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Equitable Estoppel in Louisiana: A Common Law Remedy in Civil Law Jurisprudence

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Research Guides

Equitable Estoppel in Louisiana: A Common Law Remedy in Civil Law Jurisprudence

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Overview

Equitable estoppel, also known as *estoppel in pais*, is a doctrine that developed under the courts of chancery to prevent a person from taking a stance contradictory to a past one on which another person relied to his or her detriment. There is a similar concept in civil law, *venire contra proprium factum* (no one can contradict his own act). Louisiana's law is predominately based on civil law rather than common law like the other 49 states. Though many equitable doctrines have been rejected by the Louisiana courts, such as *ne exeat*, bills of peace, and *quia timet*, Louisiana's judiciary chose to adopt equitable estoppel at least as far back as 1843.

Scope

Equitable estoppel is a remedy that has migrated into many areas of Louisiana's law. It is commonly used in suits such as construction, contracts, divorce, forgery, labor and employment, landlord-tenant, mortgages, property, sales, sureties, and wills. The materials referenced below reflect the components of equitable estoppel's application in a general sense. For example, the cases may be those frequently cited for an element of equitable estoppel rather than for property or contracts in general. There is a separate section under cases for equitable estoppel and the state because of the added sovereign immunity component. Finally, because equitable estoppel is a remedial doctrine rather than an area of law, there appear to be few or no looseleafs, alerting services, etc., that address equitable estoppel or even remedies specifically. Rather, many materials cater to areas of law, such as wills or construction, in which equitable estoppel may be located as needed.

Contact Us

Send an email to njohnson@gsu.edu for more information about this bibliography.

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Primary Sources

Legislation

Statutes may be found at http://www.legis.state.la.us/.

La. Civ. Code Ann. art. 1 (2008): Sources of law.

> La. Civ. Code Ann. art. 1, cmt. b (2008).
> Equity is a "persuasive or secondary" source of law, "that may guide the court in reaching a decision in the absence of legislation and custom."

La. Civ. Code Ann. art. 4 (2008): Absence of legislation or custom.

> La. Civ. Code Ann. art. 4, cmt. a (2008).
> "This provision reproduces the substance of Article 21 of the Louisiana Civil Code of 1870."

La. Civ. Code Ann. art. 1967 (2008): Cause defined; detrimental reliance.

La. Civ. Code Ann. art. 1967, cmt. d (2008).
"The case of Ducote v. Oden, 221 La. 228, 59 So.2d 130 (1952) (holding that promissory estoppel is not recognized in Louisiana) is thus overruled."

Case Law

i. In General

Marsh v. Smith, 5 Rob. 518 (La. 1843).
First direct equitable estoppel reference in Louisiana jurisprudence. Opinion cited an English decision but not Art. 21 of the 1870 Civil Code.

Thomas v. Blair, 35 So. 811 (La. 1903).
Estoppel must be pleaded.

McDonald v. Shreveport Mut. Bldg. Ass'n, 152 So. 318 (La. 1933).
Estoppel is not favored by law, and should not be permitted except in clear cases.

Rhodes v. Miller, 179 So. 430 (La. 1938).
"Clean hands" requirement for equitable relief.

Clark-Kelley Livestock Auction Co. v. Pioneer Bank & Trust Co., 81 So. 2d 869 (La. 1955).
Where "one of two innocent parties must suffer loss through the fraud of another, the burden of the loss should be imposed on him who most contributed to it."

Succession of Picard, 115 So. 2d 817 (La. 1959).
"The plea of laches or estoppel is an equitable plea, and under the laws of this state equity avails only where the express law is silent."

American Bank & Trust Co. v. Trinity Universal Ins. Co., 205 So. 2d 35 (La. 1967).
"Since estoppel bars the normal assertion of rights, courts apply the doctrine cautiously."

Wilkinson v. Wilkinson, 323 So. 2d 120 (La. 1975).
Three elements of estoppel: "(1) a representation by conduct or word; (2) justifiable reliance; and (3) a change in position to one's detriment because of the reliance."

John Bailey Contractor, Inc. v. State, 439 So. 2d 1055 (La. 1983).
"Although estoppels are not favored in the law, we have applied the doctrine of equitable estoppel when the ends of justice so require."

Thebner v. Xerox Corp., 480 So. 2d 454 (La. App. 3 Cir. 1985).
Court will not infringe on right to discharge an at-will employee by equitable estoppel absent a showing of detrimental reliance and that employee was misled by employer.

Drachenberg v. Parish of Jefferson, 563 So. 2d 523 (La. 1990).
"We hold that the unwritten acceptance of an option to purchase, like an unwritten agreement to sell, also cannot be proved by estoppel."

Kibbe v. Lege, 604 So. 2d 1366 (La. App. 3 Cir. 1992).
Reliance only on oral promise is not justified.

