Tortious Interference with Contracts: Why Punish It?

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Abstract

Transaction costs do not justify the doctrine of tortious interference with contract. Better reasons are malice, judgement-proofness, and foreseeable court error.

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1. Introduction

Consider the following three hypotheticals:

> *Tort.* Injuror deliberately heckles a performance in Plaintiff's theatre out of pure malice, causing damage of $10 to Plaintiff. What damages should the court require Injuror to pay to Plaintiff?
>
> *Contract.* Promisor breaches a contract in which he promised to perform in Plaintiff's theatre, causing damage of $10 to Plaintiff. What damages should the court require Promisor to pay to Plaintiff?

> *Tortious Interference with Contract.* Promisor breaches a contract in which he promised to perform in Plaintiff's theatre, causing damage of $10 to Plaintiff. Promisor does this because Inducer, who was aware of the contract, made him a better offer to perform that night. What damages should the court require Promisor and Inducer to pay to Plaintiff?

This article is about the different ways the law deals with these three situations.

The doctrine of tortious interference with contract is a curious one. There are three ways in which the law deals with a situation in which Doe has injured Roe.

First, Roe may have no legal recourse. This is the case if the injury is, for example, to start a new grocery store that competes with Roe's existing store, or to sue Roem, or repossess Roe's car after he fails to make his loan payments. None of those injuries are legal wrongs.

Second, Roe may be able to sue for compensation. This is the case in breach of contract; if Doe refuses to perform what he promised, the court

will either order Doe to perform (specific performance) or, more commonly, order him to pay enough cash to make Roe no worse off than if performance had occurred (money damages).

Third, Doe may be punished, being required to pay more than the harm he causes Roe. This is the case in criminal law and with "intentional torts", where criminal penalties and punitive damages are added to the compensation to which the Plaintiff has a right.[1]

The action for tortious interference with contract mixes the tort doctrine of punitive damages for intentional harm with the contract doctrine of mere compensation. If Promisor deliberately breaches his contract with Plaintiff, contract doctrine says that Promisor must make Plaintiff whole, but Promisor suffers no additional civil or criminal punishment. In fact, the two parties cannot even write into the contract an additional penalty for breach; the court will not enforce a penalty clause. If, however, Promisor breaches his contract with Plaintiff as a result of knowing actions of a third party, Inducer, then the doctrine of tortious interference with contract makes Inducer liable not just for compensation to Plaintiff, but for punitive damages as well.

Section 766 of the *Second Restatement of Torts* defines the tort of interference with contract as follows:

> 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 for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.

Previous articles (McChesney, Long, Gergen, Myers) are vague as to

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[1] We are here concerned with an injuror who knowingly inflicts harm, which explains why I omitted two prominent examples of how the law deals with harm: 1. Offering no legal recourse when an accident occurs but the injuror was neither aware that it would happen nor negligent, and 2. Offering compensation to the victim when an accident occurs but the injuror, while negligent, did not intend the harm.

what the remedies are, which is the crux of the matter. Clearly, punitive damages are available in tort, unlike in contract. Questions I still need to answer are:

1. Can Plaintiff collect compensatory damages from both Promisor and Inducer, for double compensation overall?

2. Can Plaintiff ask for restitution damages— the gain to Inducer from his wrongful conduct?

I will assume for simplicity below that Plaintiff cannot collect double compensatory damages and cannot collect restitution damages. If either of these assumptions is false, the doctrine of tortious interference can lead to much greater inefficiency than otherwise.

At any rate, the mixture of tort and contract is perverse. It fails to punish Promisor, who would seem to have the greater moral fault, but it does punish Inducer. Moreover, it punishes Inducer for merely outcompeting Plaintiff, something that ordinarily falls into the first class of harms, the unpunished ones that are not legal wrongs. How can this be explained?

Finding an explanation from either morality, legal formalism, or efficiency is difficult.

As just noted, everyday morality would point to Promisor as being at fault just as much or more than Inducer.

A formalist explanation might be that Inducer has induced Promisor to do what is illegal (to breach the contract– a civil wrong, if not a criminal one), and so deserves punishment. Anson/Corbin (1919) says

> "There is a clear distinction between inducing A to break his contract with X, and inducing A not to enter into a contract with X. The man who induces another to break a contract induces him to do what is in itself actionable: but not liability attaches to the refusal to make a contract. Consequently, where A is induced not to contract with X, the inducement, if it is to be actionable, must be of an

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> unlawful kind, as for example acts of coercion and intimidation; or,
> again, where there is a conspiracy by more than one person to injure;
> for 'numbers may annoy and coerce, where one may not'."
>
> p. 330, footnote to *Quinn v. Leathem* (1901) A.C. 511, 538

But, again, this fails to explain why Promisor himself is liable only for compensation and not for punishment. Legal formalism does not have a good explanation for the doctrine of tortious interference.

