Actori incumbit onus probandi [...] The burden of proof rests on the plaintiff (or on the party who advances a proposition affirmatively).

**Bona fide** [...] In or with good faith; honestly, openly, and sincerely; without deceit or fraud. Merrill v. Dept. of Motor Vehicles, 71 Cal.2d 907, 80 Cal.Rptr. 89, 458 P.2d 33. Truly; actually; without simulation or pretense. Innocently; in the attitude of trust and confidence; without notice of fraud, etc. Real, actual, genuine, and not feigned. Bridgeport Mortgage & Realty Corporation v. Whitlock, 128 Conn. 57, 20 A.2d 414, 416. See also Good faith.

**Bona fide business purpose.** In tax law, this term is often used in determining whether a real Business purpose in fact existed for carrying out a particular transaction. See also Business (Business purpose).

**Bona fide error.** Mistake made unintentionally; inadvertently; in good faith. Within meaning of Truth in Lending Act's exemption from liability for bona fide errors. "bona fide error" is error made in course of good-faith attempt at compliance with Act's requirements. Mirabal v. General Motors Acceptance Corp., C.A.III., 537 F.2d 871, 878.

**Bona fide holder for value.** An innocent or "bona fide holder for value" of negotiable paper is one who has taken it in good faith for a valuable consideration in the ordinary course of Business and when it was not overdue. One who receives negotiable paper in payment of antecedent obligations without notice of Prior equities. Under U.C.C. § 3-302, the requirements for a holder in due course are different from a mere bona fide holder for value. See Holder in due course.

**Bona fide judgment creditor.** One who in good faith, without fraud or collusion, recovers a judgment for money honestly due him.

**Bona fide mortgage.** Essential elements of Status are good faith, valuable consideration, and absence of notice. Companaro v. Gondolfo, C.C.A.N.J., 60 F.2d 451, 452. To constitute "bona fide mortgage" there must be an absence of notice and payment of, or fixed liability for the consideration. Cambridge Production Credit Ass'n v. Patrick, 140 Ohio St. 521, 45 N.E.2d 751, 755.

**Bona fide occupational qualification (BFOQ).** Employment in particular jobs may not be limited to persona of a particular sex, religion, or national origin unless the employer can show that sex, religion, or national origin is an actual qualification for performing the job. The qualification is called a bona fide occupational qualification.


**Bona fide possessor.** One who not only supposes himself to be the true proprietor of the land, but who is ignorant that his title is contested by some other Person claiming a better right to it.


Bona fide purchaser for value is one who, without notice of another's Claim of right to, or equity in, property prior to his acquisition of title, has paid vendor a valuable consideration. Snuffin v. Mayo, 6 Wash.App. 525, 494 P.2d 497.

One who buys property or to whom a negotiable document of title is transferred in good faith and without notice of any defense or Claim to the property or document. U.C.C. § 7-501. One who takes trust property for value and without notice of breach of trust and who is not knowingly Part of an illegal transaction. Restatement, Second, Trusts § 284; Uniform Probate Code § 2-202(3).
Bulk transfer. Purchaser from transferee of bulk transfer who takes for value in good faith and without notice of any defect of non-compliance with law. U.C.C. § 6-110.

Investment securities. A purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank. U.C.C. § 8-302.


Bona fide sale. A completed transaction in which seller makes sale in good faith, for a valuable consideration without notice of any reason against the sale.

Contra preferentem [...] Against the party who proffers or puts forward a thing. As a rule of strict construction, "contra preferentem," requires that contract be construed against person preparing terms thereof. Matter of City Stores Co., Bkrtcy.N.Y., 9 B.R. 717, 720.

Culpa in contrahendo [...] Term used to describe the liability which attaches to breach of contract, especially a breach by the offeror after the offeree has begun performance in a unilateral contract and is stopped by the offeror before completion of the Performance which is also the acceptance of the offer in a unilateral contract.

Estoppel [...] "Estoppel" means that party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly. Graham v. Asbury, 112 Ariz. 184, 540 P.2d 656, 658. A principle that provides that an individual is barred from denying or alleging a certain fact or state facts because of that individual's previous conduct, allegation, or denial. A doctrine which holds that an inconsistent position, attitude or course of conduct may not be adopted to loss or injury of another. Brand v. Farmers Mut. Protective Ass'n of Texas, Tex.Civ.App., 95 S.W.2d 994, 997. See Restatement, Agency, Second, § 8B.

Estoppel is a bar or impedance which precludes allegation or denial of a certain fact or state of facts, in consequence of previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law. It operates to put party entitled to its benefits in same position as if thing represented were true. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448, 458. Under law of "estoppel" where one of two innocent persons must suffer, he whose act occasioned loss must bear it. Sackenreuther v. Winston, Tex.Civ.App., 137 S.W.2d 93, 96. Elements or essentials of estoppel include change of position of parties so that party against whom estoppel is invoked has received a profit or benefit or party invoking estoppel has changed his position to his detriment.

