

UNIFYING LEGAL PRINCIPLES: INVESTIGATING THE ROLE OF ESTOPPEL IN GLOBAL COMMERCIAL LAW AND CONTRACTUAL RELATIONS

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ABSTRACT

The doctrine of estoppel serves as a critical mechanism for ensuring fairness and consistency in legal and contractual relations. This paper explores the role of estoppel within global commercial law, examining its application across different jurisdictions. By investigating commonalities and differences in the doctrine's application, the paper aims to highlight how estoppel functions to unify legal principles, promote justice, and foster predictable commercial interactions. Through comparative analysis of case laws, statutes, legal literature, and interpretations, from common law and civil law jurisdictions, the study sought to identify pathways for greater coherence and predictability in the doctrine of estoppel, with the ultimate goal of proposing a unified framework that enhances legal clarity and coherence in global commercial law, thereby enhancing fairness and efficiency of cross-border contractual relations.

Keywords: estoppel, common law, civil law, contractual relations, unifying legal principle.

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1.0 INTRODUCTION

Consistency and predictability in legal principles governing contractual relations in an increasingly globalized economy have become essential for facilitating smooth commercial transactions. As cross-border trade expands, so does the complexity of the legal frameworks regulating it. Global commercial law is characterized by diverse legal systems that often apply varying principles to similar contractual disputes. This divergence can lead to uncertainty and inconsistency in resolving cross-border commercial disputes, particularly where different legal doctrines are applied to contractual relations. Among the key doctrines that have gained significant attention in the pursuit of legal uniformity is estoppel, a principle that has its roots in common law but has gradually found its place in various legal systems worldwide.

Estoppel, in its various forms, operates as a mechanism to prevent a party from asserting a contradictory position, going back on its word, or acting inconsistently with previous conduct, that the other party has relied upon to their detriment thereby ensuring fairness and justice in legal transactions.¹

Despite its widespread application and recognition, the doctrine of estoppel remains a subject of considerable debate and inconsistency, particularly in the context of international commercial law. One of the central challenges is the lack of uniformity in the understanding and application of estoppel across different legal systems. While common law jurisdictions have developed a relatively coherent framework for estoppel², civil law countries and international legal instruments have adopted varying approaches, leading to potential conflicts and uncertainties in cross-border contractual relations.³

¹ Spencer Bower, *The Law Relating to Estoppel by Representation* (4th edn, Butterworths 2004) 13.

² John Cartwright, *Contract Law: An Introduction to the English Law of Contract for the Civil Lawyer* (3rd edn, Hart Publishing 2021) 81.

³ Peter Schlechtriem, 'Good Faith in German Law and in International Uniform Law' (1997) 3 SAclJ 10, 16.

Historically, the concept of estoppel has its roots in common law, particularly in English jurisprudence, where it has played a crucial role in preventing inequitable outcomes in disputes involving representations, promises, and assumptions.⁴ The doctrine of estoppel was categorized into several forms, including estoppel by record, estoppel by deed, and estoppel in pais (equitable estoppel).⁵ Equitable estoppel, in particular, has played a vital role in preventing parties from reneging on their promises or representations when others have relied on them to their detriment. However, its relevance is not confined to common law; civil law jurisdictions and international legal instruments have also incorporated estoppel principles, albeit under different terminologies and doctrines. For example, in civil law jurisdictions, estoppel principles exist but are often embedded within broader doctrines of good faith and contractual fairness.⁶ For example, the German Civil Code (Bürgerliches Gesetzbuch, BGB) encapsulates principles that align with estoppel through its provisions on *venire contra factum proprium* (prohibition of inconsistent behaviour).⁷ Nevertheless, the feasibility of establishing a truly “common ground” for applying estoppel across different legal systems remains contentious. In civil law jurisdictions, principles functionally similar to estoppel are often subsumed under the broader concept of good faith (*bona fides*), which encompasses duties of loyalty, fairness, and consistency but lacks the doctrinal specificity found in common law estoppel.⁸ This broader interpretive scope of good faith means that, unlike common law estoppel which is narrowly focused on preventing inconsistent conduct, civil law doctrines operate as overarching standards of behavior governing the entire contractual relationship.⁹ As Zimmermann notes, while estoppel in common law serves as a specific equitable defence, its civil law counterparts are expressions of a general obligation to act in

⁴ Robert Goff and Gareth Jones, *The Law of Restitution* (8th edn, Sweet & Maxwell 2011) 45.

⁵ John McGhee, *Snell's Equity* (34th edn, Sweet & Maxwell 2020) 579.

⁶ Jan Oosterhuis, 'The Principles of European Contract Law and Estoppel' (2008) 16 ERPL 69, 73.

⁷ Bürgerliches Gesetzbuch (BGB) (1896, as amended) s 242.

⁸ Reinhard Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford University Press 1996) 667–669.

⁹ Hein Kötz, *European Contract Law*, vol 1 (Clarendon Press 1997) 84–86.

good faith and to refrain from abusive conduct.¹⁰ Therefore, the notion of creating a unified framework for estoppel must account for these systemic and conceptual divergences between legal traditions.

This means that the significance of estoppel in global commercial law lies not only in its capacity to prevent unjust outcomes but also in its potential to serve as a unifying legal principle that transcends national boundaries. However, such a unifying function can only be realistically pursued if due regard is given to the different conceptual underpinnings of estoppel and its analogues, ensuring that any proposed common ground accommodates the flexibility inherent in civil law doctrines like good faith while retaining the certainty provided by common law estoppel. By establishing a common ground for applying estoppel in contractual relations, legal systems can reduce uncertainties and foster greater trust among parties engaged in international trade.¹¹ This, in turn, can lead to more efficient dispute resolution and a more predictable legal environment for businesses.

According to Vogenauer and Seatherill, the lack of unified global recognition and application of the doctrine of estoppel can result in unpredictable outcomes in international disputes, undermining the stability and predictability essential for global commerce.¹³ The absence of a unified approach to estoppel in international commercial law raises questions about the effectiveness of existing legal frameworks in addressing the complexities of modern-day trade. As businesses increasingly operate in multiple jurisdictions, the need for a harmonized legal approach to estoppel becomes more pressing. Ferrari posits that without such unification, the risk of divergent interpretations and inconsistent application of the

¹⁰ Reinhard Zimmermann, 'Good Faith and Equity' in Arthur Hartkamp and others (eds), *Towards a European Civil Code* (4th edn, Kluwer Law International 2011) 251.

¹¹ Roy Goode, *Transnational Commercial Law* (3rd edn, OUP 2023) 321.

¹³ Stefan Vogenauer and Stephen Weatherill, *General Principles of Law: European and Comparative Perspectives* (Hart Publishing 2017) 114–116.

doctrine remains high, potentially leading to disputes and inefficiencies in international transactions.¹⁵

This paper, therefore, aims to address these challenges by investigating the role of estoppel in global commercial law and its potential to unify legal principles across different jurisdictions. Through a comparative analysis of estoppel in common law and civil law systems and its application in international legal instruments, this study seeks to identify pathways for greater coherence and predictability in the doctrine's application, with the ultimate goal of proposing a unified framework that enhances legal clarity and coherence in global commercial law, thereby enhancing fairness and efficiency of cross-border contractual relations.

