

Tortious Interference: Texas

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A Q&A guide to state law on tortious interference in Texas. This guide addresses the elements of tortious interference claims, pleading requirements, potential remedies, defenses, and applicable standards of proof and causation.

Elements of Tortious Interference

1. What are the elements of a claim for tortious interference with contract rights in your jurisdiction? Do litigants or courts in your jurisdiction refer to this type of claim by another name (for example, tortious interference with contractual relationships)?

In Texas, a plaintiff alleging tortious interference with contract rights must establish the following elements:

- The existence of a valid contract subject to interference.
- The defendant willfully and intentionally interfered with the contract.
- The defendant's interference proximately caused the plaintiff's injury.
- The plaintiff incurred actual damage or loss.

(*Cnty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 689 (Tex. 2017); *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 207 (Tex. 2002).)

Litigants and courts in Texas commonly refer to this tort as "tortious interference with contract" or "tortious interference with an existing contract" (see, for example, *Hansen*, 525 S.W.3d at 689).

2. What are the elements of a claim for tortious interference with business relationships in your jurisdiction? Do litigants or courts in your jurisdiction refer to this type of claim by another name (for example, tortious interference with prospective or existing business advantage)?

In Texas, a plaintiff alleging tortious interference with business relationships must establish the following elements:

- There was a reasonable probability that the plaintiff would have entered into a business relationship with a third party.
- The defendant either acted with a conscious desire to prevent the relationship from occurring or knew the interference was certain or substantially certain to occur as a result of the conduct.
- The defendant's conduct was independently tortious or unlawful.
- The defendant's interference proximately caused the plaintiff injury.
- The plaintiff suffered actual damage or loss as a result.

(*Coinmach Corp. v. Aspenwood Apartment Corp.*, 417 S.W.3d 909, 923 (Tex. 2013).)



Litigants and courts in Texas commonly refer to this tort as “tortious interference with prospective business relations” (see, for example, *Coinmach Corp.*, 417 S.W.3d at 923).

3. If intent is an element of tortious interference in your jurisdiction, describe the standard or set of factors that courts in your jurisdiction apply when analyzing whether a defendant had the requisite intent to interfere.

In a claim for tortious interference with contract or for tortious interference with prospective business relations in Texas, the plaintiff must establish that the defendant’s interference was intentional (*Bradford v. Vento*, 48 S.W.3d 749, 757 (Tex. 2001); *Sw. Bell Tel. Co. v. John Carlo Tex., Inc.*, 843 S.W.2d 470, 472 (Tex. 1992)). Interference is intentional if the defendant either:

- Wants to cause interference as the consequence of the defendant’s conduct.
- Knows or believes that the interference is certain or substantially certain to occur from the defendant’s conduct.

(*Bradford*, 48 S.W.3d at 757 (quoting Restatement Second, Torts § 766B, comment d) (tortious interference with prospective business relations); *Sw. Bell Tel.*, 843 S.W.2d at 472 (quoting Restatement Second, Torts § 8A) (interference with contract).)

In a claim for tortious interference with contract, the intent element requires the plaintiff to establish that the defendant had knowledge of the existence of a contract between the plaintiff and a third party or had knowledge of facts that would lead a reasonable person to conclude that a contract existed (*Tex. Campaign for the Env’t v. Partners Dewatering Int’l, LLC*, 485 S.W.3d 184, 193 (Tex. App.—Corpus Christi 2016, no pet.)). The element of intent does not require intent to injure (*Sw. Bell Tel.*, 843 S.W.2d at 472).

In a claim for tortious interference with prospective business relations, the plaintiff must establish that the defendant had actual knowledge of the prospective contract or business relation (see *Tex. Oil Co. v. Tenneco Inc.*, 917 S.W.2d 826, 834 (Tex. App.—Houston [14th Dist.] 1994), rev’d on other grounds sub nom. *Morgan Stanley & Co. v. Texas Oil Co.*, 958 S.W.2d 178 (Tex. 1997)).

