

Maine

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A. Adoption of the UCC

Maine adopted the Uniform Commercial Code in 1963. Section 1-1103 states: “(1) The Uniform Commercial code must be liberally construed and applied to promote its underlying purposes and policies, which are: (a) To simplify, clarify and modernize the law governing commercial transactions; (b) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and (c) To make uniform the law among the various jurisdictions.”¹

The objective in determining compensatory damages is not to make awards uniform across unrelated cases, but rather to individualize each award based on who is entitled to recover and what amount represents fair compensation for proven losses sustained by the person entitled to recover.³ “Compensatory damages are individualized because the quantitative outcome is defined by what amount is proper to make a particular injured party whole,” and those determinations are made on a case-by-case basis.⁴

B. Compensatory Damages

Compensatory damages are available for a breach of contract.²

¹ 11 M.R.S. § 1-1103.

² *Marchessault v. Jackson*, 611 A.2d 95, 98-99 (Me. 1992).

³ *Smith v. Henson*, 339 A.3d 816, 830 (Me. 2025).

⁴ *Id.*

A party seeking damages must mitigate his damages.⁵ Failure to mitigate damages is affirmative defense, so a defendant must show the plaintiff failed to take reasonable steps to mitigate.⁶

C. Consequential Damages

Consequential damages resulting from a seller's breach may include: (1) loss resulting from general or particular requirements and needs of the buyer that the seller at the time of contracting had reason to know, and (2) injury to person or property proximately resulting from a breach of warranty.⁷ Plaintiffs can recover damages arising naturally from a breach of contract, or which can reasonably have been in contemplation of the parties at the time the contract was made.⁸

D. Incidental Damages

Damages available to a buyer for a seller's breach are intended to place the buyer in the position it would have been in "but for the

breach, by awarding the value of the promised performance."⁹

In Maine, the UCC defines incidental damages as resulting from the seller's breach include "expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach."¹⁰ Incidental breaches involving a buyer include "any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return of resale of the goods or otherwise resulting from the breach."¹¹

E. Punitive Damages

Maine allows punitive damages in a limited set of circumstances. In general, a claim for punitive damages requires a tort claim – so, a breach of contract claim is insufficient.¹² To recover punitive

⁵ *Schiavi Mobile Homes, Inc. v. Gironda*, 463 A.2d 722, 724-725 (Me. 1983).

⁶ *Marchessault*, 611 A.2d at 99.

⁷ 11 M.R.S. § 2-715; *see Packgen v. Berry Plastics Corp.*, 113 F. Supp.3d 371, 391 (D. Me. 2015).

⁸ *Winship v. Brewer Sch. Committee*, 390 A.2d 1089, 1095 (Me. 1978).

⁹ *Anuszewski v. Jurevic*, 566 A.2d 742, 743 (Me. 1989).

¹⁰ 11 M.R.S. § 2-715(1).

¹¹ 11 M.R.S. § 2-710.

¹² *Stull v. First Am. Title Ins. Co.*, 2000 ME 21, ¶¶ 12, 14 (Me. 2000); *Drinkwater v. Pattern Realty Corp.*, 563 A.2d 772, 776-777 (Me. 1989); *Forbes v. Wells Beach Casino, Inc.*, 409 A.2d 646, 655 (Me. 1979).

damages, “a plaintiff must prove by clear and convincing evidence that the defendant acted with malice.”¹³ The Supreme Judicial Court of Maine “rejected the law of other jurisdictions that permit an award of punitive damages based on a lesser state of mind requirement, namely on a finding of gross negligence or recklessness.”¹⁴ The Supreme Judicial Court reasoned, because a gross negligence or reckless requirement “covers too broad and too vague an area of behavior, resulting in an unfair and inefficient use of the doctrine of punitive damages” that would “allow virtually limitless imposition of punitive damages.”¹⁵

F. Liquidated Damages

For liquidated damages to be enforceable, the damages caused by the breach must be “very difficult to estimate accurately,” and (b) the amount of damages must be “a reasonable forecast of the amount necessary to justly compensate one party for the loss occasioned by the

breach of the other party.”¹⁶ Further, “the reasonableness of the amount stipulated as liquidated damages is to be examined as of the time the contract was formed,” so “the amount must be reasonable both in terms of the subject matter of the contract and the parties’ situation and as a prediction of the harm resulting from a prospective breach.”¹⁷

G. Pre- and Post-Judgment Interest

Entitlement to prejudgment interest on judgments is derived from statute.¹⁸ The purpose of prejudgment interest is twofold: first, to compensate the injured party for the inability to use money rightfully belonging to them during the delay between when the suit is filed and when the judgment is entered, and second, to encourage defendants to settle meritorious claims pretrial.¹⁹ Prejudgment interest is allowed at the one-year United States Treasury bill rate plus 3%, in “civil actions.”²⁰ Prejudgment

¹³ Tuttle v. Raymond, 494 A.2d 1353 (Me. 1985).

¹⁴ Batchelder v. Realty Res. Hospitality, LLC, 914 A.2d 1116, 1121 (Me. 2007).

