Thesis

Change in the Principles of Interpretation of Contracts

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Abstract

The paper is an in-depth analysis of various changes that have affected the established principles of contract since the time of *Investors Compensation Scheme v West Bromwich Building Society,* through a review of the existing literature. The first change was on the second principle of contract, which stated that in contract cases with clear and unambiguous words, the face value of the language used in the agreement was the real meaning of the words in the contract. Another change was on the third principle in which the jury abolished the law that excluded the use of pre-contractual bargains to assist in establishing the meaning of a contract during a court hearing. The fourth principle of the agreement was also changed, and the jury accepted the use of valid evidence that confirmed both parties agreed on a particular meaning to a word that had more than one purpose for establishing estoppel and not special meaning. Finally, in the fifth principle, Hoffmann included statements concerning the requirements for the rectification of the contract. Conclusively, language has always been flexible in its meaning depending on the interpreter and the condition surrounding two contracting parties. Furthermore, people are still afraid of losing their contract negotiation due to syntactical errors. Hence, there will always be changes to the principle of contract, but for the moment, we hope that the policies are sufficient.

Introduction

There have been several advancements in how courts interpret investment contracts in case of a dispute among participating parties. For instance, the House of Lords credited Lord Hoffman for giving several verdicts and speeches on Investors Compensation Scheme v West Bromwich Building Society.[1] The decisions that Hoffmann issued on the above case formed the foundation for all cases concerning contacts between parties. In his speech, he defended the principles from being viewed as revolutionary statements. Instead, he said that they act as guiding principles similar to that made during Prenn v Simmonds.[2]

Hoffman stated in his speech that the changes in the contract law sought to include a method used by judges to interpret contract documents using language that is understandable to any ordinary person. Moreover, the law based on five sound judgment principles. Firstly, the meaning of words in the contract document meant what would be understandable to an average person in the circumstance in which they were during the signing of the contract.[3] He further defined events during the period of signing the contract in his second principle as anything that might have affected the way statements in the agreement would have been perceived by a reasonable person.

On the other hand, the law rejects any prior bargains and declarations between contracting parties as part of the circumstances during the period of signing the contract and only accept them to rectify the agreement in the third principle. Furthermore, the law stated in the fourth principle that the meaning of words in contract documents is how a reasonable person understands the concepts in a particular scenario and not the true meaning of words. Lastly, assigning natural meaning to utterances and terms used in the contract document was meant to prevent contracting parties from using syntactical errors in the contract document to evade their obligations.

Changes in the contract principles

The first change to the policy of interpreting the contract document concerned the second principle stated by Lord Hoffmann. For instance, Saville LJ was against the introduction of background evidence for the case of the *National Bank of Sharjah v Dellborg*.[4] Saville noted that the contract had clear outcomes. Therefore the submission of proof of the background information would have confused other people whom the deal might have concerned. Hence the second principle of the contract was changed for contract cases that had clear outcomes, in which the face value of the language used in the agreement was the real meaning of the words in the contract. Saville further warned that for a contract with sensible words, the introduction of background evidence might jeopardize the real meaning of the words.

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[1] Investors Compensation Scheme v West Bromwich Building Society [1998] 1 WLR 896.

[2] Prenn v Simmonds [1971] 1 WLR 1381.

[3] Baker John Harold, Statutory Interpretation and Parliamentary Intention (3rd edn, CLJ 1993) 353.

More specifically, the purpose of the terms would be distorted for an assignee since they might lack the necessary experience in the circumstances of the case.

Lord Hoffmann noted the importance of the changes in the second principle during the trial of *Chartbrook ltd. v Persimmon Homes Ltd.*[5] Therefore, the second principle was given a new definition by Lord Hoffmann, and he said that he did not mean absolutely anything when he mentioned absolutely anything in the investors' case. Another change to the principles of contracts was on the third principle that allowed for the admissibility of the negotiations before the signing of an agreement, and it was evident in the *Oceanbulk Shipping and Trading SA v TMT Asia Limited*.[6] The case concerned payment on a contract of freight forward, and the court compromised the agreement. The court compromised the deal after admitting the use of pre-contractual bargains to establish whether the parties were aware of the facts of the contract.[7] Hence the judges abolished the law that excluded the use of pre-contractual deals to assist in determining the meaning of a contract in courts. Furthermore, Lord Hoffmann corrected his statement in the third principle by stating that the exclusionary law did not apply to other cases. More specifically, circumstances that necessitated the use of pre-contractual bargains to establish whether the contracting parties were knowledgeable of the essential facts, in case of rectification of contact, and for enforcing estoppel to the contracting parties during a court hearing.

Faux J further changed the third principle in *Excelsior Group Production Limited v Television Ltd*.[8] He stated that only verifiable facts that are known to both parties in court were admissible, not a recollection of the pre-contractual bargains. Additionally, Kerr changed the fourth principle during the case of *Karen Oltmann v Sausdale Shipping Co Ltd.,*[9] where the words in the contact had many meanings. The jury admitted the use of valid evidence that both parties agreed on a particular purpose to a concept that had more than one sense to establishing estoppel and not special meaning. On the other hand, the jury changed the fifth principle after the case of *East v Pantiles Plant Hire Limited.*[10] The fifth principle, therefore, stated that whenever words in a contract had glaring syntactical errors, the jury should use circumstances during the signing of the agreement to reconstruct the meaning of the words.

Furthermore, the case of *Swainland Builders Ltd. v Freehold Properties Ltd*.[11] led to the inclusion of Peter Gibson LJ requirements for the rectification of contract into the fifth principle of commitment.

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[4] National Bank of Sharjah v Dellborg Unreported July 9th 1997.

[5] Chartbrook ltd. v Persimmon Homes Ltd [2009] 1 AC 1101.

[6] Oceanbulk Shipping and Trading SA v TMT Asia Limited [2002] 1 AC 251.

[7] Zuckerman Andrian, Without Prejudice Interpretation (2nd edn, IJEP 2011) 232.

[8] Excelsior Group Production Limited v Television Ltd [2009] EWHC 1751 (Comm).

[9] Karen Oltmann v Sausdale Shipping Co Ltd [1976] 2 Lloyds Rep 98.

[10] East v Pantiles Plant Hire Limited [1982] 2 EGLR 111.

[11] Swainland Builders Ltd. v Freehold Properties Ltd [2002] 2 EGLR 71.

The first requirement for the correction of a deal states that the people involved must depict continuous intention into the agreement they have or have not signed. Secondly, the parties must prove that they had an accord in the contract. The aim of the contracting people must also have been continuing during the rectification period. Lastly, the statement for the correction should not be a common objective for both parties.

Conclusion

Language has always been flexible in its meaning, depending on the interpreter and the condition surrounding two contracting parties. Furthermore, people are still afraid of losing their contract negotiation due to syntactical errors. Hence, there will always be changes to the principle of contract, but for the moment, we hope that the policies are sufficient.

Bibliography

Cases

Chartbrook ltd. v Persimmon Homes Ltd [2009] 1 AC 1101

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Textbooks

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