



TORTIOUS INTERFERENCE WITH INHERITANCE: IS IT A BRAVE NEW WORLD IN CALIFORNIA?

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The recognition in *Beckwith v. Dahl*¹ for the first time in California of the tort of intentional interference with expected inheritance (IIEI) raises the question whether traditional probate disputes will be transformed into civil actions involving jury trials and large punitive damage awards. Cognizant of this concern, the Court of Appeal for the Fourth District in *Beckwith v. Dahl* limited IIEI to those who have no remedy in the probate courts. In other words, IIEI is intended to fill a void the probate courts cannot. Despite this limitation, the precise reach and applicability of IIEI will be the subject of controversy in California for years to come.

To gain a better understanding of how this new tort action may unfold in California, the author will introduce the topic of IIEI in this article by explaining the circumstances that led to the Court's decision to recognize IIEI in California. In the next issue of the *Quarterly*, the author will analyze how courts in other states have applied the elements of IIEI to different factual scenarios in order to explore the nature and quantum of proof that may be required to establish liability, and the potential reach of California's new tort, despite the Court of Appeal's efforts to limit the application of IIEI. Nonetheless, the author believes that a "cliff hanger" that leaves the reader without any of the benefit of the second part to this series is unfair. Thus, the author will also explain in this article the facts and circumstances of a famous case of IIEI, applying the law of Texas.

I. IN IIEI, THE ESTATE REMAINS INTACT, WHILE THE ATTACK IS ON THE DEFENDANT

The fundamental difference between a will or trust contest, on the one hand, and IIEI, on the other, may be described by the difference between *in rem* and *in personam* jurisdiction. The probate court has *in rem* jurisdiction, or jurisdiction over the property.² The probate court's orders determine the rights in the property and are binding on all persons who might claim an interest in the property.³ The probate court determines the validity and construction of the instruments governing the disposition of the property, and makes orders, where appropriate, concerning the same.⁴ A will or trust contest challenges the validity of the instrument that operates to dispose of the property and impacts all those with an interest in the property under that instrument.⁵ In probate, an "interested person"⁶ petitions the court to make orders affecting the property, and similarly, an interested person objects to such petitions.

By contrast, IIEI is an action that implicates the court's *in personam* jurisdiction and is initiated by a complaint from the plaintiff that seeks money damages personally against the defendant. After trial, the court will enter judgment that will have no effect on anyone other than the plaintiff and the defendant. The judgment need not affect ownership of the property or affect any of the testamentary instruments that may govern its disposition. A successful IIEI plaintiff will enforce her judgment against the defendant personally, without altering the disposition of the decedent's estate.

For example, assume Mary is one of five beneficiaries under a valid will. Assume further that Jane sues Mary for IIEI alleging that Mary by fraud interfered in Jane's expectancy of inheritance from Cynthia. The probate court would enter an order distributing the estate to Mary and the other beneficiaries. Jane's IIEI action has no bearing on that process. But if Jane succeeds on her IIEI claim, the court will enter a judgment against Mary for the damages Jane sustained as a result of Mary's conduct. Of course, when Jane collects on her judgment, she may collect from assets Mary inherited from the estate, but that is beside the point.

II. POLICY DRIVES THE ADOPTION OF IIEI

IIEI has been recognized by 25 states (prior to California) of the 42 that have considered doing so.⁷ The lack of universal adoption appears rooted in the tension between freedom of contract (or testation) and the protection of people based on status.⁸ This tension is aptly summarized by the following saying: "We may say that the movement of the progressive societies has hitherto been a movement from Status to Contract . . ."⁹

While this may be true, this observation might find resistance in probate court, an institution that still holds status in high regard.¹⁰ Despite the belief in the freedom of the individual to devise her estate according to whim, the law continues to protect people based upon status in many significant and important ways.¹¹ For example, one becomes an intestate heir by birth (and legislative fiat), not by the testator's choosing. Assume the court rejects a will for failure to comport with statutory execution requirements, causing the estate to pass by intestacy. The court will order the administrator to distribute the estate to intestate heirs whom the testator perhaps never intended to benefit at all.

Nevertheless, probate law will not always protect persons based upon their particular status. The tension seen in the decisions across the country as to validating a tort of IIEI is the tension between freedom of testation and the protection of a status: in the case of IIEI, the status of a person claiming an "expectancy" to an inheritance. The California courts have resisted the pleas of such persons until now. In *Beckwith v. Dahl*, Brent Beckwith ("Beckwith") had no status in probate court to seek to protect his expectation of inheritance from Marc MacGinnis ("MacGinnis"). Beckwith and MacGinnis were not married (same-sex couples cannot legally



marry in California),¹² and were not registered domestic partners. Based upon the following facts, the Court of Appeal determined that it was time for California to recognize the tort of IIEI.