Richard Epstein argues in a similar vein that the law treats the contract as property, and that the Inducer has destroyed or stolen Plaintiff's property. But that too fails to explain why Promisor is not liable for punitive damages.

What about efficiency? Four explanations have been attempted.

1. Court error (Bevier)

2. Transaction costs (McChesney)

3. Malice

4. Judgement-Proofness (Landes-Posner, bondage cases of the 1900 South)

   I will go through these one by one.

   We should be careful, though, in seeing if there is anything to be explained. The Pennzoil Case is not typical. Most Tortious Inducement cases do not arise simply because a third party make a better offer and induces breach. In most of them, in fact, the third party defendant does not replace the plaintiff in the contractual relationship. Instead, typical cases are more like defamation cases, or accuse the defendant of inducing breach out of pure malice. The Restatement of Torts and other authorities are not to be trusted too far in stating what courts actually do.

2. Court Error: Bevier

Lumley v. Gye talks of "to the mere chance of any damages which a

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jury may give." This is BeVier's theme. She does not formally model it, as I do below, but I think this is something of the idea she has. It depends crucially on court error.

Consider two kinds of cases. First, there is investment in information: here, the Inducer discovers that there is a profit to be made, and pays the Plaintiff more. Second, there is the relational contract. If there is investment by Plaintiff that increases the value of the Promisor, then Promisor might go to the Inducer to get a better price. This perhaps might be best dealt with by a well-written contract, containing upfront payments from Promisor to Plaintiff, but the law must also handle situations where the contract has not been well written.

Both of these ideas can profit from formal modelling, Both require predictable court error for there to be any inefficiency requiring a tort doctrine beyond the usual remedies for breach.

The Information Story

(1) Nature chooses the Plaintiff's investigation cost, $x \geq 0$, using the density $f(x)$ (denote the cumulative probability by $F(x)$).

(2) The Plaintiff pays x if he wishes and learns which one of a large population of possible performers with average value $v = a$ actually has the higher value $v = a + b$.

(3) The Plaintiff chooses a performer with whom to negotiate.

(4) The Plaintiff and the chosen Breacher bargain to choose a performance price p_1, which will be either $p_1 = a$ (if v is unknown) or some p_1 in the interval (a, v).

(5) If the Inducer chooses to induce breach, the Inducer and the Breacher bargain to choose a performance price p_2 in the interval (p_1, v).

(6) If the Inducer induced breach, the court forces the Inducer to pay damages of d to Plaintiff.

(7) If the Inducer did not induce breach, the Breacher may breach anyway. The court then forces him to pay expectation damages to Plaintiff, which are zero in this case because $p_1 > a$.

Payoffs: The Plaintiff's payoff is $v - p_1$ if no breach occurs, minus x if he discovered v in advance. If the contract is breached, his payoff is d, or $d - x$ if he discovered v in advance.

The Breacher's payoff is the price he gets (either p_1 or p_2).

The Inducer's payoff is 0 if no breach occurs. Otherwise, it is $v - p_2 - d$.

It is key how d is set. If it is expectation damages, it equals zero. If it is resttitution it is bigger. Specific performance would solve things.

The first-best solution would maximize the sum of the payoffs of Plaintiff and Breacher.[2] Without investigation, the Plaintiff would choose the Breacher randomly, so in expectation $v = a$ and the sum of the payoffs is a. With investigation, the Plaintiff would choose the high-value Breacher, so $v = a + b$ and the sum of the payoff is $a + b - x$. Clearly, investigation should occur if $b > x$ and not otherwise. Thus, the overall expected social payoff is

$$a + \int_0^b (b - x) f(x) dx$$

If damages are high, there will be no breach. The Plaintiff will forecast the value of p_1, which is the result of bargaining between him and the Breacher. He will choose to pay x if $a + b - p_1 > x$, so

$$a + \int_0^{b+(a-p_1)} (b - x) f(x) dx,$$

which is smaller than in the first-best, since $a < p_1$.

