

**“Fraud and Misrepresentation- A Comparative Study”**

*Aliasgar Challawala  
NMIMS, SOL,  
Mumbai*

**Abstract**

This research paper deals with the comparative analysis of fraud and misrepresentation and their various components. The paper starts with the question of what is misrepresentation and its various essentials. Then different types of misrepresentation are also explained. This includes unwarranted statements, breach of duty and inducing mistake about subject matter. Suppression of vital facts and of material facts is discussed. Then the case of inducement and means of discovering the truth are also discussed and explained in brief. Then the paper moves forward with the question of what is fraud and its various components are also discussed. Then it deals with the case of active concealment. Moving on forward, then the paper deals with the other cases which shows when mere silence amounts to fraud. This includes the case when the person has duty to speak, when silence is deceptive, change of circumstances and the case of half-truths. Then we move on to promises made without the intention of performing and the acts or missions specially declared to be fraudulent. Then we move on to the differences between fraud and misrepresentation. The differences includes the definition of fraud and misrepresentation, the enactment, the consent obtained, the consequences, the action and the legal action which will happen on the person doing any of these acts. Then two case laws have been discussed, one from fraud and one from misrepresentation. The fraud case discussed is of Shri Krishnan vs Kurukshetra University and the misrepresentation case taken is an English case of Fraser-Reid v. Droumtsekas. Lastly, I have ended the paper with my own conclusion and given the source of various references from which I have written my research paper.

**Keywords:** Fraud, misrepresentation, contract, parties, section, Supreme Court, silence, consent, truth, court of appeal, deceive.

**What is Misrepresentation?**

A contract the consent to that is brought on through misrepresentation is voidable at the choice of the deceived birthday celebration. Misrepresentation method misstatement of a truth fabric to the settlement.

Misrepresentation is defined in section 18:

S.18.”**Misrepresentation**” defined- “misrepresentation” means and induces-

1. The advantageous assertion, in a way now not warranted by using the information of the character making it, of that which is not genuine, even though he believes it to be real,
2. Any breach of responsibility which, without an purpose to deceive, gains an advantage to the character committing it, or any one claiming beneath him, via misleading every other to his prejudice, or to the bias of anyone claiming underneath him,

3. Causing but innocently a celebration to an agreement, to make a screw up as to the substance of the issue that's the situation of the settlement.

The section includes the following types of misrepresentation-

1. Unwarranted statements-

When a person undoubtedly asserts that a reality is real while his records does now not warrant it to be so, though he believes it to be true, that is misrepresentation.

An announcement is stated to be warranted by way of the information of the man or woman making it when he gets the statistics from a trustworthy source.

Where a representation acquires the status of being a term of the settlement, and it turns out to be untrue, the downside party might also, no longer best keep away from the agreement however additionally sue for damages for breach.

2. Breach of duty-

Any breach of responsibility which brings a bonus to the person committing it by deceptive the alternative to his prejudice is a misrepresentation. "This clause is probably intended to meet all the ones instances which might be known as within the court of fairness-cases of 'optimistic fraud', in which there is no goal to misinform, but where the situations are inclusive of to make the birthday celebration who derives a benefit from the transaction similarly answerable in effect as if he had been actuated by using reasons of fraud or deceit."

Persons of full age and knowledge who subscribe their signature to a report can't be heard to say that they had affixed the signatures on financial institution papers or that they signed without appraising themselves about the recitals. Person as imprudent as that need to face the result of such imprudence.

3. Inducing mistake about subject matter.

Causing, but innocently, a party to a settlement to make a screw up as to the substance of the element which is the subject of the settlement is likewise misrepresentation. S.18 (3).

The subject count number of every agreement is supposed to by using the parties to possess certain fee or best. If one of the parties leads the alternative, however innocently, to screw up as to the character or best of the subject rely, there is misrepresentation.

Suppression of vital facts

Misrepresentation can also arise from suppression of essential data. Cases of concealment or suppression will fall both underneath sub-phase (2), while it quantities to a breach of obligation or under sub-section (three), while it leads the opposite celebration to make a screw up about the subject-depend of the agreement

### Of material facts

Misrepresentation should be of statistics material to the contract. Mere “commendatory expression” along with men of business will habitually make about their items aren't enough to avoid the contract.

A fact is said to be fabric if it would have an effect on the judgment of an inexpensive character in deciding whether or not to enter into the settlement and, if so, on what phrases. Misrepresentation of the age of a vehicle, displaying it 5 years younger, became held to be fabric because it affected the charge which a willing purchaser would have preferred to pay for it. But putting forth exaggerated measurement of land by means of 2.3% turned into held to be not material.