However, the court may find that the defendant’s interference is not intentional if the defendant engaged in its conduct for another purpose (not intending to interfere

with the prospective business relations), even when the defendant knew that interference would be an incidental result (*Bradford*, 48 S.W.3d at 757 (citing Restatement Second, Torts § 766B, comment d); see also *Baty v. ProTech Ins. Agency*, 63 S.W.3d 841, 861 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (mere participation in the transaction is insufficient to establish intent)).

4. For tortious interference claims involving business relationships or contracts, describe the circumstances where a defendant who is not a stranger to the underlying business relationship or contract may be liable for tortious interference, if any.

In a claim for tortious interference with contract in Texas, the defendant must be a stranger to the contract with which it allegedly interfered (*Hansen*, 525 S.W.3d at 690). When alleging that a corporate agent has interfered with the corporation’s contract, the plaintiff must prove the agent willfully and intentionally acted to serve the agent’s personal interests at the expense of the corporation’s interests (*Hansen*, 525 S.W.3d at 690-91; *Powell Indus., Inc. v. Allen*, 985 S.W.2d 455, 456-57 (Tex. 1998)). An agent’s mixed motives, benefitting both the agent and the corporation, are insufficient to establish liability (*Powell*, 985 S.W.2d at 457).

Courts consider the corporation’s own evaluation of the agent’s actions to determine whether the agent acted against the corporation’s interests as the corporation is the best judge of its own best interests. While a corporation’s complaint about its agent’s conduct is not determinative, the absence of a complaint is conclusive evidence that the agent did not act against the corporation’s interest. (*Powell*, 985 S.W.2d at 457 (citing *Morgan Stanley*, 958 S.W.2d at 181-82).)

Pleading Tortious Interference

5. What is the pleading standard for a claim for tortious interference in your jurisdiction?

In Texas, tortious interference claims are subject to the fair-notice pleading standard (*Schoellkopf v. Pledger*, 778 S.W.2d 897, 899-900 (Tex. App.—Dallas 1989, writ denied); see, for example, *So. Union Co. v. City of Edinburg*, 129 S.W.3d 74, 91 (Tex. 2003)). The fair-notice pleading standard requires that the pleadings provide the defendant fair notice of the plaintiff’s claim and the relief

the plaintiff seeks such that the defendant can prepare a defense (Tex. R. Civ. P. 45 and 48; *In re Lipsky*, 460 S.W.3d 579, 590 (Tex. 2015) (orig. proceeding)). A petition is sufficient if it gives fair and adequate notice of the facts on which the plaintiff bases its claim (*DeRoeck v. DHM Ventures, LLC*, 556 S.W.3d 831, 835 (Tex. 2018)).

6. If a heightened pleading standard applies to a claim for tortious interference in your jurisdiction, describe the standard that a plaintiff must meet.

In Texas, a heightened pleading standard does not apply to tortious interference claims (see Question 5).

Remedies for Tortious Interference

7. What types of damages are available for tortious interference in your jurisdiction (for example, special damages, punitive damages, and so on)?

In Texas, the following damages are available for tortious interference with contract and prospective business relations:

- Actual damages, including:
 - lost benefits of the contract or business relationship (see *Browning-Ferris, Inc. v. Reyna*, 852 S.W.2d 540, 549 (Tex. App.—San Antonio 1992) (citing Restatement Second, Torts § 774A), *rev'd on other grounds* 865 S.W.2d 925 (Tex. 1993));
 - lost wages (*Diep Tuyet Vo v. Vu*, 2016 WL 2841286, at *4 (Tex. App.—Fort Worth May 12, 2016, no pet.) (mem. op.); see, for example, *El Paso Healthcare Sys., Ltd. v. Murphy*, 518 S.W.3d 412, 416 (Tex. 2017));
 - lost profits (see *Fluor Enters., Inc. v. Conex Int'l Corp.*, 273 S.W.3d 426, 447 (Tex. App.—Beaumont 2008, pet. denied); *Sandare Chem. Co. v. WAKO Int'l, Inc.*, 820 S.W.2d 21, 24 (Tex. App.—Fort Worth 1991, no writ));
 - mental anguish (*Comstock Silversmiths, Inc. v. Carey*, 894 S.W.2d 56, 57 n.2 (Tex. App.—San Antonio 1995, no writ)); and
 - damage to reputation (*Browning-Ferris*, 852 S.W.2d at 549 (citing Restatement Second, Torts § 774A)).
- Exemplary (or punitive) damages (*Seelbach v. Clubb*, 7 S.W.3d 749, 756-57 (Tex. App.—Texarkana 1999, pet. denied)).

