

Intentional Interference with Contractual Relations in Colorado

by Brett R. Lilly and Scott A. Hale

This article discusses the basic elements of the tort of intentional interference with contractual relations, with particular emphasis on pragmatic considerations practitioners will face in litigating what constitutes improper interference.

This article presents an overview of Colorado law on the tort of intentional interference with contractual relations.¹ The essence of the tort is the duty to not interfere with contracts.² This duty flows from the interest in maintaining the security and integrity of contractual obligations.³ The existence of the contractual relationship gives rise to a duty to those who know about the contract to not intentionally and improperly interfere with it.⁴

The General Rule

Although some cases refer to the tort as “intentionally inducing a breach of contract,”⁵ Colorado follows the majority rule, which holds that the tort of intentional interference with contractual relations is not limited to inducing a “breach” of contract, because the tort would have no application if there were no breach.⁶ The modern rule is that the action “lies, more broadly, for intentional ‘interference with the performance of a contract,’ even if the contract is terminable at will.”⁷

No single rule states a prima facie case of improper interference, or the affirmative defense to tortious interference, the privilege of justified competition. Unlike most other intentional torts, there is often no clear-cut distinction between the requirements to establish or deny liability.⁸ A comparative appraisal of several factors must be evaluated in the context of each matter. This balancing process is not conducive to generalizations or bright line statements of law. Instead, the determination of whether the interference was improper depends on an assessment of the particular facts of the individual case.⁹

Contractual relations are generally protected against harms from inducement of breach as well as any intended and improper interference that causes loss.¹⁰ A defendant can be held liable for intentionally and improperly causing a breach of contract. But the protection against improper interference in business relations is not limited to liability for inducing breach of contract.¹¹ A defendant can be liable for the harm caused by intentionally interfering with a known contract if he “acted in pursuit of some purpose considered improper.”¹²

Conduct that intentionally induces a breach of contract or interferes with a contract states a claim.¹³ Inducing a party to break a contract by persuading and thus causing the party to choose to break the contract will establish the tort, but it is not the only means to do so. “[I]t is not necessary to show that the third party was induced to break the contract.”¹⁴

Interference with the third party’s performance includes preventing the performance, depriving the means of performance, misdirecting the performance, or generally “causing him not to perform the contract by preventing his performance by some means other than influencing his mental choice.”¹⁵ Tort liability may be imposed on a defendant who intentionally and improperly interferes with the plaintiff’s contract “if the interference causes the plaintiff to lose a right under the contract or makes the contract rights more costly or less valuable.”¹⁶

Colorado follows the definition of the tort contained in the *Restatement (Second) of Torts (Restatement (Second))* §§ 766 and 767.¹⁷ One who intentionally and improperly interferes with the performance of a contract “by inducing or otherwise causing the

Coordinating Editor

William P. Godsman of the Law Office of William Godsman, Denver—
(303) 455-6900, will.godsman@gmail.com



About the Authors

Brett R. Lilly of Brett R. Lilly, LLC practices in the areas of civil appeals and complex commercial and constitutional litigation—info@brettlilly.com. Scott Hale of Scott A. Hale, P.C. has over 28 years of broad litigation experience. His practice includes criminal defense, DUI, construction litigation, divorce and family law, personal injury, and insurance defense—sahale@integra.net. The authors were co-counsel for the plaintiff in *Slater Numismatics, LLC v. Driving Force, LLC*.

Tort and Insurance Law articles provide information concerning current tort law issues and insurance issues addressed by practitioners representing either plaintiffs or defendants in tort cases. They also address issues of insurance coverage, regulation, and bad faith.

third person not to perform the contract” is liable for the loss.¹⁸ Accordingly, this article discusses the elements of the tort with a particular emphasis on Colorado law and *Restatement (Second)*. The alternative theory of unjust enrichment is also briefly discussed.

Elements

In Colorado, the elements of liability are:

- 1) the existence of a contract;
- 2) the defendant knew or reasonably should have known of the contract;
- 3) the defendant intentionally interfered with the performance of the contract;
- 4) the defendant’s interference with the contract was improper; and
- 5) the defendant’s interference with the contract caused the plaintiff damages or losses.¹⁹

If a contract is terminable at will, the affirmative defense of justifiable business competition has been recognized.²⁰

Existence of Contract

Contracts, including contracts terminable at will, must exist at the time of the improper interference.²¹ The contract must be valid.²² An action for interference is not precluded by a possible action for or even a judgment regarding breach of contract against the other party to the contract.²³

Knowledge of Contract

A tortious interference with contract claim must be filed within two years after the cause of action accrues.²⁴ A claim accrues when the plaintiff knew or should have known of an injury ascertainable from the defendant’s intentional and improper interference with a contract.²⁵

