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# Critical Analysis of Fraud and Negligent Misstatement in Law of Tort

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## ABSTRACT

*The purpose of the Research paper is to deal with the fraud and the negligent misstatement in law of tort. It also explains people opinion and view on fraud and misstatement in last decades and the view of people in current scenario. It also shows what a small negligent misstatement in a word which has the smallest meaning can change the entire judgement and provide injustice to an innocent person also. The conclusion speaks about writers' suggestion on the topic and how important is it to write a correct judgement without any falsification in writing. The research paper makes use of theoretical data as well as articles and other literature works on fraud and misstatement in tort in explaining the views on misstatement and fraud happening in tort. The finding and results on the misstatement and fraud show that there were some cases where small wording error has resulted into wrong decisions.*

**Keywords:** *Fraud, Negligent, Misstatement.*

## I. MEANING, NATURE AND SCOPE OF FRAUD AND NEGLIGENT MISSTATEMENT<sup>2</sup>

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.

The essential elements to constitute fraud are that the contracting party or any other with his connivance, or his agent, or to induce him to enter into the agreement, should have performed

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<sup>2</sup> -, D.R. (2019) *How misrepresentation of facts lead to fraud or deceit in torts, iPleaders*. Available at: <https://blog.ipleaders.in/fraud-deceit-misrepresentation-torts/> (Accessed: January 29, 2023).

such acts.

The definition above is of fraud of contract. The general meaning of the term fraud is a false representation of facts that is made with the intention of causing loss or damage to a particular individual.

Fraudulent misrepresentation means a lie which is used to trick an individual in an agreement which would result in a harm or damage to the person. The misrepresentation can be in oral, written, gesture or any other form

The main elements of fraudulent misrepresentation are: -

- Wrong representation to the claimant by the defendant
- Defendant should know that the representation is false
- Defendant must intend to make the claimant agree with the representation

Fraudulent misrepresentation and Negligent misstatement are all the parts of Tort of Deceit. Tort of Deceit means when a person intentionally and knowingly defrauds another person into an action that causes harm to them, it is a form of legal injury to the person. Deceit wants the tortfeasor to give a factual representation of each and every statement even when he knows that the statements are actually false. The term Deceit means a tort arising from an untrue or false statement of facts which are made by a person, recklessly or knowingly, with an intention that it shall be acted upon by the other person, who would suffer damages as a result.

The essential elements of Tort of Deceit are: -

- False representation which means the defendant lied or misstated the facts
- Knowledge of falsity which means that knows that he is presenting false statement.
- Acting on the statement this means that the defendant made the representation with the intent that the plaintiff should act upon it.

Negligent misstatement, for the claim of fraud in it, there must be the basic means like the defendant must make a representation as to a past or existing material fact, the representation must be false and other essential are the same as the essentials of Tort of deceit.

### **(A) Literature review**

#### a. Articles

**“Fraud and Federalism: Pre-empting Private State Securities Fraud Causes of Action” -**

By Michael A Perino

A significant movement in the venue of class action securities fraud litigation from federal to state courts has resulted from the adoption of the Private Securities Litigation Reform Act of 1995. The issue over our dual federal-state system of securities regulation has been resurrected as a result of the Act's unanticipated side effect, which has also sparked a debate over whether Congress should now pre-empt state securities fraud causes of action. Pre-emption is argued to be a suitable, but not the only, response to these issues in this article. This article first examines the development of dual state-federal securities regulation in the context of private rights of action in order to bolster this claim. The essay then expands current empirical findings by analysing in more detail the changing incentives to file state court lawsuits.<sup>3</sup>

**“Negligent Misrepresentation as Contract”** – By Mark P. Gergen

This article disputes the widely held belief that a claim of negligent misrepresentation constitutes a tort in the United States and throughout the rest of the common law world. I contend that promissory estoppel and negligent misrepresentation are both contractual claims with the same basic premise of encouraged reliance. The dominant viewpoint is a regrettable result of traditional conceptions of contract and the idealisation of contract as fundamentally private law. The claim's classification as a tort is regrettable because it raises the possibility that the tort of negligent misrepresentation will be absorbed into a general tort of negligence given the development of the modern tort of negligence, which is based on the principle of liability for harm recklessly caused. encompassing the<sup>4</sup>

**“WHAT IS SECURITIES FRAUD?”** – By Samuel W. Buell

As Rule 10b-5 approaches its seventieth birthday, extensive familiarity with an extraordinarily powerful and significant piece of American administrative law has hidden its absence of comprehensible conceptual foundation. The rule lacks a well-developed connection to fraud, of all things, in its current form as stated, understood, and applied. It's challenging to define fraud. There are several reasonable strategies. However, neither a definition of this kind nor an acknowledgement of its importance for the coherence and effectiveness of the theory have been made in the law of securities fraud or in most of the discussion concerning that body of law. The absence of a well-articulated definition of fraud in securities fraud results in at least three costs: When pursuing clearly defined regulatory goals, public and private acts are not taken; the

