

CHAPTER 21 ECONOMIC TORTS

- Section 1 [Introduction](#)
- Section 2 [Inducing Breach of Contract](#)
- Section 3 [Intimidation](#)
- Section 4 [Conspiracy](#)
- Section 5 [Unlawful Interference with Trade](#)
- Section 6 [Malicious Falsehood](#)
- Section 7 [Defamation](#)

SECTION 1 INTRODUCTION

21.1.1 This section outlines the law in relation to two groups of torts: the first seeks primarily to protect a person against harm to his trade and economic interests resulting from the deliberate acts of another; the second, comprising defamation and malicious falsehood, is concerned with the protection of one's reputation.

21.1.2 In Singapore, the law on economic torts and defamation has its origins in English common law. Although there is now a substantial body of local case law on these subjects, and notwithstanding the dissimilar political and economic climates of the two jurisdictions, the key legal principles as applied in Singapore have remained largely the same as those in English law. That said, there have been, in Singapore, important legislative developments affecting both these areas. Thus, particular aspects of the common law on defamation have been modified by the Defamation Act (Cap 75, 1985 Rev Ed), and the extent to which the law on economic torts regulates market competition must now be understood in the light of the regulatory framework set out in the Competition Act 2004 (No 46 of 2004) (on Competition Law, see [Chapter 27](#)).

[Return to the top](#)

SECTION 2 INDUCING BREACH OF CONTRACT

The Cause of Action

21.2.1 If A knows that B owes a contractual obligation to C, and procures or induces B to breach the said obligation such that C incurs damage as a result, A is liable to C for inducing the breach of B's contract obligation to C.

The Mental Element

21.2.2 To establish this cause of action, it must be proven that (a) A knows of the existence of B's contractual relationship with C, and (b) that A has intended the breach of the obligation. A's knowledge may be inferred from surrounding circumstances, and need not relate to the precise terms of the contract.

Inducement

21.2.3 Further, A's action must be a direct and effective cause of B's breach. This requirement is most obviously satisfied when A directly persuades B, whether with the promise of reward or incentives or otherwise, to commit the relevant breach.

Breach

21.2.4 It is essential that A's inducement results in the breach of B's contractual undertaking to C. This does not, however, require proof that the breach in question results in any liability. Thus, it will suffice if it is proven that B is in breach of his contractual obligation, but does not in fact incur any liability by reason, for instance, of an operative exemption clause.

Damage

21.2.5 The aggrieved party must have sustained damage as a result of the breach of contract. Such damage may be inferred from the surrounding circumstances.

Justification

21.2.6 A person's interference with another's contract may be justified in exceptional circumstances. The precise scope of this defence is unclear, but it is generally thought to be a narrow defence which can only be founded upon a careful examination of all the facts. Some instances in which the defence has succeeded include those where the interference is the inevitable result of asserting a pre-existing legal right, or where it is necessary for the protection of public morals.

Inducing Breach of Other Obligations

21.2.7 The tort of inducing breach of contract has been extended to other types of enforceable obligations. Thus, a person who induces another to breach a statutory or an equitable obligation may also commit an actionable tort.

[Return to the top](#)

SECTION 3 INTIMIDATION

The Cause of Action

21.3.1 If A makes a threat of unlawful conduct against B so as to prevent B from doing that which he is entitled to do, resulting in harm to C, A is liable to C.

Threat of Unlawful Conduct

21.3.2 The threat made by A must have the effect of compelling B to comply with A's wishes so as to avoid the unpleasant consequences threatened by A. It is insufficient if A merely makes idle abuses of which B takes little or no notice. The

threat must also relate to unlawful conduct, such as the commission of a crime, tort, or contractual breach.

Damage

21.3.3 This tort is only actionable where the aggrieved party, C, has suffered damage as a result of A's threat. Such damage includes all intended losses as well as damages that are not too remote.

Two-party Liability

21.3.4 The paradigm within which the tort of intimidation arises usually involves three parties: A threatens B with a view to cause loss to C. There is some suggestion that the tort may also arise in a two-party scenario, where A makes an unlawful threat against B, thereby causing loss to B. However, the imposition of tortious liability in this latter situation is more controversial because it has the tendency to obscure the distinction between the tort of intimidation and the threatened unlawful act.