To be liable for intentional interference with contract, a defendant must be aware of the contract. If there is no evidence regarding knowledge of the contract, then there is no liability.²⁶ The same is true if the plaintiff fails to allege or present any evidence of an existing contract.²⁷

Only the parties to the contract can properly state a claim of interference with the contract by a third party.²⁸ A defendant cannot be liable for interference with her own contract because a claim for tortious interference cannot be maintained among parties to the same contract.²⁹ The proper defendant is the party who interferes with the contractual relation, not any party to the contract itself.³⁰

An interfering defendant may be liable where he commits no independent tort to the plaintiff but does commit a tort to the person in contract with the plaintiff. If the plaintiff’s interests and those of the contracting party are sufficiently close, a tort to the one may be sufficient basis for liability to the other, if harm results.³¹ This is based on the rule that a defendant who commits an independent tort to a third person “may be liable for all proximately caused harm, including economic harm, resulting from interfer-

ence with the contract.³² To be liable, the defendant must have knowledge of the contract “and of the fact that he is interfering with the performance of the contract.”³³

Intentional Interference with Performance of Contract

The defendant must intend to interfere with the performance of the contract.

Intent. The basis for liability for interference is intent.³⁴ The plaintiff has the burden of proving the defendant’s conduct was both improper and intentional. A plaintiff must prove the defendant intended for one of the parties to breach the contract, or intended to interfere with the performance of the contract, thereby causing the third party not to perform the contract with the plaintiff.³⁵ Insufficient evidence of a defendant’s intention to interfere with the agreement between the plaintiff and the third party will defeat a claim.³⁶ For example, the conduct must be intended to affect the contract of the specific person in contract with the plaintiff.³⁷

Conduct is intentional if its purpose is to bring about a particular result, or if a person knows the acts or words are likely to bring about the result. Proof of malice or ill will is not necessary, but the presence or absence of malice or ill will may be considered in determining if the conduct is intentional.³⁸ Intent and purpose are interrelated. Acting with the primary purpose of interfering with the performance of a contract will broaden the scope of liability.³⁹ However, knowledge that interference is a “necessary consequence” is sufficient for liability.⁴⁰

Intent alone may not be enough for liability to attach. But if the sole motivation was to interfere with the other’s contractual relations, the interference is more likely to be held improper.⁴¹ If the conduct is independently wrongful, such as tortious behavior, the desire to interfere with the other’s contractual relations is less essential to finding the interference improper. But if innocent or less blameworthy means are used, such as persuasion or offers of benefits, then the motive, intent, or desire to accomplish the interference may be more essential to a holding that the interference is improper.⁴²

Intent, knowledge, and other conditions of mind of a person may be generally alleged under CRCP 9(b). The evidence necessary to establish the element of “intent” may prove to be problematic in interference cases. The element of intent may be proven by direct and circumstantial evidence. Evidence establishing intent may also prove improper conduct. Practitioners should pay close attention to the available and admissible facts in each case to establish these elements.

Interference. A defendant must induce a breach or make it impossible or more difficult to perform the contract. Interference means intentional conduct that causes another to terminate or to not perform a contract, or that makes another’s performance of a contract impossible or more difficult.⁴³ While the paradigm case will involve an actual breach of the contract, breach is not a required element of the tort of intentional interference with contract. A defendant’s conduct that makes a third party’s performance more difficult is sufficient to support a claim. The duty of non-interference also applies to contracts terminable at will.⁴⁴ Courts can redress the wrong of causing the termination of a contract that otherwise would have continued in effect.

Because Colorado case law relies on the *Restatement (Second)* §§ 766 and 767 to define the tort of intentional interference with con-

tractual relations,⁴⁵ most definitions of the tort do not require proof of either impossibility of performance or breach of contract, but rather require proof that the defendant induced or otherwise caused a third party not to perform the contract.

Case law on breach and impossibility of performance addresses two of the possible ways in which intentional interference with contractual relations can be proven.⁴⁶ Cases discussing impacts short of a total breach or impossibility of performance explain that evidence of inducing or causing a contracting party to not perform are additional methods to prove the tort of intentional interference with contractual relations.⁴⁷ Accordingly, liability has been imposed on a defendant for intentional interference with contractual relations in the absence of a breach of contract or impossibility of performance where the defendant significantly induced or caused a contracting party not to perform its contract with the plaintiff.⁴⁸

