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Torts—Intentional Interference with Contractual Relationship—Malicious Interference with Attorney-Client Relationship

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the twenty-two states which have completely repudiated charitable immunity,[11] a trend universally applauded by writers in the field.[12] Barring legislative reversal,[13] Washington will presumably remain there.

Intentional Interference With Contractual Relationship—Malicious Interference With Attorney-Client Relationship. The Washington Supreme court recently decided a case having personal as well as professional interest to the legal profession. Plaintiff, an attorney, was requested by a widow to make arrangements whereby she could continue her deceased husband's business, and initiated probate of the husband's estate. Defendants, tax consultants and certified public accountants, were later retained by the widow to perform the estate's tax work. At defendant's urging, the widow selected another attorney from a list furnished by defendants and terminated plaintiff's employment. Plaintiff, upon inquiry, was informed by defendants that they hired and fired attorneys for their clients. Plaintiff sued for damages in the amount of his expectable attorney's fees, alleging that defendants had intentionally interfered with his employment contract. On appeal from a judgment for plaintiff, *held:* The defense of privilege is not available to a third party who maliciously interferes with a contract terminable at will. *Calbom v. Knudtzon,* 65 Wash. Dec.2d 137, 396 P.2d 148 (1964).

Intentional interference in the contract rights of others is an actionable tort in Washington.[1] The tort consists of an intentional act, committed with knowledge of the plaintiff's economic interest, which interferes with an existing valid contractual relationship or business expectancy of the plaintiff, and causes damage to the plaintiff.[2] The interference may be privileged, however, if its purpose is protection of

[11] See 2 HARPER & JAMES, TORTS 1671 (1956); PROSSER, TORTS § 127 at 1023 (3rd ed. 1964).

[12] *E.g.,* 2 HARPER & JAMES, TORTS § 29.17; PROSSER, TORTS § 127; Spencer, *Ray v. Tucson Medical Center: A Reappraisal of Tort Liability of Charities,* 24 ROCKY MT. L. REV. 71 (1951).

[13] See N.J. REV. STAT. §§ 2A:53A-7-11 (Supp. 1962); Collopy v. Newark Eye & Ear Infirmary, 27 N.J. 29, 141 A.2d 276 (1958); Peck, *The Role of the Courts and Legislatures in the Reform of Tort Law,* 48 MINN. L. REV. 265, 288 (1963).

[1] Titus v. Tacoma Smeltermen's Union, 62 Wn.2d 461, 383 P.2d 504 (1963); Hein v. Chrysler Corp., 45 Wn.2d 586, 277 P.2d 504 (1954); Sears v. International Bhd. of Teamsters, 8 Wn.2d 447, 112 P.2d 850 (1941); Porter v. King County Medical Society, 186 Wash. 410, 58 P.2d 367 (1936); Pacific Typesetting Co. v. International Typographical Union, 125 Wash. 273, 216 Pac. 358 (1923); Seidell v. Taylor, 86 Wash. 645, 151 Pac. 41 (1915); Jones v. Leslie, 61 Wash. 107, 112 Pac. 81 (1910).

[2] RESTATEMENT, TORTS § 766 (1939). See 65 Wash. Dec.2d at 142, 396 P.2d at 151.

a sufficient interest of the defendant, or of others.[3] Defendant has the burden of proving that an alleged interference is privileged.[4]

In the principal case, defendants claimed that their interference was justified by the privilege of responsibility for the welfare of another and the privilege of giving requested advice, as set forth in sections 770 and 772 of the Restatement of Torts. Rejecting this claim, the court stated with reference to privileges in general, "Such privileges, however, do not justify officious, self-serving, or presumptuous assumption of responsiblity and interference with the rights of others."[5] Because the court approved the trial court's finding that "defendants' interference was malicious, intentional and without justification,"[6] it followed that defendants' interference was unprivileged.

