The Missing Remedy

Why Some States Recognize Tortious Interference With Inheritance

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This article explains the elements of tortious interference with inheritance, examines its treatment in other jurisdictions, and discusses policy considerations for its adoption in Colorado.

In a May 2013 *Colorado Lawyer* article, authors Herb Tucker and Gregory Washington noted that appellate courts of several states had recognized the legal claim of tortious interference with inheritance, but that in Colorado, only federal courts had addressed the viability of the tort.[1] Thirteen years later, Colorado appellate courts still have not weighed in on this issue, while several more states have explicitly adopted the claim.

This article explains the elements of the tort, surveys the most recent case law from other jurisdictions, and analyzes statutes of limitations issues. It then considers why Colorado appellate courts might want to adopt the tort and provides a framework for doing so.

The Tort Explained: Elements and Foundations

In 1979, the *Restatement (Second) of Torts* (*Restatement*) described tortious interference with the right to inherit as follows: "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 the inheritance or gift."[2] Soon thereafter, many states adopted this cause of action.[3]

Conceptual Framework

The tort gained widespread attention during the high-profile Anna Nicole Smith litigation, which went all the way to the US Supreme Court twice. In *Marshall v. Marshall*, the Court cited to the *Restatement* § 774B and characterized tortious interference with inheritance expectancy as "widely recognized."[4]

The cause of action creates civil liability when a person intentionally and wrongfully prevents another from receiving an inheritance. It represents an extension of the well-established cause of action for intentional interference with contractual relations or prospective economic advantage. The reasoning for the tort is that just as tort law protects existing contractual relationships and business expectancies from wrongful interference by third parties, it logically should protect inheritance expectancies, which likewise represent economic interests.

Essential Elements

While formulations vary slightly across jurisdictions, courts generally require plaintiffs to prove five or six core elements to establish a claim for intentional interference with inheritance expectancy.[5]

Valid expectancy. The plaintiff must demonstrate a reasonable expectation of receiving an inheritance, which means more than hope but less than an otherwise enforceable right. Courts have found such a sufficient expectancy based on prior wills, promises, status as the natural object of the bounty of the decedent, or expressed intent.

Critically, an expectancy can exist even without a written instrument. Under the *Restatement* § 774B, comment b, an "'[i]nheritance' is used to include any devise or bequest that would otherwise have been made under a testamentary instrument or any property that would have passed to the plaintiff by intestate succession."[6] Courts have recognized that a person who is a natural object of the testator's bounty may have a sufficient expectancy even without documentary evidence.

Reasonable certainty. The plaintiff must prove with reasonable certainty that they would have received the inheritance but for interference. This requirement filters out speculative claims based merely on a close family relationship. The standard is higher than preponderance but doesn't require absolute proof.

Knowledge and intent. The defendant must have had knowledge of the plaintiff's expectancy and taken deliberate action to interfere with it. This element ensures that liability attaches only to intentional, knowing conduct rather than inadvertent interference. The defendant need not have been motivated by malice or ill will toward the plaintiff specifically; it suffices that the defendant intended to bring about the result (interference with the inheritance) even if motivated solely by self-interest rather than spite or other nefarious motives.

Independently tortious conduct. This element distinguishes wrongful interference from legitimate persuasion. The defendant's interference must have been accomplished through independently tortious means (i.e., conduct that is wrongful, if not actionable, independent of the mere fact that it interfered with an expectancy). Recognized tortious conduct includes (1) fraud or misrepresentation, (2) undue influence, (3) duress or coercion, (4) forgery or document fabrication, (5) destruction or suppression of testamentary documents, and (6) abuse of fiduciary duty.

Merely persuading a testator through legitimate means to change the estate plan, even if this results in disinheritance of another, does not constitute tortious interference. The law recognizes a testator's fundamental right to freedom of testation and the right of family members and others to express their views, preferences, and concerns. Liability arises only when persuasion crosses the line into legally cognizable wrongful conduct.

Causation. The defendant's tortious conduct must have caused the plaintiff to lose the expected inheritance.

Damages. The plaintiff must have suffered actual, quantifiable damages from the interference. Damages typically consist of the value of the lost inheritance or gift, which is calculated based on the property the plaintiff would have received. Courts may also award consequential damages (such as emotional distress damages in some jurisdictions) and punitive damages where the defendant's conduct was particularly egregious.[7] Because will contests are generally equitable (rather than legal) proceedings where punitive damages are unavailable, the availability of punitive damages in tort claims provides an important additional remedy in appropriate cases.

The Requirement of an Inadequate Probate Remedy

Many jurisdictions add a crucial limitation: the tort action is available only when the plaintiff lacks an adequate remedy in probate court.[8] This requirement reflects courts' concern about undermining the probate system's statutory framework and creating duplicative litigation. The rationale is that probate courts are specifically designed to address challenges to testamentary dispositions, with specialized procedures, heightened evidentiary standards, and statutory limitations periods. Allowing disappointed beneficiaries to bypass probate court by asserting tort claims could undermine these well-established safeguards.

