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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.

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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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These distinctions can be complex and can request the assistance of a lawyer when it comes to them. What are the remedies for false fraudulent statements? To be held responsible for false fraudulent declarations, the actor must suffer measurable damage due to the fraudulent declaration. This is important, because the courts will formulate their remedies based on the damage or loss of the plaintiff. Therefore, in most cases fraudulent false declarations, the remedy will be some form of monetary damage. These will be calculated on the basis of the quantity of damage or loss suffered by the plaintiff. It is important to note that various parties (and combinations of parties) can be held responsible and necessary to pay damage to the actor. For example, if a person was instructed by an employer to make a fraudulent declaration, then their employer could be held responsible pursuant to the legal principles of Vicar responsibility. If several people have made fraudulent statements to the actor or if they have contributed to creating the false false declaration, so it is possible that they can also be appointed in the legal complaint and caused for remedies and damage. What are the defenses for false fraudulent statements? In many cases, there may be defended e e ilatats iggel ei eserpmoc ,jrottaf itlom ad onnarednepid itseuQ ,etneloduarf inoizaraicid eslaf id atasucca eneyh ehc anosrep anu rep tmetats eslaf a si noitatneserspersim JÂ relevant fact on the one hand that affects the decision of the other party in accepting a contract. If the false declaration is discovered, the contract can be declared null and, depending on the situation, the part influenced negatively can ask for damage. In this type of contractual controversy, the accused party to make the false declaration is the accused and the part that makes the complaint is the actor. False statements are false declarations of truth that affect the decision of another party relating to a contract. False declarations can cancel a contract and, in some cases, allow the other party to ask for damage. The declaration is a basis for violation of the contract, regardless of size, but applies only to facts, not to opinions or forecasts. There are three types of false statements - innocent false statements, negligent false statements and false declarations fraudulent - all have various remedies. The false declaration applies only to de facto declarations, not to opinions or forecasts. The false declaration is a basis for violation of the contract in transactions, regardless of size. A seller of a car in a private transaction could mislead the number of miles to a potential buyer, who could make the person buy the person. If the buyer later discovers that the car had a lot of wear of what is represented, he can present a cause against the seller. In the most high situations, a false declaration can be considered an event of default by a lender, for example, in a credit contract. In the meantime, false declarations may be reasons for termination of a merger and acquisition agreement (M&A), in which case a substantial pause commission could be applied. In some situations, for example the false declaration may occur by omission. That is, false statements may occur where a trustee fails to reveal material facts he has knowledge of. 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