

# [In plaintiff suffered damage as he she was not](https://assignbuster.com/in-plaintiff-suffered-damage-as-heshe-was-not/)

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Inorder to constitute fraud, there are some elements necessary to be proved. InMalaysia, there are 5 acts which may constitute fraud.

1These acts must be made with intent todeceive or to induce one to enter into contract and S. 17of CA will not apply iffail to prove the elements. 2 Similar with UK and Washington, Malaysia would also covers fraudulent misrepresentation (known as intentionalmisrepresentation in Washington) under S. 17(a)-(c). However, fraudulentmisrepresentation in Malaysia is more detailed than UK and Washington as CA haslisted down the acts constitute fraud. First, suggestion of untrue fact.

3 In Malaysia, the elements to provefraud is quite similar to UK which are suggestion of fact, the fact suggestedis untrue and it was made by one who does not believe it to be true. 4In UK, Derry and others v Peekstated that fraud will be proved if the false misrepresentation is madeknowingly, without believe in its truth or careless as to whether it is true orfalse. 5Malaysia case had referred to this caseand held that there is no fraudulent misrepresentation as it did not fulfillthe elements. 6However in Washington, fraud will beproved if there is false representation of material existing fact, the defrauderhas knowledge of falsity and with intent that it be acted upon by plaintiff andplaintiff suffered damage as he/she was not aware of the falsity, relied on thetruth of the representation and right to rely on it. 7Second, active concealment of fact. In this situation, silence is not amount fraud. Theelements need to be proved in Malaysia and UK are there must be an activeconcealment of fact made by person who has knowledge of it. 8TohSek Cheong v Great Eastern Life Assurance (M) Bhd and TayTho Bok & Anor v Segar Oil Palm Estate Sdn Bhd which referred toEnglish case Pertab Chunder Ghose v Mohendra Purkait held that the partyhad committed fraud as he had dishonestly concealed the material facts that hehas knowledge of it.

9Differently, fraudulent concealment in Washington will be proved if a partyintentionally prevents other to acquire material information. 10For example, the court held the act of ship owner to keep a boat afloat toprevent buyer discovering its rotten hull was amount to fraud. 11Third, fraudulent promises. The elements necessary to be proved in Malaysia are thepromise made without intention to perform it. 12InPublicBank Bhd lwn Rafidah bt Zainal Abidin & Ors, the court held thatthe agreement made without intention to perform it was fall under fraud underS. 17(c)of CA. 13InDatukJaginder Singh &Ors v Tara Rajaratnam, the court held that fraudhad been proved as defendants had no intention to perform the promise and thisdecision had been upheld by Privy Council.

Then, elements requires inWashington is quite similar to Malaysia but it requires false promise to futureperformance and intention  to perform itas stated under S. 22-3221(c)of Code of Distinct of Columbia(DC). 14 Fraud in Malaysia is wider than UK andWashington by the virtue of S. 17(d) and (e)as it covers ‘ act fitted to deceive’which is general and has wide application. For example, the court held that theappellant was guilty of fraud as he was not honest in the exchange of landtitles. 15  Besides, fraud in Malaysia also covers ‘ act or omission that law specifically declaresas fraud’. For example, Federal Court in Eric Chan Thiam Soon v Sarawak SecuritiesSdn Bhd stated that an act can be declared as fraudulent if it isclearly stated in Penal Code.

16 Different from Malaysia and UK, fraudin Washington also cover constructive fraud which is misrepresentation due tocareless or negligence. 17 Theburden of proof of fraud in UK, Malaysia and Washington is similar which isupon one who alleging it and it is shown in Cooper v Cooper18, Datin Zainun binti Ismail v Tuan Minah bintiSyed Abdul Rahman& Anor19and Workman v Bryce. 20Then, the standard of proof of fraud inUK is preponderance of probability in civil proceeding which requires the personasserting fraud to prove high degree of probability but not proof beyondreasonable doubt as in criminal proceeding and this has been followed byMalaysia in Lee You Sin v Chong Ngo Khoon. 21In Washington, the standard of proof offraud is preponderance of evidence which requires the plaintiff to prove morethan 50% of likelihood but not proof beyond reasonable doubt and this has statedin Davisv. Department of Labor and Industries. 221 S. 17CA2 Letchumanan ChettiarAlagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona LenaAlamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd 2017 4 MLJ 6973 S.

17(a)4 Kheng Chwee Lianv Wong Tak Thong 1983 2 MLJ 3205 Derry and othersv Peek 1886-90 All ER Rep 16 Double Acres SdnBhd v Tiarasetia Sdn Bhd 2001 1 AMR 1117 Hoffer v. State, 110 Wn. 2d 415, 755 P. 2d 781 (1988), WPI 160.

018 S. 17(b)9 Tay Tho Bok& Anor v Segar Oil Palm Estate Sdn Bhd 1996 3 MLJ 18110 RESTATEMENT(SECOND) OF TORTS § 550 (1977). 11 Schneider v.

Heath (1813) 170 Eng. Rep. 1462 (Ct. Com. Pls.

) 1462–63, 3 Camp. 506, 506–08. 12 S.

17(c)13Public Bank Bhd lwn Rafidah bt Zainal Abidin & Ors 2016 9 MLJ 3314S. 22-3221(c) of Code of Distinct of Columbia(DC) https://beta. code.

dccouncil. us/dc/council/code/sections/22-3221. html15 LoiHieng Chiong v Kon Tek Shin 1983 1 MLJ 3116Eric Chan Thiam Soon v Sarawak Securities Sdn Bhd 2000 4 MLJ 39917https://books. google. com.

my/books? id= YWP4FY\_GsfYC&pg= PA219&lpg= PA219&dq= washington+contract+law++of+fraud&source= bl&ots= 2YgGrCdVxM&sig= 8WPQVsetaR7cl\_84y7HsUD8WHr8&hl= en&sa= X&ved= 0ahUKEwiVnbDd65jYAhXIRo8KHaKcB2MQ6AEIVzAG#v= onepage&q= washington%20contract%20law%20%20of%20fraud&f= false18Cooper v Cooper (1869) L. R. 5 Ch. App. 20319Datin Zainun binti Ismail v Tuan Minah binti Syed Abdul Rahman& Anor19801 MLJ 10020Workman v.

Bryce 50 Wn. 2d 185 (1957), 310 P. 2d 22821Bater v Bater 1950 2 AII ER 45822Davis v. Department of Labor and Industries, 94 Wn. 2d 119, 615 P. 2d 1279 (1980)