

Asset tracing – a beginner's guide

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What is asset tracing?

It is the process of identifying assets which represent those which were initially misappropriated as a result of fraud.

English law contains two sets of rules:

- the rules of common law (which recognises legal title)
- the rules of equity (which recognises beneficial interests)

Who may a victim of fraud sue?

- Perpetrators
- Accessories
- Recipients of the proceeds of fraud

Limitations of tracing money at common law

- Electronic payments
- Mixed funds

Tracing money in equity I

- it was the victim's money to start with, and
- the defendant received the same money.

Tracing money in equity II

- the mixed fund rule
- the rule in Re Hallett's Estate
- the rule in Re Oatway
- the lowest intermediate balance rule
- the overdraft rule
- the rule in Clayton's case

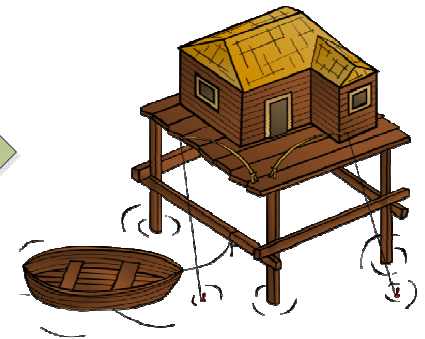
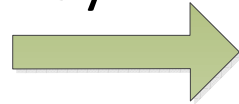
Straightforward transaction

Victim's bank account

Fraudster's bank account



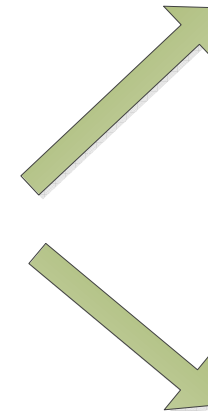
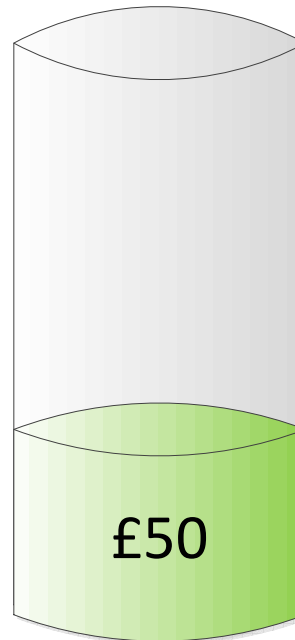
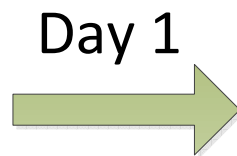
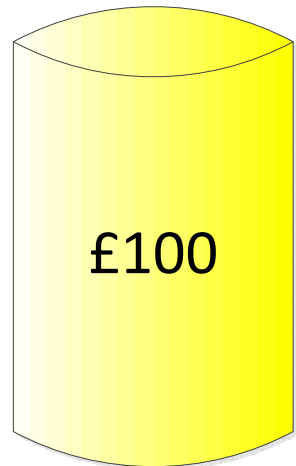
Day 1



