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An Agricultural Law Research Article

Stealing the Family Farm: Tortious Interference with Inheritance

by

Marianna R. Chaffin

Originally published in SAN JOAQUIN AGRICULTURAL LAW REVIEW
14 SAN JOAQUIN AGRIC. L. REV. 73 (2004)

www.NationalAgLawCenter.org

STEALING THE FAMILY FARM: TORTIOUS INTERFERENCE WITH INHERITANCE

I. INTRODUCTION

California is an economic powerhouse, comparable with the economies of Great Britain,[1] and China,[2] and larger than other industrialized countries such as Brazil, Canada, and Spain.[3] This economic dominance is, in significant part, based upon California's agricultural businesses ("agri-businesses"), which have evolved into high output, high growth industries.[4] In the ever changing world of business, California's agri-businesses have not only kept pace with an increasingly competitive marketplace, but have become leaders both domestically and abroad.[5]

California's dominance in the world agricultural marketplace has, in a large part, been based upon the development of family-run agricultural enterprises.[6] At its inception, the United States agricultural industry was family owned and operated, constituting a tradition which has spanned well over two hundred years.[7] Likewise, family agricultural operations, no matter how they may be structured or incorporated, currently comprise the vast majority of California's agri-business landscape.[8] Family agricultural businesses are commonly transferred from one generation to the next, with the various generations constantly adapting to meet the changing conditions of the marketplace in order to successfully stay in business.[9]

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[1] *No Golden Days; America's Impecunious States,* Economist.com, July 1, 2003, LEXIS, Nexis Library, Economics File.

[2] California Department of Finance, A Brief History of the California Economy (January 8, 2004), *at* http://www.dof.ca.gov/HTML/FS_DATA/HistoryCAEconomy/index.htm (last visited Nov. 7, 2003).

[3] *Id.*

[4] *See* discussion *infra* Part II.C.

[5] *See* discussion *infra* Part II.C.

[6] *See* discussion *infra* Part II.A.

[7] *See* discussion *infra* Parts II.A, C, D.

[8] California Farm Bureau, *Measure of California Agriculture, 2000* (2000), at http://www.cfbf.com/info/moca.htm (last visited Sept. 14, 2003).

[9] Steve C. Bahls, *Judicial Approaches to Resolving Dissension Among Owners of the Family Farm,* 73 NEB. L. REV. 14, 15 (1994).

The evolution of California's agri-businesses, however, has not been without its risks. Forced to compete in an ever more sophisticated marketplace, California's agri-businesses have also had to become more sophisticated and its operators more educated.[10] Farmers and ranchers are now striving to protect their assets from the growing risks posed by legal liability, taxes, legislation and regulations, and are utilizing more complex legal structuring and planning to do so.[11] This growing sophistication, in turn, has created more complex legal issues, which have been further compounded by the relatively slow ability of the law to adapt to these increasingly rapid changes.[12] In turn, special relationships of trust, oral understandings, and similar situations peculiar to transactions and dealings between family members can further complicate the ability of the legal system to provide effective recourse.[13]

Given these particularly challenging issues, the tort of intentional interference with inheritance is a cause of action especially needed in today's more sophisticated family agri-businesses. As agri-business structuring has become more complex, it has resulted in an increased use of corporate entities, trusts and complex transactions designed to more effectively pass family operations from one generation to the next in the most cost efficient manner.[14] Often siblings will be in active business together in at least a portion of the total operations, while the parents retain control over the remaining operations and arrange for those family assets to transfer to the next generation via trusts and other estate planning tools.[15] As time passes, many parents in their advanced years become more easily influenced by their favorite child and are more likely to change their devises at that child's insistence to remove or include additional terms. This can be a dangerous situation in the event that the child is an "unscrupulous heir," i.e., one who tortiously interferes in the inheritance of another.

Interference with inheritance by unscrupulous heirs has traditionally been blatantly obvious, and generally results in the outright disinheritance of a sibling by the parents. Much more subtle, and possibly even more effective, is the inclusion of a strict no-contest clause, a standard term often included in estate instruments in order to preserve family unity. However, unscrupulous heirs running operations with their siblings can exploit family ties and the complexities of the current system to

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[10] *See* discussion *infra* Parts II.B, C.

[11] *See* discussion *infra* Part II.D.

[12] *See* discussion *infra* Part V.C.

[13] *See* discussion *infra* Part IV.B.

[14] *See* discussion *infra* Parts II.D, III.

[15] *See* discussion *infra* Part III.

either plunder business assets or effectively convert their sibling's inheritance into their own. By doing so, other siblings ("wronged heirs") may be caught in a daunting Catch-22 situation: bring suit to stop the plundering of business assets and thereby trigger a broadly worded no-contest clause and be disinherited, or in the alternative, permit the agri-business to be ravaged by the unscrupulous sibling so as to preserve the right to inherit. In both situations, the unscrupulous heir will gain from his or her wrongful acts by either retaining the plundered business assets or realizing an increased portion of inheritance. Thus, notwithstanding the unscrupulous heir's apparent breaches of duty to the other heirs and business partners, the unscrupulous heir may literally be able to steal the family farm with almost complete impunity unless the tort of intentional interference with inheritance may be utilized as a cause of action.

Currently, however, California has merely flirted with recognizing the tort of intentional interference with inheritance as a cause of action,[16] despite its widespread acceptance in many other jurisdictions.[17] Without recognition of this tort in California, innocent family members are without adequate recourse under the law, and the very foundation of California's agricultural economy is threatened. Failing to recognize this cause of action will not only result in damage to the agricultural industry, but will also negatively affect consumers and discourage families from operating businesses together. On the other hand, recognition of the tort will not only allow effective redress under the law, but will acknowledge the growing sophistication of agri-business and its immediate need for protection. In essence, a modern industry deserves modern redress.

This article will examine the growing need for the tort of intentional interference with inheritance. First, the development of the agricultural industry will be reviewed through an examination of the growing sophistication of the business. Such expanding complexity is traced through an analysis of industry origins, growth, educational trends, economic scale and use of complicated legal entities. Next, the more complicated problems and opportunity for plundering of family assets by an unscrupulous heir will be discussed. Furthermore, the nature and elements of the tort will be set forth, including methods of proof and pleading, and its ability to provide a remedy to a wronged heir. In addition, the development and

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[16] *See In re* Estate of Legeas, 258 Cal. Rptr. 858, 863 (1939), ordered not published; Hagen v. Hickenbottom, 41 Cal. App. 4th 168, 173 (1996); Montegani v. Johnson, 2003 WL 21197271, *1, ordered not published.