2.0 THE EVOLUTION AND HARMONIZATION OF ESTOPPEL: BRIDGING COMMON LAW AND CIVIL LAW TRADITIONS

The doctrine of estoppel has deep roots in both common law and civil law traditions, serving as a mechanism to prevent individuals from reneging on their previous assertions or actions when such changes would result in injustice. This is to ensure fairness and consistency in contractual relations and broader commercial transactions. As legal systems evolve toward greater unification and harmonization of global commercial law, understanding the role of estoppel across different jurisdictions becomes increasingly significant. This literature review examines the historical development, jurisprudential foundations, and contemporary applications of estoppel in both common law and civil law systems, with a focus on its potential for unifying legal principles in global commercial law.

The concept of estoppel has its roots in English common law, where it evolved as a procedural tool to bar contradictory pleadings equitable to prevent injustice.

¹⁵ Franco Ferrari, *Contracts for the International Sale of Goods: Applicability and Applications of the 1980 United Nations Sales Convention (CISG)* (2nd edn, Brill Nijhoff 2018) 202–205.

Estoppel by record, one of the earliest forms, emerged from the principle that a judgment or decision by a court should be conclusive between the parties and not subject to dispute in subsequent proceedings. This is closely tied to the principle of *res judicata*, preventing re-litigation of matters already judged.¹⁶ For example, in Ghana, the Supreme Court held in various cases including the case of *In Re Mensah (Decd); Mensah & Sey v. Intercontinental Bank (Gh) Ltd*¹⁷ that a party is estopped by *res judicata* of judgment by default where identical issues arising in the second action have been directly decided in the first action between the same parties.

The development of estoppel in common law further evolved through various forms, including "estoppel by deed" and "estoppel by conduct." Estoppel by deed developed during the 16th and 17th centuries, particularly in relation to property transactions. It prevented parties to a deed from asserting something contrary to what was contained in the deed. This principle was solidified in cases like *Duchess of Kingston's Case*¹⁸ where it was held that estoppel could apply to prevent a party from contradicting a solemn admission in a legal context. This form of estoppel was significant in ensuring the integrity and reliability of formal documents and agreements.¹⁹

Estoppel *in pais* also referred to as estoppel by representation, gained prominence in the 19th century. It was developed to prevent a party from denying a fact they had previously represented as true if another party had relied on that representation to their detriment. This principle was solidified in the case of *Pickard v Sears*²⁰, where the court held that an individual who has made a representation through words or conduct, leading another to act to their detriment, cannot later deny the truth of that representation.

¹⁶ *Ferrers Case* (1446) YB 21 Hen Vol 7, p 118.

¹⁷ *In Re Mensah (Decd); Mensah & Sey v. Intercontinental Bank (Gh) Ltd* [2010] SCGLR 118

¹⁸ *Duchess of Kingston's Case* (1776) 20 State Tr 355

¹⁹ *Bowman v Taylor* (1834) 4 LJ Ch 57.

²⁰ *Pickard v Sears* (1837) 6 Ad & E 469, 112 ER 179.

The common law refinery of the doctrine continued to evolve. The classic definition is found in the case of *Hughes v Metropolitan Railway Co.*²¹, where Lord Cairns LC stated that "a party cannot insist on a right inconsistent with what he has led the other party to believe." This principle has been extended to various forms, including promissory estoppel, estoppel by representation, and estoppel by conduct, each serving to uphold the integrity of promises or representations made in a commercial context. The doctrine of promissory estoppel emerged more fully in the 20th century, particularly with the landmark case of *Central London Property Trust Ltd v High Trees House Ltd*, where Lord Denning articulated the principle that a promise, intended to be binding and acted upon by the promisee, is enforceable to prevent the promisor from going back on their word, even if the promise was not supported by consideration.²² Promissory estoppel in this case operated to prevent a landlord from collecting full rent during wartime when he had accepted a lower amount.

The doctrine of estoppel has developed through the principles of *stare decisis* which currently forms an integral part of the common law, particularly in the English legal system, where it emerged as a means to prevent a party from asserting a claim or fact that is contrary to their previous conduct or representations.

In the United States, the doctrine of estoppel is similarly critical and recognized in various forms, prominently promissory and equitable estoppel. One of the most significant applications of estoppel in U.S. contract law is promissory estoppel. This form of estoppel is invoked when a promise, not formalized as a contract, leads another party to take action or suffer a detriment based on reliance on that promise. The Restatement (Second) of Contracts, a legal treatise produced by the American Law Institute (ALI) solidified the principle of promissory estoppel in American jurisprudence. Section 90 of the *Restatement (Second) of Contracts* codifies the principle of **promissory estoppel**, providing that a promise that the promisor

²¹ *Hughes v Metropolitan Railway Co* [1877] 2 App Cas 439.

²² *ibid*; *Central London Property Trust Ltd v High Trees House Ltd* [1947] KB 130.

should reasonably expect to induce reliance, and which does induce such reliance, is binding if injustice can be avoided only by enforcing the promise.²⁴

The case of *Ricketts v. Scothorn*²⁵ is often cited as one of the earliest applications of promissory estoppel in the United States. In this case, the court held that the grandfather's promise to his granddaughter, which led her to quit her job, was enforceable despite the lack of consideration because she had relied on the promise to her detriment. Another influential case is *Hoffman v. Red Owl Stores, Inc.*²⁶, where the court enforced a promise made during preliminary negotiations that led the plaintiff to sell his business and move his family, even though no formal contract was finalized. The court ruled that Red Owl's promise was binding under the doctrine of promissory estoppel because the plaintiff had reasonably relied on the promise to his detriment.

Equitable estoppel prevents a party from going back on its word when the other party has relied on that word to its detriment. In the United States promissory estoppel is widely recognized, particularly in contract law. The landmark case of *Ricketts v. Scothorn*²⁷, established that a promise made without consideration could still be enforceable if the promisee relied on it to their detriment. The U.S. Supreme Court in *Heckler v. Community Health Services of Crawford County, Inc.*²⁸ noted that "the doctrine of equitable estoppel is grounded in the premise that a party is precluded from asserting to another's disadvantage a right inconsistent with a position previously taken." In its modern development, the Supreme Court of the United States applied the doctrine in the case of *Dickinson v. Zurko*²⁹ to prevent the government from taking a legal position that contradicted an earlier stance, which had been relied upon by the opposing party. This case highlights the broader application of estoppel in both public and private sectors.

²⁴ American Law Institute, *Restatement (Second) of Contracts* (American Law Institute 1981) s 90.

²⁵ *Ricketts v Scothorn* (1898) 57 Neb 51, 77 NW 365.

²⁶ *Hoffman v Red Owl Stores, Inc.* (1965) 26 Wis 2d 683, 133 NW2d 267.

²⁷ *Ricketts* (n 25)

²⁸ *Heckler v Community Health Services of Crawford County, Inc.* (1984) 467 US 51

²⁹ *Dickinson v Zurko* (1999) 527 US 150.

