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Law



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In order to constitute fraud, there are some elements necessary to be proved. In Malaysia, there are 5 acts which may constitute fraud.

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

3 In Malaysia, the elements to prove fraud is quite similar to UK which are suggestion of fact, the fact suggested is untrue and it was made by one who does not believe it to be true. 4 In UK, *Derry and others v Peek* stated that fraud will be proved if the false misrepresentation is made knowingly, without believe in its truth or careless as to whether it is true or false. 5 Malaysia case had referred to this case and held that there is no fraudulent misrepresentation as it did not fulfill the elements. 6 However in Washington, fraud will be proved if there is false representation of material existing fact, the defrauder has knowledge of falsity and with intent that it be acted upon by plaintiff and plaintiff suffered damage as he/she was not aware of the falsity, relied on the truth of the representation and right to rely on it.

7 Second, active concealment of fact. In this situation, silence is not amount fraud. The elements need to be proved in Malaysia and UK are there must be an active concealment of fact made by person who has knowledge of it.

8 *Toh Sek Cheong v Great Eastern Life Assurance (M) Bhd and Tay Tho Bok & Anor v Segar Oil Palm Estate Sdn Bhd* which referred to English case *Pertab*

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Chunder Ghose v Mohendra Purkait held that the party had committed fraud as he had dishonestly concealed the material facts that he has knowledge of it.

9Differently, fraudulent concealment in Washington will be proved if a party intentionally prevents other to acquire material information. 10For example, the court held the act of ship owner to keep a boat afloat to prevent buyer discovering its rotten hull was amount to fraud. 11Third, fraudulent promises. The elements necessary to be proved in Malaysia are the promise made without intention to perform it. 12In Public Bank Bhd lwn Rafidah bt Zainal Abidin & Ors, the court held that the agreement made without intention to perform it was fall under fraud under S. 17(c) of CA.

13In Datuk Jaginder Singh & Ors v Tara Rajaratnam, the court held that fraud had been proved as defendants had no intention to perform the promise and this decision had been upheld by Privy Council.

Then, elements requires in Washington is quite similar to Malaysia but it requires false promise to future performance and intention to perform it as stated under S. 22-3221(c) of Code of District of Columbia (DC). 14 Fraud in Malaysia is wider than UK and Washington 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 the appellant was guilty of fraud as he was not honest in the exchange of land titles. 15 Besides, fraud in Malaysia also covers 'act or omission that law specifically declares as fraud'. For example, Federal Court in Eric Chan Thiam Soon v Sarawak Securities Sdn Bhd stated that an act can be declared as fraudulent if it is clearly stated in Penal Code.

16 Different from Malaysia and UK, fraud in Washington also covers constructive fraud which is misrepresentation due to carelessness or negligence.

17 The burden of proof of fraud in UK, Malaysia and Washington is similar which is upon one who alleges it and it is shown in *Cooper v Cooper*<sup>18</sup>, *Datin Zainun binti Ismail v Tuan Minah binti Syed Abdul Rahman & Anor*<sup>19</sup> and *Workman v Bryce*.<sup>20</sup> Then, the standard of proof of fraud in UK is preponderance of probability in civil proceedings which requires the person asserting fraud to prove a high degree of probability but not proof beyond reasonable doubt as in criminal proceedings and this has been followed by Malaysia in *Lee You Sin v Chong Ngo Khoon*.<sup>21</sup> In Washington, the standard of proof of fraud is preponderance of evidence which requires the plaintiff to prove more than 50% of likelihood but not proof beyond reasonable doubt and this has been stated in *Davis v. Department of Labor and Industries*.<sup>22</sup> *17 CA2 Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alameloo Acho, deceased) & Anor v Secure Plantation Sdn Bhd* 2017 4 MLJ 6973 S.

17(a) *4 Kheng Chwee Lian v Wong Tak Thong* 1983 2 MLJ 3205 *Derry and others v Peek* 1886-90 All ER Rep 16 *Double Acres Sdn Bhd 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).<sup>11</sup> *Schneider v. Heath* (1813) 170 Eng. Rep. 1462 (Ct. Com. Pls.

) 1462-63, 3 Camp. 506, 506-08. 12 S.

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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.](https://beta.code.dccouncil.us/dc/council/code/sections/22-3221.html)

dccouncil.us/dc/council/code/sections/22-3221.html15 LoiHieng Chiong v  
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Cooper (1869) L. R. 5 Ch. App. 20319Datin Zainun binti Ismail v Tuan Minah  
binti Syed Abdul Rahman & Anor 1980 1 MLJ 10020Workman v.

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