Unlawful Interference With Contractual Rights

By ABELARDO BUENAVENTURA *

INTRODUCTION

THE contractual relations between two persons may be invaded and interfered with by a third party in several ways The third party may directly induce one of the parties to the contract to break the contract; or he may interfere indirectly, but with equally the same results, by doing some act which renders the performance of the contract very burdensome and even impossible. This interference may be done for the purpose of injuring one of the parties or the party's interests deliberately; or without such purpose, but with the knowledge that the act done will result in the injury of the rights of the party to the contract, or under such circumstances that a reasonably prudent man would see that such an injury is likely to result.

HISTORY OF THE ACTION

That the party to the contract whose rights have been violated by the interference of the third person has some sort of action has long been recognized. This action has root in the ancient Roman Law action of *injurias*, which the *pater familias* had against an outsider who might injure any member of his family or household. An affront or attack against any member of the family or household of the *pater familias* was considered an affront or attack against the head of the family or household. Immediately after the great plague which laid waste the human resources of Europe after the Thirty Years War, labor became exceedingly costly and hard to find. In England a law was enacted compelling any laborer to work for any person who should demand his services for wages which the English Parliament had fixed. Because labor was scarce it was only natural that employers induced laborers to quit the services of other employers for services under them. Any such interference was considered as trespass and actionable as such. As can be seen the interference of contractual relations which was actionable was interference of the contractual relations between master and servant. But later on the action was broadened to include all classes of interference with all classes of contractual relations. Thus, the right of action was directed, first, as against outsiders interfering with the domestic relations within a family or household, second, as against persons interfering with the relations between master and servant, and third, as against persons interfering with all kinds of contractual relations.

GENERAL PRINCIPLES

The tort of interference with contractual relations is broader in scope than that of inducing breach of the contract. Inducing breach of contractual relation embraces only the intentional procurement of the obligor to break the contract. Can it not be said that the mere incidental causing of an undesired breach is not in itself actionable, whereas the inducing or

* LL.B., University of the Philippines.

procuring of a breach often is? A breach of contract is *procured* when the breach is directly and consciously sought, either as the end desired in and for itself, or as a measure out of which to gain some ultimate aim, such as trade advantage or the like. A breach is merely *caused* when it occurs only as an incident and is undesired or unintended, though its occurence may be clearly foreseen but inevitable by-product in the seeking of some quite different object unconnected with the object which led to the making of the contract the breach of which is occasioned. It may be asked why the third person shall not be made to answer for whatever damages he may have caused. The answer is that the law clearly does not undertake to hold every person liable for damages he may cause; it undertakes to hold him liable only for such damages he has culpably caused, that is, for such damages as result from his culpable acts. Otherwise accidental injury would often be actionable, a situation so manifestly against the letter and spirit of the law. As the Civil Code has so wisely provided: "Article 1105. Outside of the cases mentioned in the law and of those in which the obligations so declare, no one shall be liable for events which could not be foreseen, or which having been foreseen were unvoidable."

MALICE OR MOTIVE

Whether a breach has been procured or merely caused as an incident depends upon whether it was deliberately and intentionally done or not. And whether the interference was done deliberately or not must invariably all cases depend upon the motive of the tortfeasor.

If cases of incidentally causing breaches of contract are to be distinguished from cases of procuring the said breach, and if the distinction must rest upon the evident motive which caused the third person to cause the breach, there remains the question of what kind of motive must be proved. In the first case, the reason why the law allows an action to be brought against a third person for causing a breach in the contractual relations is the desire to prevent the stealing of the promised advantages. Parties enter into contracts for the purpose of deriving some profit out of such contracts, which profits may be material or otherwise. The law intends to protect such promised and expected profits. If the true basis, then, of the tort is the policy or the law to prevent the stealing of the promised advantage, the necessary motive, or in the language of the books, the requisite *malice*, must be the conscious intention to appropriate for oneself that which by law belongs to another, something akin to the *animus furandi* of a thief. It is not meant to suggest that a close analogy exists between the action for inducing a breach of contract and for the prosecution for the theft of tangible personality. The one is a tort; the other a crime. Only a suggestion is thrown out, an analogy between one of the elements required for the tort of inducing breach of contract (malice) and one of those required for theft (animus furandi). But this theory that the basis for the action for unlawful interference is the malice of the tort feasor is by no means uniformly accepted by the American courts. In the case of Read vs. Friendly Society of Operative Stonemasons, 2 K. B., Justice Darling said: "I think the plain-

