

**APPROACHES RELATED TO CONTRACTUAL
INTERPRETATION IN ENGLISH AND
PAKISTANI LAW;
A COMPARATIVE STUDY**



RESEARCHER

IRTIFA KHAN

REG NO. 256-FSL/LLM/ITL/S-21

SUPERVISOR

DR. SAYYEDA FATIMA

ASSISTANT PROFESSOR

**DEPARTMENT OF LAW
FACULTY OF SHARIAH AND LAW
INTERNATIONAL ISLAMIC UNIVERSITY
ISLAMABAD
2025**

APPROACHES RELATED TO CONTRACTUAL INTERPRETATION IN
ENGLISH AND PAKISTAN LAW;
A COMPARATIVE STUDY

BY

IRTIFA KHAN

Registration. No. 256-FSL/LLM/ITL/S21

Submitted in partial fulfilment of the requirements for the Masters of Law with specialization
in International Law at the faculty of Shariah & Law,
International Islamic University, Islamabad.

DR. SYEDA FATIMA

January, 2025

TABLE OF CONTENTS

DEDICATION	v
DECLARATION	vi
ACKNOWLEDGEMENT.....	7
ABSTRACT.....	11
CHAPTER 1.....	12
FORMATION OF CONTRACT AND THEORIES OF CONTRACTUAL INTERPRETATION	12
1.1 INTRODUCTION:	12
1.2 SCOPE OF CONTRACT:.....	14
1.3 DEFINITION OF CONTRACTS:	16
1.4 FORMATION OF CONTRACTS:	16
1.5 TYPES OF CONTRACTS:.....	17
1.6 ELEMENTS OF A CONTRACT:	17
1.7 KEY CONSIDERATIONS IN CONTRACTS:.....	18
1.8 CONTRACTUAL INTERPRETATION:	19
1.9 PRINCIPLES OF CONTRACTUAL INTERPRETATION	19
1.9.1 OBJECTIVE THEORY OF CONTRACTUAL INTERPRETATION:.....	19
1.9.2 PRINCIPLE OF LITERAL INTERPRETATION:	21
1.9.3 THE PRINCIPLE OF CONTEXTUAL INTERPRETATION:	24
1.9.4 PRINCIPLE OF BUSINESS EFFICENCY/INTERPRETING CONTRACT IN COMMERCIAL SENSE:	27
1.10 METHODS OF CONTRACTUAL INTERPRETATION:	29
1.10.1 TEXTUAL ANALYSIS:	29
1.10.2 EXTRINSIC EVIDENCE:.....	29
1.10.3 CONTRA PROFERENTEM RULE:	30
1.11 CONSIDERATIONS IN CONTRACTUAL INTERPRETATION:	30
1.11.1 WHOLE AGREEMENT CLAUSE:	30
1.11.2 TRADE CUSTOM AND USAGE:.....	30
1.11.3 GOOD FAITH AND FAIR DEALING:	30

1.12	CONCLUSION:	31
CHAPTER 2.....		32
PRINCIPLES OF CONTRACTUAL INTERPRETATION IN ENGLISH LAW		32
2.1	DOCTRINE OF NATURAL MEANING:	32
2.1.1	EVOLUTION OF PRINCIPLE OF NATURAL MEANING:.....	32
2.1.2	APPLICATION OF THE DOCTRINE OF NATURAL MEANING:.....	33
2.2	CONTRA PROFERENTUM RULE.....	37
2.2.1	APPLICATION OF CONTRA PROFERENTUM RULE:.....	37
2.3	DOCTRINE OF OBJECTIVITY:	42
2.3.1	EVOLUTION OF RULE OF OBJECTIVITY:	43
2.3.2	APPLICABILITY OF RULE OF OBJECTIVITY	43
2.3.3	APPLICATION OF PURPOSIVE APPROACH:	49
2.4	READING THE DOCUMENT AS A WHOLE:.....	54
2.4.1	EVOLUTION OF PRINCIPLE OF READING THE DOCUMENT:.....	54
2.4.2	APPLICATION OF THIS RULE:	54
2.5	INTERPRETATION OF AMBIGUOUS CONTRACTS:.....	56
2.5.1	EVOLUTION OF THEORIES OF INTERPRETATION:.....	57
2.5.2	DIFFERENT APPROACHES FOR INTERPRETATION OF AMBIGUOUS CONTRACTS:	58
2.5.3	APPLICATION OF DIFFERENT APPROACHES IN AMBIGUOUS CONTRACTS:.....	59
2.6	INTERPRETATION OF TECHNICAL AND NON-TECHNICAL TERMS:	61
2.6.1	DIFFERENT APPROACHES TO INTERPRET TECHNICAL AND NON-TECHNICAL TERMS OF THE CONTRACT:	62
2.7	EXPRESSED TERMS, COURSE OF PRIOR PERFORMANCE AND USAGE OF TRADE:	66
2.7.1	EVOLUTION OF BASIC PRINCIPLES:	66
CHAPTER 3.....		71
PRINCIPLES OF CONTRACT INTERPRETATION IN PAKISTAN.....		71
3.1.	EVOLUTION OF DOCTRINE OF NATURAL MEANING:.....	71
3.2.	APPLICATION OF DOCTRINE OF NATURAL MEANING:.....	72
3.3	DOCTRINE OF CONTRA PROFERENTUM RULE:.....	74
3.3.1.	EVOLUTION OF CONTRA PROFERENTUM RULE:	74

3.3.2. APPLICATION OF CONTRA PROFERENTUM RULE IN PRECEDENTS:	75
3.4. DOCTRINE OF OBJECTIVE INTERPRETATION:	76
3.4.1. EVOLUTION OF OBJECTIVE INTERPRETATION:.....	77
3.4.2 APPLICATION OF THEORY OF OBJECTIVE APPROACH:	77
3.5 DOCTRINE OF LITERAL/STRICT APPROACH:	79
3.5.1 EVOLUTION OF LITERAL/STRICT APPROACH:	79
3.6 READING THE DOCUMENT AS A WHOLE:	81
3.6.1 EVOLUTION OF PRINCIPLE OF READING THE DOCUMENT AS A WHOLE:	81
3.7 WHEN A CONTRACT CONTAINS AMBIGUOUS OR UNCLEAR TERMS:	84
3.7.1 APPLICATION OF DIFFERENT APPROACHES TO CONTRACT INTERPRETATION:	84
3.7.2 DIFFERENT APPROACHES TO INTERPRET THE AMBIGUOUS CONTRACT:	85
3.8 CONTRA PROFERENTEM RULE:	87
3.8.1 APPLICATION OF CONTRA PROFERENTUM RULE TO INTERPRET TECHNICAL TERMS:	87
3.9 INTERPRETATION OF TECHNICAL AND NON-TECHNICAL TERM:	88
3.9.1 DIFFERENT APPROACHES TO INTERPRET TECHNICAL AND NON-TECHNICAL TERMS OF THE CONTRACT:	88
3.10 INTERPRETATION OF AMBIGUOUS CONTRACT:	90
3.10.1 EVOLUTION OF THIS PRINCIPLE:	90
3.11 EXPRESSED TERMS, COURSE OF PRIOR PERFORMANCE AND USAGE OF TRADE:	91
3.11.1 EVOLUTION OF THIS PRINCIPLE:	91
3.12 APPLICATION OF RULES OF INTERPRETATION:.....	92
3.12.1 EXPRESSED TERMS:	92
3.12.2 COURSE OF PRIOR PERFORMANCE:	92
3.12.3 USAGE OF TRADE:	92
4.1 INTRODUCTION:	95
4.2 OBJECTIVE APPROACH OF CONTRACT INTERPRETATION:	96
4.3 RULE OF LITERAL/OBJECTIVE INTERPRETATION:	96
4.3.1 RULE OF LITERAL/OBJECTIVE INTERPRETATION IN PAKISTAN:	96
4.4 RULE OF CONTRA PROFERENTUM:	97
4.4.1 RULE OF CONTRA PROFERENTUM IN ENGLAND:.....	97

4.4.2	RULE OF CONTRA PROFERENTUM IN PAKISTAN:.....	98
4.5	READING THE DOCUMENT AS A WHOLE:	99
4.6	APPLICATION OF RULE IN PAKISTAN:	100
4.6.1	APPLICATION OF RULE IN ENGLAND:	100
4.7	PRINCIPLE OF GOOD FAITH:	100
4.7.1	PRINCIPLE OF GOOD FAITH IN ENGLAND:	101
4.7.2	PRINCIPLE OF GOOD FAITH IN PAKISTAN:	101
4.8	PRINCIPLE OF EQUITY:	102
4.8.1	PRINCIPLE OF EQUITY IN ENGLAND:	102
4.8.2	PRINCIPLE OF EQUITY IN PAKISTAN:	102
4.9	PRINCIPLE OF FAIRNESS:	102
4.9.1	PRINCIPLE OF FAIRNESS IN ENGLAND:	102
4.9.2	PRINCIPLE OF FAIRNESS IN PAKISTAN:	103
4.10	DOCTRINE OF STARE DECISIS:	103
4.10.1	DOCTRINE OF STARE DECISIS IN ENGLAND:	103
4.10.2	DOCTRINE OF STARE DECISIS IN PAKISTAN:	104
CHAPTER 5	105
CONCLUSION	105
BIBLIOGRAPHY:	116
CASELAWS:	119

DEDICATION

This study and research is dedicated to my Parents, who did everything for me especially provided me with education and encouragement from the first day of school. May ALLAH give them the best reward from His treasures.

DECLARATION

I, Irtifa Khan D/o Muhammad Ismail Khan, holding Registration No. 256-FSL/LLM/ITL/S21 do hereby declare that “Approaches related to Contractual Interpretation in English and Pakistan Law; A Comparative Study” Submitted by me in partial fulfillment of LLM International Trade Law degree is my original work and has not been submitted or published earlier. All sources that I have used or quoted have been indicated and acknowledged using complete references.

Student: IRTIFA KHAN

Signature:

Dated:

ACKNOWLEDGEMENT

In the name of ALLAH, the most gracious and the most merciful. First and foremost, I am thankful to Allah Almighty who blessed me with the strength, knowledge, ability, and opportunity to undertake this study and complete it satisfactory.

I am thankful to my honorable teacher and supervisor Dr. Syeda Fatima, for her guidance, inspiration, and encouragement to complete my thesis. She truly guided me and encouraged me with her motivating words.

I am also thankful to my whole family who stood through ups and downs beside me and helped me to cope with all the hardships. I truly acknowledge they are a source of my motivation and I would have been nothing without the prayers of my parents.

ABSTRACT

This thesis undertakes a comparative examination of contractual interpretation approaches in Pakistani law and English law. Contractual interpretation is a crucial aspect of contract law, as it determines the rights and obligations of parties to a contract. Despite the significance of contractual interpretation, there exists a dearth of research on the comparative analysis of contractual interpretation approaches in Pakistani law and English law.

This research aims to bridge this knowledge gap by analyzing the contractual interpretation approaches in Pakistani law and English law, with a focus on the principles, rules, and methodologies employed by courts in both the jurisdictions. The study explores the principles, which serve as the fundamental underpinnings for interpreting contracts in English law. Moreover, to inquire as to whether these principles are applicable in Pakistan as well. If yes, to what extent do they influence the legal landscape of contractual interpretation in the country. Lastly, to find out any notable distinctions exist in these principles between Pakistani and English legal system.

The findings of this research reveal significant differences in the contractual interpretation approaches employed in Pakistani law and English law. While Pakistani law relies heavily on statutory provisions and judicial precedents, English law employs a more nuanced approach, incorporating contractual context, party intentions, and business efficacy. This research contributes to the existing body of knowledge on contractual interpretation by providing a comprehensive comparative analysis of contractual interpretation approaches in Pakistani law and English laws.

CHAPTER 1

FORMATION OF CONTRACT AND THEORIES OF CONTRACTUAL

INTERPRETATION

Contracts serve as the cornerstone of modern society, governing relationships, transactions, and agreements across various domains. At their essence, contracts are legally binding agreements between two or more parties, stipulating rights, obligations, and responsibilities that each party must adhere to. These agreements can take various forms, including written contracts, oral agreements, and implied contracts inferred from the conduct of the parties.¹ Written contracts are the most common and preferred form, providing tangible evidence of the terms and conditions agreed upon by the parties. Regardless of their form, contracts play a crucial role in providing clarity, certainty, and enforceability to agreements, thereby facilitating trust and cooperation among parties involved.²

1.1 INTRODUCTION:

The importance of contracts cannot be overstated, as they serve multiple functions in both personal and business contexts. Firstly, contracts clarify the rights and obligations of each party, outlining the scope of the agreement and the duties that must be fulfilled. This clarity helps to prevent misunderstandings and disputes, providing a framework for smooth and efficient interaction between parties. Secondly, contracts allocate risks by specifying the consequences of breach or non-performance, thereby incentivizing parties to fulfill their

¹ Stewart, Andrew, Warren Swain, and Karen Fairweather. *Contract Law: Principles and Context*. Cambridge University Press, 2019.

² Cohen, Morris R. "The Basis of Contract." *Harv. L. Rev.* 46 (1932): 553

obligations and mitigating potential losses.³ Additionally, contracts serve as a means of enforcing promises and holding parties accountable for their actions, ensuring that agreements are honored and upheld. Moreover, contracts protect the interests of parties by including provisions related to payment terms, intellectual property rights, confidentiality, and dispute resolution mechanisms, among others. In this way, contracts provide a legal framework for parties to safeguard their rights and interests, promoting fairness and equity in their interactions.

Effective contract drafting requires careful consideration of various elements and principles to ensure clarity, enforceability, and fairness. Key components of a well-drafted contract include a clear identification of the parties involved, a detailed description of the subject matter and scope of the agreement, specific terms and conditions governing the rights and obligations of each party, and provisions for dispute resolution and termination. Additionally, contracts should be drafted using clear and precise language, avoiding ambiguity or vagueness that could lead to interpretation issues or disputes. Furthermore, parties should seek legal advice when drafting or entering into contracts, especially for complex or high-value agreements, to ensure compliance with applicable laws and regulations and to protect their interests.

