

# Tortious Interference: Massachusetts

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Status: Law stated as of 15 Jun 2021 | Jurisdiction: Massachusetts, United States

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A Q&A guide to state law on tortious interference in Massachusetts. This guide addresses the elements of tortious interference claims, pleading requirements, potential remedies, defenses, and applicable standards of proof and causation.

## Elements of Tortious Interference

### 1. What are the elements of a claim for tortious interference with contract rights in your jurisdiction? Do litigants or courts in your jurisdiction refer to this type of claim by another name (for example, tortious interference with contractual relationships)?

Under Massachusetts law, the elements of a claim for tortious interference with a contract are that:

- A valid contract exists between the plaintiff and a third party.
- The defendant knowingly induced the third party to break that contract.
- The defendant's interference was intentional and involved improper motive or means.
- The plaintiff was harmed by the defendant's actions.

(*Psy-Ed Corp. v. Klein*, 947 N.E.2d 520, 536 (Mass. 2011).)

Courts and litigants in Massachusetts sometimes refer to a tortious interference with a contract claim as a claim for tortious interference with contractual relations.

### 2. What are the elements of a claim for tortious interference with business relationships in your jurisdiction? Do litigants or courts in your jurisdiction refer to this type of claim by another name (for example, tortious interference with prospective or existing business advantage)?

Under Massachusetts law, the elements of a claim for tortious interference with a business relationship are that:

- An advantageous business relationship existed between the plaintiff and a third party.
- The defendant knowingly induced a break of the relationship.
- The defendant's interference involved an improper motive or means.
- The plaintiff was damaged as a result of the defendant's interference.

(*Blackstone v. Cashman*, 860 N.E.2d 7, 12 (Mass. 2007) (tortious interference with business relations claim protects plaintiff's present and future economic interests from wrongful interference); *Skyhook Wireless, Inc. v. Google, Inc.*, 19 N.E.3d 440, 447 (Mass. App. Ct. 2014) (business relationship can involve a present or prospective contract or employment relationship); but see *Pembroke Country Club, Inc. v. Regency Sav. Bank, F.S.B.*, 815 N.E.2d 241, 245-46 (Mass. App. Ct. 2004) (advancing a personal economic interest is not, by itself, an improper motive).)

Courts and litigants in Massachusetts refer to this claim by various names, including tortious interference with prospective (or advantageous) business relations, tortious interference with prospective contractual (or advantageous) relations, or tortious interference with economic rights.

### 3. If intent is an element of tortious interference in your jurisdiction, describe the standard or set of factors that courts in your jurisdiction apply when analyzing whether a defendant had the requisite intent to interfere.

Under Massachusetts law, to prove that a defendant had the requisite intent to interfere, the plaintiff must show that the defendant had knowledge of the contract or business relationship and knew that they were interfering with its performance when they undertook the alleged tortious act (*Walker v. Waltham Hous. Auth.*, 44 F.3d 1042, 1048 (1st Cir. 1995) (applying Massachusetts law); *Bartle v. Berry*, 953 N.E.2d 243, 250 (Mass. 2011); *Yiakas v. Savoy*, 526 N.E.2d 1305, 1309 (Mass. App. Ct. 1988)).

When the plaintiff asserts a tortious interference claim against a corporate official acting in their corporate capacity in an employment case, the plaintiff has a heightened burden to show intent to interfere. The plaintiff must show that the controlling factor for the defendant's conduct involved actual malice, which is a spiteful, malignant purpose distinct from a legitimate business interest. Implied malice is insufficient. (*Barr Inc. v. Studio One, Inc.*, 146 F. Supp. 3d 375, 381 (D. Mass. 2015) (applying Massachusetts law); *Blackstone*, 860 N.E.2d at 13, 19 (courts analyze entirety of the defendant's conduct).)

