



Construction of Contracts: A solicitor's perspective

8 June 2011

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What can be taken into account?

- Surrounding circumstances/objective background facts
- Subjective intention?
- Negotiations?
- Post – contract conduct?
- Considerations of business common sense do not permit court to disregard clear words
- Other remedies: eg, rectification

Objective Facts

- Facts - assist in determining meaning
- Loss of relevant employees (keep names and contact details, keep all documents)
- Keep all records while contract on foot
- Sale of business
 - ⇒ obtain all records surrounding entry into contract

Negotiations

- Not generally admissible
- Codelfa per Mason J
 - ⇒ refusal to include a provision
 - ⇒ deletion of provision
- Keep:
 - ⇒ drafts
 - ⇒ emails
 - ⇒ file notes

Post contractual conduct

- Generally not admissible
- Unless goes to objective fact
 - ⇒ eg admission of fact that is relevant to factual matrix
- Keep
 - ⇒ emails
 - ⇒ notices under contract

Questions





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