

Fraudulent misrepresentation definition

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Fraud and Misrepresentation

Under Contracts Act 1950, fraud is defined under s.17 where it consists of certain acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party to enter into the contract. Under Common Law, fraud is categorized as misrepresentation which is fraudulent misrepresentation where it must be made knowingly, without belief in its truth or recklessly.

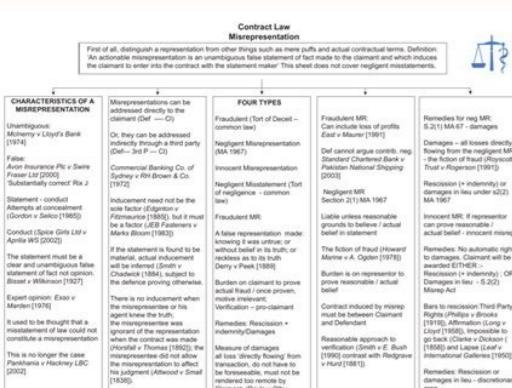
Under Contracts Act 1950, there are 3 elements to prove the commission of fraud. The first one is the fraudulent acts. Fraudulent act can be in the form of false statement, active concealment, promise made without intention of performing it, any other act fitted to deceive and any act or omission the law specially declares to be fraudulent. False statement is defined under s.17 (a) as the suggestion, as to a fact, of that which is not true by one who does not believe it to be true. In another words, the false statement but be statement of facts, not opinions or law. In the case of *Bisset v Wilkinson*, the court held that a mere opinion is not a statement of fact. Besides, the false statement must be made by the person who does not believe the statement to be true. In the case of *Derry v Peek*, the maker of the statement honestly believed it to be true, thus not liable for fraudulent misrepresentation.

Another way to establish fraudulent act is the active concealment which is stated under s.17(b) of the CA 1950. There must be an active concealment of the facts and it is made by one who has the knowledge of it. It can be seen under illustration. Mere silence is considered as fraud because it must be active concealment where it involves conduct of the party. Under s.17(c), a person is considered to have committed fraud if he has no intention to perform the promise after the promise was made. In the case of *Datuk Jaginder Singh v Tara Rajaratnam*, the court held that fraud has been proved as the evidence shown that the defendant did not have any intention to perform their promises.

Other ways to establish a fraud act are stipulated under s.17(d) and (e) which is the act fitted to deceive and act or omission declared to be fraudulent respectively.

The second element in establishing the commission of fraud is the intention of the party who made the false representation. The fraudulent act must be made with the intention of deceiving another party to enter into the contract or, to induce him or her to enter into the contract. In the case of *BP (Sabah) Sdn Bhd v Syarikat Jubrin Enterprise (a partnership firm) & Anor*, fraud was described as a person have acted fraudently or with intent to defraud if he acts with the intention that some person be deceived. This element is to differentiate fraud with misrepresentation stated under s.18. For misrepresentation, the intention of the person who falsely represented is innocent.

The third element is the inducement on the representee. The representee must have relied on or has been induced by the false statement made by the representor. The representee must be actually deceived. Under Explanation of s.19, it stated that a fraud or misrepresentation which did not cause the consent to a contract of the party on whom the fraud or misrepresentation was made, does not render a contract voidable. There must be a causation-link which shows that representee has entered into the contract based on the representation. If the representee entered the contract based on reason other than the false representation made by the representor, then no fraud has been committed. In sum, there can be no actionable fraud if the representee never knew of the existence of the fraud, did not allow the fraud to affect his judgment and was aware of the truth.



Indian Contract Act 1872

Undue Influence

The term undue influence means the unfair use of one's superior power in order to obtain the consent of a person who is in a weaker position.

Sec.16(1) says 'A contract is said to be induced by undue influence where the relations subsisting between the parties, are such that one of the parties is in a position to dominate the will of other, and uses that position to obtain an unfair advantage over the other.'

It contains the following elements

1. The subsisting relations between the parties are such that one of the parties is in a position to dominate the will of other.

In *Smith v Kay(1859)* Lord Kingsdown observed 'The principle applies to every case where influence is acquired and abused, where confidence is reposed and betrayed'



Welcome...



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