

**LEGAL SYSTEMS IN ASEAN – SINGAPORE**  
**CHAPTER 5 – BUSINESS LAW (PART 3): THE LAW OF TORTS**

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**A. INTRODUCTION**

A tort is a civil, or non-criminal, wrong that can be committed by a person. Someone who has been found liable for committing a tort is usually required to

pay monetary compensation (also called damages) to the party who has been injured.

In Singapore, the law of torts is largely common-law based. In other words, it is mostly derived from statements of the law made by judges in court rulings, rather than from statutes enacted by the Legislature. However, some rules of tort law have been modified or supplemented through statutes over the years. This part of the chapter introduces some of the torts recognised in Singapore law that are relevant in the business context.

## **B. THE TORT OF NEGLIGENCE**

An action in negligence consists of the following elements:

- (a) The defendant must owe a duty of care to the plaintiff.
- (b) The defendant must have breached this duty of care.
- (c) The plaintiff must have suffered damage caused by the breach of duty, and the damage must not be too remote.

Peripheral issues relating to negligence include the following:

- (a) **Vicarious liability.** Under this doctrine, an employer may be held liable for an employee's negligence if the negligent act is closely connected with his employment.<sup>1</sup>
- (b) **Non-delegable duties.** Some duties are regarded in tort law as non-delegable. In other words, the person owing the duty remains legally responsible for the proper performance of the duty even if its performance has been delegated to another person.<sup>2</sup> One example of a non-delegable duty is an employer's duty to take reasonable care to provide a safe system of work for employees.<sup>3</sup>

### ***The Legal Test***

The general test for ascertaining the existence of a duty of care was laid down by the Singapore Court of Appeal in a case called *Spandek Engineering (S) Pte Ltd v Defence Science & Technology Agency*.<sup>4</sup> The court will go through the following steps of analysis:

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<sup>1</sup> *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 *Singapore Law Reports* 540 (Court of Appeal, Singapore)

<sup>2</sup> *MCST Plan No 3322 v Tiong Aik Construction Pte Ltd* [2016] 4 SLR 521 (Court of Appeal, Singapore).

<sup>3</sup> *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR 786 (Court of Appeal, Singapore).

<sup>4</sup> [2007] 4 *Singapore Law Reports (Reissue)* 100 (Court of Appeal, Singapore) (hereafter *Spandek*), applying *Anns v Merton London Borough Council* [1978] AC 728 (House of Lords, United Kingdom).

- (a) As a threshold requirement, it must be factually foreseeable that the defendant's breach of duty would cause harm to the plaintiff.<sup>5</sup>
- (b) At the first stage, there must be sufficient legal proximity between the plaintiff and the defendant, giving rise to a *prima facie* duty of care.<sup>6</sup> Proximity includes physical, circumstantial and causal proximity.<sup>7</sup>
- (c) At the second stage, the court will ascertain whether there are policy considerations which may negate this *prima facie* duty,<sup>8</sup> or have regard to policy considerations in favour of imposing the duty of care.<sup>9</sup>

Further, the *Spandeck* test must be incrementally applied by referring to decided cases in analogous situations at each stage of its application.<sup>10</sup>

The *Spandeck* test has proven to be flexible, applying to different factual situations. For example, in cases where the plaintiff has only suffered pure economic loss rather than physical harm, proximity is usually ascertained by examining the twin criteria of assumption of responsibility and reliance.<sup>11</sup> Additional factors that the court will consider include the defendant's particular knowledge of the state of affairs at play, his or her capacity to control the situation that might give rise to the risk of harm, and the vulnerability of the plaintiff.<sup>12</sup>

Some examples of situations where defendants have been found to be negligent are given below:

- (a) Liability can be found for negligent certification in a construction project. In *Spandeck*, DSTA was appointed as the superintending officer responsible for the administration and supervision of the construction project, including certifying interim payments in respect of the contractor's work. Subsequently, the contractor claimed that DSTA had breached its duty of care to apply professional skill and judgment in certifying, in a fair and unbiased manner, payment for work carried out by the contractor, by negligently undervaluing and under-certifying its works.<sup>13</sup>
- (b) Lawyers can be found negligent for their conduct in court, or for decisions that they have made out of court.<sup>14</sup> For example, in one

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<sup>5</sup> *Spandeck*, *ibid* [89].

<sup>6</sup> *ibid* [77] and [83].