The essence of the tort is the duty to not interfere: “The existence of a contract may impose a duty on nonparties not to interfere with the performance of that contract. . . . Violation of this duty, causing injury, is the tort of intentional interference with contractual relations.”⁴⁹ Interference, short of inducement to actual breach, states a claim. An “action for damages lies against one who intentionally and maliciously interferes with or induces another to breach a contract in which a plaintiff has an interest.”⁵⁰

Accordingly, “actual inducement is not necessarily required at all” because unjustified interference with a contract that causes harm “may be quite sufficient for liability. . . .”⁵¹ An actual repudiation of the contract is not necessary for liability. It is “enough that the contract performance is partly or wholly prevented, or made less valuable, or more burdensome by the defendant’s unjustified conduct.”⁵²

A violation of the duty of non-interference with the performance of the contract is sufficient to meet this element of the tort. The Colorado Supreme Court has upheld judgments for interference without reference to inducement of a breach. Where there was intentional interference with an oral distributorship contract and damages resulted, the Court upheld the judgment for the “unlawful interference” with the contract.⁵³ The Court made clear that the defendant was liable for the results, which followed his course of conduct of “interference.”⁵⁴ Acting to induce a breach also states a claim. When the “evidence before the court of both intent and inducement” is sufficient, a judgment that the defendant wrongfully interfered with certain contractual relations is appropriate because “his actions induced the breach.”⁵⁵ Another example of inducing a breach involved two competing communications analysts, one of whom had actual knowledge that the other had contracted with a hospital. The competing analyst deliberately sought to undercut his competition and acted to induce a breach for monetary advantage.⁵⁶ As such, a defendant “is not free, under this rule, to induce a contract breach merely to obtain customers or other prospective advantage”⁵⁷

Interference Was Improper

In addition to intending to cause the result, the defendant must have acted improperly in causing such result. “Improper” is a term of art used in the tort of intentional interference⁵⁸ and generally means that the interference resulting in harm to another’s contractual relations is wrongful by some measure beyond the fact of interference itself.⁵⁹ Malice is a term used in some Colorado cases, but

this does not mean ill will so much as intentional interference without justification, which is to say, improper interference.⁶⁰

The *Restatement (Second)* § 767 lists the following factors to consider in determining whether intentional interference with a contract is improper:

- a) the nature of the actor's conduct,
- b) the actor's motive,
- c) the interests of the other with which the actor's conduct interferes,
- d) the interests sought to be advanced by the actor,
- e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,
- f) the proximity or remoteness of the actor's conduct to the interference, and
- g) the relations between the parties.⁶¹

Practitioners should note that these factors may also prove the element of intent.

Liability “may depend in large measure on the purpose” of the conduct.⁶² The presence or absence of malice, in the sense of ill will, is often related to the question of purpose and can be an “important factor in determining whether the interference was improper.”⁶³

Colorado courts have approved of instructing the jury on the elements listed in *Restatement (Second)* § 767,⁶⁴ as well as instructing the jury on the factors to be used in determining improper conduct based on consideration of the factors set forth in § 767.⁶⁵ The courts have disapproved findings of fact and conclusions of law that did not weigh the factors contained in § 767 and the failure to make findings on whether the interference was improper.⁶⁶ Courts have also approved of instructing the jury on § 768.⁶⁷

A clearer case is presented if the alleged improper conduct constitutes an independent tort. For example, breaches of the duty of loyalty and confidence, fiduciary duty, unfair competition, and misappropriation of trade values constitute wrongful means and thus are improper means.⁶⁸ If the means of interference is itself tortious, there is little, if any, justification to interfere with existing or prospective contractual relations.⁶⁹

Under the tort, liability can be imposed when the means of inducement are not tortious themselves if the intentional interference breaches the duty of non-interference with contracts.⁷⁰ But when the means used are not themselves tortious or innately wrong, “and it is the resulting interference that is in question as a basis of liability, the interference is more likely to be found not improper.”⁷¹

Persuasion by permissible means that induce a competitor's prospective customers not to deal with her are a necessary and desirable aspect of competition.⁷² A common method of inducing one to sever business relations with another is to offer a better bargain. Whether this is improper is often a question of fact.⁷³ If harm results from such conduct, some justification beyond mere competition for future business is required, or the interference with the contract will be considered improper.⁷⁴

If the case involves either interference with terminable at will contracts or prospective contractual relations, the affirmative defense of business competition privilege can apply, raising the issue of whether the privilege has been abused by the use of “wrongful means” in competition.⁷⁵ In this instance, the general considerations of improper interference in § 767 give way to the specific application of the rule to competitors in § 768.⁷⁶ Because “wrongful” is a higher standard of bad conduct than “improper,” when the

business competition privilege does not apply because the contract is not terminable at will, wrongful conduct will likely encompass improper conduct.⁷⁷

Interference Caused Loss or Damages

The defendant's actions must cause both the interference with the contract and the resulting loss or damages.