¹⁵ *Id.*

¹⁶ Dairy Farm Leasing Co., Inc. v. Hartley, 395 A.2d 1135 (Me. 1978).

¹⁷ Interstate Indus. Uniform Rental Serv., Inc. v. Couri Pontiac, Inc., 355 A.2d 913 (Me. 1976).

¹⁸ Brown v. Habrle, 2010 ME 72, ¶ 11 (Me. 2010).

¹⁹ Jasch v. Anchorage Inn, 2002 ME 106, ¶ 13 (Me. 2002).

²⁰ 14 M.R.S. § 1602-B(3). Other rules apply to small claims and claims involving contracts or notes. For small claims, prejudgment interest is not recoverable

interest accrues from the time of notice of claim until the date in which an order of judgment is entered.²¹

Post-judgment interest is allowed in all civil and small claims involving a contract or note that contains a provision relating to interest and will accrue at the rate set forth.²² In all other actions, the rate is the one-year United States Treasury bill rate plus 6%.²³ The interest accrues from and after the entry of judgment and includes the period of any appeal.²⁴

Ultimately, the legislature determines what rate the judgment will accrue depending on the date of filing the complaint, the basis of the action, and whether the rate is specified in a written instrument, if such instrument exists. The following table gives an understanding of how each of these variables impact the calculation of a pre- and post-judgment award.

DATE OF FILING COMPLAINT	BASIS OF ACTION	CALCULATION OF AWARD
Before July 1, 2003	Actions that do not involve contracts or notes setting forth a stated interest rate with judgments not exceeding \$30,000. ²⁵	The rate for prejudgment interest is 8%. ²⁶
Before July 1, 2003	Actions that do not involve contracts or notes setting forth a stated interest rate with judgments exceeding \$30,000. ²⁷	The rate for prejudgment interest is the one-year United States Treasury bill, plus 1%. ²⁸
After July 1, 2003	Actions that do not involve contracts or notes setting forth a stated rate. ²⁹	The rate for prejudgment interest is the one-year United States Treasury bill rate plus 3%. ³⁰
Any Date	Actions for small claims that do not involve a contract or note setting forth a stated rate. ³¹	Prejudgment interest is not recoverable. ³²
Any Date	Actions for claims involving a contract or note that contain a provision relating to interest. ³³	Prejudgment interest is the rate set forth in the contract or note. ³⁴

unless the rate of interest is based on a contract or note. For claims involving a contract or note that contains a provision relating to interest, prejudgment interest is allowed at that particular rate.

²¹ *Id.* at § 1602-B(5).

²² *Id.* at § 1602-C(1)(A).

²³ *Id.* at § 1602-C(1)(B).

²⁴ *Id.* at § 1602-C(2).

²⁵ *Id.* at § 1602-B(7)(A).

²⁶ *Id.*

²⁷ *Id.* at § 1602-B(7)(B).

²⁸ *Id.*

²⁹ *Id.* at § 1602-B(3).

³⁰ *Id.*

³¹ *Id.* at § 1602-B(1).

³² *Id.*

³³ *Id.* at § 1602-B(2).

³⁴ *Id.*

H. Attorney's Fees

Maine courts follow the “American Rule” with respect to the payment of attorney fees and costs; each party is responsible for their own attorney fees unless a statute or court rule specifically authorizes the trial court to enter an award of attorney fees.³⁵ However, contractually based attorney’s fees do not need statutory or rule-based authority – instead, a contract that includes a provision that requires payment of attorney’s fees becomes a part of the damages claims available to be recovered, so long as they are reasonable.³⁶ Courts are expected to enforce the parties’ agreement, and if attorney fee provisions “reflect the anticipated or actual loss” and are not “excessive so as to constitute a penalty, they will be enforced.”³⁷

I. Reliance Damages

Maine has adopted the Restatement (Second) of Contracts Section 90 formulation of promissory estoppel, which provides the primary basis for recovering reliance damages.³⁸ The Maine Supreme Judicial Court has

stated “a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.”³⁹ Promises may be enforced based on detrimental reliance, even without traditional consideration.

The scope of remedies allowed under promissory estoppel has been clarified such that binding promises are treated as contracts.⁴⁰ Relief may be limited to restitution, damages, or “specific relief measured by the extent of the promisee’s reliance, rather than by the terms of the promise.”⁴¹ Maine courts have adopted the Restatement formulation of the doctrine of promissory estoppel, requiring proof that (1) the promisor should have reasonably expected the promise to induce action or forbearance; (2) the promise actually induced such detrimental reliance; (3) the reliance was reasonable under the circumstances; and (4) injustice can be avoided only by enforcement of the promise.⁴²

³⁵ *In re Estate of Weatherbee*, 93 A.3d 248, 252 (Me. 2014).

³⁶ *Yim K. Cheung v. Wing Ki Wu*, 919 A.2d 619, 625 (Me. 2007).

³⁷ *St. Hilaire & Assocs., Inc v. Harbor Corp.*, 607 A.2d 905 (Me. 1992).

³⁸ *Chapman v. Bomann*, 381 A.2d 1123, 1127 (Me. 1978).

