

GETTING THE CONTRACT RIGHT
2009 HFMA SPRING CONFERENCE
Thursday, April 30, 2009

1. Definition of Ambiguous
 - a. If the contract is capable of more than one reasonable interpretation, it is ambiguous.
2. Basic Principles
 - a. The mutual intention of the parties at the time the contract is formed governs interpretation.
 - b. Such intent is to be inferred, if possible, solely from the written provisions of the contract.
3. Clear Words Control
 - a. The clear and explicit meaning of the written provisions, interpreted in their ordinary and popular sense, controls judicial interpretation.
 - b. Thus, if the meaning a layperson would ascribe to contract language is not ambiguous, the court will apply that meaning.
4. Words May Be Given A Special Meaning
 - a. The ordinary and popular sense of the language does not control if the evidence shows that the parties intended.
 - i. To use the language in a technical sense, or
 - ii. To give the language a special meaning through usage
5. Circumstances/Reasonableness/Entire Contract
 - a. "A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." (Civil Code § 1647)
 - b. "A contract must receive such an interpretation as will make it . . . reasonable." (Civil Code § 1643)
 - c. "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civil Code § 1641)

6. The Practical Construction of the Parties
 - a. The practical interpretation that both parties give to their contract before any dispute arises is the best evidence of their mutual intent at the time the contract was originally made.

7. Whose Meaning Controls
 - a. If ambiguity remains, it is resolved by interpreting the ambiguous provision in the sense the promisor believed the promisee understood them at the time of formation.

 - b. Historical Example From Early Days of Managed Care Contracting
 - i. "Temures promised the garrison of Sebastia that if they would surrender, no blood should be shed. The garrison surrendered, and Temures buried them all alive."

8. If All Else Fails
 - a. If ambiguity remains, it is resolved against the party who caused the uncertainty to exist.

9. Implied Covenant of Good Faith & Fair Dealing
 - a. There is implied in every contract a covenant by each party not to do anything which will deprive the other parties thereto of the benefits of the contract.

 - b. This covenant imposes upon each contracting party the duty to refrain from doing anything which would render performance of the contract impossible by any act of that party.

 - c. This covenant imposes upon each contracting party the duty to do everything that the contract presupposes that each party will do to accomplish the contract's purpose.