19.01A INTENTIONAL INTERFERENCE WITH CONTRACT – ELEMENTS

The plaintiff claims that [he][she] was harmed because the defendant intentionally interfered with a contract between the plaintiff and [insert name of third party]. To win on this claim, the plaintiff must prove it is more likely true than not true that:

(1) the plaintiff had a contract with [insert name of third party];

(2) the defendant knew about the contract;

(3) the defendant intended to induce [insert name of third party] to breach the contract; a breach of contract occurs when a person fails without excuse to do what [he][she] promised to do in the contract;

(4) [insert name of third party] breached the contract;

(5) the defendant’s conduct caused the breach;

(6) the plaintiff was damaged as a result of the breach; and

(7) the defendant’s conduct was not privileged or justified.

If the plaintiff proves all seven elements, you must find for the plaintiff on this claim. But if the plaintiff fails to prove any one of the elements, you must find for the defendant on this claim.

## Use Note

This instruction should be given in any case that includes a claim of intentional interference with contract. If the existence of a contract between the plaintiff and the third person is not contested, element one can be eliminated.

Instructions 19.02 on intent and 19.03 on justification should be given with Instruction 19.01A.

The following contract instructions may be helpful: Instruction 24.01A – existence of contract disputed, Instruction 24.01C – existence of disputed terms, and Instruction 24.03 - breach of contract.

## Comment

The tort of intentional interference with contract promotes security and integrity in “contractual relations by protecting those relations from wrongful intermeddling by third parties.” *Ellis v. City of Valdez*, 686 P.2d 700, 706-07 (Alaska 1984). Instruction 19.01A sets forth the elements of a prima facie case. *E.g.*, *Kinzel v. Discovery Drilling Inc.*, 93 P.3d 427, 443 (Alaska 2004); *K & K Recycling, Inc. v. Alaska Gold Co.*, 80 P.3d 702, 716 (Alaska 2003); *Odom v. Lee*, 999 P.2d 755, 761 (Alaska 2000). Elements two and three of the instruction may be combined into a single element. *See, e.g.*, *Briggs,* 984 P.2d at 1119. This instruction allocates the burden of proof to the plaintiff to prove all of the elements. *See* *Sisters of Providence in Washington v. A.A. Pain Clinic, Inc.*, 81 P.3d 989, 997-99 (Alaska 2003).

The first element requires proof of contract. *Knight v. American Guard & Alert, Inc.*, 714 P.2d 788, 794 (Alaska 1986). Even contracts voidable due to the statute of frauds or other technical flaws may be protected against interference by third parties. Restatement (Second) of Torts § 766 comment f.

The second and third elements require the plaintiff to show that the defendant knew of the contract and intended to induce breach. *Knight*, 714 P.2d at 793. But breach has been broadly construed. The tort has been applied to inducing termination of a contract that was terminable at will. *See, e.g.* *Kinzel*, 93 P.3d at 433. It may also apply to situations where the interference made the plaintiff’s performance more expensive or burdensome. *See Briggs v. Newton*, 984 P.2d 1113, 1119 (Alaska 1999). The Restatement (Second) of Torts § 766 comments h and j also indicate that the tort applies to acts other than "inducements," including violence and fraud which interfere with a person’s performance of a contract. Section 766 also discusses four categories of acts which will satisfy the requirement: (1) "causing (name of third party) not to keep his or her part of the agreement;" (2) "preventing the plaintiff from keeping the plaintiff's part of the agreement;" (3) "making it more difficult or expensive for the plaintiff to keep the plaintiff's part of the agreement;" or (4) "causing (name of third party) to terminate the agreement." *See* Restatement (Second) of Torts § 766 comments h, i, k, 1 and m; § 766A comment g.

With respect to the fourth and fifth elements, the defendant's interference must be a "material and substantial" cause of the breach. *See, e.g.*, *Long v. Newby*, 488 P.2d 719, 723 (Alaska 1971). The plaintiff must introduce evidence that the defendant did more than merely "influence" a breach. *Knight,* 714 P.2d at 794.

Regarding the fifth element, most Alaska decisions include wrongful conduct in the causation element. *See, e.g.*, *Odom* 999 P.2d at 761(“[plaintiff] must show: . . . wrongful conduct of the Defendant . . . which caused the breach”). But in the past, “wrongful” has been equated with whether the interference was justified. *See* *Bendix Corp. v. Adams*, 610 P.2d 24, 29 (Alaska 1980) (“the breach was caused by defendant's wrongful or unjustified conduct”). And in *Kinzel,* the court did not include wrongful in the causation element. 93 P.3d at 443 (“the defendant's conduct was the cause of that breach”). Instruction 19.01A follows the *Kinzel* formulation. The propriety of the defendant’s conduct is addressed in Instruction 19.03 on privilege and justification. This is consistent with Alaska decisions that discuss the character of the defendant’s conduct in the context of justification and privilege. *See, e.g.,* *Alyeska Pipeline Service Co. v. Aurora Air Service, Inc.*, 604 P.2d 1090, 1094 (Alaska 1979)(“In order to negate liability, the justification must be as broad as the act and must cover not only the motive and purpose, but also the means used”).

On the last element, the court has “adopted a test of privilege . . . that where an actor has a direct financial interest, he is privileged to interfere with a contract for economic reasons, but not where he is motivated by spite, malice, or some other improper objective.” *RAN Corp.v. Hudesman*, 823 P.2d 646, 648 (Alaska 1991). The plaintiff bears the burden of proof to show that the defendant’s conduct was not justified or privileged. *See, e.g*., *Kinzel*, 93 P.3d at 443. Until 1986, the Alaska decisions held that the defendant bore the burden of proof to show that its conduct was justified or privileged. *See, e.g.*, *Bendix Corp.*, 610 P.2d at 29; *Alyeska Pipeline Service Co.*, 604 P.2d at 1095; *Long*, 488 P.2d at 722. But in *Knight v. American Guard & Alert, Inc.*, 714 P.2d 788, 793 (Alaska 1986), the court changed position and held that the plaintiff bears the burden of proof to show the defendant’s conduct was not justified or privileged, citing *Bendix Corp.*, but not acknowledging the apparent shift of the burden of proof on justification and privilege from the defendant to the plaintiff. *Id.* at 794*.* Decisions following *Knight* continue to place the burden on the plaintiff. *See, e.g.*, *Kinzel*, 93 P.3d at 443 (“[A] plaintiff must prove: . . . defendant’s conduct was not privileged”); *K & K Recycling, Inc.*, 80 P.3d at 717 (“[A] plaintiff must show: . . . absence of privilege or justification for the defendant's conduct”). The same rule applies in the closely related tort of intentional interference with prospective economic advantage. *Sisters of Providence in Washington,* 81 P.3d at 1000 (“[T]he superior court correctly instructed the jury that plaintiffs had the burden of proving the Group's actions were not privileged”).