- Pre- and post-judgment interest (see, for example, *Dominguez v. Dominguez*, 583 S.W.3d 365, 369 (Tex. App.—El Paso 2019, pet. denied)).
- Court costs (Tex. R. Civ. P. 131).

8. If punitive damages are available for tortious interference in your jurisdiction, what is the standard for obtaining punitive damages on a claim for tortious interference in your jurisdiction?

In Texas, a plaintiff may recover exemplary (or punitive) damages for tortious interference (*Seelbach*, 7 S.W.3d at 757). To recover exemplary damages, the plaintiff must establish by clear and convincing evidence that the plaintiff's harm resulted from the defendant's fraud or malice (Tex. Civ. Prac. & Rem. Code Ann. § 41.003).

9. What types of equitable and declaratory relief are available for tortious interference in your jurisdiction?

If the plaintiff satisfies the requirements for injunctive relief, a Texas court can grant equitable relief in the form of a temporary restraining order, temporary injunction, or permanent injunction in connection with a tortious interference claim (see, for example, *Bureaucracy Online, Inc. v. Schiller*, 145 S.W.3d 826, 828 (Tex. App.—Dallas 2004, no pet.); *Graham v. Mary Kay Inc.*, 25 S.W.3d 749, 753 (Tex. App.—Houston [14th Dist.] 2000, pet. denied)).

A party generally cannot use a declaratory judgment action to determine potential tort liability under Texas law (Tex. Civ. Prac. & Rem. Code Ann. § 37.004; see *In re Houston Specialty Ins. Co.*, 569 S.W.3d 138, 140-41 (Tex. 2019)). Declaratory relief therefore is not typically available for a tortious interference claim. However, a plaintiff can seek declaratory relief to determine the construction or validity of a contract or establish an existing right, status, or other legal relationship underlying the tortious interference claim. (Tex. Civ. Prac. & Rem. Code Ann. § 37.004; see, for example, *Nnah v. 125 Interests, Inc.*, 2016 WL 4543685, at *8 (Tex. App.—Houston [14th Dist.] Aug. 31, 2016, pet. denied) (mem. op.) (requesting that the court construe the meaning of an "all rights" provision in the underlying contract).)

10. Please describe any circumstances in which a litigant may recover attorneys' fees on a tortious interference claim.

Attorneys' fees generally are not recoverable for tortious interference claims in Texas (*DP Sols., Inc. v. Rollins, Inc.*, 353 F.3d 421, 430-31 (5th Cir. 2003) (citing *Marcus, Stowell & Beye Gov't Sec., Inc. v. Jefferson Inv. Corp.*, 797 F.2d 227, 234 (5th Cir. 1986) (attorneys' fees generally are not recoverable in Texas tort actions unless provided by statute or contract)); *Smith v. Hennington*, 249 S.W.3d 600, 606 (Tex. App.—Eastland 2008, pet. denied)).

In some instances, attorneys' fees may be recoverable in tortious interference claims under the equitable theory of attorney fees as damages. Under this equitable theory, a plaintiff can recover attorneys' fees incurred in a previously litigated claim with a third party when the previous litigation was caused by the defendant (*DP Sols., Inc.*, 353 F.3d at 430-31; but see *Martin-Simon v. Womack*, 68 S.W.3d 793, 797 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (declining to allow attorneys' fees as damages in a tortious interference claim)).

11. May a plaintiff recover pre-judgment and post-judgment interest in connection with a tortious interference claim?

A plaintiff may recover pre- and post-judgment interest in tortious interference claims in Texas (see, for example, *Dominguez*, 583 S.W.3d at 369).

