

PANORAMIC **COMMERCIAL CONTRACTS**

USA



LEXOLOGY

Commercial Contracts

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CONTRACT FORMATION

Good faith in negotiating

Is there an obligation to use good faith when negotiating a contract?

There is no inherent obligation to negotiate a contract in good faith. Courts presume that, in business transactions, each party is trying to get the best deal. Courts will, however, enforce an explicit agreement between parties to negotiate in good faith. In such cases, the scope of each party's obligation to negotiate in good faith is determined not by reference to principles of common law but by reference to the terms of the parties' agreement.

Law stated - 4 July 2025

Oral contracts

Is an oral contract binding in your jurisdiction?

Generally, oral contracts are binding so long as they satisfy the standard requirements of contract formation – offer, acceptance, mutual assent and consideration – and the parties did not previously agree only to be bound by an executed written agreement. Typically, however, the following types of agreements must be in writing to be enforceable: marriage agreements, contracts for longer than one year, land sales, executor arrangements, contracts for the sale of goods worth more than US\$500, and surety agreements.

Law stated - 4 July 2025

'Battle of the forms' disputes

How are 'battle of the forms' disputes resolved in your jurisdiction?

For contracts relating to the provision of services, where the parties submit different contract forms, a contract is not formed. To accept an offer, the offeree's acceptance must be identical to the offer; any additional or conflicting terms is a counter offer. For contracts between non-merchants and relating to the sale of goods, the Uniform Commercial Code (UCC) provides that, when the offeree submits a different contract form, a contract is formed and the additional/differing terms are considered proposed non-binding additions. For contracts between merchants and relating to the sale of goods, the UCC provides that, when the offeree submits a different contract form, a contract is formed and the additional/differing terms become part of the contract unless: (1) the offeror expressly limits acceptance to the terms of the original offer; (2) the additional or different terms materially alter the original offer; or (3) the offeror has previously objected, or objects within a reasonable time, to the additional terms.

Law stated - 4 July 2025

Language requirements

Is there a legal requirement to draft the contract in the local language?

There is generally no legal requirement to draft a contract in the local language. Some states, however, impose an obligation to translate certain consumer contracts like automobile sales and lease agreements, apartment lease agreements, home mortgage agreements, agreements for legal services and personal loan agreements. For example, if a buyer negotiates the purchase of a car primarily in Spanish, the car dealership must provide a Spanish translation of the agreement.

Law stated - 4 July 2025

Signatures and other execution formalities

In what circumstances are signatures or any other formalities required to execute commercial contracts in your jurisdiction? Is it possible to agree a B2B contract online (eg, using a click-to-accept process)? Does the law recognise the validity of electronic and digital contract signatures? If so, how are they treated in comparison to wet-ink signatures?

Unless the contract is one that must be in writing to be binding (for example, contracts involving the transfer of real estate), the contract need not be signed, provided there is other evidence of acceptance. Additionally, the Uniform Electronic Transactions Act (which has been adopted in 49 states): (1) allows business-to-business (B2B), contracts to be executed via digital processes; (2) recognises the validity of handwritten/ink signatures as well as electronic and digital signatures; and (3) treats such signatures as wet-ink signatures.

Law stated - 4 July 2025

STATUTORY CONTROLS AND IMPLIED TERMS

Controls on freedom to agree terms

Are there any statutory or other controls on parties' freedom to agree terms in contracts between commercial parties in your jurisdiction?

Generally, so long as a contract's terms are freely negotiated, there are no limitations on the terms to which the parties may agree. However, courts will not enforce provisions that require unlawful conduct or otherwise contravene public policy. For example, indemnification clauses that purport to exculpate a party for wilful misconduct or gross negligence and liquidated damages provisions that function as penalties are generally unenforceable since they contravene public policy. Additionally, most jurisdictions are reluctant to enforce best efforts clauses that impose vague obligations rather than objective, measurable performance standards, although some courts have enforced abstract criteria where the criteria may be understood with reference to or informed by external circumstances or industry standards.

Law stated - 4 July 2025

Standard form contracts

Are standard form contracts treated differently from those that are freely negotiated?

Standard form contracts are generally treated the same as those that are freely negotiated. Unless the contractual terms themselves are unconscionable, they will be enforced.

Law stated - 4 July 2025

Implied terms

What terms are implied by law into the contract? Is it possible to exclude these in a commercial relationship?

