

Tortious Interference: Illinois

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A Q&A guide to state law on tortious interference in Illinois. This guide addresses the elements of tortious interference claims, pleading requirements, potential remedies, defenses, and applicable standards of proof and causation. Answers to questions can be compared across many jurisdictions (see Tortious Interference: State Q&A Tool).

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)?

Under Illinois law, the elements of a claim for tortious interference with a contract are that:

- The plaintiff and a third party entered into a valid and enforceable contract.
- The defendant knew of the contract.
- The defendant intentionally and unjustifiably induced the third party to breach the contract.
- The defendant's wrongful conduct caused the third party to breach the contract.
- The plaintiff suffered damages as a result of the breach of the contract.

(*HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill. 2d 145, 154-55 (1989).)

Courts and litigants in Illinois sometimes refer to a tortious interference with contract claim as a claim for either:

- Tortious interference with contractual relations.
- Tortious interference with contractual business relationships.

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)?

Under Illinois law, the elements of a claim for tortious interference with business relationships, more commonly called tortious interference with prospective economic advantage, are that:

- The plaintiff had a reasonable expectation of entering into or continuing a valid business relationship with a third party.
- The defendant knew of that expectation.
- The defendant intentionally and without justification interfered with that expectation.
- The defendant's interference prevented the plaintiff's legitimate expectancy from ripening into a valid business relationship (*Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 483-84 (1998)).
- The plaintiff suffered damages because of the interference.

(*Voyle v. Sandia Mortg. Corp.*, 196 Ill. 2d 288, 300-01 (2001).)

Courts and litigants in Illinois also refer to this claim as tortious interference with business expectancy.



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.

Under Illinois law, a claim for tortious interference requires intentional interference. A plaintiff must prove that the defendant acted intentionally with the aim to injure the plaintiff. (*Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 863 (2008).) Intentional interference requires active persuasion, encouragement, or incitement beyond mere passiveness (*In re Estate of Albergo*, 275 Ill. App. 3d 439, 446 (1995)).

A defendant may claim a privilege to interfere with a contract or business expectancy, in which case the plaintiff also must prove that the defendant's acts were unjustified (*HPI Health Care Servs., Inc.*, 131 Ill. 2d at 156-57; *Fellhauer v. City of Geneva*, 142 Ill. 2d 495, 512 (1991)). For example, if the defendant was acting as a corporate officer, the plaintiff must plead and prove that the defendant acted:

- Outside the interest of the corporation (as corporate officers are "justified" in acting for the benefit of the corporation).
- Solely for the defendant's own gain or to harm the plaintiff.

(*Cress v. Recreation Servs., Inc.*, 341 Ill. App. 3d 149, 175 (2003); see Question 17).

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.

Under Illinois law, a plaintiff cannot bring a cause of action for tortious interference against a party to the contract. A defendant's interference must be directed towards a third party. (*Assoc. Underwriters of Am. Agency, Inc. v. McCarthy*, 356 Ill. App. 3d 1010, 1020 (2005).)

A party cannot tortiously interfere with its own contract. Contract principles, not tort law, govern when a party to a contract interferes with the performance of its own contract. (*Koehler*, 2016 IL App (1st) 142767, ¶ 43; see *Douglas Theater Corp. v. Chicago Title & Tr. Co.*, 288 Ill. App. 3d 880, 884-85 (1997).)

Pleading Tortious Interference

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

A plaintiff suing for tortious interference in Illinois circuit court must plead its claim in conformity with Illinois' fact-pleading standard. Under this pleading standard, a plaintiff must set out the ultimate facts that support its claim for tortious interference (*City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 368 (2004)).

A plaintiff must allege the ultimate facts that support each element of its cause of action but is not required to plead the evidentiary facts that prove the ultimate facts (*Beretta U.S.A. Corp.*, 213 Ill. 2d at 369). A complaint that merely paraphrases the law and the elements of the cause of action is insufficient (*Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 424 (1981); *Ruiz v. Cal-Ful Condo. Ass'n*, 2019 IL App (1st) 181734, ¶ 33).

