

COMMERCIAL TORTS 24

Common Law Fraud

[Name of plaintiff] claims that [name of defendant] defrauded [name of plaintiff]. To establish this claim, [name of plaintiff] must prove by clear and convincing evidence:

1. [Name of defendant] made a representation to [name of plaintiff]¹;
2. The representation was false;
3. The representation was material, which means that it was sufficiently important to influence [name of plaintiff]'s [a reasonable person's]² actions;
4. [Name of defendant] knew that the representation was false;
5. [Name of defendant] intended that [name of plaintiff] would act upon the representation in the manner reasonably contemplated by [name of defendant];
6. [Name of plaintiff] did not know that the representation was false;
7. [Name of plaintiff] relied on the truth of the representation;
8. [Name of plaintiff]'s reliance was reasonable and justified under the circumstances; and
9. As a result, [name of plaintiff] was damaged.

SOURCE: *Echols v. Beauty Built Homes, Inc.*, 132 Ariz. 498, 647 P.2d 629 (1982); *Stabeli v. Kauffman*, 122 Ariz. 380, 595 P.2d 172 (1979).

USE NOTE: Burden of Proof: The burden of proof for common law fraud is clear and convincing evidence. *Dunlap v. Jimmy GMC of Tucson, Inc.*, 136 Ariz. 338, 666 P.2d 83 (Ct. App. 1983). Give RAJI (Civil) 4th Standard 10 (Burden of Proof—Clear and Convincing) with this instruction.

¹ When the defendant has an obligation to reveal material information, the failure to do so is equivalent to a misrepresentation and may therefore support a claim of actionable fraud. *Haisch v. Allstate Ins. Co.*, 197 Ariz. 606, 5 P.3d 940 (Ct. App. 2000).

² The law in Arizona seems to be unclear as to whether materiality is determined by an objective or subjective standard, and thus the use of the alternative bracketed phrases in element (3) will need to be determined by the court.

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