, to allow owners to recover possession in case of default and admitted to lorry would remain the property of the owners until all the installments due were paid. It was held that when 'C', in spite of the agreement, sold the lorry before the installments were paid, was guilty of criminal breach of trust. In a criminal breach of trust, the property remains with the person entrusting and the person entrusted does not have any right in the property. The second ingredient in a case of criminal breach of trust is dishonest intention. It has to be

established that the accused dishonestly misappropriated or converted to his own use the property. Temporary retention of money would not by itself amount to criminal breach of trust. The mere failure to deposit the money would not, therefore, prove dishonesty, there must be other circumstances to prove the element of dishonesty and unless the element of dishonesty is proved, the mere retention of money would not by itself constitute the offence. False explanation is sufficient to prove the element of dishonesty. The mental act of appropriation must be established, but actual expenditure of the money is not the only proof. Mere retention of goods by a person without misappropriation does not constitute criminal breach of trust.

42. Willful omission to account. -If a person receives money, which he is bound to account for, and does not do so, he commits the offence although no precise time can be fixed at which it was his duty to pay the money. Where an employee fails to render accounts and to deliver up the moneys realized by him in spite of repeated demands, he uses the property entrusted to him in violation to the legal contract made by him with his master and is guilty of an offence under section 408. As already stated, it is not necessary or possible in every case of criminal breach of trust to prove in what precise manner, the money was spent or appropriated by the accused, because under the law even "temporary retention" is an offence provided it is dishonest. The essential thing to be proved in such cases is whether the accused was Co-operative Societies Audit Manual 222 actuated by dishonest intention or not. (Queen Empress vs. Kellie) The failure to account for the money proved to have been received by the accused or giving a false account as to its use is generally considered a strong circumstance against him. The mental act or intent to deprive the master of his property is the gist of the offence. If a servant immediately on receiving a sum for his master enters a smaller sum, he may be considered to be embezzling the difference at the time he makes the entry. It will make no difference, though he received other sums for his Master the same day and in paying those and the smaller sum to his master together he might have given his master every piece of money or notes he received at the time he made the false entry. It is not necessary to prove that any particular sum or sums were an amount forming the balance of a large number of receipts and payments; this was held to be sufficient.

43. Willfully suffers any other person: The second part of section 405 says that whoever willfully suffers any other person "to misappropriate or convert any property commits criminal breach of trust. Willfully suffering makes a man liable. "Willful" means deliberate or intentional and not accidental or by inadvertence. Where a person willfully suffers to misappropriate the money entrusted to him, he commits the offence of criminal breach of trust under section 405 in as much as if he himself had misappropriated it. His plea that he did so under the instructions of his superiors can afford him no protection.

44. Evidence –to make out a case of criminal breach of trust, which is the commonest offence relating to the funds of a co-operative society, it has to be established that not only the accused has retained the money, but that he has disposed off the same in some way other than that in which he was bound to apply it and that he did so dishonestly. The mere fact that the accused did not at once apply the money to the purpose for which it was intended does not amount to criminal breach of trust. There must be some dishonest use of money to constitute the offence. Although mere retention of money does not necessarily raise a presumption of dishonest misappropriation to one's own use dishonest misappropriation may sometimes be inferred from the circumstances without due evidence. Thus, when cash is drawn from for making small disbursements such as payment of wages of staff when a very large amount is held as cash on hand, in utter disregard to the provisions of the byelaws of the society, a presumption can be made that the cash on hand has been misappropriated. Nearly establishing that false entries have been made to be led that the accused attempted to suppress all traces of his embezzlement by manipulation of the accounts, or evidence of the financial circumstances of the accused will have to be led which would render probable a case of misappropriation.

45. Section 408. - Criminal breach of trust by clerk or servant –Clark- In modern usage, the term would mean a writer in an office, public or private, for keeping accounts or entering minutes.

