

Chapter 1 : Fraud and Misrepresentation Law in California

The following listing of possible fraud schemes can be utilized by management and auditors to assist in identifying possible fraud risks, scenarios, and schemes.

Search Fraud To Defraud: Everything You Need to Know Fraud is an intentional misrepresentation of material existing fact made by a person with knowledge of its falsity for the purpose of inducing another to act. The other person relies on this misrepresented material with resulting injury or damage. Fraud may also include an omission or intentional failure to state material facts, knowledge of which would be necessary to make other statements not misleading. To make a "misrepresentation" simply means to state as a fact something which is false or untrue. To make a material "omission" is to omit or withhold the statement of a fact, knowledge of which is necessary to make other statements not misleading. There are several qualifications for a misrepresentation to constitute fraud: A misrepresentation must be false or an omission must make other statements misleading, and it must be material in the sense that it relates to a matter of some importance or significance rather than a minor or trivial detail. A misrepresentation or omission must also relate to an existing fact. Ordinarily, a promise to do something in the future does not relate to an existing fact and cannot be the basis of a claim for fraud unless the person who made the promise did so without any present intent to perform it or with a positive intent not to perform it. Similarly, a mere expression of opinion does not relate to an existing fact and cannot be the basis of a claim of fraud unless the person stating the opinion has exclusive or superior knowledge of existing facts which are inconsistent with such opinion. A misrepresentation or omission must be made knowingly and intentionally, not as a result of mistake or accident; that is, that the person either knew or should have known of the falsity of the misrepresentation or the false effect of the omission, or that he made the misrepresentation or omission in negligent disregard of its truth or falsity. For injury or damage to be the result of fraud, it must be shown that, except for the fraud, the injury or damage would not have occurred. The word "material" means that the subject matter of the statement or concealment related to a fact or circumstance which would be important to the decision to be made as distinguished from an insignificant, trivial or unimportant detail. For example, for insurance fraud to be material, an assertion or concealment must relate to a fact or circumstance that would affect the liability of an insurer if made during an investigation of the loss, or would affect the decision to issue the policy, or the amount of coverage or the premium if made in the application for the policy. Torts is unlawfully, designedly, and knowingly appropriating the property of another without criminal intent. Every appropriation of the right of property of another is not fraud. It must be unlawful; that is to say, such an appropriation as is not permitted by law. Property loaned may, during the time of the loan, be appropriated to the use of the borrower. This is not fraud, because it is permitted by law. The appropriation must be not only unlawful, but it must be made with a knowledge that the property belongs to another and with a design to deprive him of the same. It is unlawful to take the property of another; but if it be done with a design of preserving it for the owners or if it be taken by mistake, it is not done designedly or knowingly and, therefore, does not come within the definition of fraud. Fraud, however immoral or illegal, is not in itself a crime or offense for want of a criminal intent. It only becomes such in the cases provided by law. Torts in a Contract Torts in a contract is any trick or artifice employed by one person to induce another to fall into an error or to detain him in it, so that he may make an agreement contrary to his interest. The fraud may consist either, first, in the misrepresentation or, secondly, in the concealment of a material fact. Fraud, force, and vexation are odious in law. Fraud gives no action; however, without damage and in matters of contract, it is merely a defense and cannot in any case constitute a new contract. Fraud avoids a contract, ab initio, both at law and in equity, whether the object be to deceive the public, third persons, or one party endeavor thereby to cheat the other. Types of Fraud The following is an enumeration of frauds for which equity will grant relief: Dolus Malus, which may be actual, arising from facts and circumstances of imposition. Fraud which may be presumed from the circumstances and condition of the parties contracting. Fraud which may be collected and inferred in the consideration of a court of equity, from the nature and circumstances of the transaction, as being an imposition and deceit on other persons, not parties

to the fraudulent agreement. Fraud in what are called catching bargains, with heirs, reversioners, or expectants on the life of the parents. This last seems to fall under one or more of the preceding divisions. Frauds may be also divided into actual or positive and constructive frauds. Actual Fraud An actual or positive fraud is the intentional and successful employment of any cunning, deception, or artifice used to circumvent, cheat, or deceive another. Constructive Fraud Constructive fraud is a contract or act, which, though not originating in any actual evil design or contrivance, still deceives or misleads a person, violates private or public confidence, or impairs or injures the public interests. This type of fraud is deemed equally reprehensible with positive fraud and therefore is prohibited by law, as within the same reason and mischief as contracts and acts done malo animo. Constructive frauds are such as are either against public policy; in violation of some special confidence or trust; operate substantially as a fraud upon the private rights, interests, duties, or intentions of third persons; or unconscientiously compromise or injuriously affect the private interests, rights, or duties of the parties themselves. The intention to deceive, which is the characteristic of fraud, is here present. Accidental Fraud Fraud is also divided into that which has induced the contract and incidental or accidental fraud. The former is that which has been the cause or determining motive of the contract, without which the party defrauded would not have contracted. Incidental or accidental fraud is that by which a person, is deceived on some accessories or incidents of a contract. An example of this might be misleading the person on the quality of the object of the contract or its price so that he has made a bad bargain. Accidental fraud does not, according to the civilians, avoid the contract, but simply subjects the party to damages. Was this document helpful?

Chapter 2 : Fraud in Family Law Cases | LegalZoom Legal Info

Conspiracy to Commit Fraud and Fraud are two different crimes. A person can be charged with both or either crime. Defining Conspiracy to Commit Fraud and Fraud. Conspiracy to Commit Fraud is the agreement between two or more people to engage in fraudulent activity.