<sup>7</sup> *ibid* [81].

<sup>8</sup> *ibid* [83].

<sup>9</sup> *Animal Concerns Research & Education Society v Tan Boon Kwee* [2011] 2 SLR 146, [77] (Court of Appeal, Singapore).

<sup>10</sup> *Spandeck* (n 4) [73].

<sup>11</sup> *ibid* [81].

<sup>12</sup> *Anwar Patrick Adrian v Ng Chong & Hue LLC* [2014] 3 SLR 761, [148] and [154] (Court of Appeal, Singapore).

<sup>13</sup> *Spandeck* (n 4).

<sup>14</sup> *Chong Yeo and Partners v Guan Ming Hardware and Engineering Pte Ltd* [1997] 2 SLR(R) 30 (Court of Appeal, Singapore), not following the English cases of *Rondel v Worsley* [1969]

case a lawyer negligently arranged for a will to be executed by the testator in the presence of one witness instead of two witnesses as required by the law, causing the will to be invalid. The testator's estate was eventually distributed under intestacy, which was less favourable to the plaintiffs than if the estate was distributed under the will. It was held that the plaintiffs had a remedy in negligence against the lawyer.<sup>15</sup> However, a lawsuit against a lawyer may not succeed if the lawsuit was in actual fact an abuse of the court process.<sup>16</sup>

- (c) Auditors may also be found liable for negligence in carrying out audits. An auditor's standard of care is ascertained by reference to a number of factors, namely, the standard required as a matter of contract and under the relevant statute or regulations, expert evidence relating to the conduct of the audit, and the relevant auditing standards set by the governing professional body.<sup>17</sup>

### **Defences**

A defendant will not be found liable for negligence, or will have his or her liability reduced, if he or she can rely on one or more of the following defences:<sup>18</sup>

- (a) ***Ex turpi causa***. This is a defence of illegality<sup>19</sup> – the courts will not assist a person who bases his or her action on an illegal or immoral act.<sup>20</sup> The rationale for this defence is that allowing the wrongdoer to recover damages would not promote and maintain consistency and integrity in the law.<sup>21</sup>
- (b) ***Volenti non fit injuria***. This defence is based on the plaintiff having given consent to the risks of harm due to the defendant's negligence.<sup>22</sup> There are three criteria to fulfil before the defendant can invoke this defence:<sup>23</sup>
  - (i) The plaintiff must have acted freely and voluntarily.

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1 AC 191 (House of Lords, United Kingdom) or *Saif Ali v Sydney Mitchell & Co (A Firm)* [1980] AC 198 (House of Lords, United Kingdom).

<sup>15</sup> *AEL v Cheo Yeoh & Associates LLC* [2014] 3 SLR 1231 (High Court, Singapore).

<sup>16</sup> *Chong Yeo and Partners* (n 14) [55].

<sup>17</sup> *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong (a firm)* [2007] 4 SLR(R) 460, [32] (Court of Appeal, Singapore).

<sup>18</sup> See generally Gary Chan, 'Tort of Negligence: Defences' in Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (2nd edn, Academy Publishing 2016) 329–372.

<sup>19</sup> *United Project Consultants Pte Ltd v Leong Kwok Onn (trading as Leong Kwok Onn & Co)* [2005] 4 SLR(R) 214, [330] (Court of Appeal, Singapore).

<sup>20</sup> *Holman v Johnson* (1775) 1 Cowp 341, 343; 98 ER 1120, 1121.

<sup>21</sup> *British Columbia v Zastowny* [2008] 1 SCR 27 (Supreme Court, Canada); *Hall v Hebert* [1993] 2 SCR 159 (Supreme Court, Canada).

<sup>22</sup> Gary Chan (n 18) [08.024]; See *Rashid Osman bin Abdul Razak v Abdul Muhaimin bin Khairuddin* [2013] 2 SLR 762 (High Court, Singapore).