[Return to the top](#)

SECTION 4 CONSPIRACY

The Cause of Action

21.4.1 Two or more persons commit the tort of conspiracy if they agree on a course of conduct to harm another. A conspiracy to commit an illegal act may also amount to a criminal offence. In the civil sphere, the tort of conspiracy may either be a straightforward conspiracy to injure, or a conspiracy using unlawful means.

(a) Conspiracy to Injure

Combination

21.4.2 The agreement or combination between the alleged conspirators is a rudimentary element of the tort of conspiracy to injure. Whether this element is established is largely a question of fact. The agreement may either be express or of a tacit nature. However, the mere proof of an agreement is insufficient as it has to be demonstrated that each of the conspirators has acted, or taken some step to further their common design.

Predominant Purpose to Injure

21.4.3 The conspirators' intention to harm the victim is the gist of this tort. Thus, it is necessary to prove that such ill-intent is the predominant purpose with which the conspirators acted. It follows that where it can be proven that the design of the alleged conspirators is motivated by some legitimate purpose (such as the protection of their own economic interests), the tort is not made out even if injury to the victim is an unavoidable consequence of the scheme.

Damage

21.4.4 The victim of the conspiracy has to prove that he has suffered pecuniary loss. It is generally sufficient if such losses can be inferred from the surrounding circumstances.

(b) Conspiracy by Unlawful Means

21.4.5 A conspiracy using unlawful means is unlike the simple conspiracy to injure in two ways: first, it is characterised by the use of unlawful means; and secondly, while it requires proof of the conspirators' intention to harm the victim, such intention does not have to be their predominant motive.

Unlawful Means

21.4.6 It is clear that an agreement between two or more persons to commit a tort (such as intimidation, or procuring a breach of contract) would amount to a conspiracy by unlawful means. A scheme to commit crimes that involve the use of violence or fraud or dishonesty would also clearly suffice. Beyond that, however, there is uncertainty as to whether other types of unlawful conduct (such as breach of contract and breach of statutory duty) would be regarded as 'unlawful means' for the purposes of this tort.

[Return to the top](#)

SECTION 5 UNLAWFUL INTERFERENCE WITH TRADE

The Cause of Action

21.5.1 If A uses unlawful means to interfere with B's trade or business, and A does so with the intention to harm B's interests, then A is liable to B if B does in fact sustain damage as a result. Unlike the tort of inducing breach of contract, this tort is not primarily concerned with the protection of pre-existing legal obligations, but with proscribing the use of unlawful means which has harmful effects on others.

Intention

21.5.2 The mental element of this tort appears to be a narrow one: the alleged tortfeasor must have intended to injure the victim by targeting or directing his or her conduct at the latter. The fact that the alleged tortfeasor's (unlawful) conduct would inevitably injure the victim is not, by itself, sufficient.

Unlawful Means: (a) Tort

21.5.3 It is clear that all torts constitute 'unlawful means' for the purposes of this tort. Further, it appears that a tort which is not independently actionable will also suffice. This may occur, for instance, where the essential elements of the tort have been proved, but no action lies because of the absence of proof of any damage sustained by the victim.

(b) Breach of Contract

21.5.4 It is uncertain whether a breach of contract ought to be regarded as a sufficient form of unlawfulness in this context. The difficulty in so extending the

concept of unlawfulness is that it will have the alarming effect of transforming a breach of contract into a tort, thus obscuring the distinction between contracts and torts.

(c) Crime and Breach of Statutory Duty

21.5.5 A person is invariably employing unlawful means if he or she commits crimes involving dishonesty or deception, or the use of violence. In comparison, the analysis is less straightforward where there is a breach of a statutory duty backed by criminal sanctions. As a general rule, statutory duties enforceable by way of criminal prosecution are presumed to be enforceable only in that manner. There are, however, two exceptional situations in which such statutory breaches could constitute 'unlawful means' for purposes of civil actions. First, if a statutory provision is, on its true construction, imposed for the benefit of a class of persons, a complainant who falls within that class may plead that his or her interests have been unlawfully interfered with. Secondly, where a statutory provision creates a public right, a complainant may enforce the breach of the provision in a civil suit if he or she has suffered special damage over and above that suffered by the public at large.

[Return to the top](#)

SECTION 6 MALICIOUS FALSEHOOD

The Cause of Action

21.6.1 A person is liable for malicious falsehood if he or she maliciously makes false representations in respect of another with a view to injure that person's goodwill or economic reputation.