46. Servant, Master and servant – A relation whereby a person calls in the assistance of other where his own skill and labor are not sufficient to carry out his own business or purpose. Bring the accused within the purview of section 408; it will have to be proved [1] That accused was the clerk or servant of the person reposing trust; [2] That he was in such capacity entrusted with the money or property or entrusted with dominion over it Co-operative Societies Audit Manual 223 [3] That he committed criminal breach of trust in respect of such money or property. Actual conversion need not be proved. A mental Act, of fraudulent appropriations will however, have to be proved.

47. Violation of legal contract. -Where a person taking goods on approval under an agreement that the property therein was to pass on approval, only if he exercised his option to take them and paid cash in full for certain articles and in part for others, the trust continues till the option is exercised and cash payment made and he commits criminal breach of trust, if he sells them without such payment. The manager of a bank received G. P. notes from a customer as security for an overdraft granted to him. Before the overdraft was cleared, the Manager returned the promissory notes without showing them as returned in the books of the bank, which continued to show that they were still deposited with it. The customer having got back his G. P. Notes repledged them with another banker. It was held that the Manager was guilty of criminal breach of trust and the constituent of the abetment thereof. Where the secretary of a

Cooperative society converted the money of the society in his hand to his own use or expended the same for purpose other than those of the society, and falsified account books to cover up his embezzlements, the secretary was guilty of offences under Sections 408 and 477. (Joy Shankar V. Sushil Kumar 1969 cr. J.) Where the accused, Secretary of a cooperative Society was entrusted with the amount, gave that amount to the president of the society and purchased wheat for another member of the society. The president did not return the amount, the member also did not for the wheat, the accused dishonestly misappropriated and willfully suffered these two persons to convert to their own use the property ;of the society, was guilty of criminal breach of trust. (Kundanlal v. state 1976 cr. J.) Where the accused representing himself as manager of a Gram Sahakari Samiti collected loan amount from the subscribers of the Samiti, did not deposit the collected amount in bank, he was held guilty of offence under the section. The president and Secretary of a Cooperative Society are not public servants and whey they commit embezzlement, section 408 applies to them. When a Secretary of a Cooperative Society entrusted with the surplus funds of the society, utilises the same for his won purpose, he is guild of misappropriation of funds. Where the Secretary of a Cooperative Society returned a certain amount of the society, a direction by him to accountant of the society to make a wrong cross entry was only susceptible of the inference that he wanted to misappropriate the amount. (Kantilal v. State of Gujrat AAIR 1974) Mere entry in books of account unsupported by any oral evidence cannot prove entrustment.

48.Section 409. -This section clubs together public servants, bankers, merchants' factors, brokers, and attorneys. The word "banker" in this section has not been used in the technical sense of the Banking Regulation Act, but any person or firm doing the customer business of banking, is a banker for purposes of this section. Merchant is a person who traffics in goods in remote countries, i.e. an importer or exporter and in the ordinary sense also any one engaged in the purchase and sale of goods. Factor is an agent to sell goods, for a commission. Broker is an agent employ to make bargains and contracts between other persons in matters of trade, commerce and navigation. A factor is entrusted with the disposal of the property while a broker is employed to contract about it without being in possession of goods. Attorney is one who is appointed by another to do some thing in his absence and who has authority to Act, in place and turn of the person by whom he is delegated. To establish a charge of criminal breach of trust the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accusedof the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted if prove, justifiable lead to inference of dishonest misappropriation. To justify conviction under Section 409, the prosecution must prove factum of entrustment and factum of misappropriation. Mere an audit report of inconclusive nature cannot form basis of conviction. Office bearers of a society are not

public servant within the meaning of Section 21 of the Indian Penal Code and they cannot be prosecuted under section 409 of the Indian penal code. (Hanumant Patil Vs. State of Maharashtra, 1993(2) Bom. C.R. 286 and state of Maharashtra Vs. Laljit Shah, 1994 Mah L.J.)

