



## Contract Basics: Dispute Resolution Clauses

The State Q&A guides on Practical Law provide common questions and answers from local practitioners on state-specific content for a variety of topics and practice areas. This excerpt from the Contract Basics for Litigators State Q&A addresses how courts interpret and enforce contractual dispute resolution clauses in California, Florida, New York, and Texas. For the complete versions of these resources, which include information on contract formation, construction, termination, and breach, and for information on these contract principles in other jurisdictions, visit Practical Law.

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### HOW DOES YOUR JURISDICTION INTERPRET AND ENFORCE CHOICE OF LAW PROVISIONS?

#### CALIFORNIA

If the parties choose California law to govern the contract, and the contract is worth at least \$250,000, then courts generally apply California law, even where the transaction bears no “reasonable relation” to California (Cal. Civ. Code § 1646.5). This rule is subject to several exceptions, including:

- Labor contracts.
- Personal service contracts.

- Personal, family, or household contracts.
- Certain specified contracts governed by the Uniform Commercial Code (UCC).

(Cal. Civ. Code § 1646.5; Cal. Com. Code § 1301(c).)

If the parties choose the law of a state other than California to govern the contract (or they choose the law of California and the contract is worth less than \$250,000), then California courts typically enforce the choice of law clause where:

- Either:
  - the chosen state has a substantial relationship to the parties or their transaction; or

- there is any other reasonable basis for the parties' choice of law.
- The chosen state's law is not contrary to a fundamental policy of California. If the chosen state's law is contrary to a fundamental policy of California, courts analyze whether California has a materially greater interest than the chosen state in the determination of the particular issue and whether, under Restatement (Second) of Conflict of Laws § 188, California would be the state of the applicable law in the absence of an effective choice of law by the parties.

(See, for example, *Nedlloyd Lines B.V. v. Super. Ct.*, 3 Cal. 4th 459, 464-66 (1992) (applying an analysis under Restatement (Second) of Conflict of Laws § 187).)

If the contract is silent regarding the parties' choice of law, courts interpret the contract according to the law and usage of the place where either:

- The parties are to perform the contract.
- The parties made the contract, if the contract does not indicate a place of performance.

(Cal. Civ. Code § 1646; *Costco Wholesale Corp. v. Liberty Mut. Ins. Co.*, 472 F. Supp. 2d 1183, 1197 (S.D. Cal. 2007) (in applying California law, stating that a contract is "made" where it is accepted); *ABF Capital Corp. v. Grove Props. Co.*, 126 Cal. App. 4th 204, 222 (2005).)

Additionally, courts look to whether a choice of law clause applies solely to contract disputes or also to extra-contractual matters such as tort, fraud, and statutory claims related to the contract.

Under California law, the statute of limitations of the chosen forum governs the dispute (*Hambrecht & Quist Venture Partners v. Am. Med. Int'l, Inc.*, 38 Cal. App. 4th 1532, 1540-41 (1995)).

California federal courts sitting in diversity jurisdiction must apply the choice of law rules of the forum state (*Hatfield v. Halifax PLC*, 564 F.3d 1177, 1182 (9th Cir. 2009) (applying California law)). Therefore, the federal approach generally follows the approach used in California state courts (see, for example, *Tri-Union Seafoods, LLC v. Starr Surplus Lines Ins. Co.*, 88 F. Supp. 3d 1156, 1166 (S.D. Cal. 2015) (applying California law)).



Search [General Contract Clauses: Choice of Law \(CA\)](#) for a sample choice of law clause applying the substantive law of California to a contract, with explanatory notes and drafting tips.

## FLORIDA

Florida law interprets and enforces choice of law provisions under either a statutory or common law analysis.

Under Section 685.101, Florida Statutes, contracting parties may choose Florida law to govern the contract if the transaction is over \$250,000 and either:

- The contract bears a substantial or reasonable relation to Florida.

- One of the parties is:
  - a Florida resident or citizen; or
  - incorporated or organized under Florida law or maintains a place of business in Florida.

(§ 685.101, Fla. Stat.; *Jetbroadband WV, LLC v. MasTec N. Am., Inc.*, 13 So. 3d 159, 161-62 (Fla. 3d DCA 2009); § 685.101(2)(b)-(e), Fla. Stat. (providing exceptions for certain specified contracts).)

