**ECONOMIC TORTS**

Economic torts offer protection for a person’s trade or business from acts which the law considers to be unacceptable. Although it is a fundamental element of business that businesses compete with one another and therefore to this extent, one business may succeed to the disadvantage of another; the economic torts seek to ensure that businesses are protected from acts of unacceptable interference.

Economic torts are torts which inflict economic losses. They are torts which inflict financial losses or financial injury. Economic torts occur mainly in the economic, commercial or business sector of life. Economic torts include:

* Passing off;
* Breach of intellectual property rights; such as breach of copyright, patents, trademarks and other merchandise marks;
* Injurious falsehood/Malicious falsehood
* Interference with contracts
* Conspiracy to interfere, that, civil conspiracy and so forth.

These groups of torts protect some of a person’s intangible interests – those which may loosely be called his business interests – from unlawful interference.

Generally, where a person has suffered economic loss, redress has traditionally been in contract law. The justification for this has been the doctrine of Consideration. Where a person had entered a bargain promise and provided consideration, this would justify the court protecting their expectation interest in a breach of consideration.

Damages for breach of contract are to put the claimant in the position they would have been in if the contract had been performed. The objective of damages in torts is to put the claimant in the position they would have been if the tort had not been committed. This protects the status quo interest.

For example, take the facts of ***Donoghue v Stevenson (1932) A.C. 502.*** The duty of care owed by the defendant was a duty not to cause physical damage, in this case, personal injuries to the plaintiff caused by a contaminated drink. If the plaintiff had been sick over her clothes as a result of drinking the contaminated ginger beer, she would not have had a claim for damage to property. Breach of contract may lead to tortious liability if there is damage to property. Both claim for personal injuries and the claim for property damage are status quo claims. But she could not have claimed for the cost of the ginger beer. This is regarded as a claim for economic loss and as the plaintiff had no contract, she had no claim in contract.

Dangerous Product – Torts

Defective Product – Contract.

**INTERFERENCE WITH CONTRACTS/INDUCING BREACH OF CONTRACT**

The tort of interference with contract is the intentional inducement of a contracting party to break his contract with another person, thereby causing damage to that other person. D commits a tort against C if, without lawful justification, he induces or procures A to break A’s contract with C. thus, the tort of interference with contractual relations is the persuasion of a person to break his contract with another person, or the commission of any tortious act which prevents a person from performing his contractual duty to another person. Inducing breach without lawful jurisdiction.

The origin of this form of liability lies in the case of ***Lumley v Gye (1853)118 ER 749, 1083.*** In that case, the claimant’s declaration alleged that he was the owner of the Queen’s theatre, that he has contracted with Johanna Wagner, a famous operatic singer for her to perform exclusively in the theatre for a certain time and that the defendant, owner of a rival theatre, wishing himself to obtain Miss Wagner’s services, “knowing the premises and maliciously intending to injure the plaintiff...enticed and persuaded (her) to refuse to perform.” The court held that the defendant was liable for inducing breach of contract.

This tort extends beyond relation of master and servant to embrace other contracts for personal services. This was the position in the above case. Therefore, any valid and enforceable contract may be the basis of a subsequent action for interference or inducing a breach of contract. However, an action for interference cannot be brought where a contract is void. A contract may be void due to:

* Illegality, immortality, crime, or public policy
* Infancy
* Mistake
* Being in restraint of trade and so forth

**ELEMENTS OF INTERFERENCE WITH A CONTRACT**

In order to successfully succeed in a claim for inducing breach of contract, the plaintiff/claimant must prove:

* That there was a breach of contract
* That the defendant knowingly interfered with the contract/induced the breach
* That damage was suffered by the plaintiff

**BREACH OF CONTRACT**

The plaintiff must establish that there is a breach of contract, the performance of which the plaintiff is entitled. Thus, in the above scenario, it is necessary for D to be liable, there must have been a breach of contract by A against C. In ***OBG Ltd v Allan (2001) UKHL 21,*** it was stated that “one cannot be liable for inducing a breach unless there has been a breach. No secondary liability without primary liability”. Thus, in ***Torquay Hotel Co. Ltd v Cousins (1969) 2 Ch. 106,*** in the course of an industrial action, the defendant workers tried to stop a supplier from fulfilling his contract to supply goods to the plaintiff. The contract terms had expressly exempted either party from liability for acts beyond their control, including labour disputes that may lead to a failure to perform. The English Court of Appeal held that the behavior of the defendants constituted an act of inducing a breach of contract by procuring a failure. Therefore, an injunction was issued to stop the defendants.