III. *BECKWITH V. DAHL* VALIDATES IIEI IN CALIFORNIA

A. The Facts of *Beckwith v. Dahl*

In *Beckwith v. Dahl*, Beckwith and MacGinnis were in a long-term, committed relationship, but were neither married nor registered as domestic partners. MacGinnis had one living relative, a sister, Susan Dahl (“Dahl”). According to the Court’s opinion, MacGinnis was estranged from Dahl.¹³ MacGinnis at some point showed a will he had saved on his computer to Beckwith, which would have devised MacGinnis’s estate half to Beckwith and half to Dahl.¹⁴ MacGinnis never printed the will from his computer and never signed it.¹⁵

In May 2009, while MacGinnis was hospitalized, he asked Beckwith to locate the will and print it so MacGinnis could sign it.¹⁶ Beckwith went to the couple’s home and searched without success for the will.¹⁷ When Beckwith could not locate the will on MacGinnis’s computer, MacGinnis asked Beckwith to draft a new will that MacGinnis could sign.¹⁸ Beckwith downloaded a form from the Internet and filled in the form to provide that Beckwith and Dahl would share the estate equally.¹⁹

Before presenting the will to MacGinnis for his signature, Beckwith called Dahl to tell her about the will and Beckwith then emailed the will to Dahl.²⁰ In response, Dahl emailed Beckwith:

I really think we should look into a Trust for [MacGinnis]. There are far less regulations and it does not go through probate. The house and all property would be in *our names* and if something should happen to [MacGinnis] *we* could make decisions without it going to probate and the taxes are less on a trust rather than the normal inheritance tax. I have [two] very good friends [who] are attorneys and I will call them tonight.²¹

Beckwith called Dahl to discuss the details of the trust, and Dahl told Beckwith not to present the will to MacGinnis, because she would have her friends draft the trust for MacGinnis to sign “in the next couple of days.”²² In reliance, Beckwith did not present the will to MacGinnis.²³

Two days later, MacGinnis had surgery. The doctors informed Dahl that MacGinnis might not survive the surgery, but the doctors could not discuss the matter with Beckwith because he had no legal status with respect to MacGinnis.²⁴ Dahl did not tell MacGinnis what she had been told by the doctors about the risks associated with the surgery.²⁵ After the surgery, the doctors placed MacGinnis on a ventilator and his prognosis worsened.²⁶ Six days later, following the recommendation of the doctors, Dahl authorized hospital

personnel to remove MacGinnis from the ventilator and he died in June 2009.²⁷

Dahl never provided any trust documents to MacGinnis. He died intestate.²⁸ Beckwith suggested to Dahl that they find the will that Beckwith had prepared, but Dahl said “we don’t need a will.”²⁹ Dahl subsequently opened a probate administration of MacGinnis’s estate.³⁰ Dahl informed Beckwith of the probate administration, but did not send him any of the probate filings, and did not identify Beckwith as an interested person in those filings.³¹

In September 2009, Beckwith began asking Dahl about the status of the estate, but Dahl responded that she did not know anything because she had not been in contact with the probate attorney.³² On October 2, 2009, Beckwith looked up the case online, and emailed Dahl about the probate administration and about receiving “*our proceeds* from the estate.”³³

Dahl did not respond.³⁴ Beckwith emailed Dahl again on December 2, 2009, asking if Dahl needed any information from Beckwith regarding the distribution of MacGinnis’s assets.³⁵ Dahl did not respond.³⁶ Beckwith emailed Dahl again on December 18, 2009, inquiring about the status of the probate proceedings.³⁷ This time Dahl responded: “Because [MacGinnis] died without a will, and the estate went into probate, I was made executor of his estate. The court then declared that his assets would go to his only surviving family member which is me.”³⁸

B. The Procedural Posture of *Beckwith v. Dahl*

In January 2010, Dahl filed a petition for final distribution of the estate to herself.³⁹ Beckwith filed opposition and appeared *pro se* at the hearing.⁴⁰ The court granted the petition, despite Beckwith’s opposition, on the grounds that he had no standing.⁴¹