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<sup>3</sup> Michael A Perino, “Fraud and Federalism: Pre-empting Private State Securities Fraud Causes of Action”, *Stanford Law Review*, Vol. 50, No. 2 (Jan., 1998), pp. 273-338 (66 pages)

<sup>4</sup> Mark P. Gergen, “Negligent Misrepresentation as Contract”, *California Law Review*, Vol. 101, No. 4 (August 2013), pp. 953-1011 (59 pages)

distinction between civil and criminal law is blurred.<sup>5</sup>

b. Books

**“Fraud—the company law background fraud law-book three”<sup>6</sup>**

This book is written by Sally Ramage an established legal writer of books, articles. This is the third book in his law book series, the first was “SERIOUS FRAUD AND CURRENT ISSUES” and the second was “FRAUD AND THE SERIOUS FRAUD OFFICE”. This book talks about the cooperate world fraud’s taking place in the United Kingdom. The author believes that to detect the cooperate frauds one must have a serious understanding of company law of that particular country. This third book will teach us UK Company law along with this it will also illustrate the breach of law with serious fraud office prosecution.

**“Lawman’s E-crimes and Fraud”<sup>7</sup>**

This book is written by Nayan Joshi, edition of the year 2020, this book deals with criminal law and Information Technology departments and what kind of frauds can happen in that area. The book also gives an overview of cyber crimes and other cyber illegal activities. It also makes a mention of some protection methods like telephone tapping, mobile surveillance, tapping video conferencing etc. which can be of great use in civil and criminal suits.

**“Cooperate Fraud: Business Crimes now Bigger, Broader, Bolder”<sup>8</sup>**

This book is written by Robin Banerjee, which speaks about various kinds of new cooperate frauds evolving with a high speed. It mentions some fraud like banking deceit, money laundering, tax avoidance, insurance imposters, technological tricks and lot more this shows that cooperate frauds are growing with new tricks at a very high speed. It also has a mention of the on-going pandemic which has given new opportunities to fraudsters by the means of cyber-crime. This book is the means to make people aware of the cooperate frauds and reveal many lies and deception committed in the business world.

**(B) Statement of problem**

We already know that fraud has taken a rise in all the means and fields along with negligent misstatement in decisions or online offers which are very few as compared with fraud, people

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<sup>5</sup> Samuel W. Buell, “WHAT IS SECURITIES FRAUD?”, *Duke Law Journal*, Vol. 61, No. 3 (December 2011), pp. 511-581 (71 pages)

<sup>6</sup> Fraud- the company law background book three by Sally Ramage, <https://www.betterworldbooks.com/product/detail/fraud-the-company-law-background-fraud-law-book-three-0595381359>

<sup>7</sup> Lawman’s E-crimes and fraud by Nayan Joshi, <https://www.aggarwallawhouse.com/product/lawmanns-e-crimes-fraud-by-nayan-joshi-edition-2020/>

<sup>8</sup> Cooperate Fraud: Business Crimes now Bigger, Broader, Bolder by Robin Banerjee, <https://www.amazon.in/Corporate-Frauds-Business-Crimes-Broader/dp/935479162X/>

are getting regular messages of these kind of fraud and they are able to catch them easily. But if by chance anyone is caught in fraud it is very difficult to get out of it and it is a lengthy process for the recovery of resource and valuables lost in fraud. The method of solving cyber crime and other frauds will be helpful for the entire country.

### **(C) Rationale of study**

The Research will explain the entire concept of fraud and misstatement, meaning, result or the consequences of the same. The current situation of fraud and misstatement cases are very high and with new advancement like technological fraud. The reason for the study of fraud and misstatement is to make people aware of different scams and what can be the result of these scams. The overall purpose of the paper is to get a complete picture of what is a fraud and negligent misstatement, to get a complete picture of the same.

### **(D) Research objective**

**The purpose of the research is: -**

- 1) To have a brief understanding about fraud and negligent misstatement, its meaning, scope and nature
- 2) To understand different laws, precedents and governing rules and regulations of India against fraud and misstatement.
- 3) To understand the views and opinion of different individuals on fraud and misstatement in the 18<sup>th</sup> and 19<sup>th</sup> century as compared with views of people on the same in the 21<sup>st</sup> century
- 4) To analyse judicial decisions and punishments given in cases of fraud

### **(E) Research question**

- 1) What is the meaning, nature and scope of Fraud and negligent misstatement?
- 2) What is the opinion of public on fraud since the earlier time as compared with today's condition?
- 3) What is the judicial decision and punishment in such cases?
- 4) What suggestion can be given to reduce the risk of fraud in the country?