This development of the doctrine of estoppel marked a significant shift in contract and commercial law, introducing a more flexible and equitable approach to enforcing promises in many common law jurisdictions including countries in Africa. For example, in Ghana, which inherited its legal system from the British common law tradition, estoppel plays a vital role in ensuring fairness and justice in commercial dealings and contractual obligations. The doctrine of estoppel was introduced into Ghanaian law through the reception of English common law. This occurred formally with the Supreme Court Ordinance of 1876, which provided that the common law, doctrines of equity, and statutes of general application in force in England as of 24th July 1874 would apply in Ghana, then the Gold Coast, as long as they were not inconsistent with local laws.³⁰ Over time, Ghanaian courts have developed the doctrine in line with both English precedents and local circumstances. Estoppel has been applied in various commercial and contractual contexts, reflecting the dynamic nature of Ghanaian commercial law.

In contemporary Ghana, the doctrine of estoppel continues to be a cornerstone in resolving disputes, particularly in commercial and contractual matters. The courts have consistently emphasized the importance of good faith and fair dealing, which are reinforced by estoppel. For example, in the case of *Osei-Akoto v. Akoto*³¹ the Supreme Court applied the doctrine of estoppel by conduct, holding that the defendant was estopped from denying the validity of an agreement to transfer land after allowing the plaintiff to act on it. Again, the court discussed the application of promissory estoppel in a contractual context in the case of *Essien v. Mensah*³², emphasizing that equity would prevent a party from acting inconsistently with a promise that had been relied upon.

The doctrine of promissory estoppel is frequently invoked in cases involving land disputes, business contracts, and employment agreements to the extent that it has

³⁰ Supreme Court Ordinance of Ghana 1876, s 14.

³¹ *Osei-Akoto v. Akoto* [1962] 1 GLR 113.

³² *Essien v. Mensah* [1977] GLR 28.

been codified in the Evidence Act of Ghana. The Act³³ deals with estoppel by one's own statement or conduct and states that:

“Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest of that person.”

The doctrine of promissory estoppel has accordingly been captured in section 26 of Ghana's Evidence Act as a conclusive presumption. This means that as a rule of evidence, promissory estoppel bars a party, or his successor to proceedings, from denying the truth of a representation intentionally made for his opponent to rely upon and the opponent acted on it.

In recent times the scope of estoppel has expanded and developed under common law. The recent addition to the doctrine is estoppel by convention. Per the case of *Chartbrook Ltd v Persimmon Homes Ltd*³⁴ the House of Lords held that Estoppel by convention is an aid to the interpretation of deeds to help find the intention of parties to a contract where the parties are shown to have based their subsequent dealings on a common assumption or belief. In the *Norwegian American Cruise A/S* case³⁵ the English Court of Appeal stated that estoppel by convention arises when two parties have entered into a contract but, in its operation, they both adopted a mistaken interpretation or legal effect of a term of the contract and conducted their affairs based on that mistaken interpretation. This means that if a dispute should arise out of a term of contract, the court, in ascertaining the intention

³³ Evidence Decree 1975 (NRCD 323), s 26.

³⁴ *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38.

³⁵ *Norwegian American Cruise A/S case (formerly Norwegian American Lines A/S) v Paul Mundy Ltd (the Visaffjord)* [1988] 2 Lloyds Rep 343 C.A.

of the parties, will hold them bound by the mistaken interpretation they had mutually given to the term through their practice.

In contrast, in civil law jurisdictions, while the terminology and specific doctrines may differ, similar principles of estoppel exist under doctrines such as *venire contra factum proprium* (acting against one's previous conduct) and the principle of good faith. This means that while the doctrine of estoppel is a distinct principle under common law, it does not exist as a distinct legal principle in civil law jurisdictions. Again, in civil law traditions, similar concepts are embedded within doctrines such as *Verwirkung* in German law and *bonne foi* in French law.³⁶ The convergence of these principles in international commercial law highlights the universality of the underlying concept of preventing unfairness by holding parties accountable for their prior statements or actions.

The civil laws seek to promote the doctrine of "good faith". For example, in German law, estoppel is encompassed under the principle of "*Treu und Glauben*" (good faith), as stipulated in Section 242 of the Bürgerliches Gesetzbuch (BGB) which makes provisions on *venire contra factum proprium* (prohibition of inconsistent behavior)³⁷. This principle mandates parties to act in good faith and adhere to fair dealing, preventing contradictory behaviours that could harm others. The principle prevents parties from acting in ways that contradict their earlier conduct, closely mirroring the effects of estoppel in common law.

The French legal system also recognizes a form of estoppel through the doctrine of "préclusion," or *l'interdiction de se contredire au détriment d'autrui* (prohibition against contradicting oneself to the detriment of others), which prevents parties from contradicting previous statements or actions if it would harm others who relied on those statements or actions. The French courts have applied this principle in various contexts, ensuring that parties cannot unfairly withdraw from their

³⁶ Thomas Graziano, *Comparative Contract Law: Cases, Materials, and Exercises* (2nd edn, Palgrave Macmillan 2018) 185.

³⁷ Bürgerliches (n 7)

previous positions when others have relied upon them. This principle was notably discussed in one of the French leading cases where the French Court of Cassation emphasized the role of good faith in contractual relations, aligning with the estoppel-like doctrines found in civil law.³⁸

3.0 JURISPRUDENTIAL FOUNDATIONS OF THE DOCTRINE OF ESTOPPEL

The jurisprudential foundations of estoppel lie in the principles of equity and justice. For purposes of this study, the philosophical foundations of the doctrine of the equitable remedy of estoppel will be based on John Rawl's Theory of Justice³⁹. Rawl's Theory of Justice postulates that justice is the structural rules of society where the different sets of values of people can coexist, cooperate, and to some extent compete. Therefore, John Rawls describes his theory of justice as "justice as fairness". Rawl propounded the theory of original position as a new way to learn about principles of justice, arguing that people will prefer principles of justice that will fairly distribute what he terms as "primary social good" to benefit everyone. The central thesis of Rawl's theory of justice is that all persons must have equal rights to ensure equal basic liberties. This proposition of Rawls situates well with the objectives of this study.

To relate John Rawls' Theory of Justice to the doctrine of estoppel, the study focuses on the idea of fairness and the protection of individuals from harm caused by others' inconsistent actions or representations. John Rawls' Theory of Justice, particularly his concept of "justice as fairness," provides a robust philosophical foundation for understanding the doctrine of estoppel. According to Rawls, justice is achieved when the structural rules of society allow for the coexistence, cooperation, and even competition of different sets of values. This implies a system where individuals are treated fairly and equally, and where the principles of justice are designed to ensure

³⁸ Cass. civ. 3, 8 juillet 1992, Bull. civ. III, n° 211.

³⁹ John Rawls, *A Theory of Justice* (Harvard University Press 1971).

that everyone benefits from a fair distribution of what he terms "primary social goods."

In this context, the doctrine of estoppel can be seen as a practical embodiment of Rawls' theory. Estoppel serves to prevent injustice by ensuring that individuals cannot benefit from contradictory positions or withdraw from earlier representations that others have relied upon to their detriment. This aligns with Rawls' central thesis that all persons must have equal rights to systems that ensure equal basic liberties. In matters of access to justice, no one must be allowed to exploit inconsistencies to the disadvantage of others. Therefore, estoppel enforces fairness by holding parties accountable to their representations, ensuring that justice is not only theoretical but also practical and accessible to all.

