

# FRAUD

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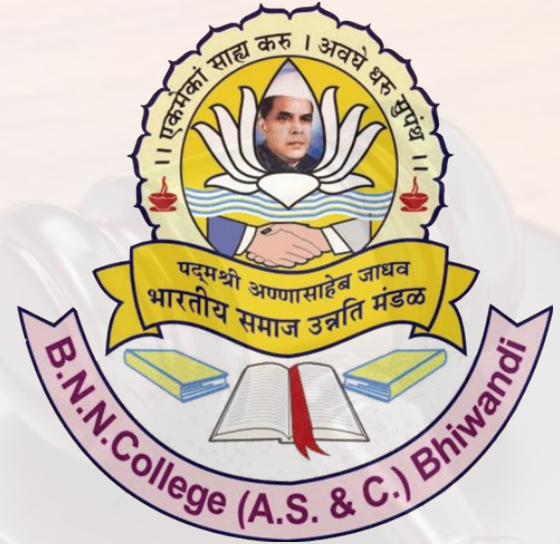
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# Definition

**Section 17** defines **FRAUD** as

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.

- Fraud means deliberate making of a false statement regarding a subject-matter of a contract with an intention to deceive the other party.
- Fraud means an act of deception, the person committing it gains an unfair material advantage.



# The acts Of Fraud

**Sub-Section (1)** - The suggestion, as a fact, of that which is not true by one who does not believe it to be true. This is also known as **SUGGESTIO FALSI**.

**Sub-Section (2)** - The active concealment of a fact by one having knowledge or belief of the fact. This is also known as **SUPPRESIO VERI**.

**Sub-Section (3)** - A promise made without any intention of performing it.

**Sub-Section (4)** - Any other act fitted to deceive.

**Sub-Section (5)** - Any such act or omission as the law specially declares to be fraudulent.

# Essentials

1. There must be intention to deceive.
2. The act of fraud must be done by Party to the contract
  - a. By the party to the contract himself
  - b. With his connivance
  - c. Or by his agent
3. There must be an active concealment of fact.
  - a. 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.
  - b. He is made to believe something is true whereas that is false.
4. False promise must be made.
5. The other party to the contract must have acted upon the false statement.

# Exceptions

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

1. When there is a **duty to speak** keeping silence is fraud.
  - a. **Uberrimae Fedei or 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.
  - 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.
  - c. **Speaking half truth** - Section 17 a person keeping silence but if he decides to speak, a duty arises to disclose the whole truth. Withholding a part of the information amounts to fraud.
  - d. **Statutory disclosure** - In some cases the disclosure is required by a statute. In such a case also there arises a duty to speak.
  - e. **Custom of trade** - If the usage or custom of trade requires disclosure of certain things or known defects then non disclosure would amount to fraud. For example, tobacco/liquor is injurious to health.
2. When silence itself 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.



# Effects

A contract, consent to which is obtained by fraud, is voidable under s 19. The party deceived has the option to affirm the contract and insist that he be put in the position in which he would have been if the representations were true, or he may rescind the contract to the extent it is not performed. Upon rescission, he is liable to restore the benefit received by him under s 64 and may recover damages. The measure of damages recoverable is essentially that applicable to the tort deceit, ie, all the actual loss directly flowing from the transaction included by the fraud, including the heads of consequential loss, and not merely the loss which was reasonably foreseeable. Where a document, which was intended to be in favor of a particular person but, as a result of fraud of the defendant, conveyed to someone else, the transaction would be also voidable under s 19.

# Remedies

1. He may avoid the contract and file a suit for damages, if any, suffered by him.

**OR**

2. He may insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.

**OR**

3. If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of Section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.



THANK YOU