49.Cheating. -Section 415 defines cheating. This is a very wide section and deals with almost all the aspects of cheating. A dishonest concealment of fact is also deception within the meaning of the section. Unlike in other offences, in the case of cheating, the offender obtains not only possession of the property, but also sustains property in it. Cheating, criminal breach of trust and criminal misappropriation are all distinct offences. Cheating differs from the last two offences in the fact that the cheat takes possession of the property by deception. There is wrongful gain or loss in both the cases and there is inducement to deliver the property.

50.Deceiving means causing to believe what is false or misleading as to a matter of fact leading to error. It is not sufficient to prove that a false representation has been made, but it is further necessary to prove that the misrepresentation was false to the knowledge of the accused, and was made in order to deceive the complainant. It is not necessary that the false pretence should be made in express words; it can be inferred from all the circumstances attending the obtaining of the property or conduct of the person. If a person obtains goods on credit promising to pay for them on a particular day, knowing that it was impossible for him to pay, or draws cheques knowing that the bank balance was insufficient and the cheque would not be honored, it would amount to cheating. Under section 417, punishment for cheating is one year. Cheating with knowledge that wrongful loss may ensue to person whose interest the offender is bound to protect invites higher punishment under section 418. This section applies to cases of cheating by guardians, trustees, solicitors, agents, managers of Hindu Joint families, directors and managers of joint stock companies, and of co-operative societies, in fraud of the members or shareholders. It is the abuse of trust that is met with a more safer punishment. Presenting a false balance sheet by the directors and managers of the bank to induce depositors to renew their deposits which they would not have otherwise done or putting a false balance sheet in material respects, before the share holders or members which they knew to be false and likely to mislead the public as to the condition of the bank and concealed its true condition, would constitute offences under this section and the directors and managers have been held liable

51.Wrongful loss and gain: the Section 23 of the Indian penal Code defines 'wrongful loss as. "Wrongful loss" the loss by unlawful means of property to which the person losing it is legally entitled. It further defines that. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property. Co-operative Societies Audit Manual 225 This section also defines wrongful gain, as "Wrongful gain" is a gain by unlawful means of property to which the person gaining is not legally entitled. A person is said to gain wrongfully when such person retains wrongfully, as well

as when such persons acquires wrongfully. A person can be said to have dishonest intention if in taking the property it is his intention to cause gain, by unlawful means, of the property to which the person so gaining is not legally entitled or to cause loss, by wrongful means, of property to the person so losing is legally entitled. The gain or loss need not be a total acquisition or a total deprivation, but it is enough if it is a temporary retention of property by the person wrongfully gaining or a temporary keeping out of property from the person legally entitled. Wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of property.

52. Dishonestly: The section 24 of the Indian penal code defines it as, " whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly". Dishonest intention has got to be proved. A dishonest intention may be presumed only if an unlawful act is done or if lawful act is done by unlawful means.

53. Cheating: Section 420, which deals with cheating and dishonestly inducing delivery of property, is an important section and quite a number of offences in co-operative societies come within the purview of this section. Simple cheating is punishable under section 417, but when there is delivery or destruction of any valuable security, resulting from the act, of the person deceiving, this section comes into operation. For conviction under this section, it must be proved that the complainant parted with his property, acting on a representation, which was false to the knowledge of the accused and that the accused had a dishonest intention from the outset. Where a person whose duty it was to report the current rates in the market by arrangement with persons in the market reported rates higher than those really current and in consequence of which higher rates were paid to the sellers, than they were entitled, it was held that he was guilty of offence under this section. Assisting to obtain larger advances against a consignment sent by rail, which was made to show a higher quantity by tampering with the railway receipts, has been held to be an offence under this section. In a case the accused executed a hypothecation bond in respect of property representing that the property belonged to him and there were no encumbrances on the property, and succeeded in getting money from the complainant but in fact the property did not belong to the accused, a fact which was in the knowledge of the accused from the very beginning, the accused is guilty under section 420. When the accused by making fraudulent representations obtained loan from the Bank, they were held guilty of the offence of cheating. Where the accused Manager of the bank passed a certain cheque which resulted in loss to the bank, the accused was negligent in the sense that he had not observed that the specimen signature card of the drawer had not been authenticated by any bank official and the drawer had not been introduced by any one, the accused was negligent in the performance of his duty, but was not guilty, of cheating. Section 423 deals with dishonest or fraudulent execution of deeds of transfer containing false