Contractual interpretation is the process of deciphering the meaning and intent of the parties' agreements, often necessitated by ambiguity or dispute. Principles such as the objective approach, literal rule, contextual analysis, and commercial sense guide the interpretation process, ensuring that the parties' intentions are accurately

³ Wightman, John. *Contract: A Critical Commentary*. Pluto Press, 1996.

discerned and applied.⁴ Methods of contractual interpretation include textual analysis, extrinsic evidence, and the contra proferentem rule, each aimed at elucidating the meaning of contractual terms and resolving ambiguity or uncertainty. Practical considerations in contractual interpretation include the use of clear and precise language the inclusion of whole agreement clauses, and the consideration of trade customs and usage in relevant industries.⁵ In Islamic law, the main jurists involved in the art of interpretation follow a 'hermeneutic circle' that contains different theories and approaches and sometimes a shared one. Although Islamic law recognizes several methodologies regarding interpretation from the perspective of Islamic law, all those involved in the art of interpretation have common principles and maxims that only differ on the specific tools or approaches.

All jurists, for example, accept the two main sources (the Qur'an and Sunna) that generate general rules of interpretation, and all are agreed that the reasons for revelation come as the first step in the interpretation. Also, to interpret a verse in the Qur'an, you first must look at other Quranic verses. If this is not possible, you should refer to the Sunna and then to other sources, and to interpret Hadith you must look at the Qur'an first, then to the Sunna, and then to other sources.

Commented [OP51]: Added as directed.

1.2 SCOPE OF CONTRACT:

Contracts are the foundation of business transactions, legal agreements, and interpersonal relationships, serving as binding documents that outline rights, obligations, and expectations

⁴ Herbots, Jacques H. "Interpretation of Contracts." In *Elgar Encyclopedia of Comparative Law, Second Edition*, Pp. 421-448. Edward Elgar Publishing, 2012.

⁵ Ottinger, Patrick S. "Principles of Contractual Interpretation." *La. L. Rev.* 60 (1999): 765.

between parties. Whether written or oral, contracts play a pivotal role in clarifying terms, allocating risks, and fostering trust and cooperation. This note provides a comprehensive overview of contracts, covering their definition, elements, types, formation, enforceability, and key considerations.

Primarily, the Islamic jurisprudence has based the contract law regarding several underlying principles that help understand the functioning of such law. we need to understand that jurists belonging to the formative/classical period of Islamic law had not expressly laid down a general theory of contract that can be associated with the Islamic law. Because of the same, two radically different, although equally mistaken, conclusions have arisen. The same has been stated hereunder:

- The first conclusion states that as Islamic contract law does not have any general theory to rest upon, the same reflects the existence of conceptual primitiveness that open rooms for ambiguity in this segment of law. This has been generally concluded by non-Muslim scholars of Islamic law
- The second conclusion that we need to know is a reaction to the first point which has been laid down by Muslim scholars, who have tried to establish the fact that there does exist a general theory of contract law. The general theory that Muslim scholars have talked about rests its basis on the ability of Islamic law to enforce innominate contracts.⁶

⁶ <https://blog.ipleaders.in/principles-of-islamic-contract-law-an-analysis/>

1.3 DEFINITION OF CONTRACTS:

A contract is a legally enforceable agreement between two or more parties that creates rights and obligations enforceable by law. It involves an offer by one party, acceptance by another party, consideration (something of value exchanged), and an intention to create legal relations. Contracts may be written, oral, or implied by conduct, depending on the jurisdiction and the nature of the agreement.

1.4 FORMATION OF CONTRACTS:

Contracts are formed through a process of offer, acceptance, and consideration. The following steps typically occur during the formation of a contract. One party makes a clear and definite proposal to enter into an agreement with another party. The offeree agrees to the terms of the offer, creating a mutual agreement or meeting of the minds between the parties. Something of value is exchanged between the parties, forming the basis of the contractual relationship.

The contract is formed in Islam by way of speaking or writing, the thing which is required is the consent of both the offeror and the acceptor. The first stage of any contract is the offer then the acceptance. There must be a declaration by the offeror and then there must be an acceptance to the contract to be completed. Both the offer and the acceptance must take place at the same meeting (majlis).⁷

Commented [OP53]: Added as per direction.

⁷ https://blog.ipleaders.in/principles-of-islamic-contract-law-analysis/#Good_faith_principle_of_Islamic_Contract_Law

1.5 TYPES OF CONTRACTS:

Contracts can be categorized into various types based on their form, enforceability, or subject matter. Common types of contracts are as under:

- Contracts that are documented in writing and signed by the parties, providing clear evidence of the terms and intentions of the agreement.
- Contracts that are formed through spoken words or verbal agreements, enforceable if the essential elements of a contract are present and can be proven.
- Contracts where the terms are explicitly stated and agreed upon by the parties, whether in writing or orally.
- Contracts that are inferred from the conduct, actions, or circumstances of the parties, rather than being expressly stated in writing or verbally.

1.6 ELEMENTS OF A CONTRACT:

An *offer* is a promise or proposal made by one party (the offeror) to another party (the offeree), indicating a willingness to enter into a binding agreement on specific terms.

Acceptance occurs when the offeree agrees to the terms of the offer, thereby forming a mutual assent or meeting of the minds between the parties. *Consideration* refers to something of value exchanged between the parties, such as money, goods, services, or a promise to perform or refrain from performing a certain act. Both parties must have *intention* for the agreement to be legally binding, distinguishing contracts from social agreements or mere expressions of intent. In Islamic law of contract, both the parties must

be real, not insane, and are responsible enough for their work. The subject should be

permissible and should be in the possession of the relevant part. Offer and acceptance can either be oral or written and are time bound. Both parties are free to enter the contract, there should be no force, threat or coercion. The contract should not contradict the objectives which are referred to in the Maqasid Al- Shariah. ⁸The contract should be free from the major prohibitions such as Riba (interest), Gharar (uncertainty) and Maysir (Speculation) etc. Apart from that the contract should be prohibited from the sale of debt with debt.⁹

Commented [OP54]: NEW ADDED

1.7 KEY CONSIDERATIONS IN CONTRACTS:

Contracts should be drafted using clear, precise language that accurately reflects the intentions and expectations of the parties, reducing the risk of ambiguity or misunderstanding. It is advisable for parties to seek legal advice before entering contracts, especially for complex or high-value agreements, to ensure compliance with applicable laws and regulations and to protect their interest. Contracts may include provisions for resolving disputes, such as arbitration, mediation, or litigation, to facilitate timely and cost-effective resolution of conflicts that may arise. For a contract to be enforceable, it must meet certain legal requirements and not be invalidated by factors such as fraud, duress, mistake, illegality, or lack of capacity. Additionally, contracts may be subject to specific formalities, such as writing requirements or statutory regulations, depending on the jurisdiction and the nature of the agreement.

⁸ Nyazee, Imran Ahsan (1995) Theories of Islamic Law: The Methodology of Ijtihad, Chicago, Kazi Publications.

⁹ M. T. Mansuri, Islamic Law of Contract and Business Transactions (Adam Publishers & Distributors, 2006) 3-16

1.8 CONTRACTUAL INTERPRETATION:

Contracts serve as the backbone of business transactions and legal agreements, providing clarity and security for all parties involved.¹⁰ However, disputes can arise when interpreting contractual terms, leading to litigation or strained relationships.¹¹ Contractual interpretation is the process of deciphering the meaning and intent of the parties' agreements.¹² This comprehensive guide aims to elucidate the principles, methods, and considerations involved in contractual interpretation.

1.9 PRINCIPLES OF CONTRACTUAL INTERPRETATION

Principles of Contractual Interpretation including the general approach to construing express terms and the tools of construction that the courts have at their disposal to assist them in reaching a just outcome between the parties.

1.9.1 OBJECTIVE THEORY OF CONTRACTUAL INTERPRETATION:

The Contractual interpretation typically follows an objective approach, focusing on the intention of the parties as expressed in the language of the contract.¹³ The subjective intentions of the parties are generally irrelevant unless expressly stated otherwise.

1.9.1.1 EVOLUTION OF THE OBJECTIVE THEORY

The evolution of the objective theory of contract interpretation spans centuries and involves contributions from various legal scholars and courts around the world. The objective theory

¹⁰ Kramer, Adam. "Common Sense Principles of Contract Interpretation (And How We've Been Using Them All Along)." *Oxford Journal of Legal Studies* 23, No. 2 (2003): 173-196.

¹¹ Burton, Steven J. *Elements of Contract Interpretation*. Oxford University Press, 2009.

¹² Schwartz, Alan, and Joel Watson. "Conceptualizing Contractual Interpretation." *The Journal of Legal Studies* 42, No. 1 (2013): 1-34.

¹³ Miric, Marija Karanikic. "A Critical Look at the Subjective and Objective Purposes of Contract in Aharon Barak's Theory of Interpretation." *Baltic Journal of Law & Politics* 9, No. 2 (2016): 1.

of contract interpretation is based on the idea that the intentions of the parties to a contract should be determined by the words and actions they used, rather than their subjective, unexpressed intentions.¹⁴

1.9.1.1.1 Classical Roman Law:

The roots of the objective theory of contract interpretation can be traced back to ancient Roman law, particularly the principle of "pacta sunt servanda," which means that agreements must be kept. Roman jurists emphasized the importance of interpreting contracts based on the objective meaning of the words used by the parties.

1.9.1.1.2 English Common Law:

In English common law, the objective theory of contract interpretation gained prominence during the 19th century¹⁵. Judges began to prioritize the objective intentions of the parties over their subjective intentions. This approach was codified in landmark cases like *Smith v. Hughes* (1871), where the court held that the objective manifestation of assent, rather than the subjective intentions of the parties, determines the existence of a contract.

1.9.1.1.3 Restatement of Contracts (1932):

The American legal scholar Samuel Williston played a significant role in formalizing the objective theory of contract interpretation in the Restatement of Contracts. The Restatement emphasized the importance of interpreting contracts based on the reasonable meaning of the words and conduct of the parties.

¹⁴ Perillo, Joseph M. "The origins of the objective theory of contract formation and interpretation." *Fordham L. Rev.* 69 (2000): 427.

¹⁵ DiMatteo, Larry A. "Contract Theory: The Evolution of Contractual Intent." Michigan State University Press (1998):286.

1.9.1.1.4 Uniform Commercial Code (UCC):

The UCC, adopted by most U.S. states, also embraces the objective theory of contract interpretation. Section 1-303 of the UCC provides that the "interpretation of an agreement or term which is embodied in a record and which is incorporated into a larger agreement...is to be interpreted as a reasonable person in the position of the parties would interpret it."¹⁶

1.9.1.1.5 Modern Jurisprudence:

In contemporary legal practice, the objective theory of contract interpretation remains the dominant approach. Courts continue to focus on the objective intentions of the parties, as evidenced by their words and actions, rather than attempting to discern their unexpressed subjective intentions. This approach promotes predictability and certainty in contractual relationships.

Overall, the objective theory of contract interpretation has evolved over time to become a fundamental principle of contract law in many jurisdictions, guiding courts in determining the intentions of the parties and enforcing their agreements.

1.9.2 PRINCIPLE OF LITERAL INTERPRETATION:

The literal rule suggests that words in a contract should be given their ordinary meaning unless there are compelling reasons to do otherwise.¹⁷ This principle underscores the importance of clear and precise drafting. Similarly, in Islamic law, a textual interpretive approach is demonstrated in the 'Zahiri' School, which promoted observance of the literal or apparent meaning of divine words. The Zahiri view called for keeping the law from juristic

¹⁶ Zar Rokh, Ehsan. "Practical Concepts in Contract Law." *Available at SSRN 1016565* (2007).

¹⁷ Hiong, Chai Siaw. "Construing Contract Clause: The Literal Rule." (2012).

interpretation in order not to add hypothetical human estimation.¹⁸ Anyone, from the Zahiri point of view, who examines an issue beyond its textual state, will introduce personal subjectivity, prejudice and whim into the law.¹⁹ Nyazee, commenting on the Zahir approach, referred to it as ‘a new theory in itself; a theory that works without analogy’ determining to focus only on the textual meaning, and to ‘confine all interpretation to the apparent (Zahir) meaning of the textual evidences’.²⁰

Commented [OP55]: Added as directed

1.9.2.1 EVOLUTION OF PRINCIPLE OF LITERAL INTERPRETATION

The Literal Rule in contract interpretation shares similarities with its application in statutory interpretation but has its own distinct evolution within the realm of contract law:

1.9.2.1.1 Early Contract Law:

Similar to statutory interpretation, the Literal Rule has roots in early contract law, where agreements were interpreted strictly based on the literal meaning of the words used by the parties. This approach was prevalent in ancient legal systems and continued through medieval and early modern contract law.

1.9.2.1.2 Formalism and Orthodoxy:

During the 17th and 18th centuries, contract interpretation in common law jurisdictions tended to adhere strictly to the words of the contract, following the Literal Rule. Courts emphasized the importance of enforcing agreements exactly as written, without delving into the intentions or purposes behind the contract terms.

¹⁸ Chejne, Anwar G. (1982) *Ibn Hazm*, Chicago, Kazi Publications.

¹⁹ Ibid.

²⁰ Nyazee, Imran Ahsan (1995) *Theories of Islamic Law: The Methodology of Ijtihad*, Chicago, Kazi Publications.

1.9.2.1.3 Rise of Contextual Interpretation:

Over time, legal scholars and courts recognized the limitations of the Literal Rule in contract interpretation. They realized that focusing solely on the literal meaning of contract terms could lead to unjust or commercially unreasonable outcomes, especially in complex commercial transactions.

1.9.2.1.4 Shift towards Contextualism:

In the 19th and 20th centuries, there was a gradual shift towards contextual interpretation in contract law. Courts began to consider not only the literal wording of the contract but also the surrounding circumstances, the parties' intentions, industry customs, and the commercial purpose of the agreement.

1.9.2.1.5 Development of Parol Evidence Rule:

The Parol Evidence Rule, which limits the admissibility of extrinsic evidence to contradict or vary the terms of a written contract, played a significant role in the evolution of contract interpretation. While the Literal Rule suggests strict adherence to the written words of the contract, the Parol Evidence Rule allows courts to consider extrinsic evidence when interpreting ambiguous or unclear contract terms, thereby adopting a more contextual approach.

1.9.2.1.6 Modern Contract Interpretation:

In contemporary contract law, the Literal Rule coexists with contextual interpretation principles. Courts strive to balance the literal meaning of contract terms with the parties' intentions and the commercial context of the agreement. The goal is to achieve a fair and commercially reasonable interpretation that gives effect to the parties' intentions while respecting the written terms of the contract.