It is important that the inducement caused the breach of the contract. Thus, where as in the case of ***Jones Bros (Hun Stanton) Ltd v Stevens (1955) 1 QB 275,*** it is clear that the contract breaker would have taken the same steps anyway, the inducement will not be held to be an effective cause of the loss/breach.

It should be noted that a defendant may also be liable for preventing or hindering the performance of a contract. Such defendant may not induce breach but may interfere with the performance of the contract. In ***Dimbley & Sons Ltd. v NUJ (1984) 1 All ER 117,*** journalists who were employed by the plaintiff publishing company, in a contract of service refused to complete a job to be published, as a result the plaintiff had difficulty in fulfilling his contract to third parties. Having managed to perform his contract, he brought an action against the journalists. The court held that the journalists were liable for unlawful interference with the plaintiff company’s performance of its contractual obligations.

**KNOWLEDGE AND INTENTION OF THE DEFENDANT**

The plaintiff has to establish that the defendant interfered with the contract with the knowledge of its existence. The tort presupposes knowledge of the contract but that does not mean knowledge of all its details. In ***Emerald Construction Co. Ltd v Lowthian (1966) 1 WLR 691 at 700,*** Lord Denning MR stated as follows:

*“Even if (the union officials) did not know the actual terms of the contract, but had the means of knowledge which they deliberately disregard that would be enough. Like the man who turns a blind eye. So here, if the officers deliberately sought to get this contract terminated by breach or not, they would do wrong. For it is unlawful for a third person to procure a breach of contract knowingly, or recklessly, indifferent whether it is a breach or not”.*

This state of mind of conscious indifference is not the same as negligence, though the required state of mind may be inferred as a matter of evidence from circumstances which would have caused suspicion to a reasonable person.

Knowledge is an important element in proving this tort. Knowledge may be **actual** or **constructive.** Where knowledge is constructive, it is usually inferred from the facts, circumstances, or manner of interference.

**The Manner of Interference**

In ***Thomson & Co. Ltd v Deakin (1952) Ch. 646 at 687,*** *Jenkins L.J.* enumerated four mains forms the tort of interference with contracts may take, or the manner in which it may be committed. These are:

* Direct persuasion to breach, or direct procurement to breach
* Direct intervention to cause breach
* Indirect procurement of breach
* Inconsistent dealings.
1. **Direct Persuasion to Breach/Direct Procurement to Breach**

Any direct persuasion, procurement, approach or direct inducement by the defendant of a party to a contract, to breach the contract is enough. Distinction between advice and persuasion is irrelevant. An inducement is direct, even though a third party or a member of a group is engaged to transmit the inducement to the party in breach. See ***Daily Mirror Newspapers v Gardner (1968) 2 All ER 163***

1. **Direct Intervention to Cause Breach**

This is any direct intervention by a defendant to prevent a contracting party from performing his contract. It includes any act to prevent, or hinder the contracting party from performing his contract, such as kidnapping, or restraining him, removal of necessary tools, lock out and so forth. In ***GWK Ltd v Dunlop Rubber Co. Ltd (1926) 42 TLR 376,*** a car manufacturer had a contract with the plaintiff tyre company that when he exhibited his car at a certain motor show, it would have tyres manufactured by the plaintiffs fitted to it. The defendant rival tyre makers unlawfully removed the plaintiff’s tyres and substituted their own tyres. In an action by the plaintiff, the court held that the defendants were liable in trespass to goods for interfering with the plaintiff’s car and were also liable to the plaintiff for interference with the contract.

**Interference involves 3 parties: the contracting parties and the person who interferes/induces the breach. The plaintiff, the contract breaker, the defendant i.e. the third party who inferred/induced breach.**

1. **Indirect Procurement of Breach**

Procuring a breach of contract by indirect means may occur in different ways, e.g. any person, including a party to the contract, and who is in breach, may procure a third party to do act which will prevent, or make it impossible for the defendant to perform his contract to the plaintiff. Thus, a party to the contract may not escape liability. He may be liable for breach of contract. It may take the form of persuading a supplier to stop supplies or to embark on a strike that is provoking a secondary industrial action. In ***J.T. Stratford v Lindley (1965) AC 269,*** the plaintiff company hires out barges to customers who are under contractual obligation to return the barges to the plaintiff’s moorings (dock). The defendant union officials instructed their members to break their contracts of employment with the customers of the company who hire the barges, by not returning the barges to the moorings after use. The House of Lords held that the conduct of the defendant unionists amounted to inducing breach of contract between the plaintiff and his customers to return the barges to the plaintiff.

