1989

Interference with Contract in the Competitive Marketplace

Gina M. Grother

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Recommended Citation
Available at: http://open.mitchellhamline.edu/wmlr/vol15/iss2/6

This Note is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.
© Mitchell Hamline School of Law
NOTES

INTERFERENCE WITH CONTRACT IN THE COMPETITIVE MARKETPLACE

In a competitive society it should be assumed that competition is a good thing, and that a person need not be placed in the position of defending his status as a competitor when he engages in ... normal competitive acts.¹

INTRODUCTION

In the United States, interference with contract² has evolved into a potent form of tort liability.³ For instance, in 1984, Texaco, Inc. was stunned when it lost a “billion-dollar battle” with Pennzoil; it was a battle which mushroomed from Pennzoil’s interference with contract action against Texaco.⁴ Texaco was eventually forced to file Chapter 11.⁵

The tort of interference with contract originated as a claim against


Liability for interference with contract is a universal form of recovery, similar to that of the prima facie tort. For a discussion of the prima facie tort doctrine, see Brown, The Rise and Threatened Demise of the Prima Facie Tort Principle, 54 NW. U.L. REV. 563 (1959); and Forkosch, An Analysis of the “Prima Facie Tort” Cause of Action, 42 CORNELL L.Q. 465 (1957).


453
an individual who had physically injured a member of the plaintiff's household. Eventually, the violence requirement was eliminated, and the tort was expanded into a claim for damages against anyone who induced the plaintiff's servant to leave his employ. Today, the courts in the United States allow the tort to protect virtually every type of contract from interference. In some instances, a contract is not even required.

The tort of interference with contract protects a broad range of economic relations. However, the idea that a person should not interfere with another's economic relationships is easier to expound in the abstract than to apply in the particular.

One fundamental question engendered in this confusion needs to be answered: what interests should be protected? Courts differ substantially as to the type of interest they consider an adequate basis for an interference with contract claim.

This Note will first trace the development of the tort of interference with contract. It will then identify what interests are actually being protected and question whether those interests deserve protection. In particular, the courts' protection of unenforceable contracts, contracts terminable at-will, noncontractual economic relationships, and prospective advantage will be examined. Finally, the application of the tort of interference with contract in Minnesota will be analyzed.

---

6. See infra notes 15-18 and accompanying text.

7. See infra notes 19-30 and accompanying text.

8. Restatement (Second) of Torts § 766, comment c (1979) ("The liability for inducing breach of contact is now regarded as but one instance, rather than the exclusive limit, of protection against improper interference with business relations.").

9. Id. "The added element of a definite contract may be a basis for greater protection; but some protection is appropriate against improper interference with reasonable expectancies of commercial relations, even when an existing contract is lacking." Id. See, e.g., Buckaloo v. Johnson, 14 Cal. 3d 815, 822, 537 P.2d 865, 868, 122 Cal. Rptr. 745, 748 (1975) ("The tort of interference with an advantageous relationship, or with a contract, does not . . . disintegrate because it relates to a contract not written or an advantageous relation not articulated into a contract."). (emphasis added and quoting Zimmerman v. Bank of Am. Nat'l Trust & Sav. Ass'n, 191 Cal. App. 2d 55, 57, 12 Cal. Rptr. 319, 320 (1961).


11. See infra notes 57-107 and accompanying text.

12. See infra notes 57-107 and accompanying text.

13. See infra notes 59-107 and accompanying text.

14. See infra notes 108-161 and accompanying text.
I. DEVELOPMENT OF THE TORT

Although the tort of interference with contract seems to be a modern cause of action, its beginning dates back to early Roman law.\(^\text{15}\) In that era, it was not the existence of a contract which was significant, rather relationships within a household were being protected against an outsider's violent conduct.\(^\text{16}\)

Consequently, the head of the household was allowed to bring an action against anyone who committed violence upon his family or servants.\(^\text{17}\) The head of the household was the only individual entitled to bring such an action.\(^\text{18}\)

By the thirteenth century, the cause of action was adopted by the English common law and applied to the master-servant relationship.\(^\text{19}\) Hence, a master was allowed to bring a common law action for the loss of his servant's services due to a third party's violence.\(^\text{20}\)

From 1349 to 1350 the Black Death killed one third of England’s population, resulting in a dramatic decrease in the labor supply.\(^\text{21}\) Competition for servants intensified.\(^\text{22}\) Parliament responded by enacting the Statute of Labourers.\(^\text{23}\) This ordinance eliminated the violence requirement for an interference action and allowed a master to bring an action any time his servant was enticed away from his employ.\(^\text{24}\)

In the centuries that followed, the application of this rule continued to be expanded. In 1853, the English court established the inducement of breach of contract as a separate, independent tort in the

\(^{15}\) See Sayre, supra note 2, at 663.

\(^{16}\) See W. KEETON, D. DOBBS, R. KEETON & D. OWEN, PROSSER & KEETON ON THE LAW OF TORTS § 129 at 979 (5th ed. 1984)[hereinafter PROSSER & KEETON].

\(^{17}\) See Sayre, supra note 2, at 663.

\(^{18}\) Id. The head of household was allowed to bring an action against anyone who committed violence upon his wife, children, slaves, or other members of his establishment. He was even permitted to bring an action for any insults made to them. This law was based on the theory that these individuals were so identified with the head of household that the wrong was really against him. Id.

\(^{19}\) PROSSER & KEETON, supra note 16, at 980.

\(^{20}\) Id.


\(^{22}\) Id.

\(^{23}\) 23 Ewd. 3 (1349). The Statute of Labourers, 25 Ewd. 3, was enacted to make enforcement of the ordinance easier. See Sayre, supra note 2, at 665.

