

## **CHAPTER 32-04 SPECIFIC RELIEF**

### **32-04-01. When specific relief given.**

Specific relief may be given in the cases specified in this chapter and in no other cases.

### **32-04-02. How specific relief given.**

Specific relief is given:

1. By taking possession of a thing and delivering it to a claimant;
2. By compelling a party to do that which ought to be done; or
3. By declaring and determining the rights of parties, otherwise than by an award of damages.

### **32-04-03. Specific relief not given to enforce penal law.**

Specific relief cannot be granted to enforce a penal law, except in case of nuisance, nor to enforce a penalty or forfeiture in any case.

### **32-04-04. Method of recovering real property.**

A person entitled to specific real property by reason either of a perfected title, or of a claim to title which ought to be perfected, may recover the same either by a judgment for its possession to be executed by the sheriff, or by a judgment requiring the other party to perfect the title and to deliver possession of the property.

### **32-04-05. Method of recovering personal property.**

A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by this title.

### **32-04-06. Specific delivery of personal property compellable.**

Any person having the possession or control of a particular article of personal property of which such person is not the owner may be compelled specifically to deliver it to the person entitled to its immediate possession.

### **32-04-07. When specific performance compelled.**

Except as otherwise provided in this chapter, the specific performance of an obligation may be compelled.

### **32-04-08. Remedy of specific performance must be mutual.**

Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compelled specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

### **32-04-09. Presumption as to relief for not transferring property.**

It is to be presumed that the breach of an agreement to transfer real property cannot be relieved adequately by pecuniary compensation and that the breach of an agreement to transfer personal property can be thus relieved.

### **32-04-10. Specific performance compelled though contract signed only by one.**

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 the latter's part and the case is proper otherwise for enforcing specific performance.

**32-04-11. Contracts compelled though penalty imposed or damages liquidated.**

A contract otherwise proper to be enforced specifically 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.

**32-04-12. What obligations cannot be enforced specifically.**

The following obligations cannot be enforced specifically:

1. An obligation to render personal service.
2. An obligation to employ another in personal service.
3. An agreement to perform an act that the party has no power lawfully to perform when required to do so.
4. An agreement to procure the act or consent of the spouse of the contracting party or of any other third person.
5. An agreement, the terms of which are not sufficiently certain to make the precise act that is to be done clearly ascertainable.

**32-04-13. When specific performance cannot be enforced against one.**

Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If the party has not received an adequate consideration for the contract.
2. If it is not as to that party just and reasonable.
3. If such party's assent was obtained by misrepresentation, concealment, circumvention, or unfair practice 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.
4. If the party's assent was given under the influence of mistake, misapprehension, or surprise, except that when 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.

**32-04-14. When specific performance cannot be enforced in favor of one.**

Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on such party's part to the obligation of the other party, except when such party's 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.

**32-04-15. Effect of imperfect title.**

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

**32-04-16. When enforced against subsequent holder.**

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

**32-04-17. Revision of contract for fraud or mistake.**

When, through fraud or mutual mistake of the parties, or a mistake of one party which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved so as to express that intention so far as it can be done without prejudice to rights acquired by third persons in good faith and for value.

**32-04-18. Intention to make equitable agreement presumed.**

For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

**32-04-19. Court may inquire what instrument was intended to mean.**

In revising a written instrument, the court may inquire what the instrument was intended to mean and what were intended to be its legal consequences, and it is not confined to an inquiry as to what the language of the instrument was intended to be.

**32-04-20. Contract first revised then enforced.**

A contract may be revised first and then specifically enforced.

**32-04-21. When rescission of contract adjudged.**

The rescission of a written contract may be adjudged on the application of the party aggrieved:

1. In any of the cases mentioned in section 9-09-02;
2. When the contract is unlawful for causes not apparent upon its face and when the parties were not equally in fault; or
3. When the public interest will be prejudiced by permitting it to stand.

**32-04-22. Rescission not adjudged for mere mistake.**

Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same condition as if the contract had not been made.

**32-04-23. Compensation may be required.**

On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

**32-04-24. When cancellation of instrument adjudged.**

When a written instrument, or the record thereof, may cause injury to a person against whom such instrument is void or voidable, such instrument, in an action brought by the party injured, may be adjudged void and the same ordered to be delivered up for cancellation and the record thereof canceled, whether or not extrinsic evidence is necessary to show its invalidity.

**32-04-25. Partial cancellation.**

When an instrument is evidence of different rights or obligations, it may be canceled in part and allowed to stand for the residue.