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

Illinois does not apply a heightened pleading standard to claims for tortious interference (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)?

Under Illinois law, the damages available for a claim of tortious interference include:

- Compensatory damages, which may include:
 - loss of the benefits of the contract (*Koehler*, 2016 IL App (1st) 142767, ¶ 64);
 - lost customers (*Advantage Mktg. Grp., Inc. v. Keane*, 2019 IL App (1st) 181126, ¶ 48);
 - out-of-pocket damages (*Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365, 384 (2004) (*Dowd II*));
 - lost profits (*Dowd II*, 352 Ill. App. 3d at 384);

- loss of potential income from property (*City of Rock Falls v. Chicago Title & Tr. Co.*, 13 Ill. App. 3d 359, 363 (1973));
 - a decline in expected sales even where the plaintiff received a profit and did not suffer a loss (see *D 56, Inc. v. Berry's Inc.*, 955 F. Supp. 908, 918 (N.D. Ill. 1997) (applying Illinois law));
 - actual harm to reputation, if harm to reputation is reasonably to be expected to result from the interference (*Koehler*, 2016 IL App (1st) 142767, ¶ 64); and
 - emotional damages, where the defendant's interference with the contract caused the plaintiff mental and physical suffering (*Stafford v. Puro*, 63 F.3d 1436, 1443-45 (7th Cir. 1995) (applying Illinois law)).
- Punitive damages for misconduct going above and beyond that required to establish the underlying tort (*Koehler*, 2016 IL App (1st) 142767, ¶¶ 89-93; see Question 8).

The economic loss doctrine, which bars parties from recovering purely economic damages in most tort cases, does not apply to claims for tortious interference with contract or prospective economic advantage (see *Metro. Water Reclamation Dist. of Greater Chicago v. Terra Found. for Am. Art*, 2014 IL App (1st) 130307, ¶ 59).

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?

Under Illinois law, punitive damages are awarded to punish the wrongdoer and to deter others from similar behavior. An award of punitive damages is appropriate where the tortfeasor's conduct demonstrates a high degree of moral culpability, such as where the defendant acts:

- With fraud, actual malice, or deliberate violence or oppression.
- Willfully, or with a level of gross negligence demonstrating a wanton disregard for others.

(*Koehler*, 2016 IL App (1st) 142767, ¶¶ 89-93.)

Courts do not award punitive damages if the defendant's conduct did not exceed what was necessary to establish the tort itself (*Cress*, 341 Ill. App. 3d at 182).

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

In Illinois, the most common form of relief that a party seeks on a tortious interference claim is money damages (see Question 7). Where money damages are inadequate to remedy the harm caused to the plaintiff, a plaintiff may seek equitable remedies.

For example, a tortious interference plaintiff may seek injunctive relief, including:

- A temporary restraining order (see *Empire Indus., Inc. v. Winslyn Indus., LLC*, 327 F. Supp. 3d 1101, 1116 (N.D. Ill. 2018) (applying Illinois law)).
- A preliminary injunction (see *Lifetec, Inc. v. Edwards*, 377 Ill. App. 3d 260, 262 (2007)).
- A permanent injunction (see *Disher v. Fulgoni*, 124 Ill. App. 3d 257, 260 (1984)).

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

In Illinois, parties are generally responsible for their own attorneys' fees unless otherwise provided by contract or statute (*Maschhoff v. Klockenkemper*, 343 Ill. App. 3d 500, 503 (2003)). Attorneys' fees are generally not available for tortious interference with contract or prospective economic advantage.

However, the court may include the plaintiff's attorneys' fees in a punitive damages award where appropriate (see *E.J. McKernan Co. v. Gregory*, 252 Ill. App. 3d 514, 5336 (1993)).

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

In Illinois, a plaintiff can only recover pre-judgment interest in limited circumstances, such as where:

- The parties' contract provides for interest.
- The underlying claim is a liquidated sum or is otherwise easily computed.
- Statutory grounds exist.