Courts also generally enforce a choice of law clause under Florida common law unless either:

- The law of the chosen forum contravenes a strong Florida public policy (see, for example, *Mazzoni Farms, Inc. v. E.I. DuPont De Nemours & Co.*, 761 So. 2d 306, 311 (Fla. 2000)).
- The choice of law clause is unjust or unreasonable (see, for example, *Default Proof Credit Card Sys., Inc. v. Friedland*, 992 So. 2d 442, 444 (Fla. 3d DCA 2008)).

Under Florida law, statutes of limitations are substantive in nature. Therefore, the statute of limitations applicable under the jurisdiction chosen in the choice of law clause governs the dispute. (*Perez v. FedEx Ground Package Sys., Inc.*, 587 F. App'x 603, 606 (11th Cir. 2014) (applying Florida law).)

Florida federal courts sitting in diversity jurisdiction must apply the choice of law rules of the forum state (*Caban v. J.P. Morgan Chase & Co.*, 606 F. Supp. 2d 1361, 1365 (S.D. Fla. 2009)).

Therefore, the federal approach generally follows the approach used in Florida state courts (see, for example, *Maxcess, Inc. v. Lucent Techs., Inc.*, 433 F.3d 1337, 1341 (11th Cir. 2005)).



Search [General Contract Clauses: Choice of Law \(FL\)](#) for a sample choice of law clause applying the substantive law of Florida to a contract, with explanatory notes and drafting tips.

## NEW YORK

New York law interprets and enforces choice of law provisions under either a statutory or common law analysis.

Under Section 5-1401 of the New York General Obligations Law, contracting parties may choose New York law to govern any contract if the aggregate value of the transaction is at least \$250,000, regardless of whether the contract has a reasonable relationship to New York (N.Y. Gen. Oblig. Law § 5-1401(1)). This rule does not apply to:

- Labor contracts.
- Personal, family, or household service contracts.
- Certain specified contracts governed by the UCC. (N.Y. Gen. Oblig. Law § 5-1401(1).)

If Section 5-1401 of the New York General Obligations Law does not apply, courts generally enforce a choice of law clause under New York common law unless either:

- The chosen state has no substantial relationship to the parties.
- Application of the chosen state's law would contravene a fundamental policy of a state with a materially greater interest.

(See, for example, *Haag v. Barnes*, 216 N.Y.S.2d 65, 68-70 (1961); *Sabella v. Scantek Med., Inc.*, 2009 WL 3233703, at \*12

(S.D.N.Y. Sept. 25, 2009) (applying New York law); *Am. Equities Grp., Inc. v. Ahava Dairy Prods. Corp.*, 2004 WL 870260, at \*7-8 (S.D.N.Y. Apr. 23, 2004) (applying New York law); see also *TGG Ultimate Holdings, Inc. v. Hollett*, 2017 WL 1019506, at \*3-4 (S.D.N.Y. Feb. 24, 2017) (recognizing a split in New York case law about the precise formulation of the test to enforce a choice of law clause and concluding that the bulleted test above is the most prudent approach for a court to follow).)

For any contract, including one that otherwise satisfies the requirements of Section 5-1401 of the New York General Obligations Law, New York courts will not enforce a choice of law clause that a party obtained by fraud (see, for example, *Sabella*, 2009 WL 3233703, at \*13).

New York courts consider statutes of limitations to be procedural and not covered by a generic choice of law clause, which typically applies only to substantive issues (see, for example, *2138747 Ontario, Inc. v. Samsung C & T Corp.*, 78 N.Y.S.3d 703, 706 (2018)).

New York federal courts sitting in diversity jurisdiction apply the choice of law rules of the forum state (*Ayco Co., L.P. v. Frisch*, 795 F. Supp. 2d 193, 200 (N.D.N.Y. 2011) (applying New York law)). Therefore, the federal approach generally follows the approach used in New York state courts (see, for example, *Sabella*, 2009 WL 3233703, at \*13 (applying New York law)).



Search [General Contract Clauses: Choice of Law \(NY\)](#) for a sample choice of law clause applying the substantive law of New York to a contract, with explanatory notes and drafting tips.

