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Chapter 1 : Tortious interference - Wikipedia

The tort of interference with contractual relations permits a plaintiff to recover damages based upon a claim that a defendant interfered with the plaintiff's contractual relations.

Back to Business Law Posts Business Torts in Denver and Colorado Business torts are a general category of torts that pertain to claims relating to business transactions and the ongoing functioning of business entities. Because business torts are inherently related to the functioning of a business, they can have important economic ramifications and effect whether or not a business can survive. Overall, there are various types of business torts that range from interference with contractual relations to theft of intellectual property such as misappropriation of trade secrets. See Colorado Bar Association et al. This article discusses the primary business torts recognized in Colorado and is intended to provide guidance to businesses currently dealing with potential claims. Breach of Fiduciary Duty Breach of fiduciary duty is a claim relating to the failure of a person or entity to make decisions with the best interests of the beneficiary in mind. With respect to businesses, corporate directors frequently owe a fiduciary duty to act in the best interests of the corporation and must make business decisions accordingly. Thus, where an individual owes a duty to a business but fails to act in the best interests of that business, a breach of fiduciary claim may lie. Under Colorado law, the elements for a breach of fiduciary duty claim are: A fiduciary relationship exists where the defendant has agreed to act for the benefit or fin the interest of the plaintiff and has the legal authority to do so. Importantly, confidential relationships can give rise to a breach of fiduciary claim where that confidentiality has been breached. Damages for a breach of a fiduciary duty claim can include economic and noneconomic losses. However, where the fiduciary duty stems arises from a contract, the economic loss rule limits the remedies available to those in contract, as opposed to tort which are generally more expansive. Accordingly, noneconomic damages such as emotional distress â€” which can be recovered in tort claims â€” will likely not be available where the fiduciary duty stems from a contract. Additionally, punitive damages may be applicable where tort remedies are available and where there are sufficient circumstances of fraud, malice, or willful and wanton conduct. Breach of Contract Breach of contract claims are common legal claims that exist in a variety of legal areas and are not necessarily unique to business disputes. However, since contracts are common in business and, indeed, are the underpinnings of business transactions, breach of contract claims are frequently plead in business disputes. Under Colorado law, a breach of claim requires the plaintiff to show that: Where a breach has occurred, whether or not the non-breaching party is still obligated to fulfill their end of the contract depends on whether the breaching party committed a material breach or not. That is, where the breaching party fails to fulfill a substantial or essential term of the contract, the non-breaching party may elect not to perform her obligations under the contract as well. Conversely, where the breach is not material but, instead, is a minor one; the non-breaching party still is must perform her obligations under the contract. However, while the non-breaching party still has to perform under the contract, she still may sue for any damages incurred as a result of the breach. With respect to damages for a breach of contract claim, the plaintiff may elect to pursue one of three different remedies available. Expectation damages are designed to put the non-breaching party in the position she would have been in had the breaching party performed as the contract required. For example, if the non-breaching party would have made money if the contract was fully performed, then expectation damages would include the profit the non-breaching party would have made if the breach had not occurred. Reliance damages, in contrast, are designed to put the non-breaching party back in the position she would have been in had the contract never been entered into. Lastly, restitution damages are designed to put the non-breaching party back in the position she would have been in if her side of the promise had never been made. For example, where the non-breaching paid money to the breaching party as part of her side of the promise, the money paid would be restored back to the non-breaching party as part of restitution damages. Importantly, punitive damages are generally not available in ordinary breach of contract claims. Fraud or