\(^{24}\) Carpenter, Interference with Contract Relations, 41 HARV. L. REV. 728, 729 (1928). The common law action and the Statute of Labourers action eventually merged into a single action on the case. Id. at 729; Owen, supra note 2, at 43. See Blake v. Lanyon, 6 Term. Rep. 221, 101 Eng. Rep. 521 (1795); Hart v. Aldridge, 1 Cowp. 55, 98 Eng. Rep. 964 (1774). This single action on the case allowed recovery without proof of violence and was without the statutory limitation on remedies. Carpenter, supra, at 729.
landmark case of Lumley v. Gye.\textsuperscript{25} In Lumley, an opera singer who was under contract to sing at the plaintiff's theatre was induced by the defendant, the plaintiff's competitor, to break her contract and sing at the defendant's theatre.\textsuperscript{26} Although the operatic artiste was considered an independent contractor and not a servant,\textsuperscript{27} the court held that the principle of the Statute of Labourers should apply and that a tort had been committed.\textsuperscript{28} Twenty-eight years later in Bowen v. Hall,\textsuperscript{29} the English court made it clear that Lumley v. Gye had become an accepted part of English law.\textsuperscript{30}

The doctrine of Lumley v. Gye was subsequently extended by Temperton v. Russell\textsuperscript{31} to include a contract which did not involve personal services or violent conduct. The defendants in Temperton, were liable to the plaintiff for inducing persons, who were under contract with the plaintiff to supply building materials, to break their contracts.\textsuperscript{32} Interference with contract had become a well established cause of action in the English courts.\textsuperscript{33}

Initially, United States courts were not disposed to accept this tort,\textsuperscript{34} applying the doctrine predominantly to master-servant conflicts.\textsuperscript{35} Presently, however, an action for intentional interference

\textsuperscript{25}. 2 El. & Bl. 216, 118 Eng. Rep. 749 (1853).
\textsuperscript{26}. Id. at 217, 118 Eng. Rep. at 750.
\textsuperscript{27}. Id.
\textsuperscript{28}. Id. at 224, 118 Eng. Rep. at 752.
\textsuperscript{29}. 6 Q.B.D. 333 (1881).
\textsuperscript{30}. See Carpenter, supra note 24, at 729. In this case the plaintiff recovered damages from the defendant for wrongfully inducing an individual, who was under contract with the plaintiff to manufacture and glaze bricks, to discontinue his service. 6 Q.B.D. 333, 334-35 (1881).
\textsuperscript{31}. 1 Q.B. 715 (1893).
\textsuperscript{32}. Id.
\textsuperscript{34}. For instance, at first the New York courts denied any action for interference with contract unless the contract was for personal services. Ashley v. Dixon, 48 N.Y. 430 (1872). Later recovery was denied on the basis of the defendant's justification instead of the plaintiff's failure to state a cause of action. National Protective Ass'n of Steam Fitters & Helpers v. Cumming, 170 N.Y. 315, 331, 63 N.E. 369, 373 (1902). Subsequently, the rationale of the earlier cases was rejected and recovery was permitted. See, e.g., S.C. Posner Co. v. Jackson, 223 N.Y. 325, 333, 119 N.E. 573, 575 (1918). Finally, intentional interference with contract was declared actionable without reservation. Campbell v. Gates, 236 N.Y. 457, 460, 141 N.E. 914, 915 (1923).
\textsuperscript{35}. Louisiana continues to hold that interference with contract is not tortious unless unlawful means are employed. See, e.g., Cust v. Item Co., 200 La. 515, 523, 8 So. 2d 361, 363 (1942); Hartman v. Greene, 193 La. 234, 235-36, 190 So. 390, 391, cert. denied, 308 U.S. 612 (1939).
\textsuperscript{36}. See, e.g., Boyson v. Thorn, 98 Cal. 578, 581-82, 33 P. 492, 493 (1893)(over-
with contract exists in all the states,36 with the exception of Louisiana.37

The tort in the United States extends far beyond the old enticement-of-servant action which was the basis of Lumley v. Gye.38 The tort of interference with contract now encompasses virtually every type of contract and economic relationship and the violence requirement no longer exists.39


37. The Louisiana Supreme Court in Graham v. St. Charles Street Railroad, 47 La. Ann. 1656, 18 So. 707 (1895) did award a plaintiff recovery on the basis of intentional interference with contractual relations. In this early case, the defendant discouraged customers from patronizing the plaintiff’s grocery store, and the court held that a man has an action for damages when someone has acted improperly and caused others to stop buying from him. Id. at 708. However, despite this holding, Louisiana has refused to recognize this tort. See Eximo, Inc. v. Tran Co., 737 F.2d 505, 511 (5th Cir. 1984); Cust v. Item Co., 200 La. 515, 522-23, 8 So. 2d 361, 363 (1942); Robert Heard Hale, Inc. v. Gaiennie, 102 So. 2d 324, 326 (La. Ct. App. 1958).

38. Note, supra note 21, at 1499-1500.

39. See, e.g., J'Aire Corp. v. Gregory, 24 Cal. 3d 799, 598 P.2d 60, 157 Cal. Rptr. 407 (1979)(relation of restaurant to its potential customers); Gold v. Los Angeles Democratic League, 49 Cal. App. 3d 865, 122 Cal. Rptr. 732 (1975)(interference with prospective employment relationship between political candidate and electorate); Bowl-Mor Co. v. Brunswick Corp., 297 A.2d 61 (Del Ch. 1972)(interference with relationship between manufacturer of equipment and potential lessors); Barlow v. In-
Contracts and business relations play an important role in our society. Our society and market economy has a considerable interest in the formal integrity of contracts.\textsuperscript{40} Contractual relations provide reliability and structure to our marketplace.\textsuperscript{41} The tort protection, which interference with contract provides, helps promote this type of contractual reliability.\textsuperscript{42} However, if the protection is extended to cover non-binding contracts, it promotes stability at the expense of free competition.\textsuperscript{43}

Liability based on interference with contract contradicts the foundation of the competitive economic order in the United States.\textsuperscript{44} Competition in the United States presupposes that businesses will act in pursuit of their own self-interest in order to better serve their market.\textsuperscript{45} "[E]ffective competition requires both aggressive and defensive actions."\textsuperscript{46} Competition depends upon eliminating those social institutions which restrict free movement and enhancing those institutions which increase free movement.\textsuperscript{47} The tort of interference with contract, however, unreasonably restricts free movement in the marketplace.

\textsuperscript{40} See Note, supra note 21, at 1493.

\textsuperscript{41} Id.

\textsuperscript{42} Id. The court in Memorial Gardens, Inc. v. Olympian Sales & Management Consultants, Inc., 690 P.2d 207 (Colo. 1984) stated that, "[t]he existence of the tort protects the relationship between parties to a contract. . . ." Id. at 210.

\textsuperscript{43} Id. The court in Memorial Gardens, Inc. v. Olympian Sales & Management Consultants, Inc., 690 P.2d 207 (Colo. 1984) stated that, "[t]he existence of the tort protects the relationship between parties to a contract. . . ." Id. at 210.