The theory of justice can be aligned with the doctrine of estoppel from the comparative perspective of common law and civil law jurisdictions. In common law, estoppel operates as an equitable doctrine, providing remedies where strict legal rights would result in injustice. The equitable nature of estoppel is particularly evident in cases of promissory estoppel, where courts intervene to prevent a promisor from going back on a promise that the promisee has relied upon to their detriment.⁴⁰ The reliance interest protected by estoppel aligns with broader notions of fairness and the protection of legitimate expectations. In civil law systems, the equivalent doctrines are often grounded in the principle of good faith (*bona fides*), which permeates contractual relations and commercial law more broadly. The German doctrine of *Treu und Glauben* and the French principle of *bonne foi* both serve to ensure that parties act consistently and in good faith, thereby preventing unjust outcomes.⁴¹

The parallel between these civil law principles and the common law doctrine of estoppel underscores the shared commitment to equity and justice in global

⁴⁰ John McGhee (n 5)

⁴¹ Reinhard Zimmermann (n 8)

commercial law. The convergence of the common law equitable doctrine of estoppel and its civil law equivalents highlights a shared objective in both legal systems: ensuring fairness and consistency in legal and contractual relations. While the terminology and application may differ, the underlying intent to prevent injustice through inconsistent behavior is a common thread. This convergence is increasingly significant in the context of global commercial law, where cross-jurisdictional transactions require a harmonized understanding of principles like estoppel to ensure equitable outcomes and reliability in legal relationships.

The exploration of estoppel's historical jurisprudence across common and civil law systems underscores its role as a unifying legal principle, capable of bridging the gap between different legal traditions in global commerce. This unification is vital for fostering legal certainty and fairness in international contractual relations, as parties from diverse legal backgrounds engage in complex transactions that demand a coherent approach to the enforcement of rights and obligations.

4.0 THE ROLE OF PROMISSORY ESTOPPEL IN ENFORCING PROMISES WITHOUT CONSIDERATION: A COMMON LAW PERSPECTIVE IN CONTRACTUAL AND COMMERCIAL RELATIONSHIPS

At common law, a promise is not binding in the absence of consideration. However, the equitable doctrine of promissory estoppel can sometimes be used to enforce an agreement that might otherwise fail due to lack of consideration. In simple terms, estoppel prevents a party from withdrawing a promise made to another party, if the party to whom the promise was made reasonably relied on that promise. This happens where under equity; the doctrine of promissory estoppel acts to provide a remedy to the party who relied on the promise of the promisor. The doctrine of estoppel provides an exception to the principle that equity will not assist a volunteer. It operates in two stages. First, the claimant must prove that the estoppel is present, and second, the court must identify the remedy.

To establish estoppel in contractual and commercial settings, the doctrine operates under specific conditions. First, the claimant must demonstrate the existence of a contractual relationship between the parties. As established by the English courts in cases such as *High Trees*⁴² and *Tool Metal Manufacturing Co., Co.*⁴³ estoppel applies where there is an ongoing or recurrent contractual obligation between the parties. Second, the claimant must show that a clear and unequivocal promise or representation was made, intended to alter the legal relations of the parties, specifically that the promisor would not enforce their strict legal rights under the contract. In *Hughes v Metropolitan Railway Company*⁴⁴, the court held that this promise or representation could be express or implied, as was the case when the landlord's conduct in initiating negotiations with the tenant implied a promise. Third, the promisee must prove that he or she relied on the promisor's representation or promise in conducting their affairs. Finally, the course of dealing between the parties must indicate that it would be inequitable for the promisor to withdraw their promise and insist on their legal rights under the contract. This is known as the concept of unconscionability, which forbids parties from abusing one another's ignorance or lack of negotiating strength.

In expanding the scope of estoppel, the Supreme Court of Ghana, a common law jurisdiction in the case of *The Republic v. Nii Adamah & 10 Others*.⁴⁵ held that to succeed in a claim of estoppel by conduct, the claimant must establish the following five (5) elements:

1. The party alleged to be in breach must have made a representation which was false or must deliberately have concealed material facts;
2. The party making the representation knew it was false or that he acted negligently or recklessly in not knowing the falsity of the representation.
3. The other party must have been led to believe the representation was true;

⁴² *Central London Property Trust Ltd v High Trees House Ltd* [1947] KB 130.

⁴³ *Tool Metal Manufacturing Co. v. Tungsten Electric Company* [1955] 1 WLR 761.

⁴⁴ *Hughes* (n 21)

⁴⁵ *The Republic v. Nii Adamah & 10 Ors.* [2014] 73 GMJ 1 at 55.

4. The person who made the representation intended same to be relied upon;
5. The other person actually acted upon the representation and suffered prejudice or loss that cannot be remedied unless the claim in estoppel succeeds.

The scope of estoppel is expansive, covering various areas of law where it serves to prevent injustice by holding parties to their representations or promises when it would be inequitable to allow them to assert contrary positions. The application of estoppel is grounded in principles of fairness and justice, ensuring that parties cannot benefit from misleading others to their detriment. However, it is trite to note that estoppel is used as a defense in contract law but cannot be used to create a new cause of action. Its scope is thus limited to preventing injustice rather than enforcing promises as if they were contracts.

5.0 ESTOPPEL IN INTERNATIONAL COMMERCIAL LAW: HARMONIZING LEGAL PRINCIPLES ACROSS JURISDICTIONS

Estoppel, a principle rooted in equity, serves as a vital mechanism in international commercial law to ensure fairness and justice in contractual relationships. By preventing parties from acting inconsistently with prior representations or actions, estoppel fosters trust and predictability in commercial transactions.

This study delves into the doctrine of estoppel within the context of international commercial law, exploring its application across different legal systems, its role in resolving cross-border disputes, and its intersection with key international instruments such as the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts. In doing so, the study seeks to undertake an examination of the texts, commentaries, and case law related to the UNIDROIT Principles and the CISG to investigate the role of estoppel in global commercial law and its potential to unify legal principles across different jurisdictions. Again, through a comparative

analysis of case law, legal interpretations, and application of the CISG and UNIDROIT Principles related to estoppel from common law and civil law jurisdictions this study seeks to identify pathways for greater coherence and predictability in the doctrine's application, with the ultimate goal of proposing a unified framework that enhances legal clarity and coherence in global commercial law, thereby enhancing fairness and efficiency of cross-border contractual relations.

The field of international commercial law has evolved significantly to accommodate the complexities of cross-border trade. The United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles) are two pivotal instruments aimed at harmonising international commercial transactions.

