19.01B INTENTIONAL INTERFERENCE WITH prospective economic advantage - ELEMENTS

The plaintiff claims that [he][she] was harmed because the defendant intentionally interfered with a potential business relationship 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 potential business relationship with [insert name of third party or class];

(2) the defendant knew about the relationship;

(3) the defendant intended to [prevent the plaintiff from achieving the relationship] [disrupt the relationship];

(4) the defendant's conduct interfered with the potential relationship;

(5 the defendant’s interference caused damage to the plaintiff; and

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

If the plaintiff proves all six 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 prospective economic advantage.

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

## Comment

*Ellis v. City of Valdez*, 686 P.2d 700 (Alaska 1984), defined the tort of intentional interference with prospective economic advantage as follows: “Under this theory a person who is involved in an economic relation with another or who is pursuing reasonable and legitimate prospects of entering such a relationship, is protected from a third person's wrongful conduct which is intended to disrupt the relationship.” *Id.* at 707. Instruction 19.01B sets forth the elements of a prima facie case of intentional interference with prospective economic advantage. *See*, *e.g.*, *J & S Services, Inc. v. Tomter*, 139 P.3d 544, 551 (Alaska 2006). 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 does not require identification of the third-party with whom plaintiff had the prospective relationship if it is more appropriate to use a third-party class. *See* *Sisters of Providence in Washington* 81 P.3d at 998 (prospective patients generally). The tort “protects both continuing business or customary relationships not amounting to formal contracts, and prospective business or contractual relations which, absent interference, would culminate in pecuniary benefit to the plaintiff.” *Ellis*, 686 P.2d at 707.

The third element requires the plaintiff to show “definite, specific, or knowing intent” by the defendant to harm the plaintiff's relationship with a third party. *E.g*., *Mattingly v. Sheldon Jackson College*, 743 P. 2d 356, 363 (Alaska 1987). This includes “(a) inducing or otherwise causing a third party not to enter into or continue the prospective relation or (b) preventing the other from acquiring or continuing the prospective relation.” *Oaksmith v. Brusich*, 774 P.2d 191, 198 (Alaska 1989).

The fourth and fifth elements require the plaintiff to show that the defendant’s interference caused the plaintiff to suffer a pecuniary loss. *See J & S Services,* 139 P.3d at 551. This requires proof of what the defendant did to interfere and that the interference caused the plaintiff’s damages. *Oaksmith*, 774 P.2d at 198.

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. *E.g*., *Sisters of Providence in Washington,* 81 P.3d at 996-98.