Fraud is using deceit or dishonest means for the purpose of depriving another of money, property or a legal right. This article discusses types of fraud, pleading and proving the elements thereof. Intentional fraud and deceit occur when the perpetrator uses deceit false important facts to convince the victim to rely on the false facts. Then the victim reasonably relied on and was harmed by the deceit. Promissory fraud occurs when the perpetrator makes a promise that is important to the transaction that he or she never intends to and never does perform, in order to induce the victim to rely victim rely on the promise. Then the victim must reasonably rely on and be harmed by the false promise. Compare breach of contract where a party makes a genuine promise but later breaks the promise. Concealment fraud occurs when there is a fiduciary or other relationship between the parties where there is a duty of full disclosure. The concealing person, with an intention to deceive, does not disclose important facts that the concealing person knows but the victim does not and could not know. Further, the victim reasonably relied on and was harmed by the concealment. From the civil relief standpoint, embezzlement may create various causes of action such as, for example, conversion wrongful taking of property , fraud, and breach of fiduciary duty. Constructive fraud negligent misrepresentation occurs when the perpetrator misrepresents to the victim that an important false fact is true. But the perpetrator may have honestly believed that the false representation is true. Yet, the perpetrator had no reasonable grounds for believing the representation was true when he or she made it; and he or she intends that victim rely on the representation. The victim must reasonably rely on and be harmed by the false representation. Civil fraud, deceit and misrepresentation are defined in Civil Code Sections , , and In California, fraud must be pled in the complaint specifically. General and conclusionary allegations are not sufficient. Starkey Cal. Nagy Cal. Superior Court 12 Cal. Every element of a fraud cause of action must be alleged both factually and specifically. Department of Adoptions 47 Cal. Equity General Insurance Cal. In a case where misrepresentations are repeated often, the plaintiff must at least allege a representative selection of the misrepresentations sufficient enough for the trial court to ascertain if the statements were material and actionable. Natural Y Surgical Specialties, Inc. Milstein Cal. Permanente Medical Group, Inc. Hodgson 38 Cal. The representation must normally state a fact rather than an opinion. Puffing or sales talk is generally considered an opinion unless dealing with product safety. Zogarts 14 Cal. A misrepresentation may be verbal, written or implied by conduct. Bezenek 46 Cal. Dare Cal. Wraxall 33 Cal. The tort of deceit or fraud by a false promise requires that each and all of the following elements be proved: Schartkoff Cal. A promise is fraud only if made without a present intent to perform. An honest and good-faith promise without intention to deceive and in the honest expectation that it will be fulfilled, even if not carried out, is not fraud. The tort of deceit or fraud by concealment requires that each and all of the following elements be proved: Home Loan Center, Inc. Southern California Physicians Ins. Exchange 63 Cal. Judkins 52 Cal. Pollack Cal. McLeod Cal. Fraud assumes many shapes. Therefore, courts have long been cautious in attempting to define it. Sahadi 19 Cal. Preponderance of evidence means that one is required to prove each element is more likely to be true than not true. See In re Angelia P.

Chapter 3 : Conspiracy to Breach a Contract

Quite often there are several persons involved in a scheme to commit fraud and each and all may be liable for the total damages. Inherent in fraud is an unjust advantage over another which injures that person or entity.

In this article, I have combined a few different actual cases, highlighting the various tactics used by dishonest contractors to bait and then hook the homeowner. In all of these cases, the homeowner prevailed. Definition of FRAUD A wrongful or criminal deception deliberately practiced in order to secure unfair or unlawful gain. Trickery or a swindle. My Initial Contact with the Disgruntled Homeowner It was late in the afternoon, and a call came into my office. It was from a gentleman that was in great distress regarding a renovation that was taking place at his home. It seemed that every time an alleged problem arose during the renovation of his home, the contractor had been issuing change orders. The biggest problem was that until this point in time, the homeowner trusting that the contractor was honest had been paying for all of the alleged changes. Very little work had been done other than partial demolition of the old structure. Up until this point, the homeowner had gone along with all of the requests of the contractor for the additional charges. The homeowner did not want to create any problems with the contractor, and felt that by making the requested payments he would maintain a peaceful and happy project. The homeowner did not want to "rock the boat", or create any unnecessary tension with the contractor. This day was the breaking point for the homeowner. He believed that he was being taken advantage of, and he was not going to pay for any more change orders, so he wanted my opinion as to whether he was right or wrong. My First Impressions I offered to pay a visit to the work site, and the property owner agreed to meet me there. Upon my arrival, the homeowner gave me a quick tour of the jobsite. Debris, building materials, and tools were strewn all around the property. No workmen were present, and there was not a construction fence in place. There was an in ground pool in the back yard. There was no fence or gate surrounding the pool, and the original home had been almost totally demolished. There was easy access to the back yard through the demolished home, the exposed pool was potentially dangerous, and it was obvious that there were many children in the neighborhood. I immediately advised the homeowner that it was imperative that he get a construction fence around this project to protect the people in the area, as well as his property. I asked the homeowner to describe the renovation plans, and he showed me the blueprints that had been given to him by the construction company. It was apparent that the contractor was indeed taking advantage of this owner, and I spoke with the homeowner regarding his options for getting this project under control. Why the homeowner was worried His contractor was already threatening that all further work would stop and that he would place a mechanics lien on the property for non- payment of the most current change order that the homeowner was refusing to pay. I informed the homeowner that a change order was only valid if at least three conditions were met: Change order must be signed by both parties prior to commencement of additional work must be in writing, a verbal agreement is not normally enforceable. The work has been completed satisfactorily 3. It is proven that the substance of the change order added to or changed the original terms and conditions of the prior contractual agreement. He asked me if I knew an attorney, as he was concerned that he would be sued by the contractor if he terminated the project contract. He was also very worried about the existing condition of his home, and the possibility that his lender would call the note due because the house was basically no longer there. The Homeowner Begins to Fight Back I was certain that the homeowner needed to retain the services of a competent attorney, and offered several referrals that would be effective in enabling the homeowner to get control of this serious situation. A week later, the homeowner retained me as his consultant on this project, and asked me to inform his attorney of choice about the problems with this contract and contractor. The attorney went into action against the contractor, issuing a stop notice, and filed a lawsuit regarding the abusive actions by the contractor. They also said the business was family owned and that no subcontractors were employed. Personalized service and attention to details were the key reasons to use this contracting firm. The literature provided during discovery showed pictures of homes that were generic. However, one specific location was shown in detail, and it turned out to be many shots of the same home, photographed from different angles and elevations side views. It was discovered that the detailed