\textsuperscript{44} For instance, Professor Carl Auerbach in an American Law Institute debate over Dean Prosser's draft on tortious interference for the Restatement (Second) of Torts § 766B (1979)(contract for marriage is not subject to this tort).

\textsuperscript{45} J. CLARK, COMPETITION AS A DYNAMIC PROCESS 9 (1961).

\textsuperscript{46} Id.

\textsuperscript{47} C. RATZLAFF, THE THEORY OF FREE COMPETITION 36 (1936).
The application of this tort to both enforceable and unenforceable contracts and the varying expectations of the parties within these relationships have made it difficult to define the boundaries of this tort in a coherent manner.\textsuperscript{48} The tort of interference with contract therefore has been the subject of serious criticism.\textsuperscript{49}

Despite the criticism and the uncertainties in its application, courts continue to apply the tort and increase the availability of its protection.\textsuperscript{50} Generally, the following elements\textsuperscript{51} must be established before an action for interference with contract will be successful: (1) the existence of a contract or business relation;\textsuperscript{52} (2) the defendant's


\textsuperscript{49} See Dobbs, supra note 48.

\textsuperscript{50} See PROSSER & KEETON, supra note 16, at 979.


The \textit{Restatement (Second) of Torts} § 766 (1977) has also defined interference with contract:

One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other or the pecuniary loss resulting to the other from the failure of the third person to perform the contract.

\textit{Id.}

\textsuperscript{52} The tort of interference with contract only applies in situations where the contract or relationship is between the plaintiff and a third party, not when the contract is between the plaintiff and the defendant. Laser Indus., Ltd. v. Eder Instrument Co., 573 F. Supp. 987, 994 (N.D. Ill. 1983); Campbell v. Westdahl, 148 Ariz.
knowledge of the contract or business relationship; knowledge of the contract or business relationship;\textsuperscript{53} (3) intentional interference by the defendant with the contract or business relationship;\textsuperscript{54} (4) the absence of justification for the defendant's interference;\textsuperscript{55} and (5) damage to the plaintiff as a result of the defendant's interference.\textsuperscript{56}

\textsuperscript{53} Without knowledge of the plaintiff's contract or interest, or at least of facts which would lead a reasonable person to believe that a contract or interest exists there can be no intent and no liability. Augustine v. Trucco, 124 Cal. App. 2d 229, 268 P.2d 780 (1954); Kerr v. DuPree, 35 Ga. App. 122, 132 S.E. 395 (1926); Snowden v. Sorenson, 246 Minn. 526, 75 N.W.2d 795 (1956); Thomason v. Sparkman, 55 S.W.2d 871 (Tex. Civ. App. 1933); Kenworthy v. Kleinberg, 182 Wash. 425, 47 P.2d 825 (1935). It is generally held that if a party knows the facts which give rise to the plaintiff's contractual rights against another, he has the necessary knowledge for liability, even if he is mistaken as to the legal significance of the facts and believes that there is no contract, or that the contract means something else. Piedmont Cotton Mills Inc. v. H.W. Ivey Construction Co., 109 Ga. App. 876, 137 S.E.2d 528 (1964); Calbom v. Knudtzon, 65 Wash. 2d 157, 396 P.2d 148 (1964).

\textsuperscript{54} Intent has been defined as that purpose or aim or state of mind with which a person acts or fails to act. Usually it is reasonable to infer that a person intends the natural and probable consequences of his acts. \textit{See Baker v. United States}, 310 F.2d 924 (9th Cir. 1962), \textit{cert. denied}, 372 U.S. 954 (1963)(criminal case).

In addition to intent, there must also be interference. In \textit{American Medical Int'l v. Scheller}, 462 So. 2d 1 (Fla. Dist. Ct. App. 1984) the court stated that an "[u]nsuccessful interference is simply not the kind of interference upon which a tort may be founded or upon which damages may be assessed." \textit{Id.} at 9.

A claim for negligent interference with contract is usually not available. \textit{See Mattingly v. Sheldon Jackson College}, 743 P.2d 356 (Alaska 1987); \textit{ABA SECTION OF LITIGATION, MODEL JURY INSTRUCTIONS FOR BUSINESS TORT LITIGATION 8} (1980)(hereinafter \textit{ABA JURY INSTRUCTIONS}); \textit{RESTATEMENT (SECOND) OF TORTS § 766(c), comment a} (1979); \textit{but see Carbone v. Ursich}, 209 F.2d 178 (9th Cir. 1953); \textit{Ames v. Union R. Co.}, 117 Mass. 541 (1895).

\textsuperscript{55} Some courts have held that justification is an element to be pleaded and proven by the plaintiff. \textit{See}, \textit{e.g.}, \textit{Bahalada v. Hankinson Corp.}, 228 Pa. Super. 153, 323 A.2d 121 (1974); \textit{see also} A.F. Arnold & Co. v. Pacific Professional Ins., Inc., 27 Cal. App. 3d 710, 104 Cal. Rptr. 96 (1972)(court suggested that the reason some courts have treated the lack of justification as an element of the tort, rather than as a defense, derived from the practice of using the word unjustified in describing the tort). However, the majority of courts have held that justification is an affirmative defense to be pleaded and proven by the defendant. \textit{See}, \textit{e.g.}, \textit{Hope Basket Co. v. Product Advancement Corp.}, 187 F.2d 1008 (5th Cir.), \textit{cert. denied}, 342 U.S. 833 (1951); \textit{Polytec, Inc. v. Utah Foam Prods., Inc.}, 439 So. 2d 683 (Ala. 1983).


II. THE INTERESTS PROTECTED

A beginning point in analyzing a tortious interference claim is to determine whether there is an interest which should be protected. Although most contracts and business relationships are sufficient to form the basis of a tortious interference action, courts have not clearly fashioned a reliable standard for making such a determination.

If an express, enforceable contract exists between the plaintiff and a third party, the sufficiency of the interest will usually not be at issue. However, if the contract is unenforceable or terminable at-will, inconsistent results may occur among the jurisdictions.57 Also, if the plaintiff attempts to base her claim upon a noncontractual or prospective advantage, the existence of a protectable interest may once again be at issue.58 The following sections will examine these types of interests and their place within the tort of interference with contract.