Overall, the evolution of the Literal Rule in contract interpretation reflects a transition from strict formalism towards a more contextual and pragmatic approach, where courts consider both the literal language of the contract and the broader context in which it operates.

1.9.3 THE PRINCIPLE OF CONTEXTUAL INTERPRETATION:

While the literal rule is important, contractual interpretation also involves considering the context in which the contract was formed.²¹ This includes examining the entire agreement, surrounding circumstances, and the commercial purpose of the contract.²² The principle of contextual analysis in contract interpretation has evolved over time, reflecting a shift from rigid adherence to the literal words of a contract towards a more nuanced understanding that considers the broader context of the agreement. To find the meaning of a text by searching for the intent of its author, raises the question of how a jurist could determine an author's intent when that author was not available for discussion. One could look for any extra material published by the author, and this might be in the form of the author's other sources or documented explanations by those who lived with the author. From an Islamic perspective, the authorial record is not an easy topic. It is well acknowledged in Islam that the Prophet did not 'author' the Qur'an, therefore 'authorial record' of the Qur'an cannot be attributed to the Prophet. The Qur'an was revealed from Allah; it has a Divine Author The Prophet was considered the first and best interpreter of the Qur'an and the Sunna.

Commented [OP56]: Added as directed.

²¹ Ottinger, Patrick S. "Principles of Contractual Interpretation." *La. L. Rev.* 60 (1999): 765.

²² Spigelman, James. "From Text to Context: Contemporary Contractual Interpretation." *Australian Law Journal* 81 (2007): 322.

1.9.3.1 EVOLUTION OF THE PRINCIPLE OF CONTEXTUAL

INTERPRETATION:

1.9.3.1.1 Early Contract Law:

In ancient legal systems and early common law, contract interpretation was often based solely on the literal meaning of the contract terms. The emphasis was on enforcing agreements as written, without much consideration for the surrounding circumstances or the parties' intentions beyond the words used in the contract.

1.9.3.1.2 Development of Equity:

During the medieval and early modern periods, equity courts emerged alongside common law courts. Equity courts, guided by principles of fairness and justice, introduced a more flexible approach to contract interpretation. Equity courts were more inclined to consider the context and equities of a situation, rather than strictly adhering to the literal wording of contracts.

1.9.3.1.3 Rise of Commercial Law:

With the growth of trade and commerce in the 17th and 18th centuries, there was a need for more sophisticated contract interpretation principles. Courts began to recognize the importance of interpreting contracts in light of commercial realities and industry customs. This shift laid the groundwork for a more contextual approach to contract interpretation.

1.9.3.1.4 Doctrine of Contra Proferentem:

The doctrine of contra proferentem, which states that ambiguities in a contract should be construed against the party who drafted the contract, contributed to the evolution of contextual analysis in contract interpretation. Courts started to consider the context in which

contracts were drafted and the relative bargaining power of the parties when interpreting ambiguous terms.

1.9.3.1.5 Modern Contract Law:

In the 20th and 21st centuries, contextual analysis has become a central principle in contract interpretation. Courts now consider a wide range of contextual factors, including the parties' intentions, the purpose of the contract, industry customs, prior negotiations, and the practical consequences of competing interpretations.

1.9.3.1.6 Principles of Construction:

Modern contract law recognizes various principles of construction that facilitate contextual analysis. These include the ejusdem generis rule, the noscitur a sociis principle, and the plain language rule. These principles guide courts in interpreting contract terms in light of their surrounding context and the parties' intentions.

1.9.3.1.7 Judicial Discretion:

Courts have increasingly exercised judicial discretion in contract interpretation, recognizing that no single approach fits all situations. Judges have the authority to consider the specific circumstances of each case and adopt an interpretation that aligns with the overarching purpose of contract law: to give effect to the parties' intentions and promote fairness and justice.

In summary, the evolution of contextual analysis in contract interpretation reflects a broader trend towards a more flexible and nuanced approach that considers the context, purpose, and equities of contractual agreements, alongside the literal wording of the contract terms.

1.9.4 PRINCIPLE OF BUSINESS EFFICENCY/INTERPRETING CONTRACT IN COMMERCIAL SENSE:

Courts often emphasize interpreting contracts in a manner that makes commercial sense, aligning with the parties' business objectives and industry practices.²³ This principle prevents absurd or commercially unreasonable outcomes. The principle of interpreting contracts in accordance with commercial sense, also known as the business efficacy principle or the officious bystander test, has evolved over time to ensure that contractual agreements are interpreted in a manner that aligns with commercial realities and the reasonable expectations of the parties involved.

1.9.4.1 EVOLUTION OF PRINCIPLE OF BUSINESS EFFICENCY:

1.9.4.1.1 Early Contract Law:

In early common law, contract interpretation primarily focused on the literal words of the agreement, often leading to rigid and overly formalistic outcomes. However, even in these early stages, courts recognized the need to interpret contracts in a manner that was consistent with the commercial context in which they operated.

1.9.4.1.2 Emergence of Equity:

Equity courts, which developed alongside common law courts, introduced principles of fairness and justice into contract interpretation. Equity courts were more willing to consider the commercial context of contracts and the intentions of the parties beyond the literal wording of the agreement.

²³ Richardson, Lorna. "Commercial Common Sense Revisited: Further Developments in Contract Interpretation and Commercial Leasing." *Edinburgh Law Review* 20, No. 3 (2016): 342-348.

1.9.4.1.3 Nineteenth Century Developments:

During the 19th century, as commercial transactions became more complex, courts began to recognize the importance of interpreting contracts in a manner that promoted commercial efficacy. Judges were increasingly willing to imply terms into contracts to give effect to the parties' presumed intentions and ensure the smooth functioning of commercial transactions.

1.9.4.1.4 Incorporation of Implied Terms:

The recognition of implied terms in contract law played a significant role in the evolution of the commercial sense principle. Implied terms are terms that are not expressly stated in the contract but are necessary to give business efficacy to the agreement. Courts began to imply terms into contracts based on what a reasonable person in the position of the parties would have intended, considering the commercial purpose of the contract.

1.9.4.1.5 Modern Contract Law:

In contemporary contract law, the commercial sense principle is firmly established as a fundamental aspect of contract interpretation. Courts are guided by the principle that contracts should be interpreted in a manner that gives effect to the reasonable expectations of the parties and promotes commercial efficacy.

1.9.4.1.6 Use of Extrinsic Evidence:

Modern courts may also consider extrinsic evidence, such as the parties' prior negotiations, industry customs, and the practical consequences of competing interpretations, to determine the commercial sense of a contract. This approach

allows courts to interpret contracts in a manner that reflects the commercial realities of the transaction.

1.9.4.1.7 Flexibility and Context:

The commercial sense principle provides courts with the flexibility to interpret contracts in a manner that is consistent with the commercial context in which they operate. This approach ensures that contractual agreements are interpreted in a way that is practical, commercially reasonable, and aligns with the intentions of the parties.

In summary, the evolution of the commercial sense principle reflects a broader trend towards a more pragmatic and contextually sensitive approach to contract interpretation, ensuring that contractual agreements are interpreted in a manner that promotes commercial efficacy and reflects the reasonable expectations of the parties involved.

1.10 METHODS OF CONTRACTUAL INTERPRETATION:

1.10.1 TEXTUAL ANALYSIS:

The first step in interpreting a contract is closely analyzing its text. This involves examining individual clauses, grammar, punctuation, and syntax to discern the parties' intentions.²⁴

1.10.2 EXTRINSIC EVIDENCE:

If the language of the contract is ambiguous or unclear, extrinsic evidence such as prior negotiations, correspondence, and industry customs may be considered to elucidate the parties' intent.²⁵

²⁴ Goh, Yihan. "From Context to Text in Contractual Interpretation: Is There Really a Problem With a Plain Meaning Rule?" *Common Law World Review* 45, No. 4 (2016): 298-318.

²⁵ Mayson, Tom F. "The Use of Extrinsic Evidence in The Interpretation of Written Agreements in

1.10.3 CONTRA PROFERENTEM RULE:

When contractual terms are ambiguous and cannot be resolved through textual analysis or extrinsic evidence, courts may apply the contra proferentem rule.²⁶ This rule interprets ambiguous terms against the interests of the party that drafted the contract.

1.11 CONSIDERATIONS IN CONTRACTUAL INTERPRETATION:

1.11.1 WHOLE AGREEMENT CLAUSE:

Contracts often include whole agreement clauses, which stipulate that the written contract embodies the entire agreement between the parties, superseding any prior agreements or understandings. Courts generally uphold these clauses, limiting the consideration of extrinsic evidence.²⁷

1.11.2 TRADE CUSTOM AND USAGE:

In certain industries, trade customs and usage play a significant role in contractual interpretation. Courts may consider these practices when deciphering ambiguous terms or determining the parties' intentions.²⁸

1.11.3 GOOD FAITH AND FAIR DEALING:

Duty of good faith and fair dealing is implied in every contract, requiring parties to act

Alberta." *Alta. L. Rev.* 42 (2004): 499.

²⁶ Vukadinovic, Slobodan. "The Scope of the Contra Proferentem Rule in the Interpretation of the General terms of Contract." *Union U.L. Sch. Rev.* 11 (2020): 141.

²⁷ Burton, Steven J. *Elements of Contract Interpretation*. Oxford University Press, 2009.

²⁸ Alexander, Anthony. "'But That's Not What That Means': When Can Evidence of Technical Jargon, Industry Custom and Trade Practice be Used to Interpret or Augment Commercial Contract?." *Advoc.* 51 (2020-2021): 541

honestly, reasonably, and in accordance with the spirit of the agreement.²⁹Courts may consider this principle when interpreting contractual terms.

1.12 CONCLUSION:

In conclusion, contracts are essential legal instruments that govern a wide range of transactions and relationships in both personal and business contexts. By understanding the elements, types, formation process, enforceability requirements, and key considerations of contracts, parties can effectively negotiate, draft, and enforce agreements that protect their rights and promote mutual cooperation and trust. Whether written or oral, contracts serve as the cornerstone of a well-functioning legal system, providing stability, predictability, and recourse for parties to assert their rights and fulfill their obligations.

Contractual interpretation is a nuanced process that requires careful consideration of the parties' intentions, the language of the contract, and surrounding circumstances. By adhering to principles such as the objective approach, literal rule, and contextual analysis, and considering methods like textual analysis and extrinsic evidence, parties can minimize ambiguity and avoid disputes. Understanding the principles and methods of contractual interpretation is essential for drafting clear, enforceable contracts and resolving disputes effectively.

²⁹ Reiter, Barry J. "Good Faith in Contracts." *Val. Ul Rev.* 17 (1983): 705.

CHAPTER 2

PRINCIPLES OF CONTRACTUAL INTERPRETATION IN ENGLISH LAW

The interpretation of contracts is an essential aspect of contract law: ensuring that parties understand the rights and obligations outlined within the agreement. This chapter will discuss the established principles of English law that apply to interpreting contracts and how the approach taken by the courts is designed to provide clarity and certainty to contractual arrangements. When disputes arise, the court's primary objective is to ascertain the intention of the parties based on the language used in the contract. In doing so, the court considers various factors, including: Literal/Natural Meaning; Contra Proferentum Rule; different approaches of contractual interpretation such as e.g. Objective Approach; Purposive Approach and other factor will discuss in details.

Commented [OP57]: Amended as required.

2.1 DOCTRINE OF NATURAL MEANING:

The Doctrine of Natural Meaning, also known as the Plain Meaning Rule or the Literal Rule, is a principle in legal interpretation that suggests statutes and contracts should be interpreted according to their ordinary, everyday meaning. This doctrine holds that if the language of a law or contract is clear and unambiguous, it should be applied as written, without resorting to extrinsic evidence or considering the intentions of the drafters.³⁰

2.1.1 EVOLUTION OF PRINCIPLE OF NATURAL MEANING:

Evolutionarily, the doctrine emerged as a response to the need for stability and

³⁰ Herbots, Jacques H. "Interpretation of contracts." In Elgar Encyclopedia of Comparative Law, Second Edition, pp. 421-448. Edward Elgar Publishing, 2012.

predictability in legal interpretation. It gained prominence during the formalistic era of legal thought, emphasizing the importance of textual clarity and predictability in legal decision-making.

2.1.2 APPLICATION OF THE DOCTRINE OF NATURAL MEANING:

In current practice, the Doctrine of Natural Meaning³¹ is still applied, though it is often tempered by other principles such as the contextual approach and legislative intent. Courts typically start their interpretation with the plain language of the statute or contract but may consider other factors if the language is unclear or ambiguous.³² The landmark cases demonstrating the application of the Doctrine of Natural Meaning are as under:

2.1.2.1 Arnold (Respondent) vs. Britton and others (Appellants):

In the case, titled: *“Arnold (Respondent) vs. Britton and others (Appellants)”*

The owners of land granted several 99-year leases to plots so that holiday chalets could be built. Each lease stated that it was granted ‘on terms similar in all respects’ to the others. One clause dealt with service repairs. That clause was worded differently in two groups of leases. For both groups, the first half of the clause stated that the lessees had to pay ‘proportionate’ fees towards repairs.³³

In the first group, the clause went on to set that the fee started at £90 and increased at a three-year compound rate of 10%. In the second group, the second half of the clause said that the fee started at £90 and increased at a rate of 10% a year. At the time,

³¹ Moore, Michael S. "A natural law theory of interpretation." *S. Cal. L. Rev.* 58 (1985): 277.

³² Havelock, Rohan. "Return to Tradition in Contractual Interpretation." *King's Law Journal* 27, no. 2 (2016): 188-213.

³³[2015] UKSC 36, Case ID UKSC 2013/0193

inflation rates were very high. They subsequently lowered whereas, lessees in the second group contested their service charge. They argued that the clause should be interpreted so that the payable rates were not out of proportion with the costs of repairs.

In *Arnold v. Britton*, the Supreme Court was asked to determine the proper interpretation of service charge provisions in residential leases for holiday accommodations, with a focus on whether these charges were fixed amounts or subject to a cap, as argued by the leaseholders. The court upheld the owner's interpretation by a 4-1 majority that initially it was fixed as 90£, highlighting that the language of the contract should have a clear and natural meaning. Regardless of potentially severe financial consequences for one party, this ruling reinforces the principle that the interpretation of commercial agreements should be based on their straightforward terms, without undue reliance on commercial logic or surrounding circumstances.

