

# Indian Contract Act with relevant sections that are applicable in the drafting of Forensic Audit Reports

As per section 17 of Indian contract act Fraud was proved when it's shown that's the false representation is made knowingly, without belief in the truth, irresponsibly whether it's true or false.

There are some fundamentals for frauds:

- There should be the wrong statement of facts by individuals whom himself does not believe the statement is correct.
- The statement should be made for deceiving another party and convincing them to enter into a contract.
- Other parties should suffer loss.

## SECTION 17(1):

1. If the statement of fact is not true, then it is the amount to fraud.

For Example: If a person who is over 60 years he cannot be insured because of his beyond insured age, purposely a false statement that his age is 50 in order to take out an insurance policy, it indicates a false statement and the insurance agent is entitled to avoid the policy.

## 2. MERE SILENCE IS NO FRAUD

Mere silence to the significant fact possibly affect the person willing to enter into an agreement is not a fraud.

Unless the situation of the case is such that, it is the duty of the person keeping silence to speak or his silence is in equivalent to speech. A contracting party does not feel the need to disclose each and everything to the other party.

*Refer to the case of Keates Vs. Lord Cadogan 1851*

In this case, C let his house to K which he knew was in poor condition. He also knew that the house is going to occupy by K instantly. C didn't disclose the condition of the house to K. The case came in the favour of the defendant.

## 3. EXCEPTION OF MERE SILENCE IS NO FRAUD

- a. RESPONSIBILITY TO SPEAK: If it is the onus of the person to speak, keeping silence in such a case amounts to fraud.  
If there is to reveals proof one should do so rather than to remain silent and being silent it will lead to a false impression in the mind of others.

4. CONTRACT OF GOOD FAITH (UBERIMA FIDES): Contracts of good faith, in utmost good faith the party in whom good faith is reposed would make full disclosure and not keep quiet. It is the duty of a party to reveals the material facts & figures.

For Example: contract of insurance.

*Refer to the case P.J. Chacko Vs. Chairman LIC of India on 20.11.2007*

### *Crux- Suppression of Material facts*

In this case, the insured had gone through an operation for thyroid, a major operations 4years prior to the date of the proposal made him without revealing the facts while obtaining the insurance policy. He took policy 06/07/1987 and within six months on 21/02/1987 he died. Then after hearing the whole case facts and figures court held insured does not disclose all material's facts of the contract so it's a fraud.

- a. Marital Status  
Not disclosure of materials facts to parties to the marriage has been held for fraud.
- b. Change of Circumstances  
Occasionally representation is true when it is made, but it may an account of variation circumstances, become false when it is actually acted upon by other parties. In such circumstances, it is the duty of the person who made the representation to communicate the change of conditions.
- c. Silent being equivalent to speech  
Where there is a duty to speak or being silent in a certain situation creating an unnecessary existence of situation then such silence amounts to frauds.  
This type of situation arises in Insurance contracts.
- d. Half-Truth  
When a person is under no obligation to disclosing of facts, he may become guilty of frauds by not disclosing it. If he decides to reveal something then stops between, then it has been informed by the court that a person has to completely say the whole truth.

### **Section 17(2):**

Active suppression of a fact by one having knowledge or certainty of the fact that amounts to frauds.

### **Section 17(3):**

MAKING PROMISE BUT NO INTENTION TO PERFORM IT.

When a person makes a promise, they have to perform and if no such intention is found then it amounts to fraud.

For Example:

Man takes a loan without any intention to repay it. Which common case in credit card fraud.

### **Section 17(4)**

ANY OTHER ACT FITTED TO DECEIVE:

Any other act fitted to deceive is also be considered as fraud.

## **Section 17(5)**

ANY ACT OR ERROR AS THE LAW SPECIALLY ASSERTS TO BE FRAUD

As mentioned in the Transfer of Property Act 1882, under section 55 the seller of immovable property is obligated to disclose all material facts in the property to the buyer, not doing so will amount to frauds.

## **WRONGFUL INTENTION**

A Person should intentionally commit frauds/false statement to deceive another party.

*Refer to the case Derry V Peek 1889*

*Crux- Tort law- False representation*

In this case, the director of company/defendant company issued a prospectus stating that they got the permission to run tramways with steam rather by animal power. Director honestly thought that the board of trade would approve such sanction in a matter of course. But the board refused the sanction and company had to wound up. Individuals who bought a share in the company brought an action for the tort of fraud. It was held by the court that since statement not been made with the intention to deceive or statement made recklessly so there was no fraud.