

24A Fla. Jur 2d False Imprisonment § 48

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False Imprisonment and Malicious Prosecution
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II. Malicious Prosecution
D. Damages

§ 48. Punitive, generally

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West's Key Number Digest

- West's Key Number Digest, [Malicious Prosecution](#) 🔑68

Trial Strategy

- [Malicious Prosecution, 16 Am. Jur. Trials 205 §§ 10, 11](#)

Exemplary or punitive damages may be recovered by the plaintiff in an action for malicious prosecution in addition to compensatory damages. Such damages may be awarded when there is proof of actual malice or where the defendant's act was done willfully in a wanton disregard of the rights of others.¹ Exemplary or punitive damages blend the interests of society and the aggrieved individual, and the damages are not only recompense to the sufferer but also punishment to the offender and an example to the community.²

Punitive damages do not ensue automatically from a finding of malicious prosecution; they may be awarded by the jury if it determines that the tortfeasor acted with sufficient wantonness or recklessness in regard to the rights of others as to warrant punishment in addition to the compensatory award.³

Illustration:

Grocery store employees were not untruthful deliberately or acting with reckless disregard for the truth when they told the arresting officer that the customer walked out of the store without paying for the merchandise, precluding an award of punitive damages in a malicious prosecution action in which the jury found a lack of probable cause for the customer's arrest, where the customer refused to provide a receipt, continued out of the store, and, after repeated requests, told the employees that she had no receipt.⁴

Legal malice, based solely on the absence of probable cause, is insufficient to support an award of punitive damages.⁵

Illustration:

A jury finding that a grocery store owner did not have probable cause to arrest a customer for shoplifting was insufficient to support an award of punitive damages in the customer's malicious prosecution action.⁶

Although malice is an essential element in malicious prosecution, deliberate violence or oppression are not prerequisites for the assessment of exemplary or punitive damages where the wrongful act is such as to imply malice.⁷ Either legal or actual malice may support an award of punitive damages.⁸ Actual malice is always a proper basis for the recovery of punitive damages in a malicious prosecution action.⁹ A plaintiff seeking punitive damages is required to show gross misconduct or willful and wanton disregard of a plaintiff's rights.¹⁰ It is not necessary, however, to prove actual malice in order to recover punitive damages.¹¹ Legal malice is sufficient to support a punitive damage award if based on a showing of gross misconduct or willful and wanton disregard of a plaintiff's rights.¹² When legal malice is found to exist based solely upon the want of probable cause, however, an award of punitive damages is improper.¹³

Illustration:

A corporation's law firms did not act in willful and wanton disregard of the rights of the corporation's former chief executive officer when they brought a breach-of-fiduciary-duty claim against the CEO; thus, the CEO was not entitled to punitive damages in a subsequent malicious prosecution action against law firms absent evidence that the law firms lack probable cause to pursue a breach-of-fiduciary-duty claim.¹⁴

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Footnotes

- ¹ Winn-Dixie Stores, Inc. v. Gazelle, 523 So. 2d 648 (Fla. Dist. Ct. App. 1st Dist. 1988).
- ² S. H. Kress & Co. v. Powell, 132 Fla. 471, 180 So. 757 (1938).
Punitive damages are discussed, generally, in Fla. Jur. 2d, Damages §§ 1 et seq.
- ³ Montgomery Ward & Co., Inc. v. Hoey, 486 So. 2d 1368 (Fla. Dist. Ct. App. 5th Dist. 1986).
- ⁴ Louis v. Costco Wholesale Corp., 719 So. 2d 1226 (Fla. Dist. Ct. App. 4th Dist. 1998).
- ⁵ Louis v. Costco Wholesale Corp., 719 So. 2d 1226 (Fla. Dist. Ct. App. 4th Dist. 1998).
- ⁶ Louis v. Costco Wholesale Corp., 719 So. 2d 1226 (Fla. Dist. Ct. App. 4th Dist. 1998).
- ⁷ Lindeman v. C.J. Stoll, Inc., 490 So. 2d 101 (Fla. Dist. Ct. App. 2d Dist. 1986).
- ⁸ Montgomery Ward & Co., Inc. v. Hoey, 486 So. 2d 1368 (Fla. Dist. Ct. App. 5th Dist. 1986).
- ⁹ Jack Eckerd Corp. v. Smith, 558 So. 2d 1060 (Fla. Dist. Ct. App. 1st Dist. 1990); Winn-Dixie Stores, Inc. v. Gazelle, 523 So. 2d 648 (Fla. Dist. Ct. App. 1st Dist. 1988).
- ¹⁰ Endacott v. International Hospitality, Inc., 910 So. 2d 915 (Fla. Dist. Ct. App. 3d Dist. 2005).
- ¹¹ Winn-Dixie Stores, Inc. v. Gazelle, 523 So. 2d 648 (Fla. Dist. Ct. App. 1st Dist. 1988).
- ¹² Alamo Rent-A-Car, Inc. v. Mancusi, 632 So. 2d 1352 (Fla. 1994) (disapproved of on other grounds by, Weingrad v. Miles, 29 So. 3d 406 (Fla. Dist. Ct. App. 3d Dist. 2010)).
- ¹³ Jack Eckerd Corp. v. Smith, 558 So. 2d 1060 (Fla. Dist. Ct. App. 1st Dist. 1990); Winn-Dixie Stores, Inc. v. Gazelle, 523 So. 2d 648 (Fla. Dist. Ct. App. 1st Dist. 1988).
- ¹⁴ Endacott v. International Hospitality, Inc., 910 So. 2d 915 (Fla. Dist. Ct. App. 3d Dist. 2005).

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