However, courts have recognized numerous situations where probate remedies are inadequate such as:

1. when the plaintiff lacks standing to contest the will in probate (for example, unmarried partners, friends, or others not recognized as "interested persons" under probate statutes);
2. when the deadline for filing a will contest has expired, and the plaintiff was prevented from learning of the testator's death or the probate proceeding within the statutory period;
3. when the assets at issue are non-probate transfers (such as jointly held accounts, payable-on-death designations, beneficiary designations on retirement accounts or life insurance, or inter vivos transfers) that are not subject to will contest procedures;[9]
4. when the defendant's interference made it impossible to probate an earlier, more favorable will (for example, by destroying or suppressing the document); and
5. when the relief sought extends beyond what probate court can provide (such as recovery for lifetime transfers or damages from the individual wrongdoer).

California's approach in *Beckwith v. Dahl* illustrates this principle.[10] The court held that the tort action should be recognized "if it is necessary to afford an injured plaintiff a remedy" and emphasized that "a court should not take the drastic consequence of an absolute rule which bars recovery in all cases when a new tort cause of action can be defined in such a way so as to minimize the costs and burdens associated with it."[11]

State-By-State Adoption: The Current Landscape

Twenty states now recognize tortious interference with inheritance expectancy,[12] while 14 jurisdictions have declined to recognize the tort, citing concerns about circumventing probate jurisdiction and adequacy of existing remedies.[13] And 12 states—Alabama, Alaska, Arizona, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nevada, New Jersey, North Dakota, and Wyoming—have yet to address the issue.[14]

In four states—Colorado, Connecticut, New Hampshire, and South Carolina—federal courts or state trial courts have either expressly allowed the claim to proceed or predicted that the state appellate courts would adopt the tort if presented with the issue.

Colorado. While there are no published state appellate court decisions that discuss tortious interference with the right to inherit, federal courts have consistently recognized the cause of action under Colorado law. In 1951, in *McGregor v. McGregor*,[15] the US District Court for the District of Colorado cited cases from other jurisdictions that recognize the tort and commented that "[t]here is little, if any, dispute among the authorities that a person who had wrongfully deprived another of his just bequest under a will has perpetrated an actionable tort."[16] Several decades later, in *Lindberg v. United States*,[17] the Tenth Circuit assumed, for purposes of its decision, that Colorado state courts would adopt the cause of action and noted that "federal cases arising in Colorado have recognized the tort."[18]

Ten years later, in *In re Estate of Ritchie*, in an unpublished decision, a panel of the Colorado Court of Appeals held that "Colorado has not recognized the tort, and we decline to adopt it as a new rule of law."[19] Without providing an analysis, the court concluded that "Colorado's existing probate process sufficiently ensures proper distribution of probate and non-probate assets of the estate and provides for proper administration of the estate."[20]

The most recent Colorado federal case to address the claim of tortious interference with the right to inherit was the US district court in *Tripp v. Family Trust*.[21] Judge Babcock noted that, since the Colorado Supreme Court had not yet weighed in on this issue, the federal court's "determination of the governing substantive law must be predicated on an interpretation of how the state's highest court would construe the law if faced with similar facts and issues by considering all resources available, including decisions of other states and the general weight and trend of authority."[22] Judge Babcock further noted that, as an unpublished decision, *In re Estate of Ritchie* had no precedential value, and stated that "the Court in *Ritchie* acknowledged that other states and the Restatement (Second) of Torts recognize a claim for tortious interference with inheritance which weighs in favor of a finding that the Colorado Supreme Court would also recognize this claim if it was presented with the issue."[23]

Connecticut. In *Solon v. Slater*,[24] the Connecticut Supreme Court assumed, without deciding, that tortious interference with expected inheritance is a cognizable cause of action and emphasized that any interference must involve independent wrongdoing such as fraud, undue influence, or breach of fiduciary duty. A majority of Connecticut Superior Court judges have recognized the tort.[25]

In 2025, the Connecticut General Assembly considered HB 7142, "An Act Establishing a Cause of Action for Tortious Interference With the Right of an Inheritance." The bill would have codified the tort, provided a three-year limitations period, and authorized damages, costs, and reasonable attorney fees. The Judiciary Committee reported the bill favorably by a 31–8 vote, and it was placed on the House calendar. The bill did not receive a floor vote before the General Assembly adjourned on June 4, 2025, and therefore did not become law.[26]

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New Hampshire. In *Doyon v. Porter*,[27] the US District Court for the District of New Hampshire noted that the state supreme court had not yet addressed the topic, but held that the supreme court would adopt the tort of interference with inheritance if presented with the issue.[28]

South Carolina. In *Wellin v. Wellin*,[29] the US District Court for the District of South Carolina commented that prior statements from the South Carolina Supreme Court strongly suggested that it would adopt the tort of intentional inference with inheritance if called upon to decide the issue.[30]

Statutes of Limitations: A Critical Procedural Issue

One of the most litigated issues in intentional interference cases is determining when the statute of limitations begins to run. Unlike traditional torts where injury occurs at a specific moment, inheritance interference claims involve complex timing issues.

The Fundamental Question: When Does the Claim Accrue?

The tortious conduct (such as fraud or undue influence) typically occurs during the testator's lifetime, but the actual loss (disinheritance) cannot be known with certainty until the testator's death and the administration of the estate. Courts have adopted several different accrual rules, discussed below.

Date of testator's death. Some courts hold that the claim accrues when the testator dies, reasoning that until that moment, the plaintiff has suffered no actual injury because the testator could have changed the estate plan again.[31] Under this approach, the tortfeasor's conduct and the plaintiff's discovery of it are irrelevant to accrual.

