

Table of Contents

CHAPTER 1. INTRODUCTION

§ 1.1 Statutory overview

CHAPTER 2. SUBJECT MATTER JURISDICTION

- § 2.1 General subject matter requirement: Trade or commerce
- § 2.4 Potential preemption of 93A—Preemption of 93A by Massachusetts law
- § 2.5 Potential preemption of 93A—Preemption of 93A by federal law
- § 2.7 Exclusions from trade or commerce—Private transactions
- § 2.8 Exclusions from trade or commerce—Employer-employee
- § 2.9 Exclusions from trade or commerce—Partnerships
- § 2.10 Exclusions from trade or commerce—Intra-enterprise disputes
[Retitled]
- § 2.11 Exclusions from trade or commerce—Joint venturers and fiduciaries
- § 2.13 Exclusions from trade of commerce—Litigation conduct

CHAPTER 3. PERSONAL JURISDICTION

- § 3.2 Personal jurisdiction rule for business claims—Primarily and substantially test
- § 3.4 Burden of proof under the Primarily and Substantially Test

CHAPTER 4. STANDARDS AND ELEMENTS OF LIABILITY

- § 4.3 General standard—Unfair or deceptive
- § 4.4 General standard—Higher standard under M.G.L.A. c.93A, § 11
- § 4.5 General standard—Deceptive
- § 4.6 General standard—Deceptive—False advertising
- § 4.8 General standard—Unfair—Generally
- § 4.9 General standard—Unfair—§ 9 standard—Equity
- § 4.10 General standard—Unfair—M.G.L.A. c. § 11 standard—Established concept of unfairness
- § 4.11 General standard—Unfair methods of competition
- § 4.11.50 General standard—Anticompetitive litigation *[New]*
- § 4.12 General standard—Antitrust
- § 4.13 General standard—Nondisclosure and omission *[Retitled]*
- § 4.14 General standard—Conduct otherwise unlawful
- § 4.15 General standard—Promissory estoppel
- § 4.16 Materiality
- § 4.17 Reliance and causation

- § 4.18 Prima facie damages
- § 4.19 Comparison of 93A prima facie case with common law

CHAPTER 5. PARTIES PLAINTIFF

- § 5.7.50 Requirement that plaintiff be a person—Charitable organizations *[New]*
- § 5.7.75 Proper plaintiff—Unincorporated Associations *[New]*
- § 5.9 Attorney general actions
- § 5.10 Class actions

CHAPTER 6. PARTIES DEFENDANT

- § 6.3.50 Person requirement—Massachusetts *[New]*
- § 6.5 Person requirement—Municipal government
- § 6.6 Person requirement—Public authorities
- § 6.7 Person requirement—Charitable organizations
- § 6.9 Personal liability for acts in a corporate capacity
- § 6.10 Corporate or principal liability for personal acts of employees or agents—Respondeat superior
- § 6.11 Corporate liability for acts of other corporations—De facto merger
- § 6.13 Aider and abettor liability
- § 6.14 Civil conspiracy
- § 6.14.50 Successor liability—Assignee *[New]*
- § 6.15 Concurrent wrongdoers—Multiple damages against multiple defendants

CHAPTER 7. CONSUMER ACTION—§ 9

- § 7.1.50 Generally—Basic pleading elements of § 9 claim *[New]*
- § 7.3 Generally—Some loss is required *[Retitled]*
- § 7.5 M.G.L.A. c.93A, § 9 consumer plaintiff defined
- § 7.6 Demand letter
- § 7.8 Tender of settlement
- § 7.9 Exhaustion of administrative remedies

CHAPTER 8. BUSINESS ACTION—M.G.L.A. c. 93A, § 11

- § 8.1.50 Generally—Basic elements of § 11 business claim *[New]*
- § 8.1.70 Generally—Commercial relationship requirement *[New]*
- § 8.3 Generally—Loss of money or property requirement
- § 8.5 § 11 business plaintiff defined
- § 8.6 No demand letter required
- § 8.8 Tender of settlement

