

Massachusetts

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Massachusetts law provides a robust framework for addressing business torts and contract disputes, blending common law principles, the Uniform Commercial Code (UCC), and consumer-friendly statutes like General Laws Chapter 93A. This article examines key remedies available in Massachusetts, including compensatory, consequential, incidental, reliance, punitive, and liquidated damages, as well as unique statutory remedies, prejudgment and post-judgment interest, attorney's fees, unjust enrichment, and public policy limitations. The following sections detail the legal standards, statutory provisions, and practical considerations for each remedy.

A. Adoption of the UCC

Massachusetts is the second state to adopt the Uniform Commercial Code ("UCC") through Massachusetts General Laws Chapter 106, which governs commercial transactions including the sale of goods, warranties, and contract remedies.¹

B. Key Statutes Governing Remedies

Massachusetts's remedies framework is shaped by statutes like General Laws Chapter 93A, which addresses unfair or deceptive trade practices, General Laws Chapter 231, Section 6B, governing

¹ Adams v. Adams, 601 F.3d 1, 8 (1st Cir. 2010).

prejudgment interest, and General Laws Chapter 235, Section 8, for post judgment interest. Additional statutes, such as General Laws Chapter 152 (workers' compensation), General Laws Chapter 149, Section 150, and General Laws Chapter 151, Section 20 (wage violations), provide specific remedies, including attorneys' fees, enhancing the state's robust protections for aggrieved parties. While Massachusetts's remedies aim to compensate rather than punish, various damages types address distinct aspects of harm in contract and tort disputes.

C. Compensatory Damages

Compensatory damages under Massachusetts law aim to restore the plaintiff to the position they would have occupied absent the wrongful conduct² rather than to punish the breaching party.³ These damages compensate for direct losses, incidental expenses, and consequential damages, depending on the foreseeability of the loss and the nature of the tort or breach.⁴ Plaintiffs must provide evidence of

actual or anticipated economic or non-economic harm.⁵

Compensatory damages may be recoverable under the following claims in Massachusetts:

- breach of contract;⁶
- torts;⁷
- specific statutory provisions;⁸ and
- incidental and consequential damages.⁹

D. Consequential Damages

Consequential damages, governed by the UCC and common law, compensate for foreseeable losses arising naturally from a breach or contemplated by the parties at the time of contracting. Under General Laws Chapter 106, Section 2-715, UCC consequential damages include losses from the buyer's known requirements that cannot be reasonably prevented, as well as personal or property injury from warranty breaches, unless limited by an enforceable, non-unconscionable clause. Common law mirrors this, requiring plaintiffs to prove foreseeability and causation. A fact-specific evaluation determines whether limitations are

² E. Mass. St. Ry. Co. v. Union St. Ry. Co., 269 Mass. 329, 333 (Mass. 1929).

³ Glavin v. Eckman, 71 Mass. App. Ct. 313, 320 (Mass. App. Ct. 2008).

⁴ *Id.* at 320.

⁵ Keene v. Brigham & Women's Hosp., Inc., 56 Mass. App. Ct. 10, 29 (Mass. App. Ct. 2002).

⁶ Mailman's Steam Carpet Cleaning Corp. v. Lizotte, 415 Mass. 865, 869 (Mass. 1993).

⁷ McGilloway v. Safety Insurance Co., 488 Mass. 610, 614 (Mass. 2021).

⁸ MASS. G.L. c. 93A, § 9 (2025).

⁹ MASS. G.L. c. 106, § 2-715 (2025).

unconscionable, assessing whether clauses are oppressive or cause unfair surprise given the commercial context.

Under the UCC, consequential damages resulting from a seller's breach include "any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise and when injury to person or property proximately results from any breach of warranty."¹⁰ Additionally, limitations on consequential damages under the UCC are enforced unless the limitation is unconscionable.¹¹ This is a fact-specific evaluation involving an assessment of whether the clauses are oppressive or result in unfair surprise when considering the general or particular commercial background and needs of the trade or case.¹²

Massachusetts common law is similar to the UCC, supporting consequential damages from a breach of contract which includes loss that cannot be prevented and arise naturally from the breach, or which are reasonably contemplated by the parties.¹³ If damages are

foreseeable and directly linked to the breach, the aggrieved party may recover consequential damages.¹⁴ The plaintiff bears the burden of proving consequential damages.¹⁵

E. Incidental Damages

In Massachusetts, the UCC governs incidental damages.¹⁶ Under the UCC, incidental damages cover costs incurred by the aggrieved party for commercially reasonable charges, expenses, or commissions due to a seller's breach. Incidental damages are appropriate when the seller's breach includes, but is not limited to, "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."¹⁷ Incidental damages include costs incurred by the aggrieved party for commercially reasonable charges, commissions, or expenses due to a breach of contract.¹⁸ The purpose of such damages is to put the aggrieved party in as good a position as if the

¹⁰ *Id.*

¹¹ *Id.*

¹² *Zapatha v. Dairy Mart, Inc.*, 381 Mass. 284, 292 (Mass. 1980).