Carter v. Huber & Heard, Inc., 95-142 (La. App. 3 Cir. 5/31/95); 657 So. 2d 409.
Reasonable reliance required.

Oubre v. Entergy Operations, 522 U.S. 422 (1998).
In "equity, a person suing to rescind a contract, as a rule, is not required to restore the consideration at the very outset of the litigation."

In re Succession of Horn, 02-430 (La. App. 5 Cir. 9/30/02); 827 So. 2d 1241.
Although the term "equitable estoppel" is not favored in Louisiana, the Louisiana Civil Code incorporates a similar principle, "detrimental reliance."

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ii. Equitable Estoppel and the State

State v. Taylor, 28 La. Ann. 460 (La. 1876).
"The doctrine of estoppel applies to the State just as it does to individuals."

State v. Louisiana Cypress Lumber Co., 80 So. 722 (La. 1919).
"All who deal with officers or agents of the government must inquire at their peril into the extent of their powers."

State ex rel. Shell Oil Co., 192 So. 519 (La. 1939).
When in its proprietary capacity, the state is subject to the law of estoppel.

Cobb v. Louisiana Bd. of Insts., 85 So. 2d 10 (La. 1955).
There are "no exceptions to the immunity of the State from suit without its consent."

Daigle Bros. Sand and Dirt, Inc. v. Sec'y of Dept. of Revenue and Taxation for State of La., 90-883 (La. App. 3 Cir. 2/12/92); 594 So. 2d 935.
Department of Revenue was estopped from collecting sales tax.

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Secondary Sources

Law Review Articles and Other Periodical Sources

Shael Herman, *Detrimental Reliance in Louisiana Law -- Past, Present, and Future (?): The Code Drafter's Perspective,* 58 Tul. L. Rev. 707, 714 (1984).
"This paper demonstrates how modern civilian drafters, assisted by common sense and a careful review of jurisprudence, have incorporated one such general idea-detrimental reliance-into the proposed obligations articles."

N. Stephan Kinsella, *A Civil Law to Common Law Dictionary*, 54 La. L. Rev. 1265 (1994), http://www.kinsellalaw.com/publications/kinsella_civil-common-law-dictionary.pdf.
An introduction to Louisiana's unusual legal terms.

Amos J. Oelking III, Note, *Morris v. Friedman: Detrimental Reliance and Statutory Writing Requirements*, 57 La. L. Rev. 1375 (1997).
"This paper discusses: (1) the law of detrimental reliance in Louisiana prior to the enactment of Article 1967; (2) the evolution of Article 1967; (3) the statutory writing requirements and their role in Louisiana law; (4) the common law courts' treatment of a similar issue; and (5) the Louisiana Supreme Court's decision in Morris v. Friedman."

Vernon V. Palmer, *The Many Guises of Equity in a Mixed Jurisdiction: A Functional View of Equity in Louisiana*, 69 Tul. L. Rev. 7 (1994).
Presents the historical introduction, transformation, and modern process of equity in Louisiana.

David V. Snyder, *Comparative Law in Action: Promissory Estoppel, The Civil Law, and the Mixed Jurisdiction*, 15 Ariz. J. Int'l & Comp. L. 695 (1998).
"This inquiry focuses on promissory estoppel as a general basis for a claim or defense."

Stuart T. Welch, Note, *Suire v. Lafayette City-Parish Consolidate Government and Detrimental Reliance: Transforming Lightning Into a Lightning Bug*, 67 La. L. Rev. 991 (2007).
Considers the Louisiana Supreme Court's current theory of detrimental reliance and proposes a modified judicial test.

American Law Reports

J. F. Rydstrom, Comment Note, *Quantum or Degree of Evidence Necessary to Prove an Equitable Estoppel*, 4 A.L.R. 3d 361 (1965).
"This comment considers, on the basis of a selection of the cases, the quantum of proof necessary to establish an equitable estoppel against a party to an action . . . ."

P. H. Vartanian, Comment Note, *Applicability of Doctrine of Estoppel Against Government and Its Governmental Agencies*, 1 A.L.R. 2d 338 (1948).
This comment considers "the general principles controlling the application or nonapplication of the doctrine of estoppel thereto, assuming that all the elements necessary for the application of the doctrine against a private individual or corporation were present."

Books

Win-Shin S. Chiang, Louisiana Legal Research (2d ed. 1990).
"The purpose of this book is to provide a reference guide for research in current Louisiana law."

Lee Hargrave, The Louisiana State Constitution: A Reference Guide (1991).
A guide to one of the longest and most detailed state constitutions, which includes historical references, supplementary comments, extensive table of contents, and table of cases with citations.

Shael Herman et al., Tulane Law School, The Louisiana Civil Code: A Humanistic Appraisal (1981).
"The purpose of this pamphlet is to illuminate in a non-technical way the humanistic values of the Civil Code by reference to its historical and philosophical spirit, its social and economic perspectives, and its institutions and terminology."