[17] These jurisdictions include the First Circuit, Ninth Circuit, Tenth Circuit, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Massachusetts, Michigan, Missouri, New Mexico, New York, North Carolina, Oregon, Ohio, Texas, Tennessee, West Virginia and Wisconsin.

application of the tort will be evaluated through a survey of the origins of the tort, its current status in various American jurisdictions and its relationship to California. Finally, recommendations will be presented regarding the adoption and application of the tort of intentional interference with inheritance in California.

II. THE DEVELOPMENT OF THE AGRICULTURAL INDUSTRY

A. *Origins of the Modern Family Owned Agricultural Business*

The genesis giving rise for the need for a cause of action for intentional interference with inheritance can be traced to the very nature of agri-business being primarily a family affair. Indeed, "the roots of the family farms are deeply embedded in our society,"[18] so much so that the early American landscape was almost entirely agrarian.[19] This was reflected in Thomas Jefferson's envisionment of an America comprised of "cultivators of the earth [who were] the most valuable citizens...tied to their country, and wedded to its liberty and interests by the most lasting bonds."[20]

As it was in the past, American agri-business continues to be dominated by family-run operations, which remain the core foundation of the United States' agricultural production.[21] Many Americans today trace their lineage through the family farm.[22] The land that these families operate is frequently the product of generations of private ownership, to which great emotional investment is often attached.[23] The modern agribusinessperson is perceived as having a profound personal investment and emotional link to the land he works,[24] a perception that is often associated with self-reliance, independence, and other attributes inextricably intertwined with the American dream.[25]

Notwithstanding this prominent heritage, the agricultural industry has continued to develop in new directions since the founding of our nation. Indeed, since Thomas Jefferson's eighteenth-century ruminations, the

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[18] Robert A. Coulthard, *The Changing Landscape of America's Farmland: A Comparative Look at Policies Which Help Determine The Portrait of Our Land - Are There Lessons We Can Learn from the EU?*, 6 DRAKE J. AGRIC. L. 261, 264 (2001).

[19] *Id.* at 271.

[20] *Id.* at 271-272 (citing Wendell Berry, *The Unsettling of America: Culture & Agriculture* 143 (1986)).

[21] Bahls, *supra* note 9, at 15.

[22] *Id.* at 16.

[23] *Id.*

[24] *Id.*

[25] *Id.*

nature and structure of the family-run farm has clearly changed and evolved.[26] Today, modern American agri-business and farming enterprises are larger and more elaborate than their earlier counterparts.[27] Many agri-businesses, parent-owned and offspring-run, and often operated en masse by all involved family members despite age or gender, now have the opportunity to form into a variety of ever more sophisticated legal structures beyond the traditional entities.[28]

B. Development of Agricultural Enterprises: Bigger and Smarter Than Ever

Since the founding of our nation, agri-businesses have developed into increasingly larger operations. Market forces, and the economies of scale, are slowly driving smaller and less efficient operations out of business.

This trend toward larger agri-business enterprises was recently traced in a Pennsylvania study conducted in 2001. In this eastern state, small traditional hog ranches represented only two percent of the state's 45,500 farming operations.[29] These small operators acknowledge that if it were profitable to retain small-scale production, the number of farmers would increase.[30] However, given the highly competitive market, and the lack of profits, changes were necessary.[31] In essence, smaller enterprises had to expand the scope of their operations or be forced to go out of business.

These trends show the impact that market forces have on the steady increase in the size and scope of agri-business. Thus, disruptions within these family business units means not only that more is at stake, but that problems affecting California's economy and community are proportionally magnified. As such, it is incumbent upon our legal system to provide the next generation of family agri-businesses recourse to effective remedies under the law to stabilize the industry and deter wrongful acts.

In conjunction with the expansion of the operational size of agri-businesses, owners and operators are now becoming more educated than

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[26] Coulthard, *supra* note 18, at 272.

[27] Cheryl Tevis, *Planning A Successful Transition; Includes Related Articles On Succession Planning For Farms; Blueprint For Business Continuity*, SUCCESSFUL FARMING, May 15, 1997, at 30.

[28] Bahls, *supra* note 9, at 18-19.

[29] Ellen Lyon, *Pennsylvania Farmers Weigh Raising Hogs for Others*, FARMERS WEEKLY, August 12, 2001, LEXIS, Nexis Library, Knight Ridder File.

[30] *Id.*

[31] *Id.*

ever before.[32] As the marketplace becomes more complex, and competition requires more efficient use of resources and technology, a formal education is becoming not only more common, but necessary. Owners of agri-businesses need not only practical experience, but also a greater understanding of economic, business, and technical skills, with an education that will allow them to understand agriculture's expanding role on a local, national and international basis.[33]

This movement toward an increasingly more educated agricultural sector is evident in a ten-year study that examined the educational trends of the pork industry. The data indicated that agricultural industries are following the American trend toward the pursuit of a higher education, and concluded that the industry appeared to be "keeping up with the general population."[34] The study also found that the trend toward a more comprehensive education had significantly increased to the point that 65% of participants possessed some education beyond a high school diploma.[35] Indeed, by the conclusion of the study in 2000, most participants responded that they had earned a four-year college degree.[36] Furthermore, within a five-year period there was a 9.1% increase in the college degree education category, and there was also a 2.2% jump in post-college education.[37] In addition, after gaining their degrees, studies reveal that graduates are returning to the family agri-business or moving close to the family operations to engage in independent ventures.[38]

Commensurate with the attainment of a higher degree of education, agri-businesses are also demanding higher quality, better-educated employees.[39] This overall increase in the degree and scope of education in agri-business has resulted in the industry using more sophisticated and modern practices to improve business operations. It has also resulted in a more educated and sophisticated class of agri-business owners.

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[32] Terrance Jurley, *Decade of Employment Data Marks Pork Industry Changes*, NATIONAL HOG FARMER, June 2000, LEXIS, Nexis Library, National Hog Farmer File.

[33] *Staunch the Flow of Talented Young Blood from the Countryside*, FARMERS WEEKLY, September 13, 2002, LEXIS, Nexis Library, Farmers Weekly File.

[34] Jurley, *supra* note 32.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] SUCCESSFUL FARMING, *Ag World is her Oyster; Rachel Endecott and other Scholarship Recipients Know that Education is the Key* (September 14, 2003), *at* http://www.agriculture.com/sfonline/sf/2001/mid-february/0103scholarship.html (last visited May 13, 2004).

[39] Jurley, *supra* note 32.

