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**CIVIL CODE - CIV**

**DIVISION 4. GENERAL PROVISIONS [3274 - 9566]** ( *Heading of Division 4 amended by Stats. 1988, Ch. 160, Sec. 16.* )

**PART 1. RELIEF [3274 - 3428]** ( *Part 1 enacted 1872.* )

**TITLE 3. SPECIFIC AND PREVENTIVE RELIEF [3366 - 3424]** ( *Title 3 enacted 1872.* )

**CHAPTER 2. Specific Relief [3375 - 3415]** ( *Chapter 2 enacted 1872.* )

**ARTICLE 3. Specific Performance of Obligations [[3384.] - 3395]** ( *Article 3 enacted 1872.* )

[\[3384.\]](#) Section Thirty-three Hundred and Eighty-four. Except as otherwise provided in this Article, the specific performance of an obligation may be compelled.

(Amended by Code Amendments 1873-74, Ch. 612.)

[3386.](#) Notwithstanding that the agreed counterperformance is not or would not have been specifically enforceable, specific performance may be compelled if:

- (a) Specific performance would otherwise be an appropriate remedy; and
- (b) The agreed counterperformance has been substantially performed or its concurrent or future performance is assured or, if the court deems necessary, can be secured to the satisfaction of the court.

(Amended by Stats. 1969, Ch. 156.)

[3387.](#) It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation. In the case of a single-family dwelling which the party seeking performance intends to occupy, this presumption is conclusive. In all other cases, this presumption is a presumption affecting the burden of proof.

(Amended by Stats. 1984, Ch. 937, Sec. 1.)

[3388.](#) A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

(Enacted 1872.)

[3389.](#) A contract otherwise proper to be specifically enforced, may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

(Enacted 1872.)

[3390.](#) The following obligations cannot be specifically enforced:

- (a) An obligation to render personal service.
- (b) An obligation to employ another in personal service.
- (c) An agreement to perform an act which the party has not power lawfully to perform when required to do so.
- (d) An agreement to procure the act or consent of the spouse of the contracting party, or of any other third person.
- (e) An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

(Amended by Stats. 2016, Ch. 50, Sec. 12. (SB 1005) Effective January 1, 2017.)

[3391.](#) Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract;

2. If it is not, as to him, just and reasonable;

3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or;

4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

*(Enacted 1872.)*

**3392.** Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial, or capable of being fully compensated, in which case specific performance may be compelled, upon full compensation being made for the default.

*(Enacted 1872.)*

**3394.** An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

*(Enacted 1872.)*

**3395.** Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

*(Enacted 1872.)*