## TEXAS

Under Texas law, choice of law provisions are enforced where:

- There is a reasonable relationship between the parties and the chosen state.
- The law of the chosen state is not contrary to a fundamental policy of Texas.

(See, for example, *Gator Apple, LLC v. Apple Tex. Rests., Inc.*, 442 S.W.3d 521, 532-33 (Tex. App.—Dallas 2014, pet. denied) (indicating that parties generally cannot choose the law of a forum that has no relationship to the agreement); *State Nat'l Bank v. Academia, Inc.*, 802 S.W.2d 282, 289 (Tex. App.—Corpus Christi 1990, writ denied).)

Texas courts apply these principles using the framework of the Restatement (Second) of Conflict of Laws § 187. Under this approach, courts will not enforce a choice of law clause where:

- There is a state the law of which would apply under Restatement (Second) of Conflict of Laws § 188 absent an effective choice of law by the parties or, put another way, where there is a state that has a more significant relationship with the parties and their transaction than the chosen state.
- The other state has a materially greater interest than the chosen state in deciding the issue.
- Application of the chosen state's law would contravene a fundamental policy of the other state. Texas courts may not disregard a choice of law clause, however, merely because

application of the chosen state's law leads to a different result than that under Texas law.

(See, for example, *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 677-81 (Tex. 1990) (applying Texas law in a claim for breach of a non-compete agreement even though the parties' choice of law clause selected Florida law, because Texas had a materially greater interest in determining the enforceability of the agreement and enforcement of non-compete agreements is a matter of fundamental Texas policy).)



Search [General Contract Clauses: Choice of Law \(TX\)](#) for a sample choice of law clause applying the substantive law of Texas to a contract, with explanatory notes and drafting tips.

## HOW DOES YOUR JURISDICTION INTERPRET AND ENFORCE CHOICE OF FORUM PROVISIONS?

### CALIFORNIA

Under California law, choice of forum provisions may be either permissive or mandatory. The interpretation and enforcement of choice of forum provisions depend on whether the breach of contract claim is pending in California state or federal court.



Search [General Contract Clauses: Choice of Forum \(CA\)](#) for a sample clause that allows parties to a contract to choose California courts to adjudicate disputes, with explanatory notes and drafting tips.

### California State Courts

California state courts generally enforce forum selection clauses where:

- The parties enter into them freely and voluntarily.
- Enforcement would not be unreasonable.

(See, for example, *Am. Online, Inc. v. Super. Ct.*, 90 Cal. App. 4th 1, 11 (2001) (citing *Smith, Valentino & Smith, Inc. v. Super. Ct.*, 17 Cal. 3d 491, 495-96 (1976)).)

Courts consider several different factors in determining whether a forum selection clause is unreasonable. For example, they may examine whether:

- The chosen forum is unsuitable, unavailable, or otherwise unable to accomplish substantial justice (see, for example, *Smith, Valentino & Smith, Inc.*, 17 Cal. 3d at 494-96; *Miller-Leigh LLC v. Henson*, 152 Cal. App. 4th 1143, 1149 (2007); *Am. Online, Inc.*, 90 Cal. App. 4th at 12; *Cal-State Bus. Prods. & Servs., Inc. v. Ricoh*, 12 Cal. App. 4th 1666, 1683-84 (1993)).
- Inclusion of the clause was the result of overreaching or unfair use of unequal bargaining power (see, for example, *Cal-State Bus. Prods. & Servs.*, 12 Cal. App. 4th at 1679).
- Enforcement of the clause would:
  - result in a seriously inconvenient forum for the trial of the particular action; or
  - bring about a result contrary to the public policy of the forum.

(See, for example, *Cal-State Bus. Prods. & Servs.*, 12 Cal. App. 4th at 1679-80.)

- The chosen forum does not have some rational basis considering the facts underlying the transaction (see, for example, *Cal-State Bus. Prods. & Services*, 12 Cal. App. 4th at 1679).

Mere inconvenience or additional expense is insufficient to demonstrate that a forum selection clause is unreasonable (*Smith, Valentino & Smith, Inc.*, 17 Cal. 3d at 496; Cal. Civ. Proc. Code §§ 410.30(a) and 418.10(a)(2)).