This case pointed out changing in the process of contractual interpretation, specifically regarding doctrine of natural meaning. Under the supervision of Lord Neuberger Supreme Court emphasized on the importance of natural meaning of words and discouraged to develop ambiguity by leaving this meaning.³⁴ Lord Neuberger stated that as much as natural meaning of the word is clear, to that extent it is difficult to justify getting out of it. This verdict gave sign of detachment of natural meaning from ambiguity and doubts, specifically affiliated with view of Lord Hoffmann.

³⁴ <https://cms-lawnow.com/en/ealerts/2015/07/contractual-interpretation-supremacy-of-the-natural-and-ordinary-meaning> accessed on 26 November 2024

2.1.2.1.1 Principles of Contractual Interpretation derived from the cited Case:

The Supreme Court set out the principles of contractual interpretation:

- Interpreting contract clauses should be done from the perspective of a reasonable reader at the time the contract was made.
- Usually, the court does not need to go beyond the natural meaning of the clause. However, the more ambiguous or unclear the natural meaning, the more the court can depart from that meaning. However, the court should not seek out ambiguity just because the natural meaning seems unfair.
- Commercial common sense is relevant to how a reasonable person would understand a contract. However, the courts can only assess whether the contract made sense at the date it was made. The fact that a contract no longer makes commercial sense due to later developments is irrelevant.

The principles of contractual interpretation involve understanding the contract's meaning as it would appear to a reasonable person with the background knowledge available at the time. This includes relevant background information but excludes prior negotiations and subjective intentions. The contract's meaning extends beyond literal wording to what the parties reasonably intended, allowing judges to address apparent linguistic mistakes if the context suggests such errors.

2.1.2.2 Investors Compensation Scheme v. West Bromwich Building Society [1997]:

In the case titled: “**Investors Compensation Scheme v. West Bromwich Building Society [1997]**” Investors, who suffered losses due to negligent financial advice involving "Home

Income Plans," assigned their claims to the Investors Compensation Scheme Ltd. (ICS) under the Financial Services Act 1986 for compensation. A dispute arose regarding whether the assignment excluded claims for damages against West Bromwich Building Society (West Bromwich BS), with the exclusion clause being central to the case.

In this case, the court emphasized interpreting exclusion clauses and contractual provisions clearly and pragmatically, focusing on what the language would mean to the parties involved. This approach promotes fairness and avoids overly technical interpretations that could lead to unjust outcomes, aligning judicial interpretation with common-sense understanding.

2.1.2.2.1 Principles of contractual interpretation:

In this case, Lord Hoffmann summarized the *principles of contractual interpretation* in the following way:

1. Objective Intention: What a reasonable bystander with the same background knowledge would believe the parties' intentions to be.
2. Scope of Context: Wide scope of relevant background facts, as long as they were reasonably available to the parties.
3. Exclusion of Prior Negotiations: Previous negotiations and declarations of intent are excluded to prevent changing bargaining positions.
4. Meaning of Persons: Courts consider the intended meaning, not just the document's literal words, addressing errors in syntax or wording.
5. Presumption Against Irrationality: Words are interpreted within their natural

meaning unless it is evident that something went wrong with the language.).³⁵ These cases clarify how doctrine of natural meaning applied in legal interpretation. It makes consistency and predictability certain in application of laws and contracts.

2.2 CONTRA PROFERENTUM RULE

Contra proferentum also known as 'interpret against draftsman' is a rule of contractual interpretation which applies when ambiguity is present in contract. According to this rule, interpretation of ambiguous and unclear terms and conditions would be against the party who drafted the contract.³⁶ Logic behind this rule is that the party who drafts contract usually is in the upper position to make sure that contract is clear and correct that's why ambiguity should consider against that party.

Initially, roots of contra proferentum rule are in the partnership laws and equity. It urges as a means to foster justice and equity in relationships of contract, especially in such situation where one party have more potential in bargaining power or expertise in drafting contracts than other party.

2.2.1 APPLICATION OF CONTRA PROFERENTUM RULE:

In current legal practice, contra proferentum rule is relevant in contractual interpretation, specially where contracts are less considered or imbalance between power of parties is present. The contra proferentem rule is most commonly applied in the interpretation of exclusion clauses.

³⁵ https://hsfnotes.com/litigation/wp-content/uploads/sites/7/2019/07/Contract-disputes-practical-guides_Issue-2_d6-Interpretation.pdf accessed on 25 November 2024

³⁶ <https://www.investopedia.com/terms/c/contra-proferentem-rule.asp> accessed on 27 November 2024

2.2.1.1 HALFORD V PRICE:

In the case of *Halford v Price*, the High Court was asked to decide an appeal involving a claim for breach of professional duty against a partner in a law firm, as to whether the firm's insurance policy covered the partner. The insurance contract contained an ambiguous indemnity clause. In this case, Halford and Price made contract for the purchase of property. There was a clause in the contract which says if Price failed to complete the purchase till specific date, then payment of £10,000 will be due to Halford. Price failed to complete the purchase till specific date. Halford demanded the payment of £10,000 under the penalty clause. Price argued that this clause is a penalty so unenforceable.

Court of first instance favored price, agreed that the clause is a penalty. Court argued that this amount was not actual advance estimate of loss of Halford but a punishment.³⁷ Halford vs price includes an appeal related to dispute on the enforceability of penalty clause. Appeal was laid by the Halford (the pursuer) against Price (defender) after the decision which maintained the argument of defendant that contract provision develops penalty and this way it is unenforceable.³⁸ Court considered while deciding the case, situation at the time of the contract. Halford has a possible loss due to delay in the completion of purchase. It is showed by the evidence that £10,000 was not based on the detailed account of possible loss but on the arbitrary statistics. This case emphasizes on the necessity of loss provisions which reflects actual advance estimate of loss instead of working as penalty steps against the breaching party.

³⁸ <https://gibbswrightlawyers.com.au/publications/contract-law-the-contra-proferentem-rule/>

2.2.1.2 K/S Victoria Street vs. House of Fraser Ltd and Others [2011]:

In this case titled: "*K/S Victoria Street vs. House of Fraser Ltd and Others [2011]*" K/S Victoria Street was the landlord of commercial property leased to House of Fraser Ltd and Others. Lease included a provision according to which rentals need to pay a fixed amount if they fail to perform their duty, for example to keep the property repaired and maintained. Landlord tried to implement this provision when he ensured that rentals violated their obligations. Rentals argued that this provision is penalty and so unenforceable. Whereas, tenant argued that this is actual advance estimate of loss.

In *K/S Victoria Street vs. House of Fraser Limited and Others*; Court paid attention that either disputed provision was penalty or a legitimate liquidated damage. The difference between the penalty and liquidated damages is that either amount is actual advance estimate of loss or to stop the violation through penalty. Court considered the intentions of parties and the context at the time of drafting of lease agreement, in which this provision was present. The attention was paid towards the point that either by the failure of keeping the fixed amount maintained, there was a reasonable estimate of possible loss of landlord. Furthermore, the court of appeal emphasizes on the necessity of provisions in which actual estimate of loss is applied rather than payment of penalty charges against violations. This order emphasizes by ensuring the importance that these provisions are reliable and justified, which reflects the possible actual loss rather than acting as a penalty or hurdle.

2.2.1.3 Ailsa Craig Fishing Company Ltd vs. Malvern Fishing Company Ltd

In this case, *Ailsa Craig Fishing Company Ltd vs. Malvern Fishing Company Ltd* dispute

regarding implementation and interpretation of provision of liability is included in the contract for security services. This case marks essential principles regarding construction of limitation clauses in contract.³⁹ Ailsa Craig Fishing Company Ltd (complainant) made a contract along with Malvern Fishing Company Ltd (defendant) through a security company, Securicor Ltd for the distribution of security services. Security company has provision of limitation which limits their liability till £1000 per incident, until loss is due to company or its employees. Under the supervision of security company Ailsa Craig's fishing vessel was destroyed which led to enough loss and loss was above the limit of £1000. Ailsa Craig attempted to compensate the whole loss, by arguing that the provision of limitation should not be implemented. Whereas, the Securicor Ltd maintained that provision was clear and enforceable, and that their liability was limited to £1000 per contract. Lower courts favoured securicor by maintaining the provision of limitation. Ailsa Craig filed an appeal against the decision, as a result House of Lords heard the case. House of Lords maintained the limitation clause of liability, ordered that these are enforceable and reasonable in the view of the contract. Court found that this clause was clearly understandable by both the parties as literal. Ailsa Craig was deserving only till the fixed amount of £1000 in the contract, nor the complete limit of their loss.

House of Lords took the analysis of nature and purpose of provisions of limitation, specifying them among provisions of exclusion. Whereas exclusion clauses completely deny the liability, clauses of limitation makes liability limited to the extent of a specific amount. Court noticed that usually such clauses are kept maintained if they are clear and

³⁹ House of Lords, November 26, 1981

unambiguous.

Court recognized this commercial view in which the contract was formed. It was acknowledged that sometimes security services work with such limitations of responsibilities so that their losses can be managed and their services can be made economically enforceable. This case urges the importance of understanding and cautiously drafting the conditions of the contract regarding distribution of loss and duties.

2.2.1.4 UBS AG & UBS Securities LLC vs. HSH Nord Bank AG:

In this case, *UBS AG & UBS Securities LLC vs. HSH Nord Bank AG*, HSH (Nordbank AG is a German bank which is involved in investment) invested in CDO under the organization of UBS (UBS AG & UBS Securities LLC are international companies of financial services), as a result of which HSH faced financial loss. HSH blamed that UBS misrepresentation about the quality of basic assets and loss and failed to express the material information. HSH tried to recover the damages, claimed that UBS violated his duties and misrepresentation based on the fraud.⁴⁰ HSH filed a claim against violation of duty and misrepresentation against UBS, by emphasizing that UBS mislead them regarding risks of CDO.

High court while deciding in the favour of UBS found that HSH, as a Sophisticated investor, should be aware of the damages included in transactions. Court stated that UBS did not make any fraudulent misrepresentations and fulfilled their contractual obligations. HSH filed an appeal against the decision, by arguing that High court made a mistake in the decision about the duties owed by UBS and alleged misrepresentations. Court of appeal

⁴⁰ Court Of Appeal, June 18, 2009

considered this argument that HSH was a sophisticated investor and he should act with due diligence before the investment in CDO. Court accepted that HSH had skilled in financial markets, despite that it still relied on the information provided by UBS. Court analyzed evidences regarding misrepresentation from UBS. It was decided that to prove this there were not enough evidences that UBS willingly provided wrong information or hide the material facts regarding CDO. Court analysed that whether there is UBS owed a duty of care to HSH or either this duty was violated. Court found that UBS worked in the scope of duties under contract and not violated any additional duties on HSH.⁴¹ Court also considered limitations of liabilities of disclosure of UBS. This result was extracted that UBS reasonably disclosed damages attached with CDO. And HSH, as a sophisticated investor, has a responsibility of analysis of dangers independently.

The decision of UBS AG & UBS Securities LLC v HSH Nordbank AG urges the importance of due diligence from sophisticated investors and clarified the limitations of payable payments from financial institutions in the complex financial transactions. It marks the point that it is important to provide correct information to the investment banks, but modern investors are responsible for the independent analysis of risks involved.

2.3 DOCTRINE OF OBJECTIVITY:

The doctrine of objectivity, is a rule in contract law which pay attention towards beliefs and intentions of the parties except manifestations. According to this approach, an interpretation of a compromise is based on what reasonable person would understand from intentions of parties, by considering their words and actions, instead of their unknown

⁴¹Ravi, O. N. "The Contractual Interpretation Rule-Contra Proferentem: It's Relevance in Modern Law." *CMR Univ. J. Contemp. Legal Aff.* 2 (2020): 112.

views or aims.⁴²

2.3.1 EVOLUTION OF RULE OF OBJECTIVITY:

Initially, roots of objective approach are in the traditions of common law, specifically in the English law of contract. It took importance as a means to promote belief. "What a reasonable person would understand on the basis of contract by emphasizing importance of implementing predictability in the relationships of contract."⁴³

2.3.2 APPLICABILITY OF RULE OF OBJECTIVITY

In the current legal exercise, objective approach is implemented at large scale in contracts. Courts tries to know objective intentions of the parties through interpretation. Language of contract, contextual analysis and surrounding circumstances are included in examples cases of objective approach.

2.3.2.1 Smith vs. Hughes:

In the case titled; ***Smith vs. Hughes*** whereby, objective approach of contract interpretation has been explored for the formation of contract. It is an historical English contract law case, whose decision was made in 1871 by the Court of Queens. In this case, Plaintiff, Smith was a farmer who sold oats to the Hughes (defendant), a racehorse trainer, wanted to buy old oats, which is suitable to feed horses. Smith sent the samples of oats, which was accepted by the Hughes. After receiving the bulk shipment, Hughes discovered that oats are new,

⁴² Mitchell, Catherine. *Interpretation of contracts*. Routledge-Cavendish, 2018.

⁴³ Wielsch, Dan. "Contract interpretation regimes." *The Modern Law Review* 81, no. 6 (2018): 958-988.

which was not suitable for horses. Hughes refused to take the oats, claimed that he was misled that oats are old. The basic legal problem was that whether there was a binding contract among Smith and Hughes regarding nature of the oats, despite of Hughes mistaken belief.⁴⁴

Hughes argued that there was no correct contract because he intended to buy the old oats and supposed so. He further claimed that failure of Smith to correct his assumption makes misrepresentation. Whereas, Smith claimed that he did not do any misrepresentation about oats to be old or new and claimed that Hughes accepted the sample and he should check the suitability of oats.

Court emphasized the objective approach, which focuses on the outward expression despite of internal and subjective intentions of the parties. Court observed that what a reasonable person would understand from contract as a party. Court decided that decision of mutual consent is done by the practical appearance of parties. However, Hughes accepted the sample of oats and didn't investigate about its age, a reasonable person would understand oats as they were.⁴⁵ Court found that mistake was from one side. Belief of Hughes that he was buying old oats, is not effected by false statements of Smith. Therefore, mistake of Hughes doesn't deny the formation of contract. Court stated that it was correct and enforceable contract. Hughes was bound by the contract to pay for the oats despite of the false belief regarding age of barley.

