

TORTIOUS INTERFERENCE WITH INHERITANCE RIGHTS

**JACK W. LAWTER, JR. and DIANNE WHITEHORN LAWTER
Fulbright & Jaworski L.L.P.
Houston**

TABLE OF CONTENTS

	<u>Page</u>
I. PURPOSE OF PRESENTATION	1
II. DEFINITION OF TORTIOUS INTERFERENCE WITH INHERITANCE RIGHTS	1
III. RESTATEMENT (SECOND) OF TORTS	1
IV. DEFINITION OF TERMS	1
A. Inheritance or Gift	1
B. Gift	2
C. "Tortious"	2
D. "Cause of Loss"	2
V. REMEDIES	2
A. Damages	2
B. Punitive Damages	2
C. Restitution	2
D. Constructive Trust	2
VI. POSSIBLE ADVANTAGES TO THE PLAINTIFF	2
VII. POSSIBLE DISADVANTAGES TO PLAINTIFFS	3
VIII. DEFENSES	4
A. Res Judicata	4
B. Exhaustion of Probate Remedies	4
C. Statute of Limitations	4
D. Estoppel, Waiver and Laches	4
E. Defenses Based on Factual Arguments	4
IX. POTENTIAL SCOPE OF TORTIOUS INTERFERENCE WITH INHERITANCE RIGHTS	4
X. POSSIBLE APPLICATIONS OR EXTENSIONS OF TORTIOUS INTERFERENCE CASES	5
XI. BRINGING THE ACTION BEFORE THE TESTATOR DIES	5
A. Advantages	5
B. Disadvantages	5
XII. TORTIOUS INTERFERENCE V. WILL CONTEST	6

XIII.	JURY CHARGE FOR TORTIOUS INTERFERENCE CAUSE OF ACTION	6
XIV.	TEXAS CASES	7
A.	<i>King v. Acker</i> , 725 S.W.2d 750 (Tex. App.--Houston [1st Dist.] 1987, no writ)	7
B.	Damages in <i>King v. Acker</i>	7
C.	Implications of <i>King v. Acker</i> for Probate and Trust Litigation ...	7
D.	Possible Cause of Action for Interference with "Inheritance Expectancy"	8
E.	<i>King</i> and <i>Neill</i> Distinguished	8
F.	Evaluation of Contemplated Litigation	9
G.	Possible Elements of Tortious Interference in Texas	9
1.	Texas Cases Discussing Interference with Inheritance	9
a.	<i>Pope v. Garret</i> , 204 S.W.2d 867 (Tex. Civ. App.--Galveston 1947), <i>rev'd on other grounds</i> , 211 S.W.2d 559 (Tex. 1948)	9
b.	<i>Teague v. Stephens</i> , 564 S.W.2d 437 (Tex. Civ. App.--Tyler 1978, no writ)	10
c.	Summary	10
2.	Texas Cases Discussing Tortious Interference with Contract Rights	11
a.	<i>Sakowitz, Inc. v. Steck</i> , 669 S.W.2d 105 (Tex. 1984) ..	11
b.	<i>American Petrofina, Inc. v. PPG Industries, Inc.</i> , 679 S.W.2d 740 (Tex. App.--Fort Worth 1984, writ <i>dism'd</i> by <i>agr.</i>)	11
c.	<i>Tippet v. Hart</i> , 497 S.W.2d 606, 610-11 (Tex. Civ. App.--Amarillo 1973, writ <i>ref'd n.r.e.</i>)	11
d.	Summary	11
XV.	CASES FROM OTHER JURISDICTIONS	12
A.	Alabama	12
1.	<i>Holt v. First National Bank of Mobile</i> , 418 So.2d 77 (Ala. 1982)	12
B.	Colorado	12
1.	<i>Peffer v. Bennett</i> , 523 F.2d 1323 (10th Cir. 1975)	12
C.	Delaware	13
1.	<i>Williams v. Wilmington Trust Company</i> , No. 92C-06-032, 1993 WL 331049 (Del. Super. Ct. Aug. 19, 1993)	13
2.	<i>Moore v. Graybeal</i> , 843 F.2d 706 (3rd Cir. 1988)	13
3.	<i>Chambers v. Kain</i> , 424 A.2d 311 (Del. Ch. 1980)	13
D.	Florida	13
1.	<i>Carlton v. Carlton</i> , 578 So.2d 820, (Fla. Dist. Ct. App. 1991)	13
2.	<i>Glickstein v. Sun Bank/Miami, N.A.</i> , 922 F.2d 666 (11th Cir. 1991)	14
3.	<i>DeWitt v. Duce</i> , 408 So.2d 216 (Fla. 1981)	14
4.	<i>Watts v. Haun</i> , 393 So.2d 54 (Fla. Dist. Ct. App. 1981)	14

	5.	<i>Davison v. Feuerherd</i> , 391 So.2d 799 (Fla. Dist. Ct. App. 1980)	15
	6.	<i>Kramer v. Freedman</i> , 295 So.2d 97 (Fla. 1973)	15
	7.	<i>Allen v. Leybourne</i> , 190 So.2d 825 (Fla. Dist. Ct. App. 1966)	15
E.	Illinois	. . . . .	16
	1.	<i>Estate of Jeziorski</i> , 162 Ill. App.3d 1057, 516 N.E.2d 422 (Ill. App. Ct. 1987)	16
	2.	<i>In Re: Estate of Knowlson</i> , 204 Ill. App.3d 454, 562 N.E.2d 277 (Ill. App. Ct. 1990)	16
	3.	<i>Robinson v. First State Bank on Monticello</i> , 104 Ill. App.3d 758, 433 N.E.2d 285 (Ill. App. Ct. 1982)	16
	4.	<i>Nemeth v. Banhalmi</i> , 99 Ill.App.3d 493, 425 N.E.2d 1187 (Ill. App. Ct. 1981)	16
F.	Iowa	. . . . .	17
	1.	<i>Huffey v. Lea</i> , 491 N.W.2d 518 (Iowa 1992)	17
	2.	<i>Frohwein v. Haesemeyer</i> , 264 N.W.2d 792 (Iowa 1978)	17
G.	Kansas	. . . . .	17
	1.	<i>McKibben v. Chubb</i> , 840 F.2d 1525 (10th Cir. 1988)	17
	2.	<i>Maxwell v. Southwest Nat. Bank, Wichita, Kansas</i> , 593 F.Supp. 250 (D. Kan. 1984)	18
H.	Maine	. . . . .	18
	1.	<i>Harmon v. Harmon</i> , 404 A.2d 1020 (Me. 1979)	18
I.	Missouri	. . . . .	18
	1.	<i>Smith v. Chatfield</i> , 797 S.W.2d 508 (Mo. App. 1990)	18
	2.	<i>McMullin v. Borgers</i> , 761 S.W.2d 718 (Mo. App. 1988)	19
	3.	<i>Hammons v. Eisert</i> , 745 S.W.2d 253 (Mo. App. 1988)	19
J.	New York	. . . . .	19
	1.	<i>Schneider v. David</i> , 602 N.Y.S.2d 130 (N.Y. App. Div. 1993)	19
	2.	<i>Matter of Will of Young</i> , 592 N.Y.S.2d 905 (Sur. 1992)	19
K.	Ohio	. . . . .	20
	1.	<i>Firestone v. Galbreath</i> , 616 N.E.2d 202 (Ohio 1993)	20
L.	West Virginia	. . . . .	20
	1.	<i>Calacino v. McCutcheon</i> , 177 W. Va. 684, 356 S.E.2d 23 (W. Va. 1987)	20
	2.	<i>Barone v. Barone</i> , 170 W. Va. 407, 294 S.E.2d 260 (W. Va. 1982)	20
M.	Wisconsin	. . . . .	20
	1.	<i>Harris v. Kritzik</i> , 166 Wis.2d 689, 480 N.W.2d 514 (Wis. Ct. App. 1992)	20