A. Unenforceable Contracts

The law does not object to the voluntary performance of an agreement which is legally unenforceable.59 The courts even indulge in the assumption that an unenforceable promise will be carried out if no one interferes with it.60 Accordingly, courts allow contracts which are unenforceable by reason of the statute of frauds,61 formal defects,62 lack of consideration or mutuality,63 or conditions prece-
dent to the existence of the obligation to be the basis for an action for interference with contract.

California is a good example of a jurisdiction which has read the contract element very broadly. California courts apply the tort of interference with contract to protect all contracts and not just those that have "attained the dignity of a legally enforceable agreement." For instance, in Zimmerman v. Bank of America National Trust & Savings Association, a real estate broker brought an action against a bank alleging that the bank had interfered with an oral contract between himself and realty owners. The realty owners and the broker orally agreed that the owners would pay the broker a commission if he obtained and procured a purchaser for their real estate. Later, bank employees offered to save the realty owners money by avoiding the broker's commission. The bank employees then set up a meeting between the realty owners and the purchasers, who were unacquainted with each other. Thus, the realty owners breached their oral contract with the broker and deprived the broker.

---

So. 2d 825 (Fla. Dist. Ct. App. 1966)(lack of consideration); Barlow v. International Harvester Co., 95 Idaho 881, 522 P.2d 1102 (1974)(lack of certainty); Aalfo v. Kinney, 105 N.J. 345, 144 A. 715 (1929)(lack of mutuality and certainty); but see Grimm v. Baumgart, 121 Ind. App. 634, 97 N.E.2d 871 (1951); Malevich v. Hakola, 278 N.W.2d 541 (Minn. 1979)(if essential terms are missing and parties didn't intend to be bound then no interference with contract).


65. In the last forty years, California courts have expanded the protection afforded by the tort of interference with contract. Initially, the protection was only for existing contracts. Imperial Ice Co. v. Rossier, 18 Cal. 2d 33, 112 P.2d 631 (1941). Then, protection was extended to all existing or future advantageous relationships. Buckaloo v. Johnson, 14 Cal. 3d 815, 537 P.2d 865, 122 Cal. Rptr. 745 (1975). Now, protection extends to all areas of foreseeable harm. J'Aire Corp. v. Gregory, 24 Cal. 3d 799, 598 P.2d 60, 157 Cal. Rptr. 407 (1979).


California courts explicitly distinguish the availability of the tort from the enforceability of the plaintiff's contractual interest. The application of interference with contract is based upon more flexible assessments of the interests protected by the tort. California courts focus their analysis of the tort on the sufficiency of the interests of a particular plaintiff.


68. Id. at 57, 12 Cal. Rptr. at 320.

69. Id.

70. Id.

71. Id.
of his rightful commission.72

Consequently, the broker sought recovery from the bank on the grounds that the bank interfered with the oral contract.73 The trial court sustained the bank's demurrer to the complaint on the grounds that the statute of frauds rendered the contract unenforceable.74 However, on appeal the California District Court of Appeals held that the bank could not invoke a statute of frauds defense and reversed the trial court.75 In reaching this conclusion, the court stated:

The nature of the tort does not vary with the legal strength, or enforceability, of the relation disrupted. The actionable wrong lies in the inducement to break the contract or to sever the relationship, not in the kind of contract or relationship so disrupted, whether it is written or oral, enforceable or not enforceable.76

On the other hand, some jurisdictions hold that in order for a contract to be the basis of an interference with contract claim, it must be valid and enforceable.77 The New York courts enforce a rigid requirement that an enforceable contract must underlie all intentional interference with contract claims.78 These courts reason that unenforceable contracts should be allowed only very limited tort protection.79

72. Id.
73. Id. The broker likewise brought causes of action against the realty owners and purchasers for conspiring with the bank to interfere with the commission contract. Id.
74. Id.
75. Id. at 62, 12 Cal. Rptr. at 323.
76. Id. at 61, 12 Cal. Rptr. at 320–21. The court also stated: [W]e see no good reason why the protection against the dangers of oral agreements, which the statute affords to parties to a transaction, should inure to a stranger who seeks the destruction of the transaction and whose status fundamentally differs from that of the party whom the statute seeks to protect.
77. See, e.g., Zeyher v. S.S. & S. Mfg. Co., 319 F.2d 606 (7th Cir. 1963)(not liable for interference with contract which was unenforceable for lack of mutuality and certainty); Watts v. Warner, 151 Tenn. 421, 269 S.W. 913 (1925)(no judgment may be based against a defendant for interference with an unenforceable repudiated contract).
79. 50 N.Y.2d at 193, 406 N.E.2d at 449–50, 428 N.Y.S.2d at 633–34. Although this rule is typically followed in New York, some exceptions do exist. New York decisions allowing a tort action despite the lack of a possible breach of contract action have fallen into two categories. First, there is a line of cases, which begin with Rice v. Manley, 66 N.Y. 82 (1876), in which the act of the interferer was deemed to be independently tortious. Second, there is a line of lower court decisions that separate consideration of the availability of the tort from assessment of the enforceability of the breached contract. In Hardy v. Erickson, 36 N.Y.S.2d 823 (N.Y. Sup. Ct. 1942), the New York Supreme Court rejected the defendant's demurrer to a tort action based on the employment
The decision by the New York Court of Appeals, in *Guard-Life Corp. v. S. Parker Hardware Corp.*,\(^{80}\) has sharpened that state's focus on allowing tort protection only for enforceable legal rights. *Guard-Life* involved an interference claim based on a contract that was unenforceable for lack of mutuality.\(^{81}\) The plaintiff, a distributor, had entered into a five-year exclusive distribution contract with a Japanese manufacturer.\(^{82}\) The defendant, a competing distributor, allegedly caused the manufacturer to breach the contract with the plaintiff and deal with the defendant instead.\(^{83}\)

The lower court denied the defendant's motion for summary judgment and the appellate court reversed,\(^{84}\) reasoning that since the contract was unenforceable and no improper conduct was present, the contract was an insufficient basis for an interference claim.\(^{85}\)

Contrary to the holding in *Zimmerman*, the *Guard-Life* court stated that a party who seeks to impose liability for an unenforceable or terminable at-will contract,

\[
\text{enjoys no legally enforceable right to performance; his interest is a mere expectancy—a hope of future contractual relations. Consequently, there having been no trespass or invasion of a substantial legal interest, there is no liability for interference with performance of a competitor's voidable contract absent employment of wrongful means, unlawful restraint of trade, or lack of competitive motive.}\(^{86}\)
\]

In a competitive society such as the United States, the *Guard-Life* rule is more appropriate than the rule found in *Zimmerman*. *Zimmerman* allows a party to recover the benefits of a contract to which he is not otherwise entitled.\(^{87}\) The *Guard-Life* rule, on the other hand, allows a party to recover the benefits of an unenforceable agreement only when a third party employs wrongful or unlawful practices.\(^{88}\) Thus, the *Guard-Life* court preserves the concept of fair competition while refusing to grant a party a benefit to which he is not entitled.

