

FRAUD

Sam Seller has a 25 year old house that has been appraised for \$170,000. He is eager to sell so that he can relocate and offers it to Betty Buyer for \$168,000. In response to a direct question from Betty, Sam says "this house has not been built on any filled land." She buys.

Three months after moving in, she modernizes the kitchen at a cost of \$5,000.

Twelve months later Betty hires an appraiser (for \$150) who reports that the house's value has increased to \$174,000, which includes the kitchen modernization. Shortly thereafter she discovers some cracks in the walls, doors that no longer close properly, and paneling that bulges from the walls. She spends \$700 trying to correct the problems, which return in a short period of time. Betty hires a soil engineer (for \$250) who reports that the house was constructed on 5 feet of fill and is now in the process of settling. The appraiser makes another visit (for \$200) and reports that, based on the (now revealed) soil condition, the value of the house is only \$164,500. A civil engineer estimates that for \$10,000, cement pillars could be installed to stabilize the house.

- (1) a) What are the five elements of common law fraud?
(§ 33-8)

- b) If fraud is established, what are the three methods of measuring general damages?
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 - (1)
 - (2)
 - (3)

- c) What are the special damages?
 - (1)
 - (2)
 - (3)
 - (4)
 - (5)

- d) What are other possible elements of damages?

- e) What equitable remedies are available to the buyer?
 - 1) Mandatory Injunction

 - 2) Rescission? See pages 843-844. §30-12 Would the elements of fraud be treated differently? How would rescission work? Distinguish legal and equitable rescission. See Ballard v. Carroll, 2 Ark. App. 283 (1981).
 - a) What would Betty Buyer demand?
 - b) What would Sam Seller offer?

- (2) How would your answers to the above questions change if Sam Seller had answered, truthfully, “I do not know”?

- (3) How would your answers change if Sam responded “No”, but he actually had no knowledge at all of the foundation.
- (4) How would your answers to the above questions change if Sam Seller had answered, "No", but he had been lied to by the previous owner? § 33-9
- (5) a) How would your answers to the above questions change if Betty Buyer did not ask the question? Sam Seller knew it was built on filled-in land, but said nothing.
- b) Suppose Betty Buyer did not ask the question, but Sam Seller and Sam's real estate broker and Betty's financial institution knew it was built on filled-in land. See Camp v. First Federal Savings and Loan, 12 Ark. App. 150, 671 S.W.2d 213 (1984).
- c) Suppose Betty Buyer did not ask, but the Seller had not been able to sell the house because, two years previously, it had been the site of multiple murders?