#### **4. For tortious interference claims involving business relationships or contracts, describe the circumstances where a defendant who is not a stranger to the underlying business relationship or contract may be liable for tortious interference, if any.**

Under Massachusetts law, a claim for tortious interference with contract or business relations generally will not succeed against a defendant that was a party to the underlying contract or business relationship (*Psy-Ed Corp.*, 947 N.E.2d at 537; *Harrison v. NetCentric Corp.*, 744 N.E.2d 622, 632 (Mass. 2001); *Saint Louis v. Baystate Med. Ctr., Inc.*, 568 N.E.2d 1181, 1188 (Mass. App. Ct. 1991)).

Massachusetts courts have permitted a tortious interference claim against a supervisor or company official who interferes with a plaintiff's employment relationship, when the interference was motivated by actual malice unrelated to the employer's legitimate business interest (*O'Brien v. New Eng. Tel. & Tel. Co.*, 664 N.E.2d 843, 845-46 (Mass. 1996) (supervisor's malicious treatment of employee constituted intentional interference with the plaintiff's implied contractual relationship with her employer); *Falcon v. Leger*, 816 N.E.2d 1010, 1017 (Mass. App. Ct. 2004) (affirming finding that supervisor's improper motive behind employee's termination was tortious interference with employment relationship); see Question 3).

## Pleading Tortious Interference

### **5. What is the pleading standard for a claim for tortious interference in your jurisdiction?**

Under Massachusetts law, a claim for tortious interference is subject to a general fact-pleading standard, which requires a complaint to clearly and concisely allege sufficient facts that satisfy each element of the alleged cause of action and plausibly support the plaintiff's entitlement to relief (*Crabtree v. Castinetti*, 122 N.E.3d 1100, at \*1 (Mass. App. Ct. 2019) (unpublished opinion under Mass. App. Ct. Rule 1:28); *Chef Louies, Inc. v. Nuttall*, 2012 WL 6971017, at \*2 (Mass Super. Nov. 28, 2012)).

Litigants can plead malice, intent, and knowledge generally. However, litigants asserting tortious interference claims sometimes bring related fraud claims, which a plaintiff must plead with particularity under Massachusetts law. (Mass. R. Civ. P. 9(b).)

### **6. If a heightened pleading standard applies to a claim for tortious interference in your jurisdiction, describe the standard that a plaintiff must meet.**

Absent fraud, a heightened pleading standard generally does not apply to a tortious interference claim under Massachusetts law (see Question 5).

## Remedies for Tortious Interference

### **7. What types of damages are available for tortious interference in your jurisdiction (for example, special damages, punitive damages, and so on)?**

Depending on the case, multiple types of damages may be available under Massachusetts law for a tortious interference claim, such as:

- Compensatory damages (*Zimmerman v. Direct Fed. Credit Union*, 262 F.3d 70, 75 & n.7 (1st Cir. 2001) (applying Massachusetts law); *Garland v. Compuserve, Inc.*, 1993 WL 131447, at \*2 (D. Mass. Apr. 26, 1993) (applying Massachusetts law)).
- Consequential damages, if the damages directly and proximately result from the defendant's conduct (*Angiodynamics, Inc. v. Biolitec AG*, 991 F. Supp. 2d 299,

304-05 (D. Mass. 2014), *aff'd*, 780 F.3d 429 (1st Cir. 2015) (applying Massachusetts law); *Cachopa v. Town of Stoughton*, 893 N.E.2d 407, 413 (Mass. App. Ct. 2008) (emotional distress damages recoverable as consequential damages); *Hanna v. Williams*, 2017 WL 2292756, at \*7 (Mass. Super. Jan. 9, 2017)).

- Attorneys' fees in limited circumstances (see Question 10).

### 8. If punitive damages are available for tortious interference in your jurisdiction, what is the standard for obtaining punitive damages on a claim for tortious interference in your jurisdiction?

- In Massachusetts, punitive or exemplary damages are only allowed if expressly authorized by statute (*Haddad v. Wal-Mart Stores, Inc.*, 914 N.E.2d 59, 74-75 (Mass. 2009); *Flesner v. Tech. Commc'ns Corp.*, 575 N.E.2d 1107, 1112 (Mass. 1991)). There is no Massachusetts statute authorizing punitive or exemplary damages for tortious interference claims.