¹³ *Selmark Associates, Inc. v. Ehrlich*, 467 Mass. 525, 545 (Mass. 2014).

¹⁴ *Delano Growers' Co-op. Winery v. Supreme Wine Co.*, 393 Mass. 666, 679 (Mass. 1985).

¹⁵ *Walsh v. Atamian Motors, Inc.*, 10 Mass. App. Ct. 828, 829 (Mass. App. Ct. 1980).

¹⁶ Mass. G.L. c. 106, § 2-715.

¹⁷ *Id.*

¹⁸ *Id.*

opposing party had not breached the contract.¹⁹

F. Reliance Damages

In Massachusetts, reliance damages are an alternative to expectation damages, protecting an aggrieved party from losses incurred in reliance upon a contractual obligation that was not performed.²⁰ A party may choose to recover reliance damages rather than expectation damages where it is difficult to prove profit with reasonable certainty.²¹

In calculating the amount of reliance damages recoverable, one has the right to recover damages based on their reliance interest.²² The recovery includes expenditures made in preparation for performance or in performance of the contract.²³ However, the recoverable amount may be reduced by losses the breaching party proves with reasonable certainty the injured party would have suffered had the contract been performed.²⁴ Recovery for expenditures cannot exceed the full contract price.²⁵

¹⁹ *Delano Growers' Co-op. Winery*, 393 Mass. at 679.

²⁰ Restatement (Second) of Contracts § 349 (A.L.I. 1981).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Doering Equipment Co. v. John Deere Co.*, 61 Mass. App. Ct. 850, 856 (Mass. App. Ct. 2004).

²⁵ *Id.* at 857.

G. Punitive Damages

Punitive damages are generally not recoverable in Massachusetts contract law unless expressly authorized by statute, such as General Laws Chapter 93A for knowing and willful unfair business practices.²⁶ Parties may rely on liquidated damages to recover from breaches of contract, provided that the clauses are not punitive.²⁷

H. Liquidated Damages

Liquidated damages are fixed sums stipulated by the parties at contract formation to approximate anticipated harm from a breach.²⁸ The damages are set to the extent of harm anticipated from a breach of contract.²⁹

Two criteria must be met for a Massachusetts court to enforce a liquidated damages clause.³⁰ First, at the time of contracting, the amount of actual damages stemming from the breach must be difficult to ascertain.³¹ Second, the amount agreed upon and established as the liquidated damages must be a reasonable

²⁶ *Aleo v. SLB Toys USA, Inc.*, 466 Mass. 398, 411 (Mass. 2013).

²⁷ *TAL Financial Corp. v. CSC Consulting, Inc.*, 446 Mass. 422, 423 (Mass. 2006).

²⁸ *Factory Realty Corp. v. Corbin-Holmes Show Co.*, 312 Mass. 325, 331 (Mass. 1942).

²⁹ *Id.* at 331.

³⁰ *A-Z Servicenter, Inc. v. Segall*, 334 Mass. 672, 675 (Mass. 1956).

³¹ *Id.* at 675.

forecast of damages expected to occur if a breach of contract results. Parties may establish damages proactively so long as the contract provision is reasonable in the light of the anticipated loss, rather than a penalty that is punitive.³² This is consistent with the traditional notion that the system of contract remedies is designed to compensate rather than punish.³³ Damages are deemed punitive if grossly disproportionate to a reasonable estimate of the actual damages or unconscionably excessive.³⁴