⁴⁴ <https://lawprof.co/contract/mistake-cases/smith-v-hughes-1871-lr-6-qb-597/>

⁴⁵ Stern, Esther. "Objectivity, Legal Doctrine and the Law of Mistaken Identity." *Journal of Contract Law* 8, no. 2 (1995): 154-192.

2.3.2.1.1 Principles of Contractual Interpretation derived from the cited Case:

- Contracts are formed on the basis of parties' objective intentions and actions despite of their subjective intentions.
- A unilateral mistake (where only one party makes mistake regarding basic aspect of contract) not necessarily invalidate the contract until other party gets knowledge of mistake or it should know.

This case set the example for the limited impacts of unilateral mistakes in law of contract and its practical importance. *Smith vs. Hughes* is referenced for dealing with false assumptions in the formation of contract and clear explanation of objective approach of contract in the law of contract. This case emphasized on the necessity of clear declaration of parties' necessities and assumptions.

2.3.2.2 Lefkowitz vs. Great Minneapolis Surplus Store:

This case is of great importance in law of contract, especially with the reference of principles of promissory estoppel and unilateral contracts. The decision of this case *Lefkowitz vs. Great Minneapolis Surplus Store* was done by Supreme Court of Minnesota in 1957. Defendant Great Minneapolis Surplus Store gave advertisement in a newspaper in which 'three fur stole' was presented for sale at specific date and time.

Plaintiff Lefkowitz, who was familiar with the previous advertisement of store for such furs, reached store at specific time and was first person to do that. Lefkowitz tried to buy the fur but store refused, claiming that this advertisement was only for

women.⁴⁶

The central issue was that whether advertisement did a unilateral contract, and if yes, whether Lefkowitz had fulfilled the conditions to accept the proposal. Lefkowitz argued that he was first who reached at store, fulfilling conditions of advertisement, he accepted the proposal and deserve to buy the fur, on the advertisement rate. Great Minneapolis Surplus Store argued that the purpose of advertisement was not a proposal but as an invitation for communication. And that's why they have this discretion that they refuse to sell the fur. Court decided in the favor of Lefkowitz accepted the proposal by reaching store at specific time and by fulfilling conditions of advertisement and fulfilled the conditions for acceptance and said that he deserves to buy the fur on advertisement rate. Court emphasized that an advertisement can form a unilateral contract if there are clear and precise terms, which can be accepted through performance. Court also considered the ideology of promissory estoppel, which stops one party to return the promise, if other party relied on it to their detriment. Lefkowitz relied on the advertisement and took action while depending upon proposal, thereby invoking the principle of promissory estoppel.

2.3.2.2.1 Principles of Contractual Interpretation derived from the cited Case:

- A unilateral contract is formed when the person who offers, made a promise in exchange of performance of a specified act by the offeree.
- Promissory estoppel stops one party from gaining back the promise if other party relied upon it for their loss, and enforcement of promise is necessary for the prevention of injustice.

⁴⁶ Lefkowitz V. Great Minneapolis Surplus Store (1957)

Lefkowitz vs. Great Minneapolis Surplus Store is an historical case which clarifies the principles of promissory estoppel and unilateral contracts of law of contract. This case clarifies the importance of enforcement of unilateral contracts on fulfillment of specific conditions from offeree.⁴⁷

2.3.2.3 Carlill vs. Carbolic Smoke Ball Co:

Carlill vs. Carbolic Smoke Ball Co. is an historical case in the law of contract. Specially with reference to view of unilateral contracts and the effectiveness of advertisements as offers. It was decided by Court of appeal of England in 1893. Carbolic Smoke Ball company gave advertisement in newspaper that they will pay £100 to the person who is victim of influenza after he used their products, smoke ball according to the printed instructions. Company also claimed that it has deposited 1000 in bank for this purpose. Mrs. Carlill bought the smoke ball as per instructions despite which, he got influenza. Mrs. Carlill argued that she has accepted the proposal by using the smoke ball as per instructions and deserves the gift of £100 as per promise in advertisement. Carbolic company argued that the purpose of advertisement was not as a serious proposal and was just mere expression of confidence on their products benefits. The central issue was that either advertisement made a unilateral contract and if yes, whether Mrs. Carlill accepted the proposal by fulfilling the stated conditions in advertisement.

Court decided that advertisement has formed a unilateral contract, because there was clear and specific promise of gift for each and every person who performed a specific act (usage of smoke ball by following the instructions) and fulfill the condition (contract of influenza).

⁴⁷ <https://www.casebriefs.com/blog/law/contracts/contracts-keyed-to-murphy/the-bargain-relationship/lefkowitz-v-great-minneapolis-surplus-store/>

Court declared that the act of using the smoke ball by Mrs. Carlill is correct and constitutes consideration, because this is similar to loss faced on the application of presenter in exchange of the promised reward. Court stated by giving the decision in the favor of Mrs. Carlill that she deserves the reward of £100 according to the promise in advertisement. Court emphasized on the impact of advertisement when it is clear and precise and where public is needed to act.

2.3.2.3.1 Principles of Contractual Interpretation derived from the cited Case:

- Unilateral Contract is formed when presenter makes promise of specific act against the performance of any act of the other person and the other person accepts the proposal by performing the specific act.
- Acceptance of unilateral contract is done when other person performed the specific act stated in the proposal.
- Consideration is the basic principle in the law of contract, where each party is required to provide the something of value to the other party as a part of contract.

In a nutshell, Carlill v. Carbolic Smoke Ball Co is an historical case which formed the principle of unilateral contracts and clarified the impact of advertisement as a proposal when they contain clear and specific conditions. This case clarifies the importance of consideration in the implementation of contracts through public advertisement and

formation of contract.⁴⁸

PURPOSIVE APPROACH IN CONTRACTUAL INTERPRETATION:

Purposive approach in contractual interpretation is the process in which courts interpret by determining meanings of terms and conditions of contracts by paying attention towards purpose of the contract rather than strictly following literal meaning of the words. This approach accepts that contracts are tools to achieve specific aims and tries to interpret it in the way which reflects purposes best, though its meaning is different from its text.⁴⁹

Initially, purposive approach in contractual interpretation is prepared by legal interpretation preference. Specially, in scope of common law this traditional approach came as a response to limitations which preferred to apply literal meaning rule instead of considering wide context or purpose of the contract.

2.3.3 APPLICATION OF PURPOSIVE APPROACH:

In current legal practice, purposive approach is widely used in courts during interpretation of contracts, especially in complex business transactions or ambiguous or unclear language. Courts considers business context, intentions of parties and collective purpose of contract so that its meaning could be determined. These examples of purposive approach in interpretation of contracts are as under:

2.3.3.1 Investors Compensation Scheme vs. West Bromwich Building Society [1997]:

The historically cited English contract law case named: *Investors Compensation Scheme*

⁴⁸ Wightman, John. "Carlill v Carbolic Smoke Ball Co Ltd (1893)." (2008).

⁴⁹ Robertson, Andrew. "Purposive contractual interpretation." *Legal Studies* 39, no. 2 (2019): 230-246.

vs. West Bromwich Building Society [1997] which laid down that a contextual approach must be taken to the interpretation of contracts. Investors, who suffered losses due to negligent financial advice involving "Home Income Plans," assigned their claims to the Investors Compensation Scheme Ltd. (ICS) under the Financial Services Act 1986 for compensation. A dispute arose regarding whether the assignment excluded claims for damages against West Bromwich Building Society (West Bromwich BS), with the exclusion clause being central to the case.

In this case, the court emphasized interpreting exclusion clauses and contractual provisions clearly and pragmatically, focusing on what the language would mean to the parties involved. This approach promotes fairness and avoids overly technical interpretations that could lead to unjust outcomes, aligning judicial interpretation with common-sense understanding.

The central issue remains with the interpretation of exclusion clause in assignment or whether claims of damages against West Bromwich were correctly assigned to the ICS. ICS argued that damages claim against Bromwich were correctly assigned to them, despite of exclusion clause in the assignment form. House of Lords paid attention towards the determination of scope of assignment form regarding claims against West Bromwich and interpretation of assignment form. Court emphasized on the principles of interpretation of contract, with the inclusion of objective intentions of the parties and surrounding circumstances of the contract. Court analysed that whether exclusion clause has dismissed the assignment of damages claims to ICS against Bromwich. Attention was paid towards the available information of the background to the parties at the time of contract. Or whether exclusion clause is clear or understandable. House of Lords concluded that damages claim

against west Bromwich were accurately assigned to ICS, despite that there is exclusion clause in the assignment form. Court's decision emphasized to interpret the exclusion clauses of the contract according to the objective intentions of the parties and surrounding circumstances.

2.3.3.2 Chartbrook Ltd vs. Persimmon Homes Ltd:

Chartbrook Ltd vs. Persimmon Homes Ltd case concerning interpretation of contracts. It creates a so-called "red ink" rule, that there is no limit to verbal rearrangement that the court may deploy to give a commercial sensible meaning when construing a contract in its bargaining context.⁵⁰ Chartbrook Ltd made a contract of sale of immovable property with Persimmon Homes Ltd for the residential development. Contract contained provision regarding multiple payments, which clarifies that persimmon should pay additional payment on the basis of number of constructed houses more than the specific limit on the land. However, there was an ambiguity in the overage provision, which lead towards the dispute between the parties regarding interpretation.

The important issue in the contract was about the interpretation of overage provision and whether it should be rectified to reflect the real intentions of the parties. Chartbrook argued that the interpretation of overage provision should be done in the way which is in its favor, as a result permisson would made the additional payments. They also tried to rectify the contract so that it can be reflected that what they understand from the real intentions of the parties with reference to overage payments. Persimmon argued that the interpretation of overage payments should be done in the way that limits their liability of additional

⁵⁰ Chartbrook Ltd v Persimmon Homes Ltd [\[2009\] UKHL 38](#) is

payments. They oppose the correction in the contract, by saying that these conditions are clear and reflects the contract of the parties.

House of Lords does extensive analysis of language of the overage provision in the contract and its context. It considered the surrounding circumstances, inclusive of negotiations between parties and their intentions at the time of executing of contract. Court analysed that whether any basis to correct the contract is present to reflect the intentions of the parties, despite the ambiguity in the terms. House of Lords interpreted the provision of overage in favour of Chartbook, as a result Persimmion made additional payments. Furthermore, Court ordered to make the contract with reference to the additional payments according to the real intentions of the parties.⁵¹ The decision emphasized on the importance of correcting the ambiguous conditions to accurately reflect the intentions and interpret the contract in the light of intentions of the parties.

2.3.3.3 Rainy Sky (Rental) and Kookmin Bank (landlord):

In the case, Rainy Sky (Rental) and Kookmin Bank (landlord) made a contract of lease for commercial property. There was a provision in the contract of lease which clarifies the method of calculation the rental payment, a specially, regarding exchange rate between American dollars and Korean won, the provision was ambiguous, there was many possible interpretations that whether calculation of rent should be done on the basis of a fixed exchange rate or floating exchange rate. The main issue in this case was about the method of the interpretation of the provision of lease agreement to calculate the rental payment.

⁵¹ McLauchlan, David. "Interpretation and Rectification: Lord Hoffmann's Last Stand." *New Zealand Law Review* 2009, no. 3 (2009): 431-453.

Rainy Sky argued that the interpretation of should be according to the commercial sense, by claiming that fixed exchange rate will provide certainty and stability in the payments of rent which will cause benefits for both the parties. Parties emphasized the impact of commercial sense and to avoid the need of such interpretation which leads towards unreasonable or funny result. Kookmin bank favored the strict interpretation of the language of the contract, by emphasizing the point that provision should be made according to its literal meaning. They argued that language of the contract of lease was clear and unambiguous, so that recommended interpretation of fixed exchange rate of rainy sky was unsupported.

Supreme court ordered in the favour of Rainy Sky by saying that the term “present market rate” should be interpreted as a present market rate at the time of the calculation and its common meaning. Court emphasized to interpret the conditions of the contract in its commercial sense and in consistent with the intentions of the parties, whether this interpretation leads to less beneficial result for the one party. Court’s purpose is to keep maintained the integrity of the contract and to make sure the justice in the relationships of contract by its choice to adopt way of interpretation as context and commercial sense.⁵² Court’s decision put light on the principle that interpretation of contract should be given preference on the commercial reasonableness and fairness, specially in the situation of ambiguity or uncertainty.⁵³

These cases shows that how purposive approach made courts able to interpret contracts in the way which best reflects intentions of the parties, and achieve collective purpose of

⁵² Robertson, Andrew. "Purposive Contractual Interpretation." *Legal Studies* 39, no. 2 (2019): 230-246.

⁵³ Menon, Sundaresh. "The Interpretation of Documents: Saying What They Mean or Meaning What They Say." *Sing. L. Rev.* 32 (2014): 3.

contract, even if words are unclear or ambiguous.

2.4 READING THE DOCUMENT AS A WHOLE:

It is a basic rule of legal interpretation to read the document as a whole for which courts need to consider any document like agreement, law or legal instrument rather than only concentrating on isolated words or phrases.⁵⁴ By recognizing document as a complete integrated, courts aim is to know real meaning, intentions and purpose, in this way ensuring correct and justified interpretation.

2.4.1 EVOLUTION OF PRINCIPLE OF READING THE DOCUMENT:

The principle of reading the document as a whole is prepared in decades of legal practice. Its roots can be tracked down in ancient legal traditions. But, it took importance and purity by the development of modern legal system. As soon as legal texts became purified and complex, courts accept need of their interpretation in the way which reflects its context and intentions. With time, this principle got strength by judicial decisions, academic writings and legislature.

2.4.2 APPLICATION OF THIS RULE:

In current legal practice, reading a document as a whole is a basic rule of interpretation in diverse scope. Courts apply this rule during formation of contracts, laws, principles, and legal instruments. This approach not only includes to analyze language of contract but also to analyse its structure, context, purpose and history of legislation. Court tries to have

⁵⁴ Menon, Sundaresh. "The Interpretation of Documents: Saying What They Mean or Meaning What They Say." *Sing. L. Rev.* 32 (2014): 3.

impact on collective scheme of law, purpose of law making and intentions of parties.

