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TORTS — INDUCING BREACH OF CONTRACT — The recognition of inducement of breach of contract as a tort came only in comparatively recent times, its first clear enunciation being in *Lumley v. Gye* [1] in 1853. Prior to that case there had been an accepted doctrine that interference with the relation of master and servant was an actionable wrong.[2] Sayre [3] finds the roots of the liability for enticement of servants in the Ordinance of Labourers passed after the Great Plague,[4] and in a confusion of the action based on that statute and the action for forcibly interfering with the servants of another. In *Lumley v. Gye* the action for enticement was held broad enough to cover the malicious procuring of an opera singer who was under contract with the plaintiff for exclusive services for a definite term. The question did not come up for decision again until the year 1881 when the case of *Bowen v. Hall* [5] was decided. Until that decision was made it was considered dubious whether *Lumley v. Gye* would be followed.[6] This case also involved exclusive personal services, and not the strict relation of master and servant. The case, too, emphasized the malice of the defendant as an essential fact in the decision, the court saying that merely to induce another to break his contract may not be wrongful in law or fact. In *Temperton v. Russell* [7] in 1893 where the defendants, union leaders, procured persons to break contracts with the plaintiff and also not to enter further contracts, the final step was taken and the court said that the right of action for maliciously procuring a breach of contract is not confined to personal service contracts, but includes contracts of all kinds. This case has been followed in England and the law there seems well settled that an action will lie for inducing breach of contract

[1] 2 El. & Bl. 216, 118 Eng. Rep. 749 (1853).

[2] "The retaining another person's servant during the time he has agreed to serve his present master; this, as it is an ungentleman-like, so it is also an illegal act. For every master has by his contract, purchased for a valuable consideration, the service of his domestics for a limited time: the inveigling or hiring his servant, which induces a breach of this contract, is, therefore, an injury to the master; and for that injury the law has given him a remedy by a special action on the case." 3 BLACKSTONE'S COMMENTARIES 142. Thacker Coal & Coke Co. v. Burke, 59 W. Va. 253, 53 S. E. 161, 8 Ann. Cas. 885, 5 L. R. A. (N. S.) 1091 (1906).

[3] Sayre, "Inducing Breach of Contract," 36 HARV. L. REV. 663 at 665 (1923).

[4] 23 Edw. III (1349): "If any reaper, mower, or other workman or servant, of what estate or condition that he be, retained in any man's service, do depart from the said service without reasonable cause or licence, before the term agreed, he shall have pain of imprisonment. And that none under the same pain presume to receive or to retain any such in his service."

[5] 6 Q. B. D. 333, 50 L. J. Q. B. 305, 1 Eng. Rul. Cas. 717 (1881).

[6] Langdell, "A Brief Survey of Equity Jurisdiction," 1 HARV. L. REV. 55 at 57 (1887).

[7] [1893] 1 Q. B. 715.

regardless of the nature of the contract.[8] The vast majority of American courts have adopted this view.[9] A few states flatly reject the doctrine,[10] and a few more limit its scope to the master-servant contract.[11]

However, recognition that there is such a tort, and definition and limitation of its scope are different matters. The courts are agreed that an action lies when the breach is induced by force, coercion, or other illegal means.[12] Where the defendant's acts were negligent rather than intentional there is direct conflict both in England and in the United States.[13]

A frequently found statement of the rule is to the effect that any intentional and malicious interference with the contract rights of another, such as procuring the breach thereof, is an actionable wrong, unless there is sufficient justification for the interference.[14] The courts have, however, "defined" malice until it ceases to have much meaning in this connection. In *Schonwald v. Ragains* [15] the court said that "By the term 'malicious' . . . is meant an unreasonable and wrongful act done intentionally, without just cause or excuse." It is also frequently said that where the act of inducing the breach of contract was intentional, malice in law will be inferred.[16] The courts also say that where

[8] Quinn v. Leathem, [1901] A. C. 495, 70 L. J. P. C. 76; South Wales Miners' Federation v. Glamorgan Coal Co., [1905] A. C. 239.