C. Current State of the Agri-Business in the California Economy

These larger and more educated agri-business operations play a significant role in the state's economy. As an industrial leader, and the eighth ranked economy in the world,[40] California is an economic giant. This market dominance is in significant part based upon California's agri-businesses, which have evolved into high output and growth industries. In the ever changing world of business, California's agri-businesses have not only kept abreast of an increasingly competitive marketplace, but have become leaders both at home and abroad.

Agri-business comprises a considerable portion of not only the California economy, but a significant physical portion of the state itself. In fact, well over twenty-five percent,[41] or almost one third,[42] of California's land is utilized for agricultural operations, comprising a total of nearly 27.7 million acres.[43]

Agri-business is also one of California's largest employers. California agri-businesses provide 1.1 million jobs to citizens of the state, thereby employing in total close to 7.4% of the California workforce.[44] With its growing adaptation to the marketplace, and influence in the economy, agri-business provides ever increasing opportunities for career participation and advancement among traditionally disadvantaged groups. Women are now coming into the forefront of the occupation, with 13.6% of them active in the agricultural work force as operators, representing a doubling of their numbers between 1978 and 1997.[45] In addition, Hispanics comprise 6% of the total operators in the California agri-business industry, almost four times the national average of 1.4%.[46] Finally, Asian or Pacific Islanders comprise 4.5% of California farm operators, over eleven times the 0.4% comprising the national average.[47]

The significant role played by California agri-businesses both domestically and internationally is staggering. California farmers alone produce over 250 products and lead national production in seventy-five

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[40] A Brief History of the California Economy, *supra* note 2.

[41] *Measure of California Agriculture, 2000*, *supra* note 8.

[42] California Farm Bureau Federation, *Facts and Stats about California Agriculture*, *at* http://www.cfbf.com/info/agfacts.aspx (last visited Sept. 14, 2003).

[43] Of the 27.7 million acres of California land utilized in agri-business operations, approximately 5 million acres is federal grazing land. *Measure of California Agriculture, 2000*, *supra* note 8.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

commodities[48] which resulted in a $27.6 billion dollar market in just 2001 alone.[49] California agri-businesses produce 99% or more of American commercially grown almonds, artichokes, clingstone peaches, dates, figs, kiwifruit, nectarines, olives, persimmons, pistachios, prunes, raisins and walnuts.[50] Furthermore, a single California farmer creates enough food, fiber and flowers to supply 135 Americans, underscoring agri-business's development into a high-yield, high-value cash crop producer embracing advanced levels of technology, capital and management techniques.[51] Finally, unlike the average U.S. dairy that houses less than 100 head of cattle, California dairies are home to an average of more than 700 cows per operation, and produce one out of every five glasses of American milk.[52] Clearly, California agri-business plays a significant role in the state's economy.

The Golden State is not only the top leading agricultural producer domestically, but California leads the nation as the top farm-product exporter.[53] Indeed, if California were categorized as a separate country, the state would be the sixth largest agricultural exporter in the world.[54] In 2001, farm product exports to countries such as Canada, Japan, and Mexico totaled almost $6.5 billion.[55] Agricultural exports comprise, on the average, approximately $18.2 million daily,[56] thus culminating at year's end with about 14% of the total state farm output being exported.[57]

Not only does California agri-business clearly play a seminal role in the state's economy, but the industry is making significant contributions to the United States and the world as a whole. As such, the future of agri-business is an important guidepost by which to better measure and understand the future of California.

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[48] *Facts and Stats about California Agriculture*, *supra* note 42.

[49] California Department of Food & Agriculture, California Department of Food and Agricultural Resource Directory 2002, *Agricultural Statistical Review* (2002), *available at* http://www.cdfa.ca.gov/card/card_new02.htm (last visited Sept. 14, 2003).

[50] California Department of Food & Agriculture, California Department of Food and Agricultural Resource Directory 2002, *available at* http://www.cdfa.ca.gov/card/card_new02.htm (last visited Sept. 14, 2003).

[51] *Facts and Stats about California Agriculture*, *supra* note 42.

[52] *Agricultural Statistical Review*, *supra* note 49.

[53] *Id.*

[54] *Facts and Stats about California Agriculture*, *supra* note 42.

[55] *Id.*

[56] *Id.*

[57] *Agricultural Statistical Review*, *supra* note 49.

D. *The Future of California Agri-Business: Greater Use of Corporate Entities*

The rapid development and sophistication of agri-business is becoming ever more apparent. Experts have exhorted owners to contemplate their legal structure in the face of various weighty issues,[58] many of which are unique to modern agri-business. For example, urban flight into rural areas has resulted in these new neighbors bringing lawsuits and complaining of environmental issues associated with agricultural operations.[59] To avoid business risks such as these, which pose both personal and professional liability, agri-businesses are being strongly advised to consider their current legal formation.[60] By adopting a more sophisticated corporate entity, most agri-businesses take into consideration a totality of issues including, but not limited to type of assets, the nature of potential owners, governance requirements, tax treatment and growth potential.[61] This legal restructuring and greater sophistication is becoming more widespread, with many operations now organized as entities such as corporations.[62]

The trend toward more complex entities is reflected by the increase in corporate formations. In 1987, the Census of Agriculture stated that 9.7% of American farms were organized as partnerships, whereas merely 3.2% of farms were organized into corporations.[63] By 1992, approximately 73,000 of 1.925 million farms were corporations,[64] representing a slight rise to 3.8% of the total farms. In contrast, by 1997 almost 4.8% of farms were functioning as corporations,[65] a significant increase from the previous survey period.

These business structures, ranging from standard corporations to limited liability companies are steadily on the rise. In California, the trend toward more elaborate business structuring is even more pronounced.

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[58] *Managing Legal Risks in Agriculture*, THE KIPLINGER AGRICULTURAL LETTER, January 2, 1998, *at* LEXIS, Nexis Library, Kiplinger Public File.

[59] *Id.*

[60] *Id.*

[61] Don Jonovic, Ph.D., *Can Their Legal Problem be Solved? Legal Formation of Family Farm Partnerships; Questions and Answers,* SUCCESSFUL FARMING, April 1, 2000, at 50.

[62] Bahls, *supra* note 9.

[63] *Id.*

[64] Lori Henson, *Lack of Competition Among Agricultural Companies Worries Experts,* SAVANNAH MORNING NEWS, April 18, 2000, at LEXIS, Knight Ridder/Tribune News File.

[65] United States Department of Agriculture, 1997 Census of Agriculture, Volume 1-Chapter 1: United States Summary National-Level Data (1997) *available at* http://www.nass.usda.gov/census/ (last visited November 7, 2003).