This will happen if the Inducer's breaching payoff is negative, which happens if $a + b - p_2 - d < 0$. Thus, the critical level of damages is $d^* = a + b - p_2$.

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[2] xxx Maybe change these to Payer, Breacher, and Inducer.

If damages are lower than d^*, breach will occur if $p_1 > a$, because the Inducer will then deduce that $v = a + b$. The Plaintiff's payoff from investigation would be d, so he will investigate if $d > x$. This yields a social payoff of

$$a + \int_0^d (b - x) f(x) dx.$$

If $d < a + b - p_1$, then welfare is lower with the Inducer's breach than otherwise. This is so, in particular, if damages are zero–expectation damages.

COMMENTS:

The prices p_1 and p_2 are not specified exactly in the model. That is because they are the outcome of bargaining between the players. The particular form of bargaining does not matter for the present analysis; splitting the surplus evenly is one possibility. The bargaining result should depend on what is expected to happen later in the game, so I could have put tighter bounds on the equilibrium prices, but that will not matter for present purposes.

This analysis could apply to ordinary breach too, without an inducer. That is *Peevyhouse v. Garland Coal & Mining Co.* 382 P.2d 109 (Okl.1962). The difference is that ordinarily the court can observe the value u with very low measurement error. Often, it is a market price (as in efficient breach simple stories). Or, there is no outside opportunity, and the Breacher's breach is accidental or due to bankruptcy.

In this model, either Plaintiff or Inducer could pay the damage– it does not matter which, for anything. But if there were no inducer, then there would not be an efficiency problem. There would be no reason to breach, except for renegotiation maybe. And even that is not clear.

This slides into the Renegotiation problem. Suppose the court cannot measure u well, and underestimates. The Breacher can breach, pay low damages, and then negotiate a new contract with Payer. I guess that would

not count as renegotiation unless it occurred before the breach, though. A justification for the No Modification without Consideration rule is to curtail this kind of threatened breach because of predictable error, though.

The Investment Story

(1) The Plaintiff invests x in the project, adding $f(x)$ to the base value of a so that the value becomes $v = a + f(x)$.

(2) The Plaintiff and the Breacher bargain to choose a performance price p_1 in the interval $[a, a + f(x)]$.

(3) If the Inducer chooses to induce breach, the Inducer and the Breacher bargain to choose a performance price p_2 in the interval $[p_1, v]$.

(4) If the Inducer induced breach, the court forces the Inducer to pay damages of d to Plaintiff.

(5) If the Inducer did not induce breach, the Breacher may breach anyway. The court then forces him to pay expectation damages to Plaintiff, which are zero in this case because $p_1 > a$.

Payoffs: The Breacher's payoff is the price he gets (either p_1 or p_2).

The Plaintiff's payoff is $v - p_1 - x$ if no breach occurs. If the contract is breached, his payoff is $d - x$.

The Inducer's payoff is 0 if no breach occurs. Otherwise, it is $v - p_2 - d$.

Note: the investment could occur either before or after move (2), in which p_1 is determined. These are interesting variants.

A Variant Investment Story: Investment After Contracting

(1) The Plaintiff and the Breacher bargain to choose a performance price p_1 in the interval $[a, \infty]$.

(2) The Plaintiff invests x in the project, adding $f(x)$ to the base value of a so that the value becomes $v = a + f(x)$.

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(3) If the Inducer chooses to induce breach, the Inducer and the Breacher bargain to choose a performance price p_2 in the interval $[p_1, v]$.

(4) If the Inducer induced breach, the court forces the Inducer to pay damages of d to Plaintiff.

(5) If the Inducer did not induce breach, the Breacher may breach anyway. The court then forces him to pay expectation damages to Plaintiff, which are zero in this case because $p_1 > a$.

Payoffs: The Breacher's payoff is the price he gets (either p_1 or p_2).

The Plaintiff's payoff is $v - p_1 - x$ if no breach occurs. If the contract is breached, his payoff is $d - x$.

The Inducer's payoff is 0 if no breach occurs. Otherwise, it is $v - p_2 - d$.

3. Transaction Costs: McChesney

Fred McChesney calls attention to transaction costs in the negotiation and litigation involved in the breaching of an original contract that is not optimal ex post. He argues that the tortious interference rule can be efficient in the sense that it can minimize the transaction costs.

