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A COMPARATIVE ANALYSIS OF FRAUD, NEGLIGENT MISREPRESENTATION AND INNOCENT MISREPRESENTATION IN TORT LAW

Himanshu Sharma

Introduction

Fraud is defined under section 415 of the Indian Penal Code, 1860 as the act of deceiving another person with the intent to cause damage or harm. It involves misleading someone into believing something that is not true. Under the law of torts, fraud is a civil wrong for whose commission remedy is available in the form of unliquidated damages, injunction, or restitution of property. Fraud is an act of willfully making a false representation to another person with the intent that the said person will act upon it and with the aim of obtaining unlawful gain or causing damage to another party by unlawful means. Strict proof is required by the plaintiff in allegations of fraud and deceit.[1]

The making of a representation which a party knows to be untrue, and which is intended, or is calculated, to induce another to act on the faith of it so that he may incur damage, amounts to fraud in law. In fraud, there is always the motive to gain unlawfully or to injure the plaintiff by deception.

Fraud and deceit are closely connected concepts, though there exists a slight distinction between them. In deceit, it is not necessary that the defendant should

[1] Guru Prasanna Singh, Ratanlal & Dhirajlal, *The Law of Torts* (26th ed. 2013).

personally benefit from the act or act with a corrupt motive of gain. It is sufficient that the false representation induces the plaintiff to act to his detriment.[2]

This article seeks to comparatively analyze fraud, negligent misrepresentation, and innocent misrepresentation under the law of torts. It examines the essential ingredients of fraud, fraud by agents, negligent misstatements, and innocent misrepresentations with the help of important judicial precedents from English common law and related legal principles.

Fraud and Its Essential Elements:

Fraud is a willfully made fraudulent misrepresentation intended to induce another party to act upon it, resulting either in unlawful gain to the defendant or financial loss to the plaintiff. Fraud and deceit are generally associated with commercial and financial matters. Fraud also constitutes a valid ground for recovery of damages where loss has resulted from false representation or deliberate concealment of material facts.

(1) False Representation: The first essential element of fraud is the existence of a false statement. There must be an untrue statement or representation of fact to make the defendant liable for fraud or deceit. The statement may either be express or implied through conduct.

In R v. Barnard, the defendant falsely represented himself as a university student by wearing academic attire without authorization in order to obtain goods on credit. The court held that such conduct amounted to fraudulent representation because his actions created a false impression.[3]

Mere silence generally does not amount to fraud. If a person sells an unsound horse without disclosing its defects, mere non-disclosure ordinarily would not constitute fraud. However, there are exceptions where silence itself may become fraudulent.

First, there may exist a duty to disclose material facts. Insurance contracts, for example, are contracts of uberrimae fidei, requiring utmost good faith. Failure to disclose material facts in such contracts may amount to fraud.

[2] R.K. Bangia, *The Law of Torts* (23rd ed. 2013).
[3] P.S.A. Pillai, *Law of Tort* (9th ed. 2004).

Second, where a statement originally believed to be true subsequently becomes false, there arises a duty to correct the statement. Failure to do so may render the person liable if another relies upon the statement and suffers injury.

Third, half-truths may amount to fraud. Disclosure of partial facts while concealing qualifying information may create a misleading impression and become actionable.

Fourth, active concealment of defects is equivalent to fraudulent representation. Where defects in goods are deliberately hidden so that the purchaser cannot discover them, such concealment itself becomes fraudulent.

In Ward v. Hobbs, the vendor sold pigs infected with disease but stated that they were sold "with all faults." The court held that the purchaser bought the pigs at his own risk and that the seller was not liable because there was no misleading representation relied upon by the purchaser.[4]

Knowledge of Falsity and Intention to Deceive

The second essential element is knowledge of the falsity of the statement coupled with intention to deceive. The defendant must either know that the statement is false or make it recklessly without belief in its truth. Mere carelessness alone does not amount to fraud.

The distinction between false statements and fraudulent statements lies in the intention to deceive. The plaintiff must establish that the defendant intended that the statement should be acted upon.