photographed home was actually owned by family members of the contractor. For example, roofing was mentioned as one of the many available services performed by the contractor. Fraudulent Acts are Discovered As presented in the advertising, and apparently intended to deceive, the contractor seemed to have worked on dozens of local homes. When addresses were verified during discovery, it turned out that the majority of the homes did not even exist. This was the first layer of deception and dishonesty created solely by the contractor. As information surfaced through discovery and depositions, it turned out that this particular contractor had been disciplined many times by the contractors state license board, had changed business names, and was currently involved in a couple of other legal matters. Although various other homeowners later disclosed that they had checked with licensing boards to verify the contractor, the fact that numerous names and business licenses were used made it almost impossible to check the past performance or references. How the Deception Developed The sales team from the contractor personally drove the homeowner around the neighborhood pointing out locations claiming that the construction work was done by his company. The salesman repeatedly asserted that the residents of these project houses were unavailable to allow viewing of these projects, or had moved since the time of the renovations. The contractor also developed an impressive website which added false credibility. It was found, through further discovery that in the past the contractor had walked off of jobs for alleged non-payment, attempted to place liens on the properties, and had been left unchallenged for the most part. How does the Unscrupulous Contractor get away with Fraud? In previous cases, the amount of money owed and in dispute was generally too small to pursue legally. Most of the disgruntled homeowners were advised by their attorneys to not file any action against this contractor. The claimed amounts were too small for an expensive court trial, and yet too big to take into a small claims action. Why is this Case Different? This time, the case was for an amount of money that was too great for the homeowner to walk away from, and the personality of the homeowner dictated that he get revenge for the unprofessional and poor treatment that the contractor had given him. Each person contradicted or attempted to blame someone other than himself for the "misunderstanding" with the client. Promises that were made to the homeowner and his family were brushed away as inconsequential and invalid. And, the contractor refused to make any attempt to rectify or settle the case prior to trial, further continuing to expound that the homeowner was the dishonest party in this matter. In part, the contractor attempted to shift the blame onto his sales staff, stating that he was unaware of any promises made by the sales people, and so he believed he was not responsible for the alleged misunderstandings. In all three cases, the contractors were originally non English speaking. They attempted to claim that their business practices were acceptable and normal in the country that they came from, and that all three homeowners were responsible for not fully understanding their business policies. Among many other ridiculous claims, the contractor stated that the plans were misleading and incomplete. The problem with that statement was that the contractor had drawn, submitted, and obtained plan approval on behalf of the homeowner. Along with the plan issues, the financial arrangements per the contract were illegal and in direct violation of the contractor code of conduct. The contract terms and conditions were so vague and ambiguous that it was nearly impossible to identify milestone payment requirements for any work performed on this project. In the state where these events took place, a pre demolition inspection is mandated by law to determine the presence of any hazardous materials such as asbestos that would need abating prior to removal. The contractor did not comply with these laws. In each case, the contractors had claimed to have over 35 years of experience in renovating homes in the area. If that was actually the case, each contractor should have been well aware of the building requirements in that geographic area. Furthermore, it was discovered that all three contractors had not even lived in the United States for 30 years prior to these cases. Per the construction plans, the house was to be completely demolished and a new ground up two story structure was to be created. The contractor was also guilty of hiring illegal workers that were dropped off at the jobsite. They were left unsupervised, did not know what they were supposed to do, and could not communicate with other workers at the site. Everything about the beginning stages of this project were completely out of control, and absolutely unprofessional. Mitigation Efforts by the Homeowner After thorough documentation, photographic evidence, and precise analysis of existing site conditions, a comprehensive report was made by Mike Panish. This "time capsule" of information captured the site and existing conditions to provide future documentation and proof by