In international business law, estoppel is so fundamental that it forbids a party from retracting a declaration or representation made to another party. The foundation of the estoppel is the notion that someone who instills confidence or expectations in another person may not be obligated to let those expectations⁴⁶. This doctrine is essential to maintaining the stability and predictability of international transactions by prohibiting parties from retracting their prior statements. The role of the equitable doctrine of promissory estoppel in international commerce and contractual relations is profound in most national and international commercial law principles and legislations. The doctrine is recognized in international commercial law, notably under the UNIDROIT Principles and the United Nations Convention on Contracts for the International Sale of Goods (CISG), where it plays a role in ensuring fairness in cross-border transactions. In these contexts, estoppel may prevent a party from asserting inconsistent positions in different jurisdictions, thus promoting uniformity and predictability in international commerce.⁴⁷

⁴⁶Derek Bowett, 'Estoppel before International Tribunals and Its Relation to Acquiescence' (1957) 33 Brit YB Int'l L 176.

⁴⁷ *UNIDROIT Principles of International Commercial Contracts 2016*, art 1.8.

Existing studies have explored how the CISG and UNIDROIT Principles are applied in different legal systems. Ferrari provides an extensive analysis of the CISG's reception in both common law and civil law jurisdictions, highlighting discrepancies in the interpretation and application of the doctrine of estoppel.⁴⁸ Similarly, Zeller examines the principles' adaptability, emphasizing their role in bridging legal traditions⁴⁹. Despite these contributions, there remains a lack of explicit provisions of estoppel in these legislations to bind contracting parties to guarantee certainty and predictability of international commercial transactions.

The debate and controversy over the role, uncertainty, and application of the principle of good faith under the United Nations Convention on Contracts for the International Sale of Goods (CISG) continues to attract scholarly attention. While most commentators agree that good faith plays a role within the CISG framework, particularly due to its explicit mention in Article 7(1), others argue that its present formulation in the Convention gives rise to significant uncertainty. On one side of the debate, some scholars contend that good faith under the CISG should be confined to an interpretative function, serving merely as a directive for the interpretation and application of the Convention's provisions rather than as an independent substantive obligation imposed on the parties.⁵⁰ Others, however, maintain that good faith may operate as a general principle underlying the CISG, thereby imposing broader duties of cooperation and fairness in contractual performance and enforcement.⁵¹

The uncertainty surrounding the scope of good faith is further reflected in divergent judicial and arbitral interpretations. Walt, for instance, argues that reliance on good faith in CISG jurisprudence remains relatively rare, suggesting that it plays only a

⁴⁸ Franco Ferrari, 'Specific Topics of the CISG in the Light of Judicial Application and Scholarly Writing' (1995) *The Journal of Law and Commerce* 1

⁴⁹ Bruno Zeller, *CISG and the Unification of International Trade Law* (Routledge-Cavendish 2008)

⁵⁰ Troy Keily, 'Good Faith and the Vienna Convention on Contracts for the International Sale of Goods (CISG)' (2003) 3 *Vindobona Journal of International Commercial Law and Arbitration* 15.

⁵¹ John Felemegas, 'The Concept of Good Faith in the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Principles of European Contract Law (PECL)' (2001) 13 *Pace International Law Review* 399.

modest operational role in international sales law.⁵² Similarly, Tepeš and Markovinović observe that despite decades of application, there is still no consensus on the meaning and function of good faith within the CISG, leading to persistent interpretative ambiguities.⁵³ Komarov, analysing the drafting history of Article 7(1), notes that the inclusion of good faith was a deliberate compromise designed to restrict its application to interpretative functions rather than to create substantive obligations.⁵⁴ As a result, the principle of good faith in the CISG represents both a unifying ideal and a source of legal indeterminacy valued for its symbolic harmonising potential, yet criticised for its vagueness and context-dependent application across jurisdictions.⁵⁵ This is because the CISG, which governs international sales contracts, does not explicitly mention estoppel. However, the principles underlying estoppel can be inferred from several provisions.

The principle of good faith remains one of the most important requirements underlying contractual relationships between parties under the common law and civil law legal systems and has been incorporated into the United Nations Convention on International Sales of Goods (CISG). Article 7(1) of CISG contains an interpretative regulation to the effect that in the interpretation of the CISG, regard has to be given to its international character and to the need to promote a uniform application of the convention as well as the need to observe the principles of good faith in international trade arrangements⁵⁶. While Article 7 emphasizes good faith in international trade, other provisions prevent parties from inconsistent behavior that would prejudice the other party. Article 16(2)(b) of the CISG, for instance, prevents a party from revoking an offer if the offeree has relied on it to their detriment, reflecting the essence of promissory estoppel⁵⁷. Similarly, Article 29(2)

⁵² Steven Walt, 'The Modest Role of Good Faith in Uniform Sales Law' (2010) 11 *Boston University International Law Journal* 89.

⁵³ Mario Tepeš and Hrvoje Markovinović, 'The CISG and the Good Faith Principle' (2018) 36 *Journal of Law and Commerce* 171.

⁵⁴ Alexander S Komarov, 'Internationality, Uniformity and Observance of Good Faith as Criteria in Interpretation of CISG: Some Remarks on Article 7(1)' (2005–06) 25 *Journal of Law and Commerce* 75.

⁵⁵ Camilla Andersen, 'The Uniform International Sales Law and the Global Jurisconsultorium' (2014) 17 *International Trade and Business Law Review* 310.

⁵⁶ United Nations Convention on Contracts for the International Sale of Goods (CISG), art 7(1).

⁵⁷ *ibid*, art 16(2)(b).

deals with the modification of contracts, indicating that a party cannot contradict a prior agreement if the other party has relied on it⁵⁸.

The UNIDROIT Principles of International Commercial Contracts developed by the International Institute for the Unification of Private Law (UNIDROIT), on the other hand, explicitly recognize estoppel. Article 1.8⁵⁹ states, "*A party cannot act inconsistently with an assumption upon which the other party has relied to that party's detriment*". This provision captures the essence of estoppel as understood in common law and civil law systems, reinforcing its applicability in international commercial transactions. The UNIDROIT Principles further elaborate on this in Article 2.1.18, concerning the withdrawal of an offer. It states that an offer cannot be withdrawn if it is reasonable for the offeree to rely on the offer being held open and the offeree has acted in reliance on it. This aligns closely with the notion of promissory estoppel and highlights the importance of protecting reasonable reliance in commercial dealings.⁶⁰

In terms of comparative legal analysis, the UNIDROIT Principles, developed by the International Institute for the Unification of Private Law (UNIDROIT), are a set of rules designed to establish a balanced legal framework for international commercial contracts. According to Bonell⁶¹, the UNIDROIT Principles are not binding but serve as a reference to harmonize and modernize international contract law. This flexibility allows them to complement existing national laws and international conventions, making them a versatile tool in international trade. Vogenauer posits that the Unidroit principles are critical in the application and enforcement of international sales as they serve as a gap-filler in international contracts where national laws or other conventions are silent⁶².

⁵⁸ *ibid*, art 29(2).

⁵⁹ UNIDROIT Principles (n 47)

⁶⁰ *ibid*

⁶¹ Michael Bonell, *An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts* (Transnational Publishers 2002).

⁶² Stefan Vogenauer, *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)* (Oxford University Press 2015).

On the other hand, the CISG, established by the United Nations Commission on International Trade Law (UNCITRAL), is a multilateral treaty that provides a uniform framework for international sale of goods contracts. Unlike the UNIDROIT Principles, the CISG is binding on its member states, thereby offering a more structured approach to international commercial transactions. CISG applies automatically to contracts for the international sale of goods unless expressly excluded by the parties. CISG is a binding legal instrument for its signatories, ensuring uniformity, and predictability and emphasizing the principles of good faith, fair dealing, and reasonableness⁶³.