<sup>23</sup> *ibid.*

- (ii) The plaintiff must have acted with full knowledge of the nature and extent of the risk of harm created by the defendant's negligence.
- (iii) The plaintiff must have expressly or impliedly consented to the risk.
- (c) **Exemption of liability.** This defence encompasses both the complete exclusion and the reduction of liability.<sup>24</sup> Liability can be exempted or excluded through a contract or a non-contractual notice,<sup>25</sup> although the courts' approach towards such clauses is different. Clauses of limitation are regarded with less hostility than clauses of exclusion.<sup>26</sup> It should be noted that a defendant cannot exclude or limit liability for negligence which results in personal injury or death.<sup>27</sup>
- (d) **Force majeure.** This defence is based on unforeseeable events beyond any party's control,<sup>28</sup> or events known as 'acts of God'.<sup>29</sup> The foreseeability of the *force majeure* event has to be viewed with reference to the defendant's negligence and the resulting damage. Thus, in *Tesa Tape Asia Pacific Pte Ltd v Wing Seng Logistics Pte Ltd*,<sup>30</sup> when strong wind had caused a stack of the defendant's containers to topple on to the plaintiff's land and cause damage, the High Court held that the defendant could not rely on *force majeure* as it had stacked the containers next to the plaintiff's land in such an unsafe way that it was foreseeable that they could have damaged the plaintiff's property.
- (e) **Inevitable accident.** This defence is simply the defendant claiming that he or she was not at fault due to an accident. The defendant will have to establish that he or she could not, by exercising ordinary care, caution and skill, have prevented the accident.<sup>31</sup>
- (f) **Contributory negligence.** This defence means that the plaintiff's own conduct, act or omission was one of the causes or

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<sup>24</sup> See *Marina Centre Holdings Pte Ltd v Pars Carpet Gallery Pte Ltd* [1997] 2 SLR(R) 897 (Court of Appeal, Singapore), the Unfair Contract Terms Act (Chapter 396, 1994 Revised Edition) (hereafter UCTA), and the Companies Act (Cap 50, 2006 Rev Ed), section 391.

<sup>25</sup> Gary Chan (n 18) [08.041].

<sup>26</sup> *Rapiscan Asia Pte Ltd v Global Container Freight Pte Ltd* [2002] 1 SLR(R) 701, [61] (High Court, Singapore).

<sup>27</sup> UCTA (n 24) s 2(1).

<sup>28</sup> *OTF Aquarium Farm (formerly known as Ong's Tropical Fish Aquarium & Fresh Flowers) (a firm) v Lian Shing Construction Co Pte Ltd (liberty Insurance Pte Ltd, Third Party)* [2007] SGHC 122, [58] (High Court, Singapore).

<sup>29</sup> Gary Chan (n 18) [08.070].

<sup>30</sup> [2006] 3 SLR(R) 116 (High Court, Singapore).

<sup>31</sup> Gary Chan (n 18) [08.072]; and see *Loh Luan Choo Betsy (alias Loh Baby) (administratrix of the estate of Lim Him Long) v Foo Wah Jek* [2005] 1 SLR(R) 64 (High Court, Singapore).

had at least contributed to extent of the plaintiff's injury or loss.<sup>32</sup> However, it should be noted that if this defence is raised then there is a presumption that the defendant is liable for negligence.

### **Remedies**

A defendant who has been found to have been negligent will normally be ordered to pay monetary compensation (called 'damages') to the plaintiff. The amount of the damages is generally what would put the plaintiff in a position as if the negligence had not occurred. Very remote losses suffered by the plaintiff may not be recoverable, and the plaintiff is under an obligation to mitigate damages – that is, to take reasonable steps to minimize the amount of loss he or she suffers.

If a defendant has committed the tort of negligence in such an outrageous way that punishment, deterrence and condemnation are warranted, the court may order the defendant to pay punitive damages.<sup>33</sup> Proof of intentional wrongdoing or conscious recklessness by the defendant is not required.<sup>34</sup>

## **C. THE TORT OF DEFAMATION**

Defamation occurs when a person makes a statement that tends to lower the reputation of someone else in the opinion of right-thinking people. The tort of defamation in Singapore is governed by common law as modified by the Defamation Act.<sup>35</sup>

### **The Legal Test**

To establish a *prima facie* case of defamation, the plaintiff must show that the statement made by the defendant was defamatory in nature, referred to the plaintiff, and was published.<sup>36</sup>

Before ascertaining whether the statement was defamatory in nature, the court must determine its meaning, either based on its natural and ordinary meaning or by treating it as an innuendo. The natural and ordinary meaning is the meaning the words would convey to an ordinary reasonable person who is not unduly suspicious or avid for scandal, using his general knowledge.<sup>37</sup> An

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<sup>32</sup> Gary Chan (n 18) [08.076]; and see the Contributory Negligence and Personal Injuries Act (Cap 54, 2002 Rev Ed), and *Asnah bte Ab Rahman v Li Jianlin* [2016] 2 SLR 944 (Court of Appeal, Singapore).