[9] Angle v. Chicago, St. P., M. & O. Ry., 151 U. S. 1, 14 Sup. Ct. 240 (1893); Automobile Ins. Co. v. Guaranty Securities Corp., (D. C. S. D. N. Y. 1917) 240 Fed. 222; Hogue v. Sparks, 146 Ark. 174, 225 S. W. 291 (1920); Doremus v. Hennessy, 176 Ill. 608, 52 N. E. 924, 54 N. E. 524, 68 Am. St. Rep. 203 (1898); Carson v. Stephens, 14 La. App. 272, 129 So. 381 (1930); Beekman v. Marsters, 195 Mass. 205, 80 N. E. 817, 11 L. R. A. (N. S.) 201 (1907); Campbell v. Gates, 236 N. Y. 457, 141 N. E. 914 (1923); Lamb v. S. Cheney & Son, 227 N. Y. 418, 125 N. E. 817 (1920); Schonwald v. Ragains, 32 Okla. 223, 122 Pac. 203, 39 L. R. A. (N. S.) 854 (1912); Prairie Oil & Gas Co. v. Kinney, 79 Okla. 206, 192 Pac. 586 (1920); 28 MICH. L. REV. 352 (1930).

[10] See Carpenter, "Interference with Contract Relations," 41 HARV. L. REV. 728 (1928), collection of cases at 768.

[11] Boyson v. Thorn, 98 Cal. 578, 33 Pac. 492 (1893); Glencoe Land & Gravel Co. v. Hudson Bros. Commission Co., 138 Mo. 439, 40 S. W. 93 (1897); Swain v. Johnson, 151 N. C. 93, 65 S. E. 619, 28 L. R. A. (N. S.) 615 (1909).

[12] Swain v. Johnson, 151 N. C. 93, 65 S. E. 619, 28 L. R. A. (N. S.) 615 (1909); Chambers v. Baldwin, 91 Ky. 121, 15 S. W. 57, 34 Am. St. Rep. 165, 11 L. R. A. 545 (1891); Brooks v. Patterson, 234 Ky. 757, 29 S. W. (2d) 26 (1930); 15 R. C. L. 56 (1917).

[13] Discussed by Carpenter, "Interference with Contract Relations," 41 HARV. L. REV. 728 at 737 (1928). See also, 64 L. R. A. 94 (1904); 26 MICH. L. REV. 833 (1928).

[14] 15 R. C. L. 58 (1917).

[15] 32 Okla. 223 at 240, 122 Pac. 203, 39 L. R. A. (N. S.) 854 (1912).

[16] Carmen v. Fox Film Corp., (D. C. S. D. N. Y. 1919) 258 Fed. 703, reversed on other grounds, (C. C. A. 2d, 1920) 269 Fed. 928, cert. denied 255 U. S. 569, 41 Sup. Ct. 323 (1921); Campbell v. Gates, 236 N. Y. 457, 141 N. E. 914, affirming

there is privilege, malice will not be inferred. In other words, "malice" has come to mean the absence of a sufficient justification.

What then amounts to justification? No hard and fast rule can be laid down. In *Mogul Steamship Co. v. McGregor, Gow & Co.*,[17] in dealing with this question, the court said: "The good sense of the tribunal which had to decide would have to analyse the circumstances and to discover on which side of the line each case fell." And, quoting from *Brimelow v. Casson*,[18] "in analyzing or considering the circumstances, I think that regard might be had to the nature of the contract broken; the position of the parties to the contract; the grounds for the breach; the means employed to procure the breach; the relation of the person procuring the breach to the person who breaks the contract; and I think also to the object of the person procuring the breach." The cases seem to support the view that there is justification where the defendant is (1) acting in the exercise of a superior interest of his own, or (2) where it is more socially desirable that defendant be permitted freedom of action than that plaintiff's interests in his contract be protected.

