

Rhode Island

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A. Adoption of the UCC

Rhode Island has adopted the Uniform Commercial Code to resolve commercial disputes at Rhode Island General Laws, Title 6A.

B. Compensatory Damages

In Rhode Island, compensatory damages are awarded to a person in satisfaction of or in response to a loss or injury sustained.¹ An injured party is entitled to be fairly compensated for the harm which it has suffered.² Nominal damages may be awarded as well.³ The “task of assessing compensatory

damages is peculiarly within the province of the jury”; however, “[t]he trial justice may order a new trial on damages if he or she independently concludes ‘that the award is so excessive in comparison to the injuries sustained as to fail to work substantial justice between the parties.’”⁴

C. Consequential Damages

Consequential damages are defined in Rhode Island as those damages “that do not flow directly and immediately from an injurious act but that result indirectly from the act.”⁵ For instance, the Rhode

¹ *Murphy v. United Steelworkers of America Local No. 5705, AFL-CIO*, 507 A.2d 1342, 1346 (R.I.1986).

² *See Shayer v. Bohan*, 708 A.2d 158, 165 (R.I.1998).

³ *See Murphy*, 507 A.2d at 1346 (nominal damages are awarded when “it is clear that the plaintiff has sustained a loss but has failed to present evidence upon

which a factfinder could ascertain the damages sustained by the plaintiff”).

⁴ *Soares v. Ann & Hope of Rhode Island, Inc.*, 637 A.2d 339, 349 (R.I. 1994) (quoting *Paquin v. Tillinghast*, 517 A.2d 246, 249 (R.I. 1986)).

⁵ *Riley v. Stafford*, 896 A.2d 701, 703 (R.I. 2006) (quoting *Black’s Law Dictionary* 416 (8th ed. 2004)).

Island Supreme Court has allowed consequential damages in cases involving tortious interference with one's possessory interest in property.⁶ Any such damages must rest upon legally competent evidence and may not be the product of speculation or conjecture.⁷

D. Incidental Damages

Incidental damages are considered a kind of compensatory damages that include expenses reasonably incurred in relation to actual damages, but are confined to the pecuniary loss.⁸

E. Punitive Damages

In Rhode Island, the standard for imposing punitive damages is rigorous and will be satisfied only in instances where a defendant's conduct requires deterrence and punishment over and above that provided in an award of compensatory damages.⁹ The purpose of punitive damages is twofold: to punish the tortfeasor whose wrongful conduct was malicious or intentional and to deter

him or her and others from similar extreme conduct.¹⁰ The Rhode Island Supreme Court has held that the party seeking punitive damages has the burden of producing evidence of such willfulness, recklessness, or wickedness on the part of the party at fault, as amounts to criminality, which for the good of society and warning to the individual, ought to be punished.¹¹ The Supreme Court has stated that for punitive damages to be awarded there must be a showing that the defendant acted with malice or in bad faith.¹² An award of punitive damages is considered an extraordinary sanction and is disfavored in the law, but it will be permitted if awarded with great caution and within narrow limits.¹³ Whether a party seeking punitive damages has met the high standard imposed on such an award is a question of law for the trial justice.¹⁴ Once a trial justice determines that there are adequate facts to support an award of punitive damages, then the question of whether and to what extent the party is entitled to punitive damages is in the discretion of the trier of fact.¹⁵

⁶ *Hawkins v. Scituate Oil Co.*, 723 A.2d 771, 772 (R.I. 1999).

⁷ *White v. LeClerc*, 468 A.2d 289, 290 (R.I. 1983).

⁸ *Arnold v. Gaylord*, 16 R.I. 573, 18 A. 177, 179 (R.I. 1889).

⁹ *Mark v. Congregation Mishkon Tefiloh*, 745 A.2d 777, 779 (R.I. 2000).

¹⁰ *Palmisano v. Toth*, 624 A.2d 314, 317-318 (R.I.1993).

¹¹ *Id.* at 318; *Sherman v. McDermott*, 114 R.I. 107, 109, 329 A.2d 195, 196 (R.I. 1974).

¹² *Morin v. Aetna Casualty and Surety Co.*, 478 A.2d 964, 967 (R.I. 1984).

¹³ *Palmisano*, 624 A.2d. at 318.

¹⁴ *Id.*

¹⁵ *Id.*

F. Liquidated Damages

Liquidated damages are based on a provision in a contract between the parties in an effort to determine damages in advance of a breach.¹⁶ An agreement to fix damages, made in advance, will be enforced when the harm caused by the breach is difficult to estimate and when the amount fixed as liquidated damages is a reasonable forecast of the actual harm.¹⁷ Comment e to Restatement § 339 states that: “if the parties honestly but mistakenly suppose that a breach will cause harm . . . when in fact the breach causes no harm at all . . . their advance agreement fixing the amount to be paid as damages for the breach is within the rule stated in subsection (1) and is not enforceable.” The Restatement (Second) of Contracts § 356 reaffirmed this principle, stating in comment b that if “it is clear that no loss at all has occurred, a provision fixing a substantial sum as damages is unenforceable.” This rule is based on the principle that the purpose of awarding contract damages is to place the injured party in the position he would be in had the contract been performed.¹⁸

¹⁶ See *Psaty & Fuhrman v. Housing Authority of City of Providence*, 76 R.I. 87, 98, 68 A.2d 32, 38 (R.I. 1949); *Howarth v. Feeney*, 1992 WL 813502, at *3 (R.I. Super. Jan. 15, 1992).

¹⁷ *Muirhead v. Fairlawn Enterprises, Inc.*, 72 R.I. 163, 173, 48 A.2d 414, 419 (R.I. 1946); *Cavanaugh v. Conway*, 90 A. 1080 (R.I. 1914).