In every contract, there is an implied covenant of good faith and fair dealing that prohibits each party from engaging in conduct that prevents each other party from realising the benefits of their bargain. However, a party cannot breach the implied covenant of good faith and fair dealing by engaging in conduct that is expressly authorised by the contract.

In contracts for the sale of goods, the Uniform Commercial Code implies a number of warranties (unless expressly disclaimed by the contract): the implied warranty of (1) title, (2) fitness for a particular purpose, (3) against infringement (which is only imposed in contracts between merchants), and (4) merchantability. The implied warranty of title promises that the seller owns and has the right to sell the goods contracted for and that the goods will be delivered to the buyer either unencumbered or with a disclosure of encumbrances. The implied warranty of fitness for a particular purpose applies when the seller has reason to know of a particular purpose for which the buyer will use the purchased goods and promises that the goods will be suitable for that purpose. The implied warranty against infringement is only applicable to contracts between merchants and promises that, unless otherwise agreed, goods sold will be delivered free from any third-party's claim of infringement (patent, copyright, etc). And the implied warranty of merchantability promises that goods sold will be of a certain minimum quality, which is defined non-exclusively to mean that the goods would be recognised as of fair quality in the applicable trade. In addition to the above-listed implied warranties, other implied warranties may be read into a sale-of-goods contract based on the course of dealing between the contracting parties or the usage of trade.

In contracts for the provision of services, the implied warranties imposed by the common law differ depending on the contractual subject matter. For example, construction and maritime contracts may include an implied warranty of workmanlike performance (which generally cannot be waived), which requires that construction be performed skilfully and diligently.

In the landlord-tenant context, many states impose an implied warranty of habitability, which requires landlords to maintain habitable conditions. Generally, the implied warranty of habitability is not waivable in residential leases, but may be waived in commercial contracts through adequate disclosure of defects.

Law stated - 4 July 2025

Vienna Convention

Is your jurisdiction a signatory to the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention)?

The United States is a signatory to the United Nations Convention on Contracts for the International Sale of Goods. However, the United States is not bound by subparagraph (1)(b) of article 1, which provides for application of the treaty 'when the rules of private international law lead to the application of the law of a Contracting State'.

Law stated - 4 July 2025

Good faith in entering and performing

Is there an obligation to use good faith when entering and performing a contract?

The Uniform Commercial Code and the Restatement (Second) of Contracts recognise that, absent a preliminary agreement stating or suggesting otherwise, there is no obligation to use good faith when entering into a contract. The duty of good faith is instead implied in the performance of every contract. This obligation to perform in good faith prohibits a party to a contract from engaging in conduct which injures or destroys the ability of the counterparty to realise the benefits of its bargain. To determine whether a party breached the implied covenant, courts look to whether a reasonable counterparty would expect the conduct to be prohibited, or whether, had the parties thought to negotiate the issue, they would have prohibited the conduct. To be clear, the obligation of good faith does not support an independent claim for failure to act in good faith under a contract; rather, the obligation of good faith is a tool used by courts to force parties to comply with the substance of their contractual obligations.

Law stated - 4 July 2025

LIMITING LIABILITY

Prohibition on exclusions and limitations

Can parties agree to limit liability? If so, are there any limits on what liabilities can and cannot be excluded or limited by contract (including, for example, by a supplier in a contract)?

Generally, parties can agree to limit liability through contractual provisions. In contracts for the sale of goods, such limitations will be enforced unless there is evidence that the limitation is unconscionable (such as limitations limiting liability for injury to persons). In contracts for the provision of services, such limitations will be enforced unless the limitation violates public policy, for example, where a party purports to exculpate itself from liability for grossly negligent conduct, wilful misconduct or criminal conduct, or if the limitation is contrary to a state's statute. In construction contracts, statutes generally preclude parties from exculpating themselves from liability for their own negligence.

Law stated - 4 July 2025

Financial caps

Are there any statutory controls on using financial caps to limit liability for breach of contract?

There are generally no statutory controls on the use of financial caps to limit liability for breach of contract. Parties can limit damages to a nominal amount or exculpate themselves from liability entirely, unless the limitation or exculpation is against public policy. For example, some courts have found that financial caps on damages for gross negligence or wilful misconduct violate public policy.

Law stated - 4 July 2025

Indemnities

Are there any statutory controls on indemnities used to cover liability risks in contracts?

