

## GRADER'S GUIDE

### \*\*\* QUESTION NO. 5 \*\*\*

#### SUBJECT: TORTS

Alaska recognizes two intentional business interference torts: (1) intentional interference with contractual relations; and (2) intentional interference with prospective economic advantage.

#### 1. **Intentional Interference With Contractual Relations (50 points)**

The elements of the tort of intentional interference with contractual relations are:

(1) a contract existed, (2) the defendant knew of the contract and intended to induce a breach, (3) the contract was breached, (4) defendant's wrongful conduct engendered the breach, (5) the breach caused the plaintiff's damages, and (6) the defendant's conduct was not privileged or justified.

Waldroup v. Lindman, 28 P.3d 293, 296 (Alaska 2001). This cause of action promotes an individual's security and integrity in his contractual relations by protecting those relations from wrongful intermeddling by third parties. Ellis v. City of Valdez, 686 P.2d 700, 707 (Alaska 1984).

The first element of this tort is that a contract existed. Based on the facts, APC had a contract only with Joe Clark as of January of Year 7, the time when the City advised fishermen who resided in the City that APC was experiencing serious financial problems. Thus, the only existing contract that may have been subject to interference is APC's contract with Clark.

The second element requires that the defendant knew of the contract and intended to induce a breach. Based on the facts, the City likely knew that Clark had a contract with APC. The facts indicate that the City contacted all fishermen who were residents of the City in January of Year 7 to advise them that APC was having financial problems. APC will argue that the City told its resident fishermen that APC was having serious financial problems because the City wanted to discourage fishermen from selling salmon to APC. If shown, APC may prevail in its efforts to show that APC intended to induce Clark to breach his contract with APC.

As to the third, fourth and fifth elements of this tort, Clark breached his contract with APC and the reason for the breach was the information that Clark received from the City. It is reasonable to conclude upon the facts that

APC suffered damages as a result of Clark's decision to breach his contract with APC.

The final element is whether the conduct was privileged or justified. As applied by the Alaska Supreme Court, the focus of this element is whether the actor had a direct financial interest in the contract subject to alleged interference. Where "an actor has a direct financial interest, he is privileged to interfere with a contract for economic reasons, but not where he is motivated by spite, malice, or some other improper objective. . . where there is a direct financial interest in a contract, the essential question in determining if interference is justified is whether the person's conduct is motivated by a desire to protect his economic interest, or whether it is motivated by spite, malice, or some other improper objective." RAN Corp. v. Hudesman, 823 P.2d 646, 648 (Alaska 1991) (finding that a lessor has a financial interest in the assignment of a lease of the property he owns and holding that lessor was justified in interfering with lessee's efforts to assign lease when lessor had economic reasons to prefer an assignee located by lessor). Discussing the reason for the privilege rule, the Alaska Supreme Court has explained that there is a distinction between the interests of a person in a competitor's contracts and those contracts in which the actor has some financial interest. One who interferes in a competitor's contracts has little to lose and much to gain; whereas, in a case where a person has some direct financial stake in the contract, it is logical that a person's own economic self-interest would discourage causing a breach of contract because there would be some personal loss. Id. (citing Bendix Corp. v. Adams, 610 P.2d 24, 30 (Alaska 1986)); see also Hatten v. Union Oil Co. of Cal., Inc., 778 P.2d 1150 (Alaska 1989) (company had direct financial interest in contract between employee and his employer where employee performed work under contract on company's property, but issue of fact precluded summary judgment as to whether company's valid work place safety interests were predominate motive for interference); Waldroup v. Lindman, 28 P.3d 293 (Alaska 2001) (insurer has direct financial interest in contractual relationship between its insured and her medical provider and interference was privileged in the absence of evidence showing that an improper purpose motivated insurer to deny claim and to agree to defend insured against any claim for payment raised by provider).