Misrepresentation in the Inducement of a Contract Fraud or misrepresentation in the inducement of a contract is an affirmative defense to a breach of contract claim. That is, where a plaintiff is alleging a breach of contract claim, if that defendant was induced to enter into the contract fraudulently or based on misrepresentations then the defendant will be excused from performance under the contract and, thus, will not be liable for any breach. Under Colorado law, fraud or misrepresentation in the inducement of a contract requires a showing: Importantly, if the defendant is excused from the contract based on a fraud or misrepresentation of the plaintiff, any performance already received by the defendant must be returned to the plaintiff; otherwise the plaintiff will have a claim for unjust enrichment for the benefit the defendant received. Overall, where a defendant has been induced into a contract based on fraud or misrepresentation, that defendant has two main courses of action available. Specifically, the individual may affirm the contract and sue for damages in a tort action for deceit; or disaffirm the contract, return whatever benefit he received under the contract, and sue for recovery of whatever benefit the other party already received. Intentional Interference with Contractual Relations Intentional interference with contractual relations occurs where third-party intentionally and improperly interferes with the performance of a contract that he is not a party to. Examples of where an intentional interference with contractual relations claim may apply include where an employee has been improperly lured away from another company and where a third-party has induced a company to break its contract with another company and enter into a new contract with the third-party. Under Colorado law, proving an intentional interference with contractual relations claim requires that: Specifically, those factors are: Importantly, the third-party must not be a party to the contract. That is, an individual or entity cannot be liable for intentional interference with contractual relations where the individual or entity is a party to the contract. Intentional Interference with Prospective Business Advantage While intentional interference with prospective business advantage is similar to intentional interference with contractual relations in that both stem from contractual obligations, it is dissimilar in that intentional interference with prospective business advantage does not require the actual formation of a contract. Accordingly, intentional interference with prospective business advantage occurs where a third-party intentionally and improperly interferes with the potential contractual relations of other parties. Under Colorado law, intentional interference with prospective business advantage requires: See Harris Group, Inc. However, where the parties are business competitors different factors apply. In particular, because businesses should be free to compete and induce others to do business with them instead of their competitors, the alleged interference needs to be more egregious than simply luring a customer or prospective business partner away. Important areas where the business competition privilege comes into play is in competing for employees and competing for contracts with other companies. Trade Secret Misappropriation While trade secret misappropriation can have many complex facets, at its simplest trade misappropriation occurs when a company or individual has improperly taken or used information that another company has engaged in reasonable efforts to keep secret. Specifically, under Colorado law, trade secret misappropriation requires: Accordingly, while a trade secret can essentially be anything that confers value to a business, a critical component of maintaining its trade secret status is whether the owner of the trade secret engaged in reasonable efforts to maintain its secrecy. That is, where the trade secret is disclosed non-confidentially or otherwise made publicly available, it will lose its trade secret status and can no longer be the basis for a trade secret misappropriation claim. Where there is a valid trade secret, misappropriation of that trade secret occurs where it is obtained by another through improper means such as theft, bribery, corporate espionage, or breach of a duty to maintain its secrecy; and where it is disclosed to others or subsequently used by someone that knew or should have known it had been acquired by improper means. Specifically, unfair competition claims are designed to rectify a scenario where one company is capitalizing on the goodwill and reputation of another company. See Ovation Plumbing, Inc. In Colorado, proving an unfair competition claim relating to improper use of a trademark or trade name requires that the plaintiff show: Constructive Fraud Constructive fraud can have applications to many different areas of law and generally relates to situations where direct fraud is not present but the circumstances are suspicious enough that the law declares the activities to be fraudulent. In Colorado constructive fraud is broadly defined as: A breach of a legal or equitable duty that the law declares to be fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests, irrespective of the moral guilt of the perpetrator. Constructive fraud is frequently applied to situations where a transaction has taken place such as the transfer of property, assets, or money. Proving constructive fraud in Colorado requires a plaintiff to show that: Elite Properties of America, Inc. Accordingly, where a duty exists and a transfer has taken place in violation of that duty, the transfer will be determined to be fraudulent and, therefore, void as a matter of law. Specific circumstances where constructive fraud claims have been applied include distribution of proceeds from the sale of property in violation of the Colorado Uniform Fraudulent Transfer Act, C. Coors Trust, P. Importantly, constructive fraud claims are equitable in nature meaning that the court will be responsible for determining if constructive fraud occurred and, if so, for fashioning an appropriate remedy. Additionally, equitable defense such as laches and unclean hands are applicable to constructive fraud claims. Proving a corporate waste or mismanagement claim can be relatively difficult as, typically, a significant amount of deference is given to corporate directors and the decisions they make on behalf of the company. Importantly, in order for corporate decision makers to receive the benefit of the business judgment rule, they have to have acted on an informed basis, in good faith, and with the honest belief that the action taken was in the best interest of the company. See Ajay Sports, Inc. Where these requirements are met, it will be presumed that the decisions made were within the best interests of the company and, thus, did not constitute corporate waste or mismanagement. Overcoming this presumption is a significant hurdle in proving a corporate waste or mismanagement claim. Specific ways that the presumption of the business judgment rule can be challenged include demonstrating that the decision makers were not adequately disinterested from a transaction, that the decision makers were not adequately informed, or that they did not honestly believe they were acting in the best interest of the company. Jornayvaz, Civil Action No. Where the business judgment rule can be overcome, corporate waste has occurred if: The corporation has engaged in a transaction where the proceeds or exchange of the transaction is so proportionally small that no reasonable business person would find that the corporation received adequate consideration in the transaction. See In re Stat-Tech Inern. In bringing a corporate waste or mismanagement claim, the individual or entity must have proper standing to allege it. Under Colorado law, a claim of corporate waste and mismanagement typically belongs to the corporation and, accordingly, must be brought by the corporation or the stockholders on its behalf. However, if a shareholder has sustained distinct and separate harm from the corporation, then the shareholder as an individual will have standing to maintain an action. Usurpation of Corporate Opportunities Similar to corporate waste and mismanagement claims, claims for usurpation of corporate opportunities involve a breach of a fiduciary duty that a corporate director owes to the company. Accordingly, a claim for usurpation of corporate opportunities is not a separate claim for relief but, instead, constitutes an allegation of breach of fiduciary duty. In establishing a usurpation of corporate opportunities claim, the plaintiff must show that: Importantly, the corporation must demonstrate that it had more than a mere theoretical expectancy or proposed opportunity to acquire the interest. Instead, the corporation must show that it had a practical basis and legitimate expectation of acquiring that interest. Additionally, bringing a usurpation of corporate opportunities requires proper standing to allege the claim. Similar to a corporate waste and mismanagement claim, under Colorado law a usurpation of corporate opportunities claim belongs to and must be brought by the corporation or the stockholders on its behalf. However, if a shareholder has sustained distinct and separate harm from the corporation, then the shareholder as an individual will have standing to maintain the action. See In re Stat-Tech Intern. Civil Conspiracy Civil conspiracy is a claim that extends liability for an underlying claim to other actors. Accordingly, it is not a claim for relief in and of itself but, instead, requires a derivative claim to extent liability from. See Colorado Community Bank v. Under Colorado law, a civil conspiracy claim requires the plaintiff to show: Importantly, an express agreement is not necessary; however, there must be some indicia of an agreement because a court will not simply imply a conspiracy. Further, where a civil conspiracy is found, joint and several liability will be imposed on the conspirators. That is, each conspirator is legally liable for the full amount of the judgment. The information on this website is intended to be general information only and not legal advice. Laws change frequently and the information on this website may not be up to date, nor is the information intended to be fully comprehensive. For legal advice specific to your case please contact J.

