

Do I need to have damages to have a valid legal tort claim in Massachusetts?

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Answer: Yes, in some form, examples being actual damages, injury in fact, or the invasion of a legally protected interest under the Massachusetts Consumer Protection Act.

It is often that people believe that they have been wronged and the question arises, but do you have damages? For the most part, unless you have damages, you have no claim. However, the concept of damages is broader than most think because actual harm resulting in monetary loss is not necessarily required.

For example, under Massachusetts law, a person has a libel claim or a slander per se claim even without showing monetary damages. The law allows the factfinder, the judge or jury as the case may be, to decide the damages, which may be nominal such as one dollar.

Another example is a case where there are legal damages, and thus a valid legal claim, is where there has been an invasion of a legally protected interest under the Massachusetts Consumer Protection Act (Mass. Gen. Laws c.93A §§ 2 and 9) despite there being no actual harm. Leardi v. Brown, 394 Mass. 151, 159-161 (1985). In *Leardi*, a tenant class were determined to have damages from an illegal provision in a residential lease despite the landlord promising in writing not to enforce any provision that runs contrary to law. Id. at 159-61, 166. Thus, in the situation where only a legally protected interest is invaded under the Massachusetts Consumer Protection Act, a plaintiff is entitled to nominal damages, which are usually considered to be the \$25.00 statutory amount, but does include an award of attorney's fees. Id. at 168.

A recent case provided another example of where there were damages despite there having been no actual monetary harm realized is *Brissette v. Ryan*. 88 Mass. App. Ct. 606, (2015). In *Brissette* the plaintiff brought a legal malpractice claim. She was advised by the defendant not to retain a life estate in a property she planned on buying for incorrect legal reasons. She followed the advice and purchased a property in the names of her children instead of retaining a life estate leaving her without the rights of a life estate, notably the right to possession of the house for her lifetime and the right to sell (alienate) her life estate. She even could have used a planning technique of a testamentary power of appointment which would have allowed her to have power over her children. She did live in the house though and her children even testified that they had no intention of evicting her.

The jury awarded damages but the judge reversed the decision stating that the plaintiff realized no actual harm since she was living in the house and had no real threat of being evicted. Id. 609-10. In other words, despite there being negligence and the possibility of harm, no harm occurred.

But the appeals court reversed the judge and found:

“Deprivation of such a property right is actual damage that is cognizable in a tort action such as this. The value of a property right lies in, among other things, the rights it gives one to possession and to free alienation of the property. Deprivation of those rights is, under our legal system, an archetypal injury in fact.” *Id.* at 610.

You see, damages are necessary, but whether a person has incurred damages under the law is a difficult legal question that makes the difference of whether there is a legal claim or not. And as you can see from *Brissette*, good legal minds may differ as to whether damages lie.

In the event that you believe that you may have a legal claim and are unsure about whether there are damages to support that claim, feel free to give us a call.

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