**CONSPIRACY**

The tort of conspiracy is an agreement or a combination of two or more persons to injure the business of another person. In ***Sorrel v Smith (1935) AC 700 at 711 HL,*** *Lord Cave LC* stated that “a combination of two or more persons willfully to injure a man in his trade is unlawful and if it results in damage to him is actionable”. The court stated further ‘that if the real purpose of the combination is not to injure another but to forward or defend the trade of those who entered into it, then no wrong is committed, and no action will lie, although damage to another ensued. In ***Crofter Handwoven Harris Tweed Co Ltd V Veitch (1942) 1 ALL ER 142 HL.*** The defendants were officials of a spinner’s trade union. Employers told the defendant’s unionist that the competition of the plaintiff/appellant company prevented from raising wages for the workers. Following this, the union members informed Dockers at the sea ports not to handle imports and export for the plaintiffs and the docketers did so without breaking their contracts of employment. The plaintiff went to court to stop the boycott alleging that the combination of the employers and unionist was an actionable trade conspiracy. The House of Lords held that the purpose of the combination was to raise the wages of the workers in the industry and therefore the defendant’s unionists were not liable. The predominant purpose of the combination was the legitimate promotion of the interest of the combiners. The plaintiffs lost their case because the predominant purpose of the embargo was to promote the interest of the union members rather than to injure the claimants, but in that case, their lordships made it clear that if the predominant purpose of a combination is to injure another in his trade or business or in his other legitimate interest, then if damage results, then the tort of conspiracy exists.

The tort of conspiracy is an agreement or combination of businesses to limit or interfere with the business of another person and thereby eliminate competition, create monopoly, artificially raise prices or otherwise adversely affect a free market economy. The purpose of the tort of conspiracy is to encourage lawful, free and fair competition within the law. If a number of businesses or concerns combine to willfully injure another person in is business, or to do an unlawful act to damage the business of another person, the victim should not be let helpless and without civil remedy, other than perhaps remedy in criminal law.

It should be noted that trade combinations, mergers, acquisitions, takeovers and lawful trade expansions are not conspiracy. In ***Mogul Steamship Co Ltd v McGregor Gow & Co (1892) AC 25 HL****,* the plaintiff and the defendant were rival companies trading in china tea. The defendants formed an association to the exclusion of the plaintiff and persuaded the tea suppliers not to act as the plaintiff’s agent; otherwise they would stop doing business with them by withdrawing their agency. The plaintiff sued the defendant alleging civil conspiracy to injure the plaintiff’s trade by denying it of tea suppliers. The House of Lords held that the defendant companies were not liable. The defendants acted with the lawful object of protecting, extending and increasing the trade and since the means they used was not unlawful, there was no cause of action. The court stated that peaceful and honest combination of capital for the purpose of trade competition was not illegal.

**ELEMENTS OF CONSPIRACY**

1. **Purpose:**

The object or purpose of the combination must be to cause damage to the claimant. If they did not act in order that the claimant should suffer damage but to pursue their own advantage, they are not liable, however, selfish their attitude and however inevitable the claimant’s damage may have been. In ***Scarla Ballroom (Wolvehampton) Ltd v Ratcliffe (1958) WLR 1057****,*  the claimants refused to admit black people to their ballroom but they allowed black musicians to play in the orchestra. The defendants were members of the musicians’ union, a union with many black members and they gave notice to the claimants that the members of the union would not be permitted to play at the ballroom so long as the colour bar was in operation. An injunction to restrain them from persuading their members not to play there was refused.

There is no liability where the participants act in pursuance of different forms of self-interest. If one participant has the object of causing injury to the claimant and the others do not, there is no conspiracy because there is no common purpose to injure, but if the others are aware of the intention of the one bent on injury, it may be that they are all liable. This was established in ***Crofter’s*** *case* where it was stated that if the predominant purpose is to damage another person and damage results, that is tortuous conspiracy. There is no actionable conspiracy where the defendants act to improve their share of the market at the claimant’s expense.

1. **Combination:**

There must be concerted action between two or more persons. In ***Midland Bank Trust Co Ltd v Green (No. 3) (1982) Ch. 529,***the court stated that conspiracy may also be between husband and wife. This is a clear difference between the tort and the crime.

1. **Overt act causing damage:**

In contrast with the crime of conspiracy, an overt act causing damage is an essential element of liability in tort. The defendant must have actually done something that causes damage to the plaintiff. A sufficient element of damage is shown where expenses are necessarily incurred by the claimant in investigating and counteracting the machinations of the defendants. In ***Lontho Ltd v Shell Pet Co Ltd (No. 2) (1981) 2 ALL ER****,* the house of lords held that a claim in conspiracy does not lie, even if unlawful means were used to further a conspiracy, unless the defendants acted for the purpose of injuring the interests of the plaintiff, thereby causing damage.

* Remedies for conspiracy include damages and injunction
* Defences: justification see ***Scarla Ballroom (Wolvehampton) Ltd v Ratcliffe***