TORTIOUS INTERFERENCE WITH INHERITANCE RIGHTS

Jack W. Lawter, Jr.
Dianne Whitehorn Lawter

- I. PURPOSE OF PRESENTATION. The purpose of this presentation is to examine the current status of the law concerning the action of tortious interference with inheritance rights and to suggest ways in which the law may be used in probate and trust litigation. We have attempted to summarize every significant case in Texas and in the other states which mentions tortious interference with inheritance rights.
- II. DEFINITION OF TORTIOUS INTERFERENCE WITH INHERITANCE RIGHTS. Tortious interference with inheritance rights was recognized by the Texas appellate courts in 1987. As we will discuss in more detail below, Texas has not yet defined the scope of the tort and the elements are unclear. However, the cases from other states support the following elements of the tort:
 - a. Existence of an expectancy of inheritance or gift;
 - b. Intentional interference with the expectancy;
 - c. The interference was tortious, such as fraud, duress or undue influence;
 - d. The defendant's actions proximately caused damage to the plaintiff (*i.e.* plaintiff would have inherited but for defendant's actions); and
 - e. Damages.
- III. RESTATEMENT (SECOND) OF TORTS. The Restatement of Torts defines intentional interference with inheritance or gift as the following:

One who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift.
Restatement of Torts (Second) §774B.
- IV. DEFINITION OF TERMS. Restatement of Torts (Second) § 774B.
 - A. Inheritance or Gift. "Inheritance" is used to include any devise or bequest that would otherwise have been made under a testamentary instrument or any property that would have passed to the plaintiff by intestate succession. Thus, the tort applies when the testator has been induced by tortious means to make his will or not make it; and it applies also when he has been induced to change or revoke his will or not to change or revoke it. It applies also when a will is forged, altered or suppressed.

B. Gift. "Gift" is used to include in the broad sense any donation, gratuity or benefaction that other would have received from the third person. It includes for example a beneficiary designation under an insurance policy with which the actor interferes by tortious means.

C. "Tortious". The Restatement of Torts states that the tort applies only when the actor has interfered with the inheritance or gift by means that are independently tortious in character. The usual case is that in which the third person has been induced to make or not make a bequest or gift by fraud, duress, defamation or tortious abuse of fiduciary duty, or has forged, altered or suppressed a will or document making a gift. Consequently, merely persuading a person to disinherit another will not impose liability on the persuader if the persuader does not act tortiously.

D. "Cause of Loss". A recovery is only available for an inheritance or gift that would have been received but for the tortious interference of the actor. The Restatement states that there must be proof amounting to a reasonable degree of certainty that the bequest or devise would have been in effect at the time of the death of the testator or that the gift would have been made inter vivos if there had been no such interference. Absolutely certainty is available when the testator becomes incompetent after the gift or inheritance is established. In other circumstances, the plaintiff will have to establish with reasonable certainty that the testator would have made a particular gift or devise absent the defendant's conduct. The fact that it was the defendant's tortious act that makes it not possible to prove with certainty may be taken into consideration by the court. In other words, if the defendant has destroyed the evidence necessary to establish with reasonable certainty that a gift or bequest would have been made, the court should take this into consideration.

V. REMEDIES.

A. Damages. The measure of damages will be measured by the loss suffered by the plaintiff as a result of defendant's interference. Attorneys fees are recoverable as actual damages in some states, but have only been considered in awarding punitive damages in Texas. Damages for emotional distress may be available.

B. Punitive Damages.

C. Restitution. If the defendant has acquired the benefits of the legacy or gift, he is unjustly enriched at the expense of the plaintiff and restitution may be available.

D. Constructive Trust. A constructive trust may also be imposed to prevent unjust enrichment.

VI. POSSIBLE ADVANTAGES TO THE PLAINTIFF.

A. Punitive Damages.

- B. The tort action may be brought directly against the defendant rather than against an estate.
- C. Certain costs and expenses may be recoverable in tortious interference cases which are not otherwise recoverable. For instance, the cost of a temporary administration was recovered in one Texas case.
- D. The tort should apply even if there is no way for the plaintiff to establish his/her inheritance rights through traditional probate proceedings.
- E. The tort should apply to trusts and inter vivos gifts.
- F. Standing to bring a case will likely be different than the "interested person" definition in Section 3 of the Texas Probate Code.
- G. The tort may apply to post-death intentional actions taken to prevent someone from inheriting.
- H. The discovery rule will often apply to toll the statute of limitations.
- I. The case may be brought when the testator is still alive.
- J. Although it is unlikely, a possibility exists that a plaintiff may be able to bring an action for negligent interference with inheritance rights. To succeed in persuading a court to allow this type of action a plaintiff would likely need to establish a relationship between the defendant and the testator creating a duty in the defendant, that the adverse results are foreseeable and the defendant is morally to blame.

VII. POSSIBLE DISADVANTAGES TO PLAINTIFFS.

- A. Uncertainty. At least in Texas, a plaintiff cannot be sure exactly what proof will be required and what defenses will be allowed.
- B. The statute of limitations begins to run when the wrongful act occurred unless the discovery rule is applicable.
- C. In some instances, the plaintiff may be precluded by res judicata effect of the order admitting the will to probate.
- D. The "one recovery rule" often virtually eliminates actual damages if the plaintiff prevails in a will contest.
- E. Establishing inheritance expectancy is sometimes difficult.
- F. Establishing that the defendant's actions proximately caused the plaintiff to lose an inheritance is sometimes difficult.