In July 2010, Beckwith filed a complaint against Dahl alleging IIEI, deceit by false promise, and negligence. Beckwith alleged that Dahl interfered with Beckwith’s expected inheritance to one-half of the estate by lying to him about her intention to prepare a trust, and that she made the false promise that she intended to prepare a trust in order to cause sufficient delay to prevent MacGinnis from signing his will, knowing that if MacGinnis died before he executed the will, she would inherit the entire estate.⁴² Beckwith alleged that he reasonably relied on Dahl’s promise and because Beckwith had no standing in probate court, he had no remedy other than this action.⁴³

Dahl demurred to all three causes of action in the complaint.⁴⁴ She demurred to the cause of action for IIEI on the grounds that California does not recognize such a tort.⁴⁵ She demurred to the cause of action for fraud by asserting that the alleged promises were too vague to be actionable and damages were not caused by those promises because Beckwith had no vested right in the estate.⁴⁶ Dahl demurred to the negligence claim by arguing that Beckwith failed to plead that Dahl had a duty to Beckwith or that there was causation resulting in his alleged damages.⁴⁷



The court sustained the demurrer to all three causes of action without leave to amend, and with respect to IIEI, the court explained that it could not recognize a new tort, as that is an appellate decision.⁴⁸ Beckwith appealed.

C. The Appeal in *Beckwith v. Dahl*

1. *The Court Takes a Balanced Approach to Recognition of IIEI*

The Court of Appeal noted that California had not recognized IIEI as a tort. “However, the law of torts is anything but static, and the limits of its development are never set. When it becomes clear that the plaintiff’s interests are entitled to legal protection against the conduct of the defendant, the mere fact that the claim is novel will not of itself operate as a bar to a remedy.”⁴⁹

The question, then, was whether California should recognize IIEI. In concluding that IIEI should be recognized as a tort in California, the Court first noted that 25 of the 42 states that have considered the question have validated the tort.⁵⁰ The Court further noted that the U.S. Supreme Court called the tort “widely recognized.”⁵¹ IIEI also appears in the Restatement Second of Torts.⁵²

The Court then traced the brief history of IIEI in the California courts. *Hagen v. Hickenbottom* addressed IIEI for the first time in a published case in California.⁵³ In that case, the Court reversed summary judgment in favor of the defendant, including on plaintiff’s cause of action for IIEI, on the ground that defendant failed to meet her burden under the statute to warrant summary judgment. In doing so, the Court cautioned that it was not passing on the merits of plaintiff’s IIEI claim, and noted that while other states had recognized IIEI as a valid tort, California had not as yet.⁵⁴

In *Munn v. Briggs*, the court discussed the development of IIEI in other states, but “decline[d] under the present circumstances to adopt the tort of interference with an expected inheritance” because the plaintiff “had an adequate remedy in probate.”⁵⁵ In *Munn v. Briggs*, a married couple created a joint trust that upon the first death divided into three separate trusts, including a survivor’s trust over which the survivor had a testamentary power of appointment.⁵⁶ The survivor exercised that power of appointment by a codicil, directing that one million dollars be distributed to each of the couple’s daughter’s two children.⁵⁷ The exercise also stated that their son’s children were closer to their maternal grandparents who could make gifts to them if they so chose.⁵⁸

The survivor died, and the survivor’s will and codicil were admitted to probate.⁵⁹ The son received notice of the probate, but did not contest the admission of the testamentary documents. Instead, he filed a petition in the probate court against the daughter and her husband, alleging they tortiously interfered with the son’s alleged inheritance expectancy by procuring the codicil by undue influence.⁶⁰ The probate court sustained the demurrer to that petition, without leave to amend, and the son appealed.⁶¹ The Court

affirmed.⁶² The son had notice, standing, and an opportunity to challenge the codicil on the grounds of undue influence in the probate proceeding. Had he done so and been successful, the codicil would have been void, the specific gifts to the daughter’s children would not have been made, and the son would then have received his inheritance with which he alleged his sister interfered. The *Munn v. Briggs* court refused to allow the son to avoid the probate process by proceeding with a tort action.

However, in *Beckwith v. Dahl*, the Court of Appeal concluded that the circumstances in that case militated in favor of finally recognizing IIEI as a valid tort in California. Beckwith did not receive formal notice of the probate process and did not have standing to contest the intestacy or to claim any right to inheritance. He had no opportunity to challenge the disposition of MacGinnis’s estate in the probate proceeding. Those facts, the *Beckwith* court believed, supported recognizing IIEI in California. This recognition was based on the court’s consideration of the relevant policy considerations and of the risks and benefits that would follow from recognition of IIEI in California.