2.4.2.1 Kenneth Reed Construction Corporation vs. United States:

Kenneth Reed Construction Corporation vs. United States is an essential case because it clarifies the specification of risks due to unexpected circumstances and legal principles to control the construction contracts. This case puts light on the necessity of estimate and to deal with possible emergency situations in in the construction plans for the parties and the importance of the conditions of clear contract. This case also validates that contractors should not borne risk of such situations, which are not reasonably estimated at the time of making the contract, justice and equity must be promoted in the disputes of construction contracts.⁵⁵

Kenneth Reed Construction corporation made a construction contract with the government of united states to perform some construction tasks. During project, Kenneth Reed Construction faced unexpected underground circumstances which was not expected in the contract. Kenneth Reed Construction corporation faced additional expenses and delay due to unexpected underground circumstances and demanded remuneration for the additional expenses.⁵⁶

The main issue in this case was that whether Government of United States is responsible for unexpected underground circumstances faced by the Kenneth reed construction corporation? Kenneth reed construction corporation argued that unexpected underground

⁵⁵ <https://law.justia.com/cases/federal/appellate-courts/F2/962/998/91993/>

⁵⁶ *Kenneth Reed Construction Corp. V. United States*, 475 F.2d 583, 586 (Ct. Cl. 1973)

circumstances forms a situation of different site, which makes them deserving for the additional remuneration under contract. They argued that government should borne the risk of unexpected situations, because it was not reasonably estimated at the time of making the contract. Government argued that Kenneth reed construction corporation took the risk of facing the underground circumstances by entering into the contract. They argued that Kenneth reed construction corporation is responsible for any additional expenses developed from such conditions and government is not liable for remuneration.

Court of claims decided in the favour of Kenneth reed construction corporation and stated that government is responsible for the compensation of additional expenses faced by the Kenneth reed construction corporation due to unexpected underground circumstances. Court decided that the circumstances Kenneth corporation faced was materially different from the conditions mentioned in the documents of contract, from which situation of site is different. Conclusively, Kenneth Reed Construction Corporation deserves the justified adjustment in the price of contract for delay and additional expenses due to unexpected circumstances.

2.5 INTERPRETATION OF AMBIGUOUS CONTRACTS:

Interpretation of ambiguous contracts is an important aspect of law of contract, in which court is required to do careful analysis of language of contract, its context and surrounding circumstances. Solution of ambiguity is necessary to implement contracts and to make sure justice and equity between parties. Ambiguity develops when language of contract is

sensitive for several reasonable interpretations, which causes uncertainty regarding intentions of parties.

With the passage of time different principles and approaches are made to guide courts in interpretation of ambiguous terms of contracts. Approach regarding interpretation of ambiguous terms of contracts is made over the decades of legal practice. Initial legal systems relied on strict contextual analysis, where literal meaning of the terms was important. However, as legal documentation became more complex, need of flexibility and justice increased, courts started to adopt more narrow methods of interpretation. Modern ways of interpretation of ambiguous terms avail from the combination of contextual analysis, intention of law making and judicial precedents.

2.5.1 EVOLUTION OF THEORIES OF INTERPRETATION:

Approach regarding interpretation of ambiguous contracts is developed over the decades of legal prosperity. Evolution of interpretation of ambiguous contracts, current practices and understanding of noteworthy case laws provides insights of this important aspect of contract law. Initial legal systems were mostly relied on strict textualism approach, where literal meaning of the language of contract was most important. However, as soon as contracts became more complex and specific, courts accepted the boundaries of this approach and started to adopt more new ways of interpretation. Interpretation of modern contracts emphasizes on the comprehensive approach which not only focuses on the language of the contract but also surrounding circumstances, intentions of parties and wide context in which contract was formed.

2.5.2 DIFFERENT APPROACHES FOR INTERPRETATION OF AMBIGUOUS CONTRACTS:

In current legal practices, Courts applied several approaches for the interpretation of ambiguous contracts: The purpose of these approaches is to understand intentions of parties and to influence basic purpose of contract. Some common approaches are as under:

2.5.2.1 PLAIN MEANING RULE/LITERAL INTERPRETATION:

According to this approach, courts give preference to plain and natural meaning of terms used in contract. If the language is clear and unambiguous then courts will interpret it according to plain meaning.⁵⁷ However this approach cannot be used if the language of contract is unclear and ambiguous.

2.5.2.2 CONTEXTUAL INTERPRETATION:

Courts can focus on contextual analysis of contract, inclusive of way of transactions between parties, industrial practices and collective purpose of contract.⁵⁸ Courts can better understand intentions of parties and remove ambiguity by recognizing contract completely and watching circumstances widely in which contract was formed.

2.5.2.3 CONTRA PROFERENTEM RULE:

When any ambiguous terms of contract could not be solved by other interpretation approaches then courts can apply contra proferentum rule. This rule orders to interpret the ambiguous terms of the contract against the party who drafted the contract.⁵⁹ Because it is

⁵⁷ Kaushik, Ankit. "Golden Rule of Interpretation." *Available at SSRN 4676773* (2023).

⁵⁸ Crowe, Jonathan. "The role of contextual meaning in judicial interpretation." *Federal Law Review* 41, no. 3 (2013): 417-442.

⁵⁹ McCunn, Joanna. "The contra proferentem rule: contract law's great survivor." *Oxford Journal of Legal Studies* 39, no. 3 (2019): 483-506.

assumed that they have chance to clear the language. This approach promotes preparation of clear and correct documentation and favors the party who has no part in contract drafting.

2.5.3 APPLICATION OF DIFFERENT APPROACHES IN AMBIGUOUS CONTRACTS:

2.5.3.1 Rainy Sky (Rental) vs. Kookmin Bank (Landlord):

As discussed earlier under the head of purposive approach the case titled: **Rainy Sky (Rental) vs. Kookmin Bank (Landlord)** emphasized on the importance of promoting the commercial trust, affecting the intentions of the parties and establish the principles of interpretation of contract. This case emphasized on the importance of adopting the commercial context, background of the contract, context, and purposive approach of the interpretation of contract. This case features the role of court to make certain the reasonability and justice in the relationships of contract, whether this way of interpretation is less beneficial for one party or not?

In this case, the Supreme court analysed the point of interpretation of commercial contracts and to solve the ambiguity in the language of the contract. Dispute regarding interpretation of contract of lease was raised, regarding the method of payment of rent for commercial property.

2.5.3.2 Lloyd's Bank Ltd vs. Bundy:

In the case, named: "**Lloyd's Bank Ltd vs. Bundy**" court of appeal applied contra proferentum rule to interpret ambiguous terms of lease agreement regarding responsibility

of repair of tenant.⁶⁰ Court made ambiguous provision against owner, who drafted lease agreement and decided case in favor of tenant. Mr. Bundy, an old and illiterate man, create a mortgage deed in the favor of Lloyd's bank to get a loan. Mortgage deed was drafted by the lawyers of the bank and Mr. Bundy took an independent legal advice from the lawyer recommended by the bank. Mr. Bundy after that tried to discharge the mortgage deed on the basis of undue influence and irresponsible dealing, he blamed that they did not make understand the conditions of contract wholly and he was forced to sign.

The main issue in the case was that whether Mr. Bundy was followed by the undue influence of the Lloyds bank, by which mortgage deed was declared null and void. Mr. Bundy argued that he was weak due to his age and education and that bank put undue influence on him to enter the contract of mortgage. He argued that he could understand the conditions of mortgage deed wholly and much relied on the advice of lawyers of bank, about whom he assumed that they are working in their best interest.

Llyod's Bank emphatically said that Mr. Bundy took an independent legal advice and informed well about the conditions of the mortgage before signature. They argued that there was no real undue influence and Mr. Bundy put signature with whole consent and understanding. Court of appeal analysed the surrounding circumstances on the implementation of mortgage deed, the role of bank in giving advice to him, nature of transaction and weakness of Mr. Bundy. Court analysed that whether Mr. Bundy and Bank

⁶⁰ DiMatteo, Larry A. "Contract terms and standard form contracting." In *Principles of Contract Law and Theory*, pp. 212-231. Edward Elgar Publishing, 2023.

has the relationship of trust which can lead to undue influence. Court also considered that whether Mr. Bundy act upon the independent advice and understand the elements of the mortgage agreement.

Court of appeal decided the case in the favour of Mr. Bundy that the mortgage deed is void due to the undue influence of+ the Lloyds bank. Court found that Mr. Bundy was an old man and he relied heavily on the advice of lawyers, who were working in bank interest more than their own interest. Court emphasized on the importance of making sure justice in the contracts specially in the matters in which unequal bargaining power and weak parties are involved.

2.5.3.3 Coventry vs. Lawrence:

The historical case, in front of UK Supreme Court “*Coventry vs. Lawrence*” regarding law of nuisance and planning highlighted the importance of contextual interpretation. Court removed ambiguity from legal provisions by considering intentions of legislation and wide policy purposes to get justified result.

These cases shows that how courts apply different methods to interpret ambiguous contracts and emphasize on the importance of understanding of intentions of parties and to achieve justified and reasonable interpretation.⁶¹

2.6 INTERPRETATION OF TECHNICAL AND NON-TECHNICAL TERMS:

In contractual interpretation, it is very common to have technical and non-technical both types of terms in the language of contract. Non-technical terms are the terms which we use

⁶¹ Coventry vs. Lawrence (2014)

in daily life, they have “plain meaning” whereas technical terms have specific meanings in specific field or industry.⁶² It is very necessary to understand difference between these terms and conditions in order to interpret provisions of contract correctly and to determine intentions of the parties.

The difference between technical and non-technical terms in the interpretation of contract in legal practice is developed with wide trends. Initially legal system was more relied on contextualism, whereby, literal meaning of the words applied. However, as soon as contracts became more complicated and specific, courts accepted necessity to focus on context of terms and specific meanings of the industry. With the passage of time, different approaches are formed to solve the nuances of technical and non-technical languages.

2.6.1 DIFFERENT APPROACHES TO INTERPRET TECHNICAL AND NON-TECHNICAL TERMS OF THE CONTRACT:

In current legal practice, courts apply different approaches to interpret technical and non-technical terms of the contract:

2.6.1.1 PLAIN MEANING RULE:

Courts usually apply *plain meaning rule* to interpret nontechnical terms of the contract, which gives preference to plain and natural meaning of the terms.⁶³ If the

⁶²

⁶³ Thomas, H. Randolph, Gary R. Smith, And Robert E. Mellott. "Interpretation Of Construction Contracts." *Journal Of Construction Engineering and Management* 120, No. 2 (1994): 321-336.

language of the contract is clear and unambiguous then courts will interpret non-technical terms according to their plain meaning.⁶⁴

2.6.1.2 CUSTOM AND USAGE:

For the interpretation of technical terms, courts can consider *custom and usage* for the relevant industry or business. The evidence of how the term can be used regarding specific industry can be very helpful in the interpretation of technical terms of the contract.⁶⁵

2.6.1.3 TESTIMONY OF EXPERT:

Courts can rely on the *testimony of expert* for the interpretation of technical terms of the contract, in such matters where more technical terms and specific industries are evolved. Experts can give insights about the required meanings of the technical terms and standards and methods of industry.⁶⁶

2.6.1.3.1 RAFFLES VS WICHELHAUS:

Raffles vs Wichelhaus is important for its exploration of the doctrine of mutual mistake and its implications for the formation of contract. This case urged the importance of meeting of minds between the parties regarding necessary conditions of any contract so that it may be made workable. *Raffles vs Wichelhaus* is an historical case in the law which handles mutual error problem. This case is all about the contract of sale of cotton delivered on the aero plane named “pear less.” However, 2 aeroplanes were of this name. ‘pear less’

⁶⁴ Schauer, Frederick. "Is Law a Technical Language." *San Diego L. Rev.* 52 (2015): 501.

⁶⁵ Alexander, Anthony. "" But That's Not What That Means": When Can Evidence of Technical Jargon, Industry Custom And Trade Practice Be Used To Interpret a Commercial Contract?"

⁶⁶ Cecil, Joe S., and Thomas E. Willging. "Accepting Daubert's invitation: Defining a role for court-appointed experts in assessing scientific validity." *Emory LJ* 43 (1994): 995.

as a result of which dispute arose that contract refers to which plane, this case is given reference to the view of mutual error and formation of contracts and its impacts on implementation.⁶⁷

Plaintiff Raffles, agreed to sell 125 bales of cotton to defendant Wichelhaus. It was clearly mentioned in the contract that cotton will be sent from Mumbai to Liverpool on the plane named 'pear less'. No party knew at the time of formation of contract that there are two planes available of the name of pear less, a one in October and other in December. Raffles intended to send cotton on journey of pear less in October while Wichelhaus thought that his reference is for December.

The main issue in the case was “*whether contract became void due to the mutual error about identity of plane*” Raffles argued that it was that valid contract on the basis of the objective understanding of conditions in which reference of pear less of October was given. He argued that identity of plane is a basic term in a contract and both the parties should be focused on objective interpretation of conditions of contract. Wichelhaus argued that there was no consensus between the parties regarding identity of plane. He argued that contract became void due to mutual mistake, because each party has different understanding regarding the plane referred in contract.

Court of exchequer favoured Wichelhaus in its decision that contract became void due to mutual mistake. Court decided that although at the time of formation of contract both the parties had different state of mind, despite of Raffles' intention, for journey in October, understanding of Wichelhaus about journey in December made a significant difference in

⁶⁷ Raffles vs. Wichelhaus (1864):

the conditions of the contract. As a result, Court decided that there was no binding contract between the parties.⁶⁸

2.6.1.3.2 Transfield Shipping inc. vs. Mercator Shipping inc.:

Transfield Shipping inc. vs. Mercator Shipping inc., which is commonly known as the achilleas case, there is an important ruling is available for the liquidation of damages. This case is regarding the charter party contract for the rent of ship where ship owner again violated the contract by the delayed delivery of ship and this dispute was: whether ship owner can limit his liability on the basis of prediction of loss at the time of formation of contract. The main issue in the case was the estimate of loss for the violation of contract due to late delivery of ship by owner of ship.

Transfield argued that there should be liability of ship owner for remuneration of profit for the waste of opportunity of additional journey due to delay. He argued that loss can be estimated at the time of formation of contract and damages should be received in the form of compensation. Mercator argued that his liability was limited to chartered rate stated in contract and was not extended to further loss as a result of it. They argued that estimate of loss should be based on the conditions of the contract, which does not clearly have conclusive losses.⁶⁹ House of Lords decided in the favor of ship owner Mercator shipping incorporation, and stated that its liability is limited to the rate mentioned in charter. Court

⁶⁸ Birmingham, Robert L. "Holmes on Peerless: Raffles v. Wichelhaus and the Objective Theory of Contract." *U. Pitt. L. Rev.* 47 (1985): 183.

