CC

Art. 3 CC: Presumption of good faith and the diligence limit

Function and structure of the provision

Art. 3 CC has two parts. Paragraph 1 presumes good faith wherever the law makes a legal effect conditional on a person's good faith. Paragraph 2 bars anyone who failed to exercise the diligence required by the circumstances from invoking good faith **Art. 3 CC**. The French text ties the presumption to cases where the law makes "la naissance ou les effets d'un droit" depend on good faith **Art. 3 CC**.

Paragraph 1 is a rule of proof. Paragraph 2 is a normative limit: actual good faith does not count if it could not have survived the attention that could be demanded. On that point the Federal Supreme Court holds that failure to apply the attention required by the circumstances "zieht dies die gleichen Rechtsfolgen nach sich wie die Bösgläubigkeit" (entails the same legal consequences as bad faith) **BGE 122 III 1**. It has repeated this more recently in French **1B_573/2021**.

The wording of Art. 3 is the same in the current consolidated version **ZGB (2026-07-01)** as in earlier consolidated versions. No question of temporal law arises.

Scope: a specific statutory trigger is required

Art. 3 does not create protection of good faith

Art. 3 does not itself protect good faith. It governs only how good faith is established where another rule makes it relevant. According to the Federal Supreme Court, good faith can produce legal effects only where the law specially provides for it. The Court added: "Art. 3 ZGB stellt nicht etwa einen allgemeinen Grundsatz des Inhalts auf, dass guter Glaube immer und überall vor dem Eintritt von Rechtsnachteilen schütze." (Art. 3 CC does not lay down a general principle that good faith always and everywhere protects against legal disadvantage.) **BGE 96 II 161**. In that case a third party relied on an outdated entry in the register of retention of title. The reliance failed: Swiss law gives public registers no general public faith, and Art. 9 CC governs only their evidentiary force **BGE 96 II 161**.

Typical triggers in property law are:

- acquisition of entrusted chattels **Art. 933 CC**;
- the bona fide purchaser of stolen or lost chattels **Art. 934 CC**;
- the claim for return against a person who did not acquire in good faith **Art. 936 CC**;
- the liability of the possessor in good faith and in bad faith **Art. 938 CC Art. 940 CC**;
- the pledgee in good faith **Art. 884 CC**;
- reliance on the land register **Art. 973 CC**;
- ordinary adverse possession **Art. 661 CC**;
- building with another person's materials or on another person's land **Art. 672 CC Art. 673 CC**.

The law of obligations supplies further triggers:

- Assignment. A debtor who pays the former creditor in good faith before notice of the assignment is discharged **Art. 167 OR**. The Federal Supreme Court applies the presumption of Art. 3 para. 1 to that debtor and treats novation, remission and set-off like payment **BGE 131 III 586**.
- Apparent authority. Art. 33 para. 3 CO does not mention good faith **Art. 33 OR**. Case law nevertheless requires that the third party "a cru de bonne foi à l'existence des pouvoirs" (believed in good faith that the powers existed) and applies both paragraphs of Art. 3 to that belief **4A_562/2019**.

Family law shows the dependence on a trigger in reverse. Under the former law on putative marriage, the spouse's good faith was presumed under Art. 3 para. 1, and knowledge of the ground of invalidity excluded it **BGE 53 I 40**. Art. 109 para. 1 CC now gives an invalid marriage the effects of a valid marriage until judgment, except for inheritance claims, without any good-faith condition **Art. 109 CC**. With no trigger, Art. 3 has no role there.

Good faith counts only for the rule that refers to it

Good faith is assessed separately for each norm that makes it relevant. In BGE 121 III 176, the third party's lack of diligence under Art. 3 para. 2 prevented it from relying on the company being contractually bound by its organ's act. The Court nevertheless held that "la bonne foi du lésé n'est pas une condition de la responsabilité délictuelle de la personne morale" (the injured party's good faith is not a condition of the legal person's tort liability). The third party's negligence counted instead as contributory fault, and collusion with the organ would break adequate causation **BGE 121 III 176**.