### Inducement

It is in addition important that misrepresentation ought to be the motive of the consent, in the sense that however for the misrepresentation the consent would now not have been given. The rationalization to phase 19 presents:

A fraud or misrepresentation which did no longer cause the consent to a contract of the birthday party of whom such fraud was practiced, or to whom such misrepresentation turned into made, dos now not render an agreement voidable.

If the plaintiff might have consented anyways, he can infrequently complain. Again the illustration need to be made with the purpose that it will be acted upon by way of the other birthday party. The plaintiff should have been stricken by the fake misrepresentation. There could be no misrepresentation, even supposing advertisement turned into fake, if the consumer had inspected the goods before buying them until he was the victim of a few concealed disorder which couldn't be known by means of outside exam. If someone to whom the statement turned into no longer addressed voluntarily chooses to behave upon it, he isn't entitled to rescission.

### Means of discovering the truth

A party cannot complain of misrepresentation if “he had the means of discovering the fact with ordinary diligence.” This is recognized by means of way of an exception said at the side of phase 19. The statement is as follows-

If such consent became because of misrepresentation or by using mere silence, fraudulent inside them which means of phase 17, the agreement, nonetheless, isn't always voidable, if the birthday party whose consent turned into so brought about had the manner of coming across the fact with regular diligence.

### What is fraud?

Intentional misrepresentation of facts, speaking broadly is called “fraud”. According to section 17-

**Sec 17. “Fraud” defined-** Fraud method and consists of any of the following acts committed with the aid of a party to an agreement, or together with his connivance, or with the aid of his agent, with intent to mislead any other party thereto or his agents, or to result in him to enter into the settlement-

1. The proposal as a truth, of what which isn't always proper, via one who does not accept as true with it to be real,
2. The energetic concealment of a reality with the aid of one having know-how or belief of the statistics,
3. A promise made with none goal of acting it,
4. Any other act fitted to misinform,
5. Any such act or omission as the regulation in particular publicizes to be fraudulent.

Mere silence as to statistics likely to have an effect on the willingness of someone to enter into a contract isn't fraud, until the condition of the case are such that, regard being had to them, it's miles the responsibility of the individual keeping silence to speak, or until his silence is, in itself, equal to speech.

### **Active concealment**

“Active concealment” is something exceptional from mere “passive concealment”. Passive concealment means mere silence as to material statistics. A lively concealment of material fact is a fraud; mere silence; besides the few cases referred to underneath, does not quantity to fraud.

The expression “any other act fitted to deceive” evidently means any act which is finished with the apparent aim of committing fraud.

### **When silence is fraud?**

1. When the person has duty to speak  
The first such case is whilst the person preserving silence is below responsibility to speak. Duty to talk arises while one contracting celebration reposes accept as genuine with and self-belief in the other. A father, as an example, promoting a horse to his son have to inform him if the horse is unsound, as the son is likely to depend on his father. But the principle is not so confined. The responsibility to expose reality will arise in all times wherein one celebration reposes, and the alternative accepts, confidence. Duty to speak additionally arises wherein one of the parties is completely without any technique of coming across the fact and has to rely upon the good feel of the other party.
2. Where silence is deceptive  
Silence is from time to time itself equal to speech. A man or woman who continues silent, understanding that his silence is going to be deceptive, is no less guilty of fraud. Where, as an example, the customer is aware of greater about the

fee of the assets, that is the problem of sale, however prefers to keep the data from the vendor, the latter may also void the sale. Sec.17

3. Change of circumstances

Sometimes a representation is proper when made, but, it may, as a consequence of a trade of circumstances, will become fake when it is clearly ac upon by means of the alternative birthday party. In such instances, it's far the obligation of the person that made the illustration to talk the exchange of circumstances.

4. Truth not fully disclosed

Even when a person is below no responsibility to reveal a reality, he may also turn out to be guilty of fraud by means of non-disclosure if he voluntarily discloses something and then stops 1/2 the manner. A person may additionally maintain silent, however if he speaks, an obligation arises to reveal the whole truth. "Everybody is aware of that sometimes half a fact isn't any higher than a downright falsehood."

Promises made without intention of performing

To tie up someone to a promise without an aim of performing from one's side and with the purpose of only stopping the other from coping with others, is an example of a promise made without the aim of acting it. This is the third type of fraud covered inside the definition in phase 17. A customer of products without any goal of paying the rate is a fraud of this species.

Any act or omission specially declared to be fraudulent

The remaining category includes cases wherein the law in particular publicizes an act or omission to be fraudulent. For example, the insolvency acts and corporations act pronounces certain sorts of switch to be "fraudulent choice".