statement of consideration. Under this section, dishonest execution of a Benami deed is punishable. Where the consideration for the sale of immovable property was with the consent of the purchaser exaggerated in a deed of sale in order to defeat the claim of the presenter, it was held that the purchaser was guilty of this offence. Co-operative Societies Audit Manual 226 Section 424 deals with dishonest or fraudulent removal or concealment of property. This section covers cases, which do not come within the purview of sections 421 and 422. It contemplates such concealment or removal of property from the place where it is deposited as can be considered fraudulent. It also covers dishonest or fraudulent release of any demand or claim to which the offender is entitled.

54. Forgery. - Forgery is defined in section 463, as making of a false document or false electronic record or part of a document or electronic record in the next section, section 464, deals with the making of a false document or electronic record. It will be seen that the definition of forgery given in the Code is not as simple or clear as the definition of forgery in common law. Forgery as is commonly understood means fraudulent making or alteration of a writing to the prejudice of another man's right. The simple making of a false document would not amount to forgery as defined in the section. What amounts to making of a false document is explained in section 464, to constitute the offence of forgery under section 463, the following ingredients are necessary: - 1) The making of a false document or false electronic record or part of it; 2) Such making should be with intent to a) Cause damage or injury to public or any person; or b) To support any claim or title; or c) To induce any person to part with any property; or d) To cause any person to enter into any express or implied contract; or e) To commit fraud or that fraud may be committed. The essential ingredients of Section 464 are: a) that fraudulently signing, making, executing, making seal on, transmitting any electronic record or part of any electronic record, affixing any digital signature or any electronic record, making any mark which denotes the execution of the document or authenticating any digital signature. A document or a part of a document, electronic record or digital signature with an intention of causing it to be believed that such document or part of a document electronic record or digital signature was signed, sealed, executed, transmitted or affixed by another or under his authority. (b) Making such a document with an intention to commit fraud or that fraud may be committed. Secondly if any person without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; And thirdly, if any person, causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration, commits forgery under section 464.

55.Fraudulently: Section 25 defines " fraudulently" as, A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise. The expression defraud involves two element, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money and it will include any harm Co-operative Societies Audit Manual 227 whatever caused to any person, mind, reputation, or such other. It is a non-economic or non-pecuniary loss.

56.Document: A writing is a document. However, it is not necessary that in every case a document should be in writing or contain the signature or facsimile of any person. It includes what is done by way of printing. Section 29 of Indian penal code defines document as, it denotes any matter expressed or described upon any substance by means of letter, figures or marks, or by more than one of those means intended to be use, or which may be used, as evidence of that matter. The Evidence act also defines document in section 3 as, "Document means any matter expressed or described upon any substance by means of letter, figures or marks, r by more than one of those means, intended to be used, r which may be used, for the purpose of recording that matter. As per illustration given under the section it includes; a) a Writing is a document. b) Words printed, lithographed or photographed are documents. c) A map or plan is a document. d) An inscription on a metal plate or stone is a document. e) A caricature is document. Section 470 defines a forged document or electronic record as a false document or electronic record made wholly or in part by forgery and section 471 lays down that whoever fraudulently or dishonestly uses as genuine, any document, or electronic record, which he knows or has reason to believe, to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record. What is required to be proved is- 1) Fraudulent or dishonest use of a document or electronic record, as genuine; and 2) Knowledge or belief on the part of the person that the document or electronic record is a forged one.

