


Tortious Interference with Inheritance

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Editor-in-Chief

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Although the Texas Supreme Court has not yet recognized a cause of action for tortious interference with inheritance, at least two Texas courts of appeals have done so. The Fifth Circuit Court of Appeals recently held that Texas recognizes the cause of action in *Wackman v. Rubsamen*, 602 F.3d 396 (5th Cir. 2010). A recent Texas court of appeals case upholding a jury finding of tortious interference with inheritance is *In re Russell*, 2009 WL 3855950, at 5 (Tex.App.-El Paso Nov. 18, 2009, no pet.)

Definition

The first Texas appellate case to clearly hold that Texas has a tortious interference cause of action was *King v. Acker*, 725 S.W.2d 750, 754 (Tex. App.-Houston [1st Dist.] 1987, no writ). The *King* case relied on the definition of tortious interference found in The Restatement (Second) of Torts, sec. 774B (1977), which provides:

"One who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift."

Damage Elements

The Restatement lists the elements of damage recoverable as:

1. the pecuniary loss of the benefit of the contract of the prospective relation;
2. consequential losses for which the interference is the legal cause; and
3. emotional distress or actual harm to reputation, if they are reasonably to be expected to result from the interference.

The commentary in the Restatement also mentions the recovery of punitive damages.

Court's Charge

The charge endorsed by the *Wackman* court required the jury to find by a preponderance of the evidence that:

1. there was a reasonable probability that [the decedent] would have given a gift or inheritance to [the recipient];
2. [the tortfeasor] interfered with [the recipient's] expected gift or inheritance;
3. the interference was intentional, was independently tortious, or was unlawful and caused damage; and
4. the interference was conducted with neither just cause or legal excuse.

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Wackman Facts

The *Wackman* case involves an interesting and particularly disturbing set of facts. The decedent, Carolyn Clark, was an 82-year-old cancer patient who was under hospice care. She died at home while attended by her live-in caretaker, who had gone to great lengths to separate Ms. Clark from her family members. The caretaker had also become intimately involved in Ms. Clark's financial affairs, eventually consolidating all of Ms. Clark's assets into an estate plan for the caretaker's benefit.

Initially, the death certificate listed the cause of death as cancer. However, an autopsy requested by the family showed that the death was actually caused by acute morphine intoxication from an injection given by the caretaker. The jury awarded significant damages against the caretaker for wrongful death in addition to the tortious interference with inheritance damages.

If you have questions, click [here](#) to contact Steve Spitzer.



Your Probate Litigation Resource

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