<sup>33</sup> *ACB v Thomson Medical Pte Ltd* [2017] 1 SLR 918, [175] and [176] (Court of Appeal, Singapore). The Court decided not to apply the English legal position in *Rookes v Barnard* [1964] 1 AC 1129 (House of Lords, United Kingdom).

<sup>34</sup> *ACB*, *ibid* [200], [202] and [206].

<sup>35</sup> Defamation Act (Cap 75, 2014 Rev Ed).

<sup>36</sup> Chan, 'Tort of Defamation: Establishing a *Prima Facie* Case' (n 18) [12.010].

<sup>37</sup> *Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52, [27] (Court of Appeal, Singapore). A claim will be struck out if the defamatory publication does not amount to a real and substantial tort: *Yan Jun v Attorney-General* [2015] 1 SLR 752, [120] (Court of Appeal, Singapore), applying *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 (Court of Appeal, England and Wales). The question whether there has been a real and substantial tort does not depend upon a numbers game, with the court fixing an arbitrary minimum according to the facts; whether there is a real and substantial tort relates to the prospects of the court

innuendo is established where there were extrinsic facts that would give rise to a defamatory imputation, those facts were known to one or more of the persons to whom the words were published, and the knowledge of extrinsic facts would cause the words to convey the defamatory imputation relied on by the plaintiff to a reasonable person having that knowledge.<sup>38</sup> For example, if people know that a certain house is a brothel, and they are then told that a man was seen entering that house, that statement would give rise to a defamatory imputation that the man is patronising the brothel.<sup>39</sup>

Having determined its meaning, the court would find that the statement is defamatory in nature if it tends to lower the plaintiff in the estimation of right-thinking members of society generally, cause the plaintiff to be shunned or avoided, and/or expose the plaintiff to hatred, contempt or ridicule.<sup>40</sup>

In Singapore, it is not entirely clear whether the Government, government agencies and political parties can sue for defamation.<sup>41</sup> However, politicians can bring and have successfully brought, claims in defamation in their capacities as private individuals.<sup>42</sup>

### ***Defences***

The defendant may rely on the following defences to defamation:<sup>43</sup>

- (a) **Justification.** To establish this defence, the defendant will have to prove that the defamatory statement is true in substance and in fact. Since only the gist of the defamatory materials needs to be justified, there is no need to prove the truth of every single word.<sup>44</sup> If the statement contains separate and distinct allegations of defamation, but the plaintiff only complained of one of the allegations, the defendant cannot justify that particular statement by proving the truth of the other allegations.<sup>45</sup>

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granting a remedy and the proportionality of the cost of pursuing proceedings compared to the minimal vindication that would be achieved: see *Mahmud Ebrahim Kasam Munshi v Mohamed Saleh* [2017] SGDC 188 (District Court, Singapore) discussing the various authorities.

<sup>38</sup> *Lim Eng Hock Peter v Lin Jian Wei* [2009] 2 SLR(R) 1004, [106] (High Court, Singapore).

<sup>39</sup> *Rubber Improvement Ltd v Daily Telegraph Ltd* [1964] AC 234, [78] (House of Lords, United Kingdom).

<sup>40</sup> *Low Tuck Kwong v Sukanto Sia* [2013] 1 SLR 1016, [18] (High Court, Singapore).

<sup>41</sup> In the United Kingdom, the House of Lords held in *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534 that this was not possible, but in *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582, [69], the Singapore High Court doubted whether this case applied in Singapore.

<sup>42</sup> *Tang Liang Hong v Lee Kuan Yew* [1997] 3 SLR(R) 576, [116] (Court of Appeal, Singapore).

<sup>43</sup> See generally Chan, 'Tort of Defamation: Defences and Remedies' in *The Law of Torts in Singapore* (n 18) 539–599.

<sup>44</sup> Chan (n 18) [13.003]; see the Defamation Act (n 35) s 8, and *Basil Anthony Herman v Premier Security Co-operative Ltd* [2010] 3 SLR 110 (Court of Appeal, Singapore).