### 9. What types of equitable and declaratory relief are available for tortious interference in your jurisdiction?

In Massachusetts, where money damages are inadequate to remedy the harm caused to the plaintiff, a plaintiff may seek equitable relief. The most common type of equitable relief sought in connection with tortious interference claims is injunctive relief, such as a preliminary injunction or temporary restraining order. (See *Corporate Techs., Inc. v. Harnett*, 943 F. Supp. 2d 233, 242-43 (D. Mass.), *aff'd*, 731 F.3d 6 (1st Cir. 2013) (applying Massachusetts law); *Max-Planck-Gesellschaft Zur Förderung Der Wissenschaften E.V. v. Whitehead Inst. for Biomedical Research*, 850 F. Supp. 2d 317, 326 (D. Mass. 2011) (applying Massachusetts law); *Optos, Inc. v. Topcon Med. Sys., Inc.*, 777 F. Supp. 2d 217, 240-43 (D. Mass. 2011) (applying Massachusetts law).)

### 10. Please describe any circumstances in which a litigant may recover attorneys' fees on a tortious interference claim.

Under Massachusetts law, parties are generally responsible for paying their own attorneys' fees. A prevailing party may only recover its attorneys' fees from the losing party if authorized by contract or statute. (*Waldman v. Am. Honda Motor Co.*, 597 N.E.2d 404, 406 (Mass. 1992).) Attorneys'

fees typically are unavailable for tortious interference claims.

In cases involving only tortious interference claims, attorneys' fees would be hard to recover from a defendant that is held liable for tortious interference with a contract. This is because tortious interference claims involving a contract usually require that the defendant is not a party to the contract and therefore the defendant is not bound by any applicable attorneys' fee provision in that contract (see *Psy-Ed Corp.*, 947 N.E.2d at 537). Similarly, attorneys' fees are rarely available for tortious interference with business relationship claims because they are typically not based on an actual contract.

However, Massachusetts courts have ruled that attorneys' fees may be awarded in tortious interference claims if the plaintiff can establish that they were forced to sue or defend against a third party to protect their rights as a result of the defendant's tortious interference. Under this narrow exception, attorneys' fees are considered damages incurred by the plaintiff. (*Mut. Fire, Marine & Inland Ins. v. Costa*, 789 F.2d 83, 88 (1st Cir. 1986) (applying Massachusetts law); *O'Brien*, 664 N.E.2d at 850; *Coady v. Wellfleet Marine Corp.*, 816 N.E.2d 124, 130 (Mass App. Ct. 2004).)

### 11. May a plaintiff recover pre-judgment and post-judgment interest in connection with a tortious interference claim?

Under Massachusetts law, a party may be entitled to pre-judgment interest in tort cases involving monetary damages from the date the complaint is filed to entry of judgment (M.G.L. c. 231, § 6B; *Garland*, 1993 WL 131447, at \*19-20 (applying Massachusetts law)). The court clerk generally adds the interest to the full amount awarded (*Charles D. Bonanno Linen Serv., Inc. v. McCarthy*, 708 F.2d 1, 12 (1st Cir. 1983) (applying Massachusetts law); but see *Thomas & Betts Corp. v. New Albertson's, Inc.*, 187 F. Supp. 3d 229, 238 (D. Mass. 2016), *aff'd*, 915 F.3d 36 (1st Cir. 2019) (applying Massachusetts law and adjusting interest awarded because of unnecessary delay caused by prevailing litigant); *Salvi v. Suffolk Cty. Sheriff's Dep't*, 855 N.E.2d 777, 788 (Mass. App. Ct. 2006) (pre-judgment interest is inapplicable to front pay and punitive damages awards)).

Post-judgment interest is available as of the date judgment is entered (M.G.L. c. 235, § 8; *Welch v. Ciampa*, 2009 WL 1051061, at \*1 (D. Mass. Apr. 16, 2009); *Shawmut Cmty. Bank, N.A. v. Zagami*, 643 N.E.2d 448, 451 (Mass. 1994)).

