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Fraud: Ohio

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A Q&A guide to fraud claims under Ohio law. This Q&A addresses the elements of actual fraud, including material misrepresentation and reliance, and other types of fraud claims, such as fraudulent concealment and constructive fraud. Answers to questions can be compared across many jurisdictions (see Fraud: State Q&A Tool).

Elements Generally

1. What are the elements of a fraud claim in your jurisdiction?

In Ohio, a plaintiff asserting a fraud claim must plead and prove that:

- The defendant made:
  - a representation; or
  - omission, where the defendant had a duty to disclose.
- The representation or omission was material to the transaction at hand.
- The defendant made the representation or omission:
  - knowing it was false; or
  - with such utter disregard and recklessness for the truth or falsity that a fact finder may infer that that the representation or omission was knowingly false.
- The defendant intended to mislead the plaintiff into relying on the representation or omission.
- The plaintiff justifiably relied on the defendant's representation or omission.
- The plaintiff's reliance on the defendant's representation or omission proximately caused the plaintiff's injury.

(Volbers-Klarich v. Middletown Mgt., Inc., 929 N.E.2d 434, 440 (Ohio 2010); Vandemark v. Reder, 276 N.E.3d 451, 463 (Ohio Ct. App. 2026).)

Material Misrepresentation

2. What are the requirements for a material misrepresentation in your jurisdiction?

In Ohio, a plaintiff asserting a material misrepresentation must plead and prove that the defendant made a false statement or omission about a material existing fact (*Rieger v. Podeweltz*, 2010 WL 2225398, at *2 (Ohio Ct. App. June 4, 2010); *Ford v. Brooks*, 2012 WL 760741, at *7 (Ohio Ct. App. Mar. 8, 2012)).

However, some exceptions to this general rule apply (see Question 4).

3. What is the standard of materiality for a fraud claim in your jurisdiction?

Under Ohio law, a misrepresentation of fact is material when it is "likely, under the circumstances, to affect the conduct of a reasonable person with reference to the transaction" (*Roesel v. DQ Dream Props*., LLC, 279 N.E.3d 601, 614 (Ohio Ct. App. 2025)).

Ohio courts generally apply an objective standard to determine whether a fact is material (*Calypso Asset Mgt., LLC v. 180 Indus., LLC*, 127 N.E.3d 507, 520 (Ohio Ct. App. 2018) (objective materiality standard generally precludes the consideration of any idiosyncratic qualities of the plaintiff); but see *Saxe v. Dlusky*, 2010 WL 4324198, at *10-11

(Ohio Ct. App. Nov. 2, 2010) (subjective standard applies to determine materiality of a misrepresented fact where the defendant made a misrepresentation knowing that the plaintiff is peculiarly disposed to attach importance to a particular subject)).

4. What types of representation are not actionable in fraud in your jurisdiction?

Under Ohio law, a misrepresentation generally is not actionable if it is:

- A promise of future action, unless the defendant had no intent to perform the promise when the defendant made it (*Vandemark*, 276 N.E.3d at 464; *Dalrymple v. Westerville*, 201 N.E.3d 382, 403 (Ohio Ct. App. 2022)).
- A representation of law, unless the parties are in a fiduciary relationship (*Barnes v. Res. Energy Expl.*, 68 N.E.3d 133, 141 (Ohio Ct. App. 2016)).
- A matter of opinion (*Rieger*, 2010 WL 2225398, at *2; *Sobony v. Osobo Games & Toys, Inc.*, 1987 WL 9861, *5 (Ohio Ct. App. Apr. 16, 1987); but see *Stancik v. CNBC*, 420 F. Supp. 2d 800, 807 (N.D. Ohio 2006) (opinions may form the basis for fraudulent misrepresentation if the opinions were fraudulently made) (applying Ohio law)).
- Sales "puffery" made by a seller (*Diemert v. Lincoln Wood Prods., Inc.*, 2012 WL 84968, *3 (N.D. Ohio Jan. 11, 2012) (applying Ohio law); *Akers v. Classic Props., Inc.*, 2003 WL 22326605, at *5 (Ohio Ct. App. Oct. 13, 2003)).

5. Does your jurisdiction recognize fraud claims based on a defendant's false promise to honor a contract? If so, under what circumstances?

Under Ohio law, a plaintiff may not bring a fraud and breach of contract action if the fraud claim arises out of the same facts as the breach of contract claim (*Thornton v. Cangialosi*, 2010 WL 2162905, at *2-4 (S.D. Ohio May 26, 2010) (applying Ohio law); see Question 18). An exception to this rule applies when the defendant makes a promise concerning a future action, occurrence, or conduct but has no intention of keeping the promise at the time they make it (*RAE Assocs., Inc. v. Nexus Commc'ns, Inc.*, 36 N.E.3d 757, 762 (Ohio Ct. App. 2015)).