<sup>45</sup> *S & K Holdings Ltd v Throgmorton Publications Ltd* [1972] 1 WLR 1036, 1036 and 1039 (Court of Appeal, England and Wales).

(b) **Fair comment.** This defence only applies to comments or expressions of opinions but not factual statements.<sup>46</sup> The criteria for this defence are as follows:<sup>47</sup>

- (i) The statement must be a comment.
- (ii) The comment must be based on facts.
- (iii) The comment must be one which a fair-minded person can honestly make on the facts proved.
- (iv) The comment is on a matter of public interest.

Even if these criteria are fulfilled, the defence can still be defeated by showing that the defendant's comments were motivated by malice.<sup>48</sup>

(c) **Qualified privilege.** This defence provides protection for certain untrue statements. The privilege is said to be 'qualified' as it can be defeated by proof that the defendant's statements were motivated by malice or where the privilege is exceeded. The following are the circumstances in which the defence might arise:<sup>49</sup>

- (i) Where the defendant has an interest or duty to communicate information and the recipient has a corresponding interest or duty to receive the information, for example, where the defendant is reporting suspected wrongdoing by the plaintiff to the police.
- (ii) Where the defendant makes a statement with a view to protect his or her self-interest.
- (iii) Where the statement constitutes a fair and accurate report of parliamentary or judicial proceedings.

(d) **Absolute privilege.** This defence gives full immunity to the defendant in certain situations even when the statements may be untrue and made maliciously. It applies to statements made during the course of or related to judicial proceedings and those relating to executive matters.<sup>50</sup>

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<sup>46</sup> Chan (n 18) [13.013].

<sup>47</sup> See *Chen Cheng and another v Central Christian Church* [1998] 3 SLR(R) 236 (Court of Appeal, Singapore), and *Review Publishing* (n 37).

<sup>48</sup> Chan (n 18) [13.033].

<sup>49</sup> See the Defamation Act (n 35) s 12; *D v Kong Sim Guan* [2003] 3 SLR(R) 146 (High Court, Singapore); *Hytech Builders Pte Ltd v Goh Teng Poh Karen* [2008] 3 SLR(R) 236 (High Court, Singapore), *Review Publishing*, *ibid*; and *Goh Lay Khim v Isabel Redrup Agency Pte Ltd* [2017] 1 SLR 546 (Court of Appeal, Singapore).

<sup>50</sup> Chan (n 18) [13.041]; see the Parliament (Privileges, Immunities and Powers) Act (Cap 217, 2000 Rev Ed) ss 6 and 7; Defamation Act, *ibid* s 11; and *Low Tuck Kwong* (n 40) and *Lim Eng Hock Peter* (n 43).



- (e) **Consent.** The defence is established when the defendant can prove that the plaintiff clearly and unequivocally assented or consented to the fact and content of the publication of the defamatory statement. The publication has to fall within the scope of the consent given, and consent has to be given voluntarily.<sup>51</sup>
- (f) **Statutory defence for network service providers.** A network service provider is protected from tortious liability arising from the, publication, dissemination or distribution of third-party materials or statements made in such material.<sup>52</sup>
- (g) **Offer of amends.** This procedure allows the defendant to avoid a potential defamation action. The defendant has to first show that the defamation was ‘innocently’ done and all reasonable care in relation to the publication had been exercised. The defendant then has to offer to publish a suitable correction of the allegedly defamatory words and make a sufficient apology, and take reasonably practicable steps to inform the persons to whom copies of the publication had been distributed to that the contents were defamatory.<sup>53</sup>

### **Remedies**

On a successful claim for defamation, the plaintiff may claim four types of damages from the defendant: general damages, special damages, aggravated damages and exemplary damages.

General damages are damages awarded for the harm done to the plaintiff’s reputation and the distress and embarrassment suffered by the plaintiff. These damages are assessed by reference to various factors, including the reputation of the plaintiff, the nature and seriousness of the statement, the mode and extent of publication, and the intended deterrent effect of the damages to be awarded.<sup>54</sup> In *Review Publishing Co Ltd v Lee Hsien Loong*, the Court of Appeal observed that the quantum of damages may be adjusted based on the degree of care exercised by the defendant in publishing the material – the damages may be higher if the defendant failed to exercise proper care to ensure that the material was not defamatory.<sup>55</sup>

Special damages are specific quantifiable losses that result from the defamation, such as a reduction of business profits or the salary that the plaintiff would have earned if he or she had not lost a job. Evidence must be adduced to prove the amount of such damages. In many cases of defamation in Singapore, the plaintiffs ask only for general damages and not for special damages.