G. The tort overlaps with other causes of action leading to possible confusion by juries and judges.

VIII. DEFENSES.

A. Res Judicata. Many courts around the country have held that an order admitting the will to probate precludes an action for tortious interference with inheritance rights when the plaintiff is contending that the defendant used undue influence, fraud or deceit to obtain the testator's signature on the will.

1. Res judicata will prevent the plaintiff from splitting a will contest and the tort action if both cases are based on the same facts (*e.g.* undue influence causing a will to be executed in favor of defendant).

2. Res judicata will not prohibit a subsequent tort action if the facts giving rise to the tort are independent of the facts decided in a will contest (*e.g.* interference with an inter vivos gift).

B. Exhaustion of Probate Remedies. A question exists as to whether a plaintiff must exhaust his/her probate remedies before proceeding with the tortious interference claim. This is to preserve the effectiveness of the statutes involving will contests and probate procedure. The probate proceedings will not be a prerequisite to a tortious interference claim if the plaintiff cannot receive full relief through the probate proceedings.

C. Statute of Limitations. This is the most often used defense. The statute begins to run when the wrongful act occurs or when the plaintiff discovered or should have discovered the wrongful conduct. This defense is often applicable when the claims are based on financial transactions or gifts by the decedent during his/her lifetime. Many claimants simply do not act until after the decedent dies and often the statute of limitations has run.

D. Estoppel, Waiver and Laches. These defenses will be available if the claim is based on fraud or if the plaintiff seeks equitable relief such as a constructive trust. In family business situations, the plaintiff may have been a party to the transactions in question, benefitted from the transactions or acquiesced in the conduct.

E. Defenses Based on Factual Arguments. Depending on the facts, the defendant may want to focus his/her attention on disproving one of the essential elements of the plaintiff's case. The elements which are the easiest to attack are whether the plaintiff can establish a reasonable expectancy of inheritance and whether the plaintiff can establish proximate cause. If the action is brought during the lifetime of the testator, it will be very difficult to establish a reasonable expectancy of inheritance because a competent testator can change his/her mind concerning testamentary disposition.

IX. POTENTIAL SCOPE OF TORTIOUS INTERFERENCE WITH INHERITANCE RIGHTS. The possible scope of the cause of action for tortious interference with

inheritance rights is very broad. During this early stage of the development of the law, consideration should be given to bringing this type of action whenever intentional wrongful conduct or gross negligence is involved.

X. POSSIBLE APPLICATIONS OR EXTENSIONS OF TORTIOUS INTERFERENCE CASES.

A. The cause of action should be applicable to any fraudulent conduct resulting in loss of inheritance or gift.

B. The cause of action should be applicable to any act of undue influence or duress resulting in loss of inheritance or gift.

C. The cause of action should apply to intentional acts interfering with rights under a trust.

D. The cause of action should apply to interference with an inheritance expectancy.

E. The cause of action should apply to destruction or suppression of a will.

F. The cause of action should apply to forgery resulting in loss of inheritance or gift.

G. The cause of action could be extended to allow suits based on an inheritance expectancy before the testator dies.

H. The cause of action may apply to an intentional breach of fiduciary duty during the administration of an estate or trust or outside interference with a trust or estate administration. The cause of action is not necessary in a suit against a fiduciary because a breach of fiduciary duty action will allow the plaintiff a full recovery. However, it could be used to assert claims against others who participate with a fiduciary in an intentional breach of duty.

I. The cause of action may apply to the filing of a contest, application for probate or other action if the case set forth in the pleadings is without merit.

XI. BRINGING THE ACTION BEFORE THE TESTATOR DIES.

A. Advantages. The testimony of the testator is available. The witnesses will have a fresh recollection.

B. Disadvantages. Damages will be very difficult to prove because the plaintiff possesses only a contingent expectancy. Standing of the plaintiff will also be a difficult matter because the testator will own the right to bring suit for any act against the testator's interest. For instance, if the defendant defrauds the testator into making a gift to defendant, the testator is the person who normally has the right to complain.

XII. TORTIOUS INTERFERENCE V. WILL CONTEST.

A. A will contest is an action to contest the probate of the will, to contest the validity of a will, or to assert an interest in the estate because a will is ineffective, because another will exists, or because the decedent breached a contract to make or revoke a will.

B. A tortious interference action does not challenge the probate or validity of a will. Rather, the action seeks damages from a third party because of the plaintiff's loss of an expectancy. The tort action accrues when the wrongful act is complete. This may be before the testator's death, after the testator's death, or even after the probate proceedings have ended.

XIII. JURY CHARGE FOR TORTIOUS INTERFERENCE CAUSE OF ACTION. The following is a jury charge that was submitted for a tortious interference cause of action in one of the authors' Harris County cases:

Do you find from a preponderance of the evidence that the defendant tortiously interfered with the plaintiff's right to inherit property from the testator?

_____ YES _____ NO

INSTRUCTION

You are instructed that a party tortiously interferes with another's inheritance rights when he: (1) participates in or receives benefits from a wrongful or tortious act; (2) proximately causes an event which prevents or interferes with an inheritance or another person; (3) and this results in damages or loss to that person.

INSTRUCTION

You are instructed that fraud, misconduct, an illegal action and intentional invasion of or interference with property or property rights, causing injury without just cause or excuse, constitute tortious or wrongful acts.

What sum of money, if any, if paid in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the plaintiff for his losses or injury, if any, proximately caused by the defendant's tortious interference?

\$ _____

XIV. TEXAS CASES.

A. *King v. Acker*, 725 S.W.2d 750 (Tex. App.--Houston [1st Dist.] 1987, no writ). In *King*, the decedent's wife transferred stock to herself using a forged power of attorney and filed an application to probate a forged 1982 will. The plaintiffs, who were beneficiaries under a previous will, brought a will contest and prevailed. After prevailing in the will contest, the plaintiffs brought suit against the wife, her attorney and the "witnesses" to the forged will. The case against the attorney and witnesses was severed before trial. At trial, a jury found that the decedent's wife had maliciously conspired to tortiously interfere with the inheritance rights of the beneficiaries under the actual will of the decedent and awarded the beneficiaries punitive damages.

On appeal, it was initially noted that Texas courts had never addressed the issue of whether such a cause of action existed. The Court held that "a cause of action for tortious interference with inheritance rights exists in Texas" and affirmed the trial court's award of actual and punitive damages. The court based its decision on:

- (1) Decisions from other jurisdictions;
- (2) Restatement (Second) of Torts § 774B (1977);
- (3) The recognition of a cause of action for tortious interference in other contexts by Texas courts; and
- (4) Previous cases implying that interference with inheritance rights is an actionable tort.

