

2780 INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONSHIP

Question ____ of the Special Verdict asks whether (plaintiff) had a contractual relationship (prospective contractual relationship) with (3rd party).

[If there is an issue on whether the relationship amounts to a contract, use appropriate contract instructions.]

Question ____ of the Special Verdict asks whether (defendant) interfered with the (prospective) contractual relationship (plaintiff) had with (3rd party).

An interference may consist of any conduct or words conveying to (3rd party) the defendant's desire to influence (3rd party) to refrain from dealing with the plaintiff. It could be a simple request or persuasion, exerting only moral pressure, as well as threats or promises of some benefit to (3rd party). It does not require ill will or expression of malice towards the plaintiff.

Question _____ of the Special Verdict asks whether that interference on (defendant)'s part was intentional.

In determining (defendant)'s intent, you may consider (his) (her) actions and statements. Ordinarily, it is reasonable to infer that a person intends the natural and probable consequences of (his) (her) acts.

Although other reasons may appear, (plaintiff) must prove that (defendant)'s prime purpose was to interfere with the contractual relationship (plaintiff) had with (3rd party) or (defendant) knew or should have known that such interference was substantially certain to occur as a result of the conduct.

[If knowledge (plaintiff)'s relationship with (3rd party) is an issue, add the following: It is not necessary that (defendant) had actual knowledge of this specific

contract. It is sufficient that (defendant) had knowledge of facts which, if followed by inquiry ordinarily made by a reasonable and prudent person, would have led to a disclosure of the contractual relationship between (plaintiff) and (3rd party). This is sometimes referred to as “constructive knowledge.”]

Question ____ asks whether a causal connection existed between the interference by (defendant) and the damages claimed by (plaintiff).

Before you can find that (defendant)’s conduct was a cause of the claimed damages, you must find that the defendant’s conduct was a substantial factor; that is, it had a substantial influence in producing the damages claimed by the plaintiff. In other words, there must be a real causal connection between defendant’s conduct and plaintiff’s claimed damages.

Question ____ asks whether (defendant) was justified (or privileged) to interfere with the contractual relationship (plaintiff) had with (3rd party).

In determining whether (defendant)’s conduct was justified, you should weigh all the circumstances of the case. Among the factors you should consider are (1) the nature, type, duration, and timing of the conduct; (2) whether (defendant) had an improper motive; (3) whether (defendant) was motivated by self-interest as opposed to a public interest; (4) the type of interest allegedly interfered with; (5) society’s interest in protecting both freedom of action on (defendant)’s part and contractual relationship of parties; (6) the closeness or remoteness of (defendant)’s conduct to the alleged interference; (7) whether (plaintiff) and (defendant) are competitors; and (8) whether (defendant)’s conduct, even though intentional, was fair and reasonable under the circumstances.

A defendant's conduct may only be found justified if the means employed by the defendant were lawful. A person's conduct cannot be justified if the person acted from ill will or an improper motive towards the plaintiff. Some ill will does not preclude the possibility of justification, so long as defendant acted in substantial part with a proper motive in mind.

[For privileges, see Comment.]

The burden of proof as to questions one, two, three, four, and six is on (plaintiff). The burden of proof as to question five is on (defendant). In questions one and five, the party contending that the question should be answered "yes" must satisfy you, by the greater weight of the credible evidence, to a reasonable certainty, that "yes" should be your answer.

Before you may answer "yes" to questions two, three, or four, (plaintiff) must satisfy you by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that "yes" should be your answer as to the questions under consideration.

SPECIAL VERDICT

First Question: Did (plaintiff) have a contract with (third party) at the time of (defendant)'s alleged interference?

Answer: _____

Yes or No

[Note: In most cases, the first question can be answered by the court as a matter of law.]

Second Question: If you have answered question 1 “yes,” answer this question:
Did (defendant) interfere with (plaintiff)’s contract with (third party)?

Answer: _____

Yes or No

Third Question: If you have answered question 2 “yes,” answer this question:
Was the interference on (defendant)’s part intentional?

Answer: _____

Yes or No

Fourth Question: If you have answered question 3 “yes,” answer this question:
Was the interference on (defendant)’s part a cause of damages to (plaintiff)?

Answer: _____

Yes or No

Fifth Question: If you have answered question 4 “yes,” answer this question:
Was the interference on (defendant)’s part justified?

Answer: _____

Yes or No

Sixth Question: Damages.

COMMENT

This instruction and comment were approved by the Committee in 1990. The instruction was revised in 2002 and 2005 as to the burden of proof language. The comment was updated in 1996, 2001, 2005, 2014, and 2020. The 2020 revision updated case law citations.