### California Federal Courts

Whether under traditional diversity or federal question jurisdiction, federal courts in California analyze the enforceability of forum selection clauses under federal common law, not California state law (28 U.S.C. § 1404(a); see, for example, *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324-25 (9th Cir. 1996)).

The US Supreme Court has held that courts should enforce the parties' contractually valid choice of forum except in the most unusual cases (*Atl. Marine Constr. Co. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 66 (2013); for more information, search [Supreme Court Explains How to Enforce Forum Selection Clauses](#) on Practical Law). The Ninth Circuit has generally found forum selection clauses to be presumptively valid and enforceable unless the party challenging enforcement can show that the clause is unreasonable under the circumstances (*Argueta*, 87 F.3d at 324-25).

A court may find a forum selection clause unreasonable where:

- The inclusion of the clause was a product of fraud, undue influence, or overweening bargaining power.
- Enforcement of the clause would deprive the party opposing the forum of its day in court.
- Enforcement of the clause violates a strong public policy of the forum where the plaintiff commenced suit.

(*Argueta*, 87 F.3d at 325 (citing *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 18 (1972)).)

A forum selection clause does not need to provide reciprocal and equal benefits to be enforceable (*Great Am. Ins. Co. of N.Y. v. Nippon Yusen Kaisha*, 2013 WL 3850675, at \*5 (N.D. Cal. May 10, 2013) (unreported opinion)).

### FLORIDA

Under Florida law, choice of forum provisions may be either permissive or mandatory. The interpretation and enforcement of choice of forum provisions depend on whether the breach of contract claim is pending in Florida state or federal court.



Search [General Contract Clauses: Choice of Forum \(FL\)](#) for a sample clause that allows parties to a contract to choose Florida courts to adjudicate disputes, with explanatory notes and drafting tips.

### Florida State Courts

Florida state courts will enforce forum selection clauses unless they are unreasonable or unjust (see, for example, *Manrique v. Fabbri*, 493 So. 2d 437, 440 (Fla. 1986)). To demonstrate that a forum selection clause is unreasonable or unjust, a party must show that

a trial in the designated forum would be so gravely difficult and inconvenient that it would essentially deprive the party of its day in court. Inconvenience, by itself, or additional expense is insufficient. (*Ill. Union Ins. Co. v. Co-Free, Inc.*, 128 So. 3d 820, 822-23 (Fla. 1st DCA 2013); *Land O'Sun Mgmt. Corp. v. Commerce & Indus. Ins. Co.*, 961 So. 2d 1078, 1080 (Fla. 1st DCA 2007).)

Florida courts generally enforce forum selection clauses where:

- The chosen forum is not the result of a party's overwhelming bargaining power that constitutes overreaching at the other's expense (see, for example, *Ill. Union Ins. Co.*, 128 So. 3d at 823; *Ware Else, Inc. v. Ofstein*, 856 So. 2d 1079, 1082 (Fla. 5th DCA 2003)).
- Enforcement does not contravene a strong public policy declared by a statute or judicial order in the required or excluded forum.
- The clause does not transfer an essentially local dispute to a foreign forum.

(See, for example, *Land O'Sun*, 961 So. 2d at 1080.)

Florida courts do not enforce forum selection clauses that violate any of the factors listed above (*Land O'Sun*, 961 So. 2d at 1080).

Courts also do not enforce forum selection clauses tainted by fraud where a party claims that either:

- The clause itself is the product of the fraud.
- The fraud caused the inclusion of the clause in the agreement.

(See, for example, *Golden Palm Hospitality, Inc. v. Stearns Bank Nat'l Ass'n*, 874 So. 2d 1231, 1235 (Fla. 5th DCA 2004).)

### Florida Federal Courts

Whether under traditional diversity or federal question jurisdiction, federal courts in Florida analyze forum selection clauses under federal common law, not Florida state law (28 U.S.C. § 1404(a); see, for example, *P & S Bus. Machs., Inc. v. Canon USA, Inc.*, 331 F.3d 804, 807 (11th Cir. 2003) (diversity jurisdiction); *Loeffelholz v. Ascension Health, Inc.*, 34 F. Supp. 3d 1187, 1189 (M.D. Fla. 2014) (federal question jurisdiction)).