an independent party that could be used to show exactly what had occurred up to the time that the original contractor and homeowner had ended their relationship. This documentation is critical in future proceedings and is the only accepted way to prove deficiencies, preserve, and capture and maintain an official record of the site. The new contractor was brought in to restart the project, and eventually corrected and finished the building of the new structure. The cost to the homeowner was approximately one and a half times the total bid made by the original contractor. In reality, the higher cost was directly attributable to the original inferior work that needed to be corrected. The contractor attempted to claim that the homeowner was sophisticated in the field of construction and actually positioned the contractor into performing the new construction work for far less than originally proposed. The contractor claimed that the homeowner always had the upper hand on this job and had been taking advantage of him. Claim after claim was made by the dishonest contractor attempting to shift the blame onto the homeowner. This was his way of getting the homeowner of this project to pay for materials at other job locations. It seemed that the contractor was running a "Ponzi" scheme type of business, as it appeared that he had absolutely no records that could explain or support where any of the funds he had received from the homeowner had gone. He was attempting to use this money to cover past jobs or future work at other locations that he could profit from. It was also determined that the contractor would submit material bills from a supplier, claiming that the components were used on the homeowners property, and later return the materials to the supplier claiming he did not need them. The Homeowner Prevails After a two year period, the case went to trial. The homeowner was seeking compensation in the amount equal to the actual costs associated with correcting all of the deficient work that was performed by the contractor, plus all of the overages paid as a result of change orders that had no merit. After two weeks in trial, the jury awarded the homeowner approximately 10 times the amount that the homeowner was seeking. Fraud is often difficult to prove, but in this case it was proven without a doubt. The contractor, salesmen, and owners of this construction company were found to be personally responsible for their actions. Because the attorney filed the action correctly as fraud, the company could not file corporate bankruptcy to avoid this judgment and all parties were held personally responsible. They all attempted an appeal, but lost. Similar events and situations occurred to the three homeowners that this article was derived from. In the past, the housing market was strong, and many bad contractors were allowed to get away with defective workmanship. In the current market, there are many building contractors that are having significant problems finding work. There are even more dishonest and unscrupulous building contractors preying on the homeowner that is desperately seeking to have someone renovate their property. It is more important now to thoroughly verify all references, view comparable examples of work, and check that a contractor of choice is financially solvent prior to entering into any contractual agreement where money is tendered in advance for future services.

Chapter 4 : Breach of Contract with Fraud Claims | LegalMatch Law Library

Fraud avoids a contract, ab initio, both at law and in equity, whether the object be to deceive the public, third persons, or one party endeavor thereby to cheat the other. Types of Fraud The following is an enumeration of frauds for which equity will grant relief.

The illegal acts committed by individual contractors or firms are known as contractor fraud. Fraud on the part of a contractor includes performing substandard repairs or offering services that deliberately cheat the other party. Contractors may also work with construction companies to commit construction fraud. Contractor fraud is costly for homeowners because the fraudulent acts can lead to more bills or cause extensive damage to property. Many fraudulent contractors continue to get away with these acts because they target uninformed individuals. Common Fraudulent Scams by Contractors Fraudulent contractors typically use threats and intimidation and go after individuals, such as the elderly. The following are common tactics and techniques used in contractor fraud: Requiring payment up front Written contracts that do not include verbal agreements Contractors not getting the right permit Contractors reveal unforeseen problems that need extra work Selling extra materials to sell you for a cheap price What Can I Do to Avoid Contractor Fraud? There are simple steps homeowners can take to insure that they do not fall victim to these tricks. The following are questions and steps you should take when dealing with contractors: Verbal and written agreements: Make sure everything you want and agree to is in the final contract. Getting the right permit: Unforeseen problems and extra work: Make sure the contract requires that the homeowner and contractor must both sign before anything is charged or worked on. Selling extra materials at a cheap price: Do not buy services or materials on the spot or on an impulse, always do your research and make sure the contractor has a good reputation. The legal remedies for you situation can vary and an attorney can tell you what your best options are. Contractor fraud cases can be complex because they involve real estate law, contract law, and tax law. An experienced real estate lawyer or contract attorney can help you through this difficult situation and represent you in court.

Chapter 5 : The seven types of e-commerce fraud explained - Information Age

A prenuptial agreement is a contract between two people signed before they get married. The contract specifies what will happen financially if the parties die, separate or get divorced. Prenuptial agreements can only be overturned for limited reasons, one of which is fraud.

The seven types of e-commerce fraud explained Alternative payment methods are attracting criminals The Nilsen Report. Internet payment fraud is constantly increasing, and is, apparently, unstoppable. While the increase itself is nothing new there has been more e-commerce fraud every year since , the rate is impressive. Fraud is not exclusive to credit card payments, however. Criminals are becoming more sophisticated in their use of malware to command online banking logins via phones, tablets and computers, using the stolen bank account details to make fraudulent payments. So what does this fraud look like, exactly? A study by Worldpay asked merchants from various industries in six countries precisely this question. The most common types of fraud are explained below. Instead of having to come up with a completely new identity to do this, they simply take over an existing one. This is easier to do " and usually much faster. Phishing, on the other hand, simply involves using fraudulent websites, emails or text messages to access personal data. Another technical method is known as pharming, in which manipulated browsers direct unsuspecting customers to fraudulent websites. This can be used to take over an existing account with an online shop " in most cases, the payment data is already stored in the account. Of course, hacker attacks on e-commerce providers and stealing customer data also fall under this fraud category, as does using malware on computers to commit identity theft by spying out sensitive data. These involve hackers muscling in on communications between customers and merchants or between customers and banks in order to siphon off login data. Already, though, the true extent of the identity theft problem is apparent. This sounds friendlier than it really is: Then, however, they deliberately initiate a chargeback, claiming that their credit card or account details were stolen. They are reimbursed " but they keep the goods or services. This fraud method is particularly prevalent with services, such as those in the gambling or adult milieus. Friendly fraud also tends to be combined with re-shipping. Instead, they use middlemen whose details are used to make the purchases and who then forward the goods. The basic principle of clean fraud is that a stolen credit card is used to make a purchase, but the transaction is then manipulated in such a way that fraud detection functions are circumvented. Much more know-how is required here than with friendly fraud, where the only goal is to cancel the payment once a purchase has been made. In clean fraud, criminals use sound analyses of the fraud detection systems deployed, plus a great deal of knowledge about the rightful owners of their stolen credit cards. A great deal of correct information is then entered during the payment process so that the fraud detection solution is fooled. Before clean fraud is committed, card testing is often carried out. This involves making cheap test purchases online to check that the stolen credit card data works. Affiliate fraud There are two variations of affiliate fraud, both of which have the same aim: This type of fraud is payment-method-neutral, but extremely widely distributed. Triangulation fraud During triangulation fraud, the fraud is carried out via three points. The first is a fake online storefront, which offers high-demand goods at extremely low prices. In most cases, additional bait is added, like the information that the goods will only be shipped immediately if the goods are paid for using a credit card. The falsified shop collects address and credit card data " this is its only purpose. The second corner of the fraud triangle involves using other stolen credit card data and the name collected to order goods at a real store and ship them to the original customer. Top 8 ways to fight mobile banking fraud The third point in the fraud triangle involves using the stolen credit card data to make additional purchases. The order data and credit card numbers are now almost impossible to connect, so the fraud usually remains undiscovered for a longer period of time, resulting in greater damages. Merchant fraud Merchant fraud is another method which must be mentioned. The payments are, of course, kept. This method of fraud also exists in wholesale. It is not specific to any particular payment method, but this is, of course, where no-chargeback payment methods most of the push payment types come into their own. More international fraud On average, the merchants who participated in the study do business in 14 countries. Language barriers, as well as the difficulty of keeping international

