

Black's Law Dictionary (11th ed. 2019), fraud

## FRAUD

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**fraud** *n.* (14c) **1.** A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime. — Also termed *intentional fraud*.

“Fraud has been defined to be, any *kind of artifice by which another is deceived*. Hence, all surprise, trick, cunning, dissembling, and other unfair way that is used to cheat any one, is to be considered as fraud.” John Willard, *A Treatise on Equity Jurisprudence* 147 (Platt Potter ed., 1879).

**2.** A reckless misrepresentation made without justified belief in its truth to induce another person to act. **3.** A tort arising from a knowing or reckless misrepresentation or concealment of material fact made to induce another to act to his or her detriment. • Additional elements in a claim for fraud may include reasonable reliance on the misrepresentation and damages resulting from this reliance. **4.** Unconscionable dealing; esp., in contract law, the unfair use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain. See [DEFRAUD](#). — **fraudulent**, *adj.*

“[T]he use of the term *fraud* has been wider and less precise in the chancery than in the common-law courts. This followed necessarily from the remedies which they respectively administered. Common law gave damages for a wrong, and was compelled to define with care the wrong which furnished a cause of action. Equity refused specific performance of a contract, or set aside a transaction, or gave compensation where one party had acted unfairly by the other. Thus ‘fraud’ at common law is a false statement . . . : fraud in equity has often been used as meaning unconscientious dealing — ‘although, I think, unfortunately,’ a great equity lawyer has said.” William R. Anson, *Principles of the Law of Contract* 263 (Arthur L. Corbin ed., 3d Am. ed. 1919).

- **actual fraud.** (17c) A concealment or false representation through an intentional or reckless statement or conduct that injures another who relies on it in acting. — Also termed *fraud in fact*; *positive fraud*; *moral fraud*.

- **advance-fee fraud.** (1981) A criminal fraud in which the victim is persuaded by the perpetrator to pay “fees” in anticipation of receiving a much larger benefit that is ultimately never delivered. • The perpetrator usu. claims to have, or to represent someone with, a large sum of money that must be immediately transferred out of a foreign country for some compelling reason, such as to avoid seizure by a government. The criminal promises the victim a portion of the money in return for the victim's agreement to open a bank account in the victim's name. The victim then must pay “upfront fees” to the designated “bank” and others. Although the Internet has become a favorite tool for this fraud, it has been around for years, beginning with handwritten or typed letters and later faxes. Because advance-fee fraud is believed to have originated in Nigeria, it is also termed *419 fraud* after the section of the Nigerian penal code designed to punish those who defraud by this method.

- **affiliate click fraud.** (2006) Click fraud committed by a third party who agrees to host the ad in exchange for payment based on the number of clicks. See *click fraud*.
- **affinity fraud.** (2007) A fraud in which the perpetrator tailors the fraud to target members of a particular group united by common traits or interests that produce inherent trust. • The perpetrator often is or pretends to be a member of the group. Investment scams such as Ponzi or pyramid schemes are common forms of affinity fraud. When a religious group is targeted, it is usu. called *religious-affinity fraud*.
- **bank fraud.** (1843) The criminal offense of knowingly executing, or attempting to execute, a scheme or artifice to defraud a financial institution, or to obtain property owned by or under the custody or control of a financial institution, by means of false or fraudulent pretenses, representations, or promises. 18 USCA § 1344.
- **bankruptcy fraud.** (1815) A fraudulent act connected to a bankruptcy case; esp., any of several proscribed acts performed knowingly and fraudulently in a bankruptcy case, such as concealing assets or destroying, withholding, or falsifying documents in an effort to defeat bankruptcy-code provisions. See 18 USCA § 152. — Also termed *criminal bankruptcy*; *bankruptcy crime*.
- **civil fraud.** (18c) **1.** FRAUD (3). **2.** Tax. An intentional — but not willful — evasion of taxes. • The distinction between an intentional (i.e., *civil*) and willful (i.e., *criminal*) fraud is not always clear, but *civil fraud* carries only a monetary, noncriminal penalty. Cf. *criminal fraud*; TAX EVASION.
- **click fraud.** (2005) A scheme in which a person or robot repeatedly clicks on a merchant's pay-per-click advertisement on a website for purposes other than viewing the website or making a purchase.
- **collateral fraud.** See *extrinsic fraud* (1).
- **common-law fraud.** See *promissory fraud*.
- **competitor click fraud.** (2006) Click fraud committed by a business's competitor in order to increase the amount of money the advertising merchant must pay to the site hosting the ad. See *click fraud*.
- **constructive fraud.** (18c) **1.** Unintentional deception or misrepresentation that causes injury to another. **2.** See *fraud in law*. — Also termed *legal fraud*; *fraud in contemplation of law*; *equitable fraud*; *fraud in equity*.

