



Interpreting Contracts – the ambiguity about ambiguity.

Justice Marcia Neave

Admissibility of evidence of surrounding circumstances

- Parole evidence rule.
- Note convergence of principles of interpretation
 - contracts;
 - wills;
 - legislation.

Lion Nathan Australia Pty Ltd v Coopers Brewery Pty Ltd (2006) 156 FCR 1, [15]

Intention of the parties

- What would reasonable parties have intended;
- Surrounding circumstances not admissible as evidence of subjective intention.

Toll (FGT) v Alphapharm Pty Ltd (2004) 219 CLR 165

What is an ambiguity?

- Historical view-Apparent on face of contract only e.g. pay to X. X defined differently in two clauses; OR
- Modern view-apparent in light of surrounding circumstances.

Lion Nathan Australia Pty Ltd v Coopers Brewery Pty Ltd (2006) 156 FCR 1 [45]-[53]

ICS Ltd v West Bromwich Building Society [1998] 1 WLR 896, 912-3

The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean.

Approved

Pacific Carriers Ltd v BNP Paribas (2004) 218
CLR 451, 462 n 27

Royal Botanic Gardens v South Sydney (2002)
240 CLR 45, [10]

Maggbury Pty Ltd v Hafele Australia Pty Ltd (2001)
CLR 181 [11]

IATA v Ansett Australia Holdings Ltd (2008) 234
CLR 151, [53]

Summary

- Read words in their internal context;
- What would words mean to a reasonable person having the relevant background knowledge;
- Take account of matrix of fact other than declarations of subjective intent;
- Commercially sensible construction;
- Interpret to avoid failure for uncertainty.

Ambiguity – a category of illusory reference?