Discovery of the interference. Other courts apply a discovery rule, holding that the claim accrues when the plaintiff discovers (or reasonably should have discovered) the interference.[32] This approach accounts for cases where the tortious conduct was concealed or where the plaintiff had no reason to investigate during the testator's lifetime.

Discovery of damages. Some jurisdictions hold that the claim does not accrue until the plaintiff discovers both the tortious conduct and the resulting damages. For example, in *McDougal v. Vecchio*, the Ohio Court of Appeals held that a claim for intentional interference with inheritance expectancy accrued when the plaintiff, through reasonable diligence, should have discovered the fraudulent conduct, which was when he took possession of his aunt's belongings and could have examined her estate planning documents.[33]

Completion of probate. A few courts have held that the claim does not accrue until the probate proceeding is completed, reasoning that until then, the extent of injury remains uncertain, and opportunities for probate remedies remain available.[34]

Applicable Statute of Limitations Period

States apply various limitations periods to intentional interference claims, depending on how they characterize the tort.

Fraud statutes (typically 2–4 years). Many states, including Florida and Ohio, apply fraud limitations periods when the interference involves fraudulent conduct.[35]

General tort statutes (typically 2–3 years). Some states apply general tort limitations periods.[36] These are often shorter than fraud statutes but may be subject to discovery rules that delay accrual.

Property recovery statutes (may provide a longer period than a will contest deadline). In the landmark Illinois decision in *Bjork v. O'Meara*,[37] the state supreme court held that intentional interference claims are governed by the statute of limitations for property recovery actions rather than the shorter will contest deadline. The court reasoned that the tort claim seeks damages (a property remedy) rather than invalidation of a testamentary instrument (the goal of will contests). This distinction can significantly benefit plaintiffs.

Probate-specific periods. Some courts have held that intentional interference claims are subject to the same deadlines as will contests, typically six months to three years after probate admission.[38]

Discovery Rule Applications

Many jurisdictions apply discovery rules that toll the statute of limitations until the plaintiff discovers, or reasonably should have discovered, the claim. Two common tolling doctrines are fraudulent concealment and equitable estoppel.

Fraudulent concealment. If the defendant actively concealed the tortious conduct, the statute of limitations may be tolled until the plaintiff discovers or should have discovered the concealment. Florida courts apply the discovery rule to inheritance interference cases involving fraud or undue influence.[39]

Equitable estoppel. When a party is misled or prevented from filing due to another's deceptive behavior, courts may apply equitable estoppel to prevent the defendant from asserting a limitations defense (e.g., where a plaintiff is unaware of a non-probate transfer).[40]

Relationship to Will Contest Deadlines

A critical question is whether filing (or failing to file) a will contest affects the statute of limitations for the tort claim. Courts have reached different conclusions.

Independent actions. Most courts treating the tort claim and will contest as independent actions apply separate limitations periods. Illinois, for example, explicitly holds that the will contest statute does not govern tort claims.[41]

Exhaustion requirements. Many states require plaintiffs to exhaust adequate probate remedies before filing tort claims. If a will contest would provide adequate relief, the plaintiff must pursue it within the probate deadline or be barred from later bringing a tort action.[42]

No second bite at the apple. Several jurisdictions bar tort claims when the plaintiff had an adequate opportunity to contest the will in probate but failed to do so within the statutory period.[43] The rationale is preventing disappointed beneficiaries from circumventing time limits designed to promote certainty in estate administration.

Policy Reasons for Adopting the Tort

In states that have adopted the tort, the fundamental policy justification for recognizing intentional interference with inheritance expectancy is that traditional probate remedies sometimes fail to provide adequate relief to wronged beneficiaries. The discussion below considers the validity of this policy argument in Colorado.

Inadequacy of Traditional Probate Remedies

Beneficiaries may face obstacles with regard to procedural issues and substantive relief under traditional probate remedies.

Standing limitations. Most states' probate codes restrict standing to contest wills and trusts to "interested persons."[44] In certain cases, individuals who may have had legitimate expectancies, including unmarried partners in long-term committed relationships, close friends and caregivers, charities, or stepchildren without formal adoption, lack standing to assert their rights. Denying them a tort claim for interference with right to inherit leaves them without any remedy, despite egregious and wrongful conduct by the tortfeasor.

Non-probate assets. A substantial and growing percentage of wealth transfers occur outside the probate system through mechanisms such as beneficiary designations on retirement accounts, life insurance policy beneficiary designations, payable-on-death bank accounts, joint tenancy with rights of survivorship, revocable living trusts, and inter vivos gifts.[45] In certain situations, will contest procedures cannot address wrongful interference with these non-probate transfers.[46] Without a tort remedy, such wrongdoing goes unremedied.

Limited remedies and relief. Probate proceedings generally provide only equitable remedies, typically invalidation of an instrument and distribution according to an earlier will or intestacy statutes. Probate courts generally cannot award punitive damages to punish particularly egregious conduct, compensatory damages for emotional distress, attorney fees and costs (except in limited circumstances), and recovery for lifetime transfers made under undue influence. Tort claims can provide these additional remedies, which may be essential to making the plaintiff whole and deterring future misconduct. The availability of punitive damages is particularly important given that wrongful interference with inheritance often involves reprehensible conduct toward vulnerable elderly persons.