Causation. It is usually a question for the jury whether the defendant's actions were intentional and improper and resulted in a breach.⁷⁸ “In order to be held liable for interference with a contract, the defendant must be shown to have caused the interference and the loss.”⁷⁹ It is a question of fact “normally for the jury, whether the defendant has played a material and substantial part in causing the plaintiff's loss of the benefits of the contract.”⁸⁰

When there are disputed questions of material fact about whether the actions of the defendant actually induced a breach of the contract, the question is for the jury; it is not a matter for summary judgment.⁸¹ “The question whether the actor's conduct caused the third person to break his contract with the other raises an issue of fact.”⁸²

Causation under *Restatement (Second)* involves any intentional causation, whether by inducement or by “otherwise causing”; “the essential thing is intent to cause the result.”⁸³ For example, there is no inducement to make another commit a breach of contract by merely entering into an agreement with the knowledge that the other cannot perform it and the existing contract with a third person.⁸⁴

Damages. A plaintiff must demonstrate damages resulting from the defendant's interference.⁸⁵ Because intentional interference with contract is a tort, the measure of damages may depart from contractual damages when necessary to make the plaintiff whole.⁸⁶ While proof of actual damages is a necessary element of the claim for relief,⁸⁷ if the plaintiff proves damages but produces insufficient evidence to determine the amount of damages, nominal damages can be awarded.⁸⁸

Restatement (Second) § 774A(1) includes breach of contract as a measure of damages, as well as pecuniary loss of the benefits of the contract, consequential losses for which the interference is a legal cause, and emotional distress or actual harm to reputation that reasonably results from the interference.⁸⁹ “The action for interference with contract is one in tort and damages are not based on the contract rules The plaintiff can also recover for consequential harms, provided they were legally caused by the defendant's interference.”⁹⁰ For example, lost profits are recoverable⁹¹ and may be proven through the use of expert witnesses or persons with knowledge in the plaintiff's organization.⁹²

An action for breach of contract does not prevent an action for intentional interference “against the person who has induced or otherwise caused the breach. The two are both wrongdoers, and each is liable to the plaintiff for the harm caused to him by the loss of the benefits of the contract.”⁹³ Thus, the fact of a judgment in the breach of contract action is not a bar to suit. “Even a judgment obtained against the third person for the breach of contract will not bar the action . . . so long as the judgment is not satisfied. Payments made by the third person . . . must . . . be credited against the liability for causing the breach and so go to reduce the damages for the tort.”⁹⁴

Prejudgment interest may be awarded in intentional interference with contract cases for lost profits under CRS § 5-12-102(1)(b).⁹⁵

The Affirmative Defense of Justifiable Business Competition

The business competitor's privilege set out in *Restatement (Second)* § 768 has been specifically adopted in Colorado for cases involving intentional interference with contracts terminable at will.⁹⁶ While a contract terminable at will is protected by the duty of non-interference,⁹⁷ the nature of the at-will contract may be relevant on the issues of damages and privilege.⁹⁸ The defendant must plead the affirmative defense of the business competitor's privilege and establish that the defendant's conduct was justified (i.e., privileged).⁹⁹

In determining whether there is abuse of the business competition privilege when the claim involves interference with terminable at will contracts or prospective contractual relations, *Restatement (Second)* § 768 states as follows:

- 1) One who intentionally causes a third person not to enter into a prospective contractual relation with another who is his competitor or not to continue an existing contract terminable at will does not interfere improperly with the other's relation if:
 - a) the relation concerns a matter involved in the competition between the actor and the other;
 - b) the actor does not employ wrongful means;
 - c) his action does not create or continue an unlawful restraint of trade; and
 - d) his purpose is at least in part to advance his interest in competing with the other.
- 2) The fact that one is a competitor of another for the business of a third person does not prevent his causing a breach of an existing contract with the other from being an improper interference if the contract is not terminable at will.¹⁰⁰

The interest of business competition is a purpose for which the defendant may have been privileged to act.¹⁰¹ But if the conduct was engaged in solely to cause harm to the plaintiff,¹⁰² or if the conduct was otherwise tortious or wrongful, the defendant's conduct may not be privileged.¹⁰³ "Wrongful means" include the commission of independent torts, such as conversion and breach of fiduciary duty,¹⁰⁴ and also include predatory means such as violence, fraud, or civil or criminal suits. But persuasion and exerting limited economic pressure are generally not considered wrongful.¹⁰⁵

A practical question for a jury is whether the defendant's conduct is within the boundaries of common sense, fair competition.

