

ABSTRACT

" A violation of legal right committed knowingly is a cause of action, and that it is a violation of legal right to interfere with contractual relations recognised by law if there be no justification for the interference. "

" Acts of a third party lawful in themselves do not constitute actionable interference with contractual rights merely because they bring about a breach of contract, even if they were done with the object and intention of bringing about such a breach. "

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INTRODUCTION

With the rapid development of the industrial law, it becomes increasingly necessary for the workers, employers and for respective unions to be afforded the long due recognition and freedom in carrying out their activities. Raja Azlan Shah F.J (as he then was), in delivering the judgement of the Federal Court in Non-Metallic Mineral Products Manufacturing Employees Union & Ors v. South East Asia Fire Bricks Sdn Bhd¹ stated that "...workers' organisations cannot exist if workers are not free to join them, to work for them and to remain in them. This is a fundamental right which is enshrined in our Constitution and which expresses the aspirations of the workmen".

Any lack of recognition will result in strained relationship between the employer and his employees, which will consequently affect national productivity and economy.

However, whatever recognition and freedom which is due must be balanced with the interest of the industry concerned. Unrestrained recognition of the freedom to carry out trade union activities may cause more harm than good. These activities might come in the form of pickets, go-slow, work-to-rule and the most common of all, strikes, all of which are otherwise known as industrial actions.

But in whatever form these industrial actions come, it sometime entails the Union encouraging or soliciting absence from work which results in the breach of contract of either employment or service. Such actions have been aptly termed by the Courts as interference with contracts. Liability for such interference depends on whether it was lawful or unlawful.

Time and again trade unions have been accused of unlawfully interfering with the business of the industry. The question remains as to what acts amount to unlawful interference? It is the object of this research paper to answer this question and also to trace the history and development of the tort of interference.

Chapter I deals explicitly with the historical origin of this branch of the law of Tort. It traces the Tort back to as early as 1853 in Lumley v. Gye² where the law was scrutinised in the House of Lords in Allen v. Flood³ in 1898. The long due affirmation however came in 1901 in Quinn v. Leatham.⁴

Chapter II list down all the acts that amount to interference. It is somewhat important to note that liability is only attached to unlawful interference. As in

the words of Jenkins L.J (as he then was) in Thomson v. Deakin⁵ "...acts of a third party, lawful in themselves do not constitute an actionable interference with contractual relations."

Chapter III describes the application of the Tort in England. There the law is governed by section 3 of the English Trade Disputes Act (1906), from which section 21 of the Malaysian Trade Unions Act (1959) originates. This Trade Disputes Act was the result of the Taff Vale affair in 1900, where the House of Lords held that a trade union could be sued in Tort and its funds be made available by way of damages. The Act breathes life again into trade unions by conferring vast immunities from civil actions.

The law in Section 21 of the Malaysian Trade Unions Act (1959) speaks no different from the Trade Disputes Act (1906). The interesting aspect of these two sections is the way in which both of them were broken down into two limbs...ie...limb 1 deals with inducement to breach a contract, whilst limb 2 deals with interference with trade, business or employment... The reasonable inference which can be drawn here is that since limb 1 protects only inducement of contract, limb 2 therefore cannot protect against any other interference except interference with contractual relations.