### Defenses to Tortious Interference

#### 12. What are common arguments that defendants make to defeat a tortious interference claim in your jurisdiction?

Common arguments used to defeat a tortious interference claim under Massachusetts law include:

- The defendant relied on the advice of counsel (*G.S. Enters., Inc. v. Falmouth Marine, Inc.*, 571 N.E.2d 1363, 1371 (Mass. 1991)).
- The plaintiff's claim is preempted by federal law (*O'Donnell v. Boggs*, 611 F.3d 50, 55 (1st Cir. 2010) (referring to Massachusetts state law claims)).
- The defendant is protected by sovereign immunity from intentional torts under the Tort Claims Act (for example, it is a municipality) (M.G.L. c. 258, § 10(c); *Swanset Dev. Corp. v. City of Taunton*, 668 N.E.2d 333, 338 (Mass. 1996)).
- The defendant's interference was justified because it involved lawful competition (*Hamann v. Carpenter*, 937 F.3d 86, 92 (1st Cir. 2019) (applying Massachusetts law); *W. Oliver Tripp Co. v. Am. Hoechst Corp.*, 616 N.E.2d 118, 125 (Mass. App. Ct. 1993)).
- The defendant was not a stranger to the underlying contract or business relationship (*Colbert v. Choate Health Mgmt., Inc.*, 2000 WL 1512354, at \*4 (Mass. Super. Aug. 18, 2000), *aff'd*, 776 N.E.2d 1040 (Mass. App. Ct. 2002) (unpublished opinion under Mass. App. Ct. Rule 1:28)).
- The plaintiff has not shown actual malice because the defendant is a corporate official that acted in the scope of their corporate responsibilities (*Weiler v. PortfolioScope, Inc.*, 12 N.E.3d 354, 363 (Mass. 2014); see Question 3).
- The defendant was motivated by personal financial gain, which is not an improper motive (*King v. Driscoll*, 638 N.E.2d 488, 495 (Mass. 1994); *Crashfund, LLC v. FaZe Clan, Inc.*, 2020 WL 4347254, at \*5-6 (Mass. Super. June 8, 2020)).
- The defendant reasonably believed no contract existed (*Walker*, 44 F.3d at 1048).
- The plaintiff did not suffer any damages from the interference (*Mass Cash Register, Inc. v. Comtrex Sys. Corp.*, 901 F. Supp. 404, 422 (D. Mass. 1995) (applying Massachusetts law); *Morochnick v. Quigley*, 461 N.E.2d 1220, 1220 (Mass. App. Ct. 1984)).

- The claim is barred under the applicable three-year statute of limitations (M.G.L. c. 260, § 2A; *AER Advisors Inc. v. Fid. Brokerage Servs. LLC*, 327 F. Supp. 3d 278, 287 (D. Mass. 2018) (applying Massachusetts law); *Pagliuca v. City of Boston*, 626 N.E.2d 625, 629 (Mass. App. Ct. 1994); see Question 14).

#### 13. Are there any doctrines, rules, or other authorities in your jurisdiction that may prevent a plaintiff from recovering damages or asserting a claim for both tortious interference and another type of claim (for example, breach of contract)?

Under Massachusetts law, a plaintiff may not recover purely economic losses in tort and strict liability actions in the absence of personal injury or property damage (*Wyman v. Ayers Props., LLC*, 11 N.E.3d 1074, 1081 (Mass. 2014) (economic loss doctrine is intended to preclude recovery for intangible and unknown damages for lost contract or economic opportunity); *Herbert A. Sullivan, Inc. v. Utica Mut. Ins.*, 788 N.E.2d 522, 543, 413 (Mass. 2003)). However, the economic loss doctrine does not apply to a tortious interference claim (*Canal Elec. Co. v. Westinghouse Elec. Co.*, 973 F.2d 988, 998 (1st Cir. 1992) (applying Massachusetts law); *Baybutt Constr. Corp. v. J. Stewart Roberts Assoc.*, 2007 WL 9797509, at \*4 (D. Mass. Feb. 7, 2007) (applying Massachusetts law)).

