



**FRAUDULENT
CONTRACTS**

A CAUTION

It has come to the attention of the Society that in a number of recent cases before the Courts, it has emerged in evidence that the parties to a Contract for Sale have grossly understated the true consideration and purchase price in order to avoid stamp duty or to perpetrate a fraud.

Whilst a Solicitor is not obliged to accuse or interrogate his client and is entitled to give credit to his client's instructions, he may not turn a blind eye to any illegality which is manifest.

It is clearly established that such an arrangement is illegal and the apparent Contract will not be enforced by the Courts. Where practitioners suspect such an arrangement they are under a duty to establish to their reasonable satisfaction, by making such enquiries as they consider necessary in the circumstance, that the purchase price is fully stated. This duty flows from their position as Officers of the Court having responsibility to maintain a high standard of honesty in commercial matters and to ensure that in future litigation the Court will not be misled as to the true consideration.

Where a Solicitor is not satisfied that the consideration stated is the true consideration he should decline to act in the matter. His client should be made aware of the fact that by being party to such an illegal arrangement he is in effect sacrificing all the legal rights which he would otherwise enjoy against the other party. Once the Court becomes aware of the illegal character of the transaction it will decline to enforce the Contract and this can be so even despite the fact that the parties themselves do not raise the defence in their pleadings.