21.6.2 The tort of malicious falsehood may, in some respects, overlap with the tort of defamation (see [Section 7](#) below). However, these two torts are clearly distinct. In particular, the tort of malicious falsehood is founded on (a) false representations, (b) malicious motives, and (c) the complainant's incurrence of special damage, but none of these is a necessary element of the tort of defamation.

Falsehood

21.6.3 The element of falsehood is generally satisfied by proving that the tortfeasor has made a false statement in respect of the complainant's person, property or trade. The offending representation may be verbal, written, or implied by conduct. It must also have been published to third persons (other than the complainant).

Malice

21.6.4 Malice may be established by proof that the maker of a statement knows of the untruth of a statement, or is reckless as to its truth. Mere negligence is not malice, but evidence of personal ill-will and spite, or an intention to injure, would suffice.

Special Damage

21.6.5 At common law, the tort of malicious falsehood is only actionable upon proof that the complainant has sustained special damage. This may require, for instance, evidence of quantifiable losses arising from loss of sales or asset devaluation. Note, however, that this aspect of the common law has been modified by section 6 of the Defamation Act (Cap 75, 1985 Rev Ed), such that the proof of special damage may be dispensed with if the false statements are published in writing or permanent form, and are calculated to cause pecuniary injury to the complainant in respect of his or her office, profession, calling, trade or business.

[Return to the top](#)

SECTION 7 DEFAMATION

Introduction

21.7.1 The objectives of the tort of defamation are, on the one hand, to protect personal reputation and, on the other, to ensure that the right of free speech and public communication are not unduly compromised. Within the tort of defamation, these competing interests and rights have to be judiciously balanced.

21.7.2 There are two forms of defamation: libel (words in permanent form) and slander (words in temporal or transient form). Libel is actionable per se without proof of special damage whilst slander would require such proof, unless specific common law and statutory exceptions apply. For example, special damage is not required to be proved in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on at the time of the publication (see section 5 of the Defamation Act).

21.7.3 Apart from the civil tort of defamation, section 499 of the Penal Code provides for the offence of criminal defamation. For the prosecution of such an offence, it must be shown that the accused made the publication with the intention to harm the reputation of the defamed person, or knows or has reason to believe that such harm would result. The focus of this section is, however, on the civil tort of defamation.

The Elements of the Cause of Action

21.7.4 The three main requirements for a cause of action under the tort of defamation are as follows:

- (a) The statement must be defamatory in nature;
- (b) The statement must refer to the plaintiff; and
- (c) The statement must be published.

(a) Defamatory in Nature

21.7.5 A statement is defamatory in nature if it lowers the plaintiff in the estimation of right-thinking members of society or causes him or her to be shunned or avoided. This is based on the objective reasonable man test. The judge determines whether the test is satisfied in a particular case upon hearing the evidence adduced at the trial. There are no jury trials in Singapore.

21.7.6 In terms of construction, a statement may be defamatory in two ways: (i) via the natural and ordinary meaning of the words used or as may be reasonably inferred from the words; and (ii) by way of true or legal innuendo. True innuendo arises from words which appear innocuous, but may be understood to be disparaging of the plaintiff by third parties who have knowledge of special facts which are not generally known. To support a cause of action based on true innuendo, the plaintiff will have to plead those special facts known to such third parties to whom the statement has been published.

(b) Reference to Plaintiff

21.7.7 The plaintiff must show that the third party would reasonably understand the defamatory words to refer to the former. The intention of the defendant to defame the plaintiff is not a prerequisite. Thus, the defamation action may still succeed notwithstanding that the defendant did not intend to refer to the plaintiff, but to some other person or even a fictitious character bearing the same name.

21.7.8 Apart from natural persons, legal persons such as incorporated bodies (including companies) and some unincorporated bodies (for example, societies registered under the Societies Act, Cap 311, 1985 Rev Ed with the capacity to sue and be sued in its own name) may also bring defamation actions against persons who have made defamatory statements adversely affecting their commercial, trading or governing reputations.

21.7.9 In class or group defamation actions, the issue is whether the defamatory statement, though targeted at a class or group, is nonetheless reasonably understood by the reasonable third party to refer to the individual claimant. To ascertain whether such reference exists, criteria such as the group size, the generality and extravagance of the defamatory statement and other factors may be taken into consideration.

(c) Publication

21.7.10 The defamatory statement must have been communicated to third parties who would reasonably understand the statement to be defamatory of the plaintiff. Thus, the communication of the defamatory statement to the plaintiff alone would not be sufficient.