\(^{81}\) Id. at 195-96, 406 N.E.2d at 451-52, 428 N.Y.S.2d at 635. The court adopted a Japanese arbitration holding, which found the contract unenforceable, as res judicata. Id.
\(^{82}\) Id. at 187, 406 N.E.2d at 446, 428 N.Y.S.2d at 630.
\(^{83}\) Id. at 188, 406 N.E.2d at 447, 428 N.Y.S.2d at 630.
\(^{84}\) Id. at 188, 406 N.E.2d at 447, 428 N.Y.S.2d at 631.
\(^{85}\) Id. at 189, 406 N.E.2d at 446, 428 N.Y.S.2d at 630.
\(^{86}\) Id. at 193-94, 406 N.E.2d at 450, 428 N.Y.S.2d at 634.
\(^{87}\) See supra notes 67-76 and accompanying text.
\(^{88}\) See supra note 86 and accompanying text. The *Guard-Life* court defined wrongful means as actions which involve physical violence, fraud, or misrepresenta-
B. Terminable At-Will Contracts

The overwhelming majority of courts hold that interference with a contract terminable at-will is actionable. These courts reason that since an at-will contract "is a subsisting relation, of value to the plaintiff, and presumably to continue in effect" until termination or interference, it should be protected. The Arizona Supreme Court in Wagenseller v. Scottsdale Memorial Hospital, in particular, reasoned that "[t]he fact that the employment is at the will of the parties, respectively, does not make it at the will of others." This protection of at-will contracts, however, conflicts with the at-will doctrine. In the employment context, an employment at-will contract does not guarantee an employee a specific term of employment. As such, either party to the at-will contract may terminate the relationship at any time for any reason, leaving the remaining party with no cause of action. However, if a third party "interferes" with the same at-will employment relationship, by convincing the employee at-will to terminate her existing employment in order to work for him, he may be liable to the employer for ending the at-will relationship. Thus, although the employer did not bargain with


90. PROSSER & KEETON, supra note 16, at 995-96. Until an at-will contract is terminated, it is "valid and subsisting, and the defendant may not improperly interfere with it." Restatement (Second) of Torts § 766, comment g (1977).


92. Id. at 397, 710 P.2d at 1041 (quoting Truax v. Raich, 239 U.S. 33, 38 (1915)).

93. Typically, an at-will employment relationship is for an indefinite length of time. See, e.g., Cedarstrand v. Lutheran Bhd., 263 Minn. 520, 532, 117 N.W.2d 213, 221 (1962). See also Murg & Scharman, Employment at Will: Do the Exceptions Overwhelm the Rule?, 23 B.C.L. Rev. 329, 335 (1982)(broad presumption that an employee could be discharged at any time with or without cause).

94. Under the at-will doctrine, absent statutory or judicial exceptions, employment "may be terminated by either party at any time, and no action can be sustained for wrongful discharge." Skagerberg v. Blandin Paper Co., 197 Minn. 291, 302, 266 N.W.2d 872, 877 (1956).
the employee nor offer the employee a stable, definite relationship, he is still allowed to recover damages from a third party for the loss of his employee if the third party helps bring about the termination. By allowing the employer to recover as such, he gains a more definite relationship than he bargained for. The third party bears the expense rather than the parties to the at will contract.

Although at-will contracts usually are protected from interference, some courts fortunately have found that this protection should not be absolute. The possibility of termination is often taken into account when determining the defendant’s privilege to interfere. Consequently, an at-will contract is typically not protected when the defendant’s interference is based on any legitimate business purpose and no improper means are exerted.

C. Noncontractual Relationships

An action may lie for intentional interference with a business relationship even though no contract exists. In such cases, however, some courts have found it critical that the plaintiff show that the defendant acted illegally in achieving his end.

Yet, extending the ambit of the tort of interference with contract to encompass mere business or economic relationships, courts have placed an increased burden upon competition. In order to avoid liability, competitors must now proceed with extreme caution when they are seeking new business in order to avoid interference.

Many courts attempt to eliminate this strain on competition through the justification element. However, this approach does not offer much help to a third party in avoiding an interference with contract lawsuit. First, justification cannot be precisely defined; therefore, it is virtually impossible to determine beforehand whether an interference is justified.

96. See Restatement (Second) of Torts § 766, comment g (1977).
97. See Triangle Film Corp. v. Artcraft Pictures Corp., 250 F. 981, 982-83 (2d Cir. 1918); TAD, Inc. v. Siebert, 63 Ill. App. 3d 1001, 1006-07, 380 N.E.2d 963, 967 (1978); Restatement (Second) of Torts § 768, comment i (1977).

Additionally, it has long been recognized that an officer or director of a corporation is not liable for inducing the corporation’s breach of its own contract if the employee acts within the scope of his official duties. H.F. Philipsborn & Co. v. Suson, 59 Ill. 2d 465, 474, 322 N.E.2d 45, 50 (1974).


100. Guerdon Indus., Inc. v. Rose, 399 N.W.2d 186, 188 (Minn. Ct. App. 1987).
Second, although the absence of justification is one of the elements necessary to establish an interference claim, most courts hold that the burden of proof with respect to justification is upon the defendant. Justification has thus emerged as the most common defense to an allegation of interference with a business relationship. As a result, the plaintiff's burden of proof is diminished, as well as free competition in the marketplace.

D. Prospective Advantages

Liability may also be contingent upon interference with an individual's prospective advantage, relationships which have yet to materialize and are merely foreseeable at the time of interference. Tort liability for interference with prospective advantage developed from early cases which involved a third party's use of physical violence or threats to upset a competitor's future relationships. Generally, to show that a prospective interest is sufficient to enjoy protection from interference, a plaintiff need only demonstrate "the probability of future economic benefit." Under the Second Restatement of Torts, the typical interference with contract analysis is discarded for prospective advantage cases in favor of a rule which places a greater burden of proof on the plaintiff. Rather than requiring the defendant to establish justification, this rule requires the plaintiff to persuade the trier of fact that the defendant's interference was improper. Without such a burden on the plaintiff, this tort would render competition per se illegal.

