

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC- The Economic Torts

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Intimidation

Prior to 1964, the tort of intimidation was an 'obscure, unfamiliar and peculiar cause of action', having its root in cases involving physical violence and threats. Thus, in *Garret v. Taylor* it was held that a quarryman had a cause of action against the defendant who had caused the plaintiff's customers to discontinue buying the quarried stone by threatening them with 'mayhem'. 'Mayhem' was interpreted by the judges in *Allen v. Flood* as violence. However, the modern form of this economic tort arose 'out of the circumstances of modern industrial relations'.

Intimidation involves the defendant using an unlawful threat to successfully compel another to obey his wishes in order to harm the claimant. Thus, there must be a deliberate threat, that threat must involve an unlawful act and be effective, there must be an intention to harm the claimant, and damage must ensue. Though the threat will most commonly be to someone other than the claimant himself, it would appear that the tort can also take the form of a two-party threat, directly between the defendant and the claimant.

Intimidation Grips:

Intentional Harm

Threat

Unlawful Act

Damage

Two & Three Party Liability

There must be an Intention to compel a particular course of action and the claimant 'must be

a person whom [the defendant] intended to injure'. Malice of course is not necessary.

Threat was defined by Peterson J in *Hodges v. Webb* as: 'an intimidation by one to another that unless the latter does or doesn't like'. Threats obviously involve an element of coercion: what must be present, according to Lord Denning, is an intention to compel another to obey the defendant's wishes. Moreover, the threat must be effective, as Lord Denning noted in *Morgan v. Fry*. The threat must be an UNLAWFUL one. It is the unlawful element that is important: the use of a threat, in itself, is neutral. Lord Denning noted that unlawful means included 'violence, tort and breach of contract' but did not imply that this was an exhaustive list. The concept must be the same for all the economic torts that focus on the defendant's unlawful means if these torts are ever to achieve a rational development. The claimant must prove that the DAMAGE to him was caused by the defendant's threat, for it is 'the person damnified by the compliance' who can sue in intimidation. As the facts of *Rookes v. Barnard* demonstrate, intimidation usually arises in a Three-Party situation. The middleman must give in to the threat in order to harm the claimant. The middleman must give in to the threat in order for harm to the claimant to result. Lord Devlin, in *Rookes*, accepted the Two-Party version of this tort, propounded in the then current edition of *Salmond on Torts*. This gave as an example of the tort of intimidation 'a trader who has been compelled to discontinue his business by means of threats of personal violence made against him by the defendant, with that intention'.

Deceit

Deceit has a limited role as a remedy against commercial misinterpretation. A difficulty tort succeed in given 'charges of fraud should not be lightly made or considered', it does not provide protection against general allegations of fraud. Moreover, it is the person intentionally deceived by the defendant who alone can sue in the classic two-party form of the tort. The tort is largely overshadowed in importance by liability for negligent misstatement and by state regulation of trade misdescriptions

Deceit Includes:

- # False Representation.
- # Knowledge Of Falsity.
- # Intention That The Claimant Should Act In Reliance.

Reliance By Claimant: 'Materiality'.

Damage.

The Misrepresentation must be one of a past or existing fact: though that includes a statement of opinion or intention (or law) not honestly believed in. It may be expressed or implied. In *Gordon v. Selico*, the defendant was liable for fraudulently concealing the presence of dry rot, prior to letting the property to the plaintiff. Goulding J found the concealment amounted to a false representation that the flat did not suffer from dry rot and the defendants did not challenge this finding in the Court of Appeal. The false representation has to be made: 'KNOWINGLY without belief in its truth or recklessly, careless whether it be true or false.' At the very least there must be an indifference to the truth. The House of Lords in *Derry v. Peek* authoritatively discussed the state of a defendant's mind, necessary for an action in deceit. Foreseeable reliance is not sufficient for this tort: there must be an Intention That The Claimant Should Rely On The Representation.

Lord Maugham underlined this in *Bradford Third Equitable BS v. Borders*, noting that the plaintiff must prove that the defendant made the statement 'with the intention that it should be acted upon by the plaintiff or by a class of persons which will include the plaintiff'. The representation must have been relied upon by the claimant: he must have been influenced by it. It need not be the sole reason for the subsequent actions as long as it 'materially contributed to his so acting'. The claimant must prove Damage as a consequence of acting on the misrepresentation. The defendant will be liable whether he intended the harm or not. Although predominantly financial harm will be the damage alleged in this tort, physical harm (including personal injury, mental distress, and even inconvenience) is covered, as is damage to property.

The closeness of the classic version of the tort of deceit to contract liability shaped judicial attitudes to its development. The tort developed in an era where the common law courts were keen on the notion of self-reliance and laissez-faire and were hostile to attempts to undermine the sanctity of contract (which was also the reason for the slow development of liability for careless misstatements, seemingly an attack on the doctrine of consideration).

