Malicious Prosecution

CATEGORY

Malicious prosecution is an intentional tort.

INTEREST PROTECTED BY THIS TORT

The right to be free from unreasonable or unjustifiable criminal litigation brought against you. Secondly, the tort protects your interest in not having your reputation harmed by such litigation. (The tort may also cover unjustified civil proceedings, although many states have a separate tort to cover the latter.)

ELEMENTS

1. Initiation or procurement of the initiation of criminal proceedings
2. Without probable cause
3. With malice
4. The criminal proceedings terminate in favor of the accused

DEFINITIONS OF MAJOR WORDS/PHRASES IN THE ELEMENTS

*Criminal Proceedings:* Formal action commenced by criminal justice officials.

*Initiation:* Instigation, urging, inciting, exertion of pressure to begin something.

*Malice:* An improper motive. If the primary motive for initiating criminal proceedings is not the desire to bring the accused to justice, then the motive is improper.

*Probable Cause:* A suspicion based on the appearance of circumstances that are strong enough to allow a reasonable person to believe that a criminal charge against an individual is true.

*Terminate in Favor of the Accused:* The ending of the criminal proceedings expressly or by fair implication shows that the accused is innocent of the charge.

MAJOR DEFENSE AND COUNTERARGUMENT POSSIBILITIES

1. Criminal proceedings never actually began.
2. The accuser did not instigate the prosecution, but simply gave the facts to the authorities who decided to prosecute without urging from the accuser.
3. There was probable cause.
4. The primary purpose of the accuser was to bring the accused to justice (i.e., to use the court for it proper purpose).

5. The criminal proceedings have not yet terminated.

6. The criminal proceedings did not terminate in favor of the accused.

7. The plaintiff’s suit against the government for malicious prosecution may be barred by sovereign immunity. e.g., prosecutors have an absolute immunity.

8. The plaintiff’s suit against the government employee for malicious prosecution may be barred by public official immunity, e.g., prosecutors have an absolute immunity.

9. The criminal case against the plaintiff began when the defendant arrested the plaintiff.

10. The plaintiff’s suit against the charitable organization for malicious prosecution committed by someone working for the organization may be barred by charitable immunity.

**DAMAGES**

Malicious prosecution (unlike negligence) does not require proof of actual damages. There can be recovery for the humiliation and mental suffering. Other compensatory damages include the costs of defending the underlying criminal case, medical bills, and loss of business or employment. Punitive damages are often possible when the defendant (the accuser in the criminal case) acted out of hatred for the accused.

**RELATIONSHIP TO CRIMINAL LAW**

One of the main purposes of the malicious prosecution tort is to provide a remedy against a person who has unjustifiably caused the criminal justice system “to go after you” because of an accusation that you have committed a crime.

**RELATIONSHIP TO OTHER TORTS**

*Abuse of Process*: Abuse of process is the improper use of legal proceedings that may have been properly initiated. If proceedings have been properly initiated, there is no malicious prosecution, but there may be abuse of process if the proceedings are used for an improper goal, e.g., to coerce the accused to pay a debt.

*Battery*: If the accused was touched, e.g., as part of an arrest, as criminal proceedings were initiated, the tort of battery as well as malicious prosecution may have been committed.

*Defamation*: Defamation (libel or slander) as well as malicious prosecution may be committed when the accuser initiates criminal proceedings against the accused. Things are probably said or written that are derogatory of the accused’s character.
**Disparagement:** In the process of initiating criminal proceedings against the accused, the accuser may utter false statements injurious to the accused’s business or property. The tort of disparagement as well as malicious prosecution may have been committed.

**False Imprisonment:** The accused may have been improperly restrained in his or her liberty while being maliciously prosecuted.

**Intentional Infliction of Emotional Distress:** It may be that the objective of the accuser was to subject the accused to severe emotional trauma by initiating criminal proceedings against the accused. A court might consider such conduct sufficiently outrageous so that the tort of intentional infliction of emotional distress is committed along with malicious prosecution.

**Wrongful Civil Proceedings:** Malicious prosecution covers wrongful criminal proceedings. It may also cover wrongful civil proceedings. In some states, however, wrongful civil proceedings is covered by a separate tort, sometimes called wrongful civil proceedings.

**FEDERAL LAW**

a. Under the Federal Tort Claims Act, the United States Government will *not* be liable for malicious prosecution committed by one of its federal employees within the scope of employment (respondeat superior) *unless* the federal employee is an investigative or law enforcement officer.

b. There may be liability under the Civil Rights Act if the malicious prosecution was committed while the defendant was depriving the plaintiff of federal rights under color of law.

**EMPLOYER-EMPLOYEE (AGENCY) LAW**

An employee who commits malicious prosecution is personally liable for this tort. His or her employer will *also* be liable for malicious prosecution if the conduct of the employee was within the scope of employment (respondeat superior). The employee must be furthering a business objective of the employer at the time. Intentional torts such as malicious prosecution, however, are often outside the scope of employment. If so, only the employee is liable for the malicious prosecution.