

Model Utah Civil Jury Instructions, Second Edition

Economic Interference

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CV1401. ELEMENTS OF A CLAIM FOR INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONS. Approved 10/2/2017.

[Name of plaintiff] claims that [name of defendant] intentionally interfered with [name of plaintiff]’s economic relations. To award damages for this claim, [name of plaintiff] must prove three things:

- (1) That [name of defendant] intentionally interfered with [an existing] or [a potential] economic relationship that [name of plaintiff] had;
- (2) That [name of defendant] did so by improper means; and
- (3) That [name of defendant]’s interference caused harm to [name of plaintiff].

References

Eldridge v. Johndrow, 2015 UT 21, ¶ 70, 345 P.3d 553
Anderson Dev. Co. v. Tobias, 2005 UT 36, 116 P.3d 323

MUJI 1st Instruction

19.1

Committee Note

The next three instructions define the critical terms of the first two elements--“economic relationship” (CV1402), “intentionally interfered” (CV1403), and “improper means” (CV1404).

The Utah Supreme Court first recognized a claim for intentional interference with prospective economic relations in *Leigh Furniture & Carpet Co. v. Isom*, 657 P.2d 293 (Utah 1982). In defining the elements of the tort, the court rejected the approaches of both the Restatement of Torts and the Restatement (Second) of Torts and instead followed the approach of the Oregon Supreme Court in *Top Service Body Shop, Inc. v. Allstate Insurance Co.*, 582 P.2d 1365 (1978). As originally adopted, the court held that a plaintiff could make out a claim for tortious interference by proving that the defendant interfered with the plaintiff’s economic relationship either for an improper purpose or by improper means. In *Eldridge v. Johndrow*, the court dropped the “improper purpose” prong of a tortious interference claim. Accordingly, the committee has eliminated “improper purpose” from this instruction and the former definition of “improper purpose” in MUJI 19.4.

MUJI 1st included separate instructions for intentional interference with prospective economic relations (MUJI 19.1 through 19.6) and interference with contract (MUJI 19.7 through 19.13). But MUJI 19.1, entitled “Intentional Interference with Prospective Economic Relations: Elements of Liability,” expressly applied to both the plaintiff’s “existing or potential economic

relations.” MUJI 19.8, titled “Interference with Contract: Elements of Liability,” listed five elements for interference with contract. Those elements, however, are not found anywhere in Utah case law. Utah cases dealing with interference with contract have used the same elements as those dealing with “interference with economic relations.” See, e.g., *Eldridge*, 2015 UT 21, ¶ 70; *Alpine Orthopaedic Specialists, LLC v. Intermountain Healthcare, Inc.*, 2012 UT App 29, ¶¶ 4-10, 271 P.3d 174; *Jones & Trevor Mktg., Inc. v. Lowry*, 2010 UT App 113, ¶ 17 n.16, 233 P.3d 538. Other cases have referred broadly to intentional or tortious “interference with economic relations.” See *Eldridge*, 2015 UT 21, ¶¶ 1, 8; *St. Benedict’s Dev. Co. v. St. Benedict’s Hosp.*, 811 P.2d 194, 200 (Utah 1991); *Anderson Dev. Co. v. Tobias*, 2005 UT 36, ¶ 20, 116 P.3d 323. Because the elements of the two claims, as stated in *Eldridge*, are the same (the only difference being whether the economic relation is existing, as in the case of a contract, or prospective), the committee decided to treat the elements of a tortious interference claim in a single instruction.

CV1402. “ECONOMIC RELATIONSHIP” DEFINED. Approved 10/2/2017.

An economic relationship exists when [name of plaintiff] has a reasonable expectation of economic benefit from [his/her/its] relationship with one or more third parties. This expectation must be present at the time of the interference.

An economic relationship can be based upon an existing contract but does not have to be. It is enough if you find that there were either dealings or a course of conduct between [name of plaintiff] and [name of third party] from which [name of plaintiff] had a reasonable expectation of economic benefit. The expected benefit must be likely to occur but does not have to be a certainty.

References

Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982)

MUJI 1st Instruction

19.2

Committee Note

If the case involves a claim of interference with an existing contract and the existence of the contract is disputed, the court should give the relevant general instructions regarding the creation and elements of a contract. See CV2103-07.

CV 1403. “INTENTIONALLY INTERFERED” DEFINED. Approved 11/13/17.

You must next determine whether [name of defendant] intentionally interfered with [name of plaintiff]’s [existing] or [potential] economic relationship. For [name of defendant] to have intentionally interfered with an existing or potential economic relationship of [name of plaintiff], [name of defendant] must have

- 1) acted for the purpose of interfering with that relationship or
- 2) acted knowing that the interference was substantially certain to occur as a result of [his/her/its] actions.

References:

Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982)

Mumford v. IIT Commercial Fin. Corp., 858 P.2d 1041, 1044 (Utah Ct. App. 1993)

Restatement (Second) of Torts § 8A (the word “intent” denotes that the actor desires to cause the consequences of his act or believes that the consequences are substantially certain to result from it)

MUJI 1st Instruction

19.3

CV1404. “IMPROPER MEANS” DEFINED. Approved 12/11/17.

The second element of [name of plaintiff]’s claim is that [name of defendant] interfered with [name of plaintiff]’s existing or potential economic relations by improper means. “Improper means” is defined as action that was contrary to law or violated an established standard of a trade or profession. [Name of plaintiff] claims the improper means [was/were] [state the means].