tabs on individual customers, pose additional fraud management challenges. Different devices Fraud methods vary depending on the sales channel, and the fact that most merchants aim to achieve multi-channel sales does not make the situation any easier.

Chapter 6 : Conspiracy (criminal) - Wikipedia

A contractor that knowingly delivers works, goods or services that do not meet contract specifications may be guilty of fraud if it falsely represents that it has complied with the contract or deliberately conceals its failure to do so.

When the dust settles after a property settlement and dissolution, economically dependent spouses may begin to question whether they actually got a good deal. In some cases this process occurs because the spouse finally escapes from pressures exerted by the more controlling and dominant marriage partner; in other cases the dependent spouse gets wind of information suggesting that the other spouse held back key details about marital assets. When a former spouse consults a lawyer for advice about attacking the property settlement, the lawyer should keep the timing issue in mind and proceed with all deliberate speed. If preliminary investigation and research suggest that the client might be entitled to some relief, the lawyer should take care to use the correct procedural vehicle for the desired relief - usually a motion in the original dissolution action. It is probably wise to frame the motion to present a coherent single theory that would justify relief, as many courts seem averse to a scattershot approach that sets out several different, and possibly conflicting, grounds for relief. When all is said and done, the spouse who carries the day will probably be the one who can convince the trial court that the equities weigh in his or her favor. The outcome in these proceedings is often difficult to predict, however, because the equities are usually not crystal clear. This article reviews recent cases in which a former spouse sought relief from judgment based on alleged fraud or duress. Part I discusses recent cases addressing fraud claims; Part II reviews recent decisions involving duress claims; Part III examines procedural matters and miscellaneous issues. A party attempting to set aside a decree on the ground that it was procured by fraud must make the traditional showings required to prove fraud. A Missouri appeals court said that the spouse seeking to prove fraud must show: *Mitchell*, S. By analyzing these showings, counsel for the spouse accused of fraud may be able to formulate a defense theory. For example, counsel might assert that the alleged misrepresentation was one of opinion rather than fact. *Mitchell*, supra in her motion claiming that husband misrepresented the value of his pension, wife failed to establish that he made a representation which was false; a statement as to the value of property is ordinarily considered an opinion, not a statement of fact ; see also *Brown v. Brown*, S. *Shafmaster*, N. Counsel might also argue that the accused spouse did not know, or have reason to know, that the representations were false. *Castro*, 31 Conn. Along the same lines, counsel might characterize the representation or omission as a mistake or oversight made without intent to deceive. Extrinsic Fraud Versus Intrinsic Fraud. Many states distinguish between extrinsic fraud, usually characterized as fraud on the court, and intrinsic fraud, the less serious evil of fraud committed against a party. This distinction can be critical when the fraud is not discovered right away. Many jurisdictions allow judgments to be attacked for intrinsic fraud only within a short time after judgment, but have a longer time limit, or no time limit at all, for attacks grounded on extrinsic fraud. A former spouse succeeded in proving extrinsic fraud in *Grissom v. Grissom*, 30 Cal. In , the husband presented the wife with an "Appearance, Stipulation, and Waiver," which he told her had to be signed and filed in order to dismiss their pending divorce action. Unbeknownst to the wife, this document contained a property division and permitted the husband to obtain a divorce without notifying her. He did obtain the divorce, but did not tell the wife, and continued to live with her as if they were still married. When the wife found out the true facts 10 years later, she filed a motion claiming that she had been fraudulently induced to sign the document. The appellate court upheld a finding of extrinsic fraud. Where a confidential relation exists and one of the parties signs an instrument without reading it in reliance on false representations as to its contents by the other party, the instrument may be avoided, the court declared. Misrepresentation of Asset Values. Courts disagree on whether nondisclosure of property values or misstatements amount to fraud so as to support an attack on the judgment. *Johnson*, S. *Sanborn*, N. This disagreement continues to be reflected in recent cases. In *re Marriage of Melton*, 28 Cal. Based on this information, the wife agreed to accept a specified amount as her one-half share of the monthly retirement payments, and the stipulated judgment reflected that agreement. When the husband retired and the wife found out that his payments were actually much larger than expected, she sought relief from the judgment. See also