1. **Inconsistent Dealings**

This is any dealing by a defendant with a contract breaker which the defendant knows to be inconsistent with the contract existing between the plaintiff and the contract breaker. In ***Thompson & Co. Ltd v Deakin (supra),*** *Jenkins L.J.* observed that *“there seems to be no doubt that if a third party, with knowledge of a contract between the contract breaker and another, had dealings with the contract breaker which the third party knows to be inconsistent with the contract, he had committed an actionable interference.” In* **De Francesco v Barnum (1890) 63 LT 438,** the defendant theatre manager continued to employ certain show girls, after having noticed that hat the girls have an existing contract with the plaintiff, which contract makes them unavailable for hire during the material period. The plaintiff who had first hired he girls sued the defendant for damages for interfering with his contract with the girls. The court held that the defendant was liable for interpreting with the existing contract.

It is important to note that in order for a defendant to be liable for interfering with a contract, it is sufficient if the defendant intended to cause a breach of contract. It is not relevant that he should act with malice, such as spite or ill-will where a defendant does an act which potentially will cause a breach of contract of which he is aware, he is presumed to intend the breach, if it does take place, expect he leads evidence to rebut this presumption. See ***Emerald Construction Ltd v Lowthian (supra).*** In ***Exchange Telegraph Co. v Gregory & Co (1896) 1 QB 147 CA,*** the plaintiff had a monopoly of information about Stock Exchange prices and gave this information to their subscribers who contracted not to communicate it to other persons. The defendant stock defendant, induced a subscriber to give him the circular containing the information, which he then gave to his clients so that they could subscribe. The plaintiff sued and the court held that the defendant by his conduct was liable for interfering with the contract that was existing between the plaintiff and the subscribers.

For inducing breach of contract, there must be persuasion directed at a party to the contract. A distinction may be taken between persuasion and mere advice, and advice in the sense of a mere statement of, or drawing of the attention of the party addressed, to the state of facts as they were, is not actionable.

**DAMAGE SUFFERED BY THE PLAINTIFF**

In order to succeed in an action for interference with a contract, the plaintiff has to prove that the breach of contract has occasioned damage to him; or that damages can be inferred from the circumstances of the case. In ***Jones Brothers Ltd v Stevens (1954) 3ALL ER 677****,* the defendant continued to retain an employee in his service after receiving information that the employee in entering his service was breaching his contract with the plaintiffs. Evidence was led by the defendant to show that the employee would not have returned to the plaintiff’s service anyway, even if the defendant had not employed him. The court held that the action for interference with contract would fail, as the plaintiff had not suffered any damage, since the employee would not have returned to the plaintiff anyway. There was also no evidence that damage was caused a there was no interference in the first place.

**DEFENCES FOR INTERFERENCE WITH A CONTRACT**

A defendant in an action for interference with a contract may plead;

* Illegality or immoral contract
* Justification

**Illegality or immoral contract**: Where an illegal or immoral contract is breached, the party who has suffered damage is not entitled to remedy in law, based on public policy.

**Justification:** What constitutes justification is incapable of exact definition. However, in the case of ***Glamorgan Coal Co v South Wales Miners Federation (1903) 2KB 545 at 574****, Romer LJ* said that regard must be had to the nature of the contract broken, the position of the parties to the contract, the ground for breach, the means employed to procure it, the relation of the person procuring it to the person who breaches the contract, and the object of the person procuring the breach. In that case, the defendant miner federation called out mine workers on a strike to demand for higher wages. The plaintiff coal company sued the federation for instigating the workers to go on strike against the terms of employment. The federation pleaded justification. The House of Lords held that the defendants were not justified when they called the miners on strike, for the purpose of pushing up the prices of coal by which the miners pay was in turn regulated.

In contrast, in ***Brimehow v* C*asson (1924) 1 CH 302****,* the defendants were theatre labour union representatives. The plaintiff owned a touring theatre company. The defendants induced a theatre manager to break his contract with the plaintiff because the plaintiff was paying low wages to his employees, as a result of which some chorus girls were resorting to prostitution to supplement their living. In an action by the plaintiff theatre owner against the defendant unionists for interference with his contract with his employees, the court held that the defendants were not liable. The defendants were justified in their action, as they owed a duty to their offices, calling, and the union members to take necessary steps to compel the plaintiff to pay his chorus girls a living wage, so that they should not be driven to supplement their earnings by living an immoral life.

**REMEDIES FOR INTERFERENCE WITH A CONTRACT**

In a claim for interference with a contract, a plaintiff may be entitled to remedies, which includes:

* Damages
* Injunction

**Damages:** Damages is usually calculated with regards to the facts of the case from the date of the alleged breach and not from the time the contract was made.

**Injunction**: An injunction may be granted in deserving circumstances, together with or without an award of damages. It may be granted to stop a person from embarking on a course that will result in a breach, or from continuing with a breach of the contract in question.