WRONGFUL INTERFERENCE

- **Interference with Contract:** The tort of interference with contract requires proof of the following:

  1. A **valid contract** exists between parties X and Y;
  2. A third party, Z, **knows** that said contract exists; and
  3. Z **intentionally** causes X or Y to breach the contract.

- **Interference with Business Relationship:** Interference with a **prospective** business relationship is also actionable, where:

  1. While no contract or other business relationship presently exists between X and Y, Z knows or has reason to believe that X and Y might enter into a business relationship, by contract or otherwise; and

  2. Z intentionally interferes with X’s attempt to establish a business relationship with Y.

- In either case, Z’s interference will be excused if Z can establish that it was **privileged** or **justified** to act as it did.
PREDATORY BEHAVIOR AND (MIS-)APPROPRIATION

While free enterprise encourages competition, certain competitive behavior is, nonetheless unlawful. The following are examples:

- **Predatory Conduct:** Business behavior undertaken with the intention of unlawfully driving competitors out of the market.

- **(Mis-)Appropriation (of Personal Identity):** The use by one party of another party’s name, likeness, or other identifying characteristics without permission and for the benefit of the appropriating party.
BUSINESS DISPARAGEMENT

- **Defamation** becomes a business tort when a slanderous or libelous communication injures a person or entity in a profession, business, or trade, or when it adversely affects a person’s or entity’s goodwill and/or access to credit.

- **Disparagement of Property**
  - **Disparagement of Quality**: The publication, whether in writing (*trade libel*) or orally (*slander of quality*), of false information about the quality of another’s product or services.
  - **Disparagement of Title**: The publication, whether in writing or orally, of a statement that denies or casts doubt upon another’s legal ownership of any property, causing financial loss to the disparaged party.
INTELLECTUAL PROPERTY

- **Intellectual Property**: Any property resulting from intellectual, creative processes -- the products of one or more individual’s mind(s).

- The framers of the U.S. Constitution recognized the need to protect and promote intellectual property more than two hundred years ago. Article I, Section 8 empowers Congress:

  To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

- Laws protecting patents, trademarks, and copyrights are explicitly designed to protect, nurture, and reward inventive and artistic creativity.
Trademark Protection

Trademark: A distinctive mark, motto, device, or implement that a manufacturer stamps, prints, or otherwise affixes to the goods it produces so that they may be identified on the market and their origins made known.

Once a trademark is established, its owner is entitled to exclusive use of the trademark.

A trademark may be established either by:

1. registering the mark with one or more states and/or with the U.S. Patent and Trademark Office pursuant to the Lanham Act, or

2. prior use sufficient to warrant common law protection.

Only those marks that are sufficiently distinctive from all similar or competing marks will be protected under the Lanham Act. The trademark must enable consumers:

1. to identify the manufacturer of the good easily, and

2. differentiate between competing products.
SERVICE MARKS CERTIFICATION MARKS
AND COLLECTIVE MARKS

- **Service Mark:** A mark used in the sale or the advertising of *services* to distinguish the services of one person or entity from those of another.
  - Titles, character names, and other distinctive features of radio and television programs may be registered as service marks.

- **Certification Mark:** A mark used by one or more persons or entities *other than the owner* to certify the region, materials, mode of manufacture, quality, or accuracy of the owner’s goods or services (e.g., “UL Tested,” “Good Housekeeping Seal of Approval,” “J.D. Power & Associates”).

- **Collective Mark:** A mark used by members of a cooperative, association, or other organization to distinguish products or services approved by the collective from those not so approved (e.g., union labels).
TRADE NAMES AND TRADE DRESS

- **Trade Name:** A term used to indicate part or all of a business’ name and that is directly related to the business’ reputation and goodwill.

- **Trade Dress:** The use of a product’s name, likeness, or other identifying characteristics, without permission, and for the benefit of the appropriating party.

  This is sometimes referred to as “trade dress” protection. For example, Equal™ comes in a blue packet, Sweet-N-Low™ comes in pink, and any other sugar substitute packaged in either blue or pink will not be on the market for long without being sued.
PATENTS

- **Patent:** A grant from the government giving an inventor the *exclusive right* or privilege to *make, use, or sell* his or her invention, as well as any logical embodiments of the invention, for a period of time.

