TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS: A COMPARATIVE STUDY OF THE UK AND US MODELS AND THE CASE FOR A CALIBRATED INDIAN FRAMEWORK

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ABSTRACT

Tortious interference is a common law economic tort that originated in nineteenth-century English law and was subsequently developed, with significant variation, in the United States. It arises where a defendant intentionally induces a third party to breach a contract with the claimant, or otherwise uses wrongful means to disrupt the claimant's economic interests. The tort is fully recognised in both the United Kingdom and the United States, but India has no comparable statute, leaving courts to construct relief from the Indian Contract Act, 1872 and Article 19(1)(g) of the Constitution. This paper traces the historical development of the tort from Lumley v. Gye through its modern doctrinal split, in England, between inducing breach of an existing contract and causing loss by unlawful means, and, in the United States, between interference with an existing contract and interference with a prospective economic advantage. It examines this divide through six landmark decisions, Quinn v. Leathem, OBG Ltd. v. Allan, and Douglas v. Hello! Ltd. in the United Kingdom, and D.A.R.E. America v. Rolling Stone Magazine, Saint Mary's Health Network v. UHS of Delaware, and Appian Corp. v. Pegasystems in the United States, and situates the comparison within the broader law-and-economics tension between contractual sanctity and efficient breach. It then maps the uneven and unpredictable Indian jurisprudence on the subject, from Lindsay International through the Pepsi-Coca-Cola litigation to the Amway and Oyo Rooms disputes. Departing from the merely descriptive, the paper advances a specific thesis: India should not import the broad, discretionary "improper interference" standard used in the United States, but should instead codify a calibrated, UK-style "unlawful means" model, since the narrower English standard offers greater certainty to investors and competitors alike without unduly chilling legitimate competition in a developing economy. The paper concludes by proposing a model statutory clause, clarifying its relationship to existing remedies under the Indian Contract Act and the Competition Act, and recommending that the Law Commission of India be tasked with the clause's consultative refinement.

I. Origins and Development in U.S. and U.K. Law

The origin of tortious interference can be traced to English common law, which initially developed the tort to protect the master–servant relationship: courts intervened where a third party induced a servant to break an employment contract. The foundational case is Lumley v. Gye (1853)[1], in which the defendant, Gye, induced an opera singer under exclusive contract to perform at the claimant Lumley's theatre to instead perform at his own venue by offering a higher fee. Lumley successfully sued for the resulting loss, and the case has since anchored the tort in both jurisdictions.

The United Kingdom and the United States, though sharing this common origin, diverged sharply in scope. English law confines the tort to two narrow grounds: first, inducing breach of an existing, binding contract; and second, causing loss by unlawful means, that is, an independently unlawful act directed at a third party with the intention of harming the claimant. Critically, English law does not recognise interference with a merely prospective economic advantage as an independent tort: a defendant's conduct must be unlawful and actionable by the third party in its own right, not merely "improper" or malicious. Persuading a supplier not to deal with a competitor, where no contract yet exists, is treated as legitimate competition in England even where the motive is plainly malicious.

United States law, by contrast, recognises two distinct branches: tortious interference with an existing contract, and tortious interference with a prospective economic advantage, the latter extending liability to the disruption of business relationships that have not yet matured into a binding contract. The American standard turns on whether the defendant's conduct was "improper", a deliberately flexible inquiry under which malice or ill will can independently satisfy liability. This makes the American tort considerably more plaintiff-friendly and unpredictable in application than its English counterpart.

Later English authority refined this divide. Torquay Hotel Co. Ltd. v. Cousins[2] extended unlawful-means liability beyond direct inducement to indirect interference, while OBG Ltd. v. Allan[3] authoritatively separated the two economic torts and confined "unlawful means" to acts that are actionable by the third party independently of the claimant's loss. The United States

[1]Lumley v. Gye, (1853) 118 Eng. Rep. 749 (Q.B.).
[2]Torquay Hotel Co. Ltd. v. Cousins, [1969] 2 Ch. 106 (C.A.).
[3]OBG Ltd. v. Allan, [2007] UKHL 21, [2008] 1 A.C. 1 (H.L.).

instead consolidated its broader approach through the Restatement (Second) of Torts § 766[4], which extended liability to prospective relations on a discretionary, multi-factor "improperness" test. Both jurisdictions therefore share a common doctrinal ancestor, yet they have arrived at markedly different answers to the central policy question of how far the law should go in protecting expectation interests that fall short of an enforceable promise.