1. *Protection of Superior Interests of the Defendant*

Where the defendant has a property interest which is equal or superior to that of the plaintiff and conflicting therewith, he is justified in interfering with the plaintiff's contract.[19] Protecting one's own contract rights is an equal or superior right.[20] This was demonstrated in *Quinlivan v. Brown Oil Co.*[21] where the defendant, a wholesale dealer in oil and gasoline, leased a service station to one Sayer with an agreement that standard prices in the city would be maintained. Sayer subsequently contracted with the plaintiff for sale of coupon books entitling purchasers to stated amounts of free oil and gasoline. On hearing of this the defendant protested and Sayer repudiated his contract with the plaintiff. The court held that the defendant was justified in protecting his own contract rights though this interfered with the contract rights of the plaintiff; that the defendant was exercising an absolute right in

206 App. Div. 684, 199 N. Y. S. 914 (1923); Berry v. Donovan, 188 Mass. 353, 74 N. E. 603, 108 Am. St. Rep. 499, 5 L. R. A. (N. S.) 899 (1905); Bliss v. Holmes, 156 Okla. 40, 9 Pac. (2d) 718 (1932).

[17] 23 Q. B. D. 598 at 618-9 (1889), per Bowen, L. J.

[18] [1924] 1 Ch. Div. 302 at 311.

[19] Dictum in R. and W. Hat Shop v. Sculley, 98 Conn. 1, 118 Atl. 55, 29 A. L. R. 551 (1922), noted 21 MICH. L. REV. 234 (1922); Hebbits v. Constitution Indemnity Co. of Philadelphia, 279 Mass. 539, 181 N. E. 723 (1932); Moore Drop Forging Co. v. McCarthy, 243 Mass. 554, 137 N. E. 919 (1923).

[20] Knapp v. Penfield, 143 Misc. 132, 256 N. Y. S. 41 (1932); Nat. Life and Accident Ins. Co. v. Wallace, 162 Okla. 174, 21 Pac. (2d) 492 (1933).

[21] 96 Mont. 147, 29 Pac. (2d) 374 (1934).

it by reason of its contract. Though there was an express repudiation of malice in the findings, the court remarks that motive is immaterial. The question in cases like the above becomes in reality one of priorities. The defendant's contract, being prior in time, is prior in right and thus justifies interference with the plaintiff's contract which conflicts. Certainly if defendant's contract were such as would entitle him to specific performance, he would be justified in persuading the other party to the contract to carry out his contract even though it meant the breach of a subsequent contract with the other.[22]

Other property rights of the defendant may be superior to the contract right of the plaintiff, e.g., a lessor's right to refuse a sublease may justify interference with the sublease.[23] A mortgagee after default has been held entitled to dissuade a third party from carrying out a contract for purchase of land.[24]

2. *Prevailing Social Interests*

The situations in which the courts will find that it is better to permit freedom of action on the defendant's part than to curtail this for the protection of the plaintiff's contract interests may be classified according to the nature of the contract and the character of the defendant's action.

(a) The nature of the contract is important. Where the contract is one creating the relation of master and servant, for historical reasons the courts are more liberal in protecting plaintiff's contract rights than in other cases.[25] On the other hand, it is quite generally held desirable to permit third persons freely to induce parties to contracts to marry to break their contracts.[26] Some courts go even so far as to say that

[22] White Marble Lime Co. v. Consolidated Lumber Co., 205 Mich. 634, 172 N. W. 603 (1919).

[23] Millers Mutual Casualty Co. v. Insurance Exchange Bldg. Corp., 218 Ill. App. 12 (1920).

[24] Winters v. University District Bldg. & Loan Ass'n, 268 Ill. App. 147 (1932).

