

## TABLE OF CONTENTS

<b>Chapter I - INTRODUCTION.....</b>	1
A.    Definition of Business Tort.....	1
B.    Special Circumstances in Business Tort Cases.....	1
<b>Chapter II - CAUSES OF ACTION.....</b>	3
A.    Breach of Contract Accompanied by a Fraudulent Act.....	3
1.    Origin and Development.....	5
2.    Elements.....	6
3.    Practical Observations – Substantive.....	7
a.    Breach of Contract.....	7
b.    Fraudulent Intent Regarding the Breach.....	8
c.    Accompanying Fraudulent Act.....	9
4.    Practical Observations – Procedural.....	11
a.    Clear and Convincing Evidence.....	12
b.    Choice of Law.....	12
c.    Insurance Bad Faith.....	13
B.    Breach of Fiduciary Duty.....	13
1.    Elements and Present-Day Pleading and Proving.....	14
a.    The Existence of a Fiduciary Duty.....	14
b.    A Breach of Fiduciary Duty.....	15
c.    Damages Resulting from the Wrongful Conduct.....	15
d.    Aiding and Abetting a Breach of Fiduciary Duty.....	16
2.    Defenses.....	17

---

---

## TABLE OF CONTENTS

---

C.	Civil Conspiracy.....	18
1.	Elements.....	19
a.	A Combination of Two or More Persons.....	20
b.	For the Purpose of Injuring the Plaintiff.....	21
c.	Causation and Special Damages.....	22
2.	Required Proof.....	23
3.	Defending Against Civil Conspiracy.....	24
a.	Failure to State Facts Sufficient to Constitute a Cause of Action.....	24
(1)	Acts in Furtherance.....	24
(2)	Special Damages.....	25
4.	Statute of Limitations.....	26
D.	Defamation.....	26
1.	Forms of Defamation.....	26
2.	Elements.....	27
a.	A False and Defamatory Statement by the Defendant Concerning the Plaintiff.....	27
b.	An Unprivileged Publication by the Defendant to a Third Party.....	28
c.	Fault on the Defendant's Part in Publishing the Statement.....	29
d.	Either Actionability <i>Per Se</i> or the Existence of Special Harm to the Plaintiff Caused by the Publication.....	29
3.	Damages.....	31
4.	Defenses to Defamation Claims.....	33
a.	Truth.....	33

---

---

## TABLE OF CONTENTS

---

b.	Privileges: Absolute and Qualified.....	34
	(1)    Absolute Privilege.....	34
	(2)    Qualified Privilege.....	34
5.	Practical Observations.....	36
	a.    Burden of Proving Falsity.....	36
	b.    Actionable <i>Per Se</i> .....	37
	c.    Statute of Limitations.....	37
E.	Fraud and Misrepresentation.....	38
1.	Elements, Pleading and Proving.....	38
	a.    The Nine Elements of Fraud.....	39
	(1)    Representation.....	40
	(2)    Falsity.....	42
	(3)    Materiality.....	42
	(4)    Knowledge or Reckless Disregard of Falsity.....	43
	(5)    Intent that the Representation Be Acted Upon.....	44
	(6)    Hearer's Ignorance of Falsity.....	44
	(7)    Hearer's Reliance (In Fact) on the Truth of the Matter Asserted.....	45
	(8)    Hearer's Right to Rely Thereon.....	46
	(9)    Causation and Injury.....	47
2.	Defenses.....	48
	a.    Truth Easily within Reach.....	48
	b.    Governmental Defendant Immunity.....	48
	c.    Evidence of a Duty or Lack Thereof.....	49
F.	Insurance Bad Faith.....	49

---

---

## TABLE OF CONTENTS

---

G.	Interference with Contractual Relationship.....	53
1.	Introduction, Origin, and Development.....	53
2.	Pleading and Proving Interference with Contract.....	54
a.	A Valid Contract Exists.....	55
b.	The Wrongdoer Had Knowledge of a Valid Contract.....	56
c.	The Wrongdoer Intentionally Procured the Breach of the Contract.....	56
d.	There is an Absence of Justification.....	58
e.	The Breach Resulted in Damages.....	59
3.	Defenses.....	60
H.	Interference with Prospective Contractual Relationship.....	60
1.	Origins and Development.....	61
2.	Present Day Pleading and Proving.....	62
a.	Defendant Intentionally Interferes with the Plaintiff's Potential Contractual Relations.....	62
(1)	Prospective Contractual Relations.....	63
(2)	Intent to Interfere.....	64
b.	Defendant Interferes for an Improper Purpose or by Improper Means.....	64
(1)	Improper Purpose.....	64
(2)	Improper Means.....	64
(3)	Competition and Economic Self-Interest.....	65
(4)	Predominate Purpose.....	66
c.	The Interference Causes Injury to the Plaintiff.....	66
I.	Negligent Misrepresentation.....	68
1.	Restatement Standard.....	68

---

---

## TABLE OF CONTENTS

---

2.	Elements.....	69
3.	Practical Observations.....	70
a.	Pecuniary Interest and Duty of Care.....	70
b.	Certain Statements Exempted.....	70
c.	Reasonable Reliance.....	70
d.	Contributory Negligence.....	71
J.	Quantum Meruit/Unjust Enrichment.....	71
1.	Introduction.....	71
2.	Origin and Development.....	72
3.	Practical Observations – Substantive.....	74
a.	Conferring a Benefit on the Defendant.....	74
b.	Defendant’s Realization of the Benefit.....	75
c.	Defendant’s Unjust Retention of the Benefit.....	76
4.	Practical Points – Procedural.....	78
5.	Defenses.....	82
6.	Measure of Damages.....	82
K.	Trade Libel and Commercial Disparagement.....	83
1.	Introduction, Origin, and Development.....	83
2.	Elements.....	84
a.	Publication.....	85
b.	False Statement.....	85
c.	Derogatory to Plaintiff’s Title.....	86
d.	Malice.....	86
e.	Special Damages.....	86
f.	Diminished Value.....	86

---

---

## TABLE OF CONTENTS

---

3.	Defenses.....	87
a.	Privilege.....	87
b.	Good Faith.....	87
c.	Truth.....	87
d.	Statute of Limitations.....	88
L.	Unfair Competition.....	88
1.	Origin and History.....	89
2.	Trademark Infringement Claim by Another Name?.....	90
3.	Factors to Consider.....	90
4.	Defending Against a Claim for Unfair Competition.....	92
a.	No Injury.....	92
b.	Double Recovery.....	93
M.	Unfair Trade Practices Act Violation.....	93
1.	Elements.....	94
a.	An Unfair or Deceptive Act.....	94
b.	Proximate Cause and Adverse Effect on the Public Interest.....	96
c.	Damages.....	99
d.	Treble Damages/Attorneys' Fees.....	100
2.	Proof Required.....	101
3.	Defenses.....	101
a.	Statute of Limitations.....	101
b.	Statutory Exemptions.....	102
c.	Securities Cases.....	102
d.	Insurance "Bad Faith" Cases.....	102

---

---

**TABLE OF CONTENTS**

---

N.	Waste.....	104
1.	Historical Background – Property Roots.....	104
2.	Corporate Waste.....	104
3.	Accompanying Claims.....	105
4.	Remedies/Damages.....	105
<b>Table of Authorities.....</b>		107
<b>Index.....</b>		129