Massachusetts courts utilize the “single look” approach to determine whether the sum of damages agreed upon is a reasonable forecast of the actual or anticipated damages, rather than the “second look” approach.³⁵ While a “second look” approach evaluates the circumstances at the time of contract formation and then re-evaluates the actual damages when the breach occurs, a “single look” approach only examines the circumstances at the time of contract formation.³⁶ The party challenging the enforcement of the liquidated damages provision bears

the burden to show that the provision is unenforceable.³⁷

I. Prejudgment and Post-judgment Interest

Prejudgment interest in Massachusetts is awarded under General Laws Chapter 231, Section 6B, which requires that interest at a rate of twelve percent per annum be added to the amount of damages in tort actions involving personal injuries, consequential damages, or property damage.³⁸ In tort actions, interest accrues from the date of the commencement of the action and is intended to compensate the injured party for the delay in receiving monetary relief.³⁹ The statute specifies that this interest is added automatically, even if it results in the total award exceeding the maximum liability imposed by law.⁴⁰ In contract actions, prejudgment interest accrues on the date the claim or counterclaim is filed.⁴¹

The awarding of prejudgment interest is typically not discretionary under General Laws Chapter 231, Section 6B, as it is

³² Restatement (Second) of Contracts § 356 (A.L.I. 1981).

³³ *Id.*

³⁴ *A-Z Servicerter*, 334 Mass. at 675.

³⁵ *Kelly v. Marx*, 428 Mass. 877, 881 (Mass. 1999).

³⁶ *Id.* at 881.

³⁷ *TAL Financial Corp.*, 446 Mass. at 423.

³⁸ MASS. G.L. c. 231, § 6B (2025).

³⁹ *Rivera v. Tondreau*, 2006 Mass. App. Div. 21, 22 (Mass. App. Ct. 2006); *Anderson v. National Union Fire Insurance Company of Pittsburgh PA*, 476 Mass. 377, 383 (Mass. 2017).

⁴⁰ MASS. G.L. c. 231, § 6B.

⁴¹ *Interstate Brands Corp. v. Lily Trans. Corp.*, 256 F. Supp.2d 58, 63-64 (D. Mass. 2003).

statutorily mandated.⁴² In certain contexts where there is a clash with federal law, federal law may preempt the automatic application of the statute, leaving the award of prejudgment interest to the discretion of the fact finder.⁴³

Post-judgment interest is governed by General Laws Chapter 235, Section 8, which provides that every judgment for the payment of money shall bear interest from the day of its entry at the same rate as the prejudgment interest per annum. This interest accrues from the date of judgment until payment is made.⁴⁴

Post-judgment interest is as automatic as prejudgment interest under the statute, ensuring that the injured party is compensated for the time value of money during the period between judgment and payment.⁴⁵

J. Attorney's fees

Massachusetts awards attorney's fees under specific statutes. Under General Laws

Chapter 152, Section 13A, employees prevailing in workers' compensation hearings receive fees as outlined in the statute.⁴⁶ General Laws Chapter 93A, Section 11 mandates reasonable fees for prevailing parties in unfair or deceptive practice cases, with judges determining entitlement and reasonable amount,⁴⁷ even when quantifiable damages are limited.⁴⁸ Fees are also available under General Laws Chapter 93, Section 42C for bad faith trade secret misappropriation, General Laws Chapter 149, Section 150 and General Laws Chapter 151, Section 20 for wage violations,⁴⁹ and General Laws Chapter 231, Section 6F for frivolous claims or defenses.

K. Unjust enrichment

In Massachusetts, unjust enrichment is applied when one of the parties receives a benefit that is not only unjust but is at the expense of the other party.⁵⁰ An example of this is when a party has been unjustly enriched through wrongful

⁴² *Militello v. Ann & Grace, Inc.*, 411 Mass. 22, 27-28 (Mass.1991).

⁴³ *Id.* at 27-28.

⁴⁴ *Anderson*, 476 Mass. at 383; *Greene v. Philip Morris USA Inc.*, 491 Mass. 866, 880 (Mass. 2023); *Peak v. Massachusetts Bay Transp. Authority*, 20 Mass. App. Ct. 726, 728 (Mass. App. Ct. 1985).

⁴⁵ *Greene*, 491 Mass. at 884.

⁴⁶ *Green's Case*, 52 Mass. App. Ct. 141, 141 (Mass. App. Ct. 2001).

⁴⁷ *Full Spectrum Software, Inc. v. Forte Automation Systems, Inc.*, 125 F.Supp.3d 301, 303 (D. Mass. 2015).

⁴⁸ *Drywall Sys., Inc. v. ZVI Constr. Co.*, 435 Mass. 664, 671 (Mass. 2002).

⁴⁹ *Doe v. Gonpo*, 103 Mass. App. Ct. 246, 249 (Mass. App. Ct. 2023); *Ferman v. Sturgis Cleaners, Inc.*, 481 Mass. 488, 493 (Mass. 2019).