The Supreme Court has held that courts should enforce the parties' contractually valid choice of forum except in the most unusual cases (*Atl. Marine Constr. Co.*, 571 U.S. at 66; for more information, search [Supreme Court Explains How to Enforce Forum Selection Clauses](#) on Practical Law). The Eleventh Circuit has generally found forum selection clauses to be presumptively valid and enforceable unless the party challenging enforcement can show that the clause is unfair or unreasonable (*Feggstad v. Kerzner Int'l Bah. Ltd.*, 843 F.3d 915, 918 (11th Cir. 2016); *Kalb v. Marriott Int'l, Inc.*, 2017 WL 6565243, at \*2 (S.D. Fla. Oct. 5, 2017)). A court will find a clause to be unfair or unreasonable where:

- The formation of the clause was induced by fraud or overreaching.
- The inconvenience or unfairness of the chosen forum would effectively deprive a party of its day in court.
- The fundamental unfairness of the chosen law would deprive a party of a remedy.

- The enforcement of the clause would violate a strong public policy of a state.

(See, for example, *Vanderham v. Brookfield Asset Mgmt., Inc.*, 102 F. Supp. 3d 1315, 1319 (S.D. Fla. 2015).)

Financial difficulty or lengthy court dockets are insufficient grounds by themselves to refuse enforcement of a valid forum selection clause (*P & S Bus. Machs., Inc.*, 331 F.3d at 807-08).

## NEW YORK

Under New York law, choice of forum provisions may be either permissive or mandatory. The interpretation and enforcement of choice of forum provisions depend on whether the breach of contract claim is pending in New York state or federal court.



Search [General Contract Clauses: Choice of Forum \(NY\)](#) for a sample clause that allows parties to a contract to choose New York courts to adjudicate disputes, with explanatory notes and drafting tips.

### New York State Courts

New York courts generally enforce a forum selection clause unless the clause either:

- Is unjust or unreasonable, such as where the selected forum has no substantial nexus with the state.
- Is invalid because of fraud or overreaching.
- Contravenes public policy.
- Selects a forum in which a trial would be so gravely difficult that the challenging party would, in effect, be deprived of its day in court.

(See, for example, *N. Leasing Sys., Inc. v. French*, 13 N.Y.S.3d 855, 856 (1st Dep't 2015); *Puleo v. Shore View Ctr. for Rehabilitation & Health Care*, 17 N.Y.S.3d 501, 502-03 (2d Dep't 2015); *Erie Ins. Co. of N.Y. v. AE Design, Inc.*, 961 N.Y.S.2d 710, 712 (4th Dep't 2013); *Tatko Stone Prods., Inc. v. Davis-Giovinazzo Constr. Co.*, 883 N.Y.S.2d 665, 666 (3d Dep't 2009); *Sterling Nat'l Bank as Assignee of NorVergence, Inc. v. E. Shipping Worldwide, Inc.*, 826 N.Y.S.2d 235, 237 (1st Dep't 2006).)

For transactions worth at least \$1 million, Section 5-1402 of the New York General Obligations Law provides that a party may maintain an action in New York state court where both the choice of forum and choice of law clauses select New York. Under this statute, a New York court may not decline jurisdiction even if the parties or the transaction bear no relationship to New York state. (N.Y. Gen. Oblig. Law § 5-1402; see *Carlyle CIM Agent, L.L.C. v. Trey Res. I, LLC*, 50 N.Y.S.3d 326, 328 (1st Dep't 2017).)

### New York Federal Courts

Whether under traditional diversity or federal question jurisdiction, federal courts in New York analyze the enforceability of forum selection clauses under federal law, not New York state law (28 U.S.C. § 1404(a); see, for example, *Martinez v. Bloomberg LP*, 740 F.3d 211, 217-18, 223-24 (2d Cir. 2014); *Liberty USA Corp. v. Buyer's Choice Ins. Agency LLC*, 386 F. Supp. 2d 421, 424 (S.D.N.Y. 2005) (diversity jurisdiction)).