Vernon Valentine Palmer, The Louisiana Civilian Experience: Critiques of Codification in a Mixed Jurisdiction (2005).
"These essays are historical and comparative critiques of the Louisiana codes and some of the debates which surround them."

Practice Material/Looseleafs

Gail Schlosser, Louisiana Elements of an Action (West's Louisiana Practice Series, 2007). Contains "authoritative articles that provide substantive and practical overviews of hundreds of causes of action."

Hon. Max Tobias, Jr. et al, Louisiana Civil Pretrial Procedure (West's Louisiana Practice Series, 2007-2008 ed).
A "practical reference designed to answer basic questions which arise in the day to day handling of civil cases." "There are three types of estoppel in Louisiana: estoppel by deed; estoppel by record; and estoppel in pais or equitable estoppel." An estoppel defense must be asserted or it is waived.

Legal Encyclopedias/Treatise

31 C.J.S. *Estoppel and Waiver* § 58 (2008).
General considerations.

31 C.J.S. *Estoppel and Waiver* § 60 (2008).
A comparison of terms and principals.

31 C.J.S. *Estoppel and Waiver* § 64 (2008).
Availability at law.

31 C.J.S. *Estoppel and Waiver* § 73 (2008).
Equitable estoppel generally.

SAUL LITVINOFF, 6 LOUISIANA CIVIL LAW TREATISE, LAW OF OBLIGATIONS
§ 16.3 (2d ed. 2008).
Actions available to an aggrieved obligee include equitable estoppel.

Newsletters and Alerting Services

LOUISIANA CIVIL LAW AND PROCEDURE NEWSLETTER (Frank L. Maraist, ed., Baton Rouge, LA) Sept. 1978 to present (LC Call#: KFL510.A15L6).
"Reports on Louisiana appellate decisions, federal decisions, and Louisiana statutes which are of interest to the general practicing attorney. Available by email."

CD-ROMs

LOISLAW.COM PROFESSIONAL LIBRARY: LOUISIANA (Loislaw Wolters Kluwer Legal NA CD-ROM, 1922 to present).
"Full-text of Louisiana statutes, acts, regulations, supreme court rules, attorney general opinions and Supreme Court cases from 1922 and Court of Appeals cases from 1972." Available for purchase at http://www.loislaw.com/.

LOUISIANA CASES (West's Premise CD-ROM, 1944 to present).
Cases as reported in Southern Reporter, 2d, attorney general opinions from 1977 to present, Unannotated Louisiana Statutes, court rules and orders, and session laws as necessary due to legislative actions. Available for purchase at http://west.thomson.com/.

LOUISIANA STATUTES ANNOTATED (West's Premise CD-ROM).
Includes "*Louisiana Statutes Annotated*, State Constitution, *LSA Civil Procedure Forms*, State Court rules and local Federal District Court and bankruptcy court rules, and session laws as necessary due to legislative actions." Available for purchase at http://west.thomson.com/.

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Interest Groups & Associations

Interest Groups

a. The Louisiana State Law Institute - http://www.lsli.org/

The official law revision commission, law reform agency, and legal research agency for the State of Louisiana.

b. The World Society of Mixed Jurisdiction Jurists - http://www.mixedjurisdiction.org/bib_la_law.htm

Created in New Orleans, Louisiana, the purpose of the international Society is the study and advancement of mixed legal systems.

c. Police Jury Association of Louisiana - http://www.lpgov.org/

Includes an overview of Louisiana local government.***Back to Top***

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Computerized Research

Computerized Research

a. Fastcase - http://www.lsba.org/2007MemberServices/fastcase.asp

The Louisiana State Bar Association offers Fastcase, a web based legal research program, free with membership. "The program provides online access to millions of cases, statutes and regulations via the American Law Library."

b. American Law Sources Online -

http://www.lawsource.com/also/usa.cgi?la

Free online portal to access to Louisiana court decisions. The site offers a text search function.

c. Louisiana Supreme Court - http://www.lasc.org/

Free online access to Louisiana Supreme Court decisions. The site offers an advanced search feature.

d. LawHelp.org/LA - http://www.lawhelp.org/la/

"Louisiana's online guide to free legal help."

e. LexisNexis

LexisNexis is a fee-based online legal research service.

Search tip: Select "Research System," the "Search" tab, the "by Topic or Headnote" subtitle, and type "estoppel" in the "Option 1: Find a Legal Topic" field. The results can be narrowed by jurisdiction.

- To access the LexisNexis website for practitioners click here.
- To access the Law School Portal of LexisNexis click here.

f. Westlaw

Westlaw is a fee-based online legal research service.

Search tip: Westlaw uses the Key Digest System.
150 EQUITY
156 ESTOPPEL

- To access the Westlaw website for practitioners click here.
- To access the Law School Portal of Westlaw click here.

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