Procedural barriers and timing issues. Interested persons may not discover a decedent's death, the probate proceeding, or evidence of wrongdoing until after contest deadlines have expired. In cases involving fraudulent concealment, the tortfeasor may deliberately delay notification to run out the clock on probate remedies. Additionally, the plaintiff

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may face strategic barriers in probate court. For instance, if the wrongdoer is serving as personal representative, the wrongdoer can control the estate's information and resources, potentially making it difficult to investigate the claim within tight deadlines.

Destruction or suppression of evidence. When a tortfeasor destroys or suppresses an earlier will or trust, probate remedies may be unavailable because there is no valid instrument to probate. While some jurisdictions allow probate of "lost" wills based on secondary evidence of their contents, this requires meeting demanding evidentiary standards. A tort claim may be the only viable avenue for relief in such cases.

Consistency With Colorado Tort Law Principles

Recognizing intentional interference with inheritance expectancy would align with well-established principles of Colorado tort law, as discussed below.

Interference with economic relations. Colorado has long recognized causes of action for tortious interference with contractual relations and prospective business advantage.[47] The Colorado Civil Jury Instructions provide detailed guidance on these torts, which share substantial conceptual similarities with interference with inheritance.[48] Both torts protect economic expectations from wrongful interference by third parties; both require proof of an expectancy, knowledge and intent, independently tortious conduct, causation, and damages. The primary distinction is the nature of the protected interest—contractual or business relationships versus inheritance expectations. There appears to be no principled basis for protecting the former while denying protection to the latter, particularly when inheritance expectations often represent more substantial economic interests. As the Maryland Court of Appeals has noted, "Logically, interfering with an expected inheritance is just a species of interference with economic expectancy . . . ."[49]

Protection of economic interests. Colorado tort law has demonstrated consistent willingness to protect legitimate economic interests and expectations from wrongful interference. Colorado recognizes tort claims for fraud and negligent misrepresentation causing economic loss, conversion of personal property, breach of fiduciary duty causing compensable financial harm, and civil conspiracy when two or more persons agree to commit an unlawful act that proximately causes damages.[50] Inheritance expectancies are similar. These are not speculative or attenuated interests, but rather concrete economic expectations based on the expressed or demonstrated intent of the property owner; tort law can provide a remedy when wrongful conduct defeats these expectations.

Deterrence of wrongdoing. A fundamental purpose of tort law is deterring harmful conduct through the threat of civil liability. Undue influence, fraud, and exploitation of vulnerable elderly persons are serious social problems that tort remedies can help prevent. By exposing wrongdoers to personal liability, including potential punitive damages, the tort creates meaningful disincentives for such conduct. Without a tort remedy, perpetrators face limited consequences. Probate remedies affect only the distribution of estate assets; they do not impose personal liability on the wrongdoer. An individual who successfully uses fraud or undue influence to obtain a larger inheritance may retain the benefits even if the probate court invalidates the procured instrument, particularly if the assets were transferred during the decedent's lifetime.

Limiting Principles Prevent Abuse

Courts that have rejected the tort often express concern about opening floodgates to speculative claims, undermining probate procedures, or chilling legitimate family discussions about estate planning. However, jurisdictions adopting the tort have developed restrictions and limitations that adequately address these concerns.

Reasonable certainty of expectancy. The requirement that plaintiffs prove reasonable certainty of the expectancy, not mere hope or desire, filters out speculative claims.[51] Courts reject claims based solely on the plaintiff being a potential heir, having a close relationship with the decedent, or expressing hope of receiving an inheritance.[52] Plaintiffs must present concrete evidence of the decedent's testamentary intent.

Independently tortious conduct. The requirement of independently wrongful conduct ensures that liability attaches only to fraud, duress, undue influence, and similar misconduct—not to legitimate persuasion or family discussions.[53]

Inadequate probate remedy. The limitation that tort claims are available only when probate remedies are inadequate prevents the tort from displacing or duplicating probate proceedings.[54] Plaintiffs with standing to bring timely will contests that would provide full relief must pursue those remedies. Claims for interference with the right to inherit fill gaps in the probate system rather than replace it.

Addressing Colorado's Complex Estates and Aging Population

Adopting the tort in Colorado could address some of Colorado's demographic and economic realities.

Complex family structures. Modern families often involve complex relationships, including second marriages, blended families, unmarried partnerships, and varied family structures. These complexities can create situations where intestacy statutes and traditional standing rules fail to align with the decedent's actual wishes or the legitimate expectations of partners, stepchildren, and others who lack formal legal status.

Aging population. As of 2023, there were more than 962,000 people in Colorado over the age of 65, and this is the fastest growing age group, increasing by almost 33,000 from 2022 to 2023.[55] Growth in the over 65 cohort makes up 91% of the growth in the state.[56] Older adults are disproportionately vulnerable to undue influence, fraud, and exploitation. The tort provides crucial protection for this vulnerable population and their true testamentary wishes.

Intergenerational wealth transfer. Colorado residents hold substantial wealth in real estate, business interests, retirement accounts, and other assets. The coming decades will see an unprecedented intergenerational wealth transfer as baby boomers pass estates to younger generations. This transfer creates both opportunities for wrongdoing and significant stakes that justify legal protection.

Non-probate asset prevalence. Estate planning increasingly relies on non-probate transfer mechanisms, such as revocable trusts, beneficiary designations, joint accounts, and transfer-on-death instruments.[57] As these mechanisms proliferate, the gap between probate court jurisdiction and the reality of asset transfers widens, making tort remedies essential.