I think his argument is flawed and that the efficient breach rule is not an inferior alternative to the tortious interference rule; transaction costs will be the same under the two rules. This is true regardless of whether the contract is assignable; i.e. of whether Plaintiff is entitled to transfer the right to the service stipulated in the contract.

Consider the hypothetical at the start of this paper. The two doctrines that might govern breach are efficient breach and tortious interference. Under the efficient breach doctrine, Plaintiff can only sue Promisor for compensation for default of the contract; under the tortious interference doctrine world, Promisor can also sue Inducer for punitive damages.

Let use the numerical example from McChesney, replacing the names

in the real case he uses, *Lumley v. Gye*, 118 Eng. Rep. 749 (1853) with "Promisor," "Plaintiff," and "Inducer" for Wagner, Lumley, and Gye.

As in McChesney's example, assume Promisor's performance cost is $40 and Plaintiff's performance value is $55, and they arrive at a contract price of $45. Then Inducer appears and can either negotiate with Plaintiff for assignment of the contract or offer Promisor some amount to breach the contract and switch performance from Plaintiff to Inducer.

McChesney assumes that Inducer and Promisor agree on a price of $60 regardless of any future costs either of them might incur. Let us instead assume that if Promisor is going to have to incur future costs of X as a result of the agreement, the price will have to be $60+$X$.

Let us also specify some numbers that McChesney leaves unspecified: let the performance value be $90 for Inducer, let the punitive damages that a court would award be $50, and let the transaction cost of any negotiation or litigation be $0 for each party involved, for our first step in the analysis.

What will happen? Let us consider the two possible doctrines.

Case 1. Efficient Breach Doctrine: Zero Transaction Costs. Plaintiff sues Promisor and the court awards $10 in damages.

Or, Promisor and Plaintiff negotiate, and Promisor pays Plaintiff $10 to assign him the contract or waive his rights to performance.

Case 2. Tortious Interference Doctrine: Zero Transaction Costs– No Punitive Damages. Plaintiff sues Promisor or Inducer, and the court awards $10 in compensatory damages.[3]

Or, anticipating what the court will do, Inducer will negotiate with Plaintiff and/or Promisor, and one of them will pay him $10.

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[3]McChesney notes that Plaintiff indeed has the legal right to sue Promisor as a separate action, and that the law is unclear on whether the damages in tortious interference are restitution or compensation. He does not mention punitive damages.

In Cases 1 and 2, the efficient outcome— performance for Inducer instead of Promisor— occurs regardless of the legal rule, as McChesney notes. But now let us add punitive damages:

Case 3. Tortious Interference Doctrine: Zero Transaction Costs– Punitive Damages. If Promisor were to breach without the consent of Plaintiff, Plaintiff would go to court and get $10 in compensatory damages from either Promisor or Inducer and $50 in punitive damages from Inducer. This will not occur, because Inducer would end up worse than if he refrained from inducing breach.

Instead, Promisor or Inducer will obtain permission from Plaintiff to tear up the contract in exchange for a payment of between $10 (the Plaintiff's loss) and $35 (the efficiency gain from having performance be for Inducer instead of Plaintiff).

McChesney's conclusion that with zero transaction costs the legal rule does not matter to efficiency survives, but notice that the zero transaction-cost assumption is much more important, because if the parties could not negotiate in Case 3, no breach would occur and the result would be inefficient.

Positive Transaction Costs

Now let the cost of any negotiation or litigation be $1 for each party involved.

Case 1′. Efficient Breach Doctrine: Positive Transaction Costs. Inducer and Plaintiff negotiate to have Plaintiff assign the contract to Inducer at a transaction cost of $2, and Inducer pays Plaintiff between $9, the net amount Plaintiff would gain if no agreement were reached and they went to court, and $11, the net amount Inducer would lose if they went to court. The total transation cost is $2.

Case 2′. Tortious Interference Doctrine: Positive Transaction Costs– No Punitive Damages. Inducer and Plaintiff negotiate to have Plaintiff

assign the contract to Inducer at a transaction cost of $2, and Inducer pays Plaintiff between $9, the net amount Plaintiff would gain if no agreement were reached and they went to court, and $11, the net amount Inducer would lose if they went to court. The total transation cost is $2.

