QUINNIPIAC PROBATE
LAW JOURNAL

VOLUME 32 2019 ISSUE 2

THE LIGHT AT THE END OF THE TUNNEL: WHY THE TIMING IS RIGHT FOR CONNECTICUT TO CONSIDER TORTIOUS INTERFERENCE WITH INHERITANCE AS A VALID CAUSE OF ACTION

GINA M. GEARY*

I. INTRODUCTION

Agnes Moriber died, leaving a will stating that her estate was to be divided thirty percent to Judy Markowitza, thirty percent to Gyorgy Emil Sallay, thirty percent Judy Villa, and ten percent to Karol Alexander.[1] Prior to Agnes' death, Villa arranged for Agnes to transfer some of her saving accounts into brokerage accounts, naming Villa as the beneficiary.[2] Villa also arranged for Agnes to name Villa as the beneficiary of other accounts.[3] Because of Villa's actions, when Agnes died, Villa inherited $209,144.11, which was about sixty-four percent of Agnes' estate, instead of the thirty percent she was supposed to receive under the terms of Agnes' will.[4]

Markowitza and Sallay sued Villa for, among other things, tortious interference with inheritance.[5] "Tortious interference with inheritance occurs when a third party intentionally inhibits the beneficiaries' receipt of an expected legacy."[6] The cause of action "provides a plaintiff with the opportunity to

* Quinnipiac University School of Law, 2019. The author would like to thank the Quinnipiac Probate Law Journal Staff Members and Editorial Board for their hard work, as well as everyone else who made this possible.

1 *Markowitz v. Villa*, 63 Conn. L. Rptr. 787, 788 (2017).

2 *Id.*

3 *Id.*

4 *Id.*

5 *Id*.

6 Marilyn Marmai, *Tortious Interference with Inheritance: Primary Remedy or Last Recourse*, 5 CONN. PROB. L.J. 295, 295 (1991) (internal citation omitted).

recover for the loss of this expectancy if the defendant's tortious act deprives the plaintiff of an expected inheritance, benefit under a will, at-death benefit, or inter vivos gift."[7]

Such an interference can occur in three ways. The first is when a third party interferes "with the testator's acts of execution, alteration or revocation of the will."[8] The second is when a third party's acts "includ[e] suppression, spoliation, destruction or intentional loss of a will."[9] The third is when a third party "might induce an inter vivos transfer which results in a deprivation of inheritance."[10] Thus, this tort "focus[es] . . . on what the defendant did (committed an intentional tort), how it affected the plaintiff (prevented the plaintiff from receiving his expectancy), and the damages the plaintiff suffered (pecuniary damages for the lost opportunity)."[11]

Neither court of binding authority in Connecticut—either the Appellate or Supreme Court—has recognized tortious interference with inheritance as a valid cause of action.[12] However, a majority of Connecticut Superior Courts have come to recognize the tort.[13]

This Note will discuss why Connecticut should address this growing jurisprudence to firmly decide whether the State recognizes tortious interference with inheritance as a valid cause of action. This Note will first address the background and history of the tort. The focus will then shift to the Second Circuit, comparing how Vermont, New York, and Connecticut view the tort. Next, this Note will look at the advantages and disadvantages of Connecticut adopting tortious interference with inheritance as a valid cause of action. Lastly, this Note will address whether the tort should be validated through either legislative or judicial action, ultimately concluding that the better approach is through judicial action. This Note's ultimate conclusion is that it is time for the Connecticut judiciary to hear a case to firmly decide whether this cause of action should be recognized before the State's jurisprudence continues to grow

II. BACKGROUND

To better understand why tortious interference with inheritance is

---

[7] Irene D. Johnson, *Tortious Interference with Expectancy of Inheritance or Gift—Suggestions for Resort to the Tort*, 39 U. TOL. L. REV. 769, 770 (2008). The expectancy would be the inheritance or bequest left to an individual through a will, trust, or other documents.

[8] Marmai, *supra* note 6 (internal citations omitted).

[9] *Id.*

[10] *Id.*

[11] Johnson, *supra* note 7, at 771.

[12] *See* Diane J. Klein, *A Disappointed Yankee in Connecticut (or Nearby) Probate Court: Tortious Interference with Expectation of Inheritance—A Survey with Analysis of State Approaches in the First, Second, and Third Circuits*, 66 U. PITT. L. REV. 235, 271 (2004); *see also Zupa v. Zupa*, 66 Conn. L. Rptr. 620, 620 (2018).

[13] *See generally* Klein, *supra* note 12, at 271-72; *Zupa*, 66 Conn. L. Rptr. at 620.

important enough to potentially add to Connecticut's jurisprudence, it is important to understand its history. This section will examine: (1) how the cause of action has developed, (2) how the United States Supreme Court has been involved in its development, (3) how the different states in the Second Circuit view and treat the cause of action, and (4) where Connecticut law currently stands.

a. History of Tortious Interference with Inheritance

Tortious interference with inheritance had a somewhat unsteady beginning, only gaining a significant amount of traction after its inclusion in the Restatement (Second) of Torts.[14] However, its initial development began in case law.

i. Prior History

In an early leading case, *Hutchins v. Hutchins*, the plaintiff alleged that the defendants "fraudulently combine[d], confederate[d] and conspire[d] . . . for the purpose of enhancing their own interest in the estate . . . and for the purpose of injuring and defrauding the said plaintiff of his rights which otherwise would have accrued to him as devisee . . . ."[15] The father of the plaintiff was going to devise to the plaintiff 150 acres of farm land through his will.[16] The defendant found out, and "falsely and maliciously represented to the father" that, after the father died, the plaintiff would encumber the father's estate so as to deprive the other children of their share.[17] Due to the defendant's lies, the father revoked his will and executed a new one, whereby the plaintiff was excluded from his father's estate.[18] The court focused on whether such an expectancy was recognized and protected under the law to determine whether the plaintiff alleged a valid cause of action for damages.[19] The court ultimately concluded that the plaintiff failed "to show that he had any such interest in [the estate] as the law will recognize."[20]

About thirty years later, Connecticut saw a case which did protect such an expectancy. In *Dowd v. Tucker*, Frances Hayden created a will, leaving all of her property to the respondent, Tucker.[21] However, after executing her will, Frances decided to execute a codicil to give some of her property to the petitioner, Dowd.[22] When the respondent heard this, he convinced Frances to leave him the property, promising to deed it over to the petitioner so that

---

[14] RESTATEMENT (SECOND) OF TORTS § 774B (1979).
[15] *Hutchins v. Hutchins*, 7 Hill 104, 105 (N.Y. Sup. Ct. 1845).
[16] *Id.* at 108.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Hutchins*, 7 Hill at 109.
[21] *Dowd v. Tucker*, 41 Conn. 197, 198 (1874).
[22] *Id.* at 204.