The fifth and the closing class of frauds covered in the definition of phase 17 is meant to cover all such acts which under another department of regulation are seemed as fraudulent. In insolvency regulation there, is for example, the concept of fraudulent desire and within the transfer of assets act, there may be the idea of fraudulent switch.

These words seem to were inserted for making sure that each one sorts of intentional cheating is included and nothing of the sort escapes.

**Distinction between fraud and misrepresentation**

Misrepresentation and fraud have many points in not unusual. For example, each render the agreement voidable, there is a false representation in each, in either instances it is necessary that the consent need to had been resulting from the fraud or misrepresentation and in the end, wherein there's a fraud by using silence, the reality, that there had been "means of coming across the reality by means of everyday diligence", is a superb defense. This is so in misrepresentation also... Harms for misfortune brought about by blameless distortion are evaluated on a similar standard as on account of a purposeful extortion.

Right off the bat, extortion is pretty much a purposeful wrong though distortion might be very guiltless.

Besides, extortion, notwithstanding rendering the agreement voidable, is a reason for activity in tort for harms. Basic deception isn't a tort yet under segment 75 of the agreement demonstration, "an individual who legitimately repeals an agreement is qualified for pay for any harms which he has continued through the non-satisfaction of the agreement." The distortion demonstration 1976, (English) likewise empowers the court to grant harms rather than rescission. An individual who purposed to sell his better half's property without getting her assent and she would not sign the deed, was held at risk to the purchaser for his misfortune. A buyer of premises finished the buy significantly in the wake of finding that an occupancy understanding influencing one of the pads was disguised for him. He was by the by permitted to sue for harms for the misfortune caused to him, however he had in tort the privilege to cancel.

Ultimately, an individual grumbling of distortion can be met with the safeguard that he had "the methods for finding reality with standard perseverance", [s.17, exception] yet aside from misrepresentation by quietness, it doesn't lie in the mouth of the individual submitting extortion to state that is unfortunate casualty was excessively effectively tricked or had the methods for finding reality." Fools have to be protect against knaves."

### **Shri Krishnan vs Kurukshetra University**

In this case, it was held that that student was allowed to write the examination and the university was wrong in cancelling the examination of the student. It was held that it was the university's duty to check the attendance of the concerned student and the student staying silent on this issue did no fraud and was correct on his part. There is no provision of the University statutes which could have afforded jurisdiction to it to cancel the candidature of the appellant on the ground that he had not obtained the prior permission of his superior officers. The impugned order did not mention this ground at all. So the university's ground of cancelling the admission was held wrong.

### **Fraser-Reid v. Droumtsekas (1979), 29 N.R. 424 (SCC)**

This case emerged out of development with the asset of the clients of a house for harms inferable from the flooding in their storm cellar. It changed into found that the home had no premise waste as required through a city local law. The concession to the market accommodated an absolute last of the exchange "giving that the vender has uncovered to the customer every single astonishing infraction and requests expecting artworks to be finished on the premises gave by means of any civil or common or government authority." A deed passed on residual, which did now not join the confirmation, and the dealer did now not advise the buyers of its inability to give establishment waste. The clients acquired a development the heading of the merchant for harms. The Ontario High Court excused the development at the floor that there was no suggested guarantee of well-being in the obtaining

of a finished house. The Ontario Court of Appeal ignored the clients' fascination. The customers claimed.

The Supreme Court of Canada permitted the fascination and considered the merchant answerable for harms. The Supreme Court of Canada held that the stipulation in the understanding available to be purchased comprised an assurance that it would advise the customers regarding the inability to adjust to reliable structure necessities, which it neglected to do. The Supreme Court of Canada held that the confirmation transformed into now not converged inside the movement and endure it, rendering the merchant liable for its penetrate.

### **Conclusion**

Free consent is extensive to decide an expertise of a widespread agreement. The significance of loose assent can't be focused on enough. Consent of the events to the settlement need to be loose and willfully. Agree to the agreement need to accept without a type of weight or hallucinations. It is big that the assent given through the gatherings is free as this can have an effect on the legitimacy of the settlement. On the off risk that the agree to the knowledge became obtained or initiated with the aid of coercion, fraud, extortion, undue influence, or mistake, at that point it is able to settle on the understanding void.

By the above discussion, we are able to conclude that Fraud is a willful act and Misrepresentation is an unintended act. In Fraud, one celebration deceives any other birthday party and in Misrepresentation, both the parties were given deceived due to believing the facts is true but genuinely the facts is false.

In case of fraud, the damage takes place to one celebration best while in Misrepresentation each the events are faulty unknowingly and were given damaged.

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