Defenses to Tortious Interference

12. What are common arguments that defendants make to defeat a tortious interference claim in your jurisdiction?

Common defenses to tortious interference with contract claims in Texas include:

- Privilege or legal justification (*Murphy*, 518 S.W.3d at 420; *Prudential Ins. Co. v. Fin. Review Servs.*, 29 S.W.3d 74, 77-78 (Tex. 2000); *Lamont v. Vaquillas Energy Lopeno, LLP*, 421 S.W.3d 198, 218 (Tex. App.—San Antonio 2013, pet. denied)).
- Inability of the third party to perform the contract with plaintiff due to liquidation or insolvency (*Sorbus, Inc. v. UHW Corp.*, 855 S.W.2d 771, 775 (Tex. App.—El Paso 1993, writ denied)).
- Unenforceability of the underlying contract based on public policy (see, for example, *Lazer Spot, Inc. v. Hiring Partners, Inc.*, 387 S.W.3d 40, 49 (Tex. App.—Texarkana 2012, pet. denied) (unenforceability of a noncompetition

agreement on public policy grounds was a defense to the tortious interference claim)).

- The underlying contract is void (*Jetall Cos. v. Four Seasons Food Distribs., Inc.*, 474 S.W.3d 780, 784 (Tex. App.—Houston [14th Dist.] 2014, no pet.)).
- Estoppel, if:
 - the plaintiff knew of the defendant's interference with the contract;
 - the plaintiff failed to act on the interference; and
 - the defendant detrimentally relied on the plaintiff's failure to act.(See *Frost Nat'l Bank v. Alamo Nat'l Bank*, 421 S.W.2d 153, 158 (Tex. App.—San Antonio 1967, writ ref'd n.r.e.).)
- Illegality of the underlying contract (*Deuell v. Tex. Right to Life Comm., Inc.*, 508 S.W.3d 679, 692 (Tex. App.—Houston [1st Dist.] 2016, pet. denied)).

Common defenses to claims for tortious interference with prospective business relations include privilege and legal justification. However, a defendant can raise either of these defenses only to the extent that it would be a defense to the defendant's underlying independently tortious conduct. (*Wal-Mart Stores, Inc. v. Sturges*, 52 S.W.3d 711, 727 (Tex. 2001).)

13. Are there any doctrines, rules, or other authorities in your jurisdiction that may prevent a plaintiff from recovering damages or asserting a claim for both tortious interference and another type of claim (for example, breach of contract)?

A defendant may assert the affirmative defense of failure to mitigate damages to prevent or reduce the plaintiff's recovery in a tortious interference with contract claim (*Sorbus, Inc.*, 855 S.W.2d at 775).

In Texas, a defendant cannot tortiously interfere with its own contract. Therefore, a plaintiff cannot recover against a defendant for both tortiously interfering with and breaching the same contract. (*Cleveland Reg'l Med. Ctr., L.P. v. Celtic Props., L.C.*, 323 S.W.3d 322, 346 (Tex. App.—Beaumont 2010, pet. denied).)

Texas recognizes an independent common law duty not to unlawfully interfere with another's contracts or business relationships. Therefore, a plaintiff may assert both a claim against a defendant for breaching its contract with the plaintiff (for example, a noncompete clause

in an employment contract) and a claim for tortiously interfering with the plaintiff's contract or prospective business relation with a third party (for example, acquiring the former employer's customer), even if the tortious interference arises from the same underlying facts as the contract breach (see *CoreALM, LLC v. Keen Fusion, Inc.*, 2018 WL 6072154, at *3 (Tex. App.—Austin Nov. 21, 2018, pet. denied) (mem. op.); *Tex. Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348 (Tex. App.—Dallas 2009, pet. denied)).

14. What is the statute of limitations for asserting a tortious interference claim in your jurisdiction? When does the statute of limitations period begin to run for a tortious interference claim in your jurisdiction?

In Texas, the statute of limitations for asserting tortious interference claims is generally two years (Tex. Civ. Prac. & Rem. Code Ann. § 16.003(a)). However, a one-year limitations period will apply when defamation is the sole basis of the tortious interference claim (*Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 370 (Tex. 2014)).