III. The Tort in Minnesota

The courts in Minnesota have long recognized the tort of interference with contract. In Joyce v. Great Northern Railway Co., the

101. See, e.g., Royal Realty Co. v. Levin, 244 Minn. 288, 69 N.W.2d 667 (1955); see supra note 54; see also Hope Basket Co. v. Product Advancement Corp., 187 F.2d 1008 (6th Cir. 1951); Middlesex Concrete Prods. & Excavating Corp. v. Carteret Indus. Ass'n, 37 N.J. 507, 181 A.2d 774 (1962).
102. See supra note 54, at 24.
104. PROSSER & KEETON, supra note 16, at 1005.
105. Buckaloo, 14 Cal. 3d at 815, 537 P.2d at 866, 122 Cal. Rptr. at 745.
107. For instance, in Swager v. Couri, 77 Ill. 2d 173, 395 N.E.2d 921 (1979) the plaintiff's complaint gave sufficient notice of the lack of justification element; therefore, the court entered judgment in favor of the plaintiff. See also Lake Gateway Motor Inn v. Matt's Sunshine Gift Shops, Inc., 361 So. 2d 769, 771 (Fla. Dist. Ct. App. 1978)(inter alia tortious interference requires intentional and unjustified interference by defendant).
108. Mealey v. Bemidji Lumber Co., 118 Minn. 427, 136 N.W. 1090 (1912); see also
Minnesota Supreme Court first noted that a stranger's wrongful and malicious interference with the contractual relations of another, which causes a breach, is an actionable tort. However, it was not until *Mealey v. Bemidji Lumber Co.* that this tort was actually applied. In *Mealey*, the Minnesota Supreme Court upheld the trial court's finding that the defendant had interfered with the plaintiff's performance in a logging contract. The *Mealey* court held "that wrongful interference by a third party with an existing contract between two others, causing one to breach it and a resulting loss to the other, is actionable." 

As in other jurisdictions, the tort of interference with contract in Minnesota has not escaped the courts' inclination to broaden its application. In Minnesota, the elements necessary to establish a claim for interference with contract are essentially the same as other

---

109. 100 Minn. 225, 110 N.W. 975 (1907).
110. *Id.* at 229, 110 N.W. at 976. In this case, the plaintiff was initially employed by the Union Depot Company. *Id.* at 226, 110 N.W. at 976. During his employment the plaintiff was injured and had to sever this relationship. *Id.* at 227, 110 N.W. at 976. There was a possibility that the defendant railway company had been at fault for the plaintiff's injury.

Upon his recovery, the plaintiff applied for re-employment with the depot company and was promised a position subject to the approval of the superintendent. *Id.* However, the plaintiff was subsequently prevented from obtaining re-employment with the depot company because of the actions of the defendant. *Id.* at 228, 110 N.W. at 977.

The defendant railway company wrote to the depot company requiring them to obtain a release from the plaintiff. *Id.* If the plaintiff had agreed to sign this release the plaintiff would have relinquished any action against the defendant for the injuries he had sustained during his initial employment with the depot company. *Id.* The plaintiff refused to release the defendant, and the depot company did not re-employ him. *Id.*

The trial court dismissed the plaintiff's claim for interference. *Id.* at 229, 110 N.W. at 976. On appeal, the Minnesota Supreme Court recognized the tort of interference with contract, but relied upon a Minnesota Statute to overrule the lower court's dismissal. The statute made it unlawful for two employers to join in interfering with a person's effort to obtain employment. *Id.* at 235, 110 N.W. at 979.

111. 118 Minn. 427, 136 N.W. 1090 (1912).
112. *Id.* at 432, 136 N.W. at 1092.
113. *Id.* at 429, 136 N.W. at 1091.
114. For a discussion of the tort in other jurisdictions see *supra* notes 34–39 and accompanying text.
Since Mealey, the application of this tort in Minnesota has been expanded. Minnesota courts have used the tort of interference with contract to protect not only unenforceable contracts but also non-contractual relations. The Minnesota Supreme Court lists "the existence of a contract" as the first element necessary in establishing a claim for interference with contract. Yet the courts do not always require an existing contract.

Nonetheless, the contract element in an action for interference with contract in Minnesota is important. For instance, in Malevich v. Hakola, the parties to the sale of real estate had left essential terms of a written agreement to future negotiation. There was no subsequent meeting of the minds. It was undisputed that the vendors intended to remain unbound. The court held that the purchasers failed to state a cause of action for tortious interference since the existence of a contract to convey land is an essential ingredient.

115. See supra notes 51-56 and accompanying text for a discussion of the elements for a interference with contract claim.

Specifically, in Minnesota, recovery can be obtained for interfering with a contract by establishing that: (1) a contract existed; (2) the alleged tortfeasor knew of the contract; (3) the alleged tortfeasor intentionally interfered with the contract or intentionally procured its breach; (4) the alleged tortfeasor's actions were not justified; and (5) damage resulted. The elements for interference with contract can be found in the following cases: Span-Deck, Inc. v. Fab-Con, Inc., 677 F.2d 1237, 1245 (8th Cir.), cert. denied, 459 U.S. 981 (1982); American Surety Co. v. Schottenbauer, 257 F.2d 6, 10 (8th Cir. 1958); Continental Research, Inc. v. Crittenden, Podesta & Miller, 222 F. Supp. 190, 198 (D. Minn. 1963); Furley Sales & Assocs., Inc. v. North Am. Automotive Warehouse, Inc., 325 N.W.2d 20, 25 (Minn. 1982); Bouten v. Richard Miller Homes, Inc., 321 N.W.2d 895, 900 (Minn. 1982); Stephenson v. Plastics Corp. of Am. Inc., 276 Minn. 400, 416, 150 N.W.2d 668, 679 (1967); Snowden v. Sorensen, 246 Minn. 526, 532, 75 N.W.2d 795, 799 (1956); Royal Realty Co. v. Levin, 244 Minn. 288, 292, 69 N.W.2d 667, 671 (1955); Guerdon Indus., Inc. v. Rose, 399 N.W.2d 186, 187 (Minn. Ct. App. 1987); Andersen v. Andersen, 376 N.W.2d 711, 716 (Minn. Ct. App. 1985); New Concept Confineement Technology Feeders, Inc. v. Kuecker, 364 N.W.2d 450, 452-53 (Minn. Ct. App. 1985); Potthoff v. Jefferson Lines, Inc., 363 N.W.2d 771, 775 (Minn. Ct. App. 1985). See also MINN. JURY INSTRUCTION GUIDES, CIVIL 3/ JIG 680 at 156 (West Supp. 1988).