B. Damages in *King v. Acker*.

1. The court approved recovery of the temporary administrator's commission on stock that had to be redeemed because of the acts of the defendant.

2. The court did not allow recovery of the handwriting expert's fees because such fees were litigation expenses.

3. The jury awarded punitive damages equal to the plaintiff's attorneys' fees.

C. Implications of *King v. Acker* for Probate and Trust Litigation. The court's rationale in *King* provides no reason to believe that its holding is limited solely to actions for interference with inheritance rights. In reaching its holding, the court recognized:

- (1) that "equity will not suffer a right to be without a remedy," [citing *Chandler v. Wellborn*, 156 Tex. 312, 294 S.W.2d 801, 807 (1956)];

(2) that an intentional and injurious invasion or interference with property or personal rights is an actionable tort [citing *Cooper v. Steen*, 318 S.W.2d 750, 757 (Tex. Civ. App.--Dallas 1958, no writ)]; and

(3) that "Texas seems to recognize a cause of action for tortious interference" [citing *Tippet v. Hart*, 497 S.W.2d 606 (Tex. App.--Amarillo 1973, writ ref'd n.r.e.)].

The court's reliance on these general principles was seemingly applied to the particular allegation made in this case, interference with inheritance rights. However, it seems very possible that such principles could be applied to support the existence of a cause of action for almost any act, whether by an executor, trustee, beneficiary or third party, which constitutes an intentional interference with or disruption of the proper administration or distribution of a trust or estate.

D. Possible Cause of Action for Interference with "Inheritance Expectancy". In *Neill v. Yett*, 746 S.W.2d 32 (Tex. App.--Austin 1988, no writ), the decedent left a will in which his granddaughter was not remembered. The granddaughter attempted to extend the principles of *King* by pleading that, based on fraud and undue influence committed by the decedent's wife, a cause of action existed for tortious interference by the decedent's wife with the granddaughter's inheritance expectancy. The trial court granted summary judgment against the granddaughter. The Court of Appeals held that the judgment of the probate court admitting the will to probate barred the granddaughter's claim for tortious interference with her inheritance expectancy; as long as such judgment remained valid, the granddaughter had no inheritance expectancy. The court then noted that the granddaughter failed to either set out the elements of her claimed cause of action for tortious interference with her inheritance expectancy or to describe the basis for such cause of action. Apparently, the granddaughter cited *King* for the first time in her appellate brief in support of her claim. The court recognized the general conclusion in *King* that the cause of action for tortious interference with inheritance rights exists in Texas, but observed that the elements of such cause of action were not delineated in the *King* opinion. However, while never stating that a cause of action for tortious interference with an inheritance expectancy exists, the court stated that "if, indeed, a cause of action for tortious interference with inheritance expectancy exists," the granddaughter's assertion of such cause of action was barred by limitations.

E. *King* and *Neill* Distinguished. It should be observed that the facts of *Neill* are clearly distinguishable from *King*. In *King*, the parties who brought the action for tortious interference were named as beneficiaries in a will that was ultimately admitted to probate. The granddaughter in *Neill* could make no such claim. Additionally, the defendant in *King* was found to have engaged in fraudulent activity in connection with the decedent's disposition of the property in question. In *Neill*, no evidence was discussed which could be viewed as demonstrating that there was anything unusual about the disposition of the estate in question. These clearly distinguishable facts make the decision in *Neill*

noteworthy primarily because the court refused to preclude the possible existence of a cause of action for tortious interference with an expectancy of inheritance even though the fact supporting the granddaughter's case were relatively weak. To the contrary, the court in *Neill* gave every indication that with its elements properly pled and its basis properly described, such a cause of action would indeed exist.

F. Evaluation of Contemplated Litigation. The decisions in *King* and *Neill* should prompt attorneys to be cautious when contemplating probate or trust litigation. If a case involving an estate or trust is without merit and the party bringing the case is found to have filed the meritless action without just cause or simply out of spite, the pursuit of such an action may be actionable tortious interference with another's rights in such estate or trust under the rationale of these decisions. Until the scope of this cause action has been determined, extreme caution should be employed when considering court action or other legally significant events affecting a will or trust. For example, the unacknowledged, but common, practice of filing a will contest alleging every available ground for a contest based on sketchy facts delivered to the attorney shortly before the hearing on an application for probate could lead to disaster for both client and attorney. It should be noted that in *King* the attorney involved in applying to probate the forged will was sued by the beneficiary for tortious interference with inheritance rights. An attorney may need to obtain a written affirmation of facts which will support the proposed cause of action before filing such action to protect the attorney from a charge of conspiracy to tortiously interfere with inheritance rights if the case later appears to be without merit.

G. Possible Elements of Tortious Interference in Texas.

1. Texas Cases Discussing Interference with Inheritance.

a. *Pope v. Garret*, 204 S.W.2d 867 (Tex. Civ. App.--Galveston 1947), rev'd on other grounds, 211 S.W.2d 559 (Tex. 1948). The appellee in *Pope v. Garret*, sought to recover damages caused by the acts of two of the appellants in physically preventing the decedent from executing a will under which property would have passed to appellee. As a result of such action, the decedent died intestate and his property passed to eight appellants who would take decedent's property under the laws of descent and distribution. The trial court imposed a trust on the property received by the eight appellants which would have passed to appellee under the will. On rehearing of the appeal, the court observed that the appellee might have obtained a judgment against the two appellants who by their wrongful act prevented the execution of the will and stated that "[t]he measure of damages would have been the value of the property which would have passed by the will except for the wrongful act." However, the Court of Appeals held that the interests of the six appellants who did not participate in preventing the execution of the will were not subject to the trust imposed by the trial court. Such ruling as to the six non-participating appellants was reversed by the Texas Supreme Court and the trial court's judgment was affirmed.

b. *Teague v. Stephens*, 564 S.W.2d 437 (Tex. Civ. App.--Tyler 1978, no writ). In *Teague v. Stephens*, the plaintiff sued the defendant for negligently or intentionally causing the disappearance or destruction of a will under which plaintiff was a beneficiary. The defendant's motion for summary judgment was granted based on his affidavit stating that he had never seen nor had knowledge of a will executed by decedent under which plaintiff would receive property and that he had never destroyed or lost a will of decedent. The plaintiff presented summary judgment evidence which suggested that the decedent may have executed a will under which plaintiff was a beneficiary. Stating that the focused issue of the case was whether the defendant had destroyed or lost the decedent's will, the Court of Appeals upheld the summary judgment on the ground that plaintiff's summary judgment evidence failed to create a genuine issue of material fact.

c. Summary. The language in *Pope* can be interpreted to break the cause of action for tortious interference with inheritance rights into the following elements:

- (1) participation in or receipt of benefits from,
- (2) a wrongful act,
- (3) proximately causing an event,
- (4) which prevents or interferes with an inheritance,
- (5) and results in damages or loss to the plaintiff.