Defences: (a) Justification

21.7.11 The plaintiff is not required to prove that the defamatory statement is false. Instead, the defendant may establish the defence of justification by proving that the defamatory statement is true in substance and in fact. Where the allegedly defamatory statement is a comment, both the facts on which the comment is based and the comment itself must be substantiated. Similarly, where an innuendo is pleaded, both the statement and the innuendo have to be justified. Particulars of the statement(s) of fact and the true facts relied upon by the defendant must be pleaded (Order 78 Rule 3(2), Rules of Court). The defendant is not required to substantiate every charge so long as the unsubstantiated charges do not materially injure the plaintiff's reputation (see section 8 of the Defamation Act). The defence of justification normally constitutes a complete defence against the plaintiff's claims.

(b) Fair Comment

21.7.12 To succeed in the defence of fair comment, the defendant has to show that

- (i) the words complained of are in the nature of a comment (that is, an expression of opinion as opposed to facts);
- (ii) the comment is based on true facts – it is not necessary to prove the truth of all allegations of facts but only those facts alleged or referred to in the defamatory words which form the basis of the opinion (see section 9 of the Defamation Act);
- (iii) the comment is fair, that is, it must be an honestly-held opinion of a fair-minded person though some allowance may be given for prejudices and exaggeration; and
- (iv) the comment relates to a matter of public interest, that is, a matter which the public at large may legitimately be interested in or concerned with.

21.7.13 The defence of fair comment will not succeed if the defendant's comments are motivated by malice. An opinion is made maliciously if it is shown that the defendant did not genuinely hold the view he expressed. Actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation, whatever it may be, even if it is the dominant or sole motive, does not *of itself* defeat the defence (see paragraph 21.7.14).

(c) Privilege

21.7.14 The next defence against the plaintiff's claim in defamation is based on the concept of privilege. There are two types of privilege: absolute and qualified privilege. Absolute privilege cannot be defeated by the plaintiff's proof that the defendant's statements were motivated by malice. On the other hand, qualified privilege can be defeated by proof of malice. A statement is made maliciously if it was actuated by dominant improper motive(s). In addition, a statement which is made without belief in its truth or recklessly (that is, with indifference to its truth or falsity) is one that is published with malice.

Absolute Privilege

21.7.15 Absolute privilege arises in the following situations or circumstances:

- (i) Parliamentary proceedings – the Members of Parliament are conferred immunity from both civil and criminal actions in respect of defamatory statements made in the course of parliamentary proceedings (see section 6 of the Parliament (Privileges, Immunities and Powers) Act, Cap 217, 2000 Rev Ed). Similarly, the reports, papers and journals relating to the proceedings the publication of which is authorised by Parliament are immune (see section 7 of the Parliament (Privileges, Immunities and Powers) Act).
- (ii) Judicial proceedings – immunity is conferred on the judges, counsel, witnesses and parties in respect of statements made in the course of or for the purposes of judicial proceedings, including proceedings conducted by tribunals and bodies recognised by law and acting judicially. The fair, accurate and contemporaneous report of judicial proceedings which are publicly heard is also absolutely privileged (section 11 of the Defamation Act). This privilege extends to a 'fair and bona fide' comment on such report.

(iii) Executive matters – this generally covers communications made by ministers and civil servants relating to state affairs.

Qualified Privilege

21.7.16 The defence of qualified privilege arises in the following instances:

(i) Where the defendant has an interest or duty to communicate information and the third party has the corresponding interest or duty to receive the information – for instance, communications made by solicitors for the purposes of advancing clients' interests and communications between employers and employees in relation to work matters are ordinarily accorded qualified privilege.

(ii) Where the defendant makes a statement with a view to protect his or her self-interests (such as when he or she is responding to accusations), such statements are privileged to the extent that they are published bona fide as well as relevant and necessary to protect such interests.

(iii) Where reports of parliamentary and judicial proceedings are fair and accurate, qualified privilege arises at common law (that is, outside the scope of the statutory provisions). Newspaper reports of parliamentary and judicial proceedings in the Commonwealth are also accorded qualified privilege statutorily (section 12 of the Defamation Act).

(d) Innocent Dissemination

21.7.17 The defence of innocent dissemination is generally available to intermediaries such as retail vendors, libraries and delivery agents. To avail of such a defence, the intermediary who participated in the distribution of the defamatory statements must show that he or she did not know that the publication was libellous, the circumstances or work could not have alerted the defendant to the libellous content and that such ignorance was not due to his or her negligence.