116. See, e.g., Royal Realty Co. v. Levin, 244 Minn. 288, 69 N.W.2d 667 (1955)(Minnesota Supreme Court adopted the prevailing view that noncompliance with the statute of frauds does not relieve an interfering party of liability); Miller v. Monsen, 228 Minn. 400, 37 N.W.2d 543 (1949)(child was entitled to recover against the defendant for enticing the child's mother from his home).

117. See supra note 115.

118. See infra notes 128-138 and accompanying text.

119. Malevich v. Hakola, 278 N.W.2d 541, 544 (Minn. 1979); see also Snowden v. Sorensen, 246 Minn. 526, 532, 75 N.W.2d 795, 799 (1956).

120. 278 N.W.2d 541 (1979).

121. Id. at 544.

122. Id.

123. Id.
which was missing.\textsuperscript{124}

In the same vein, in \textit{Bouten v. Richard Miller Homes, Inc.},\textsuperscript{125} the contract was void since the contracting parties had failed to meet the contingencies which were set out in the purchase agreement.\textsuperscript{126} Once again, the Minnesota Supreme Court held that there were no interference with contract rights because there was no contract.\textsuperscript{127}

Even if a contract is void because it fails to meet the requirements of the statute of frauds, however, an interfering party may still be liable for inducing the breach of the contract.\textsuperscript{128} In \textit{Royal Realty Co. v. Levin},\textsuperscript{129} the Minnesota Supreme Court unequivocally held that the statute of frauds does not relieve the interfering party of liability.\textsuperscript{130} The court reasoned that, "the statute of frauds does not render a contract absolutely void in the sense that no contract ever [came] into existence."\textsuperscript{131} Moreover, the court concluded that the defense of the statute of frauds could only be employed by those in privity to the contract.\textsuperscript{132}

The Minnesota Supreme Court expressly rejected the New York courts' rule that an interference claim cannot be based on an unen-
forceable contract. The court stated that the New York courts' reasoning was "faulty." In addition to unenforceable contracts, Minnesota also offers tort protection for potential contractual relationships. Wrongful interference with a prospective advantage is actionable in Minnesota. Courts often analyze a cause of action for interference with prospective contractual relations as they would a claim for interference with a present contract. In *United Wild Rice, Inc. v. Nelson*, the court set out the elements of interference with prospective advantage:

One who intentionally and improperly interferes with another's prospective contractual relation (except a contract to marry) is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relations, whether the interference consists of:

(a) inducing or otherwise causing a third person not to enter into or continue the prospective relation; or
(b) preventing the other from acquiring or continuing the prospective relation.

Also, a claim for interference with prospective business relations is subject to a showing by the plaintiff that, absent the conduct of the interfering party, he would have been able to secure the business allegedly taken from him.

In *United Wild Rice*, the defendant's former employer alleged that the defendant was actively soliciting the employer's customers, and hence, interfering with their contracts. In recognizing a need to

133. Id. at 293, 69 N.W.2d at 672. For a discussion of the New York courts' approach see supra notes 77–88 and accompanying text.
134. 244 Minn. at 293, 69 N.W.2d at 672.
135. See infra notes 136–43 and accompanying text.
136. See Wild v. Rarig, 302 Minn. 419, 447, 234 N.W.2d 775, 799 (1975)(research scientist's action for interference with contract for project funding); Witte Transp. Co. v. Murphy Motor Freight Lines, 291 Minn. 461, 464, 193 N.W.2d 148, 152 (1971)(mere administrative failure will not sustain an action; interference with a non-contractual business relationship must be willful and malicious); Wicker v. Roering, 364 N.W.2d 479, 481 (Minn. Ct. App. 1985)(seller's plowing of land did not constitute interference with contract purchaser's rights under agreement); see also Midway Manor Convalescent & Nursing Home v. Adcock, 386 N.W.2d 782, 788 (Minn. Ct. App. 1986)(trial court's denial of a claim for wrongful interference with a prospective advantage affirmed because the practices of the defendant were justified and protected by discretionary immunity).
137. 313 N.W.2d 628 (Minn. 1982).
138. Id. at 633 (quoting *RESTATEMENT (SECOND) OF TORTS* § 766B (1977)).
139. North Central Co. v. Phelps Aero, Inc., 272 Minn. 413, 420, 139 N.W.2d 258, 263 (1965)(applying a "but-for" test, the court held that defendant's leasing of an aircraft to a competing aviation company when not used by lessee, in accordance with contract, did not violate an implied covenant not to compete).
140. Id. at 631.
preserve competition, the court denied the plaintiff's claim. Although the defendant interfered with the plaintiff's prospective contractual relations, the court found that the interference was not improper. The court's rationale was based on the Second Restatement:

(1) One who intentionally causes a third person not to enter into a prospective contractual relation with another who is his competitor or not to continue an existing contract terminable at will does not interfere improperly with the other's relation if:
   (a) the relation concerns a matter involved in the competition between the actor and the other; and
   (b) the actor does not employ wrongful means; and
   (c) his action does not create or continue an unlawful restraint of trade; and
   (d) his purpose is at least in part to advance his interest in competing with the other.

Although the Mealey court stated that an interference had to be "wrongful" in order to be actionable, under present law this requirement no longer exists. Rather than requiring a "wrongful" interference, interference is considered actionable when the defendant cannot meet his or her burden of proof and establish that his or her actions were justified.