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<sup>51</sup> Chan, (n 18) [13.122]; see *Hady Hartanto v Yee Kit Hong* [2014] 2 SLR 1127 (High Court, Singapore); and *Ramesh s/o Krishnan v AXA Life Insurance Singapore Pte Ltd* [2015] 4 SLR 1 (High Court, Singapore).

<sup>52</sup> Electronic Transactions Act (Cap 88, 2011 Rev Ed) s 26.

<sup>53</sup> Defamation Act (n 35) s 7.

<sup>54</sup> *Lim Eng Hock Peter v Lin Jian Wei* [2010] 4 SLR 357 (Court of Appeal, Singapore); *Koh Sin Chong Freddie v Chan Cheng Wah Bernard* [2013] 4 SLR 629 (Court of Appeal, Singapore).

<sup>55</sup> *Review Publishing* (n 42) [297].

Aggravated damages are awarded for injury to feelings and pride in circumstances where the defendant's conduct has worsened the injury.<sup>56</sup> Relevant factors include the defendant's refusal to apologise, persistence in repeating the defamatory remarks, and insulting the plaintiff during trial. It appears that aggravated damages may only be claimed by individuals and not by companies.<sup>57</sup>

Exemplary damages are limited to cases where the defendant publishes a defamatory statement which he or she knows to be false, or is reckless as to whether it is true or false, and with the expectation of obtaining profits as a result of the publication.<sup>58</sup> This might happen, for example, when a media company deliberately publishes a news article that it knows to be defamatory in order to attract attention and sell more copies of a newspaper.

The plaintiff may also apply for an injunction, which is a court order to stop the defendant from repeating the defamatory statement. In most cases, the courts would only grant such an injunction after the plaintiff has succeeded at the trial, and not before the trial. However, a pre-trial or interlocutory injunction may be granted where it is clear that the defendant's statement is defamatory and no defence could possibly apply.<sup>59</sup>

#### **D. THE TORT OF MALICIOUS FALSEHOOD**

In Singapore, like the tort of defamation, the tort of malicious falsehood is also governed by common law as modified by the Defamation Act.<sup>60</sup>

##### ***The Legal Test***

To establish malicious falsehood, the plaintiff must show that the defendant maliciously published statements about the plaintiff, or his or her business, property or other interests that were false, and that special damage has followed as a direct and natural result of the publication.<sup>61</sup>

##### ***Defences***

A common defence against malicious falsehood is for the defendant to prove that he or she did not act with malice. The Court of Appeal has decided that even if a defendant is careless, impulsive or irrational in coming to a certain belief, the

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<sup>56</sup> *Golden Season Pte Ltd v Kairos Singapore Holdings Pte Ltd* [2015] 2 SLR 751, [136] (High Court, Singapore).

<sup>57</sup> *Golden Season*, *ibid* [136]–[137]; *ATU v ATY* [2015] 4 SLR 1159, [60] (High Court, Singapore). In *Basil Anthony Herman* (n 44) [65], the Court of Appeal considered the issue but did not make a definitive ruling.

<sup>58</sup> *Golden Season*, *ibid* [137].

<sup>59</sup> *Chin Bay Ching v Merchant Ventures Pte Ltd* [2005] 3 SLR(R) 142, [37] (Court of Appeal, Singapore).

<sup>60</sup> Defamation Act (n 35).

<sup>61</sup> *Challenger Technologies Pte Ltd v Dennison Transoceanic Corp* [1997] 2 SLR(R) 618, [61] (High Court, Singapore): see Gary Chan and Lee Pey Woan, 'False Representations' in *The Law of Torts in Singapore* (n 18) [14.034].

fact that the defendant spread the belief does not necessarily mean that he or she was malicious.<sup>62</sup>

### ***Remedies***

At common law, to succeed in establishing the tort of malicious falsehood, proof of special damage is required.<sup>63</sup> Section 6 of the Defamation Act provides for two statutory exceptions to this general rule: where the words upon which the action is founded are calculated to cause financial damage to the plaintiff and are published in writing or other permanent form; and where the words are calculated to cause financial damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him or her at the time of the publication.<sup>64</sup>

## **E. THE TORT OF INDUCEMENT OF BREACH OF CONTRACT**

### ***The Legal Test***

For a defendant to be liable for inducing (or causing) a breach of contract, the plaintiff must show that:<sup>65</sup>

- (a) The defendant knew of the contract and intended for it to be breached;
- (b) The defendant induced the breach; and
- (c) The contract was breached and damage was suffered.