This is exactly the same as in Case 1′. Why is it worth mentioning? Because McChesney's story is different. He says on page 151 (replacing his "Promisee" with the "Plaintiff" term used here),

> "The original negotiation between Promisor and Plaintiff to form the contract necessarily established the amount Promisor would be paid if she performed ($45) but not Plaintiff's expected gains. If Inducer negotiates with Plaintiff for Promisor's performance, the already-established amount to be paid to Promisor ($45) still holds; no price terms of the new arrangement concerning Promisor remain to be determined. [So that is what Inducer will do– regardless of the legal rule!] But if Inducer is free instead to negotiate with Promisor, compensating Plaintiff later (the "efficient"-breach rule), the question of the amount to be paid Plaintiff remains to be settled. Absent a liquidated damages clause, Plaintiff's gain has never been established. Negotiation/litigation will be required subsequently to establish the amount of Plaintiff's compensation when Promisor breaches.
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> ... Under either rule there will be negotiation before the breach, either between Inducer and Plaintiff (tortious interference) or between Inducer and Promisor ("efficient" breach) [No: always between Inducer and Plaintiff, if the contract is assignable] ... But in a regime of tortious interference, the Inducer-Plaintiff negotiation before the fact is the only transaction cost. With a rule of "efficient" breach, there is still the subsequent problem of of Inducer or Promisor compensation Plaintiff, resolution of which will require a second round of transaction costs (either litigation or negotiation)...."

McChesney is saying that Case 1′ is stated wrongly. It should be, for his argument, like this:

Case 1″. Efficient Breach Doctrine: Positive Transaction Costs. Inducer and Promisor negotiate at a transaction cost of $2 to have Promisor breach and perform for Inducer instead of for Plaintiff. Plaintiff and Promisor then either litigate or negotiate at a transaction cost of $2 to compensate Plaintiff for the breach. The total transation cost is $4.

The problem with the story in Case 1″ is that there is no need for the Inducer to negotiate with Promisor if Plaintiff can just assign the contract. Inducer can instead just deal with Plaintiff, and in one transaction determine how much Inducer is to pay for Promisor's services and how much Plaintiff is going to be compensated. If the deal is split into two, as McChesney suggests, then transaction costs are doubled, and this will hurt Inducer because even if the second transaction is between Plaintiff and Promisor, the amount Inducer must pay Promisor will rise if Promisor knows he will have to pay $X=\$1$ for the second transaction.

What if the contract cannot be assigned? Then efficient breach doctrine means that there will have to be two transactions— Promisor and Inducer will have to make a deal, and then Promisor and Plaintiff will have to make a deal to settle the breach claim. But so will tortious interference doctrine. First, Promisor and Inducer will have to make a deal, and then Promisor and Plaintiff will have to make a deal to settle the tortious interference claim.

Thus, transaction costs are the same for the two legal doctrines.

This result stems from the fact that in an Efficient Breach world, the Inducer can negotiate with the Plaintiff just as easily as in the tortious interference world, and he will prefer to do so to avoid litigation. So the same thing actually happen in both worlds. The justification that the inducer will always negotiate with the Plaintiff could be made by formalizing Bevier's argument of undercompensation. Suppose Plaintiff has private information on the value of Promisor's performance, which is unique. They are in a bilateral monopoly, and split the surplus 50-50. Once the contract is announced, however, Inducer realizes how valuable performance is. He outbids the contract price for that reason. The Court will not realize how valuable performance is. It will not realize it, because *nobody* except Plaintiff knew it at the time

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of the deal-otherwise, it would not have been such a good deal for Plaintiff. Inducer knows it too, now, but to prove it in court is likely to be difficult.

According to McChesney, the fundamental difference between EB and TI rules is to which party the property right is assigned to. He argues, normatively, the TI model, where the Plaintiff enjoys the property right, is more efficient; positively, he founds that most of the legal rules relevant to inducement are consistent with the property-based model of interference. A similar argument is made by Epstein, property law penalizes someone who steals the property, so that is what happens here. But this begs the question. Why isn't *all* breach treated in this way? If the Promisor breaches intentionally, the contract as Promise's property. And, in fact, the Promisor is most directly to blame for taking away the Plaintiff's benefit. Any theory based on property or morality founders on this feature: that breach of contract, while intentional is not punished (except by compensation), while tortious interference *is* punished. So the question begged by Epstein is: Why does the law treat breach of contract as contract law but inducement to breach as property law?

4. Malice

Malice is a word used in many ways. As McChesney notes, the use in the law of tortious interference is confused, sometimes having its everyday meaning of spite, and sometimes a legal meaning of awareness that an action will cause harm. The everyday meaning provides a sound economic motivation for allowing an action for tortious interference.