For tortious interference with contract claims, the limitations period begins to run when the defendant's interference with the contract first causes harm to the plaintiff, even if damages continue past that date (*Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 591 (Tex. 2017) (when the contracting party knows of its injury and damages, limitations begins to run in a tortious interference with contract claim, regardless of whether the contract has been terminated at that time); *Hill v. Heritage Res.*, 964 S.W.2d 89, 116 (Tex. App.—El Paso 1997, pet. denied)). For tortious interference with business relations claims, the limitations period begins to run when the interference terminates the pertinent business negotiations and harms the plaintiff (*Hill*, 964 S.W.2d at 116).

15. Are there any doctrines, rules, or other authorities that courts in your jurisdiction may apply to toll or suspend the statute of limitations period for a tortious interference claim?

The discovery rule may apply to tortious interference claims if the plaintiff proves that the nature of its injury is inherently undiscoverable and its injury is objectively verifiable (see *Burke v. Union Pac. Res. Co.*, 138 S.W.3d 46, 71 (Tex. App.—Texarkana 2004, pet. denied) (assuming

but not deciding that the discovery rule applied to a tortious interference claim); *Snell v. Sepulveda*, 75 S.W.3d 142, 144 (Tex. App.—San Antonio 2002, no pet.) (discussing but not applying the discovery rule in a tortious interference claim)).

Proving Tortious Interference

16. What is the standard of proof that a party seeking to prove a tortious interference claim must satisfy in your jurisdiction?

In Texas, a plaintiff must establish a tortious interference claim by a preponderance of the evidence (see, for example, *Sowell v. Resolution Trust Corp.*, 1996 WL 233727, at *4 (Tex. App.—Houston [14th Dist] May 9, 1996, no writ) (mem. op., not designated for publication)).

17. If lack of justification or privilege for interference is an element of tortious interference in your jurisdiction, which party bears the burden of proof of establishing justification or privilege (or lack thereof)? Discuss any circumstances under which a defendant may have the burden of proof on other elements of a tortious interference duty claim in your jurisdiction.

Lack of justification or privilege is not an element of a claim for tortious interference in Texas. In tortious interference with contract claims, privilege and justification are affirmative defenses on which the defendant carries the burden of proof. (*Sturges*, 52 S.W.3d at 725.)

In tortious interference with prospective business relations claims, the plaintiff is not required to prove justification or privilege as an element of the claim but is required to prove that the defendant's conduct was independently tortious or wrongful. In these claims, justification and privilege are defenses only to the extent they negate the independent tortious nature of the defendant's underlying conduct. (*Sturges*, 52 S.W.3d at 726-27.)

18. If causation is an element of a tortious interference claim in your jurisdiction, what is the applicable standard for proving the causation element?

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In Texas, causation is an element of tortious interference claims (*Hansen*, 525 S.W.3d at 689; *Coinmach Corp.*, 417 S.W.3d at 923). The applicable standard is proximate cause. To establish proximate cause, the plaintiff must prove that the defendant's interference was both the cause-in-fact of the plaintiff's injury and that its injury was foreseeable. (*Richardson-Eagle, Inc. v. William M. Mercer, Inc.*, 213 S.W.3d 469, 474 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) (causation requires the plaintiff to prove that the defendant's acts or omissions were a substantial factor in bringing about the alleged injury).) To establish proximate cause in tortious interference with contract claims, the plaintiff also must show that the defendant took an active part in persuading the third party to breach the contract (*Davis v. HydPro, Inc.*, 839 S.W.2d 137, 139 (Tex. App.—Eastland 1991, writ denied)).

Related Claims

19. What other types of tortious interference claims (for example, tortious interference with quiet enjoyment with land) does your jurisdiction recognize, if any?

Texas courts have also recognized claims for:

- Tortious interference with the right to dispose of property. A cause of action for interference with the right to dispose of property is essentially a claim for tortious interference with a prospective contract or business relation.
- Tortious interference with the peaceful use and enjoyment of property rights. A cause of action for interference with the peaceful use and enjoyment of property rights is essentially a claim for intentional invasion of, or interference with, property rights.

(*Ski River Dev., Inc. v. McCalla*, 167 S.W.3d 121, 140 (Tex. App.—Waco 2005, pet. denied).)

Miscellaneous

20. Are there other significant things that litigants should know when asserting or defending a tortious interference claim in your jurisdiction?

No.

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