As for the policy considerations, the Court explained the policies in favor of tort remedies generally:

The tort of IIEI developed under the general principle of law that whenever the law prohibits an injury it will also afford a remedy. Similarly, it is a maxim of California jurisprudence that, for every wrong there is a remedy. In addition, in California, every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his or her rights. We cannot let the difficulties of adjudication frustrate the principle that there be a remedy for every substantial wrong. Recognition of the IIEI tort in California is consistent with and advances these basic principles.⁶³

With respect to the potential risks of recognizing the tort, the Court noted: “One policy concern that stands out is the effect that recognition of the tort could have on the probate system.”⁶⁴ Quoting *Munn v. Briggs*, the Court explained the concern thusly:

If we were to permit, much less encourage, dual litigation tracks for disgruntled heirs, we would risk destabilizing the law of probate and creating uncertainty and inconsistency in its place. We would risk undermining the legislative intent inherent in creating the Probate Code as the preferable, if not exclusive, remedy for disputes over testamentary documents. These are very valid concerns that warrant this court’s attention.⁶⁵

The Court noted that the majority of states that have already adopted IIEI have imposed the following elements of proof to establish a right to recovery:



In general, most states recognizing the tort adopt it with the following elements: (1) an expectation of receiving an inheritance; (2) intentional interference with that expectancy by a third party; (3) the interference was independently wrongful or tortious; (4) there was a reasonable certainty that, but for the interference, the plaintiff would have received the inheritance; and (5) damages. Most states prohibit an interference action when the plaintiff already has an adequate probate remedy.⁶⁶

It is this prohibition that the *Beckwith v. Dahl* Court adopted to balance the need to provide a remedy in appropriate circumstances against the risk of a two-track system for will and trust contests. “By applying a similar last recourse requirement to the tort in California, the integrity of the probate system is protected because where a probate remedy is available, it must be pursued.”⁶⁷ *Beckwith* had no remedy in probate court since MacGinnis died intestate and *Beckwith* had no protected status as the decedent’s life partner.

2. *The Court Addresses the Oft-cited Concerns with Validating IIEI*

The Court also addressed two related concerns. First, opponents of adopting IIEI argue that the plaintiff should have no cause of action against a third party if the plaintiff would not have been able to enforce the promise as against the testator.⁶⁸ The Court agreed that gratuitous promises are not actionable (a promise to be enforceable must be supported by consideration); testators may change their minds and their estate plans.⁶⁹ However, California already recognizes other interference torts that protect future expectancies, such as interference with at-will employment, interference with contract and interference with prospective economic advantage.⁷⁰ Thus, the court believed that IIEI is consistent with long-standing California law.

Second, detractors argue that an expectancy of inheritance is too speculative to be actionable as a tort.⁷¹ The Court of Appeal answered this concern by adopting the element that there be a “reasonable certainty” that, but for the interference, the plaintiff would have received that inheritance.⁷² As for the meaning of “reasonable certainty”, the decision is unclear, indicating that liability should be imposed “where there is a *strong probability* that an expected inheritance would have been received absent the alleged interference” and “proof that it is *reasonably probable* that the lost economic advantage would have been realized but for the defendant’s interference.”⁷³ The court did not clarify if “strong” or “reasonable” are synonymous or, if different, what standard applies.

The Court also explained it is not necessary to allege that the decedent named plaintiff in an instrument prior to the defendant’s wrongful conduct, or that decedent would have devised the particular property at issue to plaintiff. “[I]t is only the expectation that one would receive some interest that gives rise to a cause of action.”⁷⁴

Not surprisingly, Dahl joined the chorus of those who advocated against the recognition of IIEI, arguing that it would create a two-track judicial system for estate and trust controversies and open the floodgates to litigation with the specter of jury trials and potentially large punitive damage awards. The Court responded that this is simply “an argument that the courts are incapable of performing their appointed tasks”⁷⁵ Quoting the California Supreme Court, the Court of Appeal stated:

Indubitably juries and trial courts, constantly called upon to distinguish the frivolous from the substantial and the fraudulent from the meritorious, reach some erroneous results. But such fallibility, inherent in the judicial process, offers no reason for substituting for the case-by-case resolution of causes an artificial and indefensible barrier. Courts not only compromise their basic responsibility to decide the merits of each case individually but destroy the public’s confidence in them by using the broad broom of “administrative convenience” to sweep away a class of claims a number of which are admittedly meritorious.⁷⁶