## **II. JUDICIAL PRECEDENTS OF FRAUD AND NEGLIGENT MISSTATEMENT IN 18<sup>TH</sup> AND 19<sup>TH</sup> CENTURY**

There was a case in 1889 called the Derry vs Peek in which there was a prospectus released by

the defendant company, it was stated that the company was permitted to use trams that were powered by steam, rather than by horses. In reality, the company did not possess such a right as this had to be approved by a Board of Trade. The individuals who had purchased a stake in the business, upon reliance on the statement, brought a claim for deceit against the defendant's business after it became liquidated. The decision by the House of lord disagreed with the shareholder and his claim was rejected, the court also said that the shareholder failed to prove that the company was dishonest in the belief, the court called it a fraudulent misrepresentation.<sup>9</sup>

There was another famous case of Hedley Byrne vs Heller & partner ltd in 1964, A negligent misstatement may give rise to an action for damages for economic loss. When a party seeking information or advice from another – possessing a special skill – and trusts him to exercise due care, and that party knew or ought to have known that the first party was relying on his skill and judgment, then a duty of care will be implied. In this case the court decided that the H&P claim was sufficient to protect them from the liability and the claimant Hedley Byrne failed in the case. In 1963 the House of Lords established that in limited circumstances – if a duty of care arose in the making of statements – pure economic loss in tort could now be recoverable in English law. However, in this case the house of lord ruled out this condition.<sup>10</sup>

### III. JUDICIAL PRECEDENTS OF FRAUD AND NEGLIGENT MISSTATEMENT IN 21<sup>ST</sup> CENTURY

There was a case in 2003 of Ram Chandra Singh vs Savitri Devi, the judgement bench was V.N. Khare Cj, S.B. Sinha. This case is based on many other judgements of fraudulent misrepresentation like the case of Derry vs Peek and has given controversial judgements on same. It is dependent on many other cases which are used as precedents and some judgements are changed according to new cases.<sup>11</sup>

### IV. CRITICAL ANALYSIS OF FRAUD AND NEGLIGENT MISSTATEMENT<sup>12</sup>

The tort of deceit is the cause of action that enables the victim to recover the financial losses that has been caused due to being deceived. The losses in this case include investigation cost as well. First, in order to sustain an action in deceit, there must be proof of fraud and nothing short

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<sup>9</sup> *Derry v Peek (1889) 14 App Cas 337 (2022) Law Teacher*. LawTeacher. Available at: <https://www.lawteacher.net/cases/derry-v-peek.php> (Accessed: January 29, 2023).

<sup>10</sup> *Hedley Byrne v Heller - Brief Case summary (2022) Law Teacher*. LawTeacher. Available at: <https://www.lawteacher.net/cases/hedley-byrne-v-heller.php> (Accessed: January 29, 2023).

<sup>11</sup> *Ram Chandra Singh v Savitri Devi and others on 29 July 2004 - Judgement (no date) LawyerServices*. Available at: <https://www.lawyerservices.in/Ram-Chandra-Singh-Versus-Savitri-Devi-and-others-2004-07-29> (Accessed: January 29, 2023).

<sup>12</sup> Supra Note 2.

of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (1) **knowingly**, (2) **without belief in its truth**, or (3) **recklessly**, careless whether it be true or false.

In the cases of fraudulent misstatement or tort of deceit the claimant is entitled to be put back in the same position where he should be as a boss or the cause that makes the business run and, in the position, where he or she should be if not deceived. For example, a claimant was said by the defendant that the property which the claimant plans to buy is of 1500000 whereas the defendant knows that the actual cause of property is 500000 only, then the claimant is entitled for the damages of 1000000 and can make a claim on it. This means that defendant has to bear all the losses of deceit. Fraud and other Tort of Deceit are increasing day by day as the tortfeasors are coming up with new ideas to do the fraud easily without much of efforts like cyber-crime, the use of technology has made deceit easier to perform conveniently from the tortfeasors home as well thus this is the main reason for increase in deceit and fraud as an easy way of earning money. There should be strict action against these people and every organisation should have good technical experts to detect these frauds easily, so that the rate of fraud reduces.

## **V. SUGGESTION AND CONCLUSION**

Fraud and Misrepresentation have been a common deceit now in banks, Information Technology firms and big businesses, this is a common but a serious problem as threat to them. the government should spread awareness of such kinds of fraud like SMS fraud, link and fraud and all other types of fraud with the general public so as to make them aware of them and how to be protected from them, the government should also share details about different fraud cases and what kind of remedies were given to them so that the public is aware about the types of fraud and if they are trap in fraud what can be done and what will they receive as remedy. And lastly, there should be campaign held to make people of cyber cell and whom to reach when they are in a cyber fraud. These all steps by the government will be helpful in reducing the cases of fraud as many people are still unaware of what does cyber crime means and what can be done if they are a victim of it.

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