Currently, California agri-businesses make use of corporate structures over 20% more than their counterparts in other states, with a total of 6.0% of farms being closely held, family corporations.[66] Notwithstanding the growing sophistication and development of agri-business in California, one trend has remained almost constant since the time of Thomas Jefferson: approximately 97% of California farms are still family or individually operated.[67]

III. GROWING PROBLEMS IN THE MODERN FAMILY AGRI-BUSINESS: HYPOTHETICAL CASE STUDIES

A. *Rationale for Presentation of Case Studies*

With all the challenges faced by the family agri-business, the one typically unexpected source of additional problems comes from within the family itself. Moreover, as the agricultural operation is passed from generation to generation, through parents and children or brothers and sisters, family members tend to develop divergent and diverse goals regarding farming operations.[68] If these differing goals are not managed in an effective manner, family operations are crippled by conflict and deadlock.[69] In order to resolve these weighty problems, owners often find themselves pressed into resorting to the legal system.[70] The problem of contention among these family owners can be significant and extremely damaging to both the agri-business and family relationships.

B. *Hypothetical Case Study One*

The issues such as those discussed above could possibly be exacerbated by interference by an unscrupulous heir, who, as agri-businesses grow even larger and more productive, is offered an ever more tantalizing financial incentive to cheat other heirs out of their inheritance. This situation is best illustrated by the following hypothetical example. Suppose it is common for many sons to run the day-to-day operations, while daughters may pursue other interests. Assume that generally, many wills and trusts often evenly divide the estate equally among all the children. However, an unscrupulous son may encourage his aging parents to change their will as to transfer the family farm to just him, with the understanding that he will "take care" of his sisters. Since family members

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[66] *Measure of California Agriculture, 2000*, note 8.

[67] *Id.*

[68] Bahls, *supra* note 9.

[69] *Id.*

[70] *Id.*

enjoy a unique relationship with one another, such oral understandings between family members could be more common than outside of the family context. Furthermore, the changes that effectively write an heir out of the will may not be discovered by the disinherited children until after the parents have passed away. If the son then refuses to acknowledge the oral agreement he had with the deceased parents to "take care" of his sisters, the matter is extremely difficult if not impossible to prevail upon in court, and the sisters are without recourse under current California law.[71] The unscrupulous heir, on the other hand, would benefit from his wrongful act and may literally get away with stealing the family farm.

C. Hypothetical Case Study Two: Complications Posed by Modern Development

This rather straight forward example of tortious interference with inheritance has grown more complicated with the rising levels of education and growing sophistication of agri-business.[72] This situation may be illustrated by a second hypothetical example.

As discussed above, there is a growing trend among agri-business operations to adopt the corporate structure for tax and liability purposes.[73] Suppose that as the children grow older, and assume an ever greater management role in the enterprise, that the parents give their children separate ownership interests in various family agri-businesses. Assume that it is not uncommon that during the lifetime of the parents, these businesses typically run smoothly, with problems being resolved under the guidance of the parents. However, with the passage of time and with retirement approaching, the parents may form trust(s) to minimize tax liability and transfer the now greatly appreciated land assets to the next generation. Suppose that the remaining ownership interests of the parents in the agri-business are then placed into a living trust. Such structuring might result in the parents being named as beneficiaries, with the surviving spouse being designated to receive the entire benefit of the trust until death, after which the body of the proceeds passes to the heirs without additional direction by the surviving spouse.

Like the rather uncomplicated example of tortious interference with inheritance discussed above, suppose that it is during this process that the unscrupulous heir approaches his parents and convinces them to insert a "no-contest" clause into the trust. The insertion of an especially broad

[71] *See* discussion *infra* Part V.C.
[72] *See* discussion *infra* Part II.B.
[73] *See* discussion *supra* Part II.D.

no-contest clause, wherein *any* litigation between the heirs for any reason will result in disinheritance, could be appealing to the parents in the interests of preserving family unity following their demise. It may be thought that such an oppressive clause would effectively stop any attempts by an heir to take "more than his fair share," and thereby stop the children from petty in-fighting which could destroy the legacy of the parents. Fully convinced by the unscrupulous heir of the merit of such a broad no-contest clause, the parents could place the clause into the trust, believing that if any heir sued another sibling, he would be rightfully disinherited.

The no-contest clause issue is something of a "suicide pill" for the other heirs. The unscrupulous heir merely would have to wait for the death of a parent, or the incompetency of both of them, and then could swoop in to enact his plan. The unscrupulous heir then could proceed to systematically ransack the finances of all the family businesses in which he might be a partner, shareholder, or member with the other heirs. By doing so, the wronged heirs would be faced with a very untenable situation. On the one hand, the heirs could bring suit to stop the plundering of the business by the unscrupulous heir, only to trigger the broadly worded no-contest clause and thus be immediately disinherited. On the other hand, the wronged heirs could do nothing and watch as their joint business is systematically ransacked by the unscrupulous heir. Under either scenario the wronged heirs will be forced to suffer great losses, whereas the unscrupulous heir will be permitted to wrongfully benefit at the expense of their business assets or inheritance. As such, even though the unscrupulous heir may have grossly breached his fiduciary duties, that heir may be able to literally steal the family farm from the other heirs without fear of reprisal. Thus, the wronged heirs will have no effective recourse under the law unless the tort of intentional interference may be utilized.

In both these examples the end result is the same: an unscrupulous heir has interfered with another heir's inheritance such that he benefits by his wrongful acts. The result would likewise be the same even if the unscrupulous heir did not encourage the parents to insert the no-contest clause, but was aware of it and acted upon it with the intent of interfering with the other heir's inheritance. It is unjust to permit an unscrupulous heir's apparent breaches of duty to the other heirs and business partners by allowing that heir to seize the family farm with impunity. As such, the law should go even one step further and provide a remedy to disinherited heirs who have fallen prey to the machinations of even more sophisticated unscrupulous heirs. California needs to recognize a cause of action for the tort of intentional interference with inheritance.