Guidance From Federal Courts

The leading Colorado treatise on wills and trusts describes the tort of interference with the right to inherit as "well-established."[58] In 1998, a Colorado trial court allowed a claim for tortious interference with a contract to make a will proceed to a jury trial, although the claim was dismissed at the close of plaintiff's evidence.[59] And while Colorado state appellate courts have not addressed the issue, federal courts applying Colorado law have assumed the tort's existence. These decisions are not binding on Colorado courts, but they provide persuasive authority suggesting that recognition would align with Colorado law principles.

National Trend and Restatement Authority

The inclusion of § 774B in the *Restatement* reflects the considered judgment of legal scholars and practitioners that the tort serves important policy goals and aligns with tort law principles.[60] Colorado courts have historically looked to the *Restatement* for guidance on common law development.[61] The fact that a majority of states addressing the issue have recognized the tort demonstrates that this is not a novel or radical expansion of tort liability, but rather a mainstream legal development reflecting modern realities of family wealth, estate planning, and the need for comprehensive remedies.[62]

Potential Framework for Colorado Adoption

Below is a discussion of factors to consider for a potential version of the tort in Colorado.

Elements

Based on the *Restatement* and the most thoughtful decisions from other jurisdictions, below are key elements most consistent with Colorado law and public policy.

- The plaintiff had a reasonable expectancy of receiving an inheritance, bequest, or gift from a third person (the decedent/donor).
- The defendant had knowledge of the plaintiff's expectancy.
- The defendant intentionally interfered with the expectancy by taking deliberate action directed at the decedent/donor.
- The defendant's interference involved independently tortious conduct such as fraud, undue influence, duress, coercion, abuse of fiduciary duty, forgery, destruction of testamentary documents, or other wrongful acts.
- The plaintiff can prove with reasonable certainty that the expectancy would have been realized but for the defendant's interference.
- The plaintiff suffered actual damages as a result of the interference.
- The plaintiff lacks an adequate remedy in probate court or through other legal proceedings.

Statute of Limitations

The general two-year personal injury statute of limitations found in CRS § 13-80-102(1)(a), with accrual delayed under discovery rule principles until the plaintiff knew or should have known of the interference and resulting injury, balances the need for reasonable time to discover claims (which may not become apparent until after the decedent's death and administration of the estate) with the interest in resolving claims with reasonable promptness.

Importantly, the limitations period for tort claims should run independently from probate contest deadlines. A plaintiff's failure to contest a will or a trust within the time frame prescribed by the applicable statutes (CRS § 15-12-108, § 15-12-412, and § 15-5-604) should not automatically bar a tort claim, though it may be relevant to whether probate remedies and the availability of discovery were adequate.

Relationship to Probate Proceedings

To address concerns about conflicting with probate proceedings, Colorado courts could follow the California approach set forth in *Beckwith*: the tort would be available when probate remedies are inadequate or unavailable but would not displace probate proceedings when those proceedings can provide full relief. Inadequate probate remedies include situations where (1) the plaintiff lacks standing to contest in probate court; (2) probate contest deadlines have expired through no fault of plaintiff; (3) the relief sought (such as punitive damages or recovery for lifetime and non-probate transfers) is unavailable in probate; (4) the defendant's tortious conduct destroyed or made unavailable evidence necessary for probate contest.

When a plaintiff has both adequate probate remedies and a potential tort claim, Colorado courts should require exhaustion of probate remedies before pursuing the tort claim or, at minimum, should allow probate and tort proceedings to proceed concurrently with res judicata effect given to findings in the probate proceeding on overlapping factual issues.

Conclusion

Most states that have addressed the issue have recognized claims for tortious interference with inheritance expectancy. Courts have refined the tort's elements to prevent abuse while ensuring it serves its essential purpose: providing relief when wrongdoers use fraud, undue influence, or other tortious means to deprive beneficiaries of inheritances, and when traditional probate remedies are inadequate, such as in the gift or non-probate transfer context.

For decades, Colorado has recognized causes of action for tortious interference with contractual relations and prospective business advantage. As the North Carolina Supreme Court has commented, "If the plaintiff can recover against the defendant for the malicious and wrongful interference with the making of a contract, we see no good reason why he cannot recover for the malicious and wrongful interference with the making of a will."[63]

Colorado's common law has long evolved to address changing social conditions and provide remedies for wrongs not adequately addressed by existing legal frameworks. The tort of intentional interference with inheritance expectancy represents precisely such a development: a measured expansion of established tort principles to address a real problem in modern estate and trust litigation. With carefully developed limitations to prevent abuse and speculative claims, adoption of the tort could address numerous public policy concerns.


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NOTES

1. Tucker and Washington, "Tortious Interference With Inheritance," 42 *Colo. Law.* 59 (May 2013).

2. *Restatement (Second) of Torts* § 774B (American Law Institute 1979) (hereinafter *Restatement*).

3. *See, e.g.*, *Cyr v. Cote*, 396 A.2d 1013 (Me. 1979) ("[W]ith a frequency that approaches a general rule of law, courts have recognized an independent action for the wrongful interference with an intended bequest."); *Barone v. Barone*, 294 S.E.2d 260 (W.Va. 1982).

4. *Marshall v. Marshall*, 547 U.S. 293, 312 (2006). The Anna Nicole Smith litigation also involved a second US Supreme Court decision five years later. *See Stern v. Marshall*, 564 U.S. 462 (2011).