Unjust Enrichment

Practitioners should always be aware of pleading claims for relief in equity in the alternative as allowed by CRCP 8(a) and 8(e)(2).

If the plaintiff does not have a claim for intentional interference, the plaintiff has no remedy at law and should be entitled to a remedy in equity. Unjust enrichment is an appropriate remedy in the alternative to intentional interference with contract if there is not an adequate remedy at law.¹⁰⁶ "Conscious interference . . . with contractual expectations . . . will support the claim in restitution . . ."¹⁰⁷ The equitable rule "applies generally to interference with contract or with prospective economic advantage, to the extent that such interference is tortious under applicable law."¹⁰⁸

Conclusion

Intentional interference with contractual relations is a contextual and ad hoc tort. In analyzing the tort, the *Restatement (Second)*

requires the balancing of interests in a fact-specific manner. In the absence of firm rules, many agree that the list of factors in the *Restatement (Second)* is appropriate, but, as one commentator notes, it does not inspire predictive outcomes regarding rights and duties.¹⁰⁹

The tort requires that the interference be both intentional and improper.¹¹⁰ Practitioners will thus benefit from paying close attention to the nature of the actor's conduct. Cases involving directly tortious conduct or conduct generally considered wrongful are more likely to be found improper. Yet conduct that is not tortious, such as persuasion or offers of benefits, but that causes harm, can be considered improper. The question regarding the propriety of the means is whether the interference is justified in causing harm in the manner in which it was caused.¹¹¹ Cases involving an actual breach of contract may impose liability with a lower standard of improper or wrongful conduct. Cases involving interference with contracts short of a total breach may require more evidence of improper or wrongful conduct to impose liability.

Notes

1. This article does not discuss the companion tort of interference with prospective contractual relations. See, e.g., *Amoco Oil Co. v. Ervin*, 908 P.2d 493, 500–503 (Colo. 1995) (tortious interference with prospective business relationship case).

2. *Trimble v. City and County of Denver*, 697 P.2d 716, 725 (Colo. 1985), superseded on other grounds by CRS § 24-10-105.

3. *Memorial Gardens, Inc. v. Olympian Sales & Mgmt. Consultants, Inc.*, 690 P.2d 207, 210 (Colo. 1984); 2 Harper et al., *Harper, James and Gray on Torts* § 6.5 at 356 (3d ed., Aspen Publishers, 2009).

4. *Trimble*, 697 P.2d at 725; *Restatement (Second) of Torts* at § 766 cmt. c (1979) (hereinafter *Restatement (Second)*).

5. *Control, Inc. v. Mountain States Tel. & Tel. Co.*, 513 P.2d 1082, 1084 (Colo.App. 1973); *Carman v. Heber*, 601 P.2d 646, 647 (Colo.App. 1979) (“intentionally inducing a breach of contract”); *Baker v. Carpenter*, 516 P.2d 459, 461 (Colo.App. 1973) (“In order to establish the alleged tort, a plaintiff must prove . . . that the actions of the defendant actually induced a breach of the contract.”).

6. Harper, *supra* note 3, § 6.7 at 365.

7. *Id.* at 366 (quoting *Restatement (Second)* § 766).

8. *Harris Group, Inc. v. Robinson*, 209 P.3d 1188, 1198 (Colo.App. 2009) (“The procedures to be followed when this tort is at issue are not entirely clear.”).

9. *Restatement (Second)*, “Interference with Contractual or Prospective Contractual Relations,” Introductory Note at 4–6; *Restatement (Second)* at § 767, cmt. j.

10. Harper, *supra* note 3, § 6.9 at 379 (citing *Restatement (Second)* §§ 766, 766A, and cmt. e).

11. *Restatement (Second)* at § 766, cmt. c (“inducing breach of contract is now regarded as but one instance, rather than the exclusive limit” of tort); Harper, *supra* note 3, § 6.8 at 377 (“The term *inducing breach of contract* is somewhat misleading as a description of the tort in question.”) (emphasis in original).

12. Dobbs et al., *Prosser and Keeton on Torts*, § 129 at 979 (5th ed., West Group, 1984).

13. *Id.*, § 129 at 978–79; CJI-Civ. 24:4.

14. *Restatement (Second)* at § 766, cmt. k.

15. *Id.* at § 766A, cmt. b.

16. Dobbs, *supra* note 12, § 129 at 978 (citing *Restatement (Second)* at § 766).

17. *Trimble*, 697 P.2d at 725–26.

18. *Restatement (Second)* at § 766.

