

1. Extortion

- a. Appear to be the same as Duress.
- b. Texas did not recognize civil cause of action for extortion. 256 F.Supp.2d 678 S.D.Tex.,2003.
- c. Yet the Courts of Appeals and the Supreme Court in Texas have not directly ruled that there is no such tort. In fact numerous cases in the Dallas Court of Appeals list Civil Extortion as a cause of action. None of these cases center on the Civil Extortion claim and none squarely address it, instead they affirm or dismiss on other grounds.

2. Economic Duress/Coercion

- a. A threat or action was taken without legal justification;
- b. The threat or action was of such a character as to destroy the other party's free agency;
- c. The threat or action overcame the opposing party's free will and caused it to do that which it would not otherwise have done and was not legally bound to do;
- d. The restraint was imminent; and
- e. The opposing party had no present means of protection.
  - i. Fischer v. Richard Gill Co., 253 S.W.2d 915  
Tex.Civ.App.-San Antonio,1952  
A claim of duress by business compulsion can not be based upon doing or threatening to do that which a party has legal right to do.
  - ii. *“Pease then filed three more suits. He filed this suit against the firm, Stevens, and Lipscomb, alleging wrongful foreclosure, conversion, duress, slander, fraud, and bad faith.”*
  - iii. *“He asserted causes of action for breach of fiduciary duty, fraudulent conveyances and/or unjust relief, conspiracy to defraud, intentional infliction of emotion distress and mental anguish, defamation of character, coercion, duress, undue influence, and slander”*

3. Tortious interference with business relationships

- a. There was a reasonable probability of entering a business relationship or contract;
- b. The defendant acted maliciously by intentionally preventing the relationship from occurring with the purpose of harming the plaintiff;
- c. The defendant was not privileged or justified; and
- d. Actual harm or damage occurred as a result
  - i. *Wal-Mart Stores, Inc., v. Sturges*, 52 S.W.3d 711 (Tex.2001).  
Supreme Court case that lays out the rules for these very similar torts.

4. Tortious interference with business opportunities

- a. Same as business relationships.
- 5. Tortious interference with prospective advantage
  - a. Same as business relationships.
- 6. Harassment
  - a. A person
  - b. Intentionally
  - c. Communicates (by telephone or writing)
  - d. In vulgar, profane, obscene, or indecent language or in a coarse and offensive manner and *by such action*
  - e. Intentionally, knowingly, or recklessly annoys or alarms the recipient or intends to annoy or alarm the recipient.
    - i. This is actually a penal code violation but I have seen it pled in a laundry list with most of the other causes of action listed here.
- 7. Intimidation
  - a. This does not appear to be an actual cause of action. In fact it appears as an element to many of the causes of action listed here. Despite that fact it appears in the laundry list of causes of action along side extortion, duress and oppression.
- 8. Intentional infliction of emotional distress
  - a. The defendant acted intentionally or recklessly;
  - b. The defendant's conduct was extreme and outrageous; T
  - c. The defendant's actions caused the plaintiff emotional distress; and
  - d. The emotional distress suffered by the plaintiff was severe
    - i. *Randall's Food Markets, Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex.1995) (citations omitted). It is generally recognized that "the central element of the tort is extreme and outrageous conduct." *Twyman v. Twyman*, 855 S.W.2d 619, 630 (Tex.1993) (Hecht, J., concurring and dissenting). Liability for outrageous conduct should be found "only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Twyman v. Twyman*, 855 S.W.2d at 621 (citing Restatement (Second) of Torts § 46 cmt. d (1965)
- 9. Conspiracy
  - a. Two or more persons;
  - b. An object to be accomplished;
  - c. A meeting of minds on the object or course of action;

- d. One or more unlawful, overt acts; and
- e. Damages as the proximate result.