There are generally no statutory controls on indemnities, except in the construction, public works and certain financial contexts. Courts in most jurisdictions require that any indemnity clause be outlined in explicit language evincing a clear intent to release a party from liability. In the construction, public works and financial contexts, parties (such as contractors, architects, engineers, surveyors, lessors of real property, etc) cannot use indemnities to cover liability risks relating to negligent, wilful or criminal acts.

Law stated - 4 July 2025

Liquidated damages

Are liquidated damages clauses enforceable and commonly used in your jurisdiction?

Liquidated damages clauses are enforceable so long as they do not constitute a penalty (which violates public policy), and they are commonly used. Liquidated damages clauses constitute a penalty if the damages – after considering any potential difficulties of proof – are not reasonable in light of the anticipated loss. For example, if damages are set without regard for the potential harm and instead aim to encourage compliance by making a breach prohibitively expensive, then courts will refuse to enforce the clause as a penalty provision. Likewise, if there is a large disparity between the actual damages and the liquidated damages, courts will refuse to enforce the clause.

Law stated - 4 July 2025

PAYMENT TERMS

Statutory time limits on payments

Are there statutory time limits for paying invoices? Is it possible to agree a different payment period?

Whether there are statutory time limits for paying invoices depends upon whether the contract is for the provision of services, sale of goods or is a construction contract. In contracts for the provision of services, time limits are governed by the terms of the parties' agreement, not statute. In contracts for the sale of goods, the Uniform Commercial Code provides that payment is due when the buyer receives the goods, but parties can agree to other time limits. In construction contracts, nearly every state (except New Hampshire) has a 'prompt pay act', which dictates the payment time limits for public or private construction projects (usually 30 days). If a party does not pay its invoice, then state 'statutes of limitations,' which vary by state, dictate how long parties have to bring a claim to recover unpaid amounts.

Law stated - 4 July 2025

Late payment interest

Is statutory interest charged on late payments? Is it possible to agree a different rate of interest?

Typically, the terms of the parties' agreement govern interest rates for late payments – except in the context of loan or construction contracts. If a contract sets an agreed-upon interest rate, that rate is enforceable so long as the contract does not constitute a loan (in which case usury laws cap the amount of interest parties may charge). If, however, the contract does not set an agreed-upon interest rate and a contracting party successfully sues the non-paying party, then the contracting party may recover interest on late payments through pre-judgment interest statutes, which vary by state. If the contract is a construction contract covered by a 'prompt pay act', then the prompt pay act would specify the applicable interest applied to late payments.

Law stated - 4 July 2025

Civil penalties

What are the civil penalties for failing to comply with statutory interest rate or late payment of invoices?

Courts distinguish between contractual interest rates agreed upon by the parties and statutory interest rates imposed by law. If a contract requires the payment of interest at a specified rate, a party's failure to comply with that obligation may constitute a breach. If, however, the contract is silent with respect to interest on late payments, statutory interest may apply as damages following a breach, rather than as a contractual obligation. For construction contracts, state 'prompt pay acts' impose fines, interest penalties, and allow for the non-breaching party to recover any attorneys' fees they incur in trying to collect the non-payment. They may also bar the non-paying party from entering into future construction contracts.

For contracts that are subject to statutory caps on the allowable interest rates (for example, loan contracts), there are civil and potentially criminal consequences for setting an interest rate that exceeds the statutory cap. These include voiding the higher interest rate amount and allowing the party who paid the interest to recover any amount paid in excess of the cap.

TERMINATION

Implied terms

Are there rules regarding termination and duration of contracts that will be implied by law into a contract? Can these terms be excluded or limited by including appropriate language in the contract? Do special rules apply to termination of a supply contract?

Courts look first to the plain meaning of an agreement's unambiguous terms in determining the rights and obligations of the parties with respect to termination and duration. Courts are unlikely to insert a duration clause into a contract, particularly where the contract was negotiated by sophisticated, counselled parties. If there is no duration clause, courts typically presume that the parties intended the agreement to last a reasonable time, which is determined with reference to the parties' negotiations or industry practice. If there is no termination clause, courts typically interpret contracts as terminable at the behest of either party, especially for contracts for the provision of services. Generally, special rules do not apply to the termination of contracts for the sale of good.

Law stated - 4 July 2025

Notice period

If a contract does not include a notice period to terminate a contract, how is it calculated?