Distinction from Art. 2 CC

Art. 2 CC sets an objective standard of conduct for exercising rights and performing obligations, and it denies protection to manifest abuse of a right **Art. 2 CC**. Art. 3 concerns a subjective state of mind to which a specific rule attaches consequences. The Federal Supreme Court has drawn this line expressly: where the dispute turns on how the parties' conduct is objectively interpreted, the issue "ne relève pas de la bonne foi de E., ni au sens de l'art. 3 al. 1 CC, ni au sens du droit à la protection de la bonne foi de l'art. 3 al. 2 CC" (does not concern E.'s good faith, either under Art. 3 para. 1 CC or under the right to protection of good faith in Art. 3 para. 2 CC) **4A_488/2022**.

Trigger-specific thresholds and other fields of law

A trigger rule may set its own standard of fault, which then displaces the general test of Art. 3 para. 2:

- Encroaching building (Art. 674 para. 3 CC). The builder is in good faith if he or she "mindestens ohne grobe Fahrlässigkeit annahm, der Nachbar sei mit dem Überbau bzw. der Nichteinhaltung des vorgeschriebenen Abstandes einverstanden" (at least without gross negligence assumed the neighbour consented to the encroachment or to the shortfall in the required distance). The Court declined to demand a higher duty of care **BGE 103 II 326**. The decision does not discuss Art. 3, so its gross-negligence threshold should be read as specific to Art. 674 para. 3.
- Waiver of repayment in social insurance. Mere ignorance of the defect is not enough; the recipient must also not be guilty of "groben Nachlässigkeit" (gross negligence) **BGE 102 V 245**.

Current case law allows reliance on good faith "wenn ihr fehlerhaftes Verhalten nur leicht fahrlässig war" (if the faulty conduct was only slightly negligent) **9C_318/2021**. The civil standard is stricter: there, "leicht fahrlässiges Nichtwissen genügt" (ignorance due to slight negligence suffices) to lose protection **4A_127/2024**. In the inquisitorial social-insurance procedure, the authority must show why good faith is lacking. Requiring the insured person to explain why good faith should be recognised reverses the burden of proof **CDP.2023.66**.

- Confiscation from third parties (Art. 70 para. 2 SCC). The concept is autonomous: "Nach der Rechtsprechung entspricht die strafrechtliche Gutgläubigkeit nicht dem in Art. 3 ZGB verankerten zivilrechtlichen Begriff." (Under the case law, good faith in criminal law does not correspond to the civil-law concept anchored in Art. 3 CC.) A breach of a duty of care or information does not suffice; what excludes good faith is knowledge equivalent to dolus eventualis, or at least serious indications of criminal origin **6B_969/2020**. The third party's good faith depends on what it knew, not on what it should have known under the regulatory directives applicable to it **1B_222/2015**. A cantonal court accordingly refused to transfer a civil Art. 933 CC decision to Art. 70 para. 2 SCC **BK 2017 464**. A Ticino chamber, ruling earlier under the former Art. 59 SCC, did import the Art. 3 para. 2 standard **60.2005.90**. That approach cannot be reconciled with the later federal line.
- Allocation of seized objects (Art. 267 para. 5 CrimPC). Here the criminal authority must follow civil law. It may therefore examine good faith under Arts. 714 para. 2 and 933 CC prima facie, including the heightened diligence of Art. 3 para. 2 **1B_573/2021**.
- Public law by analogy. In facilitated naturalisation, the Federal Supreme Court presumed the applicant's good faith "art. 3 al. 1 CC par analogie" (by analogy to Art. 3 para. 1 CC) **1C_454/2017**.
- Register publicity in debt enforcement. Publicity can exclude good faith without recourse to Art. 3 para. 2. An annotated restriction on disposal "esclude nei loro confronti la buona fede del terzo" (excludes, as against the enforcing creditors, the good faith of the third party) who later acquires rights in rem in the land **BGE 130 III 669**.