The Supreme Court has held that courts should enforce the parties' contractually valid choice of forum except in the most unusual cases (*Atl. Marine Constr. Co.*, 571 U.S. at 66; for more information, search [Supreme Court Explains How to Enforce Forum Selection Clauses](#) on Practical Law). Federal courts sitting in New York generally find a forum selection clause to be enforceable where it:

- Was reasonably communicated to the party resisting enforcement.
- Is a mandatory, not permissive, clause.
- Covers the claims and parties involved in the dispute.

(See, for example, *DeBello v. VolumeCocomo Apparel, Inc.*, 720 F. App'x 37, 39 (2d Cir. 2017); *Phillips v. Audio Active Ltd.*, 494 F.3d 378, 383-84 (2d Cir. 2007); *KTV Media Int'l, Inc. v. Galaxy Grp., LA LLC*, 812 F. Supp. 2d 377, 383-84 (S.D.N.Y. 2011).)

If all three of these factors exist, the clause is presumptively valid and enforceable. A party can rebut the presumption by showing that enforcement of the clause would be unreasonable or unjust because either:

- The clause was induced by fraud or overreaching.
- The law to be applied in the selected forum is fundamentally unfair.
- Enforcement of the clause would violate a strong public policy of the forum.
- A trial in the selected forum would be so difficult and inconvenient that a party would, in effect, be deprived of its day in court.

(*DeBello*, 720 F. App'x at 39-40; *KTV Media Int'l, Inc.*, 812 F. Supp. 2d at 384.)

## TEXAS

Under Texas law, choice of forum provisions may be either permissive or mandatory. The interpretation and enforcement of choice of forum provisions depend on whether the breach of contract claim is pending in Texas state or federal court.



Search [General Contract Clauses: Choice of Forum \(TX\)](#) for a sample clause that allows parties to a contract to choose Texas courts to adjudicate disputes, with explanatory notes and drafting tips.

### Texas State Courts

Under Texas law, forum selection clauses generally are enforced where:

- The parties have contractually consented to submit to the exclusive jurisdiction of another state.
- The other state recognizes the validity of forum selection clauses.

(See, for example, *Mabon Ltd. v. Afri-Carib Enters., Inc.*, 29 S.W.3d 291, 296-97 (Tex. App.—Houston [14th Dist.] 2000, no pet.).)

The enforcement of forum selection clauses is mandatory unless a party shows that either:

- Enforcement is unreasonable and unjust.
- The clause is invalid for reasons such as fraud or overreaching.

- Enforcement of the clause goes against a strong public policy.
- The chosen forum is seriously inconvenient for trial.

(*In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (noting that a forum selection clause, like other contractual rights, may be waived); *In re Automated Collection Techs., Inc.*, 156 S.W.3d 557, 559 (Tex. 2004); *In re AIU Ins. Co.* 148 S.W.3d 109, 112 (Tex. 2004).)

Forum selection clauses are enforced for claims that sound in tort where those claims arise out of or relate to a contract containing a valid forum selection clause. This helps to discourage artful pleading of tort claims in an effort to get around an otherwise binding forum selection clause in a contract (see *Pinto Tech. Ventures, L.P. v. Sheldon*, 526 S.W.3d 428, 437-39 (Tex. 2017)).

### Texas Federal Courts

Federal courts in Texas apply federal law to determine the enforceability of forum selection clauses in both diversity and federal question cases (see, for example, *Alliance Health Grp., LLC v. Bridging Health Options, LLC*, 553 F.3d 397, 399 (5th Cir. 2008); *Haynsworth v. The Corp.*, 121 F.3d 956, 961-62 (5th Cir. 1997)).

The Supreme Court has held that courts should enforce the parties' contractually valid choice of forum except in the most unusual cases (*Atl. Marine Constr. Co.*, 571 U.S. at 66; for more information, search [Supreme Court Explains How to Enforce Selection Clauses](#) on Practical Law). The Fifth Circuit has generally found forum selection clauses to be prima facie valid and enforceable unless the party challenging enforcement shows that the clause is unreasonable (*Kevlin Servs., Inc. v. Lexington State Bank*, 46 F.3d 13, 15 (5th Cir. 1995); *Mendoza v. Microsoft, Inc.*, 1 F. Supp. 3d 533, 543 (W.D. Tex. 2014)). A forum selection clause is unreasonable where:

- The inclusion of the clause was the result of fraud or overreaching.
- The party opposing the clause essentially loses its day in court because of the grave inconvenience or unfairness of the selected forum.
- The law to be applied in the chosen forum is so fundamentally unfair that it deprives the plaintiff of a remedy.
- Enforcement of the clause goes against a strong public policy.