Since liquidated damages must compensate for loss rather than punish for breach, a liquidated damages clause will not be enforced where, in fact, no damages have occurred and thus would amount to an unjust punishment.¹⁹

G. Unjust Enrichment/Quantum Meruit Damages

In Rhode Island, unjust enrichment is defined as “[t]he retention of a benefit conferred by another, who offered no compensation, in circumstances where compensation is reasonably expected.”²⁰ To recover for unjust enrichment, a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof.²¹ “Instances of unjust enrichment typically arise . . . when a benefit is conferred deliberately but without a

¹⁸ *Howarth*, 1992 WL 813502, at *3.

¹⁹ *Id.*

²⁰ *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 210 (R.I. 2015) (quoting *Black’s Law Dictionary* 1771 (10th ed. 2014)).

²¹ *Id.* at 210-211; *Emond Plumbing & Heating, Inc. v. BankNewport*, 105 A.3d 85, 90 (R.I. 2014).

contract . . .”²² Consequently, the measure of damages for unjust enrichment is the defendant’s gains.²³

Quantum meruit is a slightly different, but closely related, cause of action. A Latin term for “as much as he has deserved,” quantum meruit is defined as “[a] claim or right of action for the reasonable value of services rendered.”²⁴ “Such an action permits recovery of damages ‘in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship.’”²⁵ A plaintiff may recover in an action in quantum meruit if he or she can show that a defendant “derived some benefit from the services and would be unjustly enriched without

making compensation therefor.”²⁶ “Quantum meruit generally applies ‘in a situation in which the plaintiff has provided services to the defendant for which the defendant has refused to pay.’”²⁷

H. Pre- and Post-Judgment Interest

Rhode Island sets pre- and post-judgment interest by statute. Rhode Island General Laws Section 9-21-10(a) sets prejudgment interest at a rate of 12% per annum. The dual purpose of prejudgment interest is to encourage early settlement of claims and to compensate an injured plaintiff for delay in receiving compensation to which he or she is entitled.²⁸ Prejudgment interest even may be awarded for future damages so long as the damages are discounted back to the time of the injury.²⁹ Post-judgment interest is calculated at the rate of twelve percent (12%) per annum and accrues on both the principal amount of the judgment and the prejudgment interest entered therein. However, neither pre- nor post-judgment interest applies until entry of judgment or to any

²² *South County Post & Beam, Inc.*, 116 A.3d at 210.

²³ *Id.*

²⁴ *Process Engineers & Constructors, Inc. v. DiGregorio, Inc.*, 93 A.3d 1047, 1052 (R.I. 2014) (quoting Black’s Law Dictionary 1361, 1362 (9th ed. 2009)).

²⁵ *Id.* (quoting Black’s Law Dictionary at 1361–1362).

²⁶ *Id.* (quoting *National Chain Co. v. Campbell*, 487 A.2d 132, 135 (R.I.1985)).

²⁷ *Id.* at 1053 (quoting *Parnoff*, 57 A.3d at 355 n. 7).

²⁸ *Metropolitan Property & Casualty Insurance Co. v. Barry*, 892 A.2d 915, 919 (R.I. 2006).

²⁹ *Blue Ribbon Beef Co., Inc. v. Napolitano*, 696 A.2d 1225, 1230 n.4 (R.I. 1997).

contractual obligation where interest is already provided. Moreover, pursuant to Rhode Island General Laws Section 9-21-10(b), subsection (a) does not apply in any action for personal injury or wrongful death filed against a licensed physician, hospital, clinic, health maintenance organization, professional service corporation providing health care services, dentist, or dental hygienist based on professional negligence. In all such medical malpractice actions in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of 12% per annum from the date of written notice of the claim by the claimant or his or her representative to the malpractice liability insurer, or to the medical or dental health care provider or the filing of the civil action, whichever first occurs.

Both pre- and post-judgment interest call for simple interest, without compounding.³⁰

I. Attorney's Fees

Rhode Island staunchly adheres to the "American Rule" which requires each litigant to pay its own

attorney's fees absent statutory authority or agreement of the parties by contract.³¹ For an example of the former, Rhode Island General Laws Section 9-1-45 permits a court to award reasonable attorney's fees to a prevailing party when the court finds that there was a complete absence of a justiciable issue raised by the losing party and is discretionary.

The general rule prohibiting fee shifting in most cases is not without exception. Courts in Rhode Island have "inherent power to fashion an appropriate remedy that would serve the ends of justice,"³² as well as the authority to award attorney's fees as a sanction for contumacious conduct.³³

J. Unique Remedies

Prejudgment attachment is a remedy available under Rhode Island law by virtue of Rhode Island General Laws Section 10-5-2 and, for equitable complaints Section 10-5-5, though the remedy of attachment is not generally available when the cause of action is

³⁰ *Imperial Cas. & Indem. Co. v. Bellini*, 947 A.2d 886, 894-895 (R.I. 2008).

³¹ *Moore v. Ballard*, 914 A.2d 487, 489 (R.I. 2007).

³² *Vincent v. Musone*, 574 A.2d 1234, 1235 (R.I. 1990).

³³ *Moore*, 914 A.2d at 489; *Moran v. Rhode Island Brotherhood of Correctional Officers*, 506 A.2d 542, 544 (R.I. 1986).

one sounding in tort.³⁴ This remedy may be used when there is a likelihood of success on the merits and a need for furnishing security in

the amount sought for satisfaction of a judgment, together with interest and costs.³⁵

³⁴ *Martin v. Lincoln Bar, Inc.*, 622 A.2d 464, 466 (R.I. 1993).

³⁵ SUPER. R. CIV. P. 4(m)(3); *Normandin v. Gauthier*, 2006 WL 1073422, at *3 (R.I. Super. Apr. 20, 2006).