5. *Halperin v. Halperin*, 341 Cal.Rptr.3d. 230 (Cal.Ct.App. 2026).

6. *Restatement* § 774B cmt. b.

7. *Huffey v. Lea*, 491 N.W.2d 518, 520 (Iowa 1992) (recognizing that remedies for tortious interference with inheritance "include recovery of damages for pecuniary loss, consequential loss and emotional distress"); *In re Est. of Boman*, 898 N.W.2d 202 (Iowa Ct.App. Feb. 8, 2017) (table) (upholding jury award of punitive damages totaling $177,514.58 where court found "actual malice" based on sisters' "callous, intentional decision" to keep father's death secret from brother, preventing him from attending funeral, in addition to exerting undue influence to disinherit him).

8. *See Beckwith v. Dahl*, 141 Cal.Rptr.3d 142 (Cal.Ct.App. 2012); *Halperin*, 341 Cal.Rptr.3d. 230.

9. *In re Est. of Jeziorski*, 516 N.E.2d 422, 426 (Ill.App. 1987) (holding that where plaintiff alleges fraudulently induced inter vivos transfers depleting the probate estate, a will contest will not provide adequate relief).

10. *Beckwith*, 141 Cal.Rptr.3d 142.

11. *Id.* at 156 (citation modified).

12. **California:** *Beckwith*, 141 Cal.Rptr.3d 142; *Dini v. Dickinson*, No. H051147, 2025 Cal. App. Unpub. LEXIS 199 (Cal.App. Jan 15, 2025); **Florida:** *Mulvey v. Stephens*, 250 So.3d 106 (Fla.App. 2018); **Georgia:** *Ford v. Reynolds*, 726 S.E.2d 687 (Ga.App. 2012); *Chambers v. Edwards*, 878 S.E.2d 276 (Ga.App. 2022); **Illinois:** *Bjork v. O'Meara*, 986 N.E.2d 626 (Ill. 2013); **Indiana:** *Keith v. Dooley*, 802 N.E.2d. 54 (Ind.App. 2004); *Salmon v. Tafelski*, 235 N.E.3d 867 (Ind.App. 2024); **Iowa:** *Frohwein v. Haesemeyer*, 264 N.W.2d 792 (Iowa 1978); *Buboltz v. Birusingh*, 962 N.W.2d 747 (Iowa 2021); **Maine:** *Morrill v. Morrill*, 712 A.2d 1039 (Me. 1998); *Cote v. Cote*, 143 A.3d 117 (Me. 2016); **Maryland:** *Barclay v. Castruccio*, 230 A.3d 80 (Md. 2020); **Massachusetts:** *Labonte v. Giordano*, 687 N.E.2d 1253 (Mass. 1997); **Missouri:** *Hammons v. Eisert*, 745 S.W.2d 253 (Mo.App. 1988); *Backer v. Backer*, 705 S.W.3d 632 (Mo.App. 2025); **New Mexico:** *Doughty v. Morris*, 871 P.2d 380 (N.M.App. 1994); **North Carolina:** *Bohannon v. Wachovia Bank & Tr. Co.*, 188 S.E. 390 (N.C. 1936); *Murrow v. Henson*, 616 S.E.2d 664 (N.C.Ct.App. 2005); **Ohio:** *Firestone v. Galbreath*, 616 N.E.2d 202 (Ohio 1993); *Vondrasek v. Heiss*, 249 N.E.3d 412 (Ohio Ct.App. 2024); **Oregon:** *Allen v. Hall*, 974 P.2d. 199 (Ore. 1999); **Pennsylvania:** *Marshall v. DeHaven*, 58 A. 141 (Pa. 1904); *Fielder v. Spencer*, 231 A.3d 831 (Pa.Super.Ct. 2020); *Vogel v. Vogel*, 258 A.3d 513 (Pa.Super. Ct. 2021). Pennsylvania's version is narrower than the *Restatement* formulation and applies primarily when tortious conduct prevents execution of a will; **Rhode Island:** While the Rhode Island Supreme Court has not yet ruled on the issue, a Rhode Island Superior Court allowed the claim in *Ams. for Life v. Legion of Christ N. Am., Inc.*, C.A. PC-2016-2900, 2017 R.I. Super. LEXIS 98 (R.I.Super. Jan. 4, 2017); **Utah:** *In re Osguthorpe*, 491 P.3d 894 (Utah 2021); **Vermont:** The Vermont Supreme Court has not yet explicitly addressed the issue, but three Vermont trial courts have recently allowed the claim. *Lagasse v. Lord*, No. 24-CV-03626, 2025 Vt. Super. LEXIS 32 (Vt.Super.Ct. Feb. 28, 2025); *Dewdney Duncan* No. 22-CV-00692, 2024 Vt. Super. LEXIS 23 (Vt.Super. Ct. Feb. 15, 2024); Entry Regarding Motion, *Inouye v. Est. of McHugo*, No. 21-CV-00327 (Vt.Super.Ct. Nov. 17, 2021); **West Virginia:** *Barone v. Barone*, 294 S.E.2d 260 (W.Va. 1982); *Hood v. Hood*, No. 22-0214, 2023 W.Va. LEXIS 422 (W.Va. Nov. 3, 2023); **Wisconsin:** *Tikalsky v. Friedman*, 928 N.W.2d 502 (Wis. 2019).