- i. *Massey v. Armco Steel Co.*, 652 S.W.2d 932, 934 (Tex.1983); *Michael v. Dyke*, 41 S.W.3d 746, 753 (Tex.App.-Corpus Christi 2001, no pet.).

10. Hobbs Act violation- This is probably a federal criminal cause of action and appears to require the actual loss of property and therefore is unlikely to be usable in this situation but may bear further investigation.

11. RICO-Federal cause of action, but can be brought in state court. There is quite a bit to this cause of action. I did not spend the time going into it in detail but if we are going to file an suit and take a default this may be the big money maker.

- a. A person who engages in;
- b. A pattern of racketeering activity;
- c. Connected to the acquisition, establishment, conduct, or control of an enterprise
  - i. A pattern of racketeering activity under civil Racketeer Influenced and Corrupt Organizations Act (RICO) requires at least two acts of racketeering activity.

12. Libel/Slander

- a. Published a statement;
- b. That was defamatory regarding plaintiff;
- c. While acting with either actual malice, if plaintiff was a public official or public figure, or negligence, if plaintiff was a private individual, regarding truth of statement.

13. Business disparagement

- a. The defendant published disparaging words about the plaintiff's economic interests;
- b. The words were false;
- c. The defendant published the words with malice;
- d. The defendant published the words without a privilege; and
- e. The publication caused special damages.

14. Usury (subtitle B)-this one requires some twisting, but may be one of our best yet as it doesn't require the plaintiff to actually pay anything.

- a. The defendant loaned money to the plaintiff;
- b. The plaintiff had an absolute obligation to repay the principal; and
- c. The defendant contracted for, charged, or received interest that exceeded the maximum amount allowed by law.

## 15. Unfair competition

- a. "Unfair competition" is not, in and of itself, a separate tort. Rather, it is an "umbrella for all statutory and nonstatutory **causes** of **action** arising out of business conduct which is contrary to honest practice in industrial or commercial matters." *United States Sporting Prods., Inc. v. Johnny Stewart Game Calls, Inc.*, 865 S.W.2d 214, 217 (Tex.App.-Waco 1993, writ denied) (quoting *American Heritage Life Ins. Co. v. Heritage Life Ins. Co.*, 494 F.2d 3, 14 (5th Cir.1974)). Within the broad scope of "unfair competition," as a general area of the law, Texas recognizes a number of independent **causes** of **action**. *Id.*; see, e.g., *Wal-Mart Stores, Inc. v. Sturges*, 52 S.W.3d 711 (Tex.2001) (interference with prospective business relations); *Browning Ferris, Inc. v. Reyna*, 865 S.W.2d 925, 926 (Tex.1993) (tortious interference with an existing contract); *Hurlbut v. Gulf Atl. Life Ins. Co.*, 749 S.W.2d 762, 766 (Tex.1987) (business **disparagement**); *All Am. Builders, Inc. v. All Am. Siding of Dallas, Inc.*, 991 S.W.2d 484, 488 (Tex.App.-Fort Worth 1999, no pet.) (trade name infringement); *United States Sporting Prods.*, 865 S.W.2d at 217 (misappropriation). And the Texas Legislature has created private **causes** of **action** to redress harm caused by some types of unfair competition. See, e.g., Tex. Bus. & Com.Code Ann. § 15.21 (Vernon 2002) (providing private **cause** of **action** for person whose business or property is injured by unlawful restraint-of-trade, monopolization, or price-fixing); Tex. Ins.Code Ann. art. 21.21 § 16 (Vernon Supp.2002) (providing private **cause** of **action** for person damaged by unfair method of competition or unfair or deceptive act or practice in the business of insurance). However, Reliable expressly disavows reliance on any of these common law or statutory **causes** of **action**; rather, it contends it has alleged the "generic tort of wrongful competition" it argues was "recognized" in *Featherstone v. Indep. Serv. Station Ass'n of Texas*, 10 S.W.2d 124 (Tex.Civ.App.-Dallas 1928, no writ).