Scienter

6. Must a plaintiff plead and prove scienter in your jurisdiction? If so, what must a plaintiff plead and prove to establish scienter?

Under Ohio law, a cause of action for fraud requires scienter. Therefore, the plaintiff must plead and prove that the defendant made a false statement with both:

- Knowledge that the statement was false, or with such utter disregard and recklessness for the truth or falsity of the statement that a fact finder may infer that that the representation or omission was knowingly false.
- An intent to mislead the plaintiff into relying on the false statement.

(*Kerbler v. Biltwell Contracting LLC*, 259 N.E.3d 655, 673 (Ohio Ct. App. 2024); *Janos v. Murduck*, 672 N.E.2d 1021, 1025-26 (Ohio Ct. App. 1996).)

7. Are there any types of fraud claims for which the plaintiff does not need to allege and prove scienter?

Under Ohio law, a constructive fraud claim does not require the plaintiff to allege and prove scienter (see *First Energy Sols. v. Gene B. Glick Co.*, 2007 WL 4554402, at *4 (Ohio Ct. App. Dec. 28, 2007); *Heller v. Bohecker's Bus. Coll., Inc.*, 1992 WL 276540, at *2 (Ohio Ct. App. Oct. 5, 1992)). However, constructive fraud only exists where the parties have "a special confidential or fiduciary relation which affords the power and means to one to take undue advantage or exercise undue influence over another" (*Heller, 1992 WL 276540*, at *2; see Question 17).

8. Must a plaintiff plead and prove actual reliance on the defendant's misrepresentation in your jurisdiction?

Ohio courts require the plaintiff to plead and prove actual reliance on the defendant's misrepresentation (*Williams v. Aetna Fin. Co.*, 700 N.E.2d 859, 868 (Ohio 1998)).

9. What is the standard of reliance for a fraud claim in your jurisdiction?

Under Ohio law, the standard for reliance is justifiable reliance. Whether a plaintiff justifiably relied on the defendant's representations depends on the circumstances of the case, including:

- The nature of the transaction.
- The form and materiality of the representation.
- The relationship of the parties.
- The parties' respective intelligence, experience, age, mental and physical condition, knowledge, and means of knowledge.

(*Geisenfeld v. Geisenfeld*, 277 N.E.3d 761, 774 (Ohio Ct. App. 2026); *Kess v. Khan*, 222 N.E.3d 1121, 1137 (Ohio Ct. App. 2023).) Reliance is justifiable if the representation does not appear unreasonable on its face and if there is no apparent reason to doubt the truth of the representation under the circumstances (*Amerifirst Sav. Bank of Xenia v. Krug*, 737 N.E.2d 68, 87-88 (Ohio Ct. App. 1999); see Question 10.)

10. Explain how a plaintiff can satisfy the reliance standard for a fraud claim in your jurisdiction.

Under Ohio law, a plaintiff satisfies the reliance standard by showing that both:

- The defendant's representation did not appear unreasonable on its face.
- Under the circumstances, the plaintiff had no apparent reason to disbelieve the defendant's representation.

(*Rupp v. Premier Health Partners*, 268 N.E.3d 534, 567 (Ohio Ct. App. 2025).)

In determining whether the plaintiff's reliance was justified, fact finders consider:

- The nature of the parties' transaction.
- The representation's form and materiality.
- The parties':
  - relationship;
  - intelligence;
  - experience;
  - age;
  - mental and physical condition; and
  - knowledge, including how they acquired that knowledge.

(*Geisenfeld*, 277 N.E.3d at 774; Kess, 222 N.E.3d at 1137.)

However, a plaintiff cannot satisfy the justifiable reliance standard when the facts are equally available to both parties (*Dalrymple*, 201 N.E.3d at 403; *Takis, L.L.C. v. C.D. Morelock Props*., Inc., 905 N.E.2d 204, 212 (Ohio Ct. App. 2008)).

11. Does your jurisdiction permit fraud claims based on the plaintiff's reliance on a third party's communication of the defendant's misrepresentation?

Under Ohio law, a fraud claim cannot be based on misrepresentations made to third parties (Lucarell *v. Nationwide Mut. Ins. Co*., 97 N.E.3d 458, 473 (Ohio 2018); *McWreath v. Cortland Bank*, 2012 WL 2522933, at *11 (Ohio Ct. App. June 29, 2012)).

12. Must a plaintiff investigate the truthfulness of a defendant's representation before relying on it in your jurisdiction?