Mitchell v. Mitchell, supra statement as to value of property is not a representation of fact and, thus, cannot be fraud. A Michigan appeals court held that a spouse who allegedly misrepresents his asset values in the divorce proceedings cannot be sued for fraud. *Nederlander*, Mich. The wife claimed that the husband misrepresented the value of his interest in two companies, in that he knew and did not reveal that one company would be merged into a new entity, and that the other was in the process of selling valuable real estate. Allowing a party to file an action for fraud whenever the other party, more than one year after the divorce judgment is entered, liquidates assets or consummates a business transaction is contrary to the public policy behind the finality of judgments, the court declared. While it suggested that a spouse who suspects fraud could seek relief from the judgment within one year after the judgment, the court did not indicate whether misrepresentation of asset values would amount to fraud permitting relief from the judgment. The New Hampshire Supreme Court, however, held that a husband acted fraudulently when he permitted the wife to rely on valuation information that he knew was dated and false. Once financial information was requested and provided, the husband had an ongoing obligation to provide current and accurate financial information, the court said. It noted that if the husband had been required to comply with the New Hampshire court rule requiring financial affidavits to be attached to stipulations, he would not have been able to perpetrate his fraud without making a false statement under oath. To avoid a repetition of these circumstances, the court held that the full disclosure provisions of the rule, Super. Reliance and Due Diligence. To prove fraud, the accusing spouse must prove reliance on the misrepresentation, and in many cases the necessity for a showing of reliance is a major hurdle for the spouse seeking relief. Some courts take the view that each spouse has a duty to exercise reasonable diligence to ascertain the value of assets. Another view, exemplified by *Shafmaster v. The husband* argued that this was a red flag which put the wife on notice that she could not rely on his disclosures. The New Hampshire Supreme Court held, however, that the wife was entitled to rely on the accuracy of the information which the husband had provided to her. Some courts have analyzed the reliance issue in terms of whether the spouses still had a confidential or fiduciary relationship at the time of the alleged misrepresentations. For example, in *Nederlander v. Nederlander*, supra, which rejected the assertion that a former spouse could file an action for fraud based on alleged misrepresentations about asset values, the court pointed out that a fiduciary relationship does not exist between spouses at the time of divorce. See also *Grissom v.* Although it is difficult to predict the outcome of proceedings for relief from judgment based on fraud, the trial court is likely to reject the claim when the accusing spouse relies solely on his or her own testimony and that testimony conflicts with objective evidence. The wife denied ever saying that, and the husband admitted he never met the lawyer, never consulted with him, and never received advice from him. Moreover, the judgment order stated that the lawyer represented the wife, and that the husband appeared pro se. *Jenks*, Conn. An Illinois appellate court stated these general rules about duress: Duress has been defined as including the imposition, oppression, undue influence or the taking of undue advantage of the stress of another whereby one is deprived of the exercise of his own free will. The person asserting duress has the burden of proving, by clear and convincing evidence, that he was bereft of the quality of mind essential to the making of the contract. In re *Marriage of Hamm-Smith*, supra, N. When the agreement was negotiated and finalized, the parties were no longer living together as husband and wife, the court pointed out. Although the husband was taking prescription medication to control depression, he presented no evidence that he was bereft of the quality of mind essential to the making of the agreement, the court added. In an Arizona case, the court held that distress resulting from external pressures on a spouse does not constitute duress. *Sharp*, Ariz. The wife, who was facing criminal charges, agreed to a settlement but later claimed that she had been forced to assent because the husband said he would give her no financial assistance until she signed the agreement. Under Arizona case law, the court observed, the test of what act or threat constitutes duress is determined by considering whether the threat placed the party entering into the transaction in such fear as to preclude the exercise of free will and judgment. By definition, an act or threat must be wrongful to constitute duress, the court said. The husband was not responsible for the criminal charge, and the wife could have petitioned the trial court for temporary maintenance, the court noted. The extreme pressure which the husband exerted on the wife in return for his agreement to the Get rendered the settlement agreement invalid, the court held. *Segal*, N. As persuasive

authority, the court cited *Golding v. Golding*, A. Perl, A. Lapse of Time Between Conduct and Agreement. A lapse of time between the allegedly wrongful conduct and the execution of the agreement does not necessarily bar a finding of duress, according to the Connecticut Supreme Court in *Jenks*. *Jenks*, supra, A. The trial court also pointed to a history of ultimatums issued by the husband as support for its finding of duress. The appellate court rejected the finding of duress, however. It was untenable to argue, as the wife did, that duress affecting the power of a spouse to exercise free will, at any time during the marriage, would be sufficient to warrant the opening of a stipulated dissolution judgment, the appellate court said. *Prior Experience with Property Settlement Negotiations*. A spouse who has been divorced before may have a particularly difficult time proving duress. *Mitchell*, supra, the wife claimed that she did not freely and voluntarily agree to the separation agreement. She testified that she was not happy with the terms of the settlement agreement, and claimed that the husband had previously threatened to kill her if she did not agree to his terms. The Missouri appellate court agreed with the trial court that the wife had not proven duress. Moreover, "[b]ecause of her prior experience with property settlement negotiations, we may infer she was fully aware of her property rights and the effects of signing the separation agreement. *Miscellaneous Issues Time Limits; Delay*. Many states have adopted postjudgment relief rules modeled on Rule 60 b of the Federal Rules of Civil Procedure, which requires postjudgment motions for relief on the ground of fraud to be filed no later than one year from the date of the divorce judgment. *Nederlander*, supra if a party suspects that the other party has committed fraud during a divorce proceeding, then the party may seek redress within one year after the judgment is entered under state procedural rules for relief from judgment. A fraud-based motion for relief may be untimely even if it is filed within one year, however, because rules modeled on Rule 60 b require that such motions be filed as well within a reasonable time. Hence, in order to head off a claim of untimeliness, counsel for the accusing spouse should file the motion as soon as reasonably possible.

