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**Economic Tort**

Economic torts, which are also called business torts, are torts that provide the common law rules on liability which arise out of business transactions such as interference with economic or business relationships and are likely to involve pure economic loss.

The economic torts can be split into two primary categories: procuring a breach of contract and causing loss by unlawful means. Conspiracy is also discussed below, and whilst this is a separate tort, it can generally be regarded as ancillary to the two primary torts of inducing breach and unlawful interference.

Harsh business practices do not form the basis for a tort. This can be seen in Mogul Steamship Co Ltd v McGregor, Gow & Co [1889] LR 23 QBD 598. The exception to this rule is conspiracy to injure, discussed below, but even this exception is rarely applied.

1. **Inducing a Breach of Contract**

Contracts form the backbone of business operations. A given organisation will have multiple contracts with the businesses which provide it with stock or raw materials, and everyone who provides services to it will be contracted to do so. If these contracts are not fulfilled as each side promises they will, this can have severe and unanticipated negative effects for both parties. Tort law can step in to assist here, and in particular can provide a course of action against any third parties for breaching their contract, whereas contract law cannot.

The root of the tort can be found in Lumley v Gye [1853] 2 E & B 216 where the court discussed that under contract, damages might be limited in a way which would mean they failed to properly reflect the claimant’s harm. They thus found it just, under the principle of full compensation, to create an action against the inducer.

2. **Causing Loss by Unlawful Means**

It is also a tort to interfere with the claimant’s trade using unlawful means. The tort includes two primary elements – the defendant must have acted unlawfully in their interference with the claimant’s trade, and they must have done so with the intent to injure the claimant.

1. **Intention to Harm:**

It is necessary for a claimant to demonstrate that a defendant has the intent to injure their business via their unlawful act. Sometimes it is not clear whether this requirement has been fulfilled – a defendant might take an unlawful act which harms the claimant, but which isn’t inherently aimed at the claimant.

The intention element was subject to significant discussion in Douglas v Hello! Ltd (No. 3) [2005] EWCA Civ 595 where Lord Nicholls described the intent element as follows:

“**Intentional harm satisfies the mental ingredient of this tort. This is so even if the defendant does not wish to harm the claimant, in the sense that he would prefer that the claimant were not standing in his way”**

1. **Unlawful Means:**

The unlawful act criterion was provided in OBG v Allen [2007] UKHL 21 where Lord Hoffman explained: “Unlawful means consists of acts intended to cause loss to the claimant by interfering with the freedom of a third party in a way which is unlawful and which is intended to cause loss to the claimant. It does not in my opinion include acts which may be unlawful against a third party but which do not affect his freedom to deal with the claimant.”

**Note :** In a crossover between the torts of inducing breach and unlawful interference, there is a precedent of breaching contract or threatening breach of contract constituting the required unlawful act. This can be seen in Rookes v Barnard [1964] UKHL 1.

**Passing off as a form of Economic Tort in the 21st century**

The tort of 'passing off' is an action available where a business wrongly suggests a connection, in the course of trade, with another's goods or services where there is damage, or a threat of damage to the proprietary interests in the reputation or goodwill that the wronged person has built up. Or

The essence of passing off is the selling of goods or the carrying on of a business in such a manner as to mislead the public into believing that the defendant’s product or business is that of the plaintiff, and the law on this matter is designed to protect traders against that form of unfair competition which consists in acquiring for oneself, by means of false or misleading devices, the benefit of the reputation already achieved by rival traders.

**Types of passing off**

1. Marketing a product as that of a plaintiff
2. Trading under a name so closely resembling that of the plaintiff as to be likely to mislead the public into believing that the defendant’s business and that of the plaintiff are one and the same:

See the case of Niger Chemists Ltd. V. Nigeria Chemists (1961) All N.L.R 171.

It seems to me as a matter of common sense that when two firms trade in the same town, in the same street and in the same line of business, one calling itself ‘Niger Chemists’ and the other ‘Nigeria Chemists,’ there must be a grave risk of confusion and deception”

•**Per Palmer, J.**

The Nigerian Supreme Court held that where the names of two separate companies so nearly resemble each other, such similarity could cause confusion or deceit on members of the public.

**ELEMENTS OF PASSING OFF**

1.Misrepresentation

2.Made by a trader in the course of trade

3.To prospective customers of his or ultimate consumers of goods and services supplied by him.

4.Which is calculated /likely to injure the business or goodwill of another trader.

5.Which causes actual damage to a business or goodwill of the trader by whom the action is brought.

**Remedies**

•1. Injunction. This may be made in a qualified form i.e. restraining the defendant from disposing of his goods without sufficiently distinguishing them from the plaintiff’s.

•2. Damages may be granted in respect of losses to the plaintiff.

**Typical forms of passing off in Nigeria**

Everyone has a right to enjoy the benefits of what they create, be it monetary benefit or even simply the goodwill and reputation that comes with it. In a country such as Nigeria, where people have little or no regards for the rights of other people, infringement on the trademark of many people has become of great concern to the public. It is common to see goods in the shops bearing almost the same name or trademark or even having similar packages .

The most common forms of passing off in Nigeria includes: using a name that closely resembles the name of an existing product, imitating the appearance of the plaintiffs products, producing fake products using the plaintiffs trademark, copying the plaintiff’s advertisement, selling the plaintiffs expired or inferior products thereby causing an injury to the plaintiffs reputation etc.

**Grounds of passing off**

The law of passing off is designed to prevent misrepresentation in the course of trade in a business which is likely to confuse the public. Passing off does not confer monopoly rights to any names, get up, marks etc., it does not recognize them as a property in its own right unlike under trademark.

The grounds for passing off includes trading with a name resembling that of the plaintiff, marketing a product as that of a the plaintiff, marketing goods with a name resembling that of the plaintiff’s goods, marketing products with the plaintiff’s trademark or it’s imitation, imitating the get up of the plaintiff’s product, imitating the plaintiff’s advertisement or selling inferior or expired goods of the plaintiff as a current stock.

An action for copyright will lie where a defendant is involved in business very similar as a plaintiff and adopts a name which will make the public believe that his business and that of the plaintiff are the same or connected. In the case of Beecham Group Ltd v. Esdee Food Product Nigeria Ltd it was held that the trademark ‘glucose-aid’ is calculated to deceive the public in sound in consideration of the trademark ‘Lucozade.’

**Relevance of passing off**

Passing off law does not only highlight what constitutes an infringement in that aspect, rather it grants appropriate remedies to those whose products or business has been infringed upon whether there is a proof of actual damage or not, so long the ingredients of what constitutes an infringement is satisfied.

Passing off is something that needs to be taken seriously in this country because a lot of people have fallen victims to lack of knowledge on how to protect their goods or ensure that they get the right remedy when such infringement occurs.

References

https://penprofile.com/blogs/4039/842/the-law-of-passing-off-and-its-application-in-nigeria