APC would argue that the City did not have a direct financial interest in the contract that APC had with Clark. The City would argue that it did have a financial interest because payment by APC under its contract was important to the City's ability to obtain tax revenue. Examinees may also identify the City's ownership of the plant as a financial interest. As the owner of the plant, the City would argue that it had an interest in ensuring that fishermen who sold salmon to the plant were paid. Otherwise, the reputation of the plant, and the future of the plant, would be compromised because unpaid fishermen may attribute the non-payment to the plant, as opposed to the operator, and may be adverse to selling to the plant in the future. Finally, this is not a situation

where the City was a competitor of APC. Rather, the City owned the plant and some of the fishermen who sold salmon to the plant were residents of the City. Thus, the City had a financial stake in the Clark contract and, logically, would have an economic self-interest against interfering with such contract. Based on Alaska authority, a court likely would find that the City had a direct financial interest in the contract. The question, then, is whether the City acted to protect its interest. There are no facts indicating that the City acted with an improper motive. Nonetheless, the issue is an issue of fact that is not absolutely resolved based on the facts.

## **2. Intentional Interference With Prospective Economic Advantage (50 points)**

The elements of the tort of intentional interference with prospective economic advantage are:

1) a prospective business relationship existed ... 2) [the defendant] knew of the prospective relationship and intended to prevent its fruition, 3) the prospective business relationship did not culminate in pecuniary benefit to [the plaintiff], 4) [the defendant's] conduct interfered with the prospective relationship, 5) the interference caused [the plaintiff's] damages, and 6) [the defendant's] conduct was not privileged or justified.

Odom v. Fairbanks Memorial Hosp., 999 P.2d 123, 132 (Alaska 2000) (citation omitted). This tort protects a party who is involved in an economic relationship with another, or is pursuing reasonable and legitimate prospects of entering such a relationship, from a third person's wrongful conduct that is intended to disrupt the relationship. Id. The cause of action protects both continuing business or customary relationships not amounting to formal contracts and prospective business or contractual relations which, absent interference, would culminate in pecuniary benefit to the plaintiff. Ellis, 686 P.2d at 707.

The first element requires that a prospective business relationship existed. APC would argue that it had a business relationship with all fishermen with whom it historically had done business. Based on the customary relationship, APC would argue that it was involved in an economic relationship or had a reasonable and legitimate prospect of entering into relationships with such fishermen for the Year 7 season. More difficult is whether APC had prospective relationships with fishermen with whom APC had not done business in the past. As of the time of the alleged tortious conduct, APC had never pursued such relationships. Rather, APC made efforts to pursue contracts with other fishermen only after it had difficulty obtaining contracts with its customary fishermen. The law does not permit APC to allege summarily that, as a salmon processor, it had expectations of business

relationships with any person who caught and sold salmon. Cf. Alaska Marine Pilots v. Hendsch, 950 P.2d 98, 106 (Alaska 1997) (vague assertions of interference with plaintiff's ability to work as a pilot cannot support claim for intentional interference with prospective economic advantage). This is because a party's acts cannot prevent the formation of an economic relationship if the plaintiff never had nor expected to have an economic relationship with the subject persons. Id. To prevail as to the new fishermen that APC approached, APC would have to prove that it reasonably expected to have an economic relationship with specific fishermen.

The second element requires that the defendant knew of the prospective relationship and intended to prevent its fruition. The facts indicate that the City likely knew that APC had relationships with all fishermen who were residents of the City with whom APC had done business in the past and there is evidence of intent. The City did not direct its conduct toward any other fishermen, however. Thus, a question for the factfinder would be whether the City reasonably expected that the information provided to the City resident fishermen would be communicated to other fishermen with whom APC might contract and whether the City intended that such information be communicated to other fishermen for the purpose of interfering with APC's business. The facts are inconclusive on this issue.

Finally, similar to the contract interference tort, APC likely would have little difficulty showing that specific fishermen refused to contract with APC because of the information communicated by the City and that APC suffered pecuniary loss as a result. Finally, the analysis with regard to privilege is the same as the analysis for the contract interference tort.