Content of good faith and the relevant time

Unawareness of the legal defect

In the sense of Art. 3, good faith means not being aware of a legal defect **BGE 122 III 1**. French-language decisions define it as "l'ignorance non fautive du vice" (blameless ignorance of the defect). An acquirer who knows that the transferor lacks capacity of discernment is therefore not in good faith, since the disposition has no legal effect **5C.122/2006**.

What the good faith must relate to depends on the trigger provision:

- Art. 933 CC: the only question is whether the acquirer could assume that the transferor was authorised to transfer possession for the purpose of passing ownership **400 21 221**.
- Art. 674 para. 3 CC: good faith also covers a belief in the neighbour's consent, which may be inferred from the neighbour's conduct **BGE 103 II 326**.
- Art. 661 CC: the court asks about good faith in the relationship that the defect concerns. A representative who bought his principal's land for himself through an intermediary was judged by his relationship with the principal, not with the intermediary. On those facts even subjective good faith was excluded **BGE 82 II 388**.

Moment of acquisition or continuing good faith

Where the trigger concerns an act of acquisition, good faith must exist when the thing is acquired **BGE 122 III 1**. For a pledge, the relevant moment is when the pledge was created. Only circumstances known or recognisable at that time count, and no inference may be drawn from later facts **5C.245/2002**. For acquisitions through the land register, good faith must exist "Im Zeitpunkt der Einschreibung im Tagebuch" (at the time of entry in the daybook) **5C.232/2003**.

Other triggers protect a continuing position, and there good faith must last throughout:

- Ordinary adverse possession (Art. 661 CC). Good faith must exist "non seulement lors de l'inscription, mais aussi pendant toute la durée du délai de prescription (mala fides superveniens nocet)" (not only at registration but throughout the prescription period) **5C.122/2006**.
- Possessor liability (Arts. 938 and 940 CC). If good faith turns into bad faith during possession, Art. 940 CC applies from that moment to fruits collected or neglected **4A_127/2024**. In that case the possessor lost protection at the latest when the competent authority informed her that the land sale was invalid. This was so "selbst dann, wenn die Beschwerdeführerin danach effektiv noch gutgläubig war" (even if the appellant actually remained in good faith afterwards) **4A_127/2024**.
- Clarifying one's position. A possessor who, after a final judgment on ownership, failed to inform himself of the consequences could not rely on the owners' passivity. He had no claim to the rents he collected **5C.215/2003**.

Attribution of knowledge to principals and legal persons

When a representative or organ acts, Art. 3 does not itself say whose knowledge counts. The answer comes from the law of representation and of organs:

- Legal representatives. In public law, the Federal Supreme Court applied Arts. 32 ff. CO to legal representation: the representative binds the represented person "par ce qu'il sait ou doit savoir" (by what he or she knows or ought to know). A mother's knowledge was attributed to her child for the period in which the child lacked capacity of discernment. For the later period, the child's own good faith was presumed **1C_454/2017**.
- Organs of companies. The knowledge and constructive knowledge of an organ are directly those of the company **4A_488/2022**.
- Organ with a conflict of interest. Where an organ acts for his own benefit, the third party may have to recognise the conflict. On that basis a cantonal court denied a bank good faith when it took a pledge from a foundation's organ (facts below under "Banks and pledgees of chattels") **10.2001.17**.

The diligence test of Art. 3 para. 2

An objective, circumstance-dependent standard

The degree of attention required is measured objectively, by "einem Durchschnittsmass an Aufmerksamkeit, welches der Redliche unter den gegebenen Umständen anzuwenden pflegt" (the average degree of attention an honest person usually applies in the given circumstances) **BGE 113 II 397**. It depends on the circumstances **5A_962/2017**. In business dealings the requirements rise with the third party's experience, and "les offres extraordinairement avantageuses requièrent une prudence accrue" (extraordinarily advantageous offers call for greater caution) **BGE 119 II 23**.