References:

Eldridge v. Johndrow, 2015 UT 21, 345 P.3d 553
Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982)
Sampson v. Richins, 770 P.2d 998 (Utah Ct. App. 1989)

MUJI 1st Instructions

19.5 & 19.6

Committee Note

Improper means may include such things as acts of violence, threats or other intimidation, bribery, false statements, defamation, a wrongful lien, bringing a lawsuit without any basis, taking money or property to which one was not entitled, or violating a court order. The court and parties should tailor examples of improper means to the facts of the case. Depending on the theory of improper means, this instruction may be used in conjunction with other instructions. If there is some question as to whether the defendant violated a statute or rule or committed a separate tort as part of his improper means, the court may have to give separate instructions on the elements of the statute or tort.

Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293, 309 (Utah 1982), suggested that an intentional breach of contract with the intent to inflict injury may constitute improper means. The committee was not certain whether this part of the *Leigh* decision survived the Utah Supreme Court's abandonment of the "improper purpose" prong of *Leigh* in *Eldridge v. Johndrow*, 2015 UT 21. Arguably, the same considerations that caused the court to abandon the "improper purpose" prong might also counsel against finding liability for intentional interference with economic relations for even a malicious breach of contract. The court in *Eldridge* did not specifically address the issue but recognized that a defendant's motivation may still be relevant to an intentional interference claim, including "relevant to the improper means prong of the *Leigh Furniture* test." *Id.* ¶ 67. The committee thought that the Utah Supreme Court was probably referring to improper means that require intent as an element of the tort or crime and not to lawful actions that were taken with a bad motive. To hold otherwise may in effect reinstate the abandoned "improper purpose" alternative.

CV1405. DEFENSES: PRIVILEGE. Approved 11/13/17.

[Name of defendant] claims that [his/her/its] actions in interfering with [name of plaintiff]'s economic relations were privileged [Name of defendant] claims that [his/her/its] conduct was privileged under the [describe the privilege]. [Name of defendant] must prove the following: [Describe the elements of the privilege.] To the extent you find [name of

defendant]’s actions were subject to a privilege, you cannot find those actions to be an “improper means.”

References:

Mumford v. ITT Commercial Financial Corp., 858 P.2d 1041 (Utah Ct. App. 1993)
Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982)

MUJI 1st Instructions

None

Committee Note

Privilege has been recognized by the Utah Supreme Court and the Utah Court of Appeals as an affirmative defense to an intentional interference with prospective economic relations claim. It does not become an issue unless “the acts charged would be tortious on the part of an unprivileged defendant.” *Mumford v. ITT Commercial Financial Corp.*, 858 P.2d 1041, 1043-44 (Utah Ct. App. 1993) (quoting *Leigh Furniture & Carpet Co. v. Isom*, 657 P.2d 293, 304 (Utah 1982)).

The Utah Court of Appeals has explained that “[e]ven a recognized privilege may be overcome when the means used by defendant are not justified by the reason for recognizing the privilege.” *Mumford*, 858 P.2d at 1043-44 (quoting *Top Serv. Body Shop, Inc. v. Allstate Ins. Co.*, 582 P.2d 1365, 1371 (Or. 1978) (en banc)). Therefore, a privilege is not an absolute defense. If the plaintiff claims that a recognized privilege should not apply because the reason for recognizing the privilege does not apply under the facts of the case, the court may also need to instruct the jury on the reason for the privilege and the parties’ arguments for why it should or should not apply under the circumstances.

If a privilege instruction is given to the jury, an instruction defining and describing the applicable privilege should be given to the jury so that it can properly assess whether the privilege applies. For example, an individual may be able to raise a privilege for statements that would otherwise be defamatory if the statements were made in the course of or incident to juridical or quasi-judicial proceedings. Because of the number and variety of possible privileges, the subcommittee did not think it practicable to provide instructions on each possible privilege. Where a privilege is claimed, the court should instruct the jury as to the nature of the privilege claimed and what the jury must find to conclude that it bars the plaintiff’s claim.

CV1406. DAMAGES. Approved 11/13/17.

If you find that [name of the defendant] intentionally interfered with [name of plaintiff]’s economic relations, then you should award [name of the plaintiff] damages that will reasonably

compensate for any harm [name of the plaintiff] has suffered because of the interference with economic relations.

References:

TruGreen Cos. v. Mower Bros., Inc., 2008 UT 81, 199 P.3d 929
Sampson v. Richins, 770 P.2d 998 (Utah Ct. App. 1989)
Restatement (Second) of Torts § 774A (1979)

MUJI 1st Instructions

19.15 & 19.16

Committee Note

Practitioners should also use the tort damages instructions at CV2001, et. seq., that are applicable. Damages could include lost monetary or other benefits or expectations under a contract, any actual harm to plaintiff's reputation, lost profits, or emotional distress caused by defendant's interference.

CV1407. DAMAGES: LOST PROFITS. Approved 11/13/17.

To award damages for lost profits, you must have a reasonable basis for calculating them. Although past profits cannot be taken as an exact measure of future or anticipated profits, you may consider the past profits and losses of the plaintiff's business in determining lost future profits. You may also consider any increase or decrease in business that might have been reasonably expected if there had been no interference.

References:

TruGreen Cos. v. Mower Bros., Inc., 2008 UT 81, 199 P.3d 929

MUJI 1st Instructions

19.15 & 19.16