



# Good Faith or Abuse of Procedural Law

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## Abstract

Good faith (*bona fide*) is a legal concept, established by the roman lawyer Marcus Tullius Cicero through two fundamental elements: sincerity in words and fidelity in commitments. Thus, good faith will take place when a double condition is respected: conformity between what is thought and what is said, and conformity between what is said and what a person commits to; both conditions need to be regarded via the manner of acting for the attainment of a goal based on a rightful and honest intention, which dictates the strict respect for legal and moral duties. Undoubtedly, the duty of good faith is a central institution of company law, part of the triad of fiduciary duties of the common law system, as well as of the civil law system of French origin. This institution has been ascertained at the beginning of the twentieth century through the formulation of the Business judgment rule, initially in Delaware, USA, and afterwards in most of the European states, the continental perception of the obligation of good faith derives mostly from its conceptualization as a principle of the law of obligations or from the specifics of the agency contract, whereas the common law system regards good faith as a fiduciary duty, fundamental in company law.

**Keywords:** rules, good faith, procedural law, cases, bad faith