Frances, who was weak with illness, did not have to.[23] The court decided that the case concerned both fraud and property held in trust.[24] The case concerned fraud because, as the court reasoned, "[i]t is the case of one obtaining the conveyance of property by a promise, which he has no intention at the time to fulfill."[25] The case concerned property held in trust because the respondent obtained the property by saying, in effect, "[l]et me have the property by the will you have already executed and I will convey it to the petitioner."[26] These two theories of the case represent an early example of tortious interference with inheritance, with the respondent fraudulently conveying an inheritance that was meant for the petitioner, to himself.

Another early case, *Lewis v. Corbin*, concerned "the defendant [being] charged with having deprived the plaintiff of a legacy, through his fraud in inducing a testatrix to execute the codicil . . . ."[27] The defendant was the executor and residuary legatee of Jane Corbin's will.[28] Jane, who was over eighty years old, decided that she wanted to leave $5,000 to Henry Lewis.[29] The defendant helped Jane leave the money to Lewis through a codicil and was the only witness to that codicil; though the defendant knew that to validly execute a codicil Jane needed two witnesses.[30] The court determined that "if the codicil had not failed for want of due attestation owing to the fraud practiced by the defendant, the plaintiff would have received about $1,650" due to the size of the testator's estate.[31] The court concluded that the plaintiff had alleged sufficient facts to sustain the action of fraud because the defendant "fraudulently procured the making of the codicil without sufficient attestation."[32]

The last important case is *Bohannon v. Wachovia Bank & Tr. Co.* In that case, the plaintiff contended that his grandfather "had formed the fixed intention and settled purpose of providing for the plaintiff and in the distribution of his estate, and would have carried out this intention and purpose but for the wrongful acts of [the defendants]."[33] Those "wrongful acts" included "fraudulent misrepresentations made to the [plaintiff's grandfather]" whereby the grandfather "change[d] a definite plan which he had made to leave to the plaintiff . . . a large share of his estate."[34] The court relied on its reasoning from an older case, where Justice Brewer stated that "[i]t has been repeatedly held

---

[23] *Id.*
[24] *Id.* at 205.
[25] *Id.* at 204-05.
[26] *Dowd*, 41 Conn. at 205.
[27] *Lewis v. Corbin*, 81 N.E. 248, 249 (Mass. 1907).
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Lewis*, 81 N.E. at 249.
[33] *Bohannon v. Wachovia Bank & Tr. Co.*, 188 S.E. 390, 391 (N.C. 1936).
[34] *Id.* at 393.

that, if one maliciously interfere[s] in a contract between two parties, and induces one of them to break that contract, to the injury of the other, the party injured can maintain an action against the wrongdoer."[35] Based on this principle, the court concluded that "[i]f 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."[36]

It is clear from the reasoning of these early cases that the idea of a cause of action for tortuously interfering with an inheritance has existed for decades, just under a different name.

ii. Modern History

The more recent history of tortious interference with inheritance began three years after *Bohannon*, when it was recognized in two illustrations of the First Restatement of Torts.[37]

These two illustrations, found in sections 870 and 912(f), seem to suggest a move by the Restatement authors towards validating tortious interference with inheritance as a cause of action. One of section 870's illustrations state:

> A is desirous of making a will in favor of B and has already prepared but has not signed such a will. Learning of this, C, who is the husband of A's heir, kills A to prevent the execution of the will, thereby depriving B of a legacy which otherwise he would have received. B is entitled to maintain an action against C.[38]

One of Section 912(f)'s illustrations state:

> A is a favorite nephew of B in whose favor B tells C, an attorney, to draw a will, devising one-half of B's property to A. C, who is B's son and heir, pretending compliance with his mother's wishes, intentionally draws an ineffective will. B dies believing that one-half of her property will go to A. A is entitled to damages from C to the extent of the net value to A of one-half of the property of which B died possessed.[39]

Although both illustrations demonstrate tortious interference with inheritance,

---

[35] *Id.* (quoting *Angle v. Chi., S.P., M. & O. R. Co.*, 151 U.S. 1, 13 (1894)).

[36] *Bohannon*, 188 S.E. at 394.

[37] *See* John C. Goldberg & Robert H. Sitkoff, *Torts and Estates: Remedying Wrongful Interference with Inheritance*, 65 STAN. L. REV. 335, 357 (2013).

[38] RESTATEMENT (FIRST) OF TORTS § 870, illus. 3 (1939).

[39] RESTATEMENT (FIRST) OF TORTS § 912(f), illus. 13 (1939).

they had little immediate impact on tort as a cause of action.[40]

However, tortious interference with inheritance received a lot of attention, in the form of various state courts accepting it into their jurisprudence, after the tort's appearance in the Restatement (Second) of Torts.[41] The section states that "[o]ne 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."[42] This tort "extends to expected inheritances the protection some courts have accorded commercial expectancies."[43] To be within the protection of this cause of action "the plaintiff must prove that the interference involved tortious conduct, which under the cases includes undue influence, duress, or fraud. The tort cannot be invoked if the challenge is based on the testator's mental incapacity."[44] After the publication of the Restatement (Second) of Torts, eleven state supreme courts and eight state appellate level courts recognized the tort.[45]

b. Federal Law

The tort gained even more notoriety through two United States Supreme Court decisions regarding the estate of J. Howard Marshall II.[46] J. Howard Marshall II was married to Vickie Lynn Marshall, more commonly known as Anna Nicole Smith.[47] During their marriage, J. Howard did not include any bequests to Anna Nicole in his will, and instead, according to Anna Nicole,

---

[40] Goldberg & Sitkoff, *supra* note 37, at 358.

[41] *Id*. at 361.

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

[43] JESSE DUKEMINIER & ROBERT H. SITKOFF, WILLS, TRUSTS, AND ESTATES, 320 (Wolters Kluwer, 9th ed. 2013).

[44] *Id*.

[45] Goldberg & Sitkoff, *supra* note 37, at 361.

The eleven state Supreme Courts are: Florida in *DeWitt v. Duce*, 408 So. 2d 216, 219 (Fla. 1981); Georgia in *Morrison v. Morrison*, 663 S.E.2d 714, 717 (Ga. 2008), among others; Illinois in *In re Estate of Ellis*, 923 N.E.2d 237, 240-41 (Ill. 2009); Iowa in *Huffey v. Lea*, 491 N.W.2d 518, 520 (Iowa 1992), among others; Kentucky in *Allen v. Lovell's Adm'x*, 197 S.W.2d 424, 426-27 (Ky. 1946); Maine in *Harmon v. Harmon*, 404 A.2d 1020, 1024 (Me. 1979), among others; Massachusetts in *Labonte v. Giordano*, 687 N.E.2d 1253, 1255 (Mass. 1997); North Carolina in *Bohannon v. Wachovia Bank & Tr. Co.*, 188 S.E. at 394; Ohio in *Firestone v. Galbreath*, 616 N.E.2d 202, 203 (Ohio 1993); Oregon in *Allen v. Hall*, 974 P.2d 199, 202-03 (Or. 1999); and West Virginia in *Barone v. Barone*, 294 S.E.2d 260, 264 (W. Va. 1982).

