

FREE CONSENT

Indian Contract Act, 1872



PRESENTED BY

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FRAUD -MEANING

Willful misstatement of facts, which are material to the formation of a contract, by one party with an intention to deceive the other party.

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, is, in itself, equivalent to speech.

FRAUD - DEFINITION (SEC. 17)

“Fraud implies and involves any of the following acts committed by a contracting party or his connivance or his agent with the intention of deceiving or inciting another party or his agent to enter into the agreement.

- The suggestion, as a fact, of that which is not true by one who does not believe it to be true.**
- The active concealment of a fact by one having knowledge or belief of the fact.**
- A promise made without any intention of performing it.**
- Any other act fitted to deceive.**
- Any such act or omission as the law specially declares to be fraudulent.**

FRAUD - ELEMENTS/ESSENTIALS

1. MAKING A FALSE SUGGESTION AS TO A FACT

- ▣ There must be a false representation or assertion – Section 17 (1)
- ▣ To constitute fraud there must be conjugation of 2 things –
 - ▣ A representation or assertion of a fact which is not true and
 - ▣ The person making such representation or assertion of fact does not believe it to be true.
- ▣ This is what is meant by **SUGGESTIO FALSI** or suggestion of falsehood coupled with the knowledge of its falsity.

FRAUD - ELEMENTS/ESSENTIALS

2. ACTIVE CONCEALMENT OF A FACT

- There must be active concealment of fact – Section 17 (2)

By active concealment of certain facts there is an effort to see that the other party is not able to know or discover the truth. He is made to believe something is true whereas that is false. This is known as **SUPPRESIO VERI** or suppression of fact purposefully.

The implication of such active concealment is more grave where it is the duty of the person to disclose – fiduciary relationship.

FRAUD - ELEMENTS/ESSENTIALS

3. A PROMISE WITHOUT ANY INTENTION OF PERFORMING IT [Sec. 17(3)]

- When a person makes a promise then it is deemed to be an undertaking by him that he will perform the promise. According to Section 17(3) if there is no such intention to perform the contract, at the time when the contract was made, it amounts to fraud.

FRAUD - ELEMENTS/ESSENTIALS

4. ANY OTHER ACT FITTED TO DECEIVE [Sec. 17(4)]

- This provision is general in nature and is intended to include other means of trick and unfair means intended to deceive any one other than by means of suggestio falsi, suppressio veri or a promise made without the intention to perform it. Under this Section, any such acts will amount to fraud.

FRAUD - ELEMENTS/ESSENTIALS

5. ANY SUCH ACT OR OMISSION AS THE LAW SPECIALLY DECLARED TO BE FRAUDULENT [Sec. 17(5)]

- **Fraud includes any such acts of omission which specially declares it to be fraudulent. For instance under the TP Act 1882, under Section 55 , the seller of immovable property is bound to disclose to the buyer all material latent defects in the property. Not doing so will amount to fraud.**

ILLUSTRATIONS

- ▣ If a person is to sell his goods he is under no obligation to disclose the defects in his goods, but if he makes an intentional false statement as to the quality of his goods, it will amount to fraud as under Section 17(1). If he indulges in any Act amounting to active concealment of facts it will constitute to fraud under Section 17 (2). But if he merely keeps silence it will not constitute fraud subject to certain exceptions.

ILLUSTRATIONS

- ▣ In case of sale of goods, the rule which is applicable is caveat emptor – or the doctrine of let the buyer beware. It means that it is the duty of the buyer to be careful while purchasing the goods as there is no implied condition or warranty as to quality or fitness of goods.

Illustration –

- ▣ A sells by auction to B, a horse which A knows is of unsound mind. A says nothing of the unsoundness of the horse. A has not committed fraud as mere silence does not amount to fraud.

SILENCE AS FRAUD

Section 17 lays down that mere silence as to facts does not amount to fraud. It states that – mere silence as to facts does not amount to fraud unless it is the duty of the person keeping silence to speak or when his silence is equivalent to speech.

EXCEPTION TO THE RULE – 'MERE SILENCE / NON-DISCLOSURE DOES NOT AMOUNT TO FRAUD'

Explanation to Section 17 mentions that mere silence or non-disclosure does not amount to fraud, other than certain statutory exceptions –

- ▣ When there is a **duty to speak** keeping silence is fraud.
- ▣ When silence itself is **equivalent to speech**.

EXCEPTION TO THE RULE –

‘MERE SILENCE / NON-DISCLOSURE DOES NOT AMOUNT TO FRAUD’

1. Duty to speak -

▣ A. Uberrimae Fedei

There are certain contracts which are **contracts of uberrimae fedei** meaning **contracts of utmost good faith**. In such a type of contract it is supposed that the party in whom good faith is reposed, would make full disclosure of it and not keep silent.

Eg: contract of insurance: In such a contract, there may be certain facts which are in full knowledge of the insured or policy holder. He must make full disclosure of such facts to the insurer or insurance company.

EXCEPTION TO THE RULE – ‘MERE SILENCE / NON-DISCLOSURE DOES NOT AMOUNT TO FRAUD’

B. Fiduciary Relationship

Another instance where a duty to disclose facts arises is where the parties to the contract repose “trust and confidence” in the each other giving rise to a fiduciary relationship.

Illustration – A sells a horse to B, his daughter by auction, who has just come of age. Here the relationship between the parties would make it the duty of A to disclose that the horse is unsound. If he does not disclose so, it would amount to fraud.

EXCEPTION TO THE RULE – 'MERE SILENCE / NON-DISCLOSURE DOES NOT AMOUNT TO FRAUD'

2. When silence is equivalent to speech -

A person who keeps silence knowing fully well his silence is going to be deceptive – is no less guilty of fraud.

Sometimes, keeping silence as to a certain fact may create an impression as to the existence of such facts. In such a case silence amounts to fraud.

Illustration – A says to B “If you do not deny it I shall accrue that the horse is sound .” B says nothing. Here B’s silence is equal to speech that the horse is sound. Later if the horse turns out to be unsound, B will be guilty of fraud.

EXCEPTION TO THE RULE – 'MERE SILENCE / NON-DISCLOSURE DOES NOT AMOUNT TO FRAUD'

▣ **Speaking half truth**

A person may keep silent, but if he decides to speak, a duty arises to disclose the whole truth. **Withholding a part of the information amounts to fraud.**

Thus, speaking half truths may also amount to willful misrepresentation as regards to the facts which have not been disclosed. When there is a duty to disclose all facts, then non-disclosure or half-disclosure of facts amounts to fraud.

CONSEQUENCES OF FRAUD

Section 19:

Where a consent to an agreement is caused by fraud , the agreement to a contract is **voidable at the option of the party whose consent was so caused by fraud**. Until such time it is avoided, the contract is valid.

The party defrauded has the following specific remedies –

- ▣ · To rescind the contract
- ▣ · To affirm it and insist on its performance
- ▣ · Rescind and claim for damages

LOSS OF RIGHT OF RECISSION

- ❖ BY AFFIRMATION
- ❖ LAPSE OF TIME
- ❖ RESTITUTION NOT POSSIBLE
- ❖ RIGHT OF THIRD PARTIES

MISREPRESENTATION

- ❖ BY AFFIRMATION
- ❖ LAPSE OF TIME
- ❖ RESTITUTION NOT POSSIBLE
- ❖ RIGHT OF THIRD PARTIES

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THANK YOU