Where the contract does not include a notice period for termination of a contract, most courts will read in a reasonable notice period. Factors often considered in determining a reasonable notice period include (1) when the contract came into effect and the time span between notice of termination, (2) commencement of activities in violation of the contract, (3) subject matter of the contract, and (4) changes in the character of the industry.

Some states have statutory provisions that require notice of termination. Other states (such as New York and Delaware), do not require notice unless there is a finding that the parties intended to include a notice period or if the failure to include a notice period would lead to a substantial loss for either party.

Law stated - 4 July 2025

Automatic termination on insolvency

Will a commercial contract terminate automatically on insolvency of the other party?

A commercial contract generally does not terminate automatically upon insolvency. 'Ipso facto' clauses – specific contractual provisions allowing or providing for termination when a party becomes bankrupt or insolvent – are enforceable only under certain circumstances.

For example, Title 11 of the United States Code, or the Bankruptcy Code, prohibits the enforcement of these clauses in a debtor's unexpired leases or executory contracts. However, these clauses are enforceable before a bankruptcy filing or after a bankruptcy concludes.

Law stated - 4 July 2025

Termination for financial distress

Are there restrictions on terminating a contract if the other party is in financial distress?

Unless explicitly allowed by the contract or by statute, courts are generally hesitant to allow termination solely due to financial distress. Some states, however, provide a statutory basis for termination due to the other party's financial distress, including Delaware, which permits the termination of alcohol distribution contracts for 'good cause', which may include a counterparty's financial distress, and California, which permits a party to rescind a contract if the consideration for its obligation fails. While financial distress alone may not justify termination, it may entitle the counterparty to demand adequate assurance, and if the party in financial distress cannot provide such assurance, then the counterparty may terminate the agreement.

Law stated - 4 July 2025

Force majeure

Is force majeure recognised in your jurisdiction? What are the consequences of a force majeure event?

Force majeure is a defence to contract performance that is recognised in the United States. If a force majeure event occurs, a party's contract performance is excused if the clause specifically includes the event that actually prevents a party's performance.

Law stated - 4 July 2025

Frustration and impossibility of performance

Are the doctrines of impossibility or frustration of purpose recognized in your jurisdiction?

The doctrines of impossibility and frustration of purpose are recognised defences to contractual performance in the United States. Courts apply the defence of impossibility in the limited circumstance where performance is 'objectively impossible' due to the destruction of the contract's subject matter or the elimination of a necessary means of performance. The party invoking the defence must prove that the event causing the impossibility was 'unanticipated' and could not have been 'foreseen' (such that the parties could have contracted around the event). The frustration of purpose defence applies when unforeseen circumstances fundamentally undermine the reason one party entered into the contract, rendering the expected benefit 'virtually worthless'. Courts typically reserve this defence for

situations involving extreme and 'wholly unforeseeable events' that strip the agreement of its value to one of the contracting parties.

Law stated - 4 July 2025

Material adverse events and material adverse changes

Are material adverse event (MAE) or material adverse change (MAC) clauses used or enforced in your jurisdiction?

Material adverse effect clauses, also referred to as material adverse event or material adverse change clauses, are used and enforced in the United States. A buyer seeking to rely on a material adverse effect clause faces a significant challenge in showing that the impact in question is truly material.

Law stated - 4 July 2025

SUBCONTRACTING, ASSIGNMENT AND THIRD-PARTY RIGHTS

Subcontracting without consent

May a supplier subcontract its obligations under the contract without seeking consent from the other party?

Whether subcontracting is permitted turns on the terms of the contract, except in certain contexts. If a contract is silent as to whether consent is required, parties are presumed to be able to subcontract without consent. As a result, most commercial supply contracts will include provisions restricting or eliminating subcontracting, such as requiring prior written consent by the other party.

Law stated - 4 July 2025

Statutory rules

Are there any statutory rules that apply to subcontracting in your jurisdiction?

The Uniform Commercial Code (UCC) applies to a subcontracting contract for the sale of goods. If a contract is for the performance of services, or a 'mixed' contract for both services and goods, state-specific statutes may apply.

If the UCC governs, all rights of either the seller or buyer may be assigned to a subcontractor unless

- the contract specifically prohibits it,
- the other party has a substantial interest in having the original promisor perform the specified obligations, or
- the assignment would materially:
 - change the other party's duty;

- increase the burden or risk imposed on the other party; or
- impair the other party's chance of obtaining reciprocal performance. And, even if performance is delegated to a subcontractor, the original party remains liable for any breach of contract.