Estoppel is or may be based on acceptance of benefits, Harjo v. Johnston, 187 Okl. 561, 104 P.2d 985, 992, 998; actual or constructive fraudulent conduct, Peterson v. Hudson Ins. Co., 41 Ariz. 31, 15 P.2d 249, 252; admissions or denials by which another is induced to act to his injury, Wabash-Drilling Co. v. Ellis, 230 Ky. 769, 20 S.W.2d 1002, 1004; agreement on and settlement of facts by force of entering into contract, Masterson v. Bouldin, Tex.Civ.App., 151 S.W.2d 301, 307; assertion of facts on which another relies; assumption of position which, if not maintained, would result in injustice to another; concealment of facts, Greer v. Franklin Life Ins. Co., Tex.Civ.App., 109 S.W.2d 305, 315; conduct or acts amounting to a representation or a concealment; consent to copyright infringement, whether express or implied from long acquiescence with knowledge of the infringement, Edwin L. Wiegand Co. v. Harold E. Trent Co., C.C.A.Pa., 122 F.2d 920, 925; election between rights or remedies, Mason & Mason v. Brown, Tex.Civ.App., 182 S.W.2d 729, 733; inaction, Hankins v. Waddell, 26 Tenn.App. 71, 167 S.W.2d 694, 696; laches: language or conduct which has induced another to act, Brown v. Federal Land Bank of Houston, Tex.Civ.App., 180 S.W.2d 647, 652.

Estoppels at common law are sometimes said to be of three kinds: (1) by deed; (2) by matter of record; (3) by matter in pais. The first two are also called legal estoppels, as distinguished from the last kind, known as equitable estoppels.

For Acquiescence, estoppel by: Collateral attack; Collateral estoppel doctrine; Contract, estoppel by; Deed, estoppel by; Direct estoppel; Election, estoppel by; Equitable estoppel; In pais, estoppel; Judgment, estoppel by; Judicial estoppel; Laches, estoppel by; Legal estoppel; Negligence, estoppel by; Promissory estoppel; Quasi estoppel; Record, estoppel by; Representation, estoppel by; Silence, estoppel by; and Verdict, estoppel by, see those titles. See also Authority (Authority by estoppel).

Acts and declarations. An "estoppel by acts and declarations" is such as arises from the acts and declarations of a person by which he designedly induces another to alter his position injuriously to himself.
Equitable estoppel. (See Estoppel in pair, below).

**Estoppel by deed.** A grantor in a warranty deed who does not have title at the time of the conveyance but who subsequently acquires title is estopped from denying that he had title at the time of the transfer and such after-acquired title inures to the benefit of the grantee or his successors. See also Deed, estoppel by.

**Estoppel by judgment.** Term means that when a fact has been agreed on, or decided in a court of record, neither of the parties shall be allowed to call it in question, and have it tried over again at any time thereafter, so long as judgment or decree stands unreversed. Humphrey v. Faison, 247 N.C. 127, 100, S.E.2d 524, 529. Final adjudication of material issue by a court of competent jurisdiction binds parties in any subsequent proceeding between or among them, irrespective of difference in forms or causes of action. Mansker v. Dealers Transport Co., 160 Ohio St. 255, 116 N.E.2d 3, 6. Sometimes referred to as issue preclusion. See also Collateral estoppel doctrine; Judgment, estoppel by. Compare Res (Res judicata).

**Estoppel certificate.** A signed statement by a party, such as a tenant or a mortgagee, certifying for the benefit of another party that a certain statement of facts is correct as of the date of the statement, such as that a lease exists, that there are no defaults and that rent is paid to a certain date. Delivery of the statement by the tenant prevents (estops) the tenant from later claiming a different state of facts.

**Estoppel in pais.** The doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Mitchell v. McIntee, 15 Or.App. 85, 514 P.2d 1357, 1359. The doctrine rests upon principle that when a person by his acts causes another to change his condition to his detriment, person performing such acts is precluded from asserting a right which he otherwise might have had. Peplinski v. Campbell, 37 Wash.2d 857, 226 P.2d 211, 213. See also Equitable estoppel.

**Misrepresentation.** See Representation, estoppel by.

**Pleading** Pledger must allege and prove not only that person sought to be estopped made misleading statements and representations but that pleader actually believed and relied on them and was misled to his injury thereby. Stenolind Oil & Gas Co. v. Milos Oil Co., Tex.Civ.App., 173 S.W.2d 342, 345.

Under rules practiced in most states, and in the federal courts, estoppel is an affirmative defense which must be pleaded. Fed.R. Civil P. 8(c).

**Ratification distinguished.** The substance of "estoppel" is the inducement of another to act to his prejudice. The substance of "ratification" is confirmation after conduct.

By ratification party is bound because he intended to be, while under "estoppel" he is bound because other party will be prejudiced unless the law treats him as legally bound. Carlile v. Harris, Tex.Civ.App., 38 S.W.2d 622. See Ratification.