The *Beckwith v. Dahl* Court concluded that it should recognize IIEI as a viable tort claim in California, and could strike an appropriate balance between the need to provide a remedy to a person injured by another, and doing damage to the probate system.⁷⁷ In addition to the limitations discussed above, the Court also emphasized that the plaintiff must plead and prove that the defendant directed the interference at the testator, not the plaintiff-beneficiary.⁷⁸ “In other words, the defendant’s tortious conduct must have induced or caused the testator to take some action that deprives the plaintiff of his expected inheritance.”⁷⁹ However, the conduct need not be exclusively aimed at the testator, and apparently may even be aimed at the plaintiff, as long as it is not solely directed at the plaintiff.⁸⁰

IIEI provides an independent tort for a plaintiff wronged by the defendant’s conduct aimed at the testator.⁸¹ Stated differently, if defendant made false statements to the testator to induce the testator to change or not change her estate plan, the IIEI plaintiff would not generally have a cause of action for fraud against the defendant: the plaintiff was not defrauded.⁸² If the plaintiff were defrauded, IIEI would be superfluous because the plaintiff would have a direct action for fraud against defendant. But when the fraud (or other wrongful conduct) is directed at the testator and interferes with plaintiff’s expectation of inheritance and there is no remedy in probate court, IIEI steps in to protect the plaintiff.⁸³

3. *After All That . . . Beckwith Failed to Allege IIEI Sufficiently*

Applying the principles established by the Court to the facts alleged in *Beckwith*’s complaint, the Court concluded that he failed to allege facts sufficient to maintain an action for IIEI.⁸⁴ The Court held that *Beckwith* failed to allege that Dahl directed any



independently tortious conduct at MacGinnis: Beckwith merely alleged that Dahl made a false promise to Beckwith that she would have a trust prepared.⁸⁵ However, because plaintiff could not have had a fair opportunity to plead properly IIEI without guidance from the Court of Appeal in recognizing the elements of the tort, the Court reversed to allow Beckwith an opportunity to amend his pleading.⁸⁶

The Court also reversed the trial court's decision sustaining Dahl's demurrer without leave to amend as to Beckwith's cause of action for promissory fraud.⁸⁷ Beckwith alleged sufficient facts to establish that Dahl made a false promise to Beckwith, which she knew was false, made with the intent to induce Beckwith's reliance, and Beckwith reasonably relied on Dahl's promise and suffered damage as a result.⁸⁸ The difficulty with promissory fraud, however, is that the plaintiff must prove that at the time the promise was made, the defendant had no intention of fulfilling the promise.⁸⁹

It remains to be seen what, if anything, may come of the case following the Court of Appeal decision, but there will no doubt be many cases to follow seeking relief for IIEI. Part Two of this article, to be published in the next issue of the *Quarterly*, will address issues that arose in other states that recognize IIEI.

IV. EXAMPLE OF IIEI

The following is a sample case involving IIEI. This case illustrates a set of facts that may lead a court to conclude that a defendant committed the tort of IIEI.

A. Procedural Posture

Vickie Marshall a.k.a. Anna Nicole Smith ("Vickie") sued Pierce Marshall ("Pierce") for IIEI over the estate of Pierce's father, J. Howard Marshall ("JHM"). Vickie was married to JHM, one of the richest men in Texas. They met in a strip club in which she was dancing when she was 24 and he was 86. After JHM passed away, Pierce filed a declaratory relief action in the Texas probate court in which he named Vickie as a defendant, seeking an order that JHM's estate planning instruments were valid and that Vickie had no rights in the estate. Vickie responded by claiming that Pierce intentionally interfered with her expectation of inheritance. At the same time, Vickie filed for bankruptcy protection in California. Pierce filed a proof of claim in the bankruptcy estate alleging that Vickie defamed Pierce by claiming he interfered with her inheritance. Vickie counterclaimed asserting IIEI under Texas law. The bankruptcy court dismissed the defamation claim but proceeded to trial on Vickie's IIEI claim. After hearing the evidence, discussed below, the court awarded Vickie \$449 million in compensatory damages and \$25 million in punitive damages on her IIEI claim. Following the bankruptcy court's decision, and not faring as well in Texas, Vickie voluntarily nonsuited her affirmative claim against Pierce. As a consequence, the Texas probate court entered judgment on Pierce's claim that the instruments were valid and Vickie had no rights in the estate. The Federal District Court for the Central District of California reviewed the record and held its own trial,

awarding Vickie \$49 million in compensatory damages and \$49 million in punitive damages.