The threshold is low. Under the civil-law case law, any breach of the required attention forfeits protection, and slight doubts are enough **4A_127/2024**. Where a representative abuses his or her powers, "des doutes d'une intensité relativement faible suffisent déjà" (doubts of relatively low intensity already suffice). Relying on the commercial register or on the outward scope of the powers does not help a third party who ignores objective signs of abuse **BGE 119 II 23**.

No general duty to inquire

The starting point is settled case law. The acquirer has no general duty to inquire into the transferor's power of disposal. Further clarification is required only where concrete grounds for suspicion exist **BGE 139 III 305 5A_962/2017**. The same holds for the possessor **5C.215/2003**.

Several factors can give rise to concrete suspicion:

- Price. An unusually low price can create suspicion. A Geneva court held that the gap between certified gem values and a "prix d'ami" (friend's price) alone required the buyer to doubt the seller's power of disposal **ACJC/591/2022**.
- Missing items with a car. Missing vehicle papers, spare key and service booklet together constituted sufficient concrete grounds for suspicion **5A_962/2017**.
- A rumour. A rumour about the theft of a painting, passed on by an art expert, triggered a duty to consult experts **BGE 139 III 305**.

Once the acquirer has asked, a plausible answer can be enough. An acquirer who receives a plausible answer may be satisfied with it and need not demand proof that it is correct **BGE 100 II 8**. Where there is nothing to arouse suspicion, the acquirer is protected. A cantonal court upheld acquisition under Art. 933 CC by a buyer of two Porsches. The buyer had been present when the papers and keys were handed over, and there was "weder ein abstrakter noch ein konkreter Verdacht eines Rechtsmangels" (neither an abstract nor a concrete suspicion of a legal defect) **400 21 221**.

Heightened diligence in exposed trades

In trades particularly exposed to goods of doubtful origin, such as the trade in second-hand goods of every kind, the general rule applies only to a limited extent. The Federal Supreme Court abandoned contrary earlier practice **BGE 113 II 397**. In these trades a duty to clarify arises "nicht erst bei konkretem Verdacht des Rechtsmangels, sondern bereits, wenn aufgrund der Umstände Anlass zu Misstrauen besteht" (not only on concrete suspicion of a legal defect, but already when the circumstances give reason for mistrust). This applies to the antiques trade **BGE 122 III 1** and particularly to dealers in luxury used cars **5A_962/2017**.

What decides is the acquirer's familiarity with the trade, not merchant status **BGE 139 III 305**.

The applications turn on how unusual the offer was:

- Diligence breached. A second-hand dealer bought seven luxury watches for CHF 4,000 from a 23-year-old seller, and some invoices bore another person's name. The dealer breached the heightened duty. Asking for boxes and certificates was not a check of the seller's power of disposal **6B_666/2019**.
- Diligence breached. A car dealer who paid a particularly low price should have suspected the cars' criminal origin **1B_573/2021**. A Vaud chamber reached the same view for two prestige Ferraris bought at low prices after quick negotiations, with cash payment and no receipt **CREP pe19-023965-853/2020**.
- No breach. A luxury-watch professional who bought at specialised trade fairs, within a trusted professional circuit, at a price reasonable given the missing certificates and boxes, did not breach Art. 3 para. 2 CC. The court found "pas, ici, de caractère insolite des offres" (no unusual character of the offers here) **ACPR/368/2023**.

Causation between lack of diligence and ignorance

A lack of attention matters only if it caused the ignorance of the defect **BGE 122 III 1 BGE 139 III 305**. The older formulation inferred lack of good faith from omitted inquiries only if those inquiries "dazu geführt hätten, dass das mangelnde Verfügungsrecht des Veräusserers entdeckt worden wäre" (would have led to discovery of the transferor's lack of power of disposal). On that basis a bank that bought coins was protected, because a query to the police would have revealed nothing: no one had reported the coins missing **BGE 100 II 8**.