Such interpretation is supported by the language in *Teague* which stated that the key issue in that case was whether the defendant had negligently lost or intentionally destroyed the alleged will preventing the plaintiff from receiving his bequests thereunder.

d. Several Texas cases have been brought asserting tortious interference, but for a variety of reasons the appellate courts have not addressed the merits of the tort action:

(a) A remainderman brought suit against the life tenant's executor for conversion and tortious interference with inheritance rights. The jury found both conversion and tortious interference with inheritance rights. The plaintiff elected to recover damages on the finding of conversion. *Rice v. Gregory*, 780 S.W.2d 384 (Tex. App.--Texarkana 1989, no writ).

(b) Plaintiff, who was the beneficiary of a specific bequest under a will, sued the executor for tortious interference, breach of fiduciary duty, fraud, bad faith and conversion. The trial court directed a verdict for the plaintiff on the conversion action. On

appeal, the court determined that the plaintiff had elected the conversion remedy. The opinion can be read to indicate that other remedies may have been available if the plaintiff had preserved his rights. ***Matter of Estate of Crawford***, 795 S.W.2d 835 (Tex. App.--Amarillo 1990, no writ).

(c) Remaindermen brought suit against the life tenant's executor arising from a sale by the life tenant of certain real property. The action included a cause of action for tortious interference with inheritance rights. The defendants responded that the life tenant's right to sell the property extinguished any inheritance rights of the plaintiff. The jury failed to find that anyone tortiously interfered with plaintiff's inheritance rights. ***Hext v. Price***, 847 S.W.2d 408 (Tex. App.--Amarillo 1993, writ denied).

2. Texas Cases Discussing Tortious Interference with Contract Rights. When defining the limits of tortious interference with inheritance rights, the Texas appellate courts will likely be guided by cases discussing tortious interference with contract rights. The following is a survey of Texas decisions:

a. ***Sakowitz, Inc. v. Steck***, 669 S.W.2d 105 (Tex. 1984). In ***Sakowitz, Inc. v. Steck***, the Texas Supreme Court held that to establish the necessary elements of tortious interference with contract, the claimant must show "(1) that the defendant maliciously interfered with the contractual relationship; and (2) without legal justification or excuse." The Court defined malice as "an act without excuse or just cause." ***Sakowitz***, 669 S.W.2d at 107.

b. ***American Petrofina, Inc. v. PPG Industries, Inc.***, 679 S.W.2d 740 (Tex. App.--Fort Worth 1984, writ dismissed by agreement). Another court has held that "[i]n maintaining a cause of action for tortious interference with contract, it must be established that (1) there was a contract subject to interference; (2) the act of interference was intentional and willful; (3) such intentional act was a proximate cause of plaintiff's damage; and (4) actual damage or loss occurred." ***American Petrofina, Inc. v. PPG Industries, Inc.***, 679 S.W.2d 740 (Tex. App.--Fort Worth 1984, writ dismissed by agreement).

c. ***Tippet v. Hart***, 497 S.W.2d 606, 610-11 (Tex. Civ. App.--Amarillo 1973, writ refused n.r.e.). To be actionable, the interference need not procure a breach of the contract. Any invasion which injures or destroys property and interferes with or makes more difficult the performance of the contract can give rise to the cause of action. ***Tippet v. Hart***, 497 S.W.2d 606, 610-11 (Tex. Civ. App.--Amarillo 1973, writ refused n.r.e.).

d. Summary. If the Texas courts look to the elements of tortious interference with contractual relations to determine the elements of tortious interference with inheritance rights, the holding in ***American Petrofina*** seems most applicable. By analogy to that holding, the elements of tortious interference with inheritance rights would be:

- (a) existence of a will or potential testator/beneficiary relationship subject to interference,
- (b) intentional and willful interference with such will or relationship,
- (c) which proximately causes,
- (d) actual damage or loss.

Under the language of *Tippet*, it seems likely that actionable interference would not require complete elimination of a potential inheritance. Instead, any interference which causes the testator's intent, as set forth in his statements or will, to be more difficult to carry out would be sufficient to give rise to the cause of action.

XV. CASES FROM OTHER JURISDICTIONS.

A. Alabama.

1. *Holt v. First National Bank of Mobile*, 418 So.2d 77 (Ala. 1982). In *Holt v. First National Bank of Mobile*, suit was filed against estate of decedent for not devising real property she had promised her husband she would devise to the plaintiffs. Plaintiffs claimed the decedent wrongfully interfered with husband's intentions to devise property to them. Husband died in 1959. The court did not allow a claim for tortious interference and dismissed the complaint. The court held that with decedent dead, the parties would have to engage in a swearing match as to her state of mind twenty-three years ago. Further, the court held that beyond their difficulty of proving such action it would controvert the policy of several well-established principles of law: the formalities required for testamentary dispositions of property, the statute of frauds, the statute of limitations and the dead man's statute. The court further stated these policies particularly posed problems here because plaintiffs must prove that decedent had no intention of performing the alleged promise at the time she made it.

B. Colorado.

1. *Peffer v. Bennett*, 523 F.2d 1323 (10th Cir. 1975). Plaintiff brought an action for malicious interference with prospective rights of inheritance. The defendant was the scrivener of the will and was named the beneficiary of the residuary estate. A will contest was filed and the plaintiff prevailed on the grounds of undue influence in a Colorado probate court. At trial on the malicious interference case, the plaintiff contended that she should recover her attorneys' fees for the will contest because she had already proved that the defendant was guilty of undue influence and that the doctrine of collateral estoppel requires that the facts not be relitigated. The appellate court held for the defendant, stating that the probate court finding of undue influence was different from the proof required for malicious interference and there was not

identity of parties because the defendant's wife (not the defendant) was the proponent of the will at the probate court.

C. Delaware.

1. *Williams v. Wilmington Trust Company*, No. 92C-06-032, 1993 WL 331049 (Del. Super. Ct. Aug. 19, 1993). In *Williams v. Wilmington Trust Company*, the plaintiffs brought a cause of action against Wilmington Trust Company and the lawyer for the decedent for negligently or as result of a breach of contract failing to properly draft a codicil to the last will and testament of the decedent and a claim for tortious interference with inheritance rights. The will had already been admitted to probate. The Court held that the claim for tortious interference with inheritance rights would constitute a improper collateral attack upon the probate of the decedent's will.