19. CJI-Civ. 24:1; Dobbs, *supra* note 12 at § 129; Harper, *supra* note 3 at §§ 6.5–6.10.

20. See *Harris Group, Inc.*, 209 P.3d at 1196–98 (contract at will entitled to less protection in business competition than contract not terminable at will, and where privilege of competition exists, causing a third person to terminate a contract terminable at will is not improper unless wrongful means, such as physical violence, fraud, etc., are used); CJI-Civ. 24:6.

21. See, e.g., *Harris Group, Inc.*, 209 P.3d at 1196–98; *Restatement (Second)* at § 766, cmt. g.

22. *Condo v. Conners*, 266 P.3d 1110, 1112–13 (Colo. 2011) (tort claims for intentional interference with contract “necessarily fail in the absence of a valid, preexisting contract.”), *affirming on different grounds Condo v. Conners*, 271 P.3d 524, 526 (Colo.App. 2010) (“For a claim for tortious interference with a contract to be viable, a valid contract must exist.”); Harper, *supra* note 3, § 6.7 at 368–69.

23. *Restatement (Second)* at § 766, cmt. v.

24. CRS § 13-80-102(1)(a).

25. *Sterenbuch v. Goss, III*, 266 P.3d 428, 434–35 (Colo.App. 2011) (because injuries suffered were ascertainable at time of interference, tortious interference with contract claim accrued when plaintiff knew or should have known that defendant had improperly induced his clients to terminate their contracts with him).

26. *Kennedy v. William R. Hudon, Inc.*, 659 F.Supp. 900, 903 (D.Colo. 1987).

27. *Williams v. Burns*, 540 F.Supp. 1243, 1251 (D.Colo. 1982) (granting summary judgment dismissing claim).

28. Harper, *supra* note 3, § 6.5 at 356.

29. See *MDM Group Assocs., Inc. v. CX Reinsurance Co. Ltd.*, 165 P.3d 882, 886 (Colo.App. 2007) (interference with prospective business relations).

30. See *L & M Enters., Inc. v. City of Golden*, 852 P.2d 1337, 1340 (Colo.App. 1993) (interference with formation of contract case).

31. Dobbs, *supra* note 12, § 129 at 993.

32. *Id.*, § 129 at 1000.

33. *Restatement (Second)* at § 766, cmt. i (also noting that mistaken belief as to legal significance of facts regarding express contract can still lead to liability).

34. Dobbs, *supra* note 12, § 129 at 982.

35. See *Control, Inc.*, 513 P.2d at 1084 (discussing intent to induce breach of contract).

36. *The Sherman Agency v. Carey*, 568 P.2d 75, 78 (Colo.App. 1977); *Telluride Real Estate Co. v. Penthouse Affiliates, LLC*, 996 P.2d 151, 155 (Colo.App. 1999) (“the required element of intentional inducement had not been proven.”).

37. *Restatement (Second)* at § 766, cmt. p.

38. *Id.* at § 766, cmts. j, r, and s; Harper, *supra* note 3 at § 6.8; CJI 24:2.

39. *Restatement (Second)* at § 766, cmt. j.

40. *Id.*

41. *Trimble*, 697 P.2d at 726.

42. *Restatement (Second)* at § 767, cmt. d.

43. Dobbs, *supra* note 12, § 129 at 991; Harper, *supra* note 3 at § 6.9; CJI-Civ. 24:4.

44. *Memorial Gardens, Inc.*, 690 P.2d at 211 n. 8 (quoting *Zelinger v. Uvalde Rock Asphalt Co.*, 316 F.2d 47, 50 (10th Cir. 1963) (“[A]n action for damages will lie against one who intentionally and without justification interferes with or induces a breach of a contractual agreement between others, even though the contract is terminable at the will of either party.”)); CJI-Civ. 24:5.

45. *Slater Numismatics, LLC v. Driving Force, LLC*, 310 P.3d 185, 189, 195 (Colo.App. 2012) (citing *Trimble*, 697 P.2d at 725–26 (adopting *Restatement (Second)* § 766 definition of tort)); *Memorial Gardens, Inc.*, 690 P.2d at 210 (same); *Westfield Dev. Co. v. Rifle Inv. Assocs.*, 786 P.2d 1112, 1117 (Colo. 1990) (adopting definition of tort contained in *Restatement (Second)* at § 766A).

46. *Slater Numismatics, LLC*, 310 P.3d at 190 (citing *Krystkowiak v. W.O. Brisben Cos.*, 90 P.3d 859, 871 (Colo. 2004) (“induce[d] the party to breach or [made] it impossible for the party to perform the contract.”), and *Radiology Prof. Corp. v. Trinidad Area Health Ass’n*, 577 P.2d 748, 751 (1978) (“The petitioner cannot recover for the alleged tortious interference with a contract because the agreement was nonexclusive in nature and had not been breached.”)).