Wisconsin adopted the 1939 version of the Restatement of Torts, § 766, in Mendelson v. Blatz Brewing Co., 9 Wis.2d 487, 101 N.W.2d 805 (1960). The updated 1979 version of this section of Restatement, Second, Torts was adopted in Charolais Breeding Ranches, Ltd. v. FPC Securities Corp., 90 Wis. 2d 97, 279 N.W.2d 493 (Ct. App. 1979).

Also actionable is preventing a party from performing a contract or causing performance to be more expensive or burdensome, § 766A, or interfering with a prospective contractual relationship, § 766B Restatement, Second, Torts; Cudd v. Crownhart, 122 Wis.2d 656, 659, 364 N.W.2d 158 (Ct. App. 1985) rev. den.

Evidentiary Burden. No Wisconsin appellate court has determined whether the plaintiff must show “improper” interference or if the defendant must prove that his or her interference was justified. Nor does the Restatement delineate on whom the burden lies. The Committee concurs with two federal courts’ interpretation of Wisconsin law that plaintiff establishes a prima facie case by showing an intentional interference with his or her contract by defendant, and the latter must then prove justification for his or her acts. See Chrysler Corp. v. Lakeshore Commercial Fin. Corp., 389 F. Supp. 1216, 1221 (E.D. Wis. 1975), aff’d., 549 F.2d 804 (1977); and Federal Pants, Inc. v. Stocking, 762 F.2d 561 (7th Cir. 1985).

A plaintiff does not have to show malicious intent to sustain a claim. Foseid v. State Bank of Cross Plains, 197 Wis.2d 772, 541 N.W.2d 203 (Ct. App. 1995).

The plaintiff does not have the burden of proving lack of privilege. Rather, proof by the plaintiff of intentional interference with the existing contractual relations of another is sufficient to establish liability. This shifts the burden of proving justification or privilege for any interference to the defendant. Finch v. Southside Lincoln-Mercury, Inc., 2004 WI App 110, 274 Wis.2d 719, 685 N.W.2d 154 (citing Chrysler Corp. v. Lakeshore Commercial Fin. Corp., supra, and Wis JI-Civil 2780). See also Wolnak v. Cardiovascular & Thoracic Surgeons of Central Wisconsin, S.C., 2005 WI App 217, 287 Wis.2d 560, 706 N.W.2d 667.

Interference. Interference may also be found where the actor knows the interference is certain or substantially certain to occur as a result of his or her action. Foseid, supra at 790 n.11. However, this concept based on Restatement, Second, Torts, applies only where it is apparent at the outset that the tortfeasor acted with the intention to interfere with the prospective contract or acted in such a fashion and for such purpose that he knew that the interference was “certain, or substantially certain, to occur.” Foseid, supra at 791 n.11, citing Augustine v. Anti-Defamation League of B’nai B’rith, 75 Wis.2d 207, 221, 249 N.W.2d 547, 554 (1977).

Defenses. Affirmative defenses include truthful information or honest advice within the scope of a request for advice by a defendant to a third party, Restatement, Second, Torts, § 772, and Liebe v. City Fin. Corp., 98 Wis.2d 10, 295 N.W.2d 16 (Ct. App. 1980) rev. den.; Hale v. Stoughton Hosp. Ass’n, Inc., 126 Wis.2d 267, 282, 376 N.W.2d 89 (Ct. App. 1985), and a free speech privilege to assert complaints. Augustine v. Anti-Defamation League B’nai Brith, 75 Wis.2d 207, 218, 249 N.W.2d 547 (1977).

A claim for intentional interference with contract based on disclosure of information is precluded by the First Amendment where the broadcast was a “matter of public concern.” Dumas v. Koebel, 2013 WI App 152, 352 Wis.2d 13, 841 N.W.2d 319.

Another example would be where defendant has a legally protected interest and believes his or her own interest would be impaired or destroyed by performance of the contract; Restatement, Second, Torts, § 773, and Cudd v. Crownhart, supra at 662.

If the contract involved is one terminable at will, competition is not an improper basis for interference as long as no wrongful means are employed, no restraint of trade occurs, and the purpose of defendant's actions is to advance his or her own competitive interests; Restatement, Second, Torts, § 768, and Liebe v. City Fin. Co., *supra*; Pure Milk Prod. Coop. v. National Farmers' Org., 90 Wis.2d 781, 796, 280 N.W.2d 691 (1979).

Other possible avoidances of liability involve situations where defendant has a financial interest in the party induced, where defendant is responsible for the welfare of another, or where the contract is an illegal one or contrary to public policy; Restatement, Second, Torts, §§ 769, 770, and 774.

Damages. Assuming a causal relationship between the defendant's actions and plaintiff's losses, damages may include: (a) pecuniary loss of benefits of the contract, (b) causally related consequential losses, and (c) emotional distress which is reasonably expected to so result from the interference; Restatement, Second, Torts, § 774A.