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*NINETEENTH EDITION*

LONDON  
SWEET & MAXWELL  
2006

CHAPTER 18

DECEIT

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1. INTRODUCTION

**Definition** The modern development of the tort of deceit (sometimes called simply "fraud") dates from *Pasley v Freeman*<sup>1</sup> in 1789. There, the defendant falsely represented to the claimant that a third party was creditworthy when he knew he was not; the plaintiff suffered loss as a result of extending credit to him. The claimant was held to have an action.<sup>2</sup> The tort involves a perfectly general principle.<sup>3</sup> Where a defendant makes a false representation, knowing it to be untrue, or being reckless as to whether it is true, and intends that the claimant should act in reliance on it, then in so far as the latter does so and suffers loss<sup>4</sup> the defendant is liable for that loss. Each aspect of the tort is discussed in detail below.<sup>5</sup>

<sup>1</sup> (1789) 3 TR 51.

<sup>2</sup> Though note that today the representation would have to be in writing: Statute of Frauds (Amendment) Act 1828. See para.18-48, below.

<sup>3</sup> An argument that it could not apply in a family context, or between cohabitants, was amply rebuffed by Stanley Burnton J. in *P v B*, (*Faternity: Damages for Deceit*) [2001] 1 F.L.R. 1041 (action by cohabitee against girlfriend for duping him into thinking a child was his and hence paying for its upkeep). The existence of liability, it was said, would not tend to subvert intimate relationships, particularly since a claimant was unlikely to sue while the relationship was still on foot. See too *Sandani Chartered Bank v Pakistan National Shipping Corp (No.2)* [2003] 1 A.C. 939; [2002] UKHL 43, where the House of Lords rejected an argument that an agent who lied on his principal's orders could not be personally liable to the representee for loss suffered (on which, see *Parker* [2003] L.M. & C.L.Q. 1).

<sup>4</sup> Damage is the gist of the action; see *Smith v Chadwick* (1884) 9 App. Cas. 187, at 190 (Lord Blackburn).

<sup>5</sup> On summary judgment, an action for fraud is within the scope of CPR, r.24. However, it is likely that there would have to be very strong evidence of fraud for this to apply.