State-specific statutory controls on subcontracting arise in the public works context. In general, public works subcontractors are required to register with the relevant state department prior to performing public works across states and may require compliance with specific statutory codes (for example, the California Public Contract Code and the Subcontracting Fair Practices Act).

Law stated - 4 July 2025

Assignment of rights and obligations

May a party assign its rights and obligations under the contract without seeking the other party's consent?

In general, a party may assign contractual rights and obligations without the other party's consent or even notice unless the contract specifies otherwise, a relevant statute prohibits assignment, or the rights and obligations are personal in nature.

Statutes may specify that a party may not assign their contractual rights and obligations without the other party's consent. Under California law, for example, an obligation may be transferred only with the consent of the party entitled to its benefit. And the United States Bankruptcy Code prohibits a trustee from assigning a debtor's executory contract or unexpired lease without the other party's consent if applicable law excuses that party from accepting or rendering performance to an entity other than the debtor. Wage-assignment statutes often contain limitations on assignment without consent, and there are statutes forbidding or limiting the assignment of rights under government contracts.

Additionally, contract rights and obligations that are personal in nature are not assignable absent the other party's consent. A contract may be of a personal nature where it:

- involves a special relationship of trust or confidence between the parties;
- requires either special types or levels of talent, skill, training or knowledge or taste or discretion;
- involves the transferor's character or reputation; or
- involves a party's promise to act in good faith or use its best efforts.

Law stated - 4 July 2025

Assignment of rights and obligations

What statutory controls apply to the assignment of rights or obligations under a supply contract?

For contracts for the sale of goods, the Uniform Commercial Code allows both buyers and sellers to assign their rights and obligations, unless the assignment:

- would materially modify the other party's duty;
- would increase materially the burden or risk imposed on the other party;
- would impair materially the other party's ability to procure reciprocal performance; or
- conflicts with the original agreement. Whether an assignment would cause a material change is a fact specific and case-by-case inquiry.

Law stated - 4 July 2025

Enforcement by a third party

Can a third party enforce a term of the contract and, if so, are there any limitations on doing so?

Third parties generally cannot enforce contractual terms unless the third party qualifies as the contract's intended beneficiary. A third party is an intended beneficiary of an agreement where the language of the agreement makes clear that the contracting parties intended that the contract benefit the third party. In such cases, the third party may enforce the terms of the contract.

Law stated - 4 July 2025

DISPUTES

Limitation periods

What are the limitation periods for breach of contract claims? Is it possible to agree a shorter limitation period?

The limitation periods for breach of contract claims vary, depending on the state in which the claim is brought. Each state has a statute of limitations that provides the limitation period for a breach of contract claim. Generally, these range from three to ten years, and the clock for bringing such a claim begins to run once a party breaches the contract. Parties can generally agree to a shorter limitation period, so long as the shorter limitation is memorialised in writing and the time period is reasonable.

Law stated - 4 July 2025

Contract interpretation

How do courts in your jurisdiction approach contract interpretation when a dispute arises? How is the intent of the parties determined? Can extrinsic evidence (ie, evidence outside the four corners of the written contract) be admitted to show intent?

The touchstone of contract interpretation in the United States is the intent of the parties. Written agreements that are clear, complete, and unambiguous on their face are enforced according to the plain meaning of their terms. In effectuating the intent of the parties, a court must construe the agreement as a whole, giving effect to and harmonising all of the agreement's provisions. The court may not, through interpretation, add or excise terms, or distort the meaning of those used, and, in so doing, make a new agreement for the parties. This is especially true where agreements are negotiated at arm's length by sophisticated, counselled parties. In such circumstances, courts will not relieve the parties of the consequences of their bargain unless there is a countervailing public policy concern (such as where a contract is entered into under duress or coercion). This policy in favour of freedom of contract both promotes certainty and predictability in commercial relationships and respects the autonomy of commercial parties.

Only where a contract is ambiguous – that is, capable of more than one meaning when assessed objectively by a reasonably intelligent person who has examined the entire contract – may a court consider extrinsic, or 'parol', evidence to determine the parties' intent.

Law stated - 4 July 2025

Choice-of-law clauses

Do your courts recognise and respect choice-of-law clauses stipulating a foreign law?