The eight state Appellate Courts are: California in *Beckwith v. Dahl*, 141 Cal. Rptr. 3d 142, 148 (Cal Ct. App. 2012); Indiana in *Minton v. Sackett*, 671 N.E.2d 160, 162 (Ind. Ct. App. 1996): Michigan in *Estate of Doyle v. Doyle*, 442 N.W.2d 642, 643 (Mich. Ct. App. 1989); Missouri in *Hammons v. Eisert*, 745 S.W.2d 253, 258 (Mo. Ct. App. 1988); New Mexico in *Doughty v. Morris*, 871 P.2d 380, 383 (N.M. Ct. App. 1994); Pennsylvania in *Cardenas v. Schober*, 783 A.2d 317, 325-26 (Pa. Super. Ct. 2001); Texas in *King v. Acker*, 725 S.W.2d 750, 754 (Tex. App. 1987), *overruled by Archer v. Anderson*, 556 S.W.3d 228 (Tex. 2018); and Wisconsin in *Harris v. Kritzik*, 480 N.W.2d 514, 517 (Wis. Ct. App. 1992).

[46] *See generally Marshall v. Marshall*, 547 U.S. 293 (2006); *Stern v. Marshall*, 564 U.S. 462 (2011).

[47] *Marshall*, 547 U.S. at 293.

"intended to provide for her financial security through a gift in the form of a 'catchall' trust."[48] Respondent was E. Pierce Marshall, one of J. Howard's sons and the ultimate beneficiary of J. Howard's estate because "[u]nder the terms of the will, all of J. Howard's assets not already included in the trust [which benefited Pierce] were to be transferred to the trust upon [J. Howard's] death."[49]

Conflict began even before J. Howard died when Anna Nicole "filed suit in Texas state probate court, asserting that Pierce . . . fraudulently induced J. Howard to sign a living trust that did not include her, even though J. Howard meant to give her half of his property."[50]

Even though this matter started in probate court the first ruling came from a federal bankruptcy court, which became involved after Anna Nicole filed for Chapter 11 Bankruptcy.[51] During those proceedings, Pierce filed a Proof of Claim "alleging that [Anna Nicole] had defamed him when, shortly after J. Howard's death, lawyers representing [Anna Nicole] told members of the press that Pierce had engaged in forgery, fraud, and overreaching to gain control of his father's assets."[52] Anna Nicole filed a counterclaim, stating that Pierce

> prevented the transfer of his father's intended gift to her by . . . effectively imprisoning J. Howard against his wishes; surrounding him with hired guards for the purpose of preventing personal contact between him and [Anna Nicole]; making misrepresentations to J. Howard; and transferring property against J. Howard's expressed wishes.[53]

Anna Nicole's counterclaim essentially alleged that Pierce had tortuously interfered with J. Howard's expected gift to her. The bankruptcy court entered judgement for Anna Nicole on her tortious interference counterclaim.[54] Meanwhile, the probate court found that the will and living trust were both valid.[55]

The matter then moved to federal district court, which found that Pierce had tortuously interfered with Anna Nicole's expectancy.[56] The district court found that J. Howard had directed his lawyers to prepare an *inter vivos* trust for Anna Nicole.[57] Pierce, presumably not wanting to lose a portion of his

---

[48] *Id.* at 300.
[49] *Id*.
[50] *Stern*, 564 U.S. at 470.
[51] *Marshall*, 547 U.S. at 300.
[52] *Id*.
[53] *Id*. at 301.
[54] *Id*.
[55] *Id*. at 302.
[56] *Marshall*, 547 U.S. at 304.
[57] *Id*.

inheritance, "conspired to suppress or destroy the trust instrument and to strip J. Howard of his assets . . . ."[58] The district court awarded Anna Nicole $44.3 million in compensatory damages and an equal amount in punitive damages.[59]

The Court of Appeals for the Ninth Circuit reversed, holding that the probate exception bars federal jurisdiction.[60] The probate exception is a judicially created doctrine, stemming from English legal history, which states that probate matters are outside federal court jurisdiction.[61] The Supreme Court reversed the Ninth Circuit's decision because the probate exception "does not bar federal courts from adjudicating matters outside those confines [, being the probating or annulment of a will and the administration of a decedent's estate]."[62] Therefore, since Anna Nicole's "claim does not 'involve the administration of an estate, the probate of a will, or any other purely probate matter . . .'" the probate exception does not apply, and the claim falls within the jurisdiction of a federal court.[63]

The Supreme Court's decision influenced tortious interference with inheritance as a valid cause of action in two ways. "First, the Court gave its imprimatur to the tort by characterizing it as 'widely recognized' and citing section 774B [of the Restatement of Torts]. Second, the Court confirmed the availability of federal jurisdiction for litigation involving the tort, holding that it falls outside of the probate exception to federal jurisdiction."[64]

c. Second Circuit

Within the Second Circuit states—New York, Connecticut, and Vermont—there is disagreement about the validity of tortious interference with inheritance as a cause of action.

i. New York

New York has declined to recognize tortious inference with inheritance as a valid cause of action. Instead, in situations where the tort would be used, New York uses its "well-developed jurisprudence relating to an equitable remedy (the imposition of a constructive trust) . . . ."[65] "[A] constructive trust may be imposed '[w]hen property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest.'"[66] The elements necessary to find that a constructive trust was created

---

[58] *Id*.
[59] *Id*.
[60] *Id*.
[61] *Marshall*, 547 U.S. at 299.
[62] *Id*. at 312.
[63] *Id*.
[64] Goldberg & Sitkoff, *supra* note 37, at 364.
[65] Klein, *supra* note 12, at 282.
[66] *Sharp v. Kosmalski*, 351 N.E.2d 721, 723 (N.Y. 1976) (internal citations omitted).

include: "(1) a confidential or fiduciary relation, (2) a promise, (3) a transfer in reliance thereon[,] and (4) unjust enrichment.[67]