13. **Arkansas:** *Jackson v. Kelly*, 44 S.W.3d 328 (Ark. 2001) **Delaware:** *Moore v. Graybeal*, 550 A.2d 35 (Del. 1988); *In re Megenthaler*, 2020-0804-MTZ (Del.Ch. Sep 4, 2024); **Hawaii:** *Young v. Van Buren*, 310 P.3d 1050 (Haw.App. 2010); **Idaho:** *Nelson v. Nelson*, 508 P.3d 301 (Idaho 2022); **Kansas:** *Ast v. Mesker*, 480 P.3d 795 (Kan.App. 2020); **Kentucky:** *Whitis v. Meece*, No. 2019-CA-695, 2021 Ky. App. Unpub. LEXIS 41 (Ky.Ct.App. Jan. 22, 2021); **Nebraska:** *Manon v. Orr*, 856 N.W.2d 106 (Neb. 2014); *Litherland v. Jurgens*, 869 N.W.2d 92 (Neb. 2015); **New York:** *Vogt v. Witmeyer*,

665 N.E.2d 189 (N.Y. 1996); **Oklahoma:** *Kirtley v. Kirtley*, 567 P.3d 400 (Okla.Civ.App. 2025); **South Dakota:** *Briggs v. Briggs*, 931 N.W.2d 510 (S.D. 2019); **Tennessee:** *Stewart v. Sewell*, 215 S.W.3d 815 (Tenn. 2007); **Texas:** *Archer v. Anderson*, 556 S.W.3d 228 (Tex. 2018); **Virginia:** *Economopoulos v. Kolaitis*, 528 S.E.2d 714 (Va. 2000); **Washington:** *In re Est. of Lowe*, 361 P.3d 789 (Wash.App. 2015).

14. In *Garruto v. Cannici*, 936 A.2d 1015 (N.J.Super. 2007), the Appellate Division of the Superior Court of New Jersey discussed the tort and declined to allow it under the specific facts of the case but did not hold that the claim was not viable in all circumstances. In *Kibbee v. First Interstate Bank*, 242 P.3d 973, 992 (Wyo. 2010), the Wyoming Supreme Court declined to consider the issue based on the record from the trial court ("We find the record before us to be insufficient to allow us to undertake the careful and deliberate analysis required to warrant adoption of a new tort."). Similarly, in *Hauck v. Seright*, 964 P.2d 749 (Mont. 1998), the Montana Supreme Court declined to address the issue on the facts presented ("[W]e need not address whether tortious interference with an expectancy will be recognized as a cause of action in Montana.").

15. *McGregor v. McGregor*, 101 F.Supp. 848 (D.Colo. 1951).

16. *Id.* at 849–50.

17. *Lindberg v. United States*, 164 F.3d 1312 (10th Cir. 1999).

18. *Id.* at 1319.

19. *In re Est. of Ritchie*, No. 08CA0471, slip op. at 24 (Colo.App. Sept. 3, 2009).

20. *Id.* at 23.

21. *Tripp v. Fam. Tr.*, No. 20-cv-02012, 2021 U.S. Dist. LEXIS 231986 (D.Colo. Feb. 17, 2021).

22. *Id.* at *12.

23. *Id.* at *13.

24. *Solon v. Slater*, 287 A.3d 574 (Conn. 2023).

25. *Reich v. Reich*, No. X03-CV-21-614841-S, 2025 Conn. Super. LEXIS 2482 (Conn.Super. Ct. Sept. 8, 2025); *Patch Hill, LLC v. Lewitz*, No. KNL-CV20-6044243-S, 2025 Conn. Super. LEXIS 2794 (Conn.Super.Ct. Oct. 10, 2025) (noting that "a majority of the judges of the Superior Court have recognized the viability of this cause of action").

26. Conn. HB 7142, 2025 Gen. Assemb., Reg. Sess. (Conn. 2025) (file no. 805); Connecticut General Assembly, Office of Legislative Research, Bill Analysis for HB 7142, at 1–2 (Apr. 29, 2025).

27. *Doyon v. Porter*, No. 18-cv-1128, 2019 U.S. Dist. LEXIS 105916 (D.N.H. June 25, 2019).

28. *Id.* at *9–10.

29. *Wellin v. Wellin*, 135 F.Supp.3d 502 (D.S.C. 2015).

30. *Id.* at 513.

31. *In re Est. of Tensfeldt*, 839 So.2d 720 (Fla.2d DCA 2003); *Claveloux v. Bacotti*, 778 So.2d 399 (Fla.2d DCA 2001).

32**.** *Burdzel v. Sobus*, 750 A.2d 573 (Me. 2000).

33. *McDougal v. Vecchio*, No. 98003, 2012 Ohio App. LEXIS 3763 (Ohio Ct.App. Sept. 20, 2012).

34. *Youngblut v. Youngblut*, 945 N.W.2d 25 (Iowa 2020).

35. *Flanzer v. Kaplan*, 230 So.3d 960 (Fla.2d DCA 2017) (holding that undue influence claims in estate disputes are founded on fraud and subject to discovery rule under Fla. Stat. § 95.031(2)(a)); *McDougal*, 2012 Ohio App. LEXIS 3763.

36. *Sacks v. Dissinger*, 178 N.E.3d 388 (Mass. 2021) (holding that intentional interference with an expectancy claim is subject to the three-year statute of limitations prescribed by the state's general tort statute of limitations).