More recent decisions have refined the test. The omitted measure "objektiv geeignet sein muss, den Mangel in der Verfügungsbefugnis zu entdecken" (must be objectively suitable to discover the defect in the power of disposal), and "Auf das hypothetische Ergebnis solcher Nachforschungen kommt es hingegen nicht an" (the hypothetical result of such inquiries, by contrast, does not matter) **5A_962/2017**. In the Malevich case it was enough that consulting experts would have been a suitable and reasonable measure **BGE 139 III 305**.

The two formulations shift the inquiry. One asks what the inquiry would actually have produced. The other asks only whether the inquiry was objectively suitable. BGE 100 II 8 can be read consistently with the newer test, because an inquiry to the police about coins nobody had reported missing was objectively unsuitable. For current practice, the suitability formulation of BGE 139 III 305 and 5A_962/2017 controls.

Particular settings

Land register and charges on land

Reliance on the land register under Art. 973 CC is also subject to Art. 3 para. 2. Even an acquirer who is in good faith must inquire further if special circumstances raise doubts about the accuracy of an entry. Natural publicity can destroy good faith: the acquirer must accept a legal situation that clearly shows on the land itself. It is enough that the acquirer could and should have perceived it **BGE 137 III 153**. In that case the buyer had inspected the property and walked through the tunnel serving as the right of way. He therefore could not rely on the vague register entry "Wegrecht" (right of way) **BGE 137 III 153**.

Doubts about the register can also require the acquirer to consult the supporting documents. In 5A_212/2023, the electronic register was unclear and the visible buildings contradicted a registered height restriction. The acquirer had to check the constitutive deed and the plan, which were available on request at the registry. Having failed to do so, she could not invoke good faith **5A_212/2023**.

In other cases the acquirer was protected:

- No need to look behind the register. The register is presumed complete. Where only a deeper investigation of supporting documents and plans would have revealed an omitted servitude, that investigation could not be demanded. The seller's contractual assurance also counted in the buyer's favour **BGE 109 II 102**.
- Inquiry only on doubt. An acquirer must inquire only about facts that, with average intelligence and attention, raise doubts about the entry **5C.232/2003**.

For charges that prejudice contractors (Art. 841 CC), the acquirer of a mortgage note is in bad faith if he or she knows "o dovrebbe sapere" (or ought to know) of the prejudice. The Federal Supreme Court rejected the view that only positive knowledge matters and relied on the general rule in Art. 3 para. 2 **BGE 109 II 13**. Cantonal courts judge banks strictly in this setting, but the outcome depends on the facts:

- Construction credit. A bank granting construction credit must at least have the building plans and cost estimates **11.2021.156**.
- Purchase-price financing. A bank financing only the purchase price need inquire only where there are concrete indications of a building project **RBOG 1995 Nr. 04**.

Banks and pledgees of chattels

For a bank taking a pledge under Art. 884 para. 2 CC, good faith is presumed. The degree of diligence required is high and is shaped by the duty of care specific to banking. Even so, a bank "n'est en principe pas tenue d'effectuer des recherches sur la provenance des biens de valeur qui lui sont remis en gage" (is in principle not obliged to research the provenance of valuables pledged to it) unless concrete circumstances raise doubt **BGE 131 III 418**. The older case law to the same effect held that a bank doing an ordinary, low-risk transaction need not investigate the customer's trustworthiness. It recognised as grounds for suspicion past incidents with the same customer, or

suspicious features of the transaction itself **BGE 100 II 8**.

Anomalies change the picture. Where a foundation's organ pledged foundation assets to secure his own company's debts with the bank, and repeated unusual withdrawals followed, the bank could not rely on formal checks. It had to demand full explanations and obtain the beneficiaries' consent, so the pledge was invalid **10.2001.17**.

