

Chapter 3**Stay Out of My Sandbox!
Preventing Third Parties from Interfering
with Your Contracts**

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§ 3.01. Introduction to Tortious Interference.

Those involved in the extraction, marketing, buying and selling of natural resources are surrounded by contractual agreements, restrictions and obligations. The rights to mine coal, oil or natural gas are acquired and governed by contracts. Many employment relationships required to mine, market, buy or sell natural gas are governed by contracts and contract principles. Contracts obligate a producer to produce a certain quantity of a resource and obligate buyers to buy a certain quantity of the resource produced.

The parties to a contract are in “privity” with one another. Privity of contract refers to “that connection or relationship which exists between two or more contracting parties.”¹ If one of the parties to the contract fails to fulfill its obligations, then that party is said to have “breached” the contract and can be sued for “breach of contract.” Generally, one can only sue another for breach of contract if the breaching party is in privity with the complaining party.

What then, can one do if a third party, not a party to the contract, causes a party to the contract to not perform its obligations? In the natural resource field, these types of scenarios arise often. In extreme cases, a producer may be precluded from supplying its buyer with adequate resources because of industrial sabotage, violence, or threats of violence. In such circumstances, the producer can state a cause of action against the saboteur for “tortious interference with contract.”

¹ *Black’s Law Dictionary* 1199 (6th ed. 1990).

The liability for interference with contract first arose from cases of “intentional prevention of prospective dealings, by violence, fraud or defamation—conduct that was essentially tortious in its nature, either to the third party, or the injured party.”²

While it is beyond dispute that society should discourage violence and intimidation for the purpose of causing one to breach a contract, what about less extreme scenarios? In a competitive marketplace competitors must be free to incentivise a prospective purchaser to purchase from them and not their competitors. In the field of natural resources, the prudent operator must obtain the rights to a particular parcel of land rich in resources, and prevent its competition from acquiring that land. The law of tortious interference with existing and prospective contractual relations attempts to set the bounds of acceptable conduct in these situations.

Tortious interference with contracts or prospective contracts is an amorphous concept. Different states have supplied different definitions and tests to determine whether one has tortiously interfered with the contractual relations of another. This chapter cannot aspire to establish a clear and concise universal definition for tortious interference with contract and tortious interference with prospective contractual relations. Instead, this chapter strives to provide some guidance to those involved in the coal, oil and natural gas fields by examining the definitions set forth in the Restatement (Second) of Torts, by examining the various tests States have devised, examining the most frequent defenses to a claim of tortious interference with contract, and examining the damages a successful plaintiff may recover. While it is not possible to divine a bright line rule, this exercise should inform those involved in the coal, oil and natural gas fields of the type of conduct that has been found to be improper.

§ 3.02. Tortious Interference (sort of) Defined.

As noted above, the concept of tortious interference is amorphous and not capable of easy definition. Competition is encouraged in a capitalist society,

² Restatement (Second) of Torts § 766 cmt. d (1979).