6.0 THE APPLICATION OF ESTOPPEL IN INTERNATIONAL COMMERCIAL ARBITRATION IN SOME LANDMARK CASES

Estoppel has played a crucial role in several landmark international commercial disputes. However, before examining its application, it is important to distinguish between international commercial arbitration and international investment arbitration, as the original discussion draws upon both contexts. International commercial arbitration generally involves disputes between private parties (or private and state-owned entities) arising from commercial contracts, governed primarily by party autonomy and contractual obligations under private international law.⁶⁴ In contrast, international investment arbitration typically involves a foreign investor and a host State, grounded in public international law and bilateral or multilateral investment treaties (BITs), such as those administered under the International Centre for Settlement of Investment Disputes (ICSID).⁶⁵ While both forms of arbitration utilise estoppel as an equitable doctrine to prevent inconsistency and bad faith, its application in investment arbitration often intersects with concepts such as legitimate expectations and sovereign assurances, whereas in

⁶³Peter Schlechtriem and Ingeborg Schwenzer, *Commentary on the UN Convention on the International Sale of Goods (CISG)* (Oxford University Press 2016).

⁶⁴Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 67–70.

⁶⁵Christoph Schreuer, *The ICSID Convention: A Commentary* (2nd edn, Cambridge University Press 2009) 115–117.

commercial arbitration, estoppel operates primarily as a bar against inconsistent contractual conduct between private parties.⁶⁶

In notable international investment arbitration cases under the auspices of the International Centre for Settlement of Investment Disputes (ICSID), the tribunal invoked estoppel principles to prevent a state from denying obligations that had been relied upon by an investor. For example, in the case of *Maffezini v Kingdom of Spain*⁶⁷, the tribunal held that Spain was estopped from invoking the most-favored-nation (MFN) clause in a manner inconsistent with its prior conduct. In this case, the tribunal addressed the issue of estoppel in relation to jurisdiction. Spain contended that Maffezini was barred from bringing a claim under the Argentina-Spain Bilateral Investment Treaty (BIT) because he had not exhausted local remedies. However, Maffezini argued that Spain was estopped from raising this objection, as its actions and assurances had led him to believe he could directly pursue international arbitration without first resorting to local courts. The tribunal considered these representations and ultimately accepted Maffezini's argument, applying the principle of estoppel to prevent Spain from contradicting its earlier position. The tribunal noted that Spain's earlier assurances to the claimant had induced reliance, and it would be inequitable to allow Spain to retract those assurances. This decision highlighted the cross-jurisdictional applicability of estoppel in protecting legitimate expectations in international investment law.⁶⁸

Again, one of the notable cases that dealt with the principle of estoppel in the context of international commercial arbitration is the ICC's International Court of Arbitration case No. 8324⁶⁹ where the tribunal applied the principle of estoppel to prevent a party from denying the validity of a contract after having benefited from

⁶⁶ Andrea Bjorklund, 'Estoppel and Reliance in International Investment Arbitration' (2014) 31 *ICSID Review – Foreign Investment Law Journal* 363.

⁶⁷ *Maffezini v Kingdom of Spain* (ICSID Case No ARB/97/7).

⁶⁸ Christoph Schreuer, 'Estoppel' in August Reinisch (ed), *Standards of Investment Protection* (Oxford University Press 2008) 426.

⁶⁹ *ICC Arbitration Case No. 8324* (1995).

it. This case concerned a dispute between a European buyer and a North African seller over a contract for the sale of goods. The buyer alleged that the goods delivered by the seller did not meet the contractual specifications. In response, the seller contended that the buyer had accepted the goods without raising any objections at the time of delivery and had even resold them to a third party. Consequently, the seller invoked the principle of estoppel, arguing that the buyer was barred from challenging the quality of the goods after accepting and reselling them without timely protest. The central legal question was whether the buyer, having accepted the goods without immediate objection, was estopped from later asserting a claim of non-conformity. The arbitral tribunal ruled in favour of the seller, concluding that the buyer was indeed estopped from disputing the quality of the goods after accepting them without reservation. The tribunal concluded that estoppel applied because the buyer's conduct of accepting the goods and reselling them indicated acceptance of the conditions of the goods condition and the seller had relied on this conduct to their detriment. Accordingly, the tribunal emphasized that the party's conduct in accepting the benefits of the contract prevented it from subsequently challenging its enforceability.

Another notable case is *Amoco International Finance Corp v Iran*⁷⁰ where the tribunal applied estoppel to bar Iran from denying the validity of certain agreements after Amoco had acted in reliance on Iran's representations. The case involved a dispute between Amoco International Finance Corporation, a U.S. company, and the government of Iran. After the Iranian Revolution, the Iranian government nationalized Amoco's oil-related assets in the country. Amoco sought compensation for the expropriation, arguing that Iran had violated international law. The principle of estoppel was relevant in the context of Iran's argument that Amoco had acted in bad faith or had misrepresented its position. Iran contended that Amoco's actions led to a situation where it should be estopped from claiming damages. However, the tribunal found that Amoco was not estopped and was entitled to compensation for the expropriated assets, emphasizing that Iran's actions

⁷⁰ *Amoco International Finance Corp v Iran* (1987) 15 Iran-US CTR 189.

were inconsistent with its obligations under international law. The tribunal found that Amoco had altered its position based on Iran's conduct, and it would be unjust to allow Iran to benefit from the contradiction.

Additionally, the case of *Amco Asia Corporation and others v. Republic of Indonesia*⁷¹, represents one of the earliest instances of the estoppel theory in international investment arbitration, where the tribunal held that estoppel arises when one party to a dispute makes a representation through words or actions. As a result, that party is barred, or estopped from asserting that the other party's position was correct in law or fact, regardless of whether it actually was. Similarly, in *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company*⁷², the tribunal demonstrated the application of estoppel in international investment arbitration and reaffirmed that estoppel occurs when one party makes a representation in words or deeds and is subsequently barred from claiming that the other party's position was correct in law or fact, regardless of its accuracy. In contrast, international commercial arbitration typically applies estoppel to promote contractual consistency and equitable conduct between private parties. Tribunals under the ICC, LCIA, and UNCITRAL frameworks have consistently relied on estoppel to prevent opportunistic conduct, protect reliance interests, and uphold the sanctity of contractual expectations.⁷³ Thus, while estoppel in investment arbitration serves as a tool for holding sovereign states accountable for their representations or assurances to investors, its role in commercial arbitration remains primarily concerned with enforcing private parties' reliance-based expectations.⁷⁴

The comparative analysis of estoppel across these two arbitration regimes reveals that although both share the equitable foundation of preventing inconsistent conduct, their functions diverge contextually. In investment arbitration, estoppel

⁷¹ *Amco Asia Corporation and others v. Republic of Indonesia (Award)* (1984) 1 ICSID Rep 413, para 40.

⁷² *The Republic of Ecuador v. Chevron Corporation and Texaco Petroleum Company (Interim Award)* (2010) PCA Case No. 2009-23, para 158.