tiff has a cause of action against the defendants, unless the court is satisfied that, when they interfered with the contractual rights of the plaintiffs, the defendants had sufficient reasons for their interference; for it is not a justification that they acted bona-fide in the best interest of the society of masons, that is, in their own interests. Nor is it enough that they were not actuated by improper motives. I think their sufficient justification for interference with plaintiff's right must be an equal or superior right in themselves, and that no one can legally excuse himself to a man, of whose contract he has procured the breach, on the ground that he acted on a wrong understanding of the rights he has, or without malice, or bona fide, or in the best interest of himself, or even that he acted as an altruist, seeking only the good of another and careless of his own advantage." Our Supreme Court quotes with approval the foregoing passage in the case of Gilchrist vs. Cuddy, 26 Phil. 452. With respect to this point the writer begs to differ with the stand taken by our court. In the first place a determination of the motive was unnecessary in that case as the evident motive of the defendant was to derive an illegal profit. The court need not have gone to the point of citing a case where even an altruistic motive on the part of the person interfering with the contractual relations may be the basis of a tort action. So also in the case of Angle vs. Railway Co., 151 U.S. 1, the view is taken that interference in order to be actionable need not be malicious. But the doctrine laid down in these cases should not meet with judicial approval in this jurisdiction as far as the question of malice is concerned.

What is malice as it is used in this connection? As to be expected much of the uncertainty surrounding this tort comes from the shifting ideas which have clustered around the requirement of malice. At the outset malice was conceived to be the right of the tort, and malice in the current opinion of the earlier cases signified malevolence. Malice denotes a mental element. A few judges during the infancy of the doctrine ventured the suggestion that malice here means no more than a knowledge of the fact that the action, if any, is a violation or will lead to a violation of contractual relations. The question of malice is disposed of by modern courts without reference to proof of knowledge on the part of the third person. Courts today take for granted that knowledge is a pre-requisite for the tort as fundamental as the infliction of the damage. Unless both these elements are present it is unnecessary even to consider the question of malice. Here, again the decision of the court in the case of Gilchrist vs. Cuddy seems to imply that knowledge is unnecessary for the determination of this tort concept. That a third person acting even without malice and without knowledge of the fact that his act will cause the breach of a contract will render himself actionable seems to be the implication left for us to understand in the said case.

As a requirement for the tort under consideration its meaning must be sought in the fundamental nature of the tort itself. Its true basis would seem to lie in the policy of the law to accord to promisees the same or similar protection accorded to the owners of other forms of property. By lending its protection to promised advantages, the law creates and se-

cures additional property values which further the social welfare. From very early times the law has protected and secured this interest in promised advantages by allowing in favor of the promisee a remedy against any promisor who breaks such promises, as the law has undertaken to protect legally binding contracts. By the decision in the case of Lumlye vs. Gye, supra, the law undertakes to provide still further protection of this interest by allowing a remedy not only against the promisor who breaks the promise but also against any intermeddler who "with malice" seeks to destroy or to appropriate for himself such promised advantages.

The distinction between causing and procuring, in the last analysis, depends upon a purely mental element. It may well be objected that to make a liability depend upon so nice a question as motive or intent is exceedingly unfortunate. But the law of torts in a number of instances, where the conflicting interests are so evenly balanced, has been forced to resort to an examination of the motive of the party causing the breach of the contract as the only basis for a solution which will comport with justice. A failure to consider the motive of the party occasioning the breach would result in far more unjust recoveries or denials of recovery than would be the contrary course. "It is no sufficient answer . . . that motives are not actionable and that the standards of the law are external. That is true in determining what a man is bound to foresee, but not necessarily in determining the extent to which he can justify harm which he has foreseen." (Justice Holmes, Aitkens vs. Wisconsin, 195 U.S. 194, 204).