IV. SOLVING THE PROBLEM: THE TORT OF INTENTIONAL INTERFERENCE WITH INHERITANCE

A. The Elements of the Cause of Action

The tort cause of action, whether it be labeled "tortious interference with expectancy,"[74] "intentional interference with expected inheritance,"[75] "tortious interference with expectancy to inherit,"[76] or "malicious interference with a prospective right of inheritance,"[77] should be available to the wronged heirs when an actor intentionally and tortiously interferes with their expected legacy.[78] Notwithstanding the assorted name variations the tort bears, courts in various jurisdictions are in agreement as to the elements needed to establish the defendant's liability.[79] Courts require the disinherited plaintiff to prove (1) the existence of her expectancy; (2) that the defendant intentionally interfered with her expectancy; (3) that the interference involved conduct tortious in itself such as fraud, duress, or undue influence; (4) that there is a reasonable certainty that the devise to the plaintiff would have been received but for the defendants' interference; and (5) damages.[80]

In this regard, the Restatement of Torts also provides that "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 inheritance or gift."[81] The basic tort cause of action also requires that the aggrieved party prove that the alleged wrongdoer owed her a duty, there was a breach of that duty, a resulting injury, and a causal connection between the breach and that injury.[82] Courts have imposed a burden of proof on the plaintiff to show that an expectancy did indeed exist and that the defendant did in fact intentionally interfere with that expected

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[74] In Re Knowlson, 562 N.E.2d 277, 280 (1990).

[75] Wickert v. Burggraf, 570 N.W.2d 889, 890 (1997).

[76] Greene v. First National Bank of Chicago, 516 N.E.2d 311, 317 (1987).

[77] Peffer v. Bennett, 523 F.2d 1323, 1326 (10th Cir. 1975).

[78] Doughty v. Morris, 871 P.2d 380, 387 (1994).

[79] Marilyn Marmai, *Tortious Interference with Inheritance: Primary Remedy or Last Recourse*, 5 CONN. PROB. L.J. 295, 299 (1991).

[80] Nemeth v. Banhalmi, 425 N.E.2d 1187, 1191 (1981); Wickert v. Burggraf, 570 N.W.2d 889, 890 (1997); Doughty v. Morris, 871 P.2d 380, 384 (1994); Greene v. First National Bank of Chicago, 516 N.E.2d 311, 317 (1987); In re Knowlson, 562 N.E.2d 277, 280 (1990); Harris v. Kritzik, 480 N.W.2d 514, 517 (1992); In re Hoover, 513 N.E.2d 991, 992 (1987).

[81] RESTATEMENT (SECOND) OF TORTS § 774B (2002).

[82] Marmai, *supra* note 79.

legacy by means of fraud, duress, or undue influence.[83] Once these elements have been shown, the defendant is liable for her tortious interference with inheritance.[84]

B. Proving the Elements of the Tort

Since the issues that arise in the agricultural arena deal with intimate, close and trusting family relationships which can often be turned into an aggressive and damaging tool by duplicitous family members, to establish liability courts must examine a myriad of techniques used by defendants to extricate the plaintiff from his rightful inheritance.

Over time, the courts have adopted certain standards in order to guide them in evaluating the defendant's conduct. One such tool used by the courts is the undue influence test, which requires that the plaintiff demonstrate with "clear, satisfactory, and convincing evidence" that when the undue influence was used, a confidential relationship was present between the defendant and testator and questionable circumstances existed during the testator's creation of his will.[85] In addition, since unscrupulous heirs often use pressure tactics upon the person preparing the devise, courts will examine any unlawful means used by the defendant during the commission of this tort.[86] If unlawful means are found, it is presumed that such means include an application of fraud, duress, or undue influence on the testator.[87] Likewise, the sole use of duress on the person(s) making the devise will also be held to be an unlawful use of force.[88] Indeed, the use of duress, fraud or undue influence, separately or together, is presumed to show wrongful interference by the defendant.[89]

Fraud is defined in intentional interference with inheritance cases as the assumption that the deceived person, even though acting under his own will, is a victim of misrepresentations made by the defendant.[90] In fact, fraud will be assumed with the mere state of mind, or intent, of the defendant, and the breach of promise in the confidential relationship will be deemed constructively fraudulent due to the reliance of the victim on the defendant.[91] Furthermore, courts will not allow any deceptive defen-

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[83] *Id.* at 299.

[84] RESTATEMENT (SECOND) OF TORTS § 774B (2002).

[85] Wickert v. Burggraf, 570 N.W.2d 889, 890 (1997).

[86] Peffer v. Bennett, 523 F.2d 1323, 1325 (10th Cir. 1975).

[87] Peffer v. Bennett, 523 F.2d 1323, 1325 (10th Cir. 1975); Hegarty v. Hegarty, 52 F.Supp. 296, 300 (D. Mass. 1943).

[88] Hegarty v. Hegarty, 52 F.Supp. 296, 300 (D. Mass. 1943).

[89] Allen v. Leybourne, 190 So.2d 825, 829 (1966).

[90] Hegarty v. Hegarty, 52 F.Supp. 296, 300 (D. Mass. 1943).

[91] White v. Mulvania, 575 S.W.2d 184, 189 (1978).

dant to raise the defense of mistake when either a confidential relationship exists, or there is confidential relationship in which the defendant uses superior knowledge to the detriment of the plaintiff.[92]

Perhaps the most important factor the courts will examine when a party brings this cause of action, is that of the existence of a confidential relationship. Thus, jurisdictions establish that such a relationship is found to exist when a plaintiff places a certain, special trust in a defendant.[93] In that situation, the actor will be obligated to act in "good conscience...good faith and just regard" toward the relying party.[94] This duty is not automatically created in familial relationships, such as the parent-child relationship; however, such a connection can be deemed to exist between relatives after an examination of the words and actions of the individuals in the particular relationship.[95]

C. Trends in Pleading the Tort of Interference

Under the claim of tortious interference with an expectancy in an inheritance, plaintiffs typically have pled a variety of wrongful acts, including fraudulent representation, and duress and undue influence on the testator by the defendant.[96] Notwithstanding the grounds giving rise to the tort, however, the cause of action generally remains the same.

The most common category typically pled by plaintiffs, undue influence, is applicable when the defendant uses undue influence on the testator or testatrix in order to immediately divest the plaintiff of his current expectation of inheritance.[97] Further, claims of fraud are the next most common fact pattern wherein the plaintiff states that through some fraudulent means the defendant, acting for his sole benefit, induced the testator in some way to change or retain his will, thus removing the plaintiff from the document.[98] Plaintiffs also commonly bring actions which state that the testator was placed under duress during the making or changing of his will, or even claim an intentional destruction of the testator's will.[99] In addition, parties bring claims of purposeful and wrongful physical diversion of the plaintiff's intended inheritance follow-

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[92] *Id.* at 192.

[93] Chapman v. Citizens and Southern National Bank of South Carolina, 395 S.E.2d 446, 451 (1990).

[94] *Id.*

[95] Doughty v. Morris, 871 P.2d 380, 385 (1994).