⁷³ Julian Lew, Loukas Mistelis and Stefan Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 561–563.

⁷⁴ Yas Banifatemi, 'The Principle of Estoppel and the Protection of Legitimate Expectations in Investment Treaty Arbitration' in Andrea Bjorklund (ed), *Yearbook on International Investment Law & Policy 2012–2013* (Oxford University Press 2014) 243–244.

reinforces the principles of legitimate expectations and good faith in the conduct of states, whereas in commercial arbitration, it safeguards the stability of contractual relationships and deters bad faith among private parties.

7.0 COMPARATIVE ANALYSIS OF ESTOPPEL IN COMMON LAW AND CIVIL LAW JURISDICTIONS: BRIDGING DIVERGENCES IN INTERNATIONAL COMMERCIAL LAW

Given the analysis of the application court in cross-jurisdictional disputes, it is expedient to evaluate the comparative approaches to recognizing and applying the doctrine of estoppel in common law and civil law jurisdictions. The application of estoppel in international commercial law reflects the convergence of common law and civil law principles. In fostering economic trade and competition policies within the European Union Economic Zone, the European Union legal framework incorporates estoppel principles primarily through its directives and regulations that promote fairness in contractual relationships⁷⁵. For example, the Principles of European Contract Law (PECL) and the Draft Common Frame of Reference (DCFR) both reflect the concept of estoppel reinforcing the importance of consistency and reliance in contractual dealings.⁷⁶

At common law, the doctrine of estoppel is viewed as a doctrine that serves as a "shield" and not a "sword," meaning it can be used defensively to prevent a party from asserting something contrary to what is implied by their previous actions, but not offensively to create a new cause of action. The leading case illustrating this principle is *Combe v Combe*⁷⁷, where the English Court of Appeal held that estoppel cannot be used to enforce a promise in the absence of consideration. The court emphasized that estoppel could only prevent a party from insisting upon their strict legal rights when it would be unjust or inequitable for them to do so, rather than

⁷⁵ Council Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market [2005] OJ L149/22.

⁷⁶ *Draft Common Frame of Reference (DCFR)* (2008) and *Principles of European Contract Law (PECL)* (1999).

⁷⁷ *Combe v Combe* [1951] 2 KB 215.

creating new rights where none previously existed. Lord Denning famously stated, "Estoppel may be used as a shield but not a sword." This principle was reinforced in *Baird Textile Holdings Ltd v Marks & Spencer Plc*⁷⁸, where it was held that estoppel could not be invoked to create a contract where none existed. In support of this position, the Supreme Court of India, in the case of *Motilal Padampat Sugar Mills Co. Ltd. v State of Uttar Pradesh* AIR⁷⁹, expanded the scope of promissory estoppel, emphasizing that the government could not renege on a promise that induced a party to alter its position significantly.

In contrast, the divergence in approach of this common law position can be seen in a landmark Australian case of *Waltons Stores (Interstate) Ltd v Maher*⁸⁰, where the High Court of Australia expanded the scope of promissory estoppel, allowing it to be used as a cause of action. In this case, the Plaintiff led the Defendant to believe that a formal contract for the lease of commercial premises would be executed. The Defendant relied on this belief by beginning construction work. The Plaintiff then withdrew from the agreement before the contract was formally executed. The High Court of Australia held that the Plaintiff was estopped from denying the existence of the contract due to their conduct and the Defendant's reliance on it, ruling in favour of the Defendant for the losses incurred.

While in common law jurisdictions, estoppel primarily operates as a shield rather than a sword to prevent unfairness, in civil law jurisdictions, similar doctrines may be used more flexibly, including as a basis for claims. Civil law jurisdictions, such as Germany, incorporate estoppel-like principles under the doctrine of good faith (*Treu und Glauben*). This doctrine obliges parties to act in good faith and prevents contradictory behaviour, similar to the function of estoppel in common law. The French concept of *abus de droit* also aligns with estoppel by preventing parties from exercising their rights in a manner that contradicts prior representations or actions.

⁷⁸ *Baird Textile Holdings Ltd v Marks & Spencer plc* [2001] EWCA Civ 274.

⁷⁹ *Motilal Padampat Sugar Mills Co. Ltd. v State of Uttar Pradesh* AIR 1979 SC 621

⁸⁰ *Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387.

On comparative analysis of the recognition and application of the doctrine of estoppel in different legal traditions relative to enforcement of the CISG and UNIDROIT Principles in commercial transactions, it is trite to note that while in common law jurisdictions, legal principles are often derived from judicial decisions and precedents, in Civil law jurisdictions, their codified statutes and comprehensive legal codes, may find the CISG's uniform rules more compatible with their legal traditions. Bridge avers that the flexibility of the UNIDROIT Principles may align well with the common law's case-by-case approach, providing supplementary rules that courts can apply when addressing gaps or ambiguities in contracts⁸¹. Conversely, Zeller posits that the structured and binding nature of CISG may sometimes be at odds with the flexibility preferred in common law systems⁸².

However, Felemegas is of the view that although CISG may be binding and structured, the UNIDROIT Principles can still play a complementary role by filling in gaps and offering interpretative guidance, particularly in areas where national codes are silent on the adoption and application of the doctrine of estoppel⁸³. Goode opines that the interplay between the UNIDROIT Principles and the CISG in different legal systems underscores the importance of understanding both instruments' strengths and limitations⁸⁴. For this reason, this comparative analysis of the application of estoppel would provide insights into how these frameworks can be effectively utilized to resolve cross-border commercial disputes, taking into account the nuances of common law and civil law traditions. Such an understanding is essential for parties, the courts, practitioners, and policymakers striving to foster more efficient and predictable international trade relations⁸⁵.

⁸¹ Michael Bridge, *The International Sale of Goods: Law and Practice* (Oxford University Press 2017).

⁸² Bruno Zeller (n 49)

⁸³ John Felemegas, *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law* (Cambridge University Press 2007).

⁸⁴ Roy Goode, Herbert Kronke and Ewan McKendrick, *Transnational Commercial Law: Text, Cases, and Materials* (Oxford University Press 2015).

⁸⁵ Marcel Fontaine and Filip De Ly, *Drafting International Contracts: An Analysis of Contract Clauses* (Martinus Nijhoff Publishers 2009).

The comparative recognition and application of estoppel in different legal systems reveals a convergence towards ensuring fairness and consistency. While the terminology and specific doctrines may differ, the underlying principles of preventing contradictory behavior and protecting reliance interests are universally recognized by the two legal traditions.⁸⁶ This shows that the doctrine of estoppel plays a unifying role in global commercial law and contractual relations by ensuring that parties adhere to their representations and promises, thus fostering trust and predictability in legal and business environments to promote the Trans-Lex Legal Principles. The Trans-Lex Principles aim to bridge the gap between different legal systems, contributing to the harmonization and unification of international commercial law.⁸⁷ Estoppel promotes this principle since it comparatively serves as transnational legal principles or rules that are widely accepted and recognized across different legal systems, particularly in international commercial law. The recognition and application of the doctrine of estoppel in both common law and civil law jurisdictions form part of a broader effort to create a body of law that transcends national boundaries and can be applied uniformly across different jurisdictions in international commercial law.

