

## Gratuitous Promise

Douglas Wilhelm Harder

When a party makes a promise to another, either within or outside the context of a contract, where that promise places an obligation on the party but where that party does not receive anything in return (no consideration), then the promise is said to be *gratuitous*. From the Oxford English Dictionary ([www.oed.com](http://www.oed.com)), that which is gratuitous is

[f]reely bestowed or obtained; granted without claim or merit; provided without payment or return; costing nothing to the recipient; free.

As a gratuitous promise has no consideration, it will in most cases not result in any obligations on the party making the promise.

### Example

For example, a used-car salesman may promise to throw in an AM-FM radio in order to get a customer who has just purchased a car but then had buyer's remorse. As the salesman does not get anything for the radio, it is a gratuitous promise which need not be delivered.

One major case where the granter of a gratuitous promise is required to follow through on that promise is in the scope of a contract where another party breaks a term in the contract based on the promise. We will look at a number of examples in the topic on *equitable estoppel* where the courts have required one party of a contract to follow through with the terms of a gratuitous promise.

This is only fair: if one party breaches a term in a contract based on the promise of another party, it would be inequitable to allow the promising party to enrich themselves as a consequence. Hence, the courts will *estop* the promising party from enforcing the strict terms of the contract.

An interesting variation on this, however, is whether habitual passive acceptance of a breach of a term in a contract constitutes a gratuitous promise to accept future breaches of the same term. As described in the document on equitable estoppel, in the case of *John Burrows Ltd. v. Subsurface Surveys Ltd. et al.*, 1968, the Supreme Court of Canada ruled that the passive acceptance of a breach does not imply that the party will accept such breaches in the future, for there is no evidence that the injured party is explicitly considering the consequences of allowing such breaches to occur.

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## References

Donald L. Marston, B.Sc., P.Eng., LL.B., *Law for Professional Engineers: Canadian and Global Insights*, 4<sup>th</sup> Ed., McGraw-Hill Ryerson, Toronto, 2008.