Generally, Ohio law does not require a plaintiff to investigate the truthfulness of a defendant's representation and a plaintiff's reliance on the representation is justified if both:

- The defendant's representation does not appear unreasonable on its face.
- Under the circumstances, the plaintiff had no apparent reason to disbelieve the defendant's representation.

Whether a plaintiff justifiably relied on a defendant's representation is a question of fact requiring an inquiry into the parties' relationship. (*Rupp*, 268 N.E.3d at 567; see Question 10.)

However, a plaintiff must conduct a reasonable investigation if it is "put on notice as to any doubt" concerning the truthfulness of a defendant's representation (*Pacifica Loan Five, LLC v. Fifth Third Bank*, 2011 WL 13228111, at *8 (S.D. Ohio Apr. 14, 2011)).

Remedies

13. Must a fraud plaintiff elect its remedies in your jurisdiction? If so, are there any exceptions?

Under Ohio law, a plaintiff alleging that it was fraudulently induced into a contract must elect between rescission or damages when the two remedies are inconsistent. Rescission and damages are inconsistent remedies when a plaintiff seeks to rescind the contract and recover contractual damages representing the loss of the benefit of the bargain. (*Bennice v. Bennice*, 612 N.E.2d 1256, 1258-59 (Ohio Ct. App. 1992).)

The plaintiff may, however, rescind a fraudulently induced contract and seek damages caused by the defendant's fraudulent inducement. For example, the plaintiff may rescind a fraudulent lease agreement and recover the rents that the defendant collected during the period when the defendant fraudulently controlled the property. However, it would be inconsistent if the plaintiff attempted to rescind a lease agreement and recover the future rents contemplated by the agreement. (*Turner v. Paradise*, 1995 WL 321725, *2 (Ohio Ct. App. May 30, 1995).)

A party cannot recover damages under theories of both fraud and negligence based on the same course of conduct, as negligence and willfulness are mutually exclusive mental states (*Textron Fin. Corp. v. Nationwide Mut. Ins. Co.*, 684 N.E.2d 1261, 1269 (Ohio Ct. App. 1996)).

14. What are the forms of damages available to a fraud plaintiff in your jurisdiction?

Under Ohio law, a fraud plaintiff may recover:

- In fraud actions based on a breach of contract, benefit-of-the-bargain damages, which are the difference in value between what the plaintiff received and the actual value of what the plaintiff would have received if the defendant's representations were true (*Helfrich v. Strickland*, 2009 WL 2933736, at *4 (Ohio Ct. App. Sept. 11, 2009)).
- Out-of-pocket damages, which are the plaintiff's monetary losses resulting from the defendant's fraudulent conduct. Ohio courts typically use the out-of-pocket rule to determine a plaintiff's damages in fraudulent misrepresentation actions. (*Northpoint Props. v. Charter One Bank*, 2011 WL 2112666, at *7 (Ohio Ct. App. May 26, 2011).)
- Punitive damages if the plaintiff can establish "malice" (see *Malone v. Courtyard by Marriott L.P.*, 659 N.E.2d 1242, 1247 (Ohio 1996) (defining malice necessary for punitive damages)).
- Attorneys' fees.
- Consequential damages, such as future lost profits. However, consequential damages are "severely limited by concepts such as proximate cause, foreseeability, mitigation, remoteness and speculation" (*Telxon Corp. v. Smart Media of Del., Inc.*, 2005 WL 2292800, at *36 (Ohio Ct. App. Sept. 21, 2005)).

(*Auto Chem Labs., Inc. v. Turtle Wax, Inc.*, 2010 WL 3769209, *6-10 (S.D. Ohio Sept. 24, 2010) (applying Ohio law).)

15. What forms of equitable relief are available to a fraud plaintiff in your jurisdiction?

In Ohio, a plaintiff entering into a contract based on the defendant's fraud may rescind the contract (*Barnes*, 68 N.E.3d at 138).

Fraudulent Concealment

16. Does your jurisdiction recognize claims of fraudulent concealment? If so, under what circumstances?

Ohio law recognizes fraudulent concealment claims. To plead and prove fraudulent concealment under Ohio law, the plaintiff must establish that:

- The defendant:
  - concealed a material fact;
  - with knowledge of the concealed fact; and
  - with the intent to mislead the plaintiff into relying on the concealment.
- The plaintiff:
  - justifiably relied on the concealment; and
  - suffered damages as a result of relying on the concealment.

(*Volbers-Klarich*, 929 N.E.2d at 447; *Jones v. Gilbert*, 210 N.E.3d 689, 695 (Ohio Ct. App. 2023); *Li-Conrad v. Curran*, 50 N.E. 3d 573, 580 (Ohio Ct. App. 2016).)

