

24A Fla. Jur 2d False Imprisonment § 47

Florida Jurisprudence, Second Edition | May 2017 Update
False Imprisonment and **Malicious Prosecution**
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II. **Malicious Prosecution** D. **Damages**

§ 47. Compensatory, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

- West's Key Number Digest, **Malicious Prosecution** [🔑65 to 67](#)

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- [Attorneys' fees as element of damages in action for false imprisonment or arrest, or for malicious prosecution, 21 A.L.R.3d 1068](#)

Trial Strategy

- [Malicious Prosecution, 16 Am. Jur. Trials 205 § 22](#)

Forms

- [Florida Pleading and Practice Forms § 21:26 \(Order for plaintiff\)](#)

An essential element of a **malicious prosecution** claim is that the plaintiff must suffer **damages** as a result of the original proceeding.¹ In a **malicious prosecution** case, the general rule is that the plaintiff may recover all **damages** that are the natural and probable consequence of the action complained of. The **damages** must be certain and proximate and not uncertain, contingent, or speculative. The plaintiff may recover for any financial loss resulting directly from the prosecution and may recover for injuries suffered in respect of his or her business.² One who maliciously institutes a criminal prosecution is deemed to intend to cause an arrest, which is a normal incident of a criminal prosecution, and the actor is liable for the confinement caused by the arrest only because it is a part of the **damages** caused by the **malicious prosecution**.³

A party bringing a **malicious prosecution** action is not limited to a specific amount of **damages** in that he or she may seek both compensatory and punitive **damages**.⁴ Compensatory **damages** in actions for **malicious prosecution**, as in other types of actions, are those that arise from actual and indirect pecuniary loss, expenses, mental suffering, and bodily pain and suffering.⁵

Practice Tip:

It is necessary that legal malice be proved in order to recover compensatory **damages** in a **malicious prosecution** action.⁶

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Footnotes

- ¹ Durkin v. Davis, 814 So. 2d 1246 (Fla. Dist. Ct. App. 2d Dist. 2002); Hardick v. Homol, 795 So. 2d 1107 (Fla. Dist. Ct. App. 5th Dist. 2001); Beizer v. Judge, 743 So. 2d 134 (Fla. Dist. Ct. App. 4th Dist. 1999); McCraney v. Barberi, 677 So. 2d 355 (Fla. Dist. Ct. App. 1st Dist. 1996).
- ² Matter of Salmon, 128 B.R. 313 (Bankr. M.D. Fla. 1991).
- ³ Erp v. Carroll, 438 So. 2d 31 (Fla. Dist. Ct. App. 5th Dist. 1983).
- ⁴ Law Offices of Harold Silver, P.A. v. Farmers Bank & Trust Co. of Kentucky, 498 So. 2d 984 (Fla. Dist. Ct. App. 1st Dist. 1986).
As to punitive **damages** in **malicious prosecution** suits, see § 48.
- ⁵ S. H. Kress & Co. v. Powell, 132 Fla. 471, 180 So. 757 (1938).
For a general discussion of compensatory **damages** in tort actions, see Fla. Jur. 2d, **Damages** §§ 1 et seq.
- ⁶ Winn-Dixie Stores, Inc. v. Gazelle, 523 So. 2d 648 (Fla. Dist. Ct. App. 1st Dist. 1988).

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