47. *Slater Numismatics, LLC*, 310 P.3d at 191 (citing *Watson v. Settlemeyer*, 372 P.2d 453 (Colo. 1962), and *Weber v. Nonpareil Baking Co.*, 274 P.932, 934 (Colo. 1929)).

48. *Slater Numismatics, LLC*, 310 P.3d at 194.

49. *Trimble*, 697 P.2d at 725–26 (citations omitted).

50. *Credit Inv. and Loan Co. v. Guaranty Bank and Trust Co.*, 353 P.2d 1098, 1100 (Colo. 1960); *accord Order of Ry. Conductors v. Jones*, 239 P.882, 883–84 (Colo. 1925) (“to induce without justification an employer to break his contract of employment with his employee is an actionable violation”); *Weber*, 274 P.934 (“contracts may impose a duty on third persons not to interfere with their performance . . . Such a duty was imposed here and its violation was properly enjoined.”).

51. Dobbs, *supra* note 12, § 129 at 991 (citing cases).

52. *Id.*

53. *Watson*, 372 P.2d at 454–55.

54. *Id.* at 454–455. See also *id.* at 456 (“[T]he unlawful interference . . . was his entire course of conduct”) and 454–455 (“[he had] no right to induce such an act or to intentionally interfere . . . by promoting his purpose and intention to take over . . .”).