THE INTEREST PROTECTED AGAINST INTERFERENCE

Not every contract right is enforceable. Similarly not all contract rights will be protected by the law of torts, even in cases where the defendant actually intended to appropriate for himself the plaintiff's promised advantages, that is in cases of *procuring* as distinguished in cases of *causing* the breach. Nor is it meant to suggest that whenever contract rights can be enforced against the promisor, they will similarly be protected against the interference of third persons. It is very evident that the conflicting interests weighing in the enforcement of a contract against the promise will be altogether different from those weighing against the restraining of a third party from committing some act which may cause the promisee to break his contract. The rival lover who induces a girl to break her contract of marriage with her fiance and marry him instead is undeniably guilty of inducing her to break a contract; yet, for reasons of public policy, the law will not hold his act actionable in tort. There are interferences with contractual relations which are not actionable. The doctrine that every contract between two persons precludes another from making an inconsistent contract with either of such parties without rendering himself liable to the other party for the injury resulting from the necessary breach of the contract involves dangerous possibilities, and on the ground of expediency, if for no other reason, should not receive the sanction of the courts. (Note, L.R.A. 1915, F. 1075).

INVASIONS AGAINST WHICH THE INTEREST IS PROTECTED

Intentional and Malicious Acts.—Where the invasion of the right of the party to the contractual interest in an intentional one, is bad motive also required to make out a *prima facie* case of tort? We have already discussed the question of malice from purely an academic point of view. The disposition of the cases is not to limit the liability for interference with contract rights to cases where the invasion is for the specific purpose of interfering with the contractual relations, but to extend it to include invasions by acts done with knowledge that an interference with the party's contractual relations must result. For instance in the case of Sandlin vs. Coyle, 143 La. 121, 78 So. 261, the defendants by threatening to take a negro into custody and punish him for failing to pay a sum he owed to one of the defendants, caused him to abandon his contract with the plaintiff to plant and cultivate 48 acres of cotton and yarn. There now where appeared to have been any interest to injure the plaintiff or his interest, yet the plaintiff recovered damages. In several cases involving strikes, where violence was used and the employer was prevented from performing his sale contracts, it has been held that the purchasers have rights of action against the union officials or strikers. A perusal of this case would seem that the decisions seem to belie the point we have already discussed: That a third person is not liable for tort where he has merely caused the breach of the contract between two parties and did not induce such breach. The point remains. A closer scrutiny of these cases will show that invariably the third persons causing the breach acted with fraud, violence, or intimidation. But where the act which causes the breach is legal in itself and not done with either of those things that will make the actor a debtor in bad faith, such breach caused by his act will not be actionable.

Negligent Acts.—As the law protects property interest from damages by negligent acts, we should expect that the interests and rights, to be so protected. The language of Lord Justice Bitt in the case of Bowen vs. Hall, "that whenever a man does an act which in law and in fact is a wrongful act, such an act as may, as a natural and probable consequence of it, produce an injury to another and which in the particular case does produce such an injury, an action in the case will lie."

In the United States there are several cases which are sometimes cited as authority for non-liability for negligent invasion of contract interests. These cases: Mutual Life Insurance Co. vs. N.Y. and N.H.R.R., 25 Conn. 265; Brink vs. Wabash R.R., 160 No. 87, 60 S.W. 1058; Byrd vs. English 117 Ga. 191, 43 S.E. 419. In each of these cases the defendant had been guilty of a negligent act toward such person for his property, and this had damaged the plaintiff by reason of the invasion of his contract interests. An examination of these cases will show that the negligent acts of the defendants did result in the invasion of the plaintiffs' contract interests, but they are clearly not cases of the defendant being *toward* the plaintiffs or their interests.

The majority opinion in the United States holds that an action will lie for such contractual interference occasioned by the negligent conduct of the third person, illustrative of the cases holding this point are the following: Glansar

vs. Shepard, 233 N.Y. 236; Here the seller of beans employed the defendant to weigh the bags of beans sold to the plaintiff, and the defendant negligently mis-stated the weight, causing the plaintiff to make an overpayment for which the defendant was held liable. In the case of Cue vs. Breeland, 78 Miss. 864, a declaration that the defendant negligently destroyed a bridge which the plaintiff was bound under contract to repair, was held good on demurrer.