(See *Am. Serv. Ins. Co. v. China Ocean Shipping Co. (Americas), Inc.*, 2014 IL App (1st) 121895, ¶ 39; *Cont'l*

Cas. Co. v. Commonwealth Edison Co., 286 Ill. App. 3d 572, 577 (1997).)

In rare instances, a court may award pre-judgment interest based on equitable considerations (*Cont'l Cas. Co.*, 286 Ill. App. 3d at 577-78).

Illinois courts generally do not award pre-judgment interest in tortious interference claims because the damages for these claims typically cannot be estimated with reasonable certainty (see *Euroholdings Capital & Inv. Corp. v. Harris Tr. & Sav. Bank*, 602 F. Supp. 2d 928, 941 (N.D. Ill. 2009) (applying Illinois law)).

A tortious interference plaintiff may recover post-judgment interest from the entry of judgment until the judgment is satisfied (735 ILCS 5/2-1303; *Poliszczuk v. Winkler*, 2011 IL App (1st) 101847, ¶ 14). The post-judgment rate of interest in Illinois circuit court actions generally is nine percent per year from the date of the judgment until satisfied, subject to certain statutory exceptions (735 ILCS 5/2-1303).

Defenses to Tortious Interference

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

Common arguments that defendants use to defeat a tortious interference claim under Illinois law include:

- The plaintiff did not suffer any damages resulting from the interference (*Bank Fin., FSB*, 2015 IL App (1st) 143956, ¶ 46).
- The defendant's interference was privileged because the defendant was acting to protect an interest of equal or greater value than the plaintiff's contractual rights (*HPI Health Care Servs., Inc.*, 131 Ill. 2d at 157-58; see Question 17). Examples of privilege include:
 - lawfully competing with the plaintiff (*Soderlund Bros., Inc. v. Carrier Corp.*, 278 Ill. App. 3d 606, 615-16 (1995));
 - protecting a right of first refusal (*Guice v. Sentinel Techs., Inc.*, 294 Ill. App. 3d 97, 106-07 (1997));
 - acting as a corporate officer and exercising business judgment on behalf of a corporation, as the officer's duty to the corporation outweighs any duty the officer may have to other contractual parties (*HPI Health Care Servs.*, 131 Ill. 2d at 157; *Cress*, 341 Ill. App. 3d at 175);
 - petitioning the government (*Heider v. Leewards Creative Crafts, Inc.*, 245 Ill. App. 3d 258, 273 (1993));

- giving honest advice as requested (*Simmons v. Champion*, 2013 IL App (3d) 120562, ¶ 31);
 - protecting the character of the defendant's property (*Philip I. Mappa Interests, Ltd. v. Kendle*, 196 Ill. App. 3d 703, 709 (1990)); and
 - protecting a copyright interest (*Am. Broad. Co. v. Maljack Prods., Inc.*, 34 F. Supp. 2d 665, 675 (N.D. Ill. 1998) (applying Illinois law)).
- In a tortious interference with contract claim, the plaintiff did not have a valid, enforceable contract (see *Ctr. For Dermatology & Skin Cancer, Ltd. v. Humana Ins. Co.*, 2012 WL 473133, at *2-3 (N.D. Ill. Feb. 8, 2012) (applying Illinois law)). However, where the parties' contract is terminable at will, the plaintiff may have a claim for tortious interference with prospective economic advantage (see *Dowd II*, 352 Ill. App. 3d at 381).
 - The defendant was not a stranger to the underlying contract or business relationship (see *Assoc. Underwriters of Am. Agency, Inc.*, 356 Ill. App. 3d at 1020).
 - The defendant was not aware of the underlying contract or business relationship (*DAN Joint Venture III, L.P. v. Touris*, 598 B.R. 430, 448 (N.D. Ill. 2019) (applying Illinois law)).
 - The defendant lacked the intent to interfere (*Romanek v. Connelly*, 324 Ill. App. 3d 393, 406 (2001)). A defendant is presumed to intend the natural and probable consequences of its actions (*Greene v. Mizuho Bank, Ltd.*, 206 F. Supp. 3d 1362, 1371 (N.D. Ill. 2016) (applying Illinois law)).
 - The plaintiff's claims are barred by the statute of limitations (*Poulos v. Lutheran Soc. Servs. Of Ill., Inc.*, 312 Ill. App. 3d 731, 745 (2000)).