Constructive Fraud

17. Does your jurisdiction recognize claims of constructive fraud? If so, what distinguishes constructive fraud from actual fraud?

Ohio courts recognize a claim for constructive fraud where the parties have a special confidential or fiduciary relationship which allows one party to unduly influence the other. Unlike actual fraud, a plaintiff claiming constructive fraud need not plead or prove fraudulent intent. (*Schmitz v. Nat'l Collegiate Athletic Ass'n*, 67 N.E.3d 852, 869-70 (Ohio Ct. App. 2016); *Heller*, 1992 WL 276540, at *2.)

Doctrines That Preclude Fraud Claims

18. Does your jurisdiction permit fraud claims based on the defendant's breach of contract?

Under Ohio law, the plaintiff generally may not base a fraud claim on the defendant's breach of contract because "a breach of contract does not create a tort claim" (*Textron Fin. Corp*., 684 N.E.2d at 1270). However, a plaintiff may bring breach of contract and fraud claims in the same lawsuit if both:

- The defendant breached a duty owed to the plaintiff that was separate from any duty created by the contract (in other words, the defendant breached a duty owed to the plaintiff even if the contract did not exist).
- The fraud creates additional damages beyond the damages caused by the breach of contract.

(*Textron Fin. Corp*., 684 N.E.2d at 1270; *22 Exchange, L.L.C. v. Exchange St. Assocs., L.L.C.*, 2015 WL 2091758, at *7 (Ohio Ct. App. May 6, 2015).)

19. Does the economic loss doctrine foreclose a fraud claim in your jurisdiction?

Ohio's economic loss doctrine does not apply to intentional torts, including fraud (*Eysoldt v. ProScan Imaging*, 957 N.E.2d 780, 784-85 (Ohio Ct. App. 2011)).

20. Does your jurisdiction recognize any other doctrine or rule that precludes a common law fraud claim? If so, what is the doctrine or rule?

Under Ohio law, the only doctrine or rule that precludes a common law fraud claim is the prohibition on duplicative fraud and contract claims (see Question 18).

Procedural Issues

21. What is the pleading standard for a fraud claim in your jurisdiction?

Under Ohio law, a plaintiff must plead fraud with particularity by alleging:

- The time, place, and content of the false representation.
- The misrepresented facts.
- A description of what was given or received as a result of the fraud.

(Ohio Civ. R. 9(b); *Carter-Jones Lumber Co. v. Denune*, 725 N.E.2d 330, 332 (Ohio Ct. App. 1999).)

Plaintiffs may generally allege:

- Malice.
- Intent.
- Knowledge.
- Any relevant mental state.

(Ohio Civ. R. 9(B); see *Arales v. Furs By Weiss, Inc.*, 2003 WL 21469131, at *5 (Ohio Ct. App. June 26, 2003); *Schluter v. PSL, Inc.*, 1998 WL 172770, at *6 (Ohio Ct. App. Feb. 3, 1998).)

22. What is the burden of proof a plaintiff must satisfy for a fraud claim in your jurisdiction?

Under Ohio law, the plaintiff's burden of proof in a fraud action depends on the remedy it seeks. If the plaintiff seeks:

- Money damages, it must prove fraud by a preponderance of the evidence.
- Equitable relief, like a declaratory judgment, or reformation or rescission of a contract, it must prove fraud by clear and convincing evidence.

(*Andrew v. Power Mktg. Direct, Inc*., 978 N.E.2d 974, 988 (Ohio Ct. App. 2012); *In re McZeal*, 2019 WL 1271398, at *8 (N.D. Ohio Mar. 14, 2019) (applying Ohio law).)

23. What is the statute of limitations for asserting a fraud claim in your jurisdiction?

Under Ohio law, a plaintiff must bring its fraud claim within the four-year statute of limitations period unless the plaintiff did not discover the fraud despite exercising reasonable diligence (R.C. 2305.09(C); *Cundall v. U.S. Bank*, 909 N.E.2d 1244, 1249 (Ohio 2009)).

A fraud cause of action accrues, and the statute of limitations period begins to run, when either:

- The plaintiff discovers the fraud.
- The plaintiff should have discovered the fraud if it had exercised reasonable diligence (that is, when the plaintiff learns of facts that "would lead a fair and prudent man, using ordinary care and thoughtfulness, to make further inquiry").

(*Cundall*, 909 N.E.2d at 1250; *Fordyce v. Hattan*, 141 N.E.3d 574, 582-83 (Ohio Ct. App. 2019).)