The mental element of the tort is twofold. The defendant must have acted with knowledge of the existence of the contract (although knowledge of the existence of the precise terms is not necessary), and must have intended to interfere with the performance of that contract.<sup>66</sup>

### ***Defence***

The defendant may rely on the defence of justification to avoid liability for an inducement of breach of contract action, where the purpose for the alleged offending acts was, for example, to legitimately further his or her own self-interest.<sup>67</sup>

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<sup>62</sup> *WBG Network (Singapore) Pte Ltd v Meridian Life International Pte Ltd* [2008] 4 SLR(R) 727, [72] (High Court, Singapore).

<sup>63</sup> *ibid* [74].

<sup>64</sup> See also *Low Tuck Kwong* (n 40) [113].

<sup>65</sup> *M+W Singapore Pte Ltd v Leow Tet Sin* [2015] 2 SLR 271 [88] (High Court, Singapore); *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407, [16] (Court of Appeal, Singapore).

<sup>66</sup> *Tribune Investment*, *ibid* [17].

<sup>67</sup> *ibid* [38].

## **Remedies**

The plaintiff can recover compensation for all damage that the defendant intended to cause, and other damages that are not too remote.<sup>68</sup> For example, the plaintiff may recover non-remote damages for loss of business caused by the fact that the contract was not performed.<sup>69</sup> Intended damage simply refers to the injury that the defendant intended for the plaintiff to suffer.<sup>70</sup> Where damages are inadequate, an injunction may also be awarded. For example, in *Gatekeeper, Inc v Wang Wensheng*, the High Court reasoned that damages would be an inadequate remedy as a breach of agreement by the defendant might destroy the plaintiff's business entirely, or cause it to lose its goodwill and reputation. As such, an injunction would be a more appropriate remedy.<sup>71</sup> While this was a contract law case, the same reasoning and factors probably apply in the case of inducement of breach of contract.

## **F. THE TORT OF CONSPIRACY**

### ***The Legal Test***

Singapore law recognises two types of conspiracy, conspiracy by unlawful means and conspiracy by lawful means. A conspiracy by unlawful means is established when two or more people act together to commit an unlawful act with the intention of injuring or damaging the plaintiff, and the act is carried out and the intention is achieved.<sup>72</sup> An unlawful act can either be an act that is a criminal offence, or an intentional act that amounts to a tort. For instance, in *Beckett Pte Ltd v Deutsche Bank AG*,<sup>73</sup> the Court of Appeal found that most of the defendant bank's actions did not constitute unlawful means. While certain pledged shares were sold at below their market value, the sale was not carried out by unlawful means since the sale had been approved by the Indonesian authorities. Further, there was no evidence that the defendant bank had acted in bad faith and deliberately took a huge loss just to injure the plaintiff.<sup>74</sup>

A conspiracy by lawful means does not require an unlawful act to be committed by the conspirators, but only that there is a predominant purpose by all the conspirators to cause injury or damage to the plaintiff, and the act is carried out and the purpose achieved. In *Quah Kay Tee v Ong and Co Pte Ltd*,<sup>75</sup> the Court of Appeal held that the purpose of a share transfer that had taken place was to protect the debtor's assets rather than to injure the plaintiff financially. Since

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<sup>68</sup> Lee Pey Woan, 'Economic Torts' in *The Law of Torts in Singapore* (n 18) [15.021].

<sup>69</sup> *Zim Integrated Shipping Services Ltd v Dafni Igal* [2010] 2 SLR 426, [24] (High Court, Singapore).

<sup>70</sup> *Total Network SL v Her Majesty's Revenue and Customs* [2008] 1 AC 1174, 1233 (House of Lords, United Kingdom); *VTB Capital plc v Nutritek International Corp* [2013] 2 AC 337, 344 (Supreme Court, United Kingdom).

<sup>71</sup> *Gatekeeper, Inc v Wang Wensheng (trading as Hawkeye Technologies)* [2011] SGHC 239, [6] (High Court, Singapore).