(*Haynsworth*, 121 F.3d at 963.)

## HOW DOES YOUR JURISDICTION INTERPRET AND ENFORCE ALTERNATIVE DISPUTE RESOLUTION PROVISIONS?

### CALIFORNIA

Under California law, parties may enter into alternative dispute resolution agreements that require the parties to mediate or arbitrate their disputes. California courts generally enforce these types of agreements. However, courts may not rule on the merits of the claims that are subject to an alternative

dispute resolution agreement (Cal. Civ. Proc. Code § 1281.2; *Acquire II, Ltd. v. Colton Real Estate Grp.*, 213 Cal. App. 4th 959, 972 (2013)). Instead, courts are limited to determining whether the alternative dispute resolution agreement is enforceable, including whether:

- The parties have a valid arbitration agreement.
- The arbitration agreement covers the parties' dispute.
- There are statutory grounds for refusing to compel arbitration.
- The party seeking to compel arbitration has waived the right to arbitration.
- There are grounds for rescinding the agreement.

(Cal. Civ. Proc. Code § 1281.2; see, for example, *Wagner Constr. Co. v. Pac. Mech. Corp.*, 41 Cal. 4th 19, 26 (2008); *Bruni v. Didion*, 160 Cal. App. 4th 1272, 1283 (2008); see also *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002).)

Once the court rules on these issues and compels arbitration, the arbitrator decides all remaining questions in the dispute (*Finley v. Saturn of Roseville*, 117 Cal. App. 4th 1253, 1259-60 (2004); *Brock v. Kaiser Found. Hosps.*, 10 Cal. App. 4th 1790, 1795-96 (1992)).

California state courts, and federal courts sitting in diversity jurisdiction, generally interpret and enforce alternative dispute resolution clauses by relying on basic principles of contract construction (see, for example, *Irwin v. UBS Painewebber, Inc.*, 324 F. Supp. 2d 1103, 1107 (C.D. Cal. 2004); *Sandquist v. Lebo Auto., Inc.*, 1 Cal. 5th 233, 246-48 (2016)). Courts generally resolve all doubts in favor of arbitration (see, for example, *Sandquist*, 1 Cal. 5th at 247; *S.F. Police Officers' Ass'n v. S.F. Police Comm'n*, 27 Cal. App. 5th 676, 683 (2018); Cal. Civ. Proc. Code § 1281.2).

As a matter of federal law and under California state law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a similar defense to arbitrability (*Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983); *Rice v. Downs*, 248 Cal. App. 4th 175, 185 (2016)).



Search [Compelling and Staying Arbitration in California](#) for more on the interpretation and enforcement of arbitration clauses in California.

Search [Drafting Contractual Dispute Provisions Toolkit \(CA\)](#) for a collection of resources to assist counsel in addressing potential contractual disputes between parties to commercial transactions agreements under California law.

### FLORIDA

Under Florida's arbitration code, judicial review of a contractual arbitration clause is generally limited to determining whether:

- There is a valid agreement to arbitrate.
- The issue is arbitrable.

(§ 682.02-03, Fla. Stat.; see, for example, *Cox v. Vill. of Tequesta*, 185 So. 3d 601, 606 (Fla. 4th DCA 2016) (applying § 682.03, Fla. Stat.).)

Unless the parties' agreement delegates the following issues to the arbitrator, a court may also determine whether:

- A party waived its right to arbitrate.
- The arbitration agreement violates public policy.

(See *Shotts v. OP Winter Haven, Inc.*, 86 So. 3d 456, 464, 471, 474 (Fla. 2011) (holding that an arbitration clause that limited the remedies available to the plaintiff was unenforceable based on public policy); *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 & n.2 (Fla. 1999).)