Chapter 7 : Fraud To Defraud: Everything You Need to Know

Conspiracy to defraud is an offence under the common law of England and Wales and Northern Ireland.

England and Wales[edit] Common law offence[edit] At common law , the crime of conspiracy was capable of infinite growth, able to accommodate any new situation and to criminalize it if the level of threat to society was sufficiently great. The courts were therefore acting in the role of the legislature to create new offences and, following the Law Commission Report No. Conspiracy to defraud[edit] Further information: Conspiracy to corrupt public morals or to outrage public decency[edit] Section 5 3 Criminal Law Act [5] preserved the common law offence of conspiracy to corrupt public morals or of conspiracy to outrage public decency. Conspiracy to corrupt public morals is an offence under the common law of England and Wales. In the case of R v Rowley, [10] the defendant left notes in public places over a period of three weeks offering money and presents to boys with the intention of luring them for immoral purposes, but there was nothing lewd, obscene or disgusting in the notes, nor were they printed by a newsmagazine at the behest of Rowley, which would have invoked the element of conspiracy. The judge ruled that the jury was entitled to look at the purpose behind the notes in deciding whether they were lewd or disgusting. This section does not cite any sources. Please help improve this section by adding citations to reliable sources. Unsourced material may be challenged and removed. The eventual aim was to abolish all the remaining common law offences and replace them, where appropriate, with offences precisely defined by statute. The common law offences were seen as unacceptably vague and open to development by the courts in ways which might offend the principle of certainty. There was an additional problem that it could be a criminal conspiracy at common law to engage in conduct which was not in itself a criminal offence: This was a major mischief at which the Act was aimed,[citation needed] although it retained the convenient concept of a common law conspiracy to defraud: Henceforward, according to the Law Commission, it would only be an offence to agree to engage in a course of conduct which was itself a criminal offence. Section 1 1 of the Criminal Law Act provides: Section 1A inserted by the Criminal Justice Terrorism and Conspiracy Act , s5 bans conspiracies part of which occurred in England and Wales to commit an act or the happening of some other event outside the United Kingdom which constitutes an offence under the law in force in that country or territory. Many conditions apply including that prosecutions need consent from the Attorney General. Exceptions[edit] Under section 2 1 the intended victim of the offence can not be guilty of conspiracy. Under section 2 2 there can be no conspiracy where the only other person s to the agreement are: Mens rea[edit] There must be an agreement between two or more persons. The mens rea of conspiracy is a separate issue from the mens rea required of the substantive crime. Lord Bridge in R v Anderson also said: But, beyond the mere fact of agreement, the necessary mens rea of the crime is, in my opinion, established if, and only if, it is shown that the accused, when he entered into the agreement, intended to play some part in the agreed course of conduct in furtherance of the criminal purpose which the agreed course of action was intended to achieve. Nothing less will suffice; nothing more is required. It is not therefore necessary for any action to be taken in furtherance of the criminal purpose in order for a conspiracy offence to have been committed. This distinguishes a conspiracy from an attempt which necessarily does involve a person doing an act see Criminal Attempts Act Things said or done by one conspirator[edit] Lord Steyn in R v Hayter said: Keane, The Modern Law of Evidence 5th ed. In two exceptional situations, a confession may be admitted not only as evidence against its maker but also as evidence against a co-accused implicated thereby. The first is where the co-accused by his words or conduct accepts the truth of the statement so as to make all or part of it a confession statement of his own. The second exception, which is perhaps best understood in terms of implied agency, applies in the case of conspiracy: History[edit] According to Edward Coke , conspiracy was originally a statutory remedy against false accusation and prosecution by "a consultation and agreement between two or more to appeal or indict an innocent man falsely and maliciously of felony, whom they cause to be indicted and appealed; and afterward the party is lawfully acquitted". These persons, together with others who did not appeal, conspired to occupy the London premises of the High Commissioner for Sierra Leone in order to publicize grievances against the

government of that country. Upon their arrival at the Commission, they threatened the caretaker with an imitation firearm and locked him in a reception room with ten other members of the staff. The students then held a press conference on the telephone, but the caretaker was able to contact the police, who arrived, released the prisoners, and arrested the accused. In this case the Court felt that the public interest was clearly involved because of the statutory duty of the British Government to protect diplomatic premises. Wolfenden report These offences were at one time tied up with prostitution and homosexual behaviour. After the Second World War, due to the fame of several convicts, the Wolfenden report was commissioned by government, and was published in Thereupon came the publication of several books, both pro and contra the report. Of these books we can isolate two representatives: Lord Devlin wrote in favour of societal norms, or morals, while H. Hart wrote that the state could ill-regulate private conduct. In May , Devlin is reported to have conceded defeat. A majority in the House of Lords not only found the appellant guilty of a statutory offence living on the earnings of prostitution , but also of the "common law misdemeanour of conspiracy to corrupt public morals". On an inside page under a column headed "Males" advertisements were inserted inviting readers to meet the advertisers for the purpose of homosexual practices. The appellants were convicted on counts of conspiracy to corrupt public morals, and conspiracy to outrage public decency. The appeal on count 1 was dismissed, while the appeal on count 2 was allowed because in the present case there had been a misdirection in relation to the meaning of "decency" and the offence of "outrage". The list of cases consulted in the ratio decidendi is lengthy, and the case of Shaw v. Conspiracy to effect a public mischief[edit] In Withers v Director of Public Prosecutions, [20] which reached the House of Lords in , it was unanimously held that conspiracy to effect a public mischief was not a separate and distinct class of criminal conspiracy. This overruled earlier decisions to the contrary effect. The Law Commission published a consultation paper on this subject in

Chapter 8 : Conspiracy to defraud - Wikipedia

A federal jury found one physician and two nurses guilty today of health care fraud, and one physician and one nurse guilty of conspiracy to commit health care fraud, all for their roles in a home health fraud scheme.