55. *Carman*, 601 P.2d at 648.
56. *Comtrol, Inc.*, 513 P.2d at 1085.
57. Dobbs, *supra* note 12, § 129 at 986 (citing cases).
58. *Restatement (Second)* at Introductory Note, Ch. 37.
59. Harper, *supra* note 3 at § 6.6 (citation omitted).
60. *Trimble*, 697 P.2d at 725 (“malicious interference with contractual relations”); *Credit Inv. and Loan Co.*, 353 P.2d at 1100 (actual malice); *Restatement (Second)* at § 766, cmt. s.
61. *Westfield Dev. Co.*, 786 P.2d at 1117–18. *See also Trimble*, 697 P.2d at 726.
62. *Restatement (Second)* at § 766, cmt. r.
63. *Id.*
64. *Amoco Oil Co.*, 908 P.2d at 501 (“The trial court properly instructed the jury on the elements of section 767.”).
65. *Boettcher DTC Bldg. Joint Venture v. Falcon Ventures*, 762 P.2d 788, 791 (Colo.App. 1988).
66. *Westfield Dev. Co.*, 786 P.2d at 1118.
67. *McCrea & Co. Auctioneers, Inc. v. Dwyer Auto Body*, 799 P.2d 394, 397 (Colo.App. 1989) (privilege extended to competitors did not apply to interference with prospective business advantage claim because “wrongful means” necessarily include a breach of fiduciary duty).
68. *Harris Group, Inc.*, 209 P.3d at 1197–1200 (wrongful means are those that are intrinsically wrongful, i.e., conduct that is itself capable of forming the basis for liability for the actor).
69. *Restatement (Second)* at § 766B, cmt. e.
70. *Id.* at § 766B, cmt. b.
71. *Id.* at § 766B, cmt. e.
72. *Id.* at § 767, cmt. g.
73. *Id.* at § 766, cmt. m.
74. Dobbs, *supra* note 12, § 129 at 986–87.
75. *Harris Group, Inc.*, 209 P.3d at 1196–97; CJI-Civ. 24:6.
76. *Memorial Gardens, Inc.*, 690 P.2d at 210, n. 7.
77. *Slater Numismatics, LLC*, 310 P.3d at 194–95.
78. *Comtrol, Inc.*, 513 P.2d at 1085 (“Whether he intended to cause a breach of the contract and whether his actions induced a breach of the contract between plaintiff and the hospital were factual issues which the court should have allowed the jury to determine.”); *Credit Inv. and Loan Co.*, 353 P.2d at 1100 (existence of intent and actual malice are “primarily questions of fact for determination by the trier of facts in the action.”).
79. Dobbs, *supra* note 12, § 129 at 989.
80. *Id.* at 991.
81. *Slater Numismatics, LLC*, 310 P.3d at 189 (reversing entry of summary judgment where “the conduct of [defendants] and its principals interfered with [third parties] performance of its contract with [p]laintiff in such a manner as to create a triable issue under Colorado law.”); *Lufi v. Brighton Cmty. Hosp. Ass’n*, 40 P.3d 51, 58 (Colo.App. 2001) (summary judgment proper where no evidentiary support for intentional and improper elements).
82. *Restatement (Second)* at § 766, cmt. o.
83. *Id.* at § 766, cmt. h.
84. *Baker*, 516 P.2d at 461 (“one does not induce a seller to breach a contract with a third person when he merely enters into an agreement with the seller with knowledge that the seller cannot perform both it and his contract with the third person.”); *Restatement (Second)* at § 766, cmt. n.
85. As a general rule, emotional distress damages may be recovered in an action for intentional interference with contract, *Trimble*, 697 P.2d at 730, but only “if they are reasonably to be expected to result from the interference.” *See also Restatement (Second)* at § 774A(1)(c); *Batterman v. Wells Fargo Ag Credit Corp.*, 802 P.2d 1112, 1117 (Colo.App. 1990) (reversing summary judgment and quoting and approving *Restatement (Second)* at § 774A(1) regarding compensable damages).
86. *Westfield Dev. Co.*, 786 P.2d at 1120.
87. *Rywalt v. Writer Corp.*, 526 P.2d 316, 318 (1974) (affirming dismissal of claim for damages with interference with an advantageous business relationship because “[n]o damage is shown from interference if any . . .”).
88. CJI-Civ. 24:7; Dobbs, *supra* note 12, § 129, at 1002–03.
89. *Westfield Dev. Co.*, 786 P.2d at 1122; *Memorial Gardens, Inc.*, 690 P.2d at 212 (citing *Restatement (Second)* at § 774A).
90. *Restatement (Second)* at § 774A, cmt. d.
91. *See Leppla v. Schroeder*, 532 P.2d 370, 372 (Colo.App. 1974) (“measure of damages for business interference is loss of net profits”). *See also Hein Enters., Ltd. v. San Francisco Real Estate Investors*, 720 P.2d 975, 981 (Colo.App. 1985) (“Loss of business advantage or opportunity can properly be recovered under a theory of intentional interference with contractual relationship. These damages may include loss of profits and chances for gain.”) (internal citations omitted); *Restatement (Second)* at § 774A.
92. *Harris Group, Inc.*, 209 P.3d at 1202 (discussing damages and expert testimony).
93. *Restatement (Second)* at § 766, cmt. v.
94. *Id.* at §§ 766, cmt. v, and 774A(2), cmt. e. *See also* Dobbs, *supra* note 12, § 129 at 1003.
95. *Westfield Dev. Co.*, 786 P.2d at 1122. Under CRS § 5-12-102(1)(b), “interest shall be at the rate of eight percent per annum compounded annually for all moneys . . . after they are wrongfully withheld or after they become due to the date of payment or to the date judgment is entered, whichever first occurs.”
96. *Harris Group, Inc.*, 209 P.3d at 1196–98 (where privilege of business competition exists, causing third person to terminate a contract terminable at will is not improper unless wrongful means, such as physical violence, fraud, etc., are used); CJI-Civ. 24:6.
97. *Watson*, 372 P.2d at 456; Dobbs, *supra* note 12, § 129 at 995–96.
98. Dobbs, *supra* note 12, § 129 at 996.
99. Harper, *supra* note 3 at § 6.12; Dobbs, *supra* note 12, § 129 at 983–84.
100. *Restatement (Second)* at § 768.
101. *See* Harper, *supra* note 3 at §§ 6.12, 6.13; Dobbs, *supra* note 12, § 129 at 985–89; *Restatement (Second)* at §§ 767–74. *See also Westfield Dev. Co.*, 786 P.2d at 1118 (privilege to file a lis pendens that interferes with a third person’s performance of contract is not an absolute one; it is qualified in that only litigants with a bona fide claim have a privilege to interfere).
102. Harper, *supra* note 3, § 6.8 at 373–74.
103. *Restatement (Second)* at § 767, cmt. c.
104. *Slater Numismatics, LLC*, 310 P.3d at 195; *Harris Group, Inc.*, 209 P.3d at 1199–1200; *Restatement (Second)* at § 768, cmt. e.
105. *Restatement (Second)* at § 768, cmt. e.
106. *Slater Numismatics, LLC*, 310 P.3d at 196; *Harris Group, Inc.*, 209 P.3d at 1207 (because the value of the benefits was included within the damages awarded for intentional interference with contract, the damages also functioned as restitution to the company to recover the gain the former employees and the new business obtained through their wrongful acts, the company therefore had an adequate remedy at law, and the jury awards for unjust enrichment were reversed).
107. *Restatement (Third) of Torts*, “Restitution and Unjust Enrichment” at § 44, cmt. b (2011).
108. *Id.*
109. Dobbs, *supra* note 12, § 129, n. 63, at 984.
110. *Restatement (Second)* at § 767, cmt. a.
111. *Id.* at § 767, cmt. c. ■