Massachusetts does not prohibit simultaneously bringing contract and tortious interference claims on the same underlying conduct. However, if successful on both claims, the plaintiff cannot receive a duplicative recovery. (*Primarque Prods. Co. v. Williams West & Witts Prods. Co.*, 368 F. Supp. 3d 192, 198-99 (D. Mass. 2019) (applying Massachusetts law).)

By contrast, a plaintiff may be barred from bringing a tortious interference claim if it could be brought under M.G.L. c. 151B (the Massachusetts anti-discrimination statute), which has an exclusivity provision (*Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.*, 50 N.E.3d 778, 807 (Mass. 2016); see also *Green v. Wyman-Gordon Co.*, 664 N.E.2d 808, 813 (Mass. 1996)).

#### 14. What is the statute of limitations for asserting a tortious interference claim in your jurisdiction? When does the statute of limitations period begin to run for a tortious interference claim in your jurisdiction?

The applicable statute of limitations for tortious interference claims under Massachusetts law is three years (M.G.L. c. 260, § 2A; *Stark v. Advanced Magnetics, Inc.*, 736 N.E.2d 434, 441 (Mass. App. Ct. 2000)).

The limitations period begins to run at the time of the plaintiff's injury. A plaintiff does not need to know of the full extent of their injury for the limitations period to begin. If an event or events are reasonably likely to put the plaintiff on notice that injury occurred, the statute of limitations begins to run. (*Bowen v. Eli Lilly & Co.*, 557 N.E.2d 739, 741 (Mass. 1990); *Stark*, 736 N.E.2d at 441-42.) However, if the wrong is inherently unknowable, the limitations period starts when the plaintiff knows or should have known of their injury. For the limitations period to start, the plaintiff need not know every fact necessary to support their claim. (*Pagliuca*, 626 N.E.2d at 628.)

### 15. Are there any doctrines, rules, or other authorities that courts in your jurisdiction may apply to toll or suspend the statute of limitations period for a tortious interference claim?

Under Massachusetts law, the statute of limitations for a tortious interference claim may be tolled or otherwise affected by:

- The discovery rule, which tolls running of the statute of limitations until a plaintiff knows or has sufficient notice of the injury (see *Abdallah v. Bain Capital LLC*, 880 F. Supp. 2d 190, 197 (D. Mass. 2012) (applying Massachusetts law)).
- Fraudulent concealment, which tolls the limitations period when the plaintiff proves the defendant concealed the existence of the cause of action through an affirmative act with an intent to deceive. However, tolling for fraudulent concealment does not occur if the plaintiff had actual knowledge of the facts giving rise to the cause of action or the full means to determine that fraud occurred. (M.G.L. c. 260, § 12; *Stolzoff v. Waste Sys. Int'l, Inc.*, 792 N.E.2d 1031, 1039 (Mass App. Ct. 2003); *Stark*, 736 N.E.2d at 442.)
- Equitable tolling, which tolls the statute of limitations when the plaintiff, exercising reasonable diligence, could not have discovered the information necessary to file suit (see *Shay v. Walters*, 702 F.3d 76, 80 (1st Cir. 2012) (applying Massachusetts law)). The plaintiff has a duty of reasonable inquiry when they seek to invoke equitable tolling (*Protective Life Ins. v. Sullivan*, 682 N.E.2d 624, 635 (Mass. 1997)).

For a discussion of exceptions and tolls that may generally apply to a statute of limitations defense, see [State Q&A, Statutes of Limitations: Massachusetts: Question 24](#).

## Proving Tortious Interference

### 16. What is the standard of proof that a party seeking to prove a tortious interference claim must satisfy in your jurisdiction?