[25] Swain v. Johnson, 151 N. C. 93, 65 S. E. 619, 28 L. R. A. (N. S.) 615 (1909); Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 38 Sup. Ct. 65 (1916); Doremus v. Hennessy, 176 Ill. 608, 52 N. E. 924, 54 N. E. 524, 68 Am. St. Rep. 203 (1898); Walker v. Cronin, 107 Mass. 555 (1871).

[26] 2 COOLEY, TORTS, 4th ed., sec. 176 (1932): "The prevention of a marriage by the interference of a third person cannot, in general, in itself, be a legal wrong. Thus if one, by solicitations, or by the arts of ridicule or otherwise, shall induce one to break off an existing contract of marriage, no action will lie for it, however contemptible and blamable may be the conduct. But a loss of marriage may be such a special injury as will support an action of slander or libel, where the party was induced to break off the engagement by false and damaging charges not actionable *per se*." Lukas v. Tarpilauskas, 266 Mass. 498, 165 N. E. 513 (1929); Clarahan v. Cosper, 160 Wash. 642, 296 Pac. 140 (1931); Minsky v. Satenstein, 6 N. J. Misc. 978, 143 Atl. 512 (1928); Ableman v. Holman, 190 Wis. 112, 208 N. W. 889, 47 A. L. R. 440

malice in the sense of ill-will does not engender liability.[27] The validity or enforceability of a contract may be determinative of the plaintiff's rights.[28] If a contract is void as against public policy, no action lies for procuring breach thereof.[29] There is a split of authority on whether the fact that the contract is unenforceable because of a statute of limitations or a statute of frauds will prevent plaintiff's recovery.[30] Though a contract is unenforceable because of uncertainty, the defendant will be held liable for procuring a breach.[31] However, it has been held that no action lies for inducing an infant to leave service to which he is bound by a voidable contract.[32] Where the contract interfered with is terminable at will, there is a conflict of authority.[33]

(b) The character of the defendant's act may be determinative. If merely negligent and not intentional, the courts are less likely to hold the defendant liable.[34] Likewise if the defendant makes a subse-

(1926); Brownstein v. Bricker, 226 Mo. App. 882, 46 S. W. (2d) 958 (1932); Ryther v. Lefferts, 232 App. Div. 552, 250 N. Y. S. 699 (1931).

[27] Conway v. O'Brien, 269 Mass. 425, 169 N. E. 491 (1929), noted in 28 MICH. L. REV. 1063 (1930). See also, 25 MICH. L. REV. 88 (1926); 27 MICH. L. REV. 478 (1929). *Cf.* Attridge v. Pembroke, 235 App. Div. 101, 256 N. Y. S. 257 (1932), holding void as against public policy a contract to pay plaintiff $100,000 if she would break her engagement to a third person.

[28] Harley & Lund Corp. v. Marray Rubber Co., (C. C. A. 2d, 1929) 31 F. (2d) 932, cert. denied 279 U. S. 872, 49 Sup. Ct. 513 (1929), holding that the existence of a tort action for inducing another to break a contract presupposes a valid obligation. See also, Cameron v. Barancik, 173 Ill. App. 23 (1912).

[29] Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U. S. 373, 31 Sup. Ct. 376 (1911), refusing to enjoin defendant from inducing breach of contracts unlawful as restraint of trade. Seitz v. Michel, 148 Minn. 474, 181 N. W. 106 (1921), 32 MICH. L. REV. 424 (1934).

[30] Vaught v. Jonathan L. Pettyjohn & Co., 104 Kan. 174, 178 Pac. 623 (1919), defendant held liable for inducing breach of oral contract for sale of land; Richardson v. Terry, (Tex. Civ. App. 1919) 212 S. W. 523, holding defendant liable; Cumberland Glass Mfg. Co. v. De Witt, 120 Md. 381, 87 Atl. 927, Ann. Cas. 1915A 702 (1913), holding defendant liable for inducing breach of contract unenforceable under Statute of Frauds. *Cf.* Little v. Childress, (Tex. Civ. App. 1929), 12 S. W. (2d) 648, 17 S. W. (2d) 786, denying liability where contract void under statute of frauds.