Florida state courts, and federal courts sitting in diversity jurisdiction, interpret and enforce alternative dispute resolution clauses by relying on basic principles of contract construction (see, for example, *Rollins, Inc. v. Garrett*, 2005 WL 8159789, at \*5-8 (M.D. Fla. June 27, 2005), *aff'd*, 176 F. App'x 968 (11th Cir. 2006); *Aberdeen Golf & Country Club v. Bliss Constr., Inc.*, 932 So. 2d 235, 240 (Fla. 4th DCA 2005)).

As a matter of federal law and under Florida state law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a similar defense to arbitrability (*Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24-25; *BallenIsles Country Club, Inc. v. Dexter Realty*, 24 So. 3d 649, 652 (Fla. 4th DCA 2009)).



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Search [Drafting Contractual Dispute Provisions Toolkit \(FL\)](#) for a collection of resources to assist counsel in addressing potential contractual disputes between parties to commercial transactions agreements under Florida law.

## NEW YORK

Under New York law, courts may not rule on the merits of the claims underlying an arbitration (CPLR 7501). The courts play only a gatekeeping role limited to determining whether:

- There is a valid agreement to arbitrate.
- The parties have complied with the agreement to arbitrate.
- Statutes of limitations bar the underlying claims.
- The arbitration would violate public policy.

(CPLR 7503; see, for example, *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Benjamin*, 766 N.Y.S.2d 1, 5 (1st Dep't 2003).)

New York state courts generally interpret and enforce alternative dispute resolution clauses by relying on basic principles of contract construction (see, for example, *Salvano v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 623 N.Y.S.2d 790, 794 (1995)).

As a matter of federal law and under New York state law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a similar defense to arbitrability (*Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24-25; *State v. Philip Morris Inc.*,

30 A.D.3d 26, 31 (1st Dept. 2006) (citing *Matter of Smith Barney Shearson v. Sacharow*, 91 N.Y.2d 39, 49-50 (1997))).



Search [Compelling and Staying Arbitration in New York State Supreme Court](#) for more on the interpretation and enforcement of arbitration clauses in New York.

Search [Drafting Contractual Dispute Provisions Toolkit \(NY\)](#) for a collection of resources to assist counsel in addressing potential contractual disputes between parties to commercial transactions agreements under New York law.

## TEXAS

Under Texas law, courts enforce arbitration agreements as a matter of policy. A party seeking to enforce an arbitration clause must show that:

- There is a valid arbitration agreement, as determined by contract law principles.
- The claims at issue fall within the agreement's scope.

(*In re Dillard Dep't Stores, Inc.*, 186 S.W.3d 514, 515 (Tex. 2006); Tex. Civ. Prac. & Rem. Code Ann. § 171.001 (Texas Arbitration Act provision recognizing the validity of written arbitration agreements regarding controversies that exist at the time of the agreement or that arise after the agreement).)

The threshold questions of whether the parties have agreed to arbitrate or whether a dispute is covered by an arbitration agreement are issues to be resolved by courts, unless the parties have clearly and unmistakably agreed to submit questions of arbitrability to an arbitrator (*Weitzel v. Coon*, 2019 WL 3418515, at \*2-3 (Tex. App.—Houston [1st Dist.] July 30, 2019, no pet.) (mem. op.) (noting that the question of arbitrability is generally a gateway issue to be decided by a court but holding that the issue in the case must be submitted to the arbitrator because the parties' contract incorporated the rules of the American Arbitration Association, which give an arbitrator power to decide arbitrability issues); *Longoria v. CKR Prop. Mgmt., LLC*, 577 S.W.3d 263, 267 (Tex. App.—Houston [14th Dist.] 2018, pet. denied)).

As a matter of federal law and under Texas state law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a similar defense to arbitrability (*Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24-25; *Longoria*, 577 S.W.3d at 268-69; *Miller v. Brewer*, 118 S.W.3d 896, 898 (Tex. App.—Amarillo 2003, no pet.)).



Search [Compelling and Staying Arbitration in Texas](#) for more on the interpretation and enforcement of arbitration clauses in Texas.

Search [Drafting Contractual Dispute Provisions Toolkit \(TX\)](#) for a collection of resources to assist counsel in addressing potential contractual disputes between parties to commercial transactions agreements under Texas law.

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