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)?

In Illinois, the economic loss doctrine generally bars recovery for solely economic damages in tort claims (*Moorman Mfg. Co. v. Nat'l Tank Co.*, 91 Ill. 2d 69, 81 (1982)). However, Illinois does not apply the economic loss doctrine to claims for tortious interference with contract or prospective economic advantage (see *Metro. Water Reclamation Dist. Of Greater Chicago*, 2014 IL App (1st) 130307, ¶ 59).

The independent tort doctrine may limit a party's ability to sue for tortious interference. Under this doctrine, where a contract governs the parties' relationship, the plaintiff's remedy generally lies only in contract unless the defendant's conduct amounts to an independent tort rather than (or in addition to) a breach of contract. (See *Morrow v. L.A. Goldschmidt Assocs., Inc.*, 112 Ill. 2d 87, 95-98 (1986).)

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?

That statute of limitations for asserting a tortious interference claim in Illinois is five years from the date the claim accrues (735 ILCS 5/13-205; see *Poulos*, 312 Ill. App. 3d at 745).

However, tortious interference claims against certain professionals may be subject to a shorter limitations period, for example, an Illinois court applied a two-year statute of limitations to a plaintiff's fraud and tortious interference claims against accountants (see *Polisky v. BDO Seidman*, 293 Ill. App. 3d 414, 424-25 (1997)).

Generally, the statute of limitations accrues when:

- The third party breaches its contract with the plaintiff, in tortious interference with contract claims.
- The defendant interferes with the prospective advantage, in tortious interference with prospective advantage claims.

(See *Leonel & Noel Corp.*, 758 F. Supp. 2d at 605 (applying Illinois law).)

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?

Under Illinois law, the statute of limitations for a tortious interference claim may be tolled or otherwise affected by:

- **The discovery rule.** This delays an action's accrual until the plaintiff knows or should have known through reasonable diligence, of an injury and that the injury was wrongfully caused (*Federal Signal Corp. v. Thorn Automated Sys., Inc.*, 295 Ill. App. 3d 762, 767 (1998)). However, the discovery rule might not apply in a tortious interference with contract claim where the plaintiff:

- had some indication of wrongdoing; and
- should have known of the injury.

(See *Heiman v. Bimbo Foods Bakeries Dist. Co.*, 902 F.3d 715, 719-20 (7th Cir. 2018) (applying Illinois law).)

- **The fraudulent concealment rule.** This gives a plaintiff five years from the time the plaintiff discovers it has a cause of action where the defendant fraudulently concealed the cause of action from the plaintiff (735 ILCS 5/13-215; see *Gredell v. Wyeth Labs., Inc.*, 346 Ill. App. 3d 51, 59-60 (2004)).
- **The defendant's absence from Illinois.** The statute of limitations may be tolled for the time after the cause of action accrues that the defendant:
 - resides outside Illinois; and
 - is not subject to personal jurisdiction in Illinois.(735 ILCS 5/13-208; *Ko v. Eljer Indus., Inc.*, 287 Ill. App. 3d 35, 45 (1997).)

For contract-related torts such as tortious interference with contract, Illinois does not apply the rule that a continuing injury or continuing tortious acts delay commencement of the limitations period (*Federal Signal Corp.*, 295 Ill. App. 3d at 765-66). However, the continuing injury rule has been applied to a plaintiff's claim for tortious interference with the use of its property (see *City of Rock Falls*, 13 Ill. App. 3d at 364).

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?

Under Illinois law, a plaintiff must prove each element of a tortious interference claim by a preponderance of the evidence (see *Parr v. State of Illinois*, 51 Ill. Ct. Cl. 44, 48-49 (1999); *Fryman v. Bd. Of Trs. Of Univ. of Illinois*, 42 Ill. Ct. Cl. 132, 165-66 (1989)).