57. Forgery of valuable securities: Section 467 deals with forgery of valuable securities, wills, etc. An extremely sever punishment, viz., imprisonment for life, 10 years and fine, has been prescribed for the forgery of the following types of documents: - 1) A document which purports to be a valuable security; 2) A will; 3) An authority to adopt a son; 4) A document which purports to give authority to any persona) To make or transfer any valuable security, or b) To receive the principal or interest or dividends thereon, or 5) To receive or deliver any money, moveable property or valuable security: 6) Any document purporting to be a) An acquaintance or receipt acknowledging the payment of money, b) An acquaintance or receipt for a delivery of any moveably property or valuable security.

58. Forgery for Cheating: Section 468 prescribes punishment for forgery for purpose of cheating. Having possession of a forged document or electronic record, knowing it to be forged and intending to use it as a genuine document constitutes an offence under section Co-operative Societies Audit Manual 228 477-A- This section, which deals with falsification of accounts and making of false entries in books is a very important section. The section deals with two distinct offences: - 1) Falsification of accounts; and 2) Making or abetting the making of false entry or omitting or altering or abetting omission or alteration of an entry. This section makes falsification of accounts punishable although there is no evidence to prove misappropriation, of any specific sum or on any particular occasion. The section requires the falsification of accounts with intent to defraud and does not require any deprivation of any property. In an old case decided by the Madras High Court, the officers of a co-operative store, who made false entries in the accounts, were held guilty under this section even though no one lost eventually by such false entries. To establish a charge under this section, the following essentials will have to be fulfilled: - 1) The person coming within its purview must be a clerk, officer or servant or acting in the capacity of clerk, officer or servant; 2) He must willfully and with intent to defraud- (a) Destroy, alter, mutilate or falsify any book, electronic record, paper, and writing, valuable security or account which- (b) Belong to or is in possession of his employer; or (c) Has been received by him for or on behalf of his employer; or B) Make or abet the making of any false entries, or omit or alter or abet the omission or alteration of any material particular from or in, any such book, electronic record, paper, writing, valuable security or accounts.

59. Clerk or servant: The words "acting in the capacity of a clerk or servant" are very wide terms and included a person who undertakes to perform and does perform the duties of a clerk or servant, whether in fact, he is a clerk or servant or not and although he is under no obligation to perform such duties and receives no remuneration. The Chairman or a committee member of a society, who writes the cashbook and other books of accounts, or issues receipts, although these are no part of his duties, comes within the purview of this section, since he has undertaken to do these duties and has done them. A person who voluntarily performs the duties of a clerk, officer or servant and falsifies the accounts also commits offence under this section. (Abdul Aziz vs. Emperor 1953). It has to be noted that the falsification can only be committed in respect of books of the employer. The Cashier's Diary, Rough Cashbook or Counter Cashbook maintained by the cashier in a bank belongs to the employer as it is maintained in the ordinary course of business and the Cashier cannot claim it as his own or in any way belonging to him.

60. Willfully and with intent to destroy, etc, -Willfully means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act, goes with it. Even if the intention with which the false entries are made is to conceal

fraudulent or dishonest act, previously committed, the intention will be to defraud (Emperor vs. Ragho Ram (AIR 1933). Making a false document with a view to prevent persons already defrauded from ascertaining that misappropriation has been committed and thus enabling the persons who had committed the misappropriations to retain the wrongful gains which they had secured, amounts to the commission of a fraud and brings the case within the purview of this section. The issuing of a false statutory report of a company calculated to deceive the public and intended to induce them to invest their money in the company, which they would not otherwise have invested, is an act, done with intent to defraud. Promoters of bogus co-operative housing societies, who offer Co-operative Societies Audit Manual 229 residential flats, shop office premises or garages on attractive terms and given assurances of loan facilities, knowing that neither Government nor the Housing Finance Society have agreed to lend, can be hauled up under the provisions of this section. It has been held that where alterations have been made not with any intent to defraud, but merely to comply with the requirements of departmental rules, no offence is committed. It has also to be noted that the alteration should be in the handwriting of the accused in order to convict him.