2. *Moore v. Graybeal*, 843 F.2d 706 (3rd Cir. 1988). Plaintiff brought action in federal court against the scrivener of a will and beneficiaries of such will alleging tortious interference with inheritance rights on grounds that the will was invalid. The court affirmed dismissal of the action because plaintiff could have obtained full relief under the Delaware probate statutes (by contesting the will).

3. *Chambers v. Kain*, 424 A.2d 311 (Del. Ch. 1980). In *Chambers v. Kain*, a cause of action for tortious interference was brought prior to the death of the testator. Sister brought a cause of action against brother during their mother's lifetime alleging that the mother had relied upon and had been dependent upon the defendant for advice and assistance in the management of all of her assets, including the assets of the marital trust. She further alleged that he had been able to exercise undue influence over their mother and as a consequence and by virtue of his complete control over the mother's financial affairs, he had benefitted personally by obtaining gifts of money from her, by having her pay his personal and business obligations out of her funds, by purchasing substantial amounts of stock from her at a price far less than its true worth and by causing her to invest in highly speculative and improper investments. The court held that there was no cause of action as to which equitable relief could be granted during the lifetime of the mother. The court stated that testator was still alive, plaintiff has not been disinherited and that plaintiff was seeking equity and that the proper remedy for a tort action was money damages.

D. Florida.

1. *Carlton v. Carlton*, 578 So.2d 820, (Fla. Dist. Ct. App. 1991). A cause of action for intentional interference with an expectancy was brought by the plaintiff claiming that the defendant influenced the plaintiff's parents to execute new wills and he caused the plaintiff's parents to execute an irrevocable trust. The cause of action was brought prior to the parents' death, but after the defendant's death. The cause of action was brought against the co-personal representative of the defendant's estate. The court held that this case was

unique because the alleged tortfeasor had predeceased the testator. Therefore, the court held that plaintiff's rights to recompense from tortfeasor's alleged torts had ripened prior to the death of the testator. The court recognized that one of the elements of damage in an action for intentional interference with the rights or expectancies of another is for the mental or emotional distress that may result from such interference. Such a claim for emotional distress for intentional interference would lie solely against the tortfeasor and would not be a claim against the estate of the grantor of the expected inheritance. The court held that plaintiff's cause of action should not have been dismissed and reversed and remanded it back to trial court for trial on the merits.

2. *Glickstein v. Sun Bank/Miami, N.A.*, 922 F.2d 666 (11th Cir. 1991). Plaintiff was successful in a will contest on the grounds of undue influence in a Florida probate court. Plaintiff then brought suit against the defendants for tortious interference and other actions for allegedly plundering the estate both before and after the death of the decedent. The court held that the plaintiff was not precluded from bringing an action for tortious interference on grounds that he failed to "exhaust" other probate remedies because the plaintiff sought relief not available in the probate court. These remedies included attorneys fees and expenses of the will contest and the cost of overturning inter vivos gifts to the defendants.

3. *DeWitt v. Duce*, 408 So.2d 216 (Fla. 1981). In *DeWitt v. Duce*, the plaintiffs brought a claim for wrongful interference with inheritance claiming that defendant exercised undue influence over decedent at a time he lacked testamentary capacity causing decedent to revoke a prior will and replace it with a will which was probated which was more favorable to defendant and less favorable to plaintiffs. The court held that if adequate relief is available in a probate proceeding, then the remedy must be exhausted before a tortious interference claim may be pursued. A later action for tortious interference may be allowed only if the circumstances surrounding the tortious conduct effectively precluded adequate relief from the probate court. The state law precludes plaintiff from proving essential elements of claim for tortious interference with inheritance where allegedly wrongfully procured will has been probated in a court in the state and where plaintiffs had notice of probate proceeding and opportunity to contest the validity of will then, but chose not to do so. The court stated that for purposes of adequacy of relief, it does not consider punitive damages as a valid expectation.

4. *Watts v. Haun*, 393 So.2d 54 (Fla. Dist. Ct. App. 1981). In *Watts*, the plaintiffs claimed that the decedent intended to make valid gifts of stock certificates to them. In order to carry out his intent, the decedent had contacted the defendant several times requesting that she forward to him the certificates, but she failed to do so. The defendant obtained the decedent's signature on a stock power which in effect transferred all of the interest represented by the certificate to her. The defendant was also named the sole beneficiary under the decedent's last will and testament. The court held that the allegations sufficiently stated a claim for wrongful interference with an expected gift.

5. *Davison v. Feuerherd*, 391 So.2d 799 (Fla. Dist. Ct. App. 1980). The plaintiff brought an action for tortious interference with an expected gift under a revocable trust. Decedent's husband had established a revocable trust which left principal and income to decedent after his death and principal and income to the plaintiff after decedent's death. Decedent also established trusts which provided income and principal to her during her lifetime with the residue of the trusts going primarily to the plaintiff. Decedent instructed her attorney to prepare amendments to her living trust to leave the residue of the trust to the plaintiff. Defendant falsely persuaded the decedent that the plaintiff did not love her, was not concerned about her and was not worthy of receiving her estate and caused the decedent to amend the trusts so that her estate would be left to defendant. The court held that the plaintiff's complaint stated a cause of action and reversed the trial court's order and remanded for proceedings consistent with their opinion.

6. *Kramer v. Freedman*, 295 So.2d 97 (Fla. 1973). In *Kramer*, the plaintiff alleged that the defendant maliciously and tortiously interfered with the plaintiff's reasonable expectation of receiving a legacy from her father. The wrongful interference allegedly consisted of many instances of conduct by the defendant directed toward the decedent which resulted in the decedent not leaving money to the plaintiff. The court held that the same issues and allegations were in sum and substance presented in the plaintiff's prior attempt to contest the decedent's will and therefore barred by the theory of collateral estoppel.

7. *Allen v. Leybourne*, 190 So.2d 825 (Fla. Dist. Ct. App. 1966). In *Allen*, the plaintiff was a daughter of the decedent. After the death of the plaintiff's mother, the plaintiff alleged that plaintiff and her father agreed that the children would not contest the administration of their mother's estate so as to allow the father to take advantage of certain exemptions and the federal estate tax laws in return for an agreement that the father would make advancements to his children by way of gifts during his lifetime and that he would distribute the remainder of his estate to the children by the terms of his will. Certain advancements were made and an agreement was signed which acknowledged that the plaintiff was entitled to an equitable division of the father's estate. The father remarried and left all of his property to the defendant, his second wife. The court held that the plaintiff had stated a cause of action for tortious interference with contract rights and tortious interference with an expected inheritance. The court stated that the plaintiff must allege and prove at trial that the testator had a fixed intention to make a bequest in favor of the plaintiff and that there existed a strong probability that the intention would have been carried out but for the wrongful acts of the defendant. The plaintiff had previously lost in a breach of contract suit, but the court held that the finding that there was not an enforceable agreement did not preclude the plaintiff from establishing an anticipated gift or legacy which would have been received but for wrongful interference of the defendant. The court stated:

" . . . when there is an allegation that the testator had a fixed intention to make a bequest in favor of the plaintiff and there

existed a strong probability that this intention would have been carried out but for the wrongful acts of the defendant there exists a cause of action."