⁵⁰ *Metro. Life Ins. Co. v. Cotter*, 464 Mass. 623, 644 (Mass. 2013); MASS. G. L. c. 93A § 9.

conduct such as breach of fiduciary duty or fraud.⁵¹ Unjust enrichment can also be applied in contract disputes when a performance has been rendered ineffective to regulate the parties' obligations.⁵² Restitution typically compensates for the value of the benefit conferred beyond the recipient's contractual entitlement.⁵³

L. Unique Remedies / Consumer Friendly Statutes

General Laws Chapter 93A, Section 9 provides a statutory cause of action for consumers harmed by unfair or deceptive trade practices. This applies when a practice falls within any of the established concepts of unfairness, regardless of the intent to deceive.⁵⁴ This is especially true when the practices are exploitative.⁵⁵ Violations of Chapter 142A, Regulation of Home Improvement Contractors, constitute an unfair or deceptive act under the provisions of Chapter 93A.⁵⁶ If a violation is found to be knowing and willful, a court must

award double, but may award treble damages, as well as attorney' fees.⁵⁷

Specific performance is another example of a unique remedy afforded in Massachusetts.⁵⁸ Massachusetts applies specific performance more liberally than other jurisdictions. Mutuality of obligation is not a sufficient reason for denying one party specific performance.⁵⁹ Additionally, it is well-established in Massachusetts that beyond contracts for sales of goods or performance of services, real property is also unique in that money damages are often inadequate to redress a deprivation and interest in land, requiring specific performance.⁶⁰

A remedy at law for damages is not a bar to specific performance of a contract.⁶¹ The fact that a plaintiff has a remedy in damages shall not bar an action for specific performance of a contract, other than one for purely personal services.⁶²

⁵¹ *Metro Life Ins. Co.*, 464 Mass. at 644.

⁵² *Sugarman & Sugarman, P.C. v. Shapiro*, 102 Mass. App. Ct. 816, 819 (Mass. App. Ct. 2023).

⁵³ *Metro. Life Ins. Co.*, 464 Mass. at 641.

⁵⁴ *PMP Associates, Inc. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (Mass. 1975).

⁵⁵ *Id.* at 596.

⁵⁶ *Simas v. House of Cabinets, Inc.*, 53 Mass. App. Ct. 131, 137 (Mass. App. Ct. 2001).

⁵⁷ *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 627 (Mass. 1978); *Renovator's Supply, Inc. v. Sovereign Bank*, 72 Mass. App. Ct. 419, 431 (Mass. App. Ct. 2008).

⁵⁸ *Atlantech Inc. v. American Panel Corp.*, 540 F. Supp.2d 274, 285 (D. Mass. 2008).

⁵⁹ *Morad v. Silva*, 331 Mass. 94, 99 (Mass. 1954).

⁶⁰ *Pierce v. Clark*, 66 Mass. App. Ct. 912, 914 (Mass. App. Ct. 2006).

⁶¹ MASS. G.L. c. 214, § 1A (2025).

⁶² *Id.*

M. Public Policy Limitations

Massachusetts courts will not enforce contracts that violate public policy.⁶³ Unconscionability is also a recognized ground for limiting or voiding contracts.⁶⁴ Lack of capacity is another reason that courts in Massachusetts may limit or invalidate a contract, and it is a lower standard to meet for contracts than in other sections of law.⁶⁵

General Laws Chapter 93A, Section 11 allows for up to three times the actual damages as a punitive measure in cases where unfair business practices are found

to be knowing and willful. Limitation of liability provisions will not protect defendants who willfully or knowingly use deceptive conduct prohibited under the statute.⁶⁶

Claims against public entities in certain contexts are limited to damages up to \$100,000, except in cases involving serious bodily injury against the Massachusetts Bay Transportation Authority.⁶⁷

⁶³ *A.Z. v. B.Z.*, 431 Mass. 150, 160 (Mass. 2000).

⁶⁴ MASS. G.L. c. 106, § 20-302.

⁶⁵ *Maimonides Sch. v. Coles*, 71 Mass. App. Ct. 240, 251 (Mass. App. Ct. 2008).

⁶⁶ *H1 Lincoln, Inc. v. South Washington Stret, LLC*, 489 Mass. 1, 3 (Mass. 2022).

⁶⁷ MASS. G.L. c. 258, § 2 (2025).