**DECEIT**

1. **Introduction**

The tort of deceit involves the act of willingly making a false statement or false representation with the intent that the plaintiff/ a person act or rely and which result into injury or harm to the plaintiff/person.

In another light, it involves a situation where a person make a fake statement to another person upon which that person relies and as a consequence of relying on that statement suffers some damage. In the case of fraudulent misrepresentation is a question in tort under the common name of deception.

 Also, it occurs when someone intentionally lie to person about the potency of an object that the person depends on, which put the person at a jeopardy because the depended on the objects performance. If a person tells someone that a crane can lift 10000 pounds, and he buys the crane knowing that he has to carry 9000 pounds, but in fact the crane only lifts 2000 pounds, that person can sue the other person on the basis of the tort of deceit.

The tort known as deceit cover the law of contract, criminal law and so forth. In the law of contract it is referred to as fraudulent misrepresentation; in criminal law, obtaining by false pretences. The tort of deceit is not actionable per se as it requires the plaintiff to prove some ingredients.[[1]](#footnote-1)

The essence of deceit, whether in the law of tort, contract or criminal law is fraud[[2]](#footnote-2) which means the plaintiff was defrauded or duped which he suffered loss and thus in an action for deceit, the claim is that there was a false representation or affirmation made by the defendant with the intention to defraud the plaintiff which he relied upon and suffered damages.

* 1. **Ingredients of the tort of deceit**

 A plaintiff in an action for the tort of deceit must prove some ingredients to succeed in such a claim and some of these ingredients are considered thus:

1. That the defendant made a false representation
2. That the defendant knew that the representation was false
3. That the defendant intended the plaintiff should rely on the information
4. That the plaintiff relied on the information
5. That the plaintiff suffered damage

These elements above will explain thus:

1. **That the defendant made a false representation**

In an action for deceit a plaintiff has to prove that the defendants made a false representation particularly to him. There must be a statement (written or oral) or conduct amounting to a representation which is false. A representation usually involves something being said, but conduct can also be included. The misrepresentation must be in relation to a specific fact. Statements of opinion or intention do not fall within the definition of a false misrepresentation.

A defendant may be liable for false representation where he is both the originator of a false representation or where he adopts a false representation made by a third party and communicate same to the plaintiff who without knowledge acted on it and suffered harm.

In ***Pasley v. Freeman***,[[3]](#footnote-3) the plaintiff was dealing in cochineal at the time when the cause of action arose and had a large stock at hand which he anxiously wanted to dispose of. Learning this, the defendant said to the plaintiff that he knew a buyer who would purchase the stock of cochineal.

The plaintiff asked: “Is he a respectable and substantial person?” “Certainly he is” was the defendant’s reply, knowing well that he was not. When the bill became due, it turned out that the purchaser was insolvent and the plaintiff was unable to recover his money from the purchaser, the defendant was sued for making a false representation to him by compensating him. The defendant was held liable to the plaintiff as far as he had suffered as a result of the former’s false statement about that buyer’s credit and character.

In line with the above, it is important to consider the conduct of silence and how it relates to false representation. It is as general rule that silence or non-disclosure is not actionable per se in an action for deceit and the rationale is except where there is a mandatory provision of a statute pertaining to disclosures , it does not amount to fraud.

However notwithstanding the above general position silence could amount to deceit in some certain circumstances. In an instance where silence distorts a positive representation, it could be regarded as partial concealment of truth. The action of such a person in concealing partly the truth in silence and making a false representation all amount to falsehood and thus can make a defendant liable to the favour of the plaintiff.[[4]](#footnote-4)

In another situation, where there is an active concealment of fact relating to a matter amount to deceit.[[5]](#footnote-5)

Also, there could be a situation where the state of facts have changed and there lies a burden on the bearing of the facts to inform of such change and where he refuses to disclosure this fact or discharge this duty, he will be liable for deceit.[[6]](#footnote-6) Likewise too, where there is a statutory duty disclose, failure to disclose amount to deceit.[[7]](#footnote-7)

Another exception in line with the above is a situation where silence is a statement of an intention or opinion. A statement of an intention which the maker intends to carry out in the future, or opinions are usually treated as representations of fact at the time they are made. A maker of a statement of an intention or of an opinion is liable if it is proved that he does not have such intention or that the opinion is false or that he does not hold the opinion at the time he made such statement.