Although the finding of malicious, intentional interference would appear to have settled the issue, the court proceeded to consider whether defendants had met the burden of proof as to the alleged privileges. To be consistent with its prior general statement, the court should have stated that the issue of burden of proof was immaterial, because malicious interference can never be privileged. Instead, the court said:

> We are satisfied, from our examination of the record, that defendants have not sustained their burden of proof. Suffice it to say the evidence supports the trial court's finding that defendant's interference was malicious, intentional and without justification.[7]

Thus it appears that the court was unwilling to be explicit as to its reason for denying the proffered defense of privilege, in light of plaintiff's proof of *malicious* intentional interference.

Plaintiff recovered damages in the amount of the fee he would have received had he concluded probate of the estate, less compensation

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[3] *E.g.*, Sunbeam Corp. v. Payless Drug Stores, 113 F. Supp. 31 (N.D. Cal. 1953) (privilege to break restrictions violative of public policy); Braden v. Haas, Howell & Dodd, 56 Ga. App. 342, 192 S.E. 508 (1937) (protection of a financial interest in the promisor's business); Philadelphia Dairy Products, Inc., v. Quaker City Ice Cream Co., 306 Pa. 164, 159 Atl. 3 (1932) (legitimate competition); Gregory v. Dealer's Equip. Co., 156 Tenn. 273, 300 S.W. 563 (1927) (privilege of one responsible for the welfare of another); Elvington v. Waccamaw Shingle Co., 191 N.C. 515, 132 S.E. 274 (1926) (privilege to assert a bona fide claim); Coakley v. Degner, 191 Wis. 170, 210 N.W. 359 (1926) (privilege to advise on request); Macauley v. Tierney, 19 R.I. 255, 33 Atl. 1 (1895) (privilege to influence another's business policy). See RESTATEMENT, TORTS §§ 768-74 (1939).

[4] Aikens v. Wisconsin, 195 U.S. 194 (1904); Berry v. Donovan, 188 Mass. 353, 74 N.E. 603 (1905); RESTATEMENT, TORTS §§ 766, 777 (1939).

[5] 65 Wash. Dec.2d at 146, 396 P.2d at 153.

[6] *Id.* at 146, 396 P.2d at 154.

[7] *Id.* at 146, 396 P.2d at 154-55.

waived for services performed prior to termination of his contract. Defendant asserted that this recovery should be further offset by the value of time and expenses saved the plaintiff by his termination, as in an action for breach of contract. The court rejected the contract measure of damages as inapplicable to an intentional tort, but added: "If defendants would offset the damages as claimed in the manner asserted, the burden rested upon them to affirmatively allege and offer proof upon such offset."[8] This statement would suggest that savings to an attorney of time and expense are deductible from his recovery in an action for intentional interference. But an attorney's fee is wholly composed of his time and expense; absent these items of recovery, an attorney would be limited to such items as damage to reputation, loss of future earnings, and mental anguish. Despite the court's recognition that "professional services ... [comprehend] many intangible values not wholly susceptible of proof,"[9] the fact remains that such damages would be extremely difficult to prove.

Regardless of the court's equivocal treatment of the issues of burden of proof and measure of damages, the position of the court as regards the integrity of the attorney-client relationship is clear. The decision in the principal case can leave no doubt that third parties will not be permitted to control the relationship between an attorney and his client.

Admissibility of Extrinsic Evidence as Proof of Libel Per Se. The dubious distinction between libel per se and libel per quod may be non-existent in Washington following a recent supreme court decision. Plaintiff was divorced from his former wife, Hazel, on February 3, 1960. In September 1960, he married his present wife. Thereafter plaintiff instituted a suit to modify the divorce decree. Defendant newspaper, in reporting this suit, printed the following statement: "Divorce Granted—Hazel M. Pitts from Phillip Pitts." Plaintiff sued defendant for libel, alleging that considering extrinsic facts the publication was libelous per se; it gave the impression that plaintiff's second marriage was illegal and that he was a bigamist. Defendant contended that the publication was not libelous per se and that plaintiff could not recover on the theory of a libel per quod since special damages had not been pleaded. On appeal from a judgment for plaintiff in the court below, *held:* False statements published in a newspaper concerning

[8] *Id.* at 147, 396 P.2d at 154.
[9] *Id.* at 147, 396 P.2d at 154.