The landmark decision in Derry v. Peek clarified this principle.[5] In this case, the directors of a tramway company issued a prospectus stating that they had authority to use steam-powered trams, believing governmental approval would soon be granted. The plaintiff invested relying upon the prospectus, but the approval was ultimately refused.

The House of Lords held that the directors were not liable for fraud because they honestly believed the statement to be true. Lord Herschell observed that fraud is proved when a false representation is made knowingly, without belief in its truth, or recklessly without caring whether it is true or false. Honest belief in the truth of the statement, even if unreasonable, negatives fraud.

Thus, intention is a crucial element for establishing fraud under tort law.

Actual Deception and Damage

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[4] A. Lakshminath & M. Sridhar, *The Law of Torts* (10th ed. 2007).

[5] *Derry v. Peek*, (1889) 14 App. Cas. 337 (HL).

The third essential element is actual deception and resulting damage. The plaintiff must show that he was deceived by the fraudulent statement and acted upon it to his detriment.

In Horsfall v. Thomas, the plaintiff concealed a defect in a gun sold to the defendant. However, the defendant had not inspected the gun before purchasing it and therefore had not relied upon the concealment. The court held that there was no actionable fraud because no actual deception occurred.[6]

Therefore, mere attempt to deceive is insufficient unless the plaintiff actually relied upon the false representation and suffered injury.

Fraud by Agent and liability of Principal

An agent is a person authorized by another person, known as the principal, to act on his behalf. Fraud committed by an agent within the course of employment may render both the agent and the principal liable.

The general principle is that the fraud of an agent acting within the scope of employment is treated as the fraud of the principal. This principle arises from the doctrine of vicarious liability.

Where the principal knows that the representation made by the agent is false and still authorizes it, both principal and agent are liable. Even where the principal lacks such knowledge, liability may still arise if the fraudulent representation was made within the ordinary course of employment.

The only circumstance where the principal may escape liability is where both principal and agent honestly believed the representation to be true. The case of Uxbridge Permanent Benefit Building Society v. Pickard illustrates this principle.[7] In this case, an agent forged title deeds and induced the plaintiff building society to advance money on mortgage security. Although the solicitor himself had no knowledge of the fraud, he was nevertheless held liable because the fraudulent acts were committed by his agent within the scope of employment.

Fraud by agents therefore demonstrates the broad operation of vicarious liability in tort law and the importance of protecting third parties who rely upon representations made in commercial dealings.

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[6] *Horsfall v. Thomas*, (1862) 1 H. & C. 90.

[7] *Uxbridge Permanent Benefit Building Society v. Pickard*, [1939] 2 All E.R. 344.

Negligent Misrepresentation

Negligent misrepresentation refers to an incorrect statement made honestly but carelessly by a person possessing special skill or knowledge. Unlike fraud, negligent misrepresentation lacks deliberate intention to deceive.

An opinion may amount to a statement of fact where the person expressing it implies that there are reasonable grounds supporting that opinion. Liability for negligent misrepresentation arises where there exists a duty of care in making the statement and where the claimant reasonably relies upon it.

The law relating to negligent misstatement was significantly developed in Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.[8] In this case, the plaintiffs sought financial references regarding a company with whom they intended to conduct business. The defendants provided references “without responsibility.” Relying on those references, the plaintiffs suffered financial loss.

The House of Lords recognized that a duty of care may arise in giving professional or financial advice even in the absence of contractual or fiduciary relations. However, because the defendants had expressly disclaimed responsibility, liability did not arise in that case. The significance of the decision lies in the recognition that careless statements causing economic loss may give rise to liability in tort where a special relationship exists between the parties.

Earlier decisions had taken a narrower approach. In Candler v. Crane, Christmas & Co., the court held that careless statements causing financial loss were not actionable unless there existed a contractual or fiduciary relationship.

The broader principle of duty of care had earlier been recognized in Donoghue v. Stevenson, where the House of Lords established liability for foreseeable harm caused by negligence.[9] Although that case involved physical injury caused by defective products, its reasoning later influenced the development of negligent misrepresentation.

Professional advisers such as lawyers, auditors, accountants, and financial consultants may therefore owe a duty of care towards persons relying upon their advice. Where negligent advice causes loss, damages may be awarded even though there was no intention to deceive.

