

# Florida

---

**By: Yasir Billoo**



*Yasir Billoo is Managing Partner at International Law Partners LLP in Hollywood, Florida. His practice area includes corporate defense, including personal injury and employment defense, business/commercial contracts, real estate transactions (and title services), intellectual property, and civil appeals.*



## A. Adoption of the UCC

Florida has adopted the Uniform Commercial Code, codified primarily in Chapters 671–680 of the Florida Statutes. The UCC governs commercial transactions such as the sale of goods, negotiable instruments, and secured transactions.<sup>1</sup>

---

<sup>1</sup> See FLA. STAT. §671.102 (goods). What constitutes goods has seen a great deal of litigation. In cases where a court must determine whether Article 2 of the Uniform Commercial Code (UCC) or the common law applies to a hybrid contract, the determination whether the predominant factor in the contract is for goods or for services is a factual inquiry unless the court can determine that the contract is exclusively for goods or services as a matter of law. See *Allied Shelving & Equipment, Inc. v. National Deli, LLC*, 154 So. 3d 482 (Fla. 3d DCA 2015); *Birwelco-Montenay, Inc. v.*

## B. Compensatory Damages

Florida courts award compensatory damages to make the injured party whole. In contract actions, this means awarding the benefit of the bargain, which typically includes damages that “naturally flow from the breach and can reasonably be said to have been contemplated by the parties at the time the contract was entered into.”<sup>2</sup> An award of damages for

*Infilco Degremont, Inc.*, 827 So. 2d 255 (Fla. 3d DCA 2001); *Mallin v. University of Miami*, 354 So. 2d 1227 (Fla. 3d DCA 1978); *Toca v. Tutco, LLC*, 430 F. Supp.3d 1313 (S.D. Fla. 2020). See also *General Elec. Credit Corp. v. Air Flow Industries, Inc.*, 432 So. 2d 607 (Fla. 3d DCA 1983) (assignment of mortgage); *in re Kevin L. IFERD*, 225 B.R. 501 (N.D. Fla. 1998) (security transactions).

<sup>2</sup> *Mnemonics, Inc. v. Max Davis Assocs., Inc.*, 808 So. 2d 1278 (Fla. 5th DCA 2002); *Scott v. Rolling Hills Place, Inc.*, 688 So.2d 937 (Fla. 5th DCA 1996).

breach of contract is intended to place the injured party in the position he or she would have been in had the breach not occurred.<sup>3</sup>

Examples of business torts or related claims that may support compensatory damages include:

- Breach of contract,
- Breach of warranty,
- Fraud,
- Civil theft,<sup>4</sup>
- Misappropriation of trade secrets,<sup>5</sup>
- Defamation,
- Tortious interference with contract or business relationships,
- Breach of fiduciary duty, and
- Unfair competition.

In Florida, to show entitlement to damages under a breach-of-contract theory, the plaintiff must “prove by a preponderance of the evidence the existence of a contract, a breach, and damages flowing from the breach.”<sup>6</sup> For claims of fraud,

the quantum of proof necessary to support an action for fraud is “preponderance” or “greater weight” of the evidence.<sup>7</sup>

### C. Consequential Damages

Consequential damages in Florida are available when they were reasonably foreseeable at the time the contract was made and arise naturally from the breach.<sup>8</sup> These are often awarded in commercial disputes involving lost profits or loss of business opportunity, so long as the damages are not speculative. A business can recover lost prospective profits regardless of whether it is established or has any “track record.” The party must prove that 1) the defendant's action caused the damage; and 2) there is some standard by which the amount of damages may be adequately determined.<sup>9</sup>

Under Florida’s UCC, consequential damages may include losses resulting from general or particular needs the seller knew about and that could not be reasonably prevented.<sup>10</sup>

<sup>3</sup> Sharick v. S.E. Univ. of Health Sci., Inc., 780 So.2d 136 (Fla. 3d DCA 2000).

<sup>4</sup> Chapter 772, FLA. STAT.

<sup>5</sup> FLA. STAT. §688.001 *et seq.*

<sup>6</sup> Carpenter Contractors of Am., Inc. v. Fastener Corp. of Am., Inc., 611 So.2d 564, 565 (Fla. 4th DCA 1992).

<sup>7</sup> See *Wieczoreck v. H & H Builders, Inc.*, 475 So. 2d 227 (Fla.1985).