E. Illinois.

1. *Estate of Jeziorski*, 162 Ill. App.3d 1057, 516 N.E.2d 422 (Ill. App. Ct. 1987). Plaintiffs brought a will contest and a claim for tortious interference with an expectancy. The plaintiffs alleged in their petition that their expectancy was based on the fact that they were decedent's children and the natural objects of his bounty. In addition, under the laws of intestacy, they would have received an equal share of the decedent's estate. The court held that they had adequately pled a cause of action for intentional interference with expectancy and their cause of action should be allowed as part of their will contest proceedings.

2. *In Re: Estate of Knowlson*, 204 Ill. App.3d 454, 562 N.E.2d 277 (Ill. App. Ct. 1990). The plaintiffs brought a will contest and as part of the will contest they alleged that defendant wrongfully interfered with their expectancies by duress, fraud and undue influence causing the decedent to make numerous inter vivos transfers of property to the defendant and leave the defendant all of her property under her will. The court stated that the general rule is that where a will contest is available and it would provide adequate relief to an injured party, a tort action does not lie. The court further stated that a claim for punitive damages is not considered a valid expectation for purposes of determining the adequacy of relief. The court held that one could bring a claim for tortious interference along with a will contest because probate remedies are speculative.

3. *Robinson v. First State Bank on Monticello*, 104 Ill. App.3d 758, 433 N.E.2d 285 (Ill. App. Ct. 1982). After a settlement of a will contest had been entered into releasing the parties and all claims and causes of action, the plaintiffs sued the defendant for tortious interference with their inheritance for failing to disclose to them the existence of a document which resulted in the plaintiffs refraining from filing a will contest proceeding and entering into the settlement agreement. The court dismissed the plaintiffs' claims and held that such claims rested upon the invalidity of a will which had been validly admitted to probate and that the six month period within which to contest admission of a will to probate had long passed. The court held that if a party allows the period in which to contest a will to expire, the court will not recognize a tort action for intentional interference with inheritance.

4. *Nemeth v. Banhalmi*, 99 Ill.App.3d 493, 425 N.E.2d 1187 (Ill. App. Ct. 1981). In *Nemeth*, the court found in favor of the stepdaughter for malicious interference with expectancy under a prior will. The decedent executed a will in 1975 leaving his estate equally to the plaintiff and the defendants. In 1975, the decedent in his late 80's and in poor health, went to live with the defendants. While living with the defendants, the decedent was induced to supply the down payment for the purchase of a house for the defendants, to act as a co-signatory on a mortgage loan for the defendants and to place title to the house in joint

tenancy with the defendants when told by the defendants that unless he did so he would have to go into a nursing home. In July, 1976, the decedent made a new will again leaving his estate equally to the plaintiff and one of the defendants. In January, 1977, the defendants induced the decedent to make a new will leaving almost all of his property to the defendants. Plaintiff sought damages from the defendants for their tortious interference with her expectancy. The defendants claim that plaintiff, a non-heir, has no recognizable expectancy in the decedent's estate with which they could interfere. The court held that since no will was ever probated and the defendants took under the laws of intestacy, a will contest was not an available remedy for the plaintiff and it upheld the judgment in favor of the plaintiff.

F. Iowa.

1. Huffey v. Lea, 491 N.W.2d 518 (Iowa 1992). In *Huffey*, the plaintiffs had previously won a will contest where the jury found that the decedent lacked testamentary capacity and that the will was procured by undue influence on behalf of the defendants. After such victory on the will contest, the plaintiffs brought an action against the defendants for unduly influencing the decedent and for tortiously interfering with her intent to devise property to them. They sought money damages for legal fees, loss of farming time, mental anguish and embarrassment. The court held that a will contest and a tort action were not the same causes of action. The court held that the proof is different, the actions are not the same and the same evidence does not necessarily support both actions. In addition, the court stated that the recovery demanded in a will contest and in an action for intentional interference are not the same. Furthermore, the court held that an adequate remedy had not been provided by the mere setting aside of the will. The court stated that it was strongly committed to the rule that attorney fees are proper consequential damages from a person in a tort action. The court allowed the claim to be pursued and remanded it for further trial on the merits.

2. Frohwein v. Haesemeyer, 264 N.W.2d 792 (Iowa 1978). The plaintiff brought an action for wrongful interference with a bequest after he had brought a will contest which was dismissed on a motion for summary judgment because it was brought more than six months after the publication of the notice of the will and therefore was barred. The plaintiff claimed that the defendants conspired to defraud him of a legacy or devise which he expected to receive from the prior will of the decedent and that the defendants maliciously, fraudulently and unlawfully through undue influence caused the decedent to revoke her prior will and execute a new will leaving her entire estate to the defendants. The court held that an independent cause of action for wrongful interference with bequest does exist and that the plaintiff's action should not have been dismissed.

G. Kansas.

1. McKibben v. Chubb, 840 F.2d 1525 (10th Cir. 1988). Plaintiff brought a tortious interference claim against the attorney who drafted a will and a stock broker who transferred stock prior to the decedent's death. The plaintiff

attempted and lost a will contest in a Kansas probate court. Plaintiff's claims against the attorney who drafted the will were dismissed because the will contest was an adequate and available remedy. Plaintiff's claims against the stock broker were dismissed because plaintiff was unable to establish an inheritance right after he lost the will contest.

2. *Maxwell v. Southwest Nat. Bank, Wichita, Kansas*, 593 F.Supp. 250 (D. Kan. 1984). The court dismissed plaintiff's tortious interference case on grounds that he could have obtained complete relief by contesting the decedent's will. The court suggested that the tortious interference claim would be appropriate to recover attorneys fees of a successful contestant of a will or if a contest would not provide the plaintiff with complete relief.

