FRAUD

Sam Seller has a 25 year old house that has been appraised for $70,000. He is eager to sell so that he can relocate and offers it to Betty Buyer for $68,000. 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 $74,000, 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 $64,500. 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)

a) 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 page 803. §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 to the above questions change if Sam Seller had answered, "No", but he had been lied to by the previous owner? § 33-9

(4) 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?