“In equity law the term fraud has a wider sense, and includes all acts, omissions, or concealments by which one person obtains an advantage against conscience over another, or which equity or public policy forbids as being to another's prejudice; as acts in violation of trust and confidence. This is often called constructive, legal, or equitable fraud, or fraud in equity.” *Encyclopedia of Criminology* 175 (Vernon C. Branham & Samuel B. Kutash eds., 1949), s.v. “Fraud.”

- **consumer fraud.** (1959) Any intentional deception, deceptive act or practice, false pretense, false promise, or misrepresentation made by a seller or advertiser of goods or services to induce a person or people in general to buy.
- **criminal fraud.** (18c) Fraud that is illegal by statute and may subject an offender to criminal penalties such as fines and imprisonment. • An example is the willful evasion of taxes accomplished by filing a fraudulent tax return. Cf. *civil fraud*; *larceny by trick* under LARCENY.
- **election fraud.** See ELECTION FRAUD.
- **equitable fraud.** See *constructive fraud* (1).
- **extrinsic fraud.** (1851) **1.** Fraud that is collateral to the issues being considered in the case; specif., intentional misrepresentation or deceptive behavior outside the transaction itself (whether a contract or a lawsuit), depriving one party of informed consent or full participation. • For example, a person might engage in extrinsic fraud by convincing a litigant not to hire counsel or answer by dishonestly saying the matter will not be pursued. — Also termed *collateral fraud*. **2.** Fraud that prevents a person from knowing about or asserting certain rights. Cf. *intrinsic fraud*.
- **419 fraud.** See *advance-fee fraud*.
- **fraud in contemplation of law.** See *fraud in law*.