1. **That the defendant knew that the representation was false**

The defendant must know that the representation was false, or at least had no genuine belief that it was true. In ***Derry v. Peek***[[8]](#footnote-8), An act incorporating a tram company provided that, with the consent of the Board of Trade, carriages could be moved by animal power, by steam power. The directors issued a prospectus stating that the company was entitled to use steam power instead of horses under the Act. The complainant took shares in this statements faith. An act incorporating a tram company provided that, with the consent of the Board of Trade, carriages could be moved by animal power, by steam power. The trading board declined their consent to use steam power and the company was wound up. In an action against the directors for false statement, they were held not to be liable for the misrepresentation as they honestly believed that the statement was true even though they were guilty of some carelessness in making it.

1. That the defendant intended the plaintiff should rely on the information

The plaintiff in order to succeed in a claim of the tort of deceit must by clear evidence prove that the statement was actually made by the defendant with the sole intention that such statement be relied upon by him alone. The intention here connotes that it will stimulate or induce the plaintiff to act upon it. In ***Langridge v. Levy***[[9]](#footnote-9), the defendant sold a gun for use by himself and his sons to the plaintiff’s father, representing that the gun was made by a well-known manufacturer and safe to use, the son used the gun that exploded wounding his hand.

 It was held that the defendant was liable to the son because there was a contract between them, not on his warranty, but for deceit.

1. **That the plaintiff relied on the information**

It must be shown that the injured party actually relied upon the information, e.g. that the representation was “an immediate cause of the injured party’s conduct and that without such representation, the injured party would not, in all reasonable probability, have entered into the contract or other transaction.” Obviously, then, if the statements were not known to the injured party until after he or she acted, no fraud would lie. Further, if the injured party discovered the truth or had easy access to the necessary information to show the truth, many courts have held that no fraud could lie since there was no reasonable reliance on the misstatements.[[10]](#footnote-10)

1. **That the plaintiff suffered damage**

The tort of deceit is not actionable per se on mere occurrence, there must be an actual damage which the plaintiff suffered and he must be able to prove same to succeed in his claim. It is important to state that at the basis of the tort of deceit is that the plaintiff suffered injury from the act of the defendant. In ***Denton v. G.N. Ry. Co***[[11]](#footnote-11), a train that had been taken off was announced as still running in a railway company’s current timetable. This was a misrepresentation and a person had missed an appointment by relying on it and the loss incurred was held to have a deceit action.

* 1. **Remedies for Deceit**

A plaintiff who succeeds in an action for deceit has some remedies which include; an award for damages, restitution of any property, money that may have passed between the parties.

* 1. **Defences for the tort of deceit**

The defendant in a tort of deceit may base on the circumstance of the case and where applicable plead some defences some his action. Such defences include the following:

1. The honest believe that the representation is true. Where a defendant in a tort deceit believes that the statement he made, he may plead that he honestly believe the statement which later turns out to be false representation.
2. That the plaintiff actually knew the truth of the matter and so could not have acted on it.
3. That the plaintiff did not rely on the misrepresentation in taking the action that caused the damages.

1. These ingredients will be considered in the course of this discourse [↑](#footnote-ref-1)
2. In Dr. Vimla vs Delhi Administration, (1963) AIR 1572, 1963 SCR Supl. (2) 585, it was held that fraud is an intention to deceive involving deceit and injury to another person as its two elements. [↑](#footnote-ref-2)
3. 100 Eng. Rep. 450 (K.B. 1789) [↑](#footnote-ref-3)
4. Dimmock v Hallet (1866) LR 2 App. 21 [↑](#footnote-ref-4)
5. Peek v Gurvey (1873) LR 6 HL 377at 403 [↑](#footnote-ref-5)
6. With v O’Flanagan (1936), 1 All ER 727 [↑](#footnote-ref-6)
7. The Provision of the Companies and Allied Matters Act and some other provides for the duty of disclosure [↑](#footnote-ref-7)
8. (1889) LR 14 App Cas 337,, UKHL 1 [↑](#footnote-ref-8)
9. (1837), 150 ER 863 [↑](#footnote-ref-9)
10. Smith v Chadwick (1882), 20 Ch. D 27. [↑](#footnote-ref-10)
11. 854 S.W.2d 885 (Tenn. Ct. App. 1993 [↑](#footnote-ref-11)