H. Maine.

1. *Harmon v. Harmon*, 404 A.2d 1020 (Me. 1979). The plaintiff in *Harmon v. Harmon* sued the defendants alleging that they had committed fraud and exercised undue influence in inducing the plaintiff's mother to transfer property to them. Under his mother's will, plaintiff was to receive a one-half (1/2) interest in the transferred property. The plaintiff's claim was dismissed and on appeal the issue presented was whether the plaintiff could maintain an action in tort against a third party for wrongful interference with an intended legacy prior to the death of the plaintiff's mother. The Maine Supreme Court began its discussion by noting *Cyr v. Cote*, 396 A.2d 1013 (Me. 1979) in which it held that an action for the wrongful interference with an expected legacy or gift under a will existed as a logical extension of an action for wrongful interference with the expectation of a future business relationship. The court reiterated this analogy and observed that the uncertainty attendant upon each such expectancy was equivalent. The court also cited Dean Prosser for the proposition that such uncertainty did not preclude the existence of a cause of action for interference with an expected gift or legacy under a will, but rather presented difficulty in proving the loss or damage suffered thereby. Accordingly, the court in *Harmon* concluded that "where a person can prove that, but for the tortious interference of another, he would in all likelihood have received a gift or a specific profit from a transaction, he is entitled to recover for the damages thereby done by him." Applying this rule to the plaintiff's claim and analogizing to actions for interference with employment contracts and benefits under life insurance policies, the court concluded that the plaintiff had standing to make his claim prior to his mother's death. The court noted that several considerations strongly favor according the plaintiff's early day in court. These include: (1) the availability of witnesses to the allegedly tortious acts while their memories are relatively fresh, (2) the present availability of relevant exhibits and (3) the prospect that the court may obtain the testimony of the mother, the testatrix.

I. Missouri.

1. *Smith v. Chatfield*, 797 S.W.2d 508 (Mo. App. 1990). A petition for tortious interference with an inheritance right was brought by the successful will contestants against the attorney who prepared the codicil that was held invalid

to recover the costs and expenses of contesting the will and codicil and punitive damages. The court held that the successful contestants achieved full relief afforded them in their successful will contest and therefore the dismissal of their cause of action for tortious interference was appropriate. The court held that they were not entitled to recovery attorneys' fees in a collateral action.

2. *McMullin v. Borgers*, 761 S.W.2d 718 (Mo. App. 1988). Plaintiffs brought an action for tortious interference with inheritance alleging that the defendant took advantage of the testator's age and diminished mental capacity to induce him to execute a will which eliminated bequests made to the plaintiff in earlier wills and removed him as the attorney for the estate. The court held that because the plaintiffs had failed to pursue their remedies in the probate court by contesting the will for undue influence their action for tortious interference with inheritance rights was precluded. The court stated that allowing an action for tortious interference in a situation such as this would merely encourage plaintiffs to forego the proper remedy of a will contest based on undue influence for the more lucrative damage options available in a tort action.

3. *Hammons v. Eisert*, 745 S.W.2d 253 (Mo. App. 1988). The plaintiffs brought a cause of action for tortious interference with a gift of inheritance. The plaintiff was the beneficiary of certificates of deposit which were held by the decedent as trustee for the plaintiff. The defendant allegedly through undue influence caused the decedent to revoke the trust. The defendant obtained the funds for his own use. The court held that a beneficiary of a revocable written trust has a cause of action, at least after the settlor's death, against a person who, by exercise of undue influence, induces the settlor to revoke the trust and prevent the beneficiary from receiving that which he would otherwise have received.

J. New York.

1. *Schneider v. David*, 602 N.Y.S.2d 130 (N.Y. App. Div. 1993). In *Schneider*, the testatrix was still alive when the plaintiffs sued the defendant for tortious interference with the plaintiff's "expectancy of inheritance" with respect to certain real property belonging to their mother. The court held that no cause of action existed in the State of New York for tortious interference with an expectation of inheritance as New York law requires that the person alleged to have been defrauded, the testatrix, bring the cause of action rather than the plaintiff because the testatrix was alive and had not been judicially declared incompetent nor had a guardian been appointed on her behalf.

2. *Matter of Will of Young*, 592 N.Y.S.2d 905 (Sur. 1992). In a probate action, a daughter raised a claim against her mother's estate on the grounds that her mother fraudulently concealed the true identity of her father. The daughter contended that had she known the identity of her true father, she could have established that she was a child of her true father and inherited from his estate. The court held that a cause of action for tortious interference with the right of

inheritance does not exist in the State of New York and that the case should be dismissed.

K. Ohio.

1. *Firestone v. Galbreath*, 616 N.E.2d 202 (Ohio 1993). This is an action for interference with an expected gift. The grandchildren who were beneficiaries of an inter vivos trust created by their grandmother brought a state tort and federal Racketeer-Influenced and Corrupt Organization Act claims against the trustee and executor of the grandmother's will and others. The Ohio Supreme Court concluded that the cause of action for tortious interference with the expectancy of inheritance does exist in Ohio. Plaintiffs basically claimed that through the fraudulent acts of the defendants during the last years of the decedent's life and while the decedent was incompetent, her estate was fraudulently diminished to the point that all of the assets remaining at her death were required to pay debts, expenses and a specific bequest with nothing remaining for the residuary estate.

L. West Virginia.

1. *Calacino v. McCutcheon*, 177 W. Va. 684, 356 S.E.2d 23 (W. Va. 1987). An action was brought by the children of a decedent alleging tortious interference with inheritance arising out of a deed transaction. The action was brought against the decedent's attorney for purportedly having the deed signed while the decedent was ill and mentally incapacitated. The decedent lived for eight years after he executed the deed and the action was not brought until after his death. The court found that the plaintiffs were aware of the transaction and that the statute of limitations began to run as of the time of the transaction.

2. *Barone v. Barone*, 170 W. Va. 407, 294 S.E.2d 260 (W. Va. 1982). Testator's son was an attorney who drafted a will which named the son as sole executor. Several years after the probate of the will, the daughter discovered that the son wrote the father's will with dispositive provisions that were contrary to their father's wishes. The daughter sued the son for damages for tortious interference with inheritance rights. The Supreme Court of Appeals of West Virginia held that West Virginia recognizes tortious interference with a testamentary bequest. The court also held that the statute of limitations was not governed by the statute relating to will contests, but was a statute relating to torts which began to run when the plaintiff discovered or by reasonable diligence should have discovered the wrongful act.

M. Wisconsin.

1. *Harris v. Kritzik*, 166 Wis.2d 689, 480 N.W.2d 514 (Wis. Ct. App. 1992). Testator's co-inhabitant brought an action against the testator's son to recover for interference with expected inheritance. The plaintiff lived with the testator and claimed that the testator promised that plaintiff would receive \$5 million from his estate at the time of his death. The plaintiff asserted that the son embarked upon a course of action to cause her separation from the testator

including monitoring and restricting the decedent's activities so as to prevent interaction with the plaintiff and defaming her. The court held that plaintiff's complaint failed to state a claim for relief which could be granted and failed to establish an inheritance expectancy. In addition, the court found that the plaintiff's complaint did not establish a reasonable expectancy of a legacy because the court concluded that the verbal agreement to leave \$5 million to plaintiff was no more than "contractual sex."