

## 37 C.J.S. Fraud § 5

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### Fraud

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#### I. Introduction

#### B. Classification

##### 1. In General

# § 5. Constructive fraud

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#### West's Key Number Digest

- West's Key Number Digest, [Fraud](#) 5 to 7

**Constructive fraud is a breach of duty which, irrespective of moral guilt, the law declares to be fraudulent because of its tendency to deceive, to violate confidence, or to injure public interests.**

Constructive fraud is a fraud that arises by the operation of law from conduct, which if sanctioned by law, would secure an unconscionable advantage,<sup>1</sup> irrespective of the actual intent to defraud.<sup>2</sup> The existence or nonexistence of an actual purpose to defraud does not enter as an essential factor in determining whether there is constructive fraud; the law regards the transaction as fraudulent per se.<sup>3</sup> Also, constructive fraud may be implied by law from the nature of the transaction itself.<sup>4</sup> The gist of a constructive fraud finding is to avoid the need to prove intent, that is, knowledge of falsity or intent to induce reliance, since it may be inferred directly from the relationship and the breach.<sup>5</sup>

Constructive fraud is a breach of a legal or equitable duty which, irrespective of the moral guilt of the fraud-feasor, the law declares to be fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.<sup>6</sup> The legal duty may arise from a statute, a contract, or a trust.<sup>7</sup>

To establish constructive fraud, it is necessary only to prove acts of fraud;<sup>8</sup> thus, a party whose actions constitute constructive fraud might still be deemed to have acted in good faith.<sup>9</sup>

Constructive fraud is an equitable claim that typically does not afford a relief in the form of monetary damages.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Constructive fraud consists of a breach of duty that, by misleading another person, gains someone a prejudicial advantage over them. *Mont. Code Ann. § 28-2-406. Hart v. Hale, 2022 MT 82, 408 Mont. 258, 508 P.3d 877 (2022).*

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—*Trytko v. Hubbell, Inc.*, 28 F.3d 715, 40 Fed. R. Evid. Serv. 1364 (7th Cir. 1994).  
Ind.—*In re Bender*, 844 N.E.2d 170 (Ind. Ct. App. 2006); *McDaniel v. Shepherd*, 577 N.E.2d 239 (Ind. Ct. App. 1991).
- 2 Ind.—*In re Bender*, 844 N.E.2d 170 (Ind. Ct. App. 2006).  
As to the elements of constructive fraud, see § 14.
- 3 Neb.—*Eggleston v. Kovacich*, 274 Neb. 579, 742 N.W.2d 471 (2007).
- 4 Neb.—*Eggleston v. Kovacich*, 274 Neb. 579, 742 N.W.2d 471 (2007).
- 5 Idaho—*Country Cove Development, Inc. v. May*, 143 Idaho 595, 150 P.3d 288 (2006).
- 6 US.—*Federal Deposit Ins. Corp. v. Hudson*, 758 F. Supp. 663 (D. Kan. 1991).  
Ariz.—*Dawson v. Withycombe*, 216 Ariz. 84, 163 P.3d 1034 (Ct. App. Div. 1 2007).  
Ark.—*Evans Indus. Coatings, Inc. v. Chancery Court of Union County*, Third Div., 315 Ark. 728, 870 S.W.2d 701 (1994); *Technology Partners, Inc. v. Regions Bank*, 97 Ark. App. 229, 245 S.W.3d 687 (2006).  
Colo.—*Kim v. Grover C. Coors Trust*, 179 P.3d 86 (Colo. App. 2007).  
Ind.—*Kapoor v. Dybwad*, 49 N.E.3d 108 (Ind. Ct. App. 2015), transfer denied, 54 N.E.3d 370 (Ind. 2016).  
Kan.—*Kampschroeder v. Kampschroeder*, 20 Kan. App. 2d 361, 887 P.2d 1152 (1995).  
Neb.—*Eggleston v. Kovacich*, 274 Neb. 579, 742 N.W.2d 471 (2007).  
Ohio—*Schmitz v. Natl. Collegiate Athletic Assn.*, 2016-Ohio-8041, 67 N.E.3d 852, 339 Ed. Law Rep. 496 (Ohio Ct. App. 8th Dist. Cuyahoga County 2016).  
Va.—*Webb v. Webb*, 16 Va. App. 486, 431 S.E.2d 55 (1993).
- 7 Tex.—*Chien v. Chen*, 759 S.W.2d 484 (Tex. App. Austin 1988).

- 8 Mo.—*Fix v. Fix*, 847 S.W.2d 762 (Mo. 1993).
- 9 U.S.—*Lichtenstein v. Kidder, Peabody & Co., Inc.*, 777 F. Supp. 423, 16 U.C.C. Rep. Serv. 2d 1125 (W.D. Pa. 1991).
- 10 Vt.—*Hardwick-Morrison Co. v. Albertsson*, 158 Vt. 145, 605 A.2d 529 (1992).

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