An example of the kind of fact pattern that may require the use of a constructive trust is what happened in *Sharp v. Kosmalski*. In *Sharp*, the plaintiff brought an action to impose a constructive trust on the property transferred to the defendant, contending that the transfer of the property solely to the defendant was a violation of trust and confidence and constituted unjust enrichment.[68] After the death of the plaintiff's wife, the plaintiff, whose education did not go beyond the eighth grade, developed a close relationship with the defendant.[69] The defendant assisted the plaintiff in disposing of his wife's belongings, as well as performing certain domestic tasks.[70] The plaintiff proposed marriage to the defendant, but the defendant rejected the proposal; however, notwithstanding her refusal, the plaintiff continued to "shower" the defendant with gifts with the hope that she would accept.[71] Additionally, the defendant was given access to the plaintiff's bank account from which she withdrew substantial amounts of money.[72] Lastly, the plaintiff made a will, naming the defendant as his sole beneficiary and executed a deed naming her the joint owner of his farmhouse, later transferring his remaining joint interest to her.[73] The relationship between the plaintiff and defendant eventually ended when the defendant ordered the plaintiff to move out of the home, which the defendant now owned, leaving the plaintiff with $300.[74]

The court determined that the relationship between the plaintiff and the defendant was the kind "to invoke consideration of the equitable remedy of constructive trust, [but] it remain[ed] to be determined whether [the] defendant's conduct following the transfer of [the] plaintiff's farm was in violation of that relationship and, consequently, resulted in the unjust enrichment of the defendant."[75] The answer to that question "must be determined from the circumstances of the transfer . . . . Therefore, the case should be remitted . . . for a review of the facts."[76] Even though the case was remanded, it is an example of the kind of case where a constructive trust may be used.

ii. Connecticut

The validity of tortious interference with inheritance as a cause of action

---

[67] *Id*. (internal citations omitted).
[68] *Id*. at 722.
[69] *Id.*
[70] *Id.*
[71] *Sharp*, 351 N.E.2d at 722.
[72] *Id.*
[73] *Id.* at 722-23.
[74] *Id.* at 723.
[75] *Id*. at 724.
[76] *Sharp*, 351 N.E.2d at 724.

has not yet been decided by a court of binding authority, and the decision is mixed among the superior courts, with the majority holding that it is a valid cause of action.[77]

The first Superior Court decision that upheld the tort as a valid cause of action was *Bocian v. Bank of Am*.[78] The court found it very persuasive that this "cause of action is very similar if not identical to a recognized cause of action in Connecticut; tortious interference with a contractual right."[79]

The idea of recognizing tortious interference with inheritance as a valid cause of action has been floating around Connecticut's jurisprudence for decades. It was first mentioned in *Hall v. Hall*, which discussed the possibility of the tort but declined to recognize it as a cause of action. The *Hall* court stated that

> [a]s to the cause of action for damages for depriving the plaintiff of his inheritance by the defendants' fraudulently procuring the execution of the pretended will in their own favor, the complaint stands on a different ground for it alleges that at the time when the so-called will was executed the testator was mentally incapable of making a will . . . . It is possible that if the complaint had stopped at this point of the narrative, it might have stated a good cause of action against the defendants for fraudulently procuring their incapable father to execute a pretended will in their favor, when coupled with the allegation that they had in fact obtained the benefit of it.[80]

The *Hall* case was cited in a footnote in *Moore v. Brower*, a case where the court was also tasked with determining whether Connecticut should recognize tortious interference with inheritance as a valid cause of action just six months before *Bocian v. Bank of Am*. was decided.[81] The court in *Moore* decided against recognizing the tort, citing the lack of appellate authority and briefing on this cause of action by the plaintiff.[82] However, the court remarked in a footnote that the discussion about the validity of the tort "begs the question of whether Connecticut ought to recognize the tort . . . ."[83] It appears that *Bocian,* and its progeny, took on the challenge of starting the progression of case law towards achieving appellate imprimatur.

Since *Bocian* was decided, a majority of superior court decisions have

---

[77] *Markowitz*, 63 Conn. L. Rptr. at 792.
[78] *See generally Bocian v. Bank of Am.*, 42 Conn. L. Rptr. 483 (2006).
[79] *Id*. at 484.
[80] *Hall v. Hall*, 100 A. 441, 443 (Conn. 1917).
[81] *See Moore v. Bower*, 41 Conn. L. Rptr. 681, 684 (2006).
[82] *Id*. at 686 n. 4.
[83] *Id*.

continued to recognize the tort.[84] These courts found persuasive the fact that:

> (1) trial courts are well positioned to determine whether Connecticut is prepared to recognize a developing ground of liability, even where our appellate courts have not expressly adopted such cause of action; (2) tortious interference with an expected inheritance is similar to tortious interference with a contractual right or business relations, which is a recognized cause of action in this state; (3) tortious interference with an expected inheritance is recognized as a valid cause of action by the Restatement (Second) of Torts; (4) the facts involved in an action for interfering with an expected inheritance are distinct from other related causes of action, namely will contests based on fraud or undue influence; (5) our Supreme Court in *Hall v. Hall*, referred to the possibility of this cause of action, even though it did not expressly recognize such an action; and (6) sister jurisdictions have recognized the viability of this cause of action.[85]

However, there are some superior court judges who are waiting for appellate authority before recognizing the tort.[86] Their concern is that the Appellate Court has yet to do a thorough analysis of the tort and define the remedy.[87] However, such an analysis in the past has relied on a number of factors including:

> a growing judicial receptivity to the recognition of the claim[;] . . . genuine public policy mandates[;] . . . the risk of affecting conduct in ways that are undesirable as a matter of public policy[;] . . . whether the new tort complements existing administrative and statutory schemes[;] . . . and whether existing remedies are sufficient to compensate those who seek recognition of a new cause of action.[88]

An additional concern is that these superior courts decisions that have

---

[84] *See Van Eck v. West Haven Funeral Home*, No. CV095031256S, 2010 WL 3447830, at *5 (Conn. Super. Ct. Aug. 4, 2010); *DePasquale v. Hennessey*, 50 Conn. L. Rptr. 605, 607 (2010); *Vechiola v. Fasanella*, 55 Conn. L. Rptr. 525, 527 (2013); *Axiotis v. Michalovits*, 57 Conn. L. Rptr. 455, 456 (2014); *Roscoe v. Elim Park Baptist Home, Inc.*, 61 Conn. L. Rptr. 507, 511 (2015); *Reilley v. Albanese*, 61 Conn. L. Rptr. 463, 465 (2015); *Hart v. Hart*, 60 Conn. L Rptr. 399, 403 (2015); *Wild v. Cocivera*, No. CV146050575S, 2016 WL 3912348, at *6 (Conn. Super. Ct. June 16, 2016); *Donato-Nash v. Nash*, 65 Conn. L. Rptr. 594, 596 (2017); *Markowitz*, 63 Conn. L. Rptr. at 792; *Zupa*, 66 Conn. L. Rptr. at 621.