[96] *See* Holt v. First National Bank of Mobile, 418 So.2d 77, 78 (1982).

[97] *See* Hagen v. Hickenbottom, 41 Cal. App. 4th 168, 172 (1996).

[98] *See* White v. Mulvania, 575 S.W.2d 184, 186 (1978).

[99] *See* McGregor v. McGregor, 201 F.2d 528, 531 n.6 (10th Cir. 1953).

ing the death of the grantor,[100] or claims of the defendant's refusal to honor the testamentary wishes of the deceased testator,[101] thereby wrongfully and tortiously depriving the plaintiff of his inheritance. However, plaintiffs often claim multiple wrongs stemming from several types of unlawful activities.[102] These allegations give opportunity, upon a successful case, to recover damages.

D. Remedies of a Wronged Heir

The issue of recovery is of utmost importance to wronged family members, and is a factor inextricably intertwined with this tort. The court may award the aggrieved plaintiff a variety of reparation options because it is commonly stated and regarded that "every wrong should have a remedy."[103]

The purpose in awarding damages is to grant due compensation to the aggrieved plaintiff for his injuries.[104] Where a wronged heir can prove that he most likely would have received a gift or benefit from an inheritance, but the defendant's tortious interference frustrated the receipt, the wronged heir is entitled to a recovery of damages.[105] The California legislature has even recognized such a purpose in California Civil Code section 3333, which states: "For the breach of an obligation not arising from contract, the measure of damages, except where otherwise provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not."[106]

It is fundamental to American jurisprudence that an injured party should be compensated for all damage proximately caused by the defendant.[107] Beyond the typical compensatory damages available to the plaintiff in tort actions, the court may also award other types of recovery.[108]

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[100] *See* Liberman v. Rogers, 481 A.2d 1295, 1296 (1984).

[101] *See* Chapman v. Citizens and Southern National Bank of South Carolina, 395 S.E.2d 446, 478 (1990).

[102] *See* Newsom v. Estate of Haythorn, 122 N.E.2d 149,151 (1954).

[103] Nita Ledford, *Note - Intentional Interference with Inheritance*, 30 REAL PROP. PROB. & TR. J. 325, 340 (1995).

[104] Story v. Gateway Chevrolet Co., 237 Cal. App. 2d 705, 709 (1965).

[105] Harmon v. Harmon, 404 A.2d 1020, 1024 (1979).

[106] CAL. CIV. CODE § 3333 (Deering 2004).

[107] Jarchow v. Transamerica Title Insurance Co., 48 Cal. App. 3d 917, 933 (1975); Zikratch v. Stillwell, 196 Cal. App. 2d 535, 543 (1961); Seaboard Music Co. v. German, 24 Cal. App. 3d 618, 622 (1972); Crisci v. The Security Insurance Company of New Haven, Connecticut, 66 Cal. 2d 425, 433 (1967); King v. Acker, 725 S.W.2d 750, 754 (1987).

[108] Ledford, *supra* note 103.

For example, the court may fashion an equitable remedy for the wronged heir.[109] The court's award may be in the form of restitution when a defendant commits a tort and wrongfully attains property through knowing fraud, duress, or undue influence upon the transferor; thus, he then will be placed under a duty of restitution.[110] Simply, when the defendant has been unjustly enriched by the wrongful receipt of the plaintiff's inheritance, restitution may be required of the wrongdoer.[111]

In this regard, many courts may impose a constructive trust on equitable grounds, thereby barring the defendant from being unjustly enriched following the wrongful acquisition of property.[112] There are three elements necessary for the court to impose such a trust: (1) the existence of a confidential or fiduciary relationship; (2) a violation of a duty imposed by that relationship; and (3) failure to impose the constructive trust would result in unjust enrichment.[113] The elements must be proved by the plaintiff with "clear and convincing evidence" which establishes the veracity of the facts as "highly probable."[114]

The constructive trust, not within the statute of wills nor statute of frauds unless created in written form, will be imposed despite any contrary interests or intentions of the parties.[115] A constructive trust will be imposed on the defendant who uses fraud, duress, abuse of confidence or unconscionable acts to wrongly acquire legal title to property.[116] If the defendant is indeed in unlawful possession, in "equity and good conscience" he will not be allowed to continue his dominion over the property.[117]

In addition, the wronged heir may be able to recover punitive damages[118] when the defendant's acts are especially egregious since the award is made to punish the defendant and to deter other unscrupulous heirs from future misconduct. Further, punitive damages may also be awarded in place of a request for attorney fees and costs when those specific costs cannot be received in any other form.[119] Courts have also permitted the

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[109] *Id.* at 340.
[110] RESTATEMENT (FIRST) OF RESTITUTION § 133 (2002).
[111] *Id.* at Cmt. a.
[112] BLACK'S LAW DICTIONARY 637 (Bryan A. Garner, ed., 1996).
[113] Selacota v. Harrison, No. CV-96-704-ST, 1998 LEXIS 21699, at *23 (D. Ore. September 18, 1998).
[114] *Id.*
[115] Pope v. Garrett, 211 S.W.2d 559, 562 (1948).
[116] In re Morris, 260 F.3d 654, 667 (6th Cir. 2001).
[117] *Id.*
[118] Ledford, *supra* note 103.
[119] *Id.* at 339-340.

recovery of a variety of consequential damages.[120] A successful plaintiff may also recover for legal fees, loss of time at work, and emotional distress resulting from the defendant's interference with the plaintiff's inheritance.[121]

V. DEVELOPMENT AND ADOPTION OF THE TORT: A SURVEY OF JURISDICTIONS

A. *Origins of the Tort of Intentional Interference with Inheritance*

The basis for the tort of intentional interference with inheritance stretches far back through the annals of jurisprudence.[122] The theory is seen to even exist in very early British law,[123] which is the foundation of American jurisprudence. Since testamentary transfers offer a ripe opportunity for deceitful defendants,[124] English common law appropriately addressed such fraudulent transactions in cases which were handed down as early as 1709.[125] Those decisions laid the groundwork for early American cases which continued to follow Britain's example to "refuse to sanction fraudulent interference with testamentary transfers."[126] Indeed, American decisions such as *Harris v. Harris*,[127] and *Mitchell v. Langley*,[128] are examples of early decisions adopting this cause of action.

In *Harris*, the plaintiff alleged that the will of the decedent was fraudulently destroyed by the defendant[129] which resulted in wrongful inheritance by the defendant. The court examined the issue as to what rules existed in regard to the level of proof in such a case.[130] During this examination, the court concluded that when a will is intentionally destroyed by design, thereby interfering with inheritance, courts have the power to take proof of the "execution and validity of such will, and to establish the same."[131] Thus, *Harris* implicitly laid the foundation for the tort of intentional interference.