Courts generally respect choice-of-law clauses stipulating to a foreign law, so long as the chosen law (1) bears some reasonable or substantial relationship to the parties or the transaction at issue and (2) is not repugnant to public policy. The foreign law has a reasonable or substantial relationship to the parties or transaction where (1) one of the parties is domiciled or incorporated in the chosen state or country or (2) the transaction or performance occurred in the chosen state or country. Additionally, even if the parties are not domiciled in the chosen state or country or the transaction or performance is not to occur in the chosen state or country, there may still be a reasonable relationship to the chosen jurisdiction where, for example, the chosen jurisdiction's law is more fully developed than the alternative and the chosen jurisdiction therefore provides the parties with more certainty regarding their rights and obligations. Whether the foreign law is repugnant to public policy is a fact-specific inquiry, determined by comparing the enforcing state's public policy against the specific foreign law at issue.

Law stated - 4 July 2025

Choice-of-law clauses

Do your courts recognise and respect choice-of-jurisdiction clauses stipulating a foreign jurisdiction?

Courts generally recognise and respect choice-of-jurisdiction clauses stipulating a foreign jurisdiction, so long as the foreign jurisdiction (1) will not result in an unreasonable or unjust outcome, (2) was not procured by fraud or overreach, and (3) will not contravene the enforcing state's public policy in the forum where the lawsuit is brought.

Enforcement of a choice-of-jurisdiction clause may cause an unreasonable or unjust outcome if the chosen jurisdiction is 'seriously inconvenient' to one or both of the parties. Choice-of-jurisdiction clauses are procured by fraud or overreach where the drafting party exerted undue influence and wielded substantially unequal bargaining power that justifies not enforcing the clause. Whether a foreign choice-of jurisdiction clause contravenes public policy depends upon the circumstances of the case and the enforcing state's public policy.

Law stated - 4 July 2025

Efficiency of the local legal system

How efficient and cost-effective is the local legal system in dealing with commercial disputes?

The local legal system is neither particularly efficient nor cost-effective. Litigation in the United States is expensive and time consuming, and, as a result, approximately 95 to 96 per cent of civil cases settle before trial.

Law stated - 4 July 2025

New York Convention

Is your jurisdiction a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Which arbitration rules are commonly used in your jurisdiction?

The United States is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Generally, parties use either the American Arbitration Association's commercial arbitration rules or the Judicial Arbitration and Mediation Services' arbitration rules.

Law stated - 4 July 2025

REMEDIES

Available remedies

What remedies may a court or other adjudicator grant? Are punitive damages awarded for a breach of contract claim in your jurisdiction?

There are generally two categories of remedies available for breach of contract: legal (eg, expectation or reliance damages) or equitable (eg, specific performance or an injunction) remedies. A court may also award any remedy contemplated by the terms of the contract.

The normal measure of damages for breach of contract is expectation damages – the amount necessary to put the non-breaching party in as good a position as she would have been had the contract been performed. Expectation damages may include 'direct damages' (those that flow naturally from the breach) and 'consequential damages' (those that do not flow directly and immediately from the breach but rather from some of the consequences or results of the breach), in each case proximately caused by the breach.

When expectation damages defy precise calculation, reliance damages, which seek to restore the non-breaching party to the position she was in before the contract was formed, may be an appropriate remedy.

Equitable remedies include:

- specific performance, in which the court requires a party to perform its obligation under the agreement;
- an injunction, in which the court requires a party to refrain from a particular action;
- reformation, in which the court can rewrite the agreement between the parties;
- rescission and restitution, in which the agreement is unwound and the parties return to their pre-contractual positions, which may include the return of the specific property or money spent for the performance rendered and received;
- accounting of profits, in which disputed monetary amounts are determined and recovered;
- constructive trust, in which the court decrees that possession and title of property be conveyed to a party; and
- subrogation, in which one party is deemed entitled to exercise the rights and remedies of another.

Law stated - 4 July 2025

Available remedies

Can a court order specific performance (ie, can a court mandate that a party perform under a contract)?

Courts may order specific performance, but generally only do so when there is an inadequate remedy at law – that is, where money damages are either inadequate or impracticable. For example, specific performance may be ordered for the breach of:

- a non-compete or non-solicit provision;
- a party's obligation to close a merger or acquisition;
- a confidentiality agreement; or
- a party's obligation to perform under an agreement related to real estate, such as a purchase and sale agreement, lease agreement or loan agreement.

Law stated - 4 July 2025

UPDATE AND TRENDS

Recent developments

Are there any other current developments or emerging trends that should be noted?

None at the present time.

Law stated - 4 July 2025