II. Doctrinal Framework: Existing Contracts and Prospective Economic Advantage

A. Interference with an Existing Contract

This branch of the tort arises where a defendant intentionally induces a third party to breach a subsisting contract with the claimant, causing loss. Its elements are well settled across both jurisdictions:

- **Valid contract:** a legally enforceable contract must subsist between the claimant and a third party.
- **Defendant's knowledge:** the defendant must have known that the contract existed.
- **Intentional inducement:** the defendant must have taken deliberate steps to procure the breach; accidental or negligent disruption does not suffice.
- **Actual breach:** the third party must actually have breached the contract as a result of the interference.
- **Resulting damage:** the claimant must have suffered quantifiable economic loss flowing directly from the breach.

B. Interference with a Prospective Economic Advantage

This branch, recognised in the United States but not as an independent tort in England, arises where a defendant uses wrongful means to prevent the claimant from entering into a future business relationship. Its elements are correspondingly more demanding:

- **Probable economic relationship:** the claimant must show a real and reasonable

[4]Restatement (Second) of Torts § 766 (Am. L. Inst. 1979).

expectation of future economic benefit.

- **Defendant's knowledge:** the defendant must have known of this probable relationship.
- **Intentional and wrongful conduct:** the interference must be independently wrongful or improper; vigorous but lawful competition is not enough.
- **Actual disruption:** the defendant's conduct must actually have prevented the relationship from forming.
- **Resulting damage:** the claimant must have suffered economic loss because the opportunity was lost.

C. The Significance of the Distinction

The distinction is not merely taxonomic; it allocates risk differently. Where an existing contract is concerned, the protected interest is a definite, legally enforceable promise, and the wrong lies in the intentional inducement of its breach: the defendant need not have committed any independently unlawful act. Where only a prospective advantage is at stake, the protected interest is a probable future opportunity rather than a present legal right, and courts correspondingly demand that the defendant's conduct be independently wrongful, affording far greater latitude to competitive behaviour. The burden of proof tracks this distinction: a claim on an existing contract succeeds on comparatively few, clearly defined elements, whereas a claim on a prospective advantage requires the claimant to establish both the likelihood of the relationship and the wrongfulness of the defendant's competitive conduct, a considerably higher bar, reflecting judicial reluctance to convert ordinary business expectations into actionable legal rights.

A simple illustration clarifies the English position. Suppose Company A holds an exclusive supply agreement with Supplier X, and Company B, aware of this agreement, offers Supplier X a higher price. If Supplier X lawfully declines or terminates its agreement with A before supplying B, no tort arises, since neither a breach nor unlawful conduct has occurred. If, however, B procures the breach through threats or deception, causing an actual breach and loss, the elements of the unlawful-means tort are satisfied. United States law reaches a similar result through a different route: mere negligent or accidental interference does not suffice, but the defendant's conduct need only be purposeful and "improper", a markedly lower threshold than England's requirement of independent unlawfulness.

The table below summarises the comparative position:

Criterion	United Kingdom	United States
Recognised causes of action	Inducing breach of an existing contract; causing loss by unlawful means	Interference with an existing contract; interference with prospective economic advantage
Prospective economic advantage	Not independently actionable absent unlawful means	Independently actionable as a distinct tort
Standard of conduct	Defendant's act must be independently unlawful and actionable by the third party	Defendant's conduct must be "improper", a broader and more discretionary standard
Role of malice	Largely irrelevant absent unlawful means	Can independently satisfy the improper-conduct element
Leading authority	OBG Ltd. v. Allan [2007] UKHL 21	Restatement (Second) of Torts § 766

III. Landmark Cases

A. United Kingdom

1. Quinn v. Leathem[5]

Facts: The claimant, Leathem, a butcher, employed non-union workers. Union officials, angered by this, threatened one of Leathem's customers that his workers would strike unless the customer stopped buying meat from Leathem. The customer, intimidated, ceased trading with Leathem, causing economic loss.