[85] *Markowitz*, 63 Conn. L. Rptr. at 792 (internal citations omitted).

[86] *See generally Eder v. Eder*, 58 Conn. L. Rptr. 347, 349-50 (2014); *Meyer v. Peck*, 46 Conn. L. Rptr. 817, 817 (2008); *Moore*, 41 Conn. L. Rptr. at 685.

[87] Defining the remedy is a valid concern because there can be different forms of remedies such as compensatory or punitive money damages and a constructive trust, among others.

[88] *Zupa*, 66 Conn. L. Rptr. at 621 (internal citations and quotations omitted).

recognized the tort have done so in factually dissimilar cases and have been inconsistent in determining the tort's elements.

However, the superior courts that have upheld the cause of action have been consistent with the elements, requiring "(1) the existence of an expected inheritance; (2) the defendant's knowledge of the expectancy; (3) tortious conduct by the defendant; and (4) actual damages to the plaintiff resulting from the defendant's conduct."[89]

With those elements in mind, it has been noted that the "third element requires more than the fact of interference; it requires interference 'by means that are independently tortious in character' such as 'fraud, duress, defamation or tortious abuse of fiduciary duty.'"[90] Additionally, it was suggested in *Markowitz* that a fifth element should be included, either requiring the exhaustion of probate remedies or alleging that a remedy in probate court is unavailable or inadequate.[91]

iii. Vermont

Vermont falls somewhere between New York and Connecticut, in that Vermont recognizes "the 'expectancy' tort of interference with 'perspective contractual relations,' under Restatement (Second) of Torts Section 767. This tort covers interference with 'a valid business relationship or expectancy.'"[92] Although Vermont does not have any case law on this issue, if the proper case were to present itself, "Vermont might be willing to extend recognition to interference with expectation of inheritance, under Restatement (Second) of Torts section 774B."[93]

III. OTHER POSSIBLE CAUSES OF ACTION?

After reviewing the background and muddled history of the tort, it is necessary to discuss whether such a cause of action should even be included in Connecticut's jurisprudence. The main advantage is that it will fill a current gap in Connecticut's jurisprudence. However, there are some disadvantages to consider, such as the possibility of creating a rival legal scheme between inheritance law and torts. On balance, the advantages appear to outweigh the disadvantages at least to the point where it is safe to advocate for either the judiciary or legislature to decide whether Connecticut will recognize tortious interference with inheritance as a valid cause of action.

---

[89] *Id.*

[90] *Id.* (quoting RESTATEMENT (SECOND) OF TORTS, § 774B).

[91] *Markowitz*, 63 Conn. L. Rptr. at 793. My position on this fifth element is more fully explained in Part IV, but, spoiler alert, I think it is a good element to add to help fix certain jurisdictional issues between the probate and superior courts.

[92] Klein, *supra* note 12, at 293.

[93] *Id*.

a. Advantages

The advantage of including such a cause of action is providing a remedy where "the probate court fails by its own standards—that is, when probate proceedings cannot fully correct a wrongful attempt to frustrate the testator's desires."[94] Such a failure can occur when: (1) a tortfeasor is an intestate heir, (2) the would-be beneficiary is without standing, (3) the beneficiary is "cut out" of the will, or (4) there is an *inter vivos* transfer that depletes the estate.[95] An example of the first failure is when both the plaintiff and defendant are siblings and beneficiaries under the will that has been tortuously interfered with.[96] If the plaintiff brings a will contest and is successful, then the defendant will still collect his intestate share.[97] An example of the second failure is when the testator makes a bequest to an unrelated companion or a charitable foundation, but the defendant's tortious conduct prevents the distribution for one reason or another.[98] The intended beneficiary, as neither an intestate heir nor taker under a prior will, lacks standing to bring a will contest.[99] The third failure occurs when the beneficiary is "cut out" of the will through undue influence that induces a testator to replace the name of the beneficiary.[100] The probate court, even if it decided not to probate the will, could not restore the gift or penalize the tortfeasor.[101] In the fourth failure, the defendant could tortuously induce the testator to make an *inter vivos* transfer that depletes the estate.[102] If the defendant is the executor of the will, it is unlikely that the estate will attempt to recapture those lost assets.[103]

Such failures also occur when the defendant's tortious conduct is not one that is challengeable by a will contest, but instead it is just general tortious conduct. As explained in *Hart*,

> there is a difference between an action arising from a will contest concerning the validity or execution of the will and an action arising from a sibling or other party, with knowledge of an inheritance, interfering with receipt of the inheritance by independent tortious means. The first situation involves a challenge to a will such as undue influence or fraud on the testator, but the second action is more appropriately recognized as interference with an expected inheritance. As a matter of

---

[94] Klein, *supra* note 12, at 247.
[95] *Id*. at 247-48.
[96] *Id.* at 247.
[97] *Id.*
[98] *Id.*
[99] Klein, *supra* note 12, at 247.
[100] *Id.* at 248.
[101] *Id.*
[102] *Id.*
[103] *Id.*

> public policy, the facts involved in an action of interference with an expected inheritance are distinct from other actions and thus lend themselves to recognition of a distinct tort.[104]

An example of this general tortious conduct includes situations like the one presented in *Wild v. Cocivera*, where there were two beneficiaries under the will, and one of the beneficiaries was the power of attorney for the decedent.[105] In *Wild*, the beneficiary who had power of attorney withdrew at least $81,287.21 from the decedent's accounts and kept the money for himself.[106] The plaintiff brought an action alleging a breach of the defendant's fiduciary obligations, as well as tortious interference with the plaintiffs' expected inheritance.[107] The court concluded that the complaint did not allege sufficient facts for the breach of fiduciary duty claim.[108] The court came to this conclusion because the plaintiff did not allege any facts that would support a finding "that the defendant's conduct occurred because *the plaintiffs* placed their trust and confidence in him such that he undertook to act primarily for their benefit."[109] However, the court concluded that the revised complaint stated a claim for tortious interference with inheritance by alleging that the "defendant diverted and used thousands of dollars from the decedent's bank account while knowing that the decedent's expectation was that such funds would be shared equally with her beneficiaries . . . . [And] that the defendant misappropriated thousands of dollars of the decedent's funds for his own use."[110] Without tortious interference with inheritance, the plaintiff would not have had a cause of action to survive a motion to strike which would have resulted in the defendant keeping the improperly obtained money all to himself.[111]

Therefore, tortious interference with inheritance fills the gap where the probate court and other causes of action are unable to offer a remedy.

b. Disadvantages

Before embracing a new cause of action, it is critical to consider the various critiques and objections levied against it. These critiques have best been best brought to life in *Torts and Estates: Remedying Wrongful Interference with Inheritance* by John C. Goldberg & Robert H. Sitkoff.[112] Even though this influential article was published in 2013, there has not been a response to the

---

[104] *Hart*, 60 Conn. L. Rptr. at 404.
[105] *Wild*, 2016 WL 3912348, at *1.
[106] *Id*.
[107] *Id*.
[108] *Id.* at *4.
[109] *Id*.
[110] *Wild*, 2016 WL 3912348, at *7.
[111] In Connecticut, a Motion to Strike is equivalent to a Motion to Dismiss. *See* Connecticut Practice Book § 10-39 (2018).
[112] *See generally* Goldberg & Sitkoff, *supra* note 37, at 335.

arguments against tortious interference with inheritance as a cause of action. This Note does not attempt to be a full response.[113] However, it would be irresponsible not to draw attention to the arguments made by Goldberg and Sitkoff, and to offer some counterpoints to attempt to explain why Connecticut should, at least, consider whether it should recognize the tort.