61.Falsification. -The expression "falsification" applies to the preparation of an entirely new document containing false information is correctly described as a false document and the act of preparing such document is called falsification of the document.

62.Accounts. -The offence is completed when accounts are falsified with intention to defraud. An alteration in the accounts made after embezzlement will come within this section, if it is part of the scheme to deprive another of his money. But the alteration of accounts without intention to commit fraud is not an offence under this section. Making false entries in books of accounts of a society by a person in order to conceal fraudulent or bogus transactions falls within the purview of this section and deprivation of property either actual or intended is not a necessary ingredient to defraud as contemplated in this section. The secretary of a co-operative society, who has misappropriated a large cash balance, in order to conceal the misappropriation, makes a bogus entry debiting the loan account of a member and forges his signature on the loan bond, commits an offence not only under section 408, but also under section 477-A. If the intention with which a false document is made is to conceal a fraudulent or dishonest act, which had been previously committed, the intention cannot be other than intention to defraud. The concealment of an already committed fraud is a fraud.

63.Electronic Record: Section 29 A of the Indian penal code defines the electronic records, as definition given in the clause (1) of sub-section (1) of the section 2 of the Information Technology Act, 2000. The definitions is explained in chapter describing InformationTechnology Act, provisions.

64. Fabricating false evidence Section 192. -Section also deals with a similar offence, viz., fabricating false evidence, but with a different intention. This section refers to the making of any false entry in any book or record or electronic record, or making any document or electronic record, containing a false statement, intending that such false entry or false statement may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such or before any arbitrator and that such false entry or false statement so appearing in evidence may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding. Auditors and officers appointed under section 83 and 88 of the Maharashtra Co-operative Societies Act have been declared to be public servants. Accordingly proceedings before these officers are proceedings before public servants and as such act specified above done by office-bearers and employees of co-operative societies come within the purview of this section. Thus, entries intentionally made to reduce the cash balance such as fictitious debits, bogus advances, benami loans etc. Would come within the purview of this section. Intention is the gist of the offence of fabricating false evidence. The false evidence must be material to the case. As soon as the evidence is fabricated or false statement made, the offence is Co-operative Societies Audit Manual 230 committed. It is not necessary that such evidence is actually used. However, the fabricated evidence must be admissible evidence. 65. Acts done by several persons Section 34. -Many times, offences are committed by two or more persons acting jointly. Several persons may come together and commit an offence. In such cases, it may be difficult to distinguish between the acts, of individual members of a party or to prove exactly what part was taken by each of them in furtherance of the common intention of all. Section 34 deals with acts, done by several persons in furtherance of the common intention of all, each of such persons is liable for that act, in the same manner as if it was done by him alone. The section embodies the principle that if two or more persons intentionally do a thing jointly, it is just the same if each of them had done it individually. However, before a person can be held liable for an act, done by another, the section requires that it should be established that, firstly, there was a common intention in the sense of a pre-arranged plan, secondly the person sought to be held liable had participated in some manner in the act, constituting the offence. Both common intention and participation have to be present before the section can apply.

66.Criminal Conspiracy: Acting on a common intention also constitutes criminal conspiracy and is the subject matter of section 120-A. to constitute criminal conspiracy, it is necessary to prove- That there was an agreement between two or more persons- 1) For doing an illegal act, or; 2) For doing by illegal means an act, or which may not itself be illegal. However, no agreement except an agreement to commit an offence shall amount to criminal conspiracy unless some act, besides the agreement is done by one or more parties to such agreement in pursuance thereof. It is immaterial whether the illegal act is the ultimate object of such

agreement, or is merely incidental to that object. The gist of the offence is the bare engagement and association to commit an illegal Act, or offence. Section 34 and section 120-A contain similar provisions. There is not much substantial difference between criminal conspiracy defined in section 120-A and acting on common intention as contemplated in section 34.