[31] Aalfo Co. v. Kinney, 105 N. J. L. 345, 144 Atl. 715 (1929), noted in 28 MICH. L. REV. 94 (1929), citing other cases.

[32] Campbell v. Cooper, 34 N. H. 49 (1856).

[33] Carpenter, "Interference with Contract Relations," 41 HARV. L. REV. 728 at 742 (1928). Sayre, "Inducing Breach of Contract," 36 HARV. L. REV. 663 at 701 (1923), says: "The current of authority is well nigh unanimous that no action for enticement can be brought where the service was at will." Biber Bros. News Co. v. New York Evening Post, 144 Misc. 405, 258 N. Y. S. 31 (1932). For minority view that there is liability, see Truax v. Raich, 239 U. S. 33, 36 Sup. Ct. 7, L. R. A. 1916D 545 (1915); London Guarantee & Accident Co. v. Horn, 206 Ill. 493, 69 N. E. 526, 99 Am. St. Rep. 185 (1904); United States Fidelity & Guaranty Co. v. Millonas, 206 Ala. 147, 89 So. 732, 29 A. L. R. 520 (1921).

[34] See note 13, supra. Robins Dry Dock & Repair Co. v. Flint, 275 U. S. 303,

quent contract which interferes with the plaintiff's contract, but does not at the time of entering his contract know of the prior contract, he is not liable, intention being the gist of the tort. If the defendant's action consists merely in giving advice as a disinterested party on being asked, and this results in a breach of contract, the courts feel that this privilege of advice should be protected and do not allow recovery.[35] The privilege of petitioning public authorities is considered superior to contract rights interfered with.[36] There is also generally recognized a somewhat undefined privilege of protecting the morals and health of the community.[37]

Thus, whether a defendant will be held liable in tort is seen to depend on a number of factors — property interests of the defendant which may conflict with those of the plaintiff, the character of the contract in question, or the character of the defendant's action. In each case it becomes a question of weighing the social desirability of curtailing the defendant's freedom as a stranger to the contract and protecting the plaintiff's rights.

H. B. A.

48 Sup. Ct. 134 (1927); Byrd v. English, 117 Ga. 191, 43 S. E. 419, 64 L. R. A. 94 (1903); Chelsea Moving & Trucking Co. v. Ross Towboat Co., 280 Mass. 282, 182 N. E. 477 (1932); La Société Anonyme de Remorquage à Hélice v. Bennetts, [1911] 1 K. B. 243. *Cf.* New York Trust Co. v. Island Oil & Transport Corp., (C. C. A. 2d, 1929) 34 F. (2d) 649.

[35] Kelly v. Rozelle, (Tex. Civ. App. 1927) 294 S. W. 699; Coakley v. Degner, 191 Wis. 170, 210 N. W. 359 (1926); Tidal Western Oil Corp. v. Shackelford, (Tex. Civ. App. 1927) 297 S. W. 279; Attridge v. Pembroke, 235 App. Div. 101, 256 N. Y. S. 257 (1932).

[36] Kelly v. Morris County Traction Co., (N. J. Sup. Ct. 1924) 126 Atl. 24; McKee v. Hughes, 133 Tenn. 455, 181 S. W. 930 (1916).

[37] Brimelow v. Casson, [1924] 1 Ch. 302, noted 23 MICH. L. REV. 518 (1925); Legris v. Marcotte, 129 Ill. App. 67 (1906). See also, Kuryer Publishing Co. v. Messmer, 162 Wis. 565, 156 N. W. 948 (1916). As to how far competition will justify interference, discussion of which the scope of this article will not permit, see Carpenter, "Interference with Contract Relations," 41 HARV. L. REV. 728 at 754 (1928); 17 CORN. L. Q. 509 at 520 (1932); 23 MICH. L. REV. 518 at 520 (1925).