Mixed fund

Victim's bank account

Fraudster's bank account



£80



£70

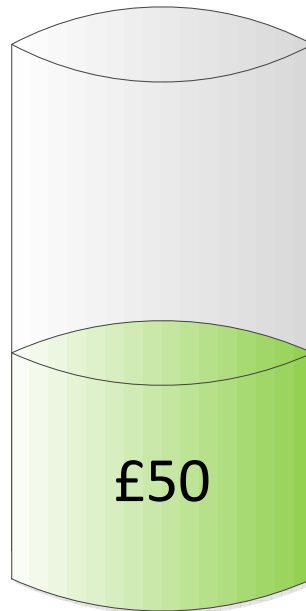
Re Hallett's

Victim's bank account

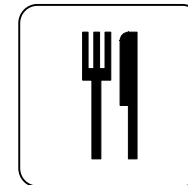
Fraudster's bank account



Day 1 →



Day 2 →



£70 – Living
Expenses

Day 3 →

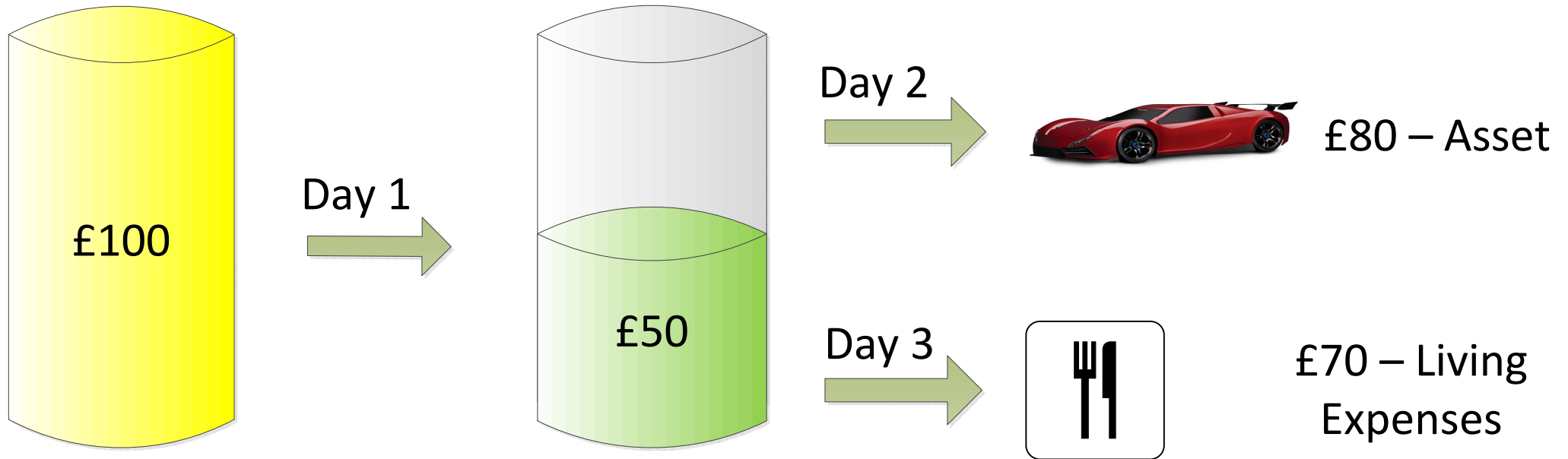


£80 – Asset

Re Oatway

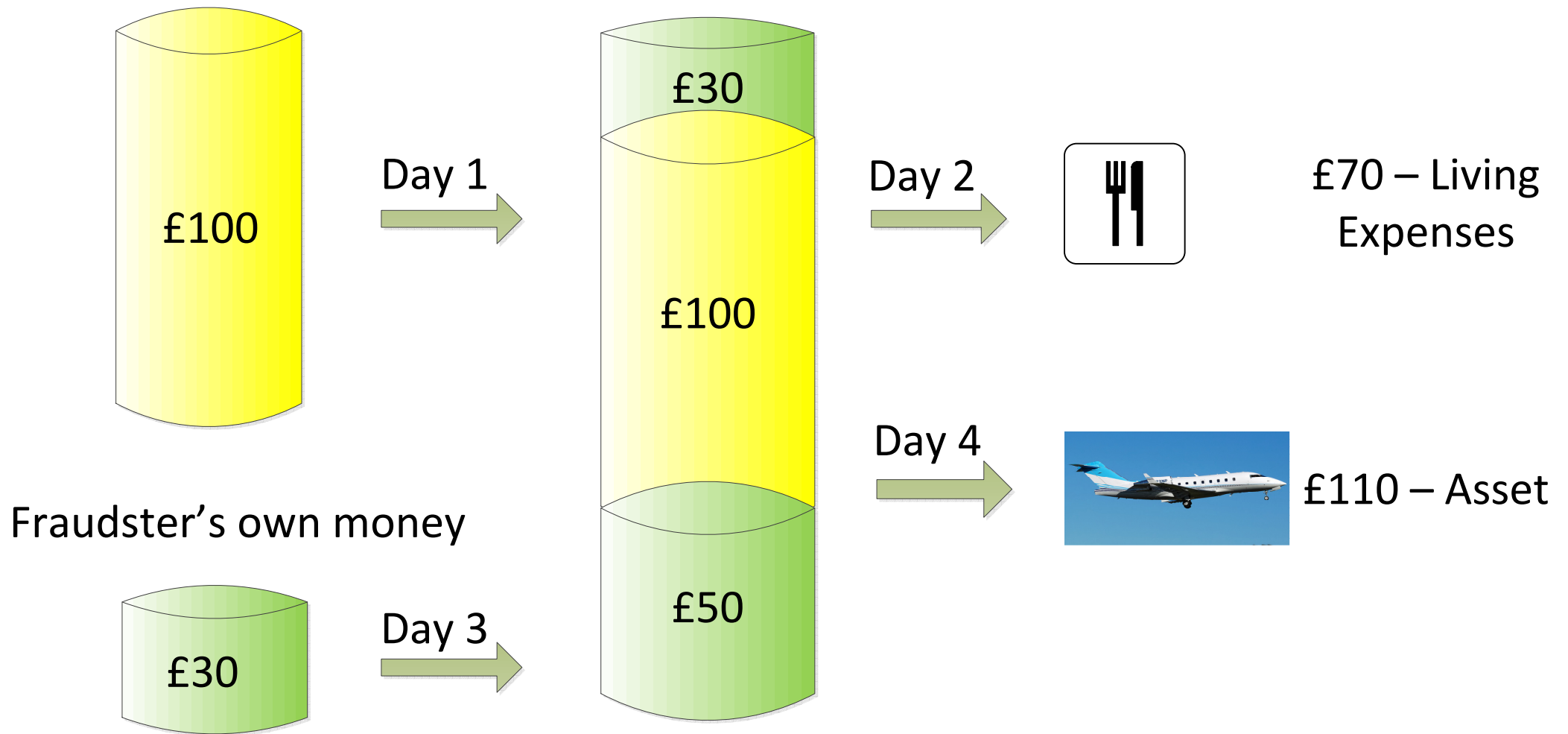
Victim's bank account

Fraudster's bank account



The lowest intermediate balance rule

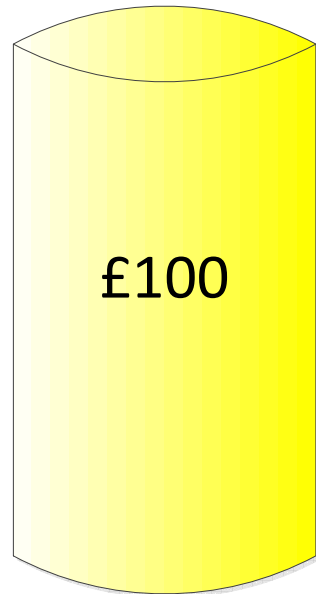
Victim's bank account Fraudster's bank account