<sup>72</sup> *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637, [45] (Court of Appeal, Singapore).

<sup>73</sup> *Beckett Pte Ltd v Deutsche Bank AG* [2009] 3 SLR(R) 452 (Court of Appeal, Singapore).

<sup>74</sup> *ibid* [120].

<sup>75</sup> *Quah Kay Tee* (n 72).

there was no predominant purpose to injure the plaintiff, the claim of conspiracy by lawful means failed.<sup>76</sup>

### **Remedies**

In addition to recovery for monetary loss, the plaintiff may claim aggravated damages if the defendant acted with serious disregard of the plaintiff's rights, and any costs incurred in carrying out an investigation to uncover the conspiracy.<sup>77</sup>

## **G. THE TORT OF UNLAWFUL INTERFERENCE WITH TRADE OR BUSINESS**

The existence of the tort of unlawful interference with trade or business was recognised by the Court of Appeal in two cases, *Tribune Investment Trust Inc v Soosan Trading Co Ltd*<sup>78</sup> and *EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd*,<sup>79</sup> though the Court did not actually apply the tort in those cases. However, the tort has been applied by the High Court in *Paragon Shipping Pte Ltd v Freight Connect (S) Pte Ltd*<sup>80</sup> and *Wolero Pte Ltd v Lim Arvin Sylvester*.<sup>81</sup>

### **The Legal Test**

To establish the tort, the plaintiff must show that:<sup>82</sup>

- (a) The defendant has committed an unlawful act affecting a third party;
- (b) The defendant acted with an intention to injure the plaintiff; and
- (c) The defendant's conduct in fact resulted in damage to the plaintiff.

What constitutes an 'unlawful act' for the purpose of the tort remains unclear.<sup>83</sup> In *Wolero*, the High Court referred to a British case, *OBG Ltd v Allan*,<sup>84</sup> for guidance. The latter case held that an act is unlawful if it is intended to cause loss to the plaintiff by interfering with the freedom of a third party in a way which is unlawful as against that third party, and which is intended to cause loss to the plaintiff. Moreover, the act against the third party has to be actionable by that third party. However, the High Court in *Wolero* noted that this ambit is limited as it precludes criminal conduct and statutory offences.<sup>85</sup>

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<sup>76</sup> *ibid* [45].

<sup>77</sup> *Li Siu Lun v Looi Kok Poh* [2015] 4 SLR 667, [57]–[59] and [150] (High Court, Singapore).

<sup>78</sup> *Tribune Investment* (n 65) [15].

<sup>79</sup> [2014] 1 SLR 860, [71] (Court of Appeal, Singapore).

<sup>80</sup> [2014] 4 SLR 574, [83] (High Court, Singapore).

<sup>81</sup> [2017] 4 SLR 747, [60] (High Court, Singapore).

<sup>82</sup> *Paragon Shipping* (n 80) [83]; *Wolero*, *ibid* [62].

<sup>83</sup> *Wolero*, *ibid* [63]–[65].

<sup>84</sup> *OBG Ltd v Allan* [2008] 1 AC 1, [49] and [51] (House of Lords, United Kingdom).

<sup>85</sup> *Wolero* (n 95) [63].

### **Defences**

Similar to the tort of inducement of breach of contract, the defence of justification is available for the tort of unlawful interference with trade or business. While this defence has not been raised in such a context in Singapore, it has been acknowledged by the Court of Appeal of England and Wales in *Morgan v Fry*.<sup>86</sup> This is, however, subject to the requirement that there has to be an exceptional circumstance that constitutes justification for a third party to interfere with the contract.<sup>87</sup>

### **Remedies**

If damages are an adequate remedy for an act of unlawful interference with trade or business, then these will be awarded by the court.<sup>88</sup> However, if damages are inadequate, an injunction might then be granted.<sup>89</sup>

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<sup>86</sup> *Morgan v Fry* [1968] 2 QB 710, 729 (Court of Appeal, England and Wales).

<sup>87</sup> *SOS Kinderdorf International v Bittaye* [1996] 1 WLR 987, 944 (PC on appeal from Gambia).

<sup>88</sup> *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, 181 (Court of Appeal, England and Wales).

<sup>89</sup> Andrew Grubb and Ken Oliphant, 'Injunctions and other Remedies' in *The Law of Tort* (2nd edn, LexisNexis Butterworths 2007) [8.6].