  - A patent may be obtained for a *product*, a *process*, or a *design*.

  - In order to obtain a patent, the inventor must convince the U.S. Patent and Trademark Office that the product, process, or design is *genuine*, *novel*, *useful*, and *not obvious* in light of current technology.

  - Unlike many other countries, the U.S. awards patent protection to the first person to invent a product, process, or design, *not* the first person to file a patent application for said product, process, or design.

  - The patent owner will frequently grant exclusive or non-exclusive *licenses* to others to enable them to make, use, or sell the patented product, process, or design. In return for which, the patent owner will typically be paid a *royalty* on all sales of goods manufactured or sold pursuant to the license.
COPYRIGHTS - PART I

■ **Copyright:** The exclusive right of an author to publish, print, or sell a product or his or her intellect for a certain period of time.

■ To obtain protection under the Copyright Act, a work must be *original* and constitute a:

(1) literary work,

(2) musical work,

(3) dramatic work,

(4) pantomime or choreographic work,

(5) pictorial, graphic, or sculptural work,

(6) film or other audiovisual work, or

(7) sound recording.

■ Note that, while it is **not** possible to copyright an **idea**, the particular **expression** of an idea is copyrightable.
COPYRIGHTS - PART II

- A copyright grants its holder the same monopolistic control over his or her creation as a patent or trademark; however, a copyright may be obtained only for works of art, literature, music, and other forms of authorship (e.g., computer programs).

- Also, like patents and trademarks, copyrights can be registered -- in the case of copyrights, with the U.S. Copyright Office, as opposed to the U.S. Patent and Trademark Office.
COPYRIGHTS - PART III

“Fair Use” Doctrine -- Unlike patents and trademarks, federal copyright law provides a statutory defense to a claim of copyright infringement. Section 107 of the Copyright Act permits a person or organization to reproduce copyrighted material without paying royalties as long as the reproduction constitutes “fair use” including, but not limited to, reproduction for purposes of criticism, commentary, news reporting, teaching, scholarship, or research.

When considering “fair use,” the courts will consider:

(1) the purpose and character of the use;

(2) the nature of the work;

(3) the amount and substantiality of the portion used in relation to the work as a whole and;

(4) the affect of the use upon the potential market of the work.
TRADE SECRETS

■ **Trade Secret:** Information or a process that gives a person or business an advantage over competitors who do not have access to the information or process.

■ Trade secrets include such things as **customer lists**, **pricing information**, **marketing techniques**, **plans**, **research and development**, **production methods**, and, generally, anything else that sets an individual business apart from and would have value to its competitors.

■ Trade secret protection is almost exclusively a matter of common law. No federal agency exists for the purpose of registering trade secrets. Likewise, no federal statute exists which would give protection to trade secrets.

■ Trade secret protection extends both to **ideas** and to their **expression**.

■ Generally, common law will protect an employer from disclosure of trade secrets by a former employee.
INTERNATIONAL PROTECTION

- The United States is a party to several international agreements giving some protection to intellectual property on a worldwide level. Two major agreements include the **Berne Convention** and the **TRIPS** agreement.

- The **Berne Convention** of 1886 states that if an American writes a book, the author’s copyright in the book must be recognized by every other country that has also signed the convention.

- The **TRIPS** agreement was signed in 1994 with over 100 countries participating. This agreement provides that a member nation must offer the same protection it offers to its own citizens to foreign owners.
BUSINESS RICO

Increasingly in recent years, businesses have been sued for fraudulent or other tortious activities under the Racketeer Influenced and Corrupt Organizations Act, or “RICO,” which was originally intended to attack organized crime. The act provides for both civil and criminal liability.

- Under RICO, it is a federal crime to:
  
  (1) use any income obtained from racketeering activity to purchase any interest in an enterprise;
  
  (2) acquire or maintain an interest in an enterprise through racketeering activity;
  
  (3) conduct or participate in the affairs of an enterprise through racketeering activity; or
  
  (4) conspire to do any of the foregoing.

- A person or entity engages in “a pattern of racketeering activity” by committing two or more offenses recited in the text of the RICO statute.

- In a private civil lawsuit, the successful plaintiff is entitled to recover treble (3 times) damages plus attorney fees for business injuries caused by violations.