NON-ACTIONABLE INTERFERENCES

Not every contractual interference by persons not party to the contract is actionable. Certain circumstances, outweighing the duty to observe contractual rights in favor of other persons, render such interferences justifiable and in some cases privileged.

The privilege to interfere to protect a contract right or property right.—Where an individual enters into a contract with two persons knowing the performance is only feasible in favor of one of them, either of the two persons may of course demand the performance of the contract. Where *A* promised to deliver a specific article to B and C. Either B or C may demand the delivery of the specific article. Delivery to B will mean that A will fail in his contract with C. Whether B knows of the existence of the contract with C is immaterial. In either case, the fact that B induced A to deliver the book to him instead of to C, thereby prejudicing C, will not render B amenable to any action. His action, though intentionally prejudicial to C, is not a tort. His action was perfectly legitimate. And what is perfectly legitimate cannot be the basis of an action based on an act not countenanced by the law.

Privilege to Interfere to protect life, reputation, health:—Where the performance of a contract which is in itself legal will occasion injury to a third person, his reputation, or health, the third person is perfectly justifiable in doing such steps as may be necessary to protect his interest. It is the legitimate right of everybody to protect his own interest. And if in the resulting acts to protect such interests, the contractual relations existing between other persons are interfered with, such interference is a case of *damnum absque injuria.* The penal law itself recognizes the fact that a person may do a criminal act without the corresponding criminal liability in those cases where the criminal acts were born of justifiable necessity. So much more so will this principle apply in purely civil actions. Where the mother of a child studying in a private school learns that one of the students in the said school was suffering from a secret disease, and she goes to the director of the school and demands that the said director sever the relation of the sick student with the school otherwise she will take her own child from the school, and the director was induced to break his contract to furnish education to the sick student, clearly, the mother is not liable for any tortious act.

Privilege to discipline.—The right of the parents or guardians of minors to the custody of the children under their care carries with it the right to exercise such disciplinary actions as may be necessary to enforce their authority. Where a minor enters into a contract to purchase several articles, let us say, without the consent of his guardian; and the guardian disapproves of such contract, the

guardian may refuse to give the minor the necessary money to comply with the obligations of the contract he entered into. Or in a case where the father of a girl prohibits her from marrying someone with whom she had a contract of marriage, the act of the father is not actionable.

Privilege to give disinterested advice.—The performance of a contract is a duty enjoined by the law upon the parties to the contract. However, the parties to the contract, or either of them, may be induced to violate the obligations of the contract. Ordinarily the person inducing the violation of the contract is liable for tort. However, where the advice is disinterestedly given, as in the case of a lawyer advising his client not to go on with the terms of a contract which in the former's opinion is clearly inequitous to his client, the person who gave the advice will not be liable for tort. So also in a case where a doctor ordered his patient not to go on with his contract of employment for reasons which the doctor believe will be for the benefit of his patient, the doctor will not be held liable for the breach of the contract. So also in all case of purely disinterested advice given resulting in the breach of contractual relations, the third person causing such a breach whether consciously or unconsciously will not be liable for tort for his act. As no malice move him, as no bad motive actuated his action, and as this motive should be the basis of the tort action for contractual interference, there can be no basis for any tortious action in those cases where this element is not present in much the same manner as there can be no criminal liability notwithstanding an act which resulted in a crime where there is not present the necessary criminal intent.

The privilege of competition:—Too sweeping application of the principle that a third person who interferes with a contractual relation existing between two persons will be liable for his action in an action on tort would be attended with the dangerous result that clever manipulators could so tie up some field of endeavor by a series of contracts thrown out and widely advertized that competitors, fearful of damage suits, could be effectively barred from the field, and privileges ordinarily given by the law could then be virtually suppressed. Where X telephone company requires its patrons to sign contracts providing that they will not become subscribers to any other telephone company as long as they continue with the X company, it seems that the courts will not enjoin a rival company from seeking business among the X company's subscribers. In the case of Citizen's Light Heat and Power Co. vs. Montgomery Light and Water Power Co., 171 Fed. 553, 560-561, the court held, in discussing such a situation: "The trader who has made a contract with another person has a right, which the law will protect, to have that other keep it. Other traders have the correlative right to solicit the custom to which the contract relates. Whatever damages result to the first trader by the mere solicitation is privileged, so far as the solicitor is concerned, in the interest of proper freedom of competition. Where the law otherwise, the first person occupying the field of public service in many facilities. by procuring long contracts to take water, light, and the like from him, might entrench himself in a monopoly there for years, because another thereafter could not soli-

