

INTERPRETATION OF CONTRACTS

- Goal: To Effectuate the Intent of the Parties
 - Determining what the actual bargain was
 - The court will not rewrite the contract

- Objective Language of the Contract – First Level of Analysis
 - Clear and unambiguous language always enforced as written
 - No explanations or clarifications permitted

- Parol Evidence – Second Level of Analysis
 - Parol evidence is explanation of facts, communications or circumstances to help explain what the agreement was
 - Parol evidence only considered when the contract is silent, ambiguous or unclear

- Express and Implied Terms
 - Express terms are spelled out either in writing or orally
 - Implied terms are part of the agreement but not discussed or communicated
 - Some common implied terms:
 - * neither party will hinder the other from performing the contract
 - * construction will be performed in a good and workmanlike manner
 - * an architect will perform his duties in accordance with the appropriate standard of care

Resolving Contradictions and Inconsistencies in a Contract

- First Step: Determine Whether There is an Actual Contradiction or Inconsistency
 - Are the words contradictory?
 - Is there an interpretation that would allow the terms to be read consistently?

- Rules Stated in the Contract for Resolving Inconsistencies
 - One document may supersede another, such as specifications superseding drawings
 - Requiring the lengthier or more expensive procedure to apply
 - Identifying who has the duty of inquiring about the inconsistency

- Judicial Rules of Contract Construction
 - Following the specific rather than the general provision
 - Construing the contract against the party who drafted it
 - Construing the contract as a whole, favoring the provision more consistent with overall contract intent

Modification of Contracts

- Modification by Agreement of the Parties
 - The parties who sign a contract can always modify it
 - Even a contract that forbids modification can be modified
 - There can even be oral modification of written contracts

- Actions for “Reformation” of Contracts
 - When the written terms of the contract do not accurately reflect the actual agreement reached
 - Requires a lawsuit: the only time that a court may rewrite the contract
 - The party seeking reformation must have a good reason
 - * Mutual mistake of fact
 - * Fraud
 - * Unilateral mistake of fact, coupled with the other party’s awareness of the mistake

Remedies for Breach of Contract

- Purpose of Contract Remedies
 - To put the innocent party in the position he would have been in had the contract been fully performed
 - Purpose is not to punish the contract breaker
- Money Damages for Breach of Contract
 - Expectation damages (making innocent party whole as if contract performed)
 - Reliance damages (receiving one's money back)
 - Restitution damages (receiving the contract breacher's windfall)
- Equitable Remedies for Breach of Contract
 - Injunction (court order requiring or forbidding an action)
 - Specific performance (court order requiring performance of the contract)
 - Rescission (undoing the contract and returning both parties to the pre-contract status quo)
- Other Types of Damages for Breach of Contract
 - Consequential damages (causally remote indirect damages, recoverable only if reasonably foreseeable when the contract was formed)
 - Liquidated damages (usually per-day delay costs stipulated in the contract, where the parties anticipated that actual losses would be difficult to calculate – not a penalty)
 - Punitive damages (not awarded for breach of contract)
 - Legal fees (awardable only if the contract says so)
- Innocent Party's Duty to Mitigate Damages (must act "reasonably")