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[120] *Id.* at 339.
[121] *Id.* at 339-340.
[122] *In re* Estate of Legeas, 258 Cal. Rptr. 858, 861-862 (1989), ordered not published.
[123] *Id.* at 861.
[124] *Id.*
[125] *Id.*
[126] *Id.* at 861-862.
[127] Harris v. Harris, 26 N.Y. 433 (1863).
[128] Mitchell v. Langley, 85 S.E. 1050 (1915).
[129] *See* Harris v. Harris, 26 N.Y. 433 (1863).
[130] Harris v. Harris, 26 N.Y. 433, 438 (1863).
[131] *Id.*

The scope of the tort's application was expanded by the court in *Mitchell.* In this case, a brother in precarious health was fraudulently convinced by one of his three sisters listed on his benefit certificate to change the inheritance so that the defendant sister would receive all monetary benefits upon his passing.[132] Following his death, the plaintiff sister alleged these facts in order to recover the monies fraudulently attained by the defendant.[133] The court held that when a devise would have reached the intended devisee but for the malicious and fraudulent actions of the defendant, an action will lie.[134]

The tort of intentional interference with inheritance is a well-established cause of action whose origins lie in both British and American common law. However, notwithstanding its recognition by early courts, in its current manifestation the tort is now considered a "modern" cause of action that is recognized by a growing number of states.

B. The Current State of the Law: American Jurisdictions Recognizing the Tort of Intentional Interference with Inheritance

Numerous American jurisdictions currently recognize the tortious interference with inheritance cause of action.[135] Sixteen other jurisdictions provide that a wronged plaintiff may invoke an equitable constructive trust.[136] In addition, several jurisdictions have found the tort of interference with inheritance to be applicable to agriculture. The Tenth Circuit has decided three cases regarding agri-business, and seven other jurisdictions[137] have all dealt with and discussed the tort's application in the agricultural setting.[138]

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[132] *See* Mitchell v. Langley, 85 S.E. 1050 (1915).

[133] *Id.*

[134] Mitchell v. Langley, 85 S.E. 1050, 1053 (1915).

[135] These jurisdictions include the First Circuit, Ninth Circuit, Tenth Circuit, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Massachusetts, Michigan, Missouri, New Mexico, New York, North Carolina, Oregon, Ohio, Texas, Tennessee, West Virginia and Wisconsin.

[136] These jurisdictions include Connecticut, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Missouri, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, and West Virginia.

[137] These jurisdictions are Texas, Illinois, Minnesota, Tennessee, Maine, Ohio, and Florida.

[138] *See generally* Rienhardt v. Kelly, 164 F.3d 1296 (10th Cir. 1999); *See generally* Lindberg v. United States, 927 F.Supp. 1401 (D. Co. 1996); *See generally* Johnston v. Goss, No. 95-6295, 1997 WL 22530 (10th Cir. 1997); *See generally* Hext v. Price, 847 S.W.2d 408 (1993); *See generally* Hartmann v. Solbrig, 12 S.W.3d 597 (2000); *See generally* Nordyke v. Nordyke, No. 07-96-406-CV, 1998 WL 4508 (Tex.App. Jan. 7, 1998); *See generally* In re Estate of Mayfield, 680 N.E.2d 784 (1997); *See generally* Botcher v. Botcher, No.CX-00-1287, 2001 WL 96147 (Minn.App. Feb. 6, 2001); *See generally* Fell

Not only is the tort widely recognized, but it is almost universally accepted among courts who have addressed this issue that a cause of action for tortious interference with inheritance rights will be recognized "whereby the estate of another is lessened."[139]

C. California and the Tort: Flirting with Recognition

One state that has yet to recognize the tort, however, is California. Despite this fact, the issue is not new to this state, having been addressed in three substantive cases.

The first, *In re Estate of Legeas*,[140] addressed the tort in the context of a fraudulent destruction of a will.[141] The decedent had executed one will, but upon a growing dislike for parties named in the first document, drew up a second will without the disfavored individuals named therein.[142] Upon the death of the decedent, the disfavored defendants located the second will, concealed its existence, and misrepresented that the first will was the only true document.[143] The plaintiffs filed a cross-complaint alleging the fraudulent representation.[144] The First District Appellate Court recognized that there was a tort cause of action for the intentional interference with testamentary transfers.[145] A subsequent appeal of the decision was made to the California Supreme Court, which denied the review.[146] However, the court ordered, without any comment, that the opinion not be officially published. While an order of the California Supreme Court directing depublication of an opinion "shall not be deemed an expression of opinion by the Supreme Court of the correctness of the result reached by the decision or any of the law set forth in the opinion,"[147] *In re Estate of Legeas* cannot be relied upon for recognition of the tort.[148]

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v. Rambo, et. al., No. M2000-02100-COA-R3-CV, 2001 Tenn. App. LEXIS 407 (Tenn. App. June 1, 2001); *See generally* Guinan v. Baker, No. Civ. A. CV-00-41, 2001 WL 1869944 (Me.Super. Dec. 13, 2001); *See generally* Fox v. Stockmaster, Nos. 13-01-34, 13-01-35, 2002 WL 1299985 (Ohio App. 3 Dist. June 5, 2002); *See generally* Carlton v. Carlton, 575 So.2d 239 (1991).

[139] Bemis v. Waters 170 S.E. 475, 477 (1933).

[140] *In re* Estate of Legeas, 258 Cal. Rptr. 858 (1989), ordered not published.

[141] *In re* Estate of Legeas, 258 Cal. Rptr. 858, 860 (1989), ordered not published.

[142] *Id.*

[143] *Id.*

[144] *Id.* at 861.

[145] *Id.* at 863.

[146] *See In re* Estate of Legeas, 258 Cal. Rptr. 858 (1989).

[147] *See* CAL. CT. R. 979(e).