[5] Quinn v. Leathem, [1901] A.C. 495 (H.L.).

Holding: The House of Lords held that while a single individual may lawfully decline to do business with another, a combination of persons acting with the predominant purpose of injuring another's trade, absent any lawful justification, amounts to an actionable conspiracy. The decision remains the foundation of the modern unlawful-means and conspiracy torts in English law.

2. OBG Ltd. v. Allan[6]

Facts: Receivers appointed under a defective debenture purported to take control of a company, mistakenly believing the appointment to be valid. In doing so, they inadvertently caused the company to default on its contracts with third parties. The company sued the receivers for interference.

Holding: The House of Lords definitively separated two distinct economic torts: inducing breach of contract, which requires actual knowledge and deliberate procurement of the breach, and causing loss by unlawful means, which requires an independently unlawful act directed at a third party. Because the receivers had acted under a genuine, if mistaken, belief in their authority, neither tort was made out, and the case became the leading modern authority confining the scope of unlawful-means liability.

3. Douglas v. Hello! Ltd.[7]

Facts: Michael Douglas and Catherine Zeta-Jones sold exclusive rights to their wedding photographs to OK! magazine. A rival publication, Hello!, aware of the exclusive arrangement, obtained and published unauthorised photographs taken by an infiltrating freelance photographer, destroying the exclusivity for which OK! had paid.

Holding: The House of Lords found in favour of OK!, holding that Hello!'s knowing publication of the unauthorised photographs, in the knowledge of OK!'s exclusive contractual rights, amounted to an actionable interference causing quantifiable commercial loss, for which damages were awarded.

[6]OBG Ltd. v. Allan, [2007] UKHL 21, [2008] 1 A.C. 1 (H.L.).
[7]Douglas v. Hello! Ltd., [2007] UKHL 21, [2008] 1 A.C. 1 (H.L.) (conjoined appeal).

B. United States

1. D.A.R.E. America v. Rolling Stone Magazine[8]

Facts: D.A.R.E., a well-known school-based anti-drug programme, sued Rolling Stone over a critical article alleging that the programme was ineffective, claiming the article was intended to damage D.A.R.E.'s relationships with schools, donors, and the public.

Holding: The claim was dismissed. The court held that publishing critical commentary, however damaging, is protected by the First Amendment, and that a tortious interference claim cannot be used to penalise the expression of an opinion absent independently unlawful conduct such as fraud or threats.

2. Saint Mary's Health Network v. UHS of Delaware, Inc.[9]

Facts: Saint Mary's alleged that its much larger competitor, UHS, had systematically targeted and induced its physicians to breach their employment contracts as a deliberate strategy to weaken its hospital business.

Holding: The jury found that UHS's conduct had crossed from lawful competitive recruitment into intentional interference with Saint Mary's contractual relations, awarding both compensatory and punitive damages. It bears noting that this was a state trial-court jury verdict rather than an appellate ruling, and so carries persuasive rather than binding precedential weight; it is nonetheless useful here precisely because it shows how the American "improper conduct" standard plays out before a finder of fact applying it to conduct that would likely fall short of the English unlawful-means threshold.

3. Appian Corp. v. Pegasystems Inc.[10]

Facts: Appian alleged that its competitor, Pegasystems, had engaged an individual with access to Appian's confidential trade secrets to covertly transmit proprietary information over several years, allowing Pegasystems to unfairly enhance its competing products.

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[8] D.A.R.E. Am. v. Rolling Stone Magazine, 101 F. Supp. 2d 1270 (C.D. Cal. 2000).
[9] Saint Mary's Health Network v. UHS of Del., Inc., No. CV20-00788 (2d Jud. Dist. Ct. Washoe Cnty., Nev. Sept. 15, 2023).
[10] Appian Corp. v. Pegasystems Inc., 895 S.E.2d 544 (Va. 2024).

Holding: The jury found for Appian, holding that the misappropriation was deliberate and harmful, and awarding damages exceeding two billion dollars, among the largest verdicts of its kind, and a striking demonstration of the scale of liability the American model permits where genuinely unlawful conduct, such as trade-secret theft, is established.