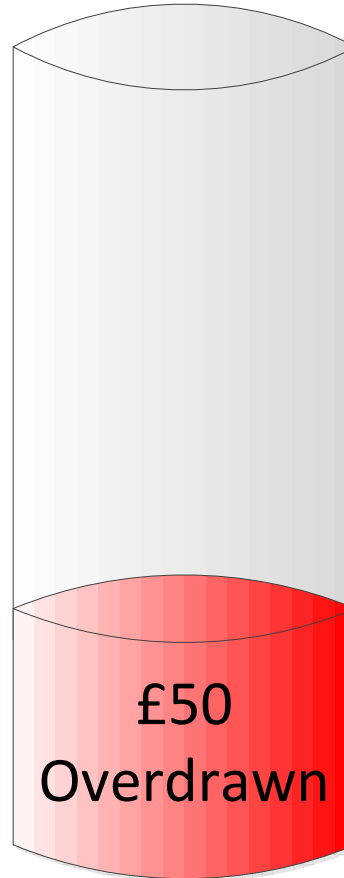
The Overdraft Rule

Victim's bank account

Fraudster's bank account



Day 1
→

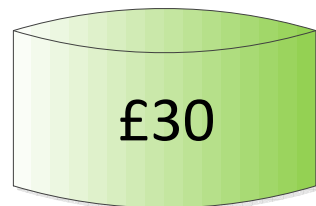


Day 3
→



£80 – Asset

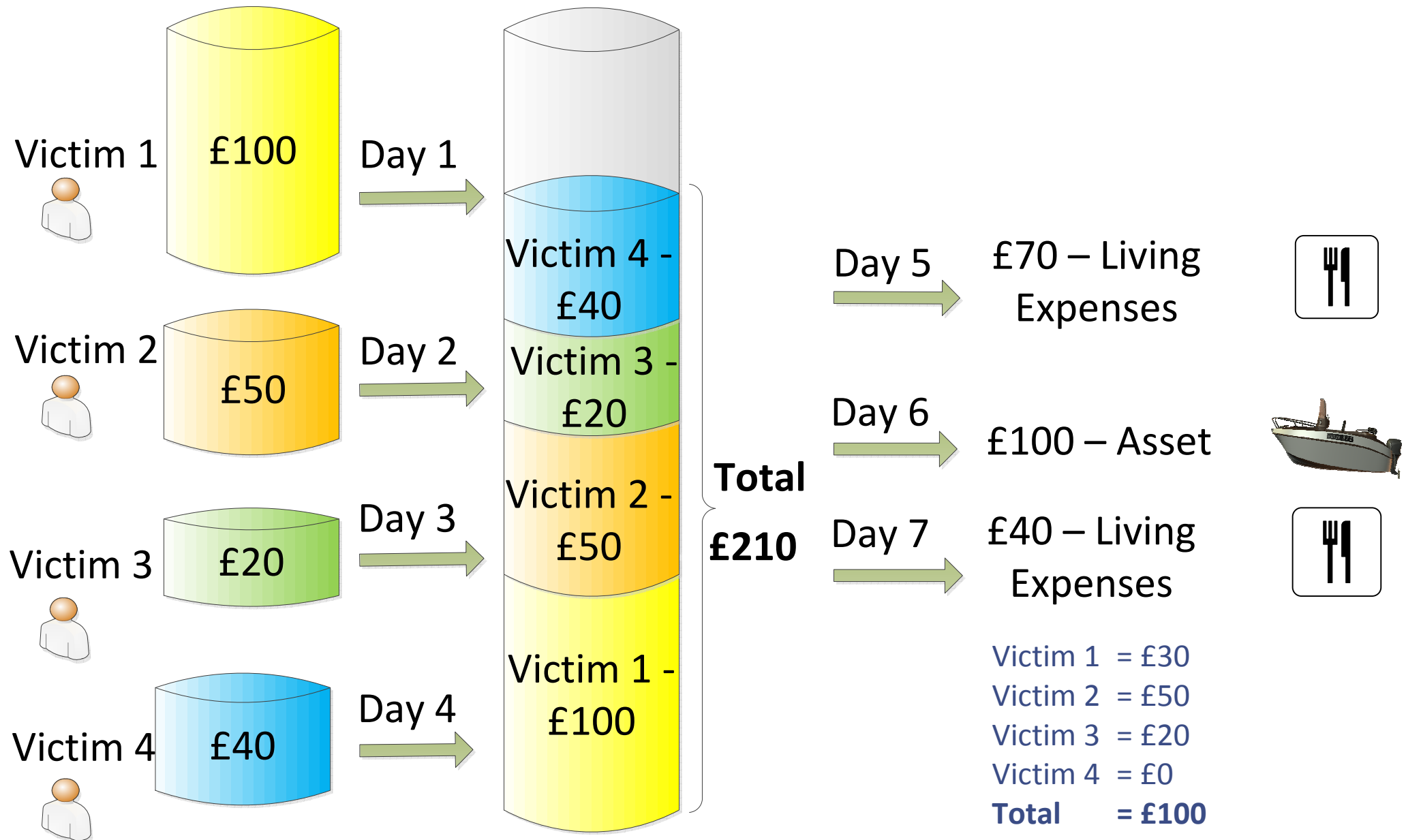
Fraudster's own money



Day 2
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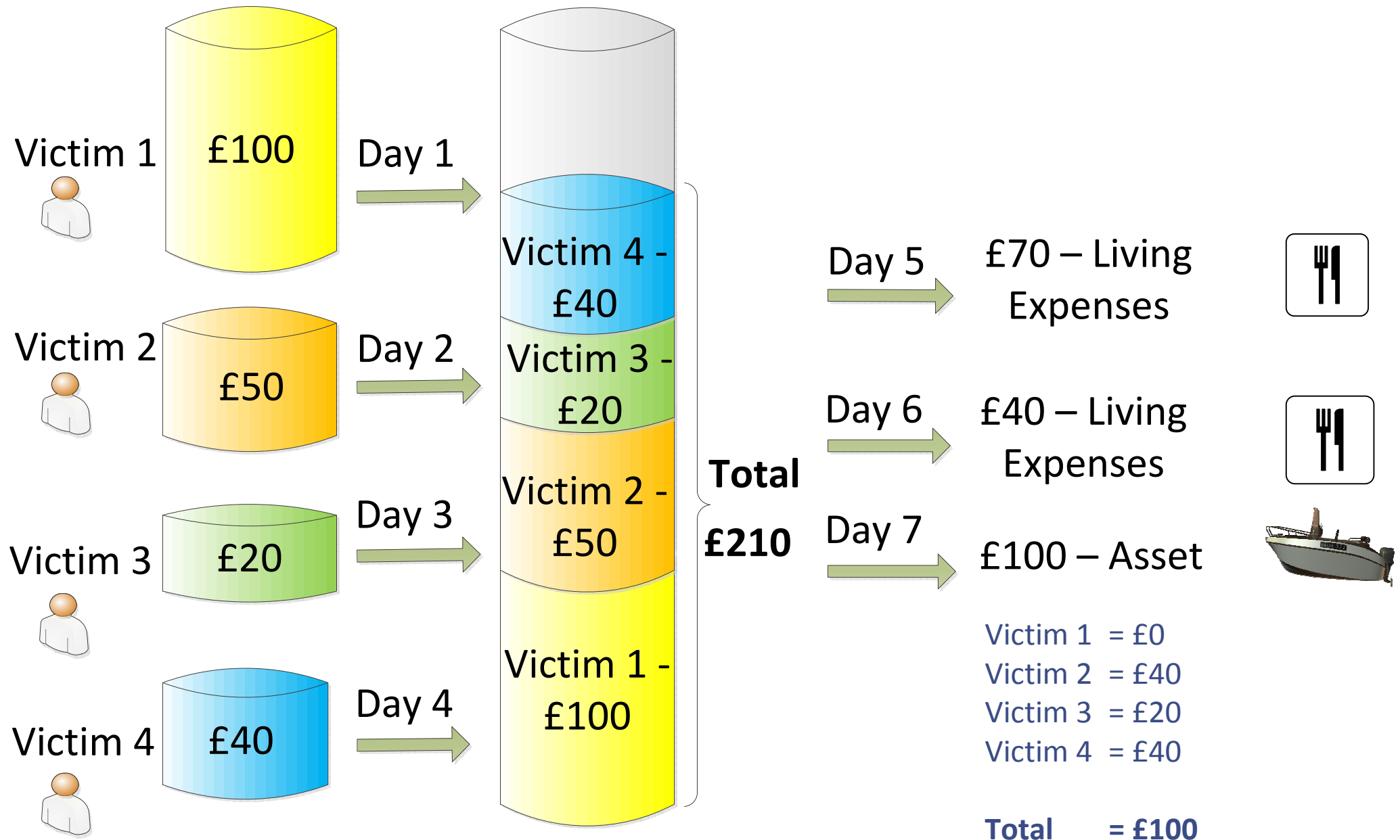
Rule in Clayton's case I

Victims' bank accounts Fraudster's bank account



Rule in Clayton's case II

Victims' bank accounts Fraudster's bank account



Some further considerations

- The sequence of transactions
- Pre-existing credit balances
- Clearance of overdrawn balances
- Amalgamation of balances
- Certificates of deposit
- Continuing evolution
- Clarity is crucial
- Hawala

and finally...

...speedy and effective interaction between lawyers and forensic accountants is vital to

- obtain promptly banking documents which evidence the onward payments of trust money
- ensure that freezing and restraint orders are obtained at the earliest possible opportunity