8.0 IMPLICATIONS OF ESTOPPEL FOR INTERNATIONAL COMMERCE

In international commerce, predictability, trust, and fairness are critical components that enable smooth commercial operations. The doctrine of estoppel plays a vital role in this context by ensuring that parties adhere to their representations and cannot arbitrarily change their positions. This segment of the paper examines the implications of estoppel for enhancing predictability and trust in international commerce, promoting fairness in contractual relations, and addressing the challenges and limitations of its application.

⁸⁶ Konrad Zweigert and Hein Kötz, *The Relative Merits of Common Law and Civil Law Systems* (1987) 37 ICLQ 73.

⁸⁷ Trans-Lex, 'The Trans-Lex Principles' (<https://www.trans-lex.org/principles>) accessed 23 August 2024.

8.1 Enhancing Predictability and Trust

Estoppel contributes significantly to the predictability of commercial transactions by creating a legal obligation for parties to honor their previous representations or conduct. This obligation ensures that one party cannot take advantage of another by changing their stance to the detriment of the other party. For instance, in the context of international trade, a seller who has consistently represented that their goods meet specific standards cannot later deny this if the buyer has relied on that representation in entering the contract. Such consistency is crucial for fostering trust among international trading partners, as it allows parties to engage in commercial transactions with the assurance that their counterparties will not engage in arbitrary or capricious behaviour⁸⁸. According to McKendrick, the importance of predictability in international commerce is underscored by the principle of legal certainty, which is essential for the functioning of global markets⁸⁹. Estoppel thus, ensures that commercial entities can make informed decisions based on the representations of others, thereby reducing the risk of unexpected or unfair outcomes. This predictability, in turn, enhances trust, as parties are more likely to enter into commercial relationships if they can rely on the stability of their counterparties' commitments.

8.2 Promoting Fairness

Beyond predictability, estoppel serves as a tool for promoting fairness in contractual relations. By holding parties accountable for their representations, estoppel prevents unjust enrichment and ensures equitable treatment.⁹⁰ This doctrine is particularly important in international commerce, where parties from different legal and cultural backgrounds may have varying expectations and understandings of

⁸⁸ Michael Bridge (n 81)

⁸⁹ Ewan McKendrick, *Contract Law: Text, Cases, and Materials* (9th edn, OUP 2022).

⁹⁰ John McGhee, *Snell's Equity* (33rd edn, Sweet & Maxwell 2015).

fairness. Estoppel helps bridge these differences by providing a common legal standard that emphasizes the importance of honouring one's word.

In the *Arakaka* case⁹¹, for example, the court held that a party could not rely on a technicality to escape liability after the other party had relied on their representation to their detriment. Such rulings reinforce the principle that fairness in international commerce requires parties to act in good faith and uphold their commitments. The *Arakaka* is a case where a cargo of iron rails was shipped from Antwerp to Bombay under a bill of lading that contained a clause exempting the carrier from liability for damage "occasioned by collision, stranding, or other perils of the sea." The ship, *Arakaka*, ran aground due to negligent navigation, and the cargo was damaged. The cargo owners sued for damages, arguing that the exemption clause did not cover the carrier's negligence. The House of Lords held that the exemption clause was broad enough to cover negligence, and the carrier was not liable for the damage. This case did not primarily focus on the principles of estoppel. Instead, it addressed the scope of an exemption clause in a bill of lading. The decision did touch upon estoppel in the context of the carrier's assertions. However, the principle of estoppel was indirectly relevant as the cargo owners argued that the carrier should be estopped from relying on the exemption clause due to the negligent conduct that led to the damage. The House of Lords ultimately ruled that the carrier could rely on the exemption clause, thereby implicitly rejecting the estoppel argument. This means that by promoting fairness, estoppel contributes to a more balanced and equitable commercial environment, where businesses are less likely to be exploited or unfairly disadvantaged.

9.0 CHALLENGES AND LIMITATIONS OF ESTOPPEL IN INTERNATIONAL COMMERCIAL TRANSACTIONS

Despite its benefits, the application of estoppel in international commerce is not without challenges. One of the primary difficulties lies in the differences in legal

⁹¹ *The Arakaka* [1896] AC 250.

traditions and interpretations across jurisdictions⁹². Civil law and common law systems, for example, may have varying approaches to estoppel, leading to inconsistent outcomes in international disputes. According to Brown, the lack of a uniform standard for applying estoppel in international commerce can therefore create uncertainty, which undermines the very predictability and trust that the doctrine seeks to promote⁹³. Furthermore, the requirement for unequivocal promises or representations can sometimes limit the applicability of estoppel in complex commercial transactions. In situations like this, Mann posits that where the parties' intentions or representations are ambiguous, courts may be reluctant to apply estoppel, leaving one party without recourse⁹⁴. This limitation is particularly problematic in international commerce, where language barriers, cultural differences, and complex contractual arrangements can make it difficult to establish the requisite clarity for estoppel to apply.

The doctrine of estoppel plays a crucial role in enhancing predictability and trust in international commerce by ensuring that parties cannot arbitrarily change their positions. By promoting fairness and preventing unjust enrichment, estoppel contributes to a more equitable commercial environment. However, challenges such as differences in legal traditions and the need for clear representations highlight the limitations of estoppel in international commerce. Addressing these challenges through greater harmonization of legal standards and clearer contractual language could enhance the effectiveness of estoppel as a tool for promoting predictability, trust, and fairness in global trade.

10.0 CONCLUSION

The doctrine of estoppel has evolved into a fundamental principle in global commercial law, acting as a critical tool in fostering predictability and fairness in

⁹² Michael Jones, *Understanding Estoppel: A Comparative Analysis* (Routledge 2019) 101-115.

⁹³ Lee Brown, 'Challenges in Applying Estoppel Across Jurisdictions' (2021) 35 *International Trade Law Review* 150-165.

⁹⁴ Adam Mann, *Estoppel in Commercial Transactions* (OUP 2012) 45-56.

contractual relations. Its application across various jurisdictions whether in common law or civil law systems demonstrates its adaptability and relevance in an increasingly interconnected world. By preventing parties from resiling from their prior representations, estoppel reinforces the integrity of commercial agreements, ensuring that trust and reliance are preserved in international transactions. Furthermore, when viewed through the lens of John Rawls' Theory of Justice, estoppel aligns with the broader goals of access to justice and equity in legal processes. It ensures that no party can unjustly benefit from contradictory positions, thereby upholding the rule of law and promoting fairness in both domestic and international commerce. As global trade continues to expand, the unification of legal principles like estoppel plays an essential role in bridging the gaps between different legal traditions, contributing to the development of a more cohesive and reliable international legal framework. This convergence of legal doctrines not only enhances the predictability of outcomes in cross-border disputes but also strengthens the trust necessary for the smooth functioning of global markets. As such, the role of estoppel in global commercial law is indispensable. Its continued evolution and harmonization across jurisdictions are vital in ensuring that legal systems remain responsive to the complexities of modern commerce while upholding the core values of justice and fairness that underpin the rule of law in commercial transactions.