

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC- The Economic Torts

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Date:- 15/06/2020

The ECONOMIC TORTS, as their name suggests, have as their primary function, the protection of claimant's economic interests. They include the torts of simple conspiracy, unlawful conspiracy, inducing breach of contract, intimidation, unlawful interference with trade, deceit, and malicious falsehood. All of these are torts of intention. They also include passing off, one of the most useful of the economic torts, which though in practice normally involving deliberate harm, is in fact a tort of strict liability. Finally, the economic torts also include the tort of negligence, though applied in a narrow way.

It is usual to separate the economic torts into two categories: the general torts and the misrepresentation torts. The general economic torts comprise conspiracy, inducing breach of contract, intimidation, and unlawful interference with trade. The misrepresentation economic torts are deceit, malicious falsehood, and passing off. However, it is a mistake to make such a rigid division when attempting a proper analysis. Such a division fails to highlight the interconnections between the two categories on the one hand and the dissimilarities between individual torts within each category on the other.

Of course, the economic torts play only a residential role in the regulation of competition but it is a role that claimants seek constantly to increase. There is an obvious need to provide clarification: the problem with litigation in this area is that it tends to start and finish at the interlocutory stage, where no detailed analysis of the law is necessary. At the heart of the uncertainty surrounding these torts is the possibility of uncontrolled judicial expansion of such liability, at odds with the caution of the past. The ultimate question is how far should we move in the direction of a policy to protect against unfair competition and economic behavior?

Conspiracy

There are two sorts of conspiracy: 'the Quinn v. Leathem type which employs only lawful means but aims at an unlawful end, and the type which employs unlawful means.' Thus the tort can take the form of unlawful conspiracy, where the combination uses unlawful means and the form of simple conspiracy, where the 'magic of plurality' renders a combination to injure tortious, despite the lack of unlawful means. Though these two torts obviously have common factors- an agreement or combination involving two or more persons intentionally to harm the claimant- their focal point is different. For this reason they must be analyzed separately. In so doing their relationship to the other economic torts will be revealed.

(A) Unlawful Conspiracy:

Its ingredients are: -

- Intention
- Agreement / Common Design
- Concerted Action
- Damage
- Unlawful Means
- Justification

The issue of Intention is controversial in the economic torts. Though they require intentional harm, it has not been established whether that concept of intention is the same for them all. So dicta can be found requiring only that the act at the heart of the unlawful conspiracy be deliberate and have the effect of injuring the claimant. The parties to a conspiracy must have a COMMON DESIGN though they need not all join at the same time. It is clear that for the conspiracy liability, it is sufficient that the parties combine to secure the doing of acts, which in the event prove to be a tort.

The lack of common design in CBS Songs Ltd. v. Amstrad meant there could be no complicity liability. The requirement of a common design- means that 'mere facilitation' is not sufficient for liability. Agreement alone is not sufficient for liability: there must be CONCERTED ACTION, consequent on that agreement.

Thus, Stuart-Smith LJ commented in *Credit Lyonnais v. ECGD*: 'it is not enough that [the defendant] merely facilitates the commission of the tort unless his assistance is given in pursuance and furtherance of the common design.' Glidewell LJ in *Unilever plc v. Chefaro* noted that in order to show liability emanating from a common design 'it is necessary to show some act in furtherance of the common design, not merely an agreement'. Pumfrey J in *Sandman v. Panasonic UK Ltd.*, having found no decision to support a doctrine of responsibility in tort from mere association with a group acting in concert, concluded there must be some evidence that the defendant was actually involved in furthering the common design, that he 'took part' in the unlawful act. There must be concerted action to a common end. DAMAGE is an essential element of liability in the tort of conspiracy for the tort, unlike the crime, consists not of agreement but of concert action taken pursuant to agreement. Pecuniary loss must be shown.

There was a detailed consideration of this point in *Lonrho v. Fayed* (no. 5). So, damages are at large, i.e. not limited to a 'precise calculation of the amount of the actual pecuniary loss actually proved. Loss of profit and the expense of investigating the conspiracy are clearly recoverable. In the light of recent dicta, it would seem that the UNLAWFUL MEANS relied on for the tort of unlawful conspiracy must, as Stuart-Smith LJ in *Credit Lyonnais v. ECGD* asserted, be 'actionable' in themselves and 'at the suit of the plaintiff'. This was accepted as correct by Toulson J in *Yukong Line Ltd. v. Rendsburg Investments Corp.* (no. 2). Such a view equates this tort with the torts of inducing breach of contract and inducing breach of statutory duty, where there is a need to show that an actionable wrong (i.e. actionable by the claimant) has been induced.

(B) Simple Conspiracy:

Here there is liability for an agreement to do acts, lawful in themselves, for the sole or predominant purpose of causing injury to the claimant and which causes injury to him. Simple conspiracy is an exception to *Allen v. Flood*. Lord Denning MR found simple conspiracy to be 'a modern intervention altogether'. Simple conspiracy was established in a modern form in *Mogul Steamship Co. v. Mc. Gregor* and nurtured in *Quinn v. Leatham*.

Simple conspiracy exists but is of little practical value. It presents the opportunity for

protection only in the most extreme cases of hostility and vendetta. It will rarely be useful for victims of other's use of market power. A tort based on reviewing the interests and motivation of only the parties before the court would appear of little value in the process of market regulation.