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18-06 **Half-truths** A half-truth or fragmentary statement may amount to deceit if it is suggestive of a falsehood and intended so to be²⁴; for example, where a defendant relays the favourable portion of a surveyor's report but omits the less favourable part.²⁵ As Lord Cairns stated in *Peck v Gerry*,²⁶ "there must . . . be some active misstatement of fact, or, in all events, such a partial and fragmentary statement of fact, as that the withholding of that which is not stated makes that which is stated absolutely false."²⁷ Thus in that case a share prospectus was held deceptive when it mentioned a price supposedly payable for a business by the promoters, but said nothing of other collateral agreements which effectively meant the promoters would not in fact pay a penny for it.

18-07 **Active conduct or concealment** Active non-verbal conduct can amount to misrepresentation, and hence deceit, just as much as words can.²⁸ A straightforward example is positive steps taken to conceal defects in something being sold (as against merely keeping silent about them). So in *Gordon v Selico Ltd*,²⁹ the Court of Appeal awarded damages for deceit where a defendant fraudulently arranged to cover up infestations of dry rot in a flat before letting it to the claimant. Again, in the antique case of *Schneider v Heath*,³⁰ a seller of a ship was held liable when he deliberately boated it so as to hide sub-waterline defects when the buyer came to inspect it.

18-08 **Other qualifications** Three other qualifications are worth mentioning. First, statements of belief or opinion generally carry an implication that the belief or opinion is reasonably held.³¹ It follows that a defendant who affirms a belief while failing to disclose information in his possession indicating it is not reasonably held is guilty of a misrepresentation, and may (if a suitable state of mind is shown) be guilty of deceit.

Secondly, a defendant who has made a true statement is bound to correct it, if, though true when made, it is later to his knowledge falsified by events: This is dealt with below.³²

²⁴ *cf. Motors Manufacturing Co Ltd v Fawcett (Sarking Area) Ltd* (1955) 72 R.P.C. 157; also *William Sindell Plc v Cambridgeshire CC* (1994) 1 W.L.R. 1016 (statement that vendor not aware of a defect in title created implied representation that it had taken reasonable steps to ascertain whether any existed).

²⁵ The example is *Jones L.J.'s*: see *Arwright v Newbold* (1881) L.R. 17 Ch.D. 501, at 318.

²⁶ (1873) L.R. 6 H.L. 377.

²⁷ (1875) L.R. 6 H.L. 377, at 409. See too *Lord Stuyin in Smith New Court Securities Ltd v Scrimgeour & Partners (Asset Management) Ltd* [1997] A.C. 254 at 274 ("a cocktail of truth, falsity and evasion is a more powerful instrument of deception than unadorned falsehood").

²⁸ See the old criminal case of *R. v Barnard* (1837) 7 C. & P. 784 (wiper donned university garb to which not entitled and thus induced seller to give him credit; held, rightly convicted of obtaining by false pretences). A more modern instance (in a claim brought under s.2(1) of the Misrepresentation Act 1967) is *Spice Girls Ltd v Aprilia World Service BV* [2002] E.M.L.R. 516; [2002] EWCA Civ 15 (representation by conduct participating in the filming of advertisements for the claimant constituted a representation that the group would not break up during the term of the advertising contract).

²⁹ [1986] 18 H.L.R. 219.

³⁰ (1813) 3 Camp 506. *cf. Reynolds v Sprye* (1852) 1 Do C.M. & G. 660; *Walters v Morgan* (1861) 3 Do C.R. & J. 713, 723; and see too *Abel v McDonald* (1964) 45 D.L.R. (2d) 198.

³¹ See below, para.18-11.

³² Below, para.18-16.

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Thirdly, it is sometimes suggested that there is a duty to disclose, and hence non-disclosure may amount to deceit, where the parties are dealing with a dangerous chattel (though this is more doubtful). This is discussed below.³³

Misrepresentation: promises and statements of intention A representation as to the future will not as such found liability in deceit.³⁴ Nor will a broken promise, as such.³⁵ However, the limits of this principle must be borne in mind.

First, it is clearly established that a representation of present intention, whether the intention be that of the representor or of a third party,³⁶ is a sufficient representation of an existing fact to form the foundation of an action for deceit.³⁷ "The state of a man's mind", said Bowen L.J., "is as much a fact as the state of his digestion. It is true that it is very difficult to prove what the state of a man's mind at a particular time is, but if it can be ascertained it is as much a fact as anything else."³⁸ Therefore, in *Edgington v Fitzmaurice*,³⁹ it was held that a prospectus was deceptive when it contained false statements of what the company intended to do with investors' money once it got it.⁴⁰

Moreover, a statement as to the future will often imply a statement as to present intention; as Lord Herschell has said, "that which is in form a promise may be in another aspect a representation".⁴¹ Thus a promise generally represents by implication that he has at the moment of making the promise the intention of fulfilling the obligations that he is undertaking; and if it can be shown that no such intention existed in his mind at that moment, he is guilty of a misrepresentation.⁴² Nevertheless, this principle cannot be taken too far. The mere fact that the intention which was represented to exist was not eventually carried into effect is little or no evidence of the original non-existence of the intention. The representor may have subsequently changed his mind⁴³; and in such a case there is no misrepresentation at all.

³³ See para.18-15, below.

³⁴ See the criminal cases of *R. v Smeath Holidays Ltd* [1973] 1 W.L.R. 1105 and *British Airways Board v Taylor* [1976] 1 W.L.R. 13 (statement that customers would be accommodated in the future not as such statements of fact, the requirement of a false statement under the relevant consumer protection legislation being the same as that in deceit).

³⁵ See *Beckett v Cohen* [1973] 1 All E.R. 120 and *R. v Smeath Holidays Ltd* [1973] 1 W.L.R. 1105 for a full discussion of the distinction between an implied statement of present fact which may form a promise and the breaking of a promise relating to future facts or conduct.

³⁶ *R. v Gordon* (1889) 23 Q.B.D. 354, at 360. (With J.; *Kestelwell v Refugee Assurance Co* [1908] 1 K.B. 545 (affirmed, [1909] A.C. 243); and *cf. Theft Act 1958, s.15(4) and DPP v Roy* [1974] A.C. 370.

³⁷ *Edgington v Fitzmaurice* (1885) 29 Ch.D. 459.

³⁸ *Ibid.*, at 483.

³⁹ *Ibid.*

⁴⁰ The prospectus said the money was wanted for further investment in the business; in fact it was needed to pay off existing debts.

⁴¹ See *Clydesdale Bank Ltd v Paton* [1896] A.C. 381, at 394. Thus when a person orders goods on credit he states not only that he will pay for them but also that he intends to do so.

⁴² *Re Shockley* (1875) L.R. 10 Ch. 446; *Re Esquass* [1905] 1 K.B. 463. See too *East v Maurer* [1991] 1 W.L.R. 961 (seller of business said he would not compete when he had every intention of doing so; accepted, liable in deceit).

⁴³ As in *Jordan v Money* (1854) 5 H.L.C. 185.

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