Goldberg and Sitkoff attack tortious interference with inheritance from two angles, arguing that it is unsound from the perspective of inheritance law and torts.[114]

i. Inheritance Law

The primary argument made against the tort from the perspective of inheritance law is that it will create a rival legal scheme by giving the plaintiff the option to bring either a will contest or a tort case.[115] With this possibility of a rival legal scheme comes different procedures, one used if the plaintiff brings a will contest and one used if the plaintiff brings a tort case. If the plaintiff brings a tort case, there is a concern that those procedures do not adequately protect freedom of disposition or confront the worst evidence rule.[116] Additionally, Goldberg and Sitkoff fear that in the rush to accept the tort, the availability of relief in restitution has been all but forgotten, a remedy that may offer a better solution.[117]

These are serious challenges. However, there are some counterpoints to consider before abandoning all hope. In partial response to the challenge that tortious interference with inheritance will create a rival legal scheme, there is a counterpoint to whether a rival legal scheme is inherently a bad thing. In other areas of law there are overlaps, such as between tort and contract law, where a plaintiff can sue for either a breach of contract, alleging that the defendant acted in a way contrary to the contract, or fraud, alleging that the defendant made a false representation of fact. Although the causes of action are different, the facts are the same, with the plaintiff simply choosing the cause of action that is best supported by the facts. The option to bring either a will contest or a tort case is analogous because the plaintiff is making the same choice, deciding which cause of action is best supported by the facts. By having options of different legal theories with different elements, it is easier for plaintiffs to bring cases which

---

[113] This is an influential article that raises serious concerns regarding the wisdom of accepting this tort. As such, this article deserves a full response. However, that is beyond the scope and ambition of this Note.

[114] *See* Goldberg & Sitkoff, *supra* note 37, at 365.

[115] *See id*.

[116] *Id*.

The "worst evidence rule" is the concept that the testator must be dead before the question of whether the testator had capacity is investigated. John H. Langbein, *Will Contests*, 103 YALE L.J., 2039, 2044 (1994). Therefore, the probate court is only left with extrinsic evidence to determine whether the testator had capacity, instead of being able to question the testator himself.

[117] *See* Goldberg & Sitkoff, *supra* note 37, at 365.

seems to be an objective that should be supported.

An additional and perhaps more helpful example is the overlap in guardianship cases where both probate courts and superior courts have jurisdiction. Although this is an overlap in jurisdiction, instead of causes of action, the overlap is more aligned with Goldberg and Sitkoff's concern about the different procedures between will contests and tort cases because probate and superior courts use different procedures.[118]

Probate courts can hold hearings for the removal of a parent as a guardian, as well as the reinstatement of a parent as a guardian.[119] Superior courts can also hold hearings for the removal of a parent as a guardian, as well as the reinstatement of a parent as a guardian.[120] Due to this overlapping jurisdiction, the probate court and superior court administrators have developed a protocol which applies if there are matters pending in more than one court concerning the same child.[121] The protocol determines which court will hear the case.[122]

The probate court and superior court administrators, by working together, have figured reconciled the overlap in jurisdiction without creating a rival legal scheme that destabilizes both systems. This suggests that it is possible for probate courts to share jurisdiction with superior courts when it comes to tortious interference with inheritance by creating a similar system that will clearly spell out when each court will have jurisdiction.

However, the real problem that Goldberg and Sitkoff have with the rival legal scheme is the concern that tort procedures are not as well equipped to protect freedom of disposition and to confront the worst evidence rule. A counterpoint which may address this issue is the option of including an element requiring the plaintiff to exhaust probate remedies before he can file suit in superior court, as suggested in *Markowitz*.[123] This potential element builds on procedures that are already in place. In Connecticut, part of probate procedure is the option of appealing the matter to superior court.[124] In deciding such appeals, the superior court is prohibited from substituting its judgment for that of the probate court, unless the substantial rights of the person appealing were prejudiced.[125] Under such a system, the superior court is bound by the probate

---

[118] Probate court procedures are governed by the Connecticut Probate Court Rules of Procedure. Superior court procedures are governed by the Connecticut Practice Book.

[119] *See* CONN. GEN. STAT. § 45a-611 (2018).

[120] *See* CONN. GEN. STAT. § 17a-111b(c) (2018).

[121] *See* Protocol for Overlapping Jurisdiction in Children's Matters Between Superior Court-Family Division and Probate Court, § 2 (2016).

[122] *See id.*

[123] *See Markowitz*, 63 Conn. L. Rptr. at 793.

[124] CONN. GEN. STAT. § 45a-186(a) (2018).

[125] CONN. GEN. STAT. § 45a-186b (2018).

court's determination, a determination that was reached using the court's expertise with protecting freedom of disposition and confronting the worst evidence rule. Therefore, to ensure that the superior court hearing the case benefits from the expertise of the probate courts, an element of the tort could be an exhaustion of probate remedies. With this added element, the plaintiff would not be able to bring a tortious interference with inheritance case in superior court until he has gone through probate court.

The last major concern that Goldberg and Sitkoff have from an inheritance law perspective is the availability of relief in restitution for constructive trust.[126] This is the approach that New York takes.[127] Although it is possible that relief in restitution for constructive trust may fix one wrong by allowing the plaintiff to regain control of lost property, it does not sufficiently address the moral wrong. That moral wrong is the defendant's actions of interfering with the plaintiff's expected inheritance, and the added expense and frustration that the plaintiff now needs to go through to regain his expected inheritance in a time of grief and sorrow.