37. *Bjork v. O'Meara*, 986 N.E.2d 626 (Ill. 2013).

38. *Robinson v. First State Bank of Monticello*, 454 N.E.2d 288 (Ill. 1983).

39. *Flanzer*, 230 So.3d at 963–64 (holding that undue influence claims are "founded upon fraud" and subject to discovery rule).

40. *Baptist Hosp. of Miami, Inc. v. Carter*, 658 So.2d 560, 563 (Fla.3d DCA 1995) (noting that fraud or misrepresentation that misleads a claimant into a justified failure to assert his rights bars reliance on a statute of limitations).

41. *See In re Est. of Ellis*, 923 N.E.2d 237, 241–42 (Ill. 2009) (holding that tort claim is not a "petition to contest the validity of the will"). However, courts may still bar tort claims on other grounds when adequate probate remedies were available but not pursued. *Id.* at 242.

42. *See Minton v. Sackett*, 671 N.E.2d 160, 162 (Ind.Ct.App. 1996) (tort unavailable where will contest remedy available and adequate); *DeWitt v. Duce*, 408 So.2d 216, 219–20 (Fla. 1981) (tort claim barred where plaintiffs had notice and opportunity to contest will in probate but failed to do so).

43. *McMullin v. Borgers*, 761 S.W.2d 718, 719–20 (Mo.Ct.App. 1988); *DeWitt*, 408 So.2d at 218.

44. CRS § 15-12-201(27).

45. Langbein, "The Nonprobate Revolution and the Future of the Law of Succession," 97 *Harv. L. Rev.* 1108 (1984) ("The popular demand for probate avoidance has coincided with a fundamental change in the nature of wealth. Most property now takes the form of claims on financial intermediaries, who can easily transfer account balances on death, without court proceedings.").

46. *In re Est. of Jeziorski*, 516 N.E.2d at 426.

47. *Amoco Oil Co. v. Ervin*, 908 P.2d 493, 500 (Colo. 1995) (recognizing both the torts of intentional interference with a contractual relationship and intentional interference with a prospective business relation); *Wasalco, Inc. v. El Paso Cnty.*, 689 P.2d 730 (Colo.App. 1984).

48. *See* CJI-Civ., ch. 24 (Intentional Interference With Contractual Obligations).

49. *Barclay v. Castruccio*, 230 A.3d 80 (Md. 2020).

50. *See Van Rees v. Unleaded Software, Inc.*, 2016 CO 51, ¶¶ 10–19; *Harris Group, Inc. v. Robinson*, 209 P.3d 1188, 1192, 1201–03, 1216–18 (Colo.App. 2009); *In re Taylor*, 2016 COA 100, ¶¶ 14–24; *Jet Courier Serv., Inc. v. Mulei*, 771 P.2d 486, 502 (Colo. 1989).

51. *See Firestone v. Galbreath*, 616 N.E.2d 202, 203 (Ohio 1993) (adopting comment d requirement for reasonable certainty).

52. *Morrill*, 712 A.2d at 1041 (plaintiff must prove "source, nature and extent" of expectancy beyond mere parent-child relationship).

53. *Restatement* § 774B cmt. c ("[O]ne who by legitimate means merely persuades a person to disinherit a child and leave the estate to the persuader instead is not liable to the child.").

54. *DeWitt*, 408 So.2d at 218–19 (Fla. 1981) (holding that "[t]he rule is that if adequate relief is available in a probate proceeding, then that remedy must be exhausted before a tortious interference claim may be pursued" to prevent tort actions from constituting an "impermissible collateral attack on the probate proceedings").

55. Colorado Department of Local Affairs, *State Demography Office 2023 Population Summary* 4 (Jan. 15, 2025).

56. *Id.*

57. Kirch, "A Donor's Rights to Disposition of Assets Versus Undue Influence Protection," 39 *Colo. Law.* 47 (Oct. 2010).

58. Wade, *Colorado Law of Wills, Trusts & Fiduciary Administration* § 4.27 (Tortious Interference With Inheritance) (9th ed. CBA-CLE 2019).

59. *Murphy v. Glenn*, 964 P.2d 581, 584 (Colo. App. 1998).

60. Published in 2020, the *Restatement (Third) of Torts* § 19 provides an update from the *Restatement* § 774B and lists the following as elements of the claim: (a) the plaintiff had a reasonable expectation of receiving an inheritance or gift, (b) the defendant committed an intentional and independent legal wrong, (c) the defendant's purpose was to interfere with the plaintiff's expectancy, (d) the defendant's conduct caused the expectancy to fail, and (e) the plaintiff suffered economic damages as a result.

61. *See Amoco Oil Co.*, 908 P.2d at 500 (adopting *Restatement* § 767); *White v. Muniz*, 999 P.2d 814, 821 (Colo. 2000) (applying *Restatement* definition of intent); *Mem. Gardens, Inc. v. Olympian Sales & Mgmt. Consultants, Inc.*, 690 P.2d 207, 210 (Colo. 1984).

62. *See* Dobbs et al., *The Law of Torts* § 642 (2d ed. West 2011) ("Most courts addressing the issue have recognized a cause of action against defendants who prevent the plaintiff from receiving an inheritance or gift she would otherwise have received, provided the defendant uses undue influence, duress, or tortious means such as fraud or murder.").

63. *Bohannon*, 188 S.E. at 394.