<sup>8</sup> *Hardwick Props, Inc. v. Newbern*, 711 So. 2d 35 (Fla. 1st DCA 1998).

<sup>9</sup> See also *W.W. Gay Mechanical Contractor Inc. v. Wharfishide Two Ltd.*, 545 So. 2d 1348, 1351 (Fla. 1989).

<sup>10</sup> FLA. STAT. §672.715. In *Nyquist v. Randall*, buyers of cattle for lease to dairy farmer were not required to procure more cattle to

#### D. Incidental Damages

Florida's UCC permits recovery of incidental damages such as expenses incurred in inspection, receipt, transportation, and care of goods rightfully rejected.<sup>11</sup> For sellers, incidental damages include reasonable expenses incurred due to buyer breach, such as stopping delivery or resale-related costs.<sup>12</sup>

#### E. Punitive Damages

Punitive damages are available in Florida where the defendant was personally guilty of intentional misconduct or gross negligence.<sup>13</sup> The degree of negligence that is sufficient to sustain a claim for punitive damages is greater than that which could be defined as gross

negligence. To justify an award of punitive damages, the actions of the defendant must be of the degree of willful and wanton negligence that would support a conviction for manslaughter.<sup>14</sup> Gross negligence in the context of a punitive damages claim means "that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct."<sup>15</sup>

Procedurally, a plaintiff must seek leave to amend the operative complaint to add a claim for punitive damages and make a specific showing of the basis for such a claim. A claim must be pled with particularity, and the plaintiff must show by clear and convincing

---

lease to replace defective ones in order to be entitled to consequential damages from seller under this section, where buyers lacked wherewithal to purchase additional cattle, and did attempt to mitigate their loss by entering revised lease with farmer. 819 F.2d 1014 (11th Cir. 1987). *See also* Cedars of Lebanon Hosp. Corp. v. European X-Ray Distributors of America, Inc., 444 So. 2d 1068 (Fla. 3d DCA 1984).

<sup>11</sup> FLA. STAT. §672.715(1).

<sup>12</sup> Whether buyer of computer and related equipment forming business records system, entitled to rescind because of breach of warranty of fitness, was entitled to damages for cost of construction of special room, court could not be held in error for refusing to grant damages therefor where there was no certainty of proof of amount of loss and no salvage credit given. Sperry Rand Corp. v. Industrial Supply Corp., 337 F.2d 363 (5th Cir. 1964).

<sup>13</sup> FLA. STAT. § 768.72.

<sup>14</sup> *See* White Const. Co., Inc. v. Dupont, 455 So. 2d 1026 (Fla. 1984); Murphy v. International Robotic Sys, Inc., 766 So. 2d 1010 (Fla. 2000); Tiger Point Golf and Country Club v. Hipple, 977 So. 2d 608 (Fla. 1st DCA 2007); Perdue Farms Inc. v. Hook, 777 So. 2d 1047 (Fla. 2d DCA 2001); Creech v. Santomassino, No. 4D2024, 2024 WL 4549453 (Fla. 4th DCA Oct. 23, 2024).

<sup>15</sup> FLA. STAT. §768.72(2)(b). *See* Soffer v. R.J. Reynolds Tobacco Co., 187 So. 3d 1219 (Fla. 2016) (plaintiffs in an *Engle* progeny action against tobacco companies who benefit from *res judicata* effect of common-core liability findings in *Engle* class action are permitted to seek an award of punitive damages on nonintentional claims for negligence and strict liability); L.E. Myers Co. v. Young, 165 So. 3d 1 (Fla. 2d DCA 2015); McLane Foodservice Inc. v. Wool, No. 3D23, 2024 WL 4536221 (Fla. 3d DCA Oct. 16, 2024); Long v. Kropke, 370 So. 3d 319 (Fla. 4th DCA 2023).

evidence that the defendant's conduct was willful, wanton, or reckless. The procedure for amending a pleading to add a claim for punitive damages is set forth in Rule 1.190(f) of the Florida Rules of Civil Procedure, which provides that "[a] motion for leave to amend a pleading to assert a claim for punitive damages shall make a reasonable showing, by evidence in the record or evidence to be proffered by the claimant, that provides a reasonable basis for recovery of such damages."<sup>16</sup> Subdivision (f) then states that the motion "can be filed separately and before the supporting evidence or proffer, but each shall be served on all parties at least 20 days before the hearing." The purpose of the time period in the service requirement is to prevent the situation in which the basis for the claim for punitive damages is disclosed to the opposing party just before the hearing.<sup>17</sup>

Fraud and civil theft are common business torts where punitive damages may be awarded.