cit customers, thus bound, to change their patronage to him, and thereby enable a rival enterprise to enter the field." Chief Justice Wells in the case of Walker vs. Cronin, 107 Mass. 555, said: "Every one has a right to enjoy the fruits and advantages of his enterprise, skill, industry, and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance or loss comes as a result of competition, or the exercise of like rights by others, it is *damnum absque injuria,* unless some superior right by contract or otherwise interfered with."

THE TORT ACTION

The nature of this action is described correctly and concisely in the case of Gilchrist vs. Cuddy, *supra,* as follows: "The liability of the appellants arises from the unlawful acts and not from the contractual obligations, as they were under no such obligations to induce Cuddy to violate his contract with Gilchrist. So that if the action of Gilchrist had been one for damages, it would be governed by Chapter 2, Title 16, Book 4 of the Civil Code. Article 1902 of that code provides that a person, who by act or omission, causes damage to another when there is fault or negligence, shall be obliged to repair the damage done." The action is not for breach of contract. The act of interference is generative of the cause of action. An action for breach of contract will not lie as against the third person as he is not a party to the contract, if the said action is to be brought under the terms of the contract.

As to the nature of the defenses which the third party may have against the party suing, a passing remark may be made. The fact that the plaintiff's contract with the other party is unenforceable by reason of the statute of frauds does not preclude the plaintiff from a defendant who has interfered with the contractual relations. Practically all the cases agree: Richardson vs. Terry, 212 S.W. 523; Jackson vs. Stanfield, 173 Ind. 592; Ringby vs. Ruby 244 Pac. 509. The contrary view is held in the case of Davidson vs. Oakes, 128 S.W. 944. "The promisor may waive the statute if he sees fit. The defense is personal to him. But where the contract is unenforceable on any other ground, that is a valid defense for the defendant." (Roberts vs. Clark, 103 S.W. 417). Similarly the defense of the statute of limitations is a defense personal to the party to the contract and may not be availed of by the third person causing the breach of the contract as a basis for non-liability.

CONCLUSION

We see that the action against persons interfering with contractual relations began with the right of the *pater familias* to bring an action for injuria. This action took the form of trespass during the middle of the 16th century. With the case of Lumlye V. Gye, the action, as we know it, emerge to confront the judiciary with new problems in connection with its application. Much of the shifting ideas about the nature of this tort action clustered around the interpretation of malice. This point, even to the present, has not been definitely decided. But the new principles are beginning to find definite shape. And as soon as the conflicting ideas will find solution. Intended primarily to pre-

vent the disruption of labor contracts between employers and laborers, this action finds much application in the present age also in connection with the relations between employers and laborers. The right to strike is recognized. But may the right to strike, by the legitimate use of pickets, be used to interfere with the contractual relations of employers and laborers? The American Courts seem to favor the idea that the contractual relations between master and laborer may be interfered with, to the extent of having the same broken, by the legitimate use of strike methods, provided that no violence, intimidation, or fraud is used. So also in the field of business we find the idea taking root that not all interference with contractual relations are actionable. Property rights must of course be protected. And no doubt the promised advantages resulting from the faithful compliance of contractual obligations are forms of property rights, but certain considerations of public policy will not countenance the strict application of the principle that a third person may not interfere with the contractual relations of other persons. Monopolies are not desired; and to prevent such policy, contractual relations may be interfered without meriting judicial disapproval. Thus we find that the tendency of the courts is to break away from the strict observance of the principle that a man may not interfere with the contractual relations of others.

ON MENTAL DISCIPLINE

"A man cannot directly choose his circumstances, but he can choose his thoughts, and so indirectly, yet surely, shape his circumstances." — JAMES LANE ALLEN.