IV. Economic Efficiency versus Contractual Sanctity

The law of tortious interference is shaped by an enduring conflict between two competing principles, examined by Fred S. McChesney[11]: economic efficiency and contractual sanctity. This tension determines when a third party's interference is treated as legitimate competition and when it is treated as an actionable wrong.

The law-and-economics tradition argues that resources should be free to flow to their most valuable use[12]. Posner's influential treatment of this question draws a distinction the present paper relies on directly: interference is efficient, and should not be tortious, where the third party's inducement reallocates a resource to a genuinely higher-valued use; it is rent-seeking, and a proper subject of liability, where the third party captures an existing surplus through inducement without creating any new value, for instance by using threats or deception to redirect a supply contract rather than by simply outbidding the original promisee on the merits. Under the efficient-breach theory more broadly, a party's breach of contract to pursue a more profitable opportunity is socially beneficial provided the non-breaching party is fully compensated; on this view, a third party who induces such a breach merely catalyses a more efficient market outcome, and an overly broad tort of interference risks trapping resources in less productive arrangements. Opposed to this is the principle of contractual sanctity, captured in the maxim pacta sunt servanda: a contract is a binding promise deserving legal protection, and a predictable commercial environment depends on parties trusting that bargains will be honoured. Proponents of this view note that contract damages frequently undercompensate the true harm of a broken bargain (reputational loss and relational instability chief among them), making a robust tort of interference necessary to protect the integrity of commercial dealing.

Courts in both jurisdictions resolve this tension not by asking whether interference occurred, but by asking how it was achieved. A competitor who simply offers better terms is

[11] Fred S. McChesney, Tortious Interference with Contract Versus "Efficient" Breach: Theory and Empirical Evidence, 28 J. Legal Stud. 131 (1999).
[12] Richard A. Posner, Economic Analysis of Law (9th ed. 2014).

not liable; liability attaches only where the means used are independently improper: fraud, defamation, coercion, or other unlawful conduct. The English unlawful-means standard operationalises this distinction with comparative precision, since liability turns on conduct that is independently actionable; the American "improper interference" standard, by contrast, leaves the line between aggressive competition and actionable wrongdoing to a more open-ended, fact-specific inquiry, generating less predictability for market participants on both sides of a transaction.

V. The Indian Perspective: An Uncodified and Uneven Jurisprudence

India has no statute governing tortious interference; courts instead construct relief from the Indian Contract Act, 1872[13] and Article 19(1)(g) of the Constitution[14], which guarantees the freedom to practise any profession or to carry on any occupation, trade, or business. Because so few such disputes have reached the higher courts, the governing principles remain underdeveloped, and the Supreme Court has yet to rule definitively on the question, leaving the field to a scattered body of High Court decisions.

The earliest significant authority is Lindsay International Private Limited v. Laxmi Niwas Mittal[15], in which the Calcutta High Court, on facts involving an alleged conspiracy to prevent a third party from dealing with the claimant, set out a four-part test broadly mirroring the common law: a valid contract, the defendant's knowledge of it, the use of unlawful means to procure its breach, and resulting damage. The court clarified that interference need not amount to outright repudiation; obstructing or delaying performance may suffice.

The practical difficulty of applying this test is illustrated by Pepsi Foods Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd.[16], in which Pepsi accused Coca-Cola of poaching its employees to damage its business. The Delhi High Court, per Bhandari J., found it difficult to identify any clearly unlawful conduct in a rival's recruitment of skilled staff, and Pepsi failed to establish the unlawfulness necessary for an injunction, illustrating how readily ordinary competitive recruitment can be mistaken for actionable interference, and how unevenly Indian courts have applied even their own four-part test.

[13]Indian Contract Act, No. 9 of 1872, India Code (1872).
[14]INDIA CONST. art. 19(1)(g).
[15]Lindsay Int'l Priv. Ltd. v. Laxmi Niwas Mittal, (2018) 1 CALLT 254 (HC).
[16]Pepsi Foods Ltd. v. Bharat Coca-Cola Holdings Pvt. Ltd., 1999 VAD (Delhi) 93.