Borrowing from the general principles of criminal law, "the conviction itself is a form of punishment, carrying with it a social stigma . . . ."[128] The same general principle can be applied here. Simply putting the property into a constructive trust for the plaintiff is not going to fix the injustice. However, punishment will help fix the injustice—as in the kind of punishment that follows from a judgment—in the form of money damages, which are not taken from the estate but from the defendant personally.[129]

ii. Tort Law

The argument made against tortious interference with inheritance as a tort is that it "starts with a claim of collateral damage to the expectant beneficiary resulting from the wrongdoer's violation of the donor's right to freedom of disposition."[130] There lies the problem, because "a core tenet of tort law [is] that the plaintiff must allege that the defendant's conduct infringed on a right personal to the plaintiff."[131]

An exception to this core tenet is wrongful death actions which allow family members of the deceased to bring an action against the defendant for

---

[126] *See* Goldberg & Sitkoff, *supra* note 37, at 368.

[127] *See infra* Part II Section c, i.

[128] SANFORD H. KADISH ET AL., CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS, 75 (Wolters Kluwer, 9th ed. 2012).

[129] It is possible for the defendant to take the money that he obtained via tortious means to then pay the judgement. However, the judge or jury could award more damages than the defendant took. Additionally, there is still the social stigma of having a judgement documented in a public record against the defendant.

[130] Goldberg & Sitkoff, *supra* note 37, at 379.

[131] *Id*. at 380.

tortuously killing their relative.[132] Tortious interference with inheritance actions are asking for a similar exception. This cause of action is asking for the plaintiff to be able to bring suit against the defendant for his or her part in the plaintiff not receiving his or her inheritance.[133] This is similar to a wrongful death action because under both legal theories the plaintiff is suing the defendant for a tortious action that is done to the decedent before the decedent's death. Since the defendant's action in wrongful death cases caused the decedent's death, and the defendant's action in tortious interference with inheritance cases are usually discovered after the decedent's death, the decedent himself is not in a position to sue the defendant. Therefore, in both wrongful death and tortious interference with inheritance actions, the plaintiff is asking to be able to correct a wrong done to the decedent that the decedent cannot correct themselves.

However, tortious interference with inheritance is different from wrongful death actions because its progression, in Connecticut, has been through the courts, instead of through legislation. This, in and of itself, is telling because these cases concern whether tortious interference with inheritance is a valid cause of action. These cases have been in front of superior court judges who have a lot of experience in hearing tort cases. In fact, the Connecticut judicial system heard 5,396 tort cases between 2016 and 2017, and since each case must begin at the superior court level, that means that superior court judges heard 5,396 tort cases.[134] From sheer numbers alone, it is clear that these are judges who understand the general principles of tort law. With that experience, a majority of superior court judges who have heard a tortious interference case have decided to allow the plaintiffs to proceed with this action even though the harm was not directed at them, but at the decedent.

As mentioned above, these are only partial responses to the challenges that Goldberg and Sitkoff mention, and given the serious nature of these challenges, they deserve a full response. However, given the rapid progression of tortious interference with inheritance in Connecticut, it is time for the legislature or judiciary to confront these challenges and to officially decide whether the State will welcome the tort into its jurisprudence.

IV. RECOMMENDATION

The last piece of the puzzle is the appropriate forum for the discussion of whether Connecticut should recognize tortious interference with inheritance as a valid cause of action, the two options being either the legislature or the

---

[132] *Id*. at 382 (internal citations omitted).

An executor or administration of an estate can also bring a wrongful death action. *See* CONN. GEN. STAT. § 52-555 (2018).

[133] Plaintiffs would be confined to being family members or close friends who were expecting an inheritance from the decedent.

[134] *See* State of Connecticut-Judicial Branch, *Civil Cases Added by Case Type*, https://www.jud.ct.gov/statistics/civil/civil_casetypeAdd.pdf (last visited Nov. 2, 2018).

judiciary. In this instance, the best option is for the judiciary to hear a case on the matter because the superior courts have already started the work. The judiciary can also clarify the effect of the *Geremia* opinion on the tort,[135] and it has the necessary experience to address the concerns expressed by Goldberg and Sitkoff. Connecticut also has a history of recognizing new torts through Supreme Court decisions, including wrongful discharge,[136] action for medical provider's unauthorized disclosure of confidential information,[137] and intentional spoliation of evidence.[138] Given this history and the number of torts that have been recognized through Supreme Court decisions, having the judiciary, through either the Appellate or Supreme Court, hear a case is a better alternative than having the legislature decide the validity the tort.

The being said, both approaches have their advantages and disadvantages that scholars have debated for centuries. For example, "[p]roponents of statute law such as Aristotle, Hobbes, and Bentham have stressed the certainty of precisely formulated general rules and the greater legitimacy of laws enacted by the sovereign authority . . . ."[139] This is contrasted with "supporters of case law such as Cato, Burke, and Hayek [who] have highlighted the value of the evolving tradition embodied in the history of judicial precedents."[140]

Proponents of statutorily-based law point to the fact that a statute is predictable. The benefit of such predictability in the legal system is that it "is likely to result [in] more adherence to norms, more productive behavior, fewer disputes, and more settlements."[141] As such, statutes "bind a decision maker to respond in a determined way to some specific triggering facts . . . [and] they minimize the need to time-consuming balancing of all relevant interests and facts."[142] A statute is therefore more efficient because, in applying a statute to a case, a judge already has an analytic formula which he can simply apply to a new set of facts. This helps both attorneys and judges resolve issues more efficiently, which, in turn, saves the judicial system from expending a large amount of resources on simple issues.

However, there are criticisms of statutory-based law which stem from the fact that "[s]tatutes have no intrinsic evolutionary property,[143] and their

---

[135] *See generally Geremia v. Geremia,* 125 A.3d 549 (Conn. App. 2015).

[136] *See Sheets v. Teddy's Frosted Food, Inc.*, 427 A.2d 385, 388-89 (Conn. 1980).

[137] *See Byrne v. Avery Center for Obstetrics & Gynecology, P.C.*, 175 A.3d 1, 20 (Conn. 2018).

[138] *See Rizzuto v. Davidson Ladders, Inc.*, 905 A.2d 1165, 1174 (Conn. 2006).

[139] Giacomo A. M. Ponzetto & Patricio A. Fernandez, *Case Law versus Statute Law: An Evolutionary Comparison*, 37 J. LEGAL STUD. 379, 379 (2008).

[140] *Id*. at 379-80.

[141] Luca Anderlini, Leonardo Felli & Alessandro Riboni, *Statute Law or Case Law?*, LONDON SCHOOL OF ECON. & POL. SCI. 1, 9 (2008) http://sticerd.lse.ac.uk/dps/te/TE528.pdf?from_serp=1.

[142] *Id*. at 9-10.

