



UiO : **Department of Private Law**
University of Oslo

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Interpretation of Contracts,



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Interpretation – Norwegian law

- Considerable flexibility in the interpretation process, even though the wording will be the starting point
- All circumstances of the case relevant when establishing the (objective) intentions of the parties
- The purpose of the contract and considerations of good faith and fair dealing are important
- Gaps can be filled, terms may be implied and in extreme cases the wording may be “corrected”

Interpretation – German law

- The interpreter shall establish the intention of the parties according to good faith and fair dealing
- Objective interpretation – the *bonus pater familias* – but if it is not in accordance with the understanding of both parties a subjective interpretation will be applied
- Can fill gaps and imply terms, but may not make an interpretation which runs against clear terms of the contract

Interpretation – Italian law

- The interpretation must first of all be based on the wording of the contract, though integrated with the parties' conduct
- Clear wording will supersede other criteria
- Purpose of the contract, balance of the contract are subordinate criteria
- The contract may be interpreted extensively, but cannot extend the object of the contract

Interpretation – English law

- Establishing the mutual intent of the parties based on the plain and literal meaning of the wording of the contract
- As a general rule the interpreter cannot take external circumstances into consideration (parol evidence rule), but exceptions when it comes to factual background – enhancing predictability
- Little room for gap filling and implying terms, if not necessary to give business efficacy or when its obvious

Interpretation – CISG

- Regulates interpretation of a party's statements or conduct, not contracts
- The real intention only relevant where it was known or could not be unknown by the other party
- Otherwise: objective meaning based on a *bonus pater familias* evaluation, taking all circumstances into consideration
- CISG is, in itself, a source for gap filling – the parties may however prevent it

Interpretation – UNIDROIT

- Establishing the common intention of the parties, taking all relevant circumstances into consideration
- Recognizes the validity of merger clauses, but extrinsic evidence may be produced to establish the meaning of the contract
- Gap filling is possible based on the intention of the parties, the nature and purpose of the contract, good faith and fair dealing and reasonableness

Interpretation – PECL

- Very similar to the regulation in UNIDROIT
- The intentions of the parties must be assessed on the basis of preliminary negotiations, circumstances of the conclusion of the contract, the conduct of the parties (also subsequent), nature and purpose of the contract, practices established between the parties, usages, good faith and fair dealing
- Gaps may be filled on the basis of the intention of the parties, the nature and purpose of the contract, good faith and fair dealing

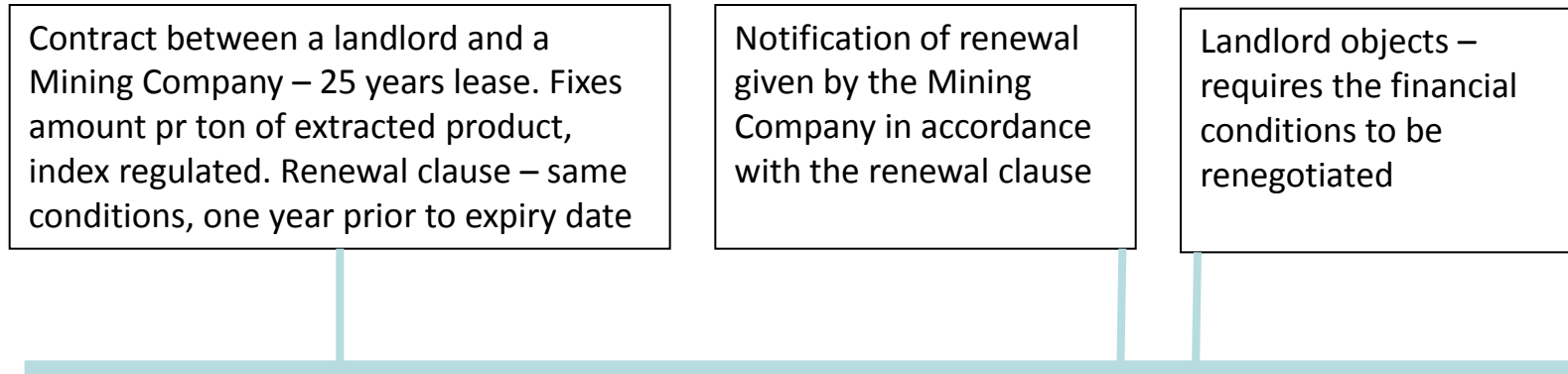
Interpretation – CESL

- Common intention or a party's intention which was known, or could be expected to be known by the other party, supersedes the meaning of a reasonable person
- Regard may particularly be had to the circumstances when the contract was concluded (incl. negotiations), the parties' conduct (incl. subsequent), usages, the practices established by the parties, “branch meaning”, nature and purpose of the contract and good faith and fair dealing

Interpretation – CESL

- Terms provided by a professional party – doubt about meaning shall be solved in favor of the consumer
- Contra proferentem rule

Timeline – Renewal of Lease (Interpretation)



Is the wording of the contract “at the same conditions” sufficiently clear, or must it be interpreted in the light of other considerations?

Renewal of Lease

- Norwegian law
- German law
- Italian law
- English law
- CISG
- UNIDROIT
- PECL
- CESL

Timeline – Transfer of Activity (Interpretation)

Doctor 1 and Doctor 2 decide to exchange cities and transfer to each other the respective practices – enters into a contract to that effect

Doctor 1 decides to go back to her original city – starts new practice in competition with Doctor 2

Doctor 2 wants to prevent Doctor 1 from starting a business in competition with her own – no contractual regulation on the issue

May the “gap” in the contract be filled by inserting a reasonable regulation or a regulation that the parties may prove was meant to apply?

Transfer of Activity

- Norwegian law
- German law
- Italian law
- English law
- CISG
- UNIDROIT
- PECL
- CESL