CHAPTER 9. SUBJECT MATTER

- § 9.1 Contracts; commercial obligations
- § 9.1.50 Regulatory noncompliance *[New]*
- § 9.2 Construction
- § 9.3 Automobiles
- § 9.4 Real estate

TABLE OF CONTENTS

§ 9.5 Investment bankers, brokers and finders *[Retitled]*
 § 9.6 Landlord-tenant
 § 9.7 Manufacturer—Distributor
 § 9.8 Franchisor—Franchisee
 § 9.8.50 Licensor-licensee *[New]*
 § 9.10 Consumer debt collection
 § 9.11 Consumer credit
 § 9.13 Attorneys
 § 9.14 Accountants
 § 9.15 Fiduciaries
 § 9.17 Torts—Interference with contract
 § 9.18 Torts—Trade secrets
 § 9.19 Trademark, Patent, Copyright and Trade Dress *[Retitled]*
 § 9.20 Torts—Business defamation
 § 9.22 Torts—Conversion
 § 9.23 Torts—Abuse of process
 § 9.24 Torts—Malicious prosecution
 § 9.25 Torts—Infliction of emotional distress
 § 9.27 Torts—Worker’s compensation
 § 9.28 Torts—Medical malpractice
 § 9.29 Torts—Pharmacist malpractice, pharmacies and
 pharmaceutical companies *[Retitled]*
 § 9.30 Torts—Personal injury—Wrongful death *[Retitled]*
 § 9.30.50 Torts—Premises liability/Security practices *[Retitled]*
 § 9.31 Torts—Products liability
 § 9.31.50 Torts—Duty to provide information *[New]*
 § 9.33 Torts—Civil rights
 § 9.34 Securities
 § 9.35 Banks, lenders
 § 9.36 Insurance
 § 9.37 Utilities
 § 9.39.25 Miscellaneous—Senior assisted living communities *[New]*
 § 9.39.50 Miscellaneous—Automotive repair shops *[New]*
 § 9.41 Miscellaneous—Cable television
 § 9.42 Miscellaneous—Car rentals and car-sharing services
 [Retitled]
 § 9.43 Miscellaneous—Computers and computer software *[Retitled]*
 § 9.44.20 Miscellaneous—Personal identification information *[New]*
 § 9.44.50 Miscellaneous—Data security breaches *[New]*
 § 9.44.53 Miscellaneous—Food delivery services *[New]*
 § 9.44.60 Miscellaneous—Gambling predominates over bona fide sale
 of goods *[New]*
 § 9.44.70 Miscellaneous—Gasoline price gouging *[New]*
 § 9.45.50 Miscellaneous—Innkeepers *[New]*
 § 9.46 Miscellaneous—Mobile homes
 § 9.47 Miscellaneous—Nursing homes
 § 9.47.50 Miscellaneous—Public contracts *[New]*
 § 9.47.57 Miscellaneous—Gaming *[New]*
 § 9.47.60 Miscellaneous—Ride-hailing services (Uber) *[New]*
 § 9.47.75 Miscellaneous—Secret recordings *[New]*
 § 9.50 Miscellaneous—Schools and universities
 § 9.50.25 Miscellaneous—Telemarketing *[New]*

- § 9.50.50 Miscellaneous—Travel services *[New]*
- § 9.51 Miscellaneous—Telecommunications
- § 9.53 Miscellaneous—Internet defamation *[New]*

CHAPTER 10. DEFENSES

- § 10.2 Sophisticated M.G.L.A. c. 93A, § 11 plaintiff
- § 10.4 Contractual defenses
- § 10.5 Conduct otherwise lawful
- § 10.6 Advice of counsel
- § 10.7 Statute of limitations
- § 10.8 State action
- § 10.8.50 Survivability of 93A claims *[New]*
- § 10.9 Miscellaneous defenses
- § 10.10 Limited defense: Lack of contractual privity
- § 10.11 Not a defense: Non-survival of the plaintiff *[New]*