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[8] *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.*, [1964] A.C. 465 (HL).

[9] *Donoghue v. Stevenson*, [1932] A.C. 562 (HL).

Innocent Misrepresentation

Innocent misrepresentation occurs where a false statement is made honestly and without negligence. The person making the representation genuinely believes it to be true and has reasonable grounds for such belief.

Unlike fraud or negligent misrepresentation, innocent misrepresentation does not involve wrongful intention or lack of due care. Nevertheless, the plaintiff may still be entitled to rescind the contract or obtain equitable relief if he relied upon the representation to his detriment.

To establish innocent misrepresentation, the plaintiff needs to prove only that:

a) A false representation was made;

b) The representation induced the plaintiff to act; and

c) The plaintiff suffered loss by relying upon it.

The English Misrepresentation Act 1967 expanded remedies available in such situations. Section 2(1) of the Act provides that where a party enters into a contract after a misrepresentation and suffers loss, the person making the representation may be liable for damages unless he proves that he had reasonable grounds for believing the statement to be true.[10]

The Act allows compensation in situations where the misrepresentation was not fraudulent and also permits damages in lieu of rescission.

However, liability under the Act generally requires the existence of a contractual relationship. In the absence of a contract, liability may still arise under the principles established in Hedley Byrne where negligent statements cause economic loss.

The doctrine of innocent misrepresentation therefore occupies a position between contract law and tort law. While it does not involve fault in the traditional sense, the law recognizes that fairness may require relief where one party has relied upon incorrect information supplied by another.

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[10] *Misrepresentation Act 1967*, c. 7 (UK).

Comparative Analysis

Fraud, negligent misrepresentation, and innocent misrepresentation all involve false representations that induce another person to act. However, the nature of fault and the degree of liability differ considerably.

Fraud is the most serious form because it involves intentional deception. The defendant knowingly makes a false statement or acts recklessly without belief in its truth. Fraud requires proof of dishonest intention, reliance by the plaintiff, and resulting damage.

Negligent misrepresentation differs from fraud because there is no intention to deceive. Liability instead arises from breach of a duty of care in making statements or giving professional advice. The focus shifts from dishonesty to carelessness.

Innocent misrepresentation differs from both fraud and negligence because the defendant neither intends to deceive nor acts carelessly. The statement is false, but it is made honestly and on reasonable grounds.

The remedies available also differ. Fraud generally entitles the plaintiff to recover all losses directly resulting from the fraudulent conduct. Negligent misrepresentation allows recovery of reasonably foreseeable losses arising from breach of duty. Innocent misrepresentation generally permits rescission of the transaction, though statutes such as the Misrepresentation Act 1967 may also allow damages.

The burden of proof is likewise different. Fraud requires strict proof because of its serious nature. Negligent misrepresentation requires proof of duty of care, breach, reliance, and resulting damage. Innocent misrepresentation mainly requires proof that the false representation induced the plaintiff to act.

These distinctions reflect different policy considerations within tort law. Fraud seeks to deter dishonest conduct, negligent misrepresentation imposes responsibility upon professionals and skilled persons who fail to exercise due care, while innocent misrepresentation aims to ensure fairness between parties who rely upon incorrect information.

Conclusion

The law relating to fraud and misrepresentation forms an important aspect of tort and commercial law. Fraud consists of intentional deception undertaken for unlawful gain or to cause injury. The essential elements of fraud include false representation, knowledge of falsity, intention to deceive, reliance by the plaintiff, and resulting damage.

Negligent misrepresentation differs from fraud because there is no dishonest intention. Liability instead arises from breach of duty of care in making statements or providing advice. The recognition of liability for negligent misstatement in Hedley Byrne significantly expanded the law relating to economic loss and professional negligence.

Innocent misrepresentation differs from both fraud and negligence because the false statement is made honestly and without fault. Nevertheless, the law still permits remedies such as rescission and, in some cases, damages.

The comparative study of these doctrines demonstrates how tort law balances honesty, fairness, commercial certainty, and protection against economic harm. While all three involve inaccurate representations, the presence or absence of intention and negligence determines the degree of liability and the remedies available.