⁶⁹ Sundaram, Jae. "Transfield Shipping Inc v Mercator Shipping Inc the Achilleas [2007] 2 Lloyds Rep 555." *The Denning Law Journal* 20, no. 1 (2008): 187-195.

stated by applying the principle of remoteness of damages that damages of violation of contract are limited to the extent which were reasonably expected by the parties at the time of formation of contract. Decision emphasized on the importance of the clear language of the contract for the determination of limitation of liability for the violation of contract.⁷⁰

2.7 EXPRESSED TERMS, COURSE OF PRIOR PERFORMANCE AND USAGE OF TRADE:

In contract interpretation, express terms, course of prior performance, and usage of trade are essential factors that courts consider to understand the parties' intentions and the scope of their agreement. Expressed Terms are those clear terms which are described in contract, while course of prior performance is meant that how parties worked in past according to contract. Usage of trade involves industrial customs and traditions which may impact on the terms of contract.⁷¹ These elements provide context for the understanding of intentions of parties and to solve the ambiguity of the contract language.

2.7.1 EVOLUTION OF BASIC PRINCIPLES:

Consideration of clear words, method of prior performance and usage of trade are developed over time in the interpretation of contract. Basically, initial legal systems paid attention towards literal interpretation of contract, in which expression of terms was given preference. However, as soon as contracts became complex and specific, courts accepted

⁷⁰ McLauchlan, David. "Interpretation and Rectification: Lord Hoffmann's Last Stand." *New Zealand Law Review* 2009, no. 3 (2009): 431-453.

⁷¹ Zamir, Eyal. "The inverted hierarchy of contract interpretation and supplementation." *Colum. L. Rev.* 97 (1997): 1710.

boundaries of strict contextualism and started to focus on surrounding circumstances and methods of industry. Over the years, these elements became compulsory for each other, which reflects a more comprehensive approach, which tries to understand intentions of the parties and to impact collective purpose of the contract. In contemporary legal practices, Courts while interpreting the contracts, consider clear terms, methods of prior performance and usage of trade:

2.7.1.1 EXPRESSED TERMS:

Express terms are those specific terms which are clearly mentioned in contract. Courts give weightage to expression of terms while interpreting contracts because it represents agreed upon terms by the parties.⁷² However, to ensure justified and reasonable interpretation of contract, interpretation of clear terms of whole contract and surrounding circumstances should be done.

2.7.1.2 COURSE OF PRIOR PERFORMANCE:

Course of prior performance is meant that how parties have worked in past according to contract. Courts can consider prior performance and actions of parties for the understanding of practical application of aims of parties and terms of contract.⁷³ A consistent performance according to contract can provide insights to the expectations of parties and interpretation of ambiguous terms.⁷⁴

⁷² Kramer, Adam. "Common Sense Principles of Contract Interpretation (and how we've been using them all along)." *Oxford Journal of Legal Studies* 23, no. 2 (2003): 173-196.

⁷³ Zamir, Eyal. "The Inverted Hierarchy of Contract Interpretation & Supplementation." *Colum. L. Rev.* 97 (1997): 1710.

⁷⁴ Patterson, Edwin W. "The Interpretation & Construction Of Contracts." *Colum. L. Rev.* 64 (1964): 833.

2.7.1.2.1 Hutton vs. Warren:

In this case titled: “*Hutton vs. Warren*” (1836) Hutton was the tenant farmer of land owned by Warren. Warren issued a notice to quit and insisted to cultivate the land throughout the notice period. Hutton continued to farm the land during the last year of the tenancy expending his own labour and purchasing seed and manure for use on the land. On quitting the farm, Hutton sought a reasonable payment for the labour and expenditure bestowed on the farm, and Warren refused to pay.

In this classic English contract law case, court considered prior performance in the interpretation of contract of sale of oven. Court considered prior transactions of parties and industrial customs to determine required standards of stock rather than absence of clear terms regarding standards of oven. Court declared that the seller is made bound to provide the oven of same quality as former, which shows importance of prior performance in the interpretation of contract.⁷⁵

2.7.1.3 USAGE OF TRADE:

Usage of trade includes industrial customs, conduct and standards which can effect the interpretation of terms of contract. Courts can rely on customs and trade usage of industry for the understanding of the meaning of technical terms or to remove the ambiguity of the language of the contract.⁷⁶ Usage of trade provides worthwhile context for the interpretation of contracts and to ensure that terms of contract must be understood in its industrial context.

In this historical English case, court emphasized on the importance of trade usage in the interpretation of contract. In the case titled: “*Shirlaw vs. Southern Foundries Ltd. (1939)*”

⁷⁵ <https://ipsaloquitur.com/contract-law/cases/hutton-v-warren/>

⁷⁶ Martorana, Vincent R. "A guide to contract interpretation." (2014).

Shirlaw was appointed as Managing Director of Southern Foundries (SF) for a fixed period of ten years. SF was taken over by another company who altered the pre-existing articles of association empowering two directors and a secretary to remove a director, irrespective of the terms of his contract. Shirlaw was sacked prior to the expiration of the fixed term, and he brought a claim to recover damages for breach of contract.

Court stated that court may guess the terms on the basis of methods and customs of trade usage, where parties to the contract works in specific industry or business.⁷⁷ This case showed that customs and trade usage are of relevant consideration in the interpretation of contract.

2.7.1.3.1 BANNERMAN VS. WHITE (1861):

In this influenced English Case, *Bannerman vs. White (1861)* court considered both clear terms and trade usage while interpreting of contract of sale of hops. The claimant, Bannerman, formed a contract with the defendant, White, regarding the purchase of hops, intending to use them to produce beer. The claimant specifically enquired as to whether the hops had received a sulphur treatment as it is only possible to make usable beer from hops that have not received this treatment. Furthermore, the claimant expressly stated that he would be unwilling to buy the hops if they had been treated. The defendant assured the claimant that the hops were untreated, however in fact the hops had received sulphur treatment and were subsequently useless to the claimant; thus, Bannerman brought an action against White for damages, contending that the statement regarding treatment ought to be viewed as a contractual term which White had thus breached.

⁷⁷ Austen-Baker, Richard. "Terms implied in fact." In *Implied Terms in English Contract Law*, Second Edition, pp. 136-170. Edward Elgar Publishing, 2017.

Buyer rejected hops that these are not able to make alcohol despite of absence of clear warranty regarding quality in the contract.⁷⁸ Court considered trade usage in hops industry, according to contract responsibilities of seller includes that hops must be purified. Court declared that breach of implied warranty of fitness by seller gives right to buyer to reject the stock.

In a nutshell, Clear terms, course of prior performance and trade usage are essential elements of interpretation of contracts, which provides worthwhile context to remove ambiguity of the language of the contract and to understand the intentions of the parties. Courts can ensure that contracts must be interpreted in the way which reflects expectations of parties and collective purpose of contract. Evolution of interpretation of clear terms, course of prior performance and trade usage, current practice and understanding of noteworthy case laws are necessary for legal experts to interpret and implementation of contracts.

⁷⁸ <https://www.studocu.com/en-gb/document/sheffield-hallam-university/law/contract-sem-2/6255356>

CHAPTER 3

PRINCIPLES OF CONTRACT INTERPRETATION IN PAKISTAN

In Pakistani law, doctrine of natural meaning which also known as plain meaning rule or literal rule is very important in the interpretation of contract. This rule advise that interpretation of laws and contract should be according to their common and meaning of daily routine, instead of taking extrinsic evidence into consideration or without considering intentions of the party who drafted the contract.⁷⁹ Understanding of evolution, current practices, and noteworthy case laws regarding the application of this approach is very essential for the influential interpretation of contract in Pakistan.

3.1. EVOLUTION OF DOCTRINE OF NATURAL MEANING:

Roots of doctrine of natural meaning in Pakistani legal system are in the traditions of law of partnership inherited from the British colonial rule. This is developed over time to adjust unique legal scenario of Pakistan, in which contextual clarification and prediction of interpretation of contract is emphasized. Basically, initial legal systems relied upon strict contextual approach, which gives preference to literal meaning of the language of the contract. However, as soon as legal system is developed, courts recognized the need of subtlety which balances the contextual interpretation with wide context and purpose

of the contract.

3.2. APPLICATION OF DOCTRINE OF NATURAL MEANING:

In contemporary Pakistani legal practice, doctrine of natural meaning is the basic rule of interpretation of contract. Courts usually starts analysis with the overview of plain language of the contract and gives preference to its plain and natural meaning. However, this doctrine gets effected by other rules like contextual approach and intentions of the legislation, by which courts get permission to consider extrinsic evidence if the language of the contract is unclear or ambiguous.

"House Building Finance Corporation vs. Shaheen Shah Humayun Cooperative House Building Society and others" (1992 SCMR 19)

It is also a cardinal principle of law that the deed of contract has to be construed strictly and literally without deviating or anything which was not supported by the intention of the parties and the language of the document nothing can be implied in a contract that was inconsistent with it.⁸⁰

"Muhammad Saeed and 2 Others vs. State Life Insurance Corporation of Pakistan through Chairman and 2 Others"

⁸⁰ 1992 SCMR 19

The Appellants were appointed as Area Managers by the Respondents / State Life Insurance Corporation of Pakistan (the "Respondent") are performing their duties since their appointment. Admittedly, services of the Appellants are governed by the State Life Employees (Service) Regulations, 1973 (the "Regulations, 1973"). Lately, the Respondent started deduction of 'Incentive Bonus' and 'Additional Incentive Bonus' from the 'Operational Cost' of the Appellants. It is the case of the Appellants that although the Respondent is entitled to recover any amount in excess of 10% of their Operational Cost yet the Respondent cannot deduct any amount from Incentive Bonus or Additional Incentive Bonus since the terms and conditions of their Appointment Letter / service contract expressly and specifically bars the deduction of Incentive Bonus and Additional Incentive Bonus from Operational Cost. Hence, such deductions are unlawful. Conversely, the Respondent asserted an unfettered and unconditional right to recover Operational Cost more than 10% from the Appellants including the impugned deductions from Incentive Bonus or Additional Incentive Bonus. The universally accepted principles of interpretation of documents ordained that plain and general words are given their literal meaning, express mention, or inclusion of one thing excludes the other and that redundancy cannot be attributed to express words of the contract.⁸¹

Consequently, it was decided by Lahore High Court (Multan Bench) that the act of the Respondent regarding deduction of Incentive Bonus and Additional Incentive Bonus from the Operational Cost of the Appellants is declared to be illegal and without lawful

⁸¹ 2023 PLC(C.S.) 849

authority. Consequently, this Appeal is allowed and the impugned Judgment dated 03.11.2020 is set aside. The Respondent is directed to refund the amount deducted out of Incentive Bonus and Additional Incentive Bonus from the Operational Cost of the Appellants within a period of 30 days from the date of this Judgment.

These cases shows that how doctrine of natural meaning forms interpretation of contract in Pakistani law, making sure consistency and prediction by maintaining intentions of the parties as expressed in the plain language of the contract.

3.3 DOCTRINE OF CONTRA PROFERENTUM RULE:

In Pakistani law, Contra Proferentum Rule which also known as “interpret against the draftsman” is an important rule in the interpretation of contract. This rule applies when there is any ambiguity in the contract, by focusing that interpretation of the ambiguous words or unclear terms must be against the party who drafted the contract. Evolution, current practices and understanding of noteworthy case laws regarding application of this doctrine is essential for the influential interpretation of contract.

3.3.1. EVOLUTION OF CONTRA PROFERENTUM RULE:

In Pakistani law, contra proferentum rule is evolved from the inherited law of partnership and equity from British colonial rule. Initially this rule was adapted according to the Pakistani legal scenario for the promotion of justice and equity in the relationships of contract, in which emphasis was given on the protection of parties which may suffer losses in contract negotiations. With the passage of time, courts recognized the need of interpretation of ambiguous terms against the party who drafted the contract, about which it is assumed that was given the chance to clear the language of the contract.

In contemporary legal practice, Contra proferentum rule is considered relevant in the interpretation of contract, especially in such situation where contracts are not negotiated or where imbalance of power is present between the parties. Courts usually applies this rule to solve the ambiguity of terms and conditions of the contract, by making sure that the burden of ambiguity will be carried out by the party who drafted the contract. Courts by interpreting the ambiguous terms of the contract against the party who drafted it promotes clear and accurate draft and protects the rights of party who didn't draft the contract.

3.3.2. APPLICATION OF CONTRA PROFERENTUM RULE IN PRECEDENTS:

The Hon'ble Supreme Court of Pakistan while interpreting the principle of contra-proferentem in *PLD 2021 SC 906 titled "Universal Insurance Company and another vs. Karim Gul and another"* has beautifully observed as under: - "It can safely be concluded that the contract (notwithstanding its typographical errors) was the creation of the appellant. It is the entity in the insurance business and can be taken to know the sense in which the term "total loss" is used in the industry".

Keeping the relevant background facts in mind (as emerging from the evidence led at the trial) in our view a reasonable person considering the contract objectively would conclude that the term was used in the contract in a technical sense. The appellant's case is that the sense was of "actual" total loss, i.e., the thing sold was mere wreckage. In our view, there is a certain ambiguity as to in which of the two technical senses the words were used.

Now, a well-known principle of interpretation of contracts is the contra proferentem rule: "when there is a doubt about the meaning of a contract, the words will be construed against the person who put them forward" (Lewison, op. city, pg. 360). It has been held judicially, in the (UK) Court of Appeal that the rule is "a principle not only of law but of justice" (Association of British Travel Agents Ltd., v. British Airways Pic (2000) 2 All ER (Comm) 24, (200) 2 Lloyd's LR 209), and in the Supreme Court of Canada that "whoever holds the pen creates the ambiguity and must live with the consequences" (Co-operators Life Insurance Co v. Gibbons (2009) 3 SCR 605, 2009 SCC 59)".

These cases clarify that how contra proferentum rule removes ambiguity from contracts and acts as a tool to make sure justice between the parties in Pakistani law.