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Chapter 2 : Guay III & Cummins, Tort Law for Paralegals | Pearson

Tortious interference with prospective advantage/interference with a business relationship/tortious interference with a business advantage/tortious interference with economic relations (definition) An intentional, damaging intrusion on another's potential business relationship, such as the opportunity of obtaining customers or employment.

Description[edit] Tortious interference with contract rights can occur when one party convinces another to breach its contract with a third party e. The tortfeasor is the person who interferes with the contractual relationship between others. When a tortfeasor is aware of an existing contract and deliberately induces a breach by one of the contract holders, it is termed, "tortious inducement of breach of contract". This tort may occur when one party knowingly takes an action that causes a second party not to enter into a business relationship with a third party that otherwise would probably have occurred. An example is when a tortfeasor offers to sell a property to someone below market value knowing they were in the final stages of a sale with a third party pending the upcoming settlement date to formalize the sale writing. Such conduct is termed "tortious interference with a business expectancy". In a similar case, Tarleton v McGawley , Eng. The defendant claimed, by way of justification, that the local native ruler had given it an exclusive franchise to trade with his subjects, but the court rejected this defense. The tort was described in the case of Keeble v Hickeringill , Eng. In that case, the defendant had used a shotgun to drive ducks away from a pond that the plaintiff had built for the purpose of capturing ducks. Thus, unlike the foregoing cases, here the actionable conduct was not directly driving the prospective customers away, but rather eliminating the subject matter of the prospective business. The application of the above has since been modified in UK law. In OBG v Allan et al. Causing loss by unlawful means: Strict liability for conversion applied only to an interest in chattels and not to chooses in action; this was too radical to impose liability for pure economic loss on receivers who had been appointed and had acted in good faith. This also left open the position where they breached the duty of good faith. Typical examples[edit] Tortious interference of business. Tortious interference of contract. Elements[edit] Although the specific elements required to prove a claim of tortious interference vary from one jurisdiction to another, they typically include the following: The existence of a contractual relationship or beneficial business relationship between two parties. Knowledge of that relationship by a third party. Intent of the third party to induce a party to the relationship to breach the relationship. Lack of any privilege on the part of the third party to induce such a breach. The contractual relationship is breached. Damage to the party against whom the breach occurs. In California, these are the elements of negligent interference with prospective economic advantage, which the plaintiff must establish: Additionally punitive damages may be awarded if malice on the part of the wrongdoer can be established. Equitable remedies may include injunctive relief in the form of a negative injunction that would be used to prevent the wrongdoer from benefiting from any contractual relationship that may arise out of the interference, i. Additional example[edit] Tortious interference with an expected inheritance - One who, by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received, is subject to liability to the other for loss of the inheritance or gift.

Chapter 3 : Interference with Business Relationship - Foldenauer Law Group

Explores the tort of Intentional Interference With Economic Relations as a possible means of recovery by a creditor against an attorney who assists a debtor in post-judgment asset planning.

Chapter 4 : Guay III & Cummins, Tort Law for Paralegals, 2nd Edition | Pearson

A bundle of torts including fraud, negligent misrepresentation, interference with contractual relations, interference with *prospective advantage, and injurious falsehood. menu of sources Other References.*

Chapter 5 : â€œIntentional Interference with Prospective Economic Relations or Business Advantage" in C

"Intentional interference with prospective economic relations" is similar to several other torts, most notably "intentional interference with contractual relations" and "inducing breach of contract.".

Chapter 6 : Business-Related Torts to Master | CEBblogâ„¢

An economic relationship existed between the plaintiff and another party, with the probability of the relationship developing into a future economic benefit for the plaintiff. 2. The defendant had knowledge of the relationship between the plaintiff and the other party.

Chapter 7 : What Is Tortious Interference? | calendrierdelascience.com

As one expert put it, the very nature of competition is "interference with the prospective economic advantage" of one's competitor". How, then, can such activity be considered a wrongful act allowing one to sue the culprit?

Chapter 8 : Tort Law for Paralegals, 2nd Edition

Economic torts, which are also called business torts, are torts that provide the common law rules on liability which arise out of business transactions such as interference with economic or business relationships and are likely to involve pure economic loss.

Chapter 9 : Economic torts - Wikipedia

Business Torts Business torts, also called "economic torts," are wrongful acts committed against business entities -- often intentional but sometimes due to negligence or recklessness -- that cause (or are likely to cause in the future) some kind of financial loss.