(e) Offer of Amends

21.7.18 The Offer of Amends is a procedure which permits a defendant to ward off a potential defamation action (or to procure, if the action has already commenced, its discontinuation thereof). The defendant has to first show that he or she has 'innocently' defamed another person and exercised all reasonable care in relation to the publication. The defendant must also offer to make a public apology and to take reasonably practicable steps to inform the persons who have been distributed with the copies of the publication that the contents are defamatory of the aggrieved party. The Offer of Amends constitutes a defence against any defamation action by the aggrieved party. If the offer is accepted by the aggrieved party and its terms are complied with by the defendant, the aggrieved party is precluded from suing the defendant in respect of the defamatory publication (see section 7 of the Defamation Act).

(f) Assent by Plaintiff

21.7.19 Where the plaintiff had clearly and unequivocally assented to the publication of the defamatory statement, that constitutes a valid defence to the defamation action.

Remedies

21.7.20 A plaintiff who has successfully established a cause of action in defamation against which there are no valid defences may obtain (a) monetary damages; and/or (b) injunctions restraining the publication, and/or (c) in exceptional circumstances, injunctions mandating that the defendant withdraw the defamatory statement.

Damages

21.7.21 Damages are awarded to vindicate the reputation of the plaintiff. The gravity of the statement, the standing of the plaintiff, the extent of the publication and the effect of the publication on the plaintiff are factors to be taken into consideration for ascertaining the quantum of the damages. In this regard, the awards in personal injury cases do not provide a helpful guide. The plaintiff has to prove that he or she suffered special damage, except in cases of libel or certain forms of slander (see [Section 21.7.2](#) above). Whilst the principles of causation and remoteness are applicable in defamation, the quantification of special damages is not, however, an exact science.

Aggravated Damages

21.7.22 Aggravated damages may be awarded in appropriate cases. Aggravated damages, which are compensatory in nature, may be awarded in respect of the additional injury caused by the defendant's conduct or bad motives. For purposes of ascertaining damages, the plaintiff is required to give full particulars in the statement of claim of the details of any conduct by the defendant which has allegedly increased the injury suffered (Order 78 Rule 3(3A), Rules of Court). The amounts for both general compensatory and aggravated damages (if any) are awarded to the plaintiff in one lump sum.

Exemplary Damages

21.7.23 Exemplary or punitive damages are less common. Nonetheless, exemplary damages may be awarded as a deterrent measure where the defendant had published the defamatory statement in the expectation of profit or gain and was aware that the publication was untrue.

Mitigation

21.7.24 The defendant may make or offer an apology with a view to mitigating damages (see section 10 of the Defamation Act). Similarly, an undertaking by the defendant not to republish would generally go towards the mitigation of damages.

Injunctions

21.7.25 Injunctions are usually granted to prevent the future publication of defamatory materials only where such further publication is reasonably apprehended. The courts are generally more cautious of issuing interlocutory injunctions, and will do so only where it is clear that the words complained of were libellous and no defence could possibly apply.

Internet Defamation

21.7.26 With the advent of technology, globalisation and rise in the usage of the Internet, defamation in cyberspace is a real issue today. This problem, though not unique to Singapore, can have a significant impact considering the high proportion of Internet usage within the country for private, commercial and public purposes.

Internet Service Providers

21.7.27 With respect to the role of Internet Service Providers (ISPs), section 10 of the Electronic Transactions Act protects an ISP from liability arising from the making, publication, dissemination or distribution of third party materials, if the ISP were merely providing access to such materials. A third party refers, in this context, to a person over which the ISP has no effective control.

Conflicts of Laws

21.7.28 Defamation on the Internet also poses conflicts of law issues, particularly in relation to jurisdiction and choice of law. (On Conflicts of Laws, see [Chapter 6](#))

[Return to the top](#)

Updated as at 19 March 2009

By: Gary Chan
Associate Professor of Law, School of Law
Singapore Management University

Lee Pey Woan
Associate Professor of Law, School of Law
Singapore Management University

Disclaimer: The articles and briefings on this website are for general information only. Readers are advised to seek specific legal advice before acting on the contents set out therein. If advice is required, please consult a Singapore lawyer or one of the writers of the relevant article or briefing. If you would like to contact the writers, please write to singaporelaw@sal.org.sg, indicating your queries and the name of the writer whom you wish to contact. The writer will be informed of your request and will contact you subsequently.