[148] *See* California Rules of Court, Rule 976(c)(2), which sets forth that "An opinion certified for publication shall not be published, and an opinion not so certified shall be

The second California case, *Hagen v. Hickenbottom*,[149] was addressed by the Sixth District Court of Appeal in 1995. *Hagen* involved a situation wherein the heirs of the deceased grandmother's estate brought action against the decedent's cousin, the sole beneficiary, alleging that the defendant had used undue influence during the formation of the testamentary instruments.[150] After summary judgment was granted in favor of the beneficiary, only one heir appealed.[151] On examination of the appeal from summary judgment, the Sixth District Appellate Court stated that:

> the [plaintiffs'] second count suggest a theory - recognized in several states but not previously validated in California - of intentional interference with an expected inheritance or gift ... The count incorporated the allegations of the first count and added allegations that from 1980 to 1988 the [plaintiffs] had been designated the sole beneficiary of the decedent's testamentary trust with assets of a value (after the decedent's death) in excess of $400,000, that from 1980 until the decedent died [the defendant] "wrongfully and intentionally engaged in conduct in which she interfered with the relationship between [the plaintiffs] and their grandmother, [the decedent], which caused decedent to create a revocable trust which excluded [the plaintiffs] as beneficiaries," that over the same period [defendant] "knowingly, wrongfully and intentionally made statements to decedent which caused [her] to disinherit [the plaintiffs]," that [defendant's] conduct and statements were "for the purpose of depriving [the plaintiffs] of the testamentary gift which decedent had previously made and to obtain the gift exclusively for herself," that as a result the decedent "did disinherit [plaintiffs]" who [were] therefore entitled to recover compensatory and punitive damages.[152]

The court then concluded that the defendant had not carried the burden for summary judgment, and reversed and remanded the case as to each cause of action.[153]

The fact that the *Hagen* court did not reject the tort out of hand, coupled with the reference that the tort was "not *previously* validated,"[154] intimates that the cause of action was implicitly recognized by the court. This is further reinforced by the fact that the matter was remanded as to each cause of action, including the cause of action for intentional interference with an expected inheritance or gift.[155] However, since the issue

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published, on an order of the Supreme Court." *See* also California Rules of Court, Rule 977(a), which states in relevant part that "An opinion of a Court of Appeal . . . that is not certified for publication or ordered published shall not be cited or relied upon by a court or a party in any other action or proceeding."

[149] Hagen v. Hickenbottom, 41 Cal. App. 4th 168 (1996).

[150] Hagen v. Hickenbottom, 41 Cal. App. 4th 168, 172 (1996).

[151] *Id.*

[152] *Id.* at 173.

[153] *Id.* at 188.

[154] *Id.* at 173 (emphasis added).

[155] *Id.* at 188.

of the tort's recognition was not directly before the court during its review of the propriety of granting summary judgment, this implicit recognition is arguably merely persuasive dicta, and therefore is not completely reliable authority for recognition of the tort.

The ambiguity of the *Hagen* decision is also reflected by the recent, unpublished opinion in *Montegani v. Johnson.*[156] The issue before the *Montegani* court was whether a cause of action for "intentional interference with economic advantage" includes "interference with a prospective right to inherit."[157] Referring to appellant's reliance upon *Hagen*, the Fifth District Court of Appeal noted in dicta that "[n]othing we have found, and nothing cited by appellant, establishes the theory [of tortious interference with inheritance] was then or has since been 'validated'" by a California court.[158] *Montegani*, however, was ordered not published, and cannot be relied upon for denial of recognition of the tort.[159]

As of the date of this article, no other reported California Supreme Court or appellate cases have addressed the recognition of the tort. However, given the problems inherent in the very nature of most agribusinesses, which have been compounded by the growing sophistication and expansion of operational size, the need for clear and conclusive recognition of the tort is needed in California.

IV. CONCLUSIONS AND RECOMMENDATIONS

This article has traced the growing need for the tort of intentional interference with inheritance. First, the development of the agricultural industry was reviewed through an examination of the growing sophistication of the business. Such expanding complexity was tracked through an analysis of agri-business origins, growth, educational trends, market scale and use of complex legal formations. Next, the more complicated problems and opportunity for the siphoning of family assets by the unscrupulous heir were discussed. Furthermore, the elements of the tort were introduced, including patterns of proof and pleading, and the tort's capacity to provide a remedy to a wronged heir. In addition, the development and application of the tort was assessed through a survey of the origins of the tort, its current status in various American jurisdictions and its relationship to California.

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[156] Montegani v. Johnson, 2003 WL 21197217, ordered not published.

[157] *Id.* at *1.

[158] *Id.*

[159] *See* California Rules of Court, Rule 977(a), which states in relevant part that "An opinion of a Court of Appeal...that is not certified for publication or ordered published shall not be cited or relied upon by a court or a party in any other action or proceeding."

The tort of intentional interference with inheritance, as a relatively new and un-implemented cause of action in California,[160] will be of great value and benefit to the essential agricultural industry. The tort will give an opportunity for redress in the face of modern issues. Lack of recognition will be devastating to agri-business families,[161] California and consumers. Without the protection of this tort, investors will be hesitant to enter the field due to potentially severe losses. With unscrupulous heirs ransacking family businesses, agricultural enterprises will not operate as efficiently, thus resulting in an increased cost of production. This in turn will not only raise prices for the average consumer, but given the very competitive world marketplace, could result in the loss of business to less expensive foreign producers. Given the size and scope of California agri-business, even a slight retraction could have a disproportionate ripple effect upon the state's economy. The industry could shrivel in size, vast numbers of employees could be left without jobs, and consumers could be left with higher prices at the check-out line and a greater reliance on goods not produced locally.

Currently, the agricultural industry is expanding due to technological, educational and societal improvements, and producers are attempting to protect themselves from corresponding liability through the creation of legal entities, thus separating themselves from personal liability.[162] However, when the attack comes not from the outside, but from within the organization, there must be a form of redress for wronged heirs.[163] Generally, most family agricultural businesses are operated with care, diligence and integrity, but the question put to us is whether, in a fast-paced, increasingly self-centered society, are we willing to rely on the blind faith that might one day prove us wrong? When antiquated methods of redress are applied to modern problems, the resulting havoc on the industry and wronged heirs clashes with the basic principle that there is a remedy for every wrong.[164] Implementation of the tort of intentional interference with inheritance will not only strengthen familial relationships, but it will allow all members doing business together to know that their rights will be protected under the law, thereby providing even greater stability to family business endeavors and a deterrence against wrongful acts. Most significantly, this tort will lend strength to the inner structure of the California agricultural community, thereby fortifying a powerful

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[160] *See* discussion *supra* Part V.C.

[161] *See* discussion *supra* Part III.

[162] *See* discussion *supra* Parts II.B, D.

[163] *See* discussion *supra* Part IV.D.

[164] *See generally* CAL. CIV. CODE § 3333 (Deering 2004).

and influential economy.[165] The final step should be taken: California courts should unequivocally embrace the tort of intentional interference with inheritance.

MARIANNA R. CHAFFIN

[165] *See* discussion *supra* Part II.C.