Under Massachusetts law, a plaintiff must prove each element of a tortious interference claim by a preponderance of the evidence (*Stemgent, Inc. v. Orion Equity Partners*, 2016 WL 8200496, at \*4 (Mass. Super. Dec. 22, 2016); *Birbiglia v. St. Vincent Hosp.*, 1994 WL 878836, at \*8 (Mass. Super. Dec. 29, 1994)).

If the defendant is a corporate official acting in the scope of their employment, the plaintiff has a heightened burden of showing by a preponderance of the evidence that the improper motive or means constituted actual malice (*Falcon*, 816 N.E.2d at 1017; see Question 3).

### 17. If lack of justification or privilege for interference is an element of tortious interference in your jurisdiction, which party bears the burden of proof of establishing justification or privilege (or lack thereof)? Discuss any circumstances under which a defendant may have the burden of proof on other elements of a tortious interference duty claim in your jurisdiction.

Under Massachusetts law, lack of justification or privilege are not elements of a prima facie case of tortious interference (*Blackstone*, 860 N.E.2d at 13 n.10; *United Truck Leasing Corp. v. Geltman*, 551 N.E.2d 20, 23 (Mass. 1990); see Questions 1 and 2). However, the defendant can assert justification or privilege as an affirmative defense to a tortious interference claim (*Charles River Data Sys., Inc. v. Oracle Complex Sys. Corp.*, 788 F. Supp. 54, 59 (D. Mass. 1991) (applying Massachusetts law); *Draghetti v. Chmielewski*, 626 N.E.2d 862, 870 (Mass. 1994)).

### 18. If causation is an element of a tortious interference claim in your jurisdiction, what is the applicable standard for proving the causation element?

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Under Massachusetts law, causation is an element of tortious interference that the plaintiff must prove (*McNamee v. Jenkins*, 754 N.E.2d 740, 745 (Mass. App. Ct. 2001)). Causation is shown when the facts show that the defendant's interference induced or caused a party to breach the underlying contract or sever the underlying business relationship through improper means (*Vranos v. Skinner*, 930 N.E.2d 156, 165 (Mass. App. Ct. 2010) (causation must be proven with certainty and not speculation); *Netherwood v. Am. Fed'n of State, Cty. & Mun. Emps., Local 1725*, 757 N.E.2d 257, 266 (Mass. App. Ct. 2001) (holding that plaintiff failed to show defendant's interference was direct and proximate cause of plaintiff's harm); *Chemawa Country Golf, Inc. v. Wnuk*, 402 N.E.2d 1069, 1072 (Mass. App. Ct. 1980)).

### Related Claims

#### 19. What other types of tortious interference claims (for example, tortious interference with quiet enjoyment with land) does your jurisdiction recognize, if any?

Massachusetts law recognizes other types of tortious interference claims, including:

- Intentional interference with an inheritance, such as a gift, devise, or legacy. Massachusetts courts sometimes refer to this claim as a claim for tortious interference

with an expectancy or tortious interference with expectancy of receiving a gift. (*Labonte v. Giordano*, 687 N.E.2d 1253, 1255 (Mass. 1997) (discussing elements).)

- Intentional or tortious interference with a dead body, also referred to as a claim for wrongful autopsy (*Kelly v. Brigham & Women's Hosp.* 745 N.E.2d 969, 973 (Mass. App. Ct. 2001) (analyzing claim as a claim for negligent infliction of emotional distress)).
- Intentional interference with parental rights (*Murphy v. I.S.K.Con. of New Eng., Inc.*, 571 N.E.2d 340, 351 (Mass. 1991)).

### Miscellaneous

#### 20. Are there other significant things that litigants should know when asserting or defending a tortious interference claim in your jurisdiction?

In Massachusetts, courts have not determined whether the Massachusetts Uniform Trade Secrets Act (MUTSA) preempts a tortious interference claim to the extent it that is based on allegations of trade secret misappropriation. This open question exists because the MUTSA states that it "supersede[s] any conflicting laws of the commonwealth providing civil remedies for the misappropriation of a trade secret" (M.G.L. c. 93, § 42F(a)).

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