The relevance of financial-market and anti-money-laundering rules to a bank's diligence has been discussed in the criminal setting. A Ticino chamber assessed a bank's diligence in light of financial regulation and the banks' due diligence agreement **60.2005.90**. For Art. 70 SCC, the Federal Supreme Court has since held that such regulatory duties are irrelevant to criminal good faith (see "Trigger-specific thresholds and other fields of law") **1B_222/2015**. For civil pledges, BGE 131 III 418 refers only to the bank-specific duty of care **BGE 131 III 418**.

Burden of proof and procedure

Allocation of the burden

The presumption means that "nicht der gute, sondern der böse Glaube zu beweisen ist" (it is bad faith, not good faith, that must be proved). The opposing party has two routes. It can rebut the presumption by proving that the other party knew of the defect. Or it can accept the presumption but show, under Art. 3 para. 2, that the other party could not rely on good faith given the attention required **HG.2013.56**. The Federal Supreme Court uses the same two routes for pledges **5C.245/2002**, ordinary adverse possession **5C.122/2006** and apparent authority. In the last case, the principal must prove the third party's bad faith, or that its good faith was incompatible with the required attention **4A_562/2019**. In an action for return under Art. 936 CC, the burden lies, in accordance with Art. 8 CC, with the person reclaiming the thing **BGE 139 III 305**.

The presumption does not relieve the party invoking good faith of proving the other elements of its claim. A pledgee must first prove its pledge right, including the pledgor's power of disposal. Good-faith acquisition under Art. 884 para. 2 CC comes into play only if that power is lacking **5C.245/2002**. A party who fails to discharge its burden loses: in the St. Gallen case, the claimant could prove neither bad faith nor a lack of diligence, so the presumption prevailed **HG.2013.56**.

Fact and law on appeal

The Federal Supreme Court separates two questions:

- Fact. Whether the person was aware of the defect is a question of fact. Under Art. 105 para. 1 BGG the Court is bound by the cantonal finding unless it is arbitrary **4A_178/2013**.
- Law. The degree of attention required, and whether it was met, is a question of law that the Court reviews freely **BGE 131 III 418 4A_178/2013**.

In the Malevich case, the Court reviewed only for arbitrariness what the expert said and what the buyer actually understood. It treated as a question of law how he could and should have understood those statements **BGE 139 III 305**.

The question of law contains a discretionary element. The measure of attention is "largement une question d'appréciation" (largely a matter of judgment) under Art. 4 CC **5C.245/2002**. Whether the circumstances required further inquiry is decided on all the facts of the case "selon l'appréciation du tribunal (art. 4 CC" (according to the court's judgment under Art. 4 CC) **5A_212/2023**. The same split applies in social insurance. There, if awareness of the wrong is not established, the diligence question is not reached **8C_651/2019**.

Practical consequences

- Identify the trigger first. Without a rule that attaches a legal effect to good faith, Art. 3 does nothing **BGE 96 II 161**. Check whether the trigger sets its own threshold, such as Art. 674 para. 3 CC or the social-insurance waiver **BGE 103 II 326 9C_318/2021**.
- Fix the decisive moment. For acquisitions, document the circumstances known at the time of acquisition **5C.245/2002**. For possession and adverse possession, supervening knowledge, including notice from a competent authority, ends protection **4A_127/2024**.
- For acquirers in exposed trades, missing papers, keys and accessories, a low price, cash payments and haste are recurring red flags. Asking for certificates does not replace checking the seller's power of disposal **5A_962/2017 6B_666/2019**.
- For land acquirers, an inspection of the site and the supporting documents is required where the register and the visible condition do not match **5A_212/2023**.
- For the party contesting good faith, proving the facts behind the required diligence is usually easier than proving actual knowledge. Because diligence is a question of law, the argument can be renewed before the Federal Supreme Court on the facts found below **4A_178/2013**. The court's discretion under Art. 4 CC still applies there (see "Fact and law on appeal").