Have a pending criminal or federal case? Are you currently being investigated? Request Free Evaluation Right Now. Rather, conspiracy takes place when a group of people collude together for an objective that is recognized as criminal under some other federal or state statute. Conspiracy Laws Federal conspiracy laws are intended to discourage major crimes requiring the participation of more than one individual by providing for additional charges, and hence additional punishments, for such crimes. A conspiracy does not have to be large: Two people can constitute a conspiracy. Generally speaking, the law recognizes that all conspiracies are somewhat different, so the specific criminal act in question helps determine the sentencing expectations. Conspiracies in which the object of the conspiracy is a felony offense. Conspiracies in which the object of the conspiracy is a misdemeanor offense. Determining whether the object of the conspiracy is a felony or misdemeanor is the major criteria involved in deciding the specific penalties that apply and how harsh they might be under the law. Federal prosecutors love to bring conspiracy charges. Yet there are a number of misunderstandings about exactly what federal conspiracy charges require. In practice, conspiracy prosecution can be challenging, and prosecutors frequently work with members of a conspiracy to obtain evidence against its other members. This can substantially reduce the prison terms that an individual charged under conspiracy laws might expect to face. In addition to prison time, individuals may face a fine commensurate with the public harm that did or reasonably would have resulted from the conspiracy being carried out. Conspiracy Sentencing Guidelines As stated above, conspiracy charges where the object is a felony can result in prison terms up to five years as well as fines. However, conspiracy charges focusing on a misdemeanor offense are punished much less severely. Federal statutes dictate that such punishment cannot exceed the maximum punishment set forth for the misdemeanor offense, no matter how many people were involved in the conspiracy. In practice, this provides protection against a misdemeanor offense being punished with the severity of a felony. Conspiracy Statute of Limitations Federal statute 18 USC provides the basis for the statute of limitations applying to various federal offenses. This statute indicates no American citizen can be tried, prosecuted in a court of law, or punished for noncapital offenses after 60 months of the commission of the offense. To be valid, an indictment must be found or information instituted within that time. In some cases, a conspiracy with the objective of committing a capital offense, like murder or kidnapping, may still be prosecuted after five years, even if the conspiracy was not successful. Conspiracy Cases Because conspiracy can be an element of such a wide variety of other crimes, there are many different ways that conspiracy charges can come about. Recent federal conspiracy charges have run the gamut from relatively simple fraud to extremely complex international schemes:

Chapter 9 : Conspiracy Laws, Charges & Statute of Limitations | Find Lawyer or Attorney Near Me

The illegal acts committed by individual contractors or firms are known as contractor fraud. Fraud on the part of a contractor includes performing substandard repairs or offering services that deliberately cheat the other party.

Generally a fraud cause of action cannot be filed simultaneously with a breach of contract cause of action, if both are based on the same basic facts and circumstances. The court will usually focus on the breach of contract claim and disregard the fraud claims as duplicative, especially when the fraud claim simply restates facts of the claim for breach. The reasoning behind this is that a breach of contract lawsuit already implies that there has possibly been some amount of misrepresentation or some type of misunderstanding that has resulted in one or more parties not performing their part. Therefore, even if a plaintiff argues that the defendant knew of a false statement in the contract, or expressed their intention not to perform, it would not successfully convert the breach of contract claim into a fraud claim. An exception to this general rule is when the fraud claim derives from a different set of facts from the contract claim. One common example of this is known as fraud in the inducement, or simply fraudulent inducement. This occurs when the plaintiff enters into a contract because the defendant made misrepresentations that led the plaintiff to agree to the contract. The remedy for fraudulent inducement is usually that the plaintiff has the option of voiding the resulting contract. An example of this is when a defendant tells the plaintiff that they must sign a car sale contract or else their house will be foreclosed, when in fact it will not be foreclosed at all. In this example you can see that the fraud has nothing to do with the actual car sale contract but rather with circumstances that force or trick the plaintiff into signing. The key to a successfully pleaded fraudulent inducement claim is that the plaintiff must do their best to prove that the fraud and the contract are two distinct, separate violations and therefore should both be heard. Essentially, to be successful, the plaintiff should show that the misrepresentation occurred before the agreement was entered into, and also that the misrepresentation actually induced or caused the plaintiff to enter the contract. It helps to demonstrate that the plaintiff would not have entered into the contract had they been aware of the true nature of the circumstances. The best way to do this is to state very clearly the details of the fraudulent inducement using dates and documents. If there has been a tort violation within the contract setting, these may be filed as well. Conversion Negligence False Imprisonment Again, the key is that the tort violation must arise from different facts other than those relating to the contract itself. The interplay between torts and contracts means that remedies that normally would not apply to a contracts case may become available due to the simultaneous filings. For example, punitive damages , which are meant to punish the defendant, are not normally assigned in a contracts case. However, if fraud or another tort is involved, then punitive damages might become available to the plaintiff. Another example of damages that might become available with the addition of a fraud claim is nominal damages. Nominal damages are awarded when the plaintiff has not actually incurred economic losses. This is less common with a contracts breach, because contracts almost always involve financial profits. However, the tort or fraud claim might make a nominal damages award necessary. Again, a court will usually emphasize that the concurrent filings are actually distinct claims and thus the punitive or nominal damages are justified. As you can probably tell, the overlap of two branches of law such as fraud and contracts is very complex. In such situations, it is important to work closely with business attorneys. They will be able to sort out the various distinctions between claims, as well as suggest the proper course of action.