More recent disputes show courts grappling with the tort in contemporary commercial settings. In the Amway litigation[17], Amway alleged that e-commerce platforms selling its products without authorisation induced its direct sellers to breach their distribution agreements; a Single Judge initially agreed, but the decision was overturned on appeal by a Division Bench, underscoring the doctrinal instability surrounding the tort even within a single High Court. In the Oyo Rooms litigation[18], by contrast, the Delhi High Court granted an injunction restraining a federation of hotel owners from inducing its members to cancel bookings made through Oyo, holding that the federation, a stranger to the underlying contracts, had unlawfully interfered with them. Read together, these decisions show Indian courts willing in principle to extend the tort to modern business models, but doing so without a settled doctrinal anchor, producing inconsistent outcomes on materially similar facts.

VI. Towards a Calibrated Indian Framework: A Proposed Statutory Model

The preceding survey suggests that India's difficulty is not the absence of any tort of interference (courts have repeatedly recognised one in substance) but the absence of a settled standard for distinguishing lawful competition from actionable wrongdoing. Lindsay and Oyo show courts willing to grant relief; Pepsi and the reversal in Amway show that, absent codified guidance, courts struggle to apply a consistent threshold. This uncertainty carries real costs. India's ambition to attract sustained foreign and domestic investment depends on commercial actors being able to predict, ex ante, which competitive conduct is lawful and which exposes them to liability; uncodified, judge-made standards applied inconsistently across High Courts cannot reliably deliver that predictability.

This paper's central submission is that India should not adopt the broad American "improper interference" standard. A discretionary, multi-factor improperness test is poorly suited to a jurisdiction with comparatively limited appellate guidance on the subject; it would invite the same inconsistency already visible in Pepsi and Amway, at greater scale, while chilling the vigorous competitive recruitment and business development that a developing economy needs. The American model functions reasonably well in the United States because decades of dense appellate case law in every state give the "improper conduct" standard

[17] 1Mg Techs. Pvt. Ltd. v. Amway India Enters. Pvt. Ltd., 2020 SCC OnLine Del 555.
[18] Oravel Stays Pvt. Ltd. v. Kota Hotels Fed'n, CS (OS) 425/2019 (Del. High Ct.).

practical content; India possesses no comparable body of precedent and is unlikely to develop one quickly enough to provide similar certainty.

The better course is to codify a calibrated, England-style unlawful-means model, which confines liability to conduct that is independently unlawful, rather than merely undesirable from the claimant's perspective. Such a standard is more readily administrable by trial courts, more predictable for commercial actors, and less likely to be deployed strategically against ordinary competitive conduct such as employee recruitment or aggressive pricing. A workable statutory provision, drawing on the doctrinal elements traced in Parts II and III above, might be framed as follows:

> *"A person who, without lawful justification, knowingly and intentionally induces another to breach a subsisting and enforceable contract, or who employs unlawful means against a third party with the intention of causing economic loss to the claimant, shall be liable in tort for the loss thereby caused, provided that: (a) a valid contract or a probable economic relationship existed; (b) the defendant had actual or constructive knowledge of such contract or relationship; (c) the defendant's conduct was intentional and either independently unlawful, or, where no existing contract is alleged, otherwise improper having regard to the rules of fair competition; and (d) the claimant suffered quantifiable economic loss as a direct and proximate result."*

This formulation preserves the existing four-element structure recognised in Lindsay (valid contract or probable relationship, knowledge, intentional wrongful conduct, and resulting damage) while resolving the central ambiguity exposed by Pepsi: it requires that the defendant's conduct be independently unlawful, or, in the absence of a subsisting contract, conducted outside the accepted rules of fair competition, rather than leaving "improper" conduct undefined. It deliberately stops short of recognising prospective economic advantage as a freestanding, low-threshold tort, in order to avoid importing the broader exposure that even a trial-level American jury was prepared to impose in Saint Mary's.