However, the Ninth Circuit held that the bankruptcy court did not have constitutional authority to enter judgment on a state claim and that the Texas probate court decision had preclusive effect against Vickie's IIEI claim.⁹⁰ The U.S. Supreme Court agreed.⁹¹ Although the Supreme Court's decision had the effect of vacating the bankruptcy court and District Court decisions, the trials on Vickie's IIEI claim against Pierce are instructive as a fully developed record of the type of conduct that IIEI exists to remedy. The following recitation of facts is reconstructed from the reported court opinions on that claim.⁹²

B. The Evidence of IIEI

In 1992, JHM directed attorneys selected by Pierce, Edwin Hunter and Jeff Townsend to draft a "catch-all" trust for Vickie's benefit. Hunter denied that the "catch-all" trust was drafted, but his law firm's billing records impeached his testimony. No draft of any such document was ever produced, but the court believed it was deliberately destroyed. In December 1992, JHM, Pierce, Hunter, Townsend and another attorney, Harvey Sorenson, met to discuss various ways in which JHM intended to benefit Vickie.

Unsatisfied with the lack of progress, JHM instructed Sorenson that JHM wanted to provide Vickie with half of his "new community". JHM told Sorenson that by "new community", he meant the growth in the value of all of JHM's assets, even if those assets were his separate property, during the relationship. JHM believed that the value of his most significant asset, stock in Koch Enterprises held in a voting trust (MPI), was about to increase substantially based upon Koch's acquisition of United Pipeline.

The next day, Sorenson dictated a memorandum of the conversation. Sorenson directed lawyers in his firm to find ways of effectuating the "new community" concept without gift tax liability. But not only was there a gift tax issue, due to the age difference between Vickie and JHM, the gift to Vickie would be subject to GST tax. Sorenson told JHM he could solve his GST and gift-tax issues by marrying Vickie.

Pierce knew that JHM's goal of providing for Vickie, in part through the increase in value of Koch, ran counter to Pierce's goal of arguing for a lower valuation for estate tax purposes and for purposes of an ongoing litigation with the IRS over the value of the Koch stock. Pierce expected to inherit the Koch stock. Pierce was put in charge by JHM of overseeing the details of carrying out his wishes for Vickie.

Pierce immediately replaced Sorenson with Hunter, who made immediate changes to JHM's estate plan. Hunter gave JHM a 151-page packet of documents, even though JHM always insisted that all legal documents be no more than one or two pages. Also, JHM had cataracts, which made it impossible for JHM to read the documents, because of the size of the print. In essence, the documents had



the ultimate effect of transferring to Pierce 41% of JHM's 70% ownership in Koch, giving Pierce control over Koch (Pierce also owned a stake in Koch gifted to him by JHM). JHM signed the documents in August 1993.⁹³

In 1994, JHM and Vickie married without Pierce's knowledge.⁹⁴ Pierce probably found out about the wedding the day after from one of the guests.⁹⁵ There then was a flurry of activity by Pierce, Hunter and others to alter JHM's estate plan.⁹⁶ In July 1994, JHM went to Los Angeles to visit Vickie.⁹⁷ Pierce hired private investigators to follow JHM. The court found that Pierce was attempting to prevent JHM from signing a new will while in Los Angeles. Meanwhile, Townsend sent a letter to Vickie's lawyer insisting that he knew that a new will was signed and demanding turnover of "the original." There was no truth to Townsend's assertion, however.

Pierce, Hunter and Townsend caused JHM to sign new documents to transfer all of JHM's property to his Living Trust and to make the Living Trust irrevocable. JHM also signed documents to ensure that none of the payments by Pierce for the stock could be given to Vickie. Hunter recognized this could constitute interference with Vickie's community property interest in the income stream, so the documents were backdated to June 1, 1994, before the marriage. The documents were actually executed on July 13 or 15, 1994. After JHM executed the documents, a new page two was inserted in the Living Trust. The new page two had the provision that made the Trust irrevocable. This was proven through a forensic document examiner who testified convincingly that the page could not have been part of the originally executed document. The court found that JHM was unaware that he had supposedly made the Living Trust irrevocable. Four or six days after the execution, the documents were "notarized" by a person who did not witness the signatures and had no evidence that the signatures were genuine.

The next day, Townsend took copies of the documents, flew from Lake Charles to Midland, Texas, drove approximately 30 miles to Glasscock County, one of the smallest counties in Texas, which has no lawyers in the entire county, and recorded the Living Trust. The court believed that this was possibly done to avoid JHM learning that the Living Trust was made irrevocable from the press or someone else.

Subsequently, JHM supposedly signed documents to move the situs of the Living Trust to Louisiana. Hunter was from Louisiana and still practiced there. The court found this was done to force proceedings where Hunter could "hometown" his opponents. Acting under a power of attorney, Pierce signed a document renouncing JHM's right to collect income from the Living Trust. Pierce claimed this was JHM's intent. The court found JHM had no such intent and was not even aware that this was done. The court also concluded that the document was backdated and the notarization was also procured under false pretenses.