**Res judicata distinguished.** A prior judgment between same parties, which is not strictly res judicata because based upon different cause of action, operates as an "estoppel" only as to matters actually in issue or points controverted. 4Etna Life Ins. Co. of Hartford, Conn. v. Martin, C.C.A.Ark., 108 F.2d 824, 827; Cunningham v. Oklahoma City, 188 Okl. 466, 110 P.2d 1102, 1104. In a later action upon a different causa of action a judgment operates as an "estoppel" only as to such issues in second action as were actually determined in the first action. Lorber v. Vista Irr. Dist., C.C.A.Cal., 127 F.2d 628, 634. The doctrine of "res judicata" is a branch of law of "estoppel". Krisher v. McAllister, 71 Ohio App. 58, 47 N.E.2d 817, 819. The plea of "res judicata" is in its nature an "estoppel" against the losing party from again litigating matters involved in previous action, but the plea does not have that effect as to matters transpiring subsequently. Fort Worth Stockyards Co. v. Brown, Tex.Civ.App., 161 S.W.2d 549, 555. See Res (Res judicata).

**Waiver distinguished.** Waiver is voluntary surrender or relinquishment of some known right, benefit or advantage; estoppel is the inhibition to assert it. In insurance law, however, the two terms are commonly used interchangeably. See Waiver.

**Exceptio non adimpleti contractus** [...] An exception in an action founded on a contract involving mutual duties or obligations, to the effect that the plaintiff is not entitled to sue because he has not performed his own part of the agreement.

**Favor negotii** [...] In conflicts of laws, legal principle which favors agreement of the parties against a construction which
would render an agreement illegal or unenforceable.

**Legal opinion.** A document in which an official such as a state attorney general, a city solicitor or a private attorney, renders his or her understanding of the law as applied to the assumed facts. It may or may not serve as protection to one acting on it, depending on the nature of it and the law governing such opinions. It may concern the state of a real estate title on which a buyer or lender may act.

**Nullus commodum capere potest de injuria sua propria** [...] No one can obtain an advantage by his own wrong. De Zotell v. Mutual Life Ins. Co. of New York, 60 S.D. 532, 245. N.W. 58, 59.

**Pacta sunt servanda** [...] Agreements (and stipulations) of the Parties (to a contract) must be observed. Qui tacet, consentire videtur [...] He who is silent is supposed to consent. The silence of a party implies his consent.

**Qui tacet consentire videtur** [...] He who is silent is supposed to consent. The silence of a party implies his consent.

**Qui tacet consentire videtur, ubi tractatur de ejus commodo** [...] He who is silent is considered as assenting, when his interest is at stake.

**Unjust enrichment doctrine.** General principle that one person should not be permitted unjustly to enrich himself at expense of another, but should be required to make restitution of or for property or benefits received, retained or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly. Tulalip Shores, Inc. v. Mortland, 9 Wash.App. 271, 511 P.2d 1402, 1404. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. L & A Drywall, Inc. v. Whitmore Const. Co., Inc., Utah, 608 P.2d 626, 630.

Three elements must be established in order to sustain a claim based on unjust enrichment: A benefit conferred upon the defendant by the plaintiff; an appreciation or knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value. Everhart v. Miles, 47 Md.App. 131, 136, 422 A.2d 28. See also Quantum meruit.

**Ut res magis valeat quarr pereat** [...] That the thing may rather have effect than be destroyed. Charitable bequests are also governed by this maxim. King v. Richardson, C.C. A.N.C., 136 F.2d 849, 858.

**Volenti non fit injuria** [...] The maxim "volenti non fit injuria" means that if one, knowing and comprehending the danger, voluntarily exposes himself to it, though not negligent in so doing, he is deemed to have assumed the risk and is precluded from a recovery for an injury resulting therefrom. Munson v. Bishop Clarkson Memorial Hospital, 186 Neb. 778, 186 N.W.2d 492, 494. This is an affirmative defense that should be pleaded under Fed.R.Civil P. B. Tyler v. Dowell, Inc., C.A.N.M., 274 F.2d 890. See also Assumption of risk.

**Referring Principles:**

- I.1.1 - Good faith and fair dealing in international trade
- I.1.5 - No advantage in case of own unlawful acts
- I.1.2 - Prohibition of inconsistent behavior
- I.1.6 - No damage claim in case of consent
- IV.1.2 - Sanctity of contracts
- IV.2.2 - Silence by offeree
- IV.5.3 - Interpretation in favor of effectiveness of contract
- IV.5.4 - Interpretation against the party that supplied the term
- IV.8.1 - Principle of pre-contractual liability
- V.1.4 - Principle of simultaneous performance; right to withhold performance
- VII.5 - Liability for damages for legal opinions
IX.1 - Basic rule
XII.1 - Distribution of burden of proof
XIV.3 - Rule of validation/Lex validitatis