

# Interference with Economic interests

## Introduction

The torts dealt with here are economic loss that is intentionally inflicted or in some cases, inflicted for an improper purpose.

# Deceit

- This tort is concerned with losses resulting from deliberate falsehoods. In many instances, the falsehoods result in the victim entering into disadvantageous contracts. The House of Lords in *Derry v Peek* (1889) gave a narrow meaning to deceit. In the case, it was held that to establish liability in this tort, the claimant had to prove that the defendants either knew that what they were saying was false or were reckless as to whether what they were saying was true or false.

# The elements of deceit

- There must be a false statement of fact. People are generally allowed to remain silent, but may have to correct what has already been said, if it becomes false or they discover it is false. The statement must be one of fact and not a promise of future action. However, it can still be a deceit if the defendant gives a false statement of his own present intentions. See *Edginton v Fitzmaurice* (1885).
- The defendant must know that the statement is false or reckless. Honest believe does not amount to liability in deceit. See *Derry v Peak* (1889)
- The defendant must have intended that the claimant should act on his false statement, causing him to behave as he did, which eventually led to him being a victim of economic loss.

# Why claimants rely on negligent misrepresentation as opposed to deceit.

- Much easier to prove in court
- Can be hazardous trying to establish that the defendant was dishonest.

## **The economic torts : general considerations.**

The next group of torts, conspiracy, inducing breach of contract and intimidation are all related and principally regulate aspects of economic life.

- Business competition is regulated by competition law affecting monopolies both under domestic English law and the laws of the European community.
- Employment disputes have been affected by trade union legislation giving some protection to things done in furtherance of a trade dispute.

### Torquay Hotel Ltd v Cousins (1969) 2 ch 106

## **Nature of the action**

Some cases have come before the courts as a matter of urgency, and the issue has been whether the defendants should be temporarily restrained from some action and an injunction has been granted without full consideration of all the relevant principles. See *Torquay Hotel Ltd v Cousins* (1969).

Angry at what they took to be an intervention by the manager of the plaintiff's Imperial Hotel in a dispute they were having with another hotel in the area, the defendant union officials telephoned Esso, with whom the Imperial Hotel had a bulk contract for the delivery of oil, and said that no further deliveries should be made. Esso told the manager that there was little point in ordering further oil since none could be delivered as the tanker drivers, being members of defendant union, would not cross the picket lines. Instead, the manager ordered oil from Alternative Fuels who made a delivery in the temporary absence of the pickets: the defendants then telephoned the firm and threatened unspecified repercussions if further deliveries were attempted. After a solicitor's letter to the defendants, the manager ordered 3,000 gallons of oil from Esso; that oil was delivered but the defendants refused to give any undertaking that further deliveries would not be stopped.

**Held** – Stamp J granted an interlocutory injunction restraining the named defendants from doing any act which, whether directly or indirectly, causes or procures a breach or breaches by any supplier of fuel oil of contracts made now or hereafter by such supplier with the plaintiff company for the delivery of oil to the plaintiff company, and picketing at or near the entrance or entrances near the Imperial Hotel for the purpose of persuading drivers of oil tankers not to deliver fuel oil there. The defendants appeal to the Court of Appeal was dismissed.

## The economic torts: fundamentals

### Allen v Flood (1898) AC 1

The Sam Weller was under repair by the Glengall Iron Co in the Regent Dock at Millwall: the woodwork was being done by the shipwrights, including the plaintiff Flood and Taylor, members of the tiny Shipwrights Provident Union and the iron work was being done by about 40 boilermakers, belonging to the huge independent Society of Boiler Makers and Iron and Steel Ship Builders, whose London delegate was the defendant Allen. The boilermakers discovered that Flood and Taylor had been employed on ironwork by another company and wired for Allen who came and talked to the boilermakers. He then told the company's manager that the boilermakers would go on strike unless Flood and Taylor were dismissed. Flood and Taylor were dismissed that very day. It was assumed that all the contracts were determinable at will.

**Held** – It was held by the House of Lords that no torts had been committed. The defendants were promoting their interests.

See also *Mogul Steamship Co Ltd v McGregor, Gow & Co* (1892) and *Quinn v Leatham* (1901)

The upshot of these famous cases, is that at common law, the defendant is only liable if;

- The conduct interferes with a pre-existing legal right.
- The defendant has interfered with the claimants business by unlawful means or
- There is a conspiracy aimed at the claimant.

## Inducing breach of contract.

The importance of this tort, is that the claimant has interfered with the claimant's right and not just a mere liberty.

See the following schools of thought for this tort;

- The defendant must have interfered with the pre-existing legal rights that the claimant has against a person. e.g for the supply of goods and services. Normally, the claimant will have an action against that person for breach of contract, but he also has in addition a right of action against the defendant for bringing about the breach. By contrast, it will not be a tort for the defendant to persuade a person not to enter into a contract, even if it can be shown that the person would have certainly entered the contract, if it had not been for the defendant's persuasion. See *Lumley v Gye*. Note that even if there is no breach of contract, the defendant can still be liable for the tort.
- The state of mind of the defendant – he/she must know that there is a contract and intend to breach it. See *Emerald Construction Co v Lowthian* (1966)
- The defendant can use **persuasion** directly . It is enough for him/her to tell the person some facts that will make him/her break the contract with the claimant. The defendant may also be liable even if he/she uses **indirect persuasion**. See *J.T Stratford & Son Ltd v Lindley* (1965).
- Can the defendant's actions be justified? See *Brimelow v Casson* (1924) and *Edwin Hill & Partners v First National Finance Corporation* (1989)

## **Intimidation**

The claimant here is affected in his economic interests by some illegal action or threat, usually directed at or through a third party.

- In this tort there is no illegality involved in the relationship of the claimant and the other party in the contract. The latter acts lawfully in relation to the claimant. e.g by dismissing the claimant, conforming with the employment contract or refusing to enter in a contract with the claimant.
- The defendant must aim at the claimant, and it must be his intention to damage his economic interest.
- Interference with business by unlawful means by the defendant. This could be threats of violence as in *Tarleton v McGawley* (1793) or threats of breach of contract by the defendant as in *Rookes v Bernard* (1964).
- Unclear whether there should be any form of justification by the defendant for this type of tort.

## Conspiracy

This tort falls into 2 categories namely:

Pure Purpose Conspiracy and Unlawful Means conspiracy.

- Pure Purpose Conspiracy – 2 or more people conspire with the ultimate motive or purpose of damaging the claimant. What they conspire to do is not necessarily actionable, if it is done by 1 person only. The illegality lies in the conspiracy which turns lawful behaviour into unlawful behaviour. See *Quinn v Leathem* (1901), *Sorrell v Smith* (1925).
- Unlawful Means Conspiracy – The conspirators may be liable if 1 of them commits an independently unlawful act. (No need to show that the intention was to injure the claimant)