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.

Under Illinois law, the plaintiff must plead and prove that the defendant's interference was unjustified if the defendant's conduct was privileged (*HPI Health Care Servs., Inc.*, 131 Ill. 2d at 156-57; *Fellhauer*, 142 Ill. 2d at 512). The burden depends on whether a privilege exists, for which the court looks to the complaint. Generally:

- If the defendant invokes a privilege, the plaintiff bears the burden to plead and prove that the defendant's conduct was unjustified or malicious.
- If the complaint does not introduce a recognized statutory or common law privilege, the plaintiff does not need to plead lack of justification. Instead, it becomes the defendant's burden to plead and prove justification as an affirmative defense.

(See *Guice*, 294 Ill. App. 3d at 106; *Zdeb v. Baxter Int'l, Inc.*, 297 Ill. App. 3d 622, 631-32 (1997).)

Illinois courts will find that a privilege exists where the defendant was acting to protect an interest of equal or greater value to the plaintiff's contract rights (*HPI Health Care Servs., Inc.*, 131 Ill. 2d at 157). For example:

- Corporate officers and directors are privileged to exercise discretion on behalf of the corporation. However, their conduct is unjustified if it is unrelated or contrary to this privilege, such as when they act solely for their own personal gain and not in the interest of the corporation. (See *Koehler*, 2016 IL App 1st 142767, ¶¶ 47-50.)
- In a tortious interference with prospective economic advantage case, the defendant enjoys a privilege to engage in lawful competition to further its own business but may not act solely out of spite or ill will (see *Soderlund Bros., Inc.*, 278 Ill. App. 3d at 615-19).

For additional examples, see Question 12

A plaintiff pleading that a defendant's actions were unjustified must state facts from which the court can reasonably infer that the conduct was unjustified (see *HPI Health Care Servs., Inc.*, 131 Ill. 2d at 156-57).

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

Under Illinois law, causation is an element of a plaintiff's claim for tortious interference. The plaintiff must prove that the defendant's acts caused each element of the plaintiff's damages. (See *Koehler*, 2016 IL App (1st) 142767, ¶ 54; *Bank Fin., FSB*, 2015 IL App (1st) 143956, ¶ 46.)

A plaintiff establishes causation by pleading and proving that the defendant induced or otherwise caused a party to breach an underlying contract or to break an underlying business relationship. Where the plaintiff's prospective business relationship is not realized, the plaintiff must plead and prove that the defendant prevented the plaintiff's legitimate expectancy from ripening into a valid business relationship. (See *Bullet Express, Inc., Inc.*, 2016 IL App (1st) 160651, ¶¶ 61-66.)

The defendant's interference must be the primary reason the third party ends or limits its relationship with the plaintiff (*The Film & Tape Works, Inc. v. Junetwenty Films, Inc.*, 368 Ill. App. 3d 462, 471 (2006)). The plaintiff is not required to refute every possible cause of its damages other than the defendant's interference unless there is evidence to suggest something else caused the plaintiff's damages (see *Koehler*, 2016 IL App (1st) 142767, ¶ 53; *Bullet Express, Inc.*, 2016 IL App (1st) 160651, ¶ 66).

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?

Illinois courts recognize:

- Tortious interference with a testamentary expectancy. A person who intentionally prevents another from receiving an inheritance or gift from a third person that they otherwise would have received is subject to liability for the loss. The plaintiff must plead sufficient facts to establish:
 - the existence of an expectancy;
 - the defendant's intentional interference with that expectancy;
 - the defendant's tortious conduct, such as undue influence, fraud, or duress;
 - a reasonable certainty that the expectancy would have been realized but for the interference; and
 - damages.(*Bjork*, 2013 IL 114044, ¶ 24.)
- That a claim for tortious interference with business expectancy may arise where a defendant interferes with the plaintiff's use of its real property (see *City of Rock Falls*, 13 Ill. App. 3d at 362-63).

Miscellaneous

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

There is no additional significant information litigants should know regarding tortious interference claims in Illinois.

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