The justification element in a tortious interference claim is intertwined with the alleged tortfeasor's motive. The tortfeasor's motive can be very important in establishing a claim for interference with contract. Minnesota recognizes two basic types of unjustified interference. "Interference is unjustifiable when it is done 'for the indirect purpose of injuring the plaintiff, or of benefiting the defend-

141. Id. at 633. The court stated that "[c]ompetition is favored in the law. The law's preference for competition is illustrated by the establishment of a special privilege for competitors." Id.
142. Id. at 635.
143. Id. at 633.
144. RESTATEMENT (SECOND) OF TORTS § 768 (1977). The United Wild Rice court adopted this section. 313 N.W.2d at 633.
145. In Mealey v. Bemidji Lumber Co., 118 Minn. at 429, 136 N.W. at 1091, the Minnesota Supreme Court stated that a "wrongful" interference by a third party was actionable.
146. The elements of a claim for interference with contract do not require a wrongful interference. See supra note 107.
147. See infra notes 148-61.
148. Stephenson v. Plastics Corp. of Am., 276 Minn. 400, 417, 150 N.W.2d 668, 680 (1967); see Royal Realty Co. v. Levin, 244 Minn. 288, 291-92, 69 N.W.2d 667, 671 (1955)("according to the vast majority of decisions, even though the means employed in procuring the breach are in themselves lawful, where the inducement is without justification it may nevertheless be actionable").
ant at the expense of the plaintiff".\textsuperscript{150} In \textit{Johnson v. Gustafson},\textsuperscript{151} the court stated that:

"[m]erely to persuade a person to break his contract, may not be wrongful in law or fact. \ldots But if the persuasion be used for the indirect purpose of injuring the plaintiff, or of benefitting the defendant at the expense of the plaintiff, it is a malicious act, which is in law and in fact a wrong act, and therefore a wrongful act, and therefore an actionable act if injury ensues from it."\textsuperscript{152}

As stated earlier, justification is the most common affirmative defense to an interference action.\textsuperscript{153} Justification denotes the presence of circumstances which establish that a tort was not committed.\textsuperscript{154} Interference is justified only when it is founded upon a lawful objective.\textsuperscript{155}

Ordinarily, justification is a question of fact for the jury and the burden of proof rests on the defendant. The standard is what is reasonable under the circumstances.\textsuperscript{156} Courts following Minnesota law have recognized justification as a defense in a variety of situations.\textsuperscript{157}

\begin{itemize}
\item \textsuperscript{150} See Stephenson, 276 Minn. at 416, 150 N.W.2d at 680 (1967); see also Furlev Sales & Assocs. Inc. v. North Am. Automotive Warehouse, Inc., 325 N.W.2d 20, 27 (Minn. 1982); Johnson v. Gustafson, 201 Minn. 629, 634, 277 N.W. 252, 255 (1938).
\item \textsuperscript{151} 201 Minn. 629, 277 N.W. 252 (1938).
\item \textsuperscript{152} Id. at 634, 277 N.W. at 255 (quoting Louis Kamm, Inc. v. Fink, 113 N.J.L. 582, 587, 175 A. 62, 66 (1934))(emphasis omitted).
\item \textsuperscript{153} See supra note 102.
\item \textsuperscript{154} Johnson v. Radde, 293 Minn. 409, 411, 196 N.W.2d 478, 480 (1972).
\item \textsuperscript{155} Sorenson v. Chevrolet Motor Co., 171 Minn. 260, 263, 214 N.W. 754, 755 (1927).
\item \textsuperscript{156} Bennett, 270 Minn. at 263, 134 N.W.2d at 900 (1965); see also Furlev, 325 N.W.2d at 27; Bouten, 321 N.W.2d at 901; Royal Realty, 69 N.W.2d at 673; Wolfson v. Northern States Management Co., 210 Minn. 504, 507, 299 N.W. 676, 678 (1941).
\item \textsuperscript{157} See, e.g., Span-Deck, Inc. v. Fab-Con, Inc., 677 F.2d 1237 (8th Cir. 1982)(urging one to cease making royalty payments because of the invalidity of the underlying patent was justified); Smith v. American Guild of Variety Artists, 349 F.2d 975 (8th Cir. 1965)(a right to strike which falls within the protection of national labor right to strike which falls within the protection of national labor statutes affords a defense of justification or privilege to a contractual interference action); Langeland v. Farmers State Bank of Trimont, 319 N.W.2d 26 (Minn. 1982)(a creditor’s redemption of a landowner’s farm after the bank failed to do so on the landowner’s behalf was justified since the landowner owed the creditor a debt that it was entitled to collect); Bennett v. Storz Broadcasting Co., 270 Minn. 525, 533, 134 N.W.2d 892, 898 (1965)("the right of the defendant to interfere with the plaintiff’s attempt to better his employment may be justified where the interference is made in good faith in an attempt to assert a legally protected interest which might be endangered or destroyed and under circumstances where the contract gives the employer a right which is equal or superior to the right of the employee to better his condition"); New Concept Confinement Technology Feeders, Inc. v. Kuecker, 364 N.W.2d 450 (Minn. Ct. App. 1985)(there is a lawful justification to pursue the debt owed by a plaintiff to the defendant).
\end{itemize}
The plaintiff is no longer required to establish that the defendant's actions were wrongful or unjustified; the plaintiff, however, must establish that the alleged tortfeasor intended to interfere.\textsuperscript{158} In \textit{Guerdon Industries, Inc. v. Rose},\textsuperscript{159} the court stated that, "it appears the nature of the intent determines liability."\textsuperscript{160} The interference must be intentional; Minnesota has never recognized an action for negligent interference with a business relation.\textsuperscript{161} However, by no longer requiring a plaintiff to affirmatively establish that the defendant wrongfully interfered but rather by placing the burden on the defendant to show that his or her actions were justified, the Minnesota courts have reduced the plaintiff's burden at the expense of free competition.

IV. Conclusion

Although the tort of interference with contract grew out of timely and appropriate concerns regarding the protection of the marketplace, this concern is no longer being served. Earlier the tort required an act of violence; however, today the tort protects most business relationships, enforceable or unenforceable, from simple third party interference. By eliminating the violence requirement, the tort has been broadened beyond its original confines to the point of creating a strain on free competition. As Texaco, Inc. discovered when it attempted to outbid Pennzoil and, subsequently lost a billion-dollar interference with contract lawsuit, free competition is no longer free.

The time has come to limit the broad reach of this tort. The elements necessary to prove an interference action should include an enforceable relationship and a malicious or wrongful interference with that relationship. These requirements would eliminate the confusion which surrounds the application of the tort and restore free competition.

\textit{Gina M. Grothe}

\textsuperscript{158} Guerdon Indus., Inc. v. Rose, 399 N.W.2d 186 (Minn. Ct. App. 1987); see also \textit{Restatement (Second) of Torts} § 766, comment a (1977).
\textsuperscript{159} 399 N.W.2d 186 (Minn. Ct. App. 1987).
\textsuperscript{160} \textit{Id.} at 188.