³⁹ *Id.*

⁴⁰ *Harvey v. Dow*, 11 A.3d 303, 308 (Me. 2011).

⁴¹ *Id.*

⁴² *Daigle Commercial Group, Inc. v. St. Laurent*, 734 A.2d 667, 672 (Me. 1999).

The requirement of proximate causation is particularly stringent in Maine.⁴³ Courts have emphasized that damages flowing from the underlying loss rather than from the reliance itself are not recoverable, establishing a clear causal requirement between the act of reliance and the resulting harm.⁴⁴

J. Unjust Enrichment

Maine recognizes unjust enrichment as a legal doctrine that allows recovery for the value of benefits retained when there is no contractual relationship, but fairness and justice compel payment.⁴⁵

A claim of unjust enrichment is established by proving that “(1) the claimant conferred a benefit on the receiving party, (2) the receiving party had appreciation or knowledge of the benefit, and (3) acceptance or retention of the benefit was under circumstances that make it inequitable for [the receiving party] to retain the benefit without payment of its value.”⁴⁶

The terms, “unjust enrichment” and “quantum meruit,” are sometimes used synonymously, although they have significantly different meanings. In particular,

“quantum meruit” means “recovery for the value of services or materials provided under an actual, implied-in-fact contract.”⁴⁷ Unjust enrichment, by contrast, involves the “recovery for the value of the benefit retained when there is no contractual relationship, but when, on the grounds of fairness and justice, the law compels performance of a legal and moral duty to pay.”⁴⁸

K. Unique Remedies (plaintiff-friendly, pre-judgment remedy statutes)

Maine strongly favors plaintiffs in asset-preservation rules through litigation. Ex parte attachment is permitted when plaintiffs show a likelihood of success and a clear danger that defendants will conceal or destroy property if notified.⁴⁹ The Maine Supreme Judicial Court has upheld these rules allowing plaintiffs to freeze assets before defendants can react, emphasizing safeguarding against abuse.⁵⁰ Maine’s attachment rules also permits “subsequent” attachment that allows plaintiffs with flexibility to seek attachment of newly discovered assets or increase attachment amounts as the case

⁴³ Gulesian v. Ne. Bank of Lincoln, 447 A.2d 814, 817 (Me. 1982).

⁴⁴ *Id.*

⁴⁵ A.F.A.B., Inc. v. Town of Old Orchard Beach, 639 A.2d 103, n.3 (Me. 1994).

⁴⁶ U.S. Bank, Nat. Ass’n v. Thomes, 69 A.3d 411, 415 (Me. 2013).

⁴⁷ A.F.A.B., 639 A.2d at n.3.

⁴⁸ *Id.*

⁴⁹ ME. R. R.C.P. Rule 4A(g).

⁵⁰ Herrick v. Theberge, 474 A.2d 870, 876 (Me. 1984).

progresses.⁵¹ Maine’s trustee process extends these advantages to assets held by third parties, using the same standard and permitting ex-parte orders.⁵²

L. Public Policy Prohibitions

The Maine Supreme Judicial Court applies a well-established test for public policy violations requiring that contracts “clearly appear[] to be in violation of some well-established rule of law, or that its tendency will be harmful to the interests of society.”⁵³ Courts balance parties’ freedom to contract against potential societal harm, emphasizing that contracts should not be “lightly set aside.”⁵⁴ Maine courts apply a restrictive approach to public policy challenges, requiring that any contract violation must involve “a well-defined and dominant policy that may be ascertained from the law and legal precedent.”⁵⁵

Maine statutes expressly void certain contracts:

- unconscionable contracts;⁵⁶
- motor carrier transportation: indemnification agreements that protect parties from liability for their own negligence or intentional acts are void;⁵⁷
- recreational vehicle dealers;⁵⁸
- personal sports mobile dealer agreements;⁵⁹
- municipal contracts: agreements involving officials with a direct or indirect pecuniary interest are voidable, except when awarded through proper bidding;⁶⁰
- Whistleblowers’ Protection Act: safeguards employees from retaliation for good-faith reports of suspected legal violations;⁶¹ and
 - uninsured motorist coverage: excess-escape clauses held void as against public policy.⁶²

⁵¹ ME. R. R.C.P. Rule 4A(f).

⁵² ME. R. R.C.P. Rule 4B.

⁵³ Allstate Ins. Co. v. Elwell, 513 A.2d 269, 272 (Me. 1986).

⁵⁴ *Id.*

⁵⁵ State Farm Mut. Auto. Ins. Co. v. Koshy, 995 A.2d 651, 665 (Me. 2010).

⁵⁶ 11 M.R.S. § 2-302.

⁵⁷ 10 M.R.S. § 1459.

⁵⁸ 10 M.R.S. § 1446.

⁵⁹ 10 M.R.S. § 1250-D.

⁶⁰ 30-A M.R.S. § 2605.

⁶¹ Nadeau v. Twin Rivers Paper Co., LLC, 247 A.3d 717, 733 (Me. 2021) (Jabar, J., dissenting).

⁶² Wescott v. Allstate Ins., 397 A.2d 156, 167 (Me. 1979).