In May 1995, Pierce signed documents as trustee of the Living Trust and as president of MPI, whereby JHM's remaining stock in MPI was sold back to MPI in exchange for a private annuity.

MPI would pay JHM \$7.9 million for this sale on March 31 of each year, commencing in 1996, as long as JHM were living. JHM was diagnosed with terminal cancer in the Spring of 1995. JHM did not live to see March 31, 1996. Thus, MPI paid nothing for JHM's remaining stock. Pierce and Hunter testified that JHM directed all of these changes. The court was persuaded otherwise.

As discussed above, these decisions were vacated on procedural grounds. Nevertheless, the fully developed record and explication of the evidence provide an interesting insight into the quantum of proof and type of independent wrongful conduct that may lead to a successful result for plaintiffs in IIEI cases in California.

V. CONCLUSION

Whether California is on the precipice of a brave new world in probate litigation, only time will tell. Nevertheless, we are no doubt only at the beginning now that IIEI is valid in California. In the next issue of the *Quarterly*, the author analyzes IIEI as applied by states that have previously recognized the tort. If those cases are any guide, there are many questions that lie ahead for California to tackle.

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1. (2012) 205 Cal.App.4th 1039.
2. *In re Radovich's Estate* (1957) 48 Cal.2d 116, 120.
3. *Id.*
4. *Id.*
5. *Id.*
6. See California Prob. Code, section 48. All references herein to the "Probate Code" are to the California Probate Code.
7. See, e.g., Klein, *Go West, Disappointed Heir: Tortious Interference with Expectation of Inheritance—A Survey with Analysis of State Approaches in the Pacific States* (2009) 13 Lewis & Clark L.Rev. 209. Ms. Klein notes that IIEI was adopted in its earliest form in 1834, citing *Heirs of Adams v. Adams* (1849) 22 Vt. 50, 51 (citing an unreported 1834 case, *Mead v. Heirs of Langdon*). She also notes that a comment appeared about the tort in the Yale Law Journal in 1917, citing M.B., Comment, *Tort Liability for Depriving the Plaintiff, Through False Representations, of an Expected Inheritance* (1917) 27 Yale L.J. 263.
8. See, Klein, *supra*, 13 Lewis & Clark L.Rev. 209.
9. Maine, *Ancient Law: Its Connection with the Early History of Society and its Relation to Modern Ideas* (Beacon Press 10th ed. 1963) p. 165. To illustrate the point, if the television show "Downton Abbey" were set in present-day California, it would be a story without a plot line. The type of inheritance crisis that threatens to displace Lord Grantham, and his immediate side of the Crawley family, from residence at Downton Abbey is anachronistic for a society now accustomed to freedom of testation. The drama of this thoroughly captivating television series spins around the potential consequences to the Crawleys of their status under the law of primogeniture.
10. Klein, *supra*, 13 Lewis & Clark L.Rev. 209.