3.4. DOCTRINE OF OBJECTIVE INTERPRETATION:

In Pakistani contract law, objective approach which is also known as doctrine of objective approach is a basic rule in the interpretation of contract. This approach is based on the outward manifestations of the intentions of the parties rather than personal beliefs or intentions.⁸² Understanding of evolution, current practices and noteworthy case laws regarding the application of this rule is essential for the influential interpretation of contracts in Pakistan.

⁸² Reinecke, M. F. B., and G. F. Lubbe. "Contracts of Insurance and the Objective Approach to Interpretation of Contracts." *JS Afr. L.* (2021): 346.

3.4.1. EVOLUTION OF OBJECTIVE INTERPRETATION:

In Pakistan, objective approach is developed from the inherited law of partnership of British colonial rule. Initially, it was made to promote certainty and prediction in the relationships of of contract, objective approach is according to the scenario of Pakistani legal system. With the passage of time, courts recognized the importance of implementation of contracts on the basis of what the reasonable person would understand from the language of the contract, context and surrounding circumstances.

3.4.2 APPLICATION OF THEORY OF OBJECTIVE APPROACH:

In contemporary legal practice, objective approach is applied in the interpretation of contract at large scale. Courts tries to know the objective intentions of the parties by analyzing the language of the contract or surrounding circumstances. By considering that what the reasonable person would understand from the language of the contract, context and surrounding circumstances, making sure justified relationships and predictions between the parties.

3.4.2.1 “Muhammad Shahnawaz and 44 others v. Karachi Electric Supply Company, Sindh”

It is decided in this case that the interpretation of the provisions of the contract (policy documents) it is well established principle of law that the same is to be construed and interpreted objectively as observed. "Finally, the provisions of the contract are to be construed and interpreted objectively.⁸³ This is fundamental principle of interpretation.

⁸³ 2011 PLC (C.S.) 1579

3.4.2.2 “Sirius International Insurance Co. v. FAI General Insurance Ltd”

In this case, it was observed as follows: - “The aim of the inquiry is not to probe the real intentions of the parties but to ascertain the contextual meaning of the relevant contractual language. The inquiry is objective: the question is what a reasonable person, circumstanced as the actual parties were, would have understood the parties to have meant by the specific language. The answer to that question is to be gathered from the text under consideration and its relevant contextual scene”.⁸⁴

Further held: "Only the clearest possible language could, if at all, achieve such a result. A contractual power of this nature should also be construed contra proferentem, i.e., any ambiguity or doubt in the scope of the power should be construed against the employer and in favour of the employee".

3.4.2.3 “Asma Qamar vs. Jubilee Life Insurance”

In the case, Asma Qamar vs. Jubilee Life Insurance, it was decided at the time of selling the product, the insurance companies including the respondent/company should show or display a recorded video of 2 or 3 minutes to the purchaser of the policy irrespective of the fact whether the purchaser is educated or quite illiterate person.⁸⁵

Further, the direction has been issued in Asma Qamar vs. Jubilee Life Insurance, to the Chairman SECP/the regulator of the insurance companies, to the insurance companies for removing the ambiguity/technicalities in the transaction: -

3.4.2.3.1 Principles derived from the cited case:

All the insurance companies shall draft the policy documents in English as well as in

⁸⁴ (2004) UKKL 54; (2005) 1 All ER 191

⁸⁵ Asma Qamar vs. Jubilee Life Insurance Case No. 287 Of 2022, Decided On 19th July, 2023.

Urdu language w.e.f 30th Sep,2023 giving the explanations of the legal language and technicalities. The policy documents should be visible and easily readable. All the insurance companies shall ensure that the representatives of the company will make live video of the complete transaction of selling the policy, wherein, the staff in a very simple language will be explained and disclose the package in detail and answer the queries/questions raised by the policy purchaser. The record of the video prepared by the agent/sale staff shall be maintained by the company, so that the same could be summoned (if required).

These cases shows that how objective approach made courts able to interpret the contracts, according to the reasonable expectations of the parties, promoting justice and certainty in the relationship of contract.

3.5 DOCTRINE OF LITERAL/STRICT APPROACH:

In Pakistan law of contract, strict approach which is also known as literal rule, is a traditional way of contractual interpretation, which emphasis on the interpretation of contract according to the plain meaning of the terms. Understanding of evolution, current practices and noteworthy cases is essential for the effective interpretation of contract in Pakistan.

3.5.1 EVOLUTION OF LITERAL/STRICT APPROACH:

Pakistani law has historical roots of strict or literal approach and these are developed from the principles of initial common law. It got importance in traditional era of legal thought, which emphasized on the contextual interpretation and prediction in judicial decisions, where as other ways of interpretation have gained traction, strict/literal rule

remains relevant in the interpretation of contract, especially when language of the contract is clear and unambiguous. In contemporary Pakistani legal practices, strict/literal rule applies till now, especially when contracts are interpreted from clear and unambiguous words. Generally, courts start interpretation by giving preference to common and natural meaning of the words. However, if language of the contract is unclear or ambiguous then this approach can be made compatible with the other approaches of interpretation like contextual interpretation and intentions of legislature. This approach appears to have been followed, to a large extent, in Pakistan. For instance, the Punjab High Court held that agreement would be interpreted reasonably and liberally in accordance with the parties' intentions.⁸⁶

3.5.1.1 Muhammad Azam Muhammad Fazil & Co Karachi v NA Industries

Karachi:

Similarly, in Muhammad Azam Muhammad Fazil & Co Karachi v NA Industries Karachi,⁸⁷ the question before the Sindh High Court was whether the seller had committed breach by the delivering of a ship (VALL MOON) by substituting the contractually agreed ship (MARIE ANN) and whether there was a new agreement needed for the purchase of the new ship. The court, maintaining that the scope of the arbitration agreement was wide, because of the words "in case of dispute touching upon this agreement," concluded that the two matters in question pertained to the interpretation of the contract and fell within the

⁸⁶ Province of Punjab (n 5); GMK Enterprises v Shaheen Builders 1999 CLC 1698.

⁸⁷ Muhammad Azam Muhammad Fazil & Co Karachi v NA Industries Karachi P L D 1977 Karachi 21

scope of the arbitration clause. In another case,⁸⁸ the original construction contract was terminated by a Termination Contract with the fact that the Original Contract embodied an arbitration clause while the Termination Contract did not. The Supreme Court gave an expansive interpretation to the scope of the arbitration agreement built into the Original Contract holding that disputes arising under the Termination Contract would also be settled by the arbitration clause incorporated in the Original Contract.⁸⁹ These cases show that how strict/literal rule forms interpretation of contract in Pakistani law, making sure the plain language of the contract in the absence of ambiguity.

3.6 READING THE DOCUMENT AS A WHOLE:

Reading the document is an essential aspect of Pakistani law of contract. It requires courts to interpret the whole document of contract or law rather than considering words or sentences separately. Understanding of evolution, current practices and noteworthy case laws is essential for the effective interpretation of contract.

3.6.1 EVOLUTION OF PRINCIPLE OF READING THE DOCUMENT AS A WHOLE:

⁸⁸Sezai Turkes Feyzi Akkaya Construction Co Lahore v Crescent Services Lahore 1997 SCMR 1928.

⁸⁹ See also Karachi Shipyard and Engineering Works Ltd Karachi v General Iron and Steel Works Ltd PLD 1971 Karachi 501

In Pakistani law of contract, principle of reading the document as a whole has been evolved overtime with traditions and methods of legal interpretation. Its roots are in the ancient legal traditions but it got importance as a result of prosperity of the modern legal systems. As soon as legal texts became complex and sophisticated, courts realize the need of interpretation of contracts in a way which reflects whole context and intentions. This rule has been reinforced with the passage of time through judicial decisions, academic writings, and legislature.

In contemporary current practices, reading the document as a whole is a basic rule. Commonly courts apply this rule at the time of formation of contracts, laws, rules and other legal instruments. This approach not only includes analysis of language of contract but also the analysis of its structure, context, purpose and legislation if possible. By seeing whole document, courts try to influence whole scheme of law, purpose of legislation and intentions of parties.

3.6.1.1 “Wasif Ali Vs Mrs. Fakhra Jabeen”

In this case titled, “Wasif Ali Vs Mrs. Fakhra Jabeen” it was decided that in construing a document, one must read the same as a whole and not by picking and choosing a particular paragraph or portion thereof. Deed of contract must be construed strictly and literally without deviating or implying anything which was not supported by the intention of parties and language of the document. Nothing can be implied in a contract, which was inconsistent with its expressed terms. Intent and purpose of a document should be inferred from the language employed and its ordinary meanings should be adhered to and given preference rather than the far-fetched meanings. Primary object of interpretation of

any contract is to find out intention of parties to agreement. By looking to words used one must construe intention which persuaded the parties to enter into the agreement. Cardinal presumption is that parties have intended what they have in fact said, so that their words must be construed as they stand. Meaning of document or of a particular part of it is to be sought in the document itself. One must consider meaning of words used, not what one may guess to be intention of the parties. No contract is made in a vacuum; in construing the documents, Court may resolve an ambiguity by looking at its commercial/social purpose and factual background against which it was made. PLD 2014 Supreme Court 506 "Liaqat Ali Khan and others v. Falak Sher and other), PLD 2014 Lahore 26 'Khushi Muhammad and others v. Muhammad Ashfaq and others".

While interpreting the document the intention of the parties must essentially be gathered from the language adopted in the document and viewed in the law through surrounding circumstances. As for proper comprehension and insight into an instrument that was to be read as a whole and where its language was simple, clearly understandable, and capable of no ambiguity, then the intention of the parties to such instrument was to be gathered from its contents alone without advertent to any other extraneous consideration. Reliance in this regard is placed in the case titled PLD 2014 Supreme Court 506 "Liaqat Ali Khan and others v. Falak Sher and other), PLD 2014 Lahore 26 'Khushi Muhammad and others v. Muhammad Ashfaq and others".

3.7 WHEN A CONTRACT CONTAINS AMBIGUOUS OR UNCLEAR TERMS:

In Pakistani law of contract, interpretation of a contract which contains ambiguous or unclear terms is an important aspect of legal activity. Ambiguity arises when contract can be interpreted reasonably and accurately in more than one ways, by which situation of uncertainty about its meaning developed. Solution of the ambiguity is essential for the implementation of contracts and to make sure justice and equity between the parties. With the passage of time, in the Pakistani legal system different approaches are formed for the guideline of courts in the interpretation of ambiguous terms of the contract and justified solution.

3.7.1 APPLICATION OF DIFFERENT APPROACHES TO CONTRACT INTERPRETATION:

In Pakistani law, Approach of interpretation of ambiguous terms is developed overtime from common law rules and technical legal interpretations. Generally initial legal systems relied on strict textualism, where literal meaning of the words was very essential. However, as soon as contracts became more complicated and need of flexibility and justice increased, courts started to adopt ways of subtlety. In Pakistani legal system, modern ways of interpretation of ambiguous words are achieved through the combination of contextual analysis, interpretation of context, intentions of legislation and judicial precedents.

In current legal practice of Pakistan, Court applies several methods for the interpretation of contracts, aimed at the understanding of intentions of parties and implementation of basic purpose of contract. Some common methods of interpretation are as under:

3.7.2 DIFFERENT APPROACHES TO INTERPRET THE AMBIGUOUS CONTRACT:

In current legal practice, courts apply different approaches to interpret technical and non-technical terms of the contract:

3.7.2.1 PLAIN MEANING RULE:

Courts usually apply *plain meaning rule* to interpret nontechnical terms of the contract, which gives preference to plain and natural meaning of the terms.⁹⁰ If the language of the contract is clear and unambiguous then courts will interpret these terms according to their plain meaning.⁹¹

3.7.2.2 CUSTOM AND USAGE:

For the interpretation of technical terms, courts can consider *custom and usage* for the relevant industry or business. The evidence of how the term can be used regarding specific industry can be very helpful in the interpretation of technical terms of the contract.⁹²

⁹⁰ Thomas, H. Randolph, Gary R. Smith, and Robert E. Mellott. "Interpretation of construction contracts." *Journal of construction engineering and management* 120, no. 2 (1994): 321-336.

⁹¹ Schauer, Frederick. "Is law a technical language." *San Diego L. Rev.* 52 (2015): 501.

⁹² Alexander, Anthony. "But that's not what that means": when can evidence of technical jargon, industry

3.7.2.3 CONTEXTUAL ANALYSIS:

Courts can consider surrounding *context*, inclusive of method of transactions between the parties, industrial customs and collective purpose of contract. Courts can better understand intentions of the parties and can resolve ambiguity by recognizing whole contract and by wide insights of circumstances in which contract was formed.

However, according to the Malikis, the sayings or actions of the Prophet cannot be understood context in which they occurred, which is connected with the Medinan practice. Ibn al-Qasim states, if a Hadith is ‘accompanied by Medinan ‘amal (practice) it would indeed be correct to follow it. But [one need not follow a hadith that is] only like other hadith that have not been accompanied by ‘amal.’⁹³It is important to note that Ibn al Qasim’s assertion does not necessarily question the authenticity of those Hadith texts, but rather sets forth the methodological principle that ‘whatever the reason for the discrepancy between the legal implications of such texts and the content of ‘amal, it is not valid to institute such legal implications into ‘amal if the first generation of Muslims did not do so’.⁹⁴

Shafi’i, in contrast, strongly argued on the unconditionally binding quality of the Sunna of the Prophet, and rejected the Maliki evidence that the practices of Medina should be the determinative indicator of the meaning of the divine law. Indeed, Shafi’i underscored the notion of the comprehensiveness of the

custom and trade practice be used to interpret a commercial contract?." *Advoc.* 51 (2020-

⁹³ Abd-Allah, Umar Faruk (1978) “Malik’s Concept of Amal in the Light of Maliki Legal Theory” (unpublished PhD dissertation), University of Chicago, p. 379.

⁹⁴ *Ibid.* p.380

revealed texts,⁹⁵ for, as the Qur'an says, 'We have neglected nothing in the book.'⁹⁶In the opinion of Shafi'i, a legitimate interpretation of God's Law must be connected to something in the Qur'an or some verified Hadith.

3.8 CONTRA PROFERENTEM RULE:

Courts can apply contra proferentem rule if ambiguous words of the contract cannot be removed by other interpretation methods. This rule states that contract must be interpreted against the party who drafted it, because it