- **fraud in equity.** See *constructive fraud* (1).
- **fraud in fact.** See *actual fraud*.
- **fraud in law.** (17c) Fraud that is presumed under the circumstances, without regard to intent, usu. through statutorily created inference. • Fraud may be presumed, for example, when a debtor transfers assets and thereby impairs creditors' efforts to collect sums due. This type of fraud arises by operation of law, from conduct that, if sanctioned, would (either in the particular circumstance or in common experience) secure an unconscionable advantage, irrespective of evidence of an actual intent to defraud. — Also termed *constructive fraud*.
- **fraud in the execution.** See *fraud in the factum* (1).
- **fraud in the factum.** (1848) **1.** Fraud occurring when a legal instrument as actually executed differs from the one intended for execution by the person who executes it, or when the instrument may have had no legal existence. • Compared to fraud in the inducement, fraud in the factum occurs only rarely, as when a blind person signs a mortgage when misleadingly told that the paper is just a letter. — Also termed *fraud in the execution*; *fraud in the making*. **2. Criminal law.** In the law of rape, misrepresentation about the nature of the act of penetration, whereby the other party's consent is nullified and the actor becomes criminally responsible. • For example, a doctor who secures his patient's consent to his inserting an object into her vagina commits fraud in factum, and is thus guilty of rape, if he has represented that the object will be a medical instrument but is instead his sexual organ. Cf. *fraud in the inducement*.
- **fraud in the inducement.** (1831) **1.** Fraud occurring when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties, or obligations involved; an intentional misrepresentation of a material risk or duty reasonably relied on, thereby injuring the other party without vitiating the contract itself, esp. about a fact relating to value or the ability to perform. — Also termed *fraud in the procurement*. **2. Criminal law.** Misrepresentation designed to elicit a person's consent to sexual activity but not concerning the nature of the activity itself, and therefore deemed not to vitiate any consent thereby secured. • For example, a man who secures a woman's consent to sexual intercourse after claiming, falsely, that he is a theatrical agent or that he wishes to marry her, commits fraud in the inducement, not fraud in the factum, and therefore has not committed the offense of rape. The factum-inducement distinction has proved difficult to apply in borderline cases and has been abandoned in most modern criminal codes. Cf. *fraud in the factum*.
- **fraud in the making.** See *fraud in the factum* (1).
- **fraud in the procurement.** See *fraud in the inducement* (1).
- **fraud on the community.** (1946) *Family law.* In a community-property state, the deliberate hiding or fraudulent transfer of community assets before a divorce or death for the purpose of preventing the other spouse from claiming a half-interest ownership in the property.
- **fraud on the court.** (1810) In a judicial proceeding, a lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the proceeding. • Examples are bribery of a juror and introduction of fabricated evidence.
- **fraud on the market.** (1893) **1.** Fraud that occurs when an issuer of securities gives out misinformation that affects the market price of stock, effectively misleading people who buy or sell even though they did not rely on the statement itself or on anything derived from it other than the market price. **2.** The securities-law claim based on such fraud. See [FRAUD-ON-THE-MARKET PRINCIPLE](#).
- **fraud on the Patent Office.** (1865) *Patents.* A defense in a patent-infringement action, attacking the validity of the patent on the grounds that the patentee gave the examiner false or misleading information or withheld relevant information that the examiner would have considered important in considering patentability. • The scope of prohibited acts is wider than that covered by common-law fraud, and today the defense is generally called “inequitable conduct before the PTO.” If the defense is established, the entire patent is rendered unenforceable. See *defense of inequitable conduct* under [DEFENSE](#) (1).
- **healthcare fraud.** (1972) A healthcare provider's false statement or misrepresentation made in order to claim a higher payment for healthcare services than the provider is actually entitled to. — Also termed (specif.) *Medicaid fraud*; *Medicare fraud*.
- **hidden fraud.** See *fraudulent concealment* under [CONCEALMENT](#).

- **identity fraud.** See [IDENTITY THEFT](#).
- **insurance fraud.** (1877) Fraud committed against an insurer, as when an insured lies on a policy application or fabricates a claim.
- **intrinsic fraud.** (1832) Fraud that pertains to an issue involved in a judicial proceeding. • Examples include the use of fabricated evidence, perjured testimony, and false receipts or other commercial documents. Cf. *extrinsic fraud*.
- **legal fraud.** See *fraud in law*.
- **long-firm fraud.** (1930) The act of obtaining goods or money on credit by falsely posing as an established business and having no intent to pay for the goods or repay the loan.
- **mail fraud.** (1918) An act of fraud using the U.S. Postal Service, as in making false representations through the mail to obtain an economic advantage. [18 USCA §§ 1341–1347](#).
- **Medicaid fraud.** See *healthcare fraud*.
- **Medicare fraud.** See *healthcare fraud*.
- **moral fraud.** See *actual fraud*.
- **passport fraud.** See [PASSPORT FRAUD](#).
- **positive fraud.** See *actual fraud*.
- **promissory fraud.** (1934) A promise to perform made when the promisor had no intention of performing the promise. — Also termed *common-law fraud*.
- **religious-affinity fraud.** See *affinity fraud*.
- **tax fraud.** See [TAX EVASION](#).
- **wire fraud.** (1955) An act of fraud using electronic communications, as by making false representations on the telephone to obtain money. • The federal Wire Fraud Act provides that any artifice to defraud by means of wire or other electronic communications (such as radio or television) in foreign or interstate commerce is a crime. [18 USCA § 1343](#).

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