

Fraud

From the Department of Injustice website <https://www.justice.gov/archives/jm/criminal-resource-manual-1007-fraud> “One court has observed, ‘[t]he law does not define fraud; it needs no definition; it is as old as falsehood and as versatile as human ingenuity.’ *Weiss v. United States*, 122 F.2d 675, 681 (5th Cir. 1941), cert. denied, 314 U.S. 687 (1941). The Fourth Circuit, reviewing a conviction under 18 U.S.C. § 2314, also noted that ‘fraud is a broad term, which includes false representations, dishonesty and deceit.’ See *United States v. Grainger*,”

From *In Re Tri-Cran, Inc.* in the People’s Republic of MA, “In short, fraud on the court is fraud committed **by the court**, by an officer of the court, or by one who colludes with the court or an officer of the court; its result is a judgment obtained through the corruption of judicial officers, which corruption prevents the judicial machinery from performing its usual functions in an impartial manner.” Also from this case, “Where a judgment is obtained by fraud perpetrated by an attorney acting as an officer of the court, the judgment may be attacked for fraud on the court. **‘Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.’** *H.K. Porter Co. v. Goodyear Tire & Rubber Co.*” And “a cause of action for fraud on the court can be maintained against one who is not an officer of the court and in whose favor judgment was granted if that person colluded with an officer of the court to perpetrate fraud on the court and thereby obtained the favorable judgment.”

The opinion of the U.S. Supreme Court in *Heiser v. Woodruff* was that “It is true that a bankruptcy court is also a court of equity...and may exercise equity powers in bankruptcy proceedings to set aside fraudulent claims, including a fraudulent judgment where the issue of fraud has not been previously adjudicated” (emphasis added). In this same case, the Court of Appeals for the Tenth Circuit “held that the court of bankruptcy could go behind the prior adjudications of the validity of the judgment and decide for itself the questions previously litigated and decided, whether the cause of action on which the judgment was entered was meritorious, and whether the claim in bankruptcy should be rejected because based [it was based] on a judgment procured by claimant’s fraud.” Moreover, the trustee actually *helped* the defendant. “The issue whether there was perjured testimony of value, were raised in the proceeding later brought in the district court for Southern California by the trustee in behalf of the bankrupt to set aside the judgment.”

From the U.S. Supreme Court case *Pepper v. Litton*: “Courts of bankruptcy, in passing upon the validity and priority of claims, exercise equity powers, and have not only the power, but the duty, to disallow or subordinate claims if equity and fairness so require.” (emphasis added).

Other courts have ruled that a litigant cannot benefit by his own misdeeds or illegal acts. “[Equitable estoppel] is wholly independent of the limitations period itself and takes its life, not from the language of the statute, but from the equitable principle that **no man will be permitted to profit from his own wrongdoing in a court of justice.**’ (*Battuello*, supra, 64 Cal.App.4th 842, 847-848, 75 Cal.Rptr.2d 548, quoting *Bomba v. W.L. Belvidere, Inc.* (7th Cir.1978) 579 F.2d 1067, 1070.)” (Emphasis strongly added.) See *Lantzy v. Centex Homes*, 73 P. 3d 517 (2003) Cal Supreme Court and many others. ***Michaud has already profited several times from his own wrongdoing and criminal acts in my case.***

Rhode Island Statute

§ 34-11-1.1 Signing and printing names

The *signatories* and notaries public to all deeds, mortgages, transfers, assignments, and discharges of mortgages, leases, rental agreements, rescissions or assignments thereof, and contracts for the sale of land shall have their names typed or printed immediately beneath or adjacent to their signatures. ***Failure to comply herewith shall not affect the validity of any such instrument***, but the recording fee for the instrument shall be increased by two dollars (\$2.00).

§ 34-11-2. Seal not required in conveyances.

No seal shall be required to any instrument conveying lands, tenements or hereditaments; and any instrument purporting to convey lands, tenements or hereditaments may be referred to as, and shall be, a deed, though no seal be affixed thereto; and the word "covenant" used in any deed or instrument to which no seal is affixed, ***shall have the same effect as though a seal had been affixed thereto***.

Rhode Island Case Law

<https://casetext.com/case/manfredi-v-state-2> (deed does not need to be recorded to be valid)

1 - § 34-11-4 "Any form of conveyance in writing, duly signed and delivered by the grantor...shall be operative to convey to the grantee all the possession, estate, title...without any other act or ceremony. This statute is consistent with current case law as it provides that a conveyance ***does not automatically have to be recorded*** in order for title to pass."

2 - "An agency cannot use its unquestionable power to assess the credibility of witnesses to posit factual findings unsupported by any evidence other than its disbelief of one or more witnesses."

3 - "As a matter of law, the January 23, 1991 conveyance was valid. As indicated, for a conveyance to pass title, the deed ***need not be recorded*** in the land evidence records."

Manfredi mentions nothing about requiring notarization.

<https://casetext.com/case/sundlun-v-volpe-1> (where deed was unrecorded and grantee was held liable to debt—the exact converse of RI case. old case, but should still be holding.)

from <https://www.courtlistener.com/opinion/4104450/national-bank-of-north-america-v-thomas/?> in the superior ct. (made it to SJC)

"the jury were justified in finding that the property in the real estate was not in defendant at the time of the attachment"

<https://casetext.com/case/carrozza-v-carrozza> "Although plaintiff failed to have his conveyance to Edith notarized, the fact that the deed was not acknowledged does not affect its validity. Accordingly, we conclude that the September 24, 1992 deed is valid."

<https://casetext.com/case/pezzello-bros-v-armenakes>

"What is important to note from the record before us is that the defendants did in fact, after the levy, receive timely notice of the levy and of the intended execution sale."

<https://casetext.com/case/rathbone-v-terry-et-al> (1837 case law) "a judgment against a party having no notice is against the first principles of justice, and null and void."

<https://cite.case.law/mo-app/10/7/> (old law out of state)

"Where a deed, good inter partes, is made and delivered to a bona fide purchaser for value, before the date of the levy of an attachment upon the property conveyed, and is recorded before the sale and sheriff's deed to the purchaser, it will have precedence over the attachment.

<https://caselaw.findlaw.com/ri-supreme-court/1862530.html> and prior cases " 'The purpose of recording statutes is to provide protection to those diligent enough to conduct a search of the title records.'). Indeed, it is necessary for a deed to be executed before it is recorded, but *the lapse in time between execution and recordation does not in any way affect the validity of the instrument itself.*"

Florida Statute

FL does not require notarization of affidavits if they contain "under penalty of perjury" wording. See 92.525(2) http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0092/Sections/0092.525.html

FL law 695.03 says deed need to be acknowledged before recording "To entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it, proved by a subscribing witness to it, or legalized or authenticated in one of the following forms"

Florida Case Law

State v. Shearer does not require affidavit notarization.

Bould Et al. v. Coe <https://casetext.com/case/bould-v-coe> "a deed takes effect upon delivery"

Miscellaneous

An attorney, as an officer of the court, has a duty of honesty towards the court. Where an attorney neglects that duty and obtains a judgment based on conduct that actively defrauds the court, such judgment may be attacked, and subsequently overturned, as fraud on the court. However, where a litigant can prove that an officer of the court fraudulently coerced or improperly influenced the impartial nature of the court, fraud on the court can be established.