Suppose that Inducer actually does not value Promisor's services at more than $55. Instead, he derives 1.5-for-1 utility from Plaintiff's disutility, so he is willing to spend a $1.50 to make Plaintiff lose 1 $1. He lures away Promisor at a price of 57 dollars. Under efficient breach, Plaintiff sues Promisor for $10, at a transaction cost of $1, which means that Plaintiff is out $2 total–his initial $1 for negotiating the original contract, and $1 more for the lawsuit. Promisor is even, having paid $1 to negotiate the new contract with Inducer and $1 in litigation. Inducer is down $3, having paid $2 too much for Promisor's services and incurred $1 in transaction costs. He receives $3

in utility from Plaintiff's loss, however, so Inducer comes out even. There is a social loss, however: wealth is down by \$2, since Promisor and Inducer have not changed their utility but Plaintiff's has declined by that amount.

This is an argument made by Gordon Tullock, who noted that altruism is socially desirable because it has the opposite effect: If I give \$1 to a beggar, then I must derive utility of at least \$1, and the beggar gets utility of \$1, so wealth has been created. Malice works the opposite, *destroying* wealth.

This fits only a small number of actual cases, if any. The law usually defines "malice" as just "intent" rather than as desire to cause harm.

4. Judgement-Proofness

This is a good argument, if perhaps of limited application. Judgement-proofness creates inefficiency, because a person can do harm without paying for it. Suppose Promisor could breach his duty to Plaintiff, perform for Inducer instead, be paid by Inducer, but then become judgement-proof, by fleeing to another jurisdiction, by hiding the funds, or by spending the funds quickly. Then without a doctrine of tortious interference, Promisor will be too ready to breach. Under tortious interference, however, if Inducer is unable to flee, hide funds, or spend quickly, Inducer's liability will make him unwilling to reward Promisor's breach.

This does not tell us why punitive damages should be granted for tortious interference, but we can go one step further to justify them. It may be common for not just the Promisor but the Inducer to have some possibility of becoming judgement-proof. Suppose each goes into the transaction with an 80% chance of post-transaction, pre-lawsuit insolvency. Then inefficient breach is a real possibility, and to deter it will require legal damages greater than compensatory damages, since often neither of them will end up paying the damages the court awards. Thus, it will be useful to have not one but two solutions to the possibility of judgement-proofness: two parties being liable, and high damages when damages are actually paid.

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5. Alienation of Affections

Still to be written.

6. Concluding Remarks

Still to be written.

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Peevyhouse v. Garland Coal & Mining Co. 382 P.2d 109 (Okl.1962)

I need to work on the McChesey part.

I can use the Westlaw cites to show that usually the 3rd party is not a replacement.

<A HREF="http://www.rkmc.com/article.asp?articleId=113">Georgia tortious inteference</A>

http://www.courts.michigan.gov/mcji/business-torts/PrintCh126.htm

1. What is the difference between the investment and info stories? Info story– a third party must be present. But that is just by assumption. COuld I have it that discovery occurs AFTER making a contract with the Perfomer? Yes, I think. Maybe I should make the models parallel. f(x) is th eprobably of discovering an opportunity. The differnec is that the investment definitely gets results. To make it fully parallel, the investment would have a chance of making a big improvement, or the discvoery would have a certainty of finding some good trading partner of varying degrees.

But if $d = a + b - p_1 > a + b - p_2$, no inducement will occur. So whenever d is low enough to induce breach, welfare is lower than if breach did not occur.

Note that $d = p_2 - a$ is not good enough.

We want p_1 to be close to a.

Notet aht the bargaining process can take into account future moves. Thus, I have subsumed a lt of complicated stuff.

Of course, we could make the 3rd party have grater gains from trade. Then we WOULD want breach, and the Plaintiff woiuld be willing to pay his cost c in expectation of getting the damages.

2. Does the investment story require a third party? It seems not.

3. Link this to literature on damgaes beyond expectation damages.

4. Thank Someone else who was sitting right up front.

5. Start by saying what is special about tortious intereferfence: A. Being able to sue two people. B. Being able to sue someone bedcause of a contract, but with whom you don't have a contractual relationship. C. Damages are higher than in contract breach.

6. I need to focus in on the law and what damages are granted. Look at some cases.

7. I need to contrast this with efficient breach. Here, it is a dealmaking setting.

Set it up as a Catch-All doctrine. No one theory will work. Give 3 cases at the start.