A. Interaction with Existing Remedies

A codified tort of this kind would not operate in a vacuum, and its relationship to two existing bodies of Indian law deserves brief clarification. First, Section 27 of the Indian

Contract Act, 1872[19] already renders agreements in restraint of trade void, and equity already permits specific performance or injunctive relief against a contracting party who threatens breach; neither of these, however, gives the claimant a cause of action against the third-party inducer, which is precisely the gap the proposed tort fills. The two regimes are therefore complementary rather than overlapping: Section 27 and equitable relief operate between the original contracting parties, while the proposed tort operates against the outside party who procures the breach. Second, the Competition Act, 2002[20] addresses a different mischief and a different class of litigant. Its provisions on anti-competitive agreements and abuse of dominant position are enforced by the Competition Commission of India as a matter of public regulatory law, concerned with market-wide effects on competition, and do not furnish an individual claimant with a private right to recover its own loss. A single act of contractual inducement, such as the conduct alleged in Pepsi or Oyo, will rarely meet the market-power or agreement thresholds that trigger competition law, but will routinely cause concrete loss to an identifiable claimant, the precise gap that a freestanding tort of interference is designed to address. The two regimes can comfortably coexist, much as unfair-competition torts and antitrust law coexist in both the United Kingdom and the United States.

B. Anticipated Objection: Why Codify Rather than Allow the Common Law to Develop?

A natural objection is that the common law is already developing this tort case by case, as Lindsay and Oyo demonstrate, and that codification risks freezing a doctrine still in its formative stages into rigid statutory language before Indian courts have had the opportunity to work out its contours through accumulated experience, in the same incremental manner that produced OBG in England after more than a century of case law beginning with Lumley v. Gye.

This objection has force, but it understates the cost of continued common-law drift in the Indian context specifically. The English common law had the benefit of a single apex court producing binding, nationwide precedent at a measured pace; India's tortious interference jurisprudence, by contrast, is being developed simultaneously and inconsistently by multiple High Courts with no binding effect on one another and with the Supreme Court yet to weigh in, as the divergence between the Single Judge and Division Bench in the Amway litigation

[19]Indian Contract Act, No. 9 of 1872, § 27, India Code (1872).
[20]Competition Act, No. 12 of 2003, §§ 3–4, India Code (2003).

itself illustrates within a single High Court. Left alone, this is more likely to produce a patchwork of conflicting regional standards than a single coherent doctrine. A statute need not foreclose judicial development merely because it is enacted: the proposed clause's reference to conduct that is "independently unlawful" or "otherwise improper having regard to the rules of fair competition" leaves courts the same interpretive latitude that English courts have exercised in giving content to unlawful means since OBG, while at least fixing the four-element structure and the choice of standard, which is precisely what current Indian case law has failed to settle even after Lindsay. Codification, on this view, supplies a floor for judicial reasoning to build on, not a ceiling that displaces it.

C. A Consultative Path to Enactment

Codification of this kind should not proceed by way of a hastily drafted standalone enactment. India's experience with consultative, sector-specific legislation such as the Competition Act, 2002[21] suggests a more appropriate model: the Law Commission of India should be tasked with a focused study of the question, undertaking structured consultation with business associations, the competition law bar, economists, and the judiciary, and surveying how England, the United States, and comparable common law jurisdictions have balanced contractual sanctity against economic efficiency. The resulting model law could then be placed before Parliament for scrutiny. This sequencing, namely study, consultation, model law, and only then legislation, reduces the risk of either an overbroad statute that chills legitimate competition or an underspecified one that simply relocates today's uncertainty into statutory language.

VII. Conclusion

Tortious interference occupies a narrow but important space between contract and tort, mediating the perennial conflict between protecting bargains and preserving competition. The United Kingdom and the United States, despite a shared doctrinal origin in Lumley v. Gye, have resolved that conflict differently: England through a narrow, independently-unlawful-means standard, and the United States through a broader, discretionary improper-conduct standard extending to prospective relations. India's uncodified jurisprudence, built from constitutional and contract-law fragments rather than a dedicated tort, has produced

[21]See generally Competition Act, No. 12 of 2003, India Code (2003) (illustrating the legislative drafting style of consultation-led economic legislation in India that the present proposal seeks to emulate).

inconsistent outcomes on comparable facts. This paper has argued that India should resist the pull of the broader American model and instead codify a calibrated, England-style unlawful-means standard through a consultative, Law Commission-led process. A modern, internationally legible framework on tortious interference, of the kind sketched in Part VI, would supply commercial actors with the predictability that an aspiring investment destination requires, without sacrificing the competitive dynamism that uncodified flexibility currently, if unevenly, allows.