<sup>16</sup> A motion to amend to add a claim of punitive damages must disclose the evidentiary basis for the claim. *See*, FLA. R. CIV. P. 1.190(f); *Robins v. Colombo*, 253 So. 3d 94 (Fla. 3d DCA 2018). The party seeking to amend must attach a copy of the proposed amended complaint to the motion. *See* *Leinberger v. Magee*, 226 So. 3d 899, 900 (Fla. 4th DCA 2017); *Crump v. American Multi-Cinema, Inc.*, 383 So. 3d 880 (Fla. 5th DCA 2024).

<sup>17</sup> Rule 1.190(f) requires an advance statement of the reasons for asserting a

## F. Liquidated Damages

Liquidated damages clauses are enforceable in Florida when:

- 1) actual damages are difficult to ascertain at contract formation; and
- 2) the liquidated sum is not a penalty.<sup>18</sup> Courts analyze reasonableness and whether the clause serves as a penalty.

## G. Pre- and Post-Judgment Interest

Florida courts award pre-judgment interest as a matter of law once damages are liquidated. The statutory rate is set by the Chief Financial Officer and is updated quarterly.<sup>19</sup> Post-judgment interest begins to accrue from the date the judgment is entered until paid in full.<sup>20</sup>

claim for punitive damages thereby preventing unfair surprise at the hearing on the motion. *See* FLA. R. CIV. P. 1.190(f) Committee Notes; *Beverly Health and Rehabilitation Services, Inc. v. Meeks*, 778 So. 2d 322 (Fla. 2d DCA 2000).

<sup>18</sup> *See* *Lefemine v. Baron*, 573 So. 2d 326 (Fla. 1991).

<sup>19</sup> *See* *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212 (Fla. 1985).

<sup>20</sup> FLA. STAT. §55.03.

## H. Attorneys' Fees

Florida follows the American Rule; each party pays its own fees unless a contract, statute, or equity provides otherwise. Common fee-shifting statutes include Florida Statutes §57.105 (sanctions for frivolous claims); §772.11 (civil theft); and §688.005 (trade secret misappropriation). Fee awards must be reasonable in amount. Courts consider time, labor, novelty, and customary rates.<sup>21</sup>

## I. Reliance Damages

Florida recognizes reliance damages primarily in promissory estoppel and fraud claims to place the plaintiff in the position they would have been in had the misrepresentation not been made.<sup>22</sup>

## J. Unjust Enrichment

Unjust enrichment is a quasi-contract remedy available when: 1) a benefit is conferred upon the defendant; 2) the defendant has knowledge of the benefit; 3) the

defendant accepted or retained the benefit; and 4) it would be inequitable for the defendant to retain the benefit without paying fair value.<sup>23</sup>

## K. Unique Remedies

Florida allows for pre-judgment remedies, including replevin;<sup>24</sup> pre-judgment garnishment;<sup>25</sup> and *lis pendens*.<sup>26</sup>

## L. Public Policy Prohibitions

Contracts may be unenforceable in Florida if they violate public policy. Examples of such contracts include: non-compete agreements that are overly broad;<sup>27</sup> misappropriation of trade secrets;<sup>28</sup> agreements to indemnify for gross negligence or intentional torts; contracts with minors or parties lacking capacity; and contracts procured by fraud or duress. Florida courts apply balancing tests to weigh the interests in enforcement versus policy concerns.<sup>29</sup>

<sup>21</sup> Florida Patient's Comp. Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985).

<sup>22</sup> See DK Arena, Inc. v. EB Acquisitions I, LLC, 112 So. 3d 85 (Fla. 2013).

<sup>23</sup> See Hillman Constr. Corp. v. Wainer, 636 So. 2d 576 (Fla. 4th DCA 1994).

<sup>24</sup> FLA. STAT. § 78.01 *et seq.*

<sup>25</sup> FLA. STAT. § 77.031.

<sup>26</sup> FLA. STAT. § 48.23.

<sup>27</sup> FLA. STAT. § 542.335.

<sup>28</sup> Florida's Uniform Trade Secret Act, FLA. STAT. § 688.001 *et seq.*

<sup>29</sup> See, for example, Global Travel Marketing, Inc. v. Shea, 908 So. 2d 392 (Fla. 2005).