[143] Unless, of course, the judiciary steps in to interpret the statute differently than it has traditionally been

quality simply reflects that of the electoral process."[144] This means that "[s]tatutes provide the short-run certainty of written law, [whereas] stare decisis endows case law with long-run certainty, because case law (unlike statutes) cannot change abruptly, and in the gradual process of distinguishing, countervailing judicial biases tend to cancel out."[145] Statutes, when well written, can fix a problem in the short term, but have little to no long term value because statutes cannot evolve to stay relevant and useful the way case law can. Although statutes can be amended, there needs to be sufficient legislative support for that to occur, and courts can respond more quickly to the changing landscape if presented with the right case.

Unlike statutes, case law can be thought of as an "evolutionary process in which the biases of successive judges offset each other: a process whereby 'the bad will be rejected and cast off in the laboratory of the years,' leading to legal outcomes that are more uniform and of greater value than are the individual judicial decisions considered in isolation."[146] This evolutionary process leads to "greater efficiency and predictability."[147]

However, there are criticisms of case law, the most important being that "judges' self-interest and personal biases play a major role in determining judicial decisions."[148] This flaw becomes even more problematic considering the "vast literature [that] has all but proved that Supreme Court decisions are shaped by ideology at least as much as by precedent."[149] This major flaw of deciding a case based on ideology instead of precedent, especially at the highest court level, has created some very problematic and troubling decisions in the past and will continue to do.[150]

Given the advantages and disadvantages of each approach, it seems that the best approach would be to have the judiciary, specifically the Supreme Court, hear a case.[151] This is the best approach because the Connecticut superior courts

---

interpreted. This, in turn, raises concerns generally known as "judicial activism" – a topic that strays from the topic of this Note.

144 Ponzetto & Fernandez, *supra* note 139, at 382.

145 *Id*.

146 *Id*. at 381 (quoting Justice Cardozo).

147 *Id*.

148 *Id*. at 380.

149 Ponzetto & Fernandez, *supra* note 139, at 380 (internal citations omitted).

150 *See generally Scott v. Sandford*, 60 U.S. 393 (1857).

151 A tortious interference with inheritance case can be appealed to the Appellate Court and the Supreme Court can transfer the case itself. *See* CONN. GEN. STAT. § 51-199(c) (2018); Conn. Practice Book § 65-1. The Supreme Court has exercised this power where the law needs to be clarified. *See, e.g.*, *Mazziotti v. Allstate Ins. Co.*, 240 Conn. 799 (1997) (transferring a case for the Supreme Court to determine the res judicata effect of a prior judgement where the defendant was not in privity with the tortfeasor); *Breton v. Comm'r of Corr.*, 330 Conn. 462 (2018) (transferring a case for the Supreme Court to determine the ex post facto clause's effect of applying an amendment to the petitioner); *Browning v. Brunt*, 330 Conn. 447 (2018) (transferring a case for the Supreme Court to determine whether the plaintiffs fit into an exception

have already started the work and the Supreme Court will be able to clarify the effect of the *Geremia* decision.[152] Given the concerns about the tort stated in the last section, the Supreme Court is also in the best position to substantively address those concerns.

Superior courts have already started the heavy lifting of determining whether Connecticut should recognize tortious interference with inheritance as a valid cause of action in the form of motions to strike and motions for summary judgement. The results of those decisions have been addressed in a prior section.[153]

Also addressed in a previous section, an element can be added to the tort, requiring the plaintiff to exhaust probate remedies before bringing the action in Superior Court.[154] However, this element may run into some difficulty given the Appellate Court's ruling in *Geremia*. The court in *Geremia* clearly stated that "[n]either § 45a-98 nor any other provision of the General Statutes vests the Probate Court with jurisdiction, exclusive or otherwise, over those actions sounding in tort."[155] As such, a plaintiff cannot even go to a probate court to try and secure a remedy, which means that a plaintiff cannot exhaust a probate remedy. That being said, if the Supreme Court rules on the issue of allowing tortious interference with inheritance to be a valid cause of action, the court could specify the exhaustion requirement to mean that if there are causes of action which do not sound in tort, those actions need to be first brought in probate court.

An example of a situation where the court could use such an exhaustion requirement is *Reilley v. Albanese*. The case concerned a five-count complaint which alleged "undue influence, incapacity, intentional interference with an inheritance, breach of fiduciary duty, and fraud . . . ."[156] The plaintiff was the daughter and sole heir of the decedent under a will executed on June 6, 2013.[157] "Prior to December 9, 2014, and December 16, 2014, the decedent named the plaintiff as beneficiary of his Cantella & Co., Inc., investment accounts."[158] According to the complaint, the defendant unduly influenced the decedent to purchase items for the defendant and defendant's family. The complaint also stated that the defendant unduly influenced the decedent to gain access to decedent's bank accounts and credit cards.[159] If the courts in such situations

---

that would allow the plaintiffs to bring an action against third parties if the trustee improperly refuses to do so).

[152] *See generally Geremia*, 125 A.3d at 549.

[153] *See infra* Part II Section c, iii.

[154] *Id.*

[155] *Geremia*, 125 A.3d at 563.

[156] *Reilley*, 61 Conn. L. Rptr. at 463.

[157] *Id*.

[158] *Id*. at 463-64.

[159] *Id*. at 464.

require an exhaustion requirement, before the plaintiff could bring a claim for tortious interference with inheritance in superior court, the plaintiff would first need to bring the undue influence, incapacity, breach of fiduciary duty, and fraud claim in probate court.

The last reason why the Supreme Court should be the authority to decide this issue is because these courts have the required expertise to address the challenges raised by Goldberg and Sitkoff. Since Goldberg and Sitkoff raise substantive challenges regarding the effect of the tort on the probate and tort systems, the judiciary, by virtue of having experience with both areas of law, is in a better position to address those and other concerns than the General Assembly.

V. CONCLUSION

All in all, the time is ripe for the judiciary to hear a case concerning whether Connecticut should recognize tortious interference with inheritance as a valid cause of action. Given the challenges that Goldberg and Sitkoff address in their article about the stability of the tort, and the superior court judges who are either unaware of these concerns, or who are not addressing them, the Connecticut judiciary needs to respond before the jurisprudence regarding tortious interference with inheritance continues to grow. The growing jurisprudence becomes more of an issue every day as more Superior Courts are tasked with deciding for themselves whether the tort should be recognized.[160] As demonstrated above, there are certain actions that Connecticut can take to mitigate against these concerns, but in order for the State to take the appropriate action, Connecticut needs to be clear as to whether it will even recognize the tort.

[160] There have been three decisions involving tortious interference with inheritance in 2018. *See generally Solon v. Slater*, No. CV156026286S, 2018 WL 632344 (Conn. Super. Ct. Jan. 8, 2018); *Zupa*, 66 Conn. L. Rptr. 619; *Vaicunas v. Gaylord*, No. CV146053845S, 2018 WL 3814971 (Conn. Super. Ct. July 20, 2018).