CHAPTER 11. DAMAGES; ATTORNEYS FEES; COSTS

- § 11.3 Recoverable actual damages—Statutory permission for recovery of actual damages
- § 11.4 Recoverable actual damages—Standing to assert claim under § 9 *[Retitled]*
- § 11.4.50 Recoverable actual damages—Standing to assert a § 11 claim *[New]*
- § 11.5 Recoverable actual damages—Bar on duplicative actual damages
- § 11.6 Recoverable actual damages—Measure of actual damages
- § 11.9 Multiple damages—Willful or knowing violation
- § 11.10 Multiple damages—Failure to offer reasonable settlement
- § 11.11 Multiple damages—Double or treble
- § 11.11.50 Contribution *[New]*
- § 11.12 Late tenders of payment and offsets *[Retitled]*
- § 11.13 Multiple damages—Damages to be multiplied
- § 11.14 Multiple damages against multiple defendants
- § 11.16 Attorney’s fees—Automatic award for prevailing plaintiff
- § 11.16.50 Attorney’s fees—Fees may be awarded to in-house counsel *[New]*
- § 11.17 Attorney’s fees—Plaintiff must show some loss *[Retitled]*
- § 11.18 Attorney’s fees—Standard for amount of award
- § 11.19 Attorney’s fees—Apportionment of fee between 93A and non-93A
- § 11.20 Attorney’s fees—Evidentiary basis for award
- § 11.21 Attorney’s fees—Attorneys fees on appeal
- § 11.22 Interest
- § 11.23 Costs

CHAPTER 12. PRACTICE AND PROCEDURE

- § 12.3 Jurisdiction of various courts to hear 93A claims—Housing Court

TABLE OF CONTENTS

- § 12.5 Jurisdiction of various courts to hear 93A claims—Land Court
- § 12.7 Jurisdiction of various courts to hear 93A claims—United States District Court
- § 12.8 Pleading standards *[Retitled]*
- § 12.8.50 Federal court actions—SJC decisions on 93A Govern *[New]*
- § 12.9 Choice of law
- § 12.10 Forum selection clauses
- § 12.11 Default
- § 12.12 Motions to dismiss, strike, or for more specific pleading
- § 12.14 Injunctions
- § 12.15 Summary judgment
- § 12.15.50 Trial Evidence *[New]*
- § 12.16.50 Claim preclusion of 93A claims *[New]*
- § 12.18 Trial by court or jury—State court—Discretion of trial judge on 3 options
- § 12.19 Trial by court or jury—Procedure of option 1—Jury finds facts on 93A claim
- § 12.20 Trial by court or jury—Procedure of option 2—Reservation of all aspects of 93A to trial judge
- § 12.21 Trial by court or jury—Jury verdict not collateral estoppel on 93A
- § 12.22 Trial by court or jury—Procedure of Option 3—Jury verdict may be advisory on 93A
- § 12.23 Trial by court or jury—Federal court—Only Option 2, judge trial, or Option 3, advisory jury
- § 12.23.50 Trial by court or jury—Option 4—Trial by court as if sitting as a jury—Massachusetts Superior Court *[New]*
- § 12.24 Contribution and indemnification *[Deleted]*
- § 12.24.50 Judgment on 93A Claim vs. Related Non-93A Claims *[New]*
- § 12.27 Appeal and appellate issues—Premature appeals from bifurcated trials
- § 12.28 Appeal and appellate issues—Multiple damages on appeal
- § 12.31 Appeal and appellate issues—93A findings on appeal

CHAPTER 13. ALTERNATE FORUMS

- § 13.2 Arbitration—Arbitrability of 93A claims
- § 13.3 Arbitration—Availability of multiple damages, attorney’s fees, class claims and four-year statute of limitations *[Retitled]*
- § 13.4 Bankruptcy

Appendices

- Appendix C. Regulations
- Appendix D. Federal Trade Commission
- Appendix E. Bibliography
- Table of Laws and Rules**
- Table of Cases**
- Index**