

A food company contracted with a delivery service to supply food to remote areas around the world. The contract between the food company and the delivery service was terminable at will. The delivery service then entered into a contract with an airline to provide an airplane to deliver the food. The contract between the delivery service and the airline was also terminable at will.

The food company was displeased with the airline because of a previous business dispute between them. Upon learning of the delivery service's contract with the airline, the food company terminated its contract with the delivery service in order to cause the airline to lose the business. After the food company terminated the delivery service's contract, the delivery service had no choice but to terminate the airline contract.

If the airline sues the delivery service for tortious interference with contract, will the airline prevail?

- A. No, because the airline and the delivery service were the parties to the contract.
- B. No, because the airline was not in privity with the food company.
- C. Yes, because the delivery service did not terminate the contract because of poor performance.
- D. Yes, because the delivery service's termination of the contract made it a party to the food company's acts.

Explanation:

To prevail on a **tortious interference with contract** claim, the plaintiff must prove all of the following:

A valid contract existed **between the plaintiff and a third party**.

The defendant intentionally and improperly interfered with the contract's performance—eg, using physical violence or economic pressure to prevent or hinder performance of the contract.

The interference caused the plaintiff pecuniary (monetary) loss.

Therefore, the plaintiff can only prevail if the defendant interfered with a contract between the plaintiff and a third party—**not** a contract between **the plaintiff and the defendant**.

Here, the delivery service (defendant) entered into a contract with the airline (plaintiff). Although the delivery service terminated that contract, the delivery service is not liable for tortious interference with contract because the delivery service interfered with its own contract with the airline—not a contract between the airline and a third party (eg, the food company). Therefore, the airline will not prevail.

(Choice B) The airline's claim for tortious interference with contract will fail because the contract at issue involves the airline (plaintiff) and the delivery service (defendant)—not the airline and a third party. Therefore, the airline's lack of privity (ie, contractual relationship) with the food company (third party) is inconsequential.

(Choice C) Since the airline's suit stems from the airline's contract with the delivery service, the claim against the delivery service should be based on that contract (eg, breach of contract)—not tort (eg, tortious interference with contract). And since the contract was terminable at will, the contract could be terminated by either party for *any* reason—not just poor performance.

(Choice D) The food company's acts forced the delivery service to terminate its contract with the airline, but did not make the delivery service a party to (or liable for) the food company's acts.

Educational objective:

Tortious interference with contract requires proof that (1) a valid contract existed between the plaintiff and a third party, (2) the defendant intentionally and improperly interfered with the contract's performance, and (3) that interference caused the plaintiff pecuniary loss.

References

Restatement (Second) of Torts §§ 766, 766A (Am. Law Inst. 1979) (intentional interference with contract).

Restatement (Second) of Torts § 767 (Am. Law Inst. 1979) (improper interference requirement).

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Tortious interference with contract (between plaintiff and third party)