11. The Probate Code protects individuals based upon status in many situations. See, e.g., Prob. Code, section 1200, et seq. (requiring notice to class of “interested persons,” in whom the testator may have had no interest at all); section 21610 (omitted spouse); section 21620 (omitted child).
12. By California Proposition 8, the voters passed the “California Marriage Protection Act” in the November 2008 elections, declaring that only marriages between a man and a woman were valid. On August 4, 2010, U.S. District Court Judge Vaughn Walker ruled that Proposition 8 was unconstitutional. In a 2-1 decision by a panel of the Ninth Circuit Court of Appeals, the Court affirmed Judge Walker’s decision on February 7, 2012. The Circuit Court denied a petition for rehearing *en banc* but agreed to stay the effect of its decision pending review by the U.S. Supreme Court.
13. *Beckwith, supra*, 205 Cal.App.4th at p. 1046.
14. *Id.*
15. *Id.*
16. *Id.* at p. 1047.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* (emphasis added by the court).
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.* at pp. 1047-48.
31. *Id.* at p. 1048.
32. *Id.*
33. *Id.* (emphasis added by the court).
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.* Beckwith lacked standing as he was not married to, a registered domestic partner of, beneficiary under a valid Will of, or intestate heir of MacGinnis.
44. *Id.*
45. *Id.* at p. 1049.
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.* at p. 1050 (citing Prosser & Keeton, Torts (5th ed. 1984) § 1, p.4, fn. omitted) (quotation omitted).
50. *Id.*
51. *Id.* (quoting *Marshall v. Marshall* (2006) 547 U.S. 293).
52. *Id.* (citing Rest.2d Torts, § 774B [“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”].)
53. (1995) 41 Cal.App.4th 168, 173.
54. *Id.* at p. 188.
55. (2010) 185 Cal.App.4th 578, 593.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.* at p. 584.
62. *Id.* at p. 594.
63. *Beckwith, supra*, 205 Cal.App.4th at pp.1051-1052 (citations and quotations omitted).
64. *Id.* at p. 1052
65. *Id.* at p. 1052 (citations and quotations omitted).
66. *Id.* at p. 1050 (citations omitted).
67. *Id.* at p. 1052.
68. *Id.*
69. *Id.* at p. 1053 (see, e.g., *Coon v. Shry* (1930) 209 Cal. 612).
70. *Id.* See, e.g., *Reeves v. Hanlon* (2004) 33 Cal.4th 1140 (interference with at-will employment); *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134 (interference with prospective economic advantage); *Speegle v. Board of Fire Underwriters* (1946) 29 Cal.2d 34 (interference with contract).
71. *Beckwith, supra*, 205 Cal.App.4th at p. 1054.
72. *Id.*
73. *Id.* (quotation omitted) (emphasis added).
74. *Id.* at p. 1057 (quotations and citations omitted). But, being named in existing documents does help. The Court cited with approval *Nemeth v. Banhalmi* (1981) 99 Ill.App.3d 493 [425 N.E.2d 1187, 1191] in which the plaintiff had alleged “an expectancy sufficient to maintain [an IIEI] action” by virtue of having been named a beneficiary under two of decedent’s prior wills. *Beckwith, supra*, 205 Cal.App.4th at p. 1054.
75. *Beckwith, supra*, 205 Cal.App.4th at p. 1057 (quoting *Emden v. Vitz* (1948) 88 Cal.App.2d 313, 319).
76. *Id.* (quoting *Dillon v. Legg* (1968) 68 Cal.2d 728, 737).
77. *Id.* at p. 1056.



78. *Id.* at pp. 1057-58.
79. *Id.* at p. 1058 (citing *Schilling v. Herrera* (Fla. Dist. Ct. App. 2007) 952 So.2d 1231 [defendant unduly influenced testator to execute a new will in her favor]; *Cardenas v. Schober* (Pa. Super. Ct. 2001) 783 A.2d 317, 326 [defendant's intentional failure to adhere to agreement made with testator to draft will in favor of plaintiffs]).
80. *Beckwith, supra*, 205 Cal. App. 4th at p. 1058 (citing *Allen v. Leybourne* (Fla. Dist. Ct. App. 1966) 190 So.2d 825 [defendant interfered with testator's attempts to change will by falsely telling testator's attorney testator was not lucid]).
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.* at p. 1059.
85. *Id.*
86. *Id.*
87. *Id.* at p. 1068.
88. *Id.* at pp. 1060-68.
89. *Id.* at p. 1060.
90. *Marshall v. Stern* (9th Cir. 2010) 600 F.3d 1037.
91. *Marshall v. Stern* (2011) ____ U.S. ____, 131 S.Ct. 2594.
92. *Marshall v. Marshall* (2002) 275 B.R. 5; *Marshall v. Marshall* (2000) 253 B.R. 550. Texas law does not require proof of an inadequate remedy in probate court before pursuing a claim for IIEI, and Anna Nicole Smith, as J. Howard Marshall's wife, had standing to contest the testamentary instruments.
93. Pursuant to the document signed by JHM, he resigned as trustee of MPI voting trust which held the Koch stock. JHM sold to Pierce 15% of the MPI stock for a \$17 million note at 6.26%, payable \$575,000 annually with a 10-year balloon payment. This sale reduced JHM's ownership from 70% to 55%. JHM did not live 10 years, nor was there any expectancy that he would. The note was assigned to JHM's Living Trust, of which Pierce was the primary beneficiary. The net effect was that Pierce avoided about \$16 million for the acquisition of this block of stock. JHM also executed a Grantor Retained Annuity Trust. JHM transferred 20% of MPI to the GRAT, thus reducing his ownership to 35%. The GRAT provided that JHM would receive annual payments for five years, after which time the shares would transfer to Pierce. JHM also sold back shares of MPI to the company to cancel debt to MPI, which reduced JHM's stake to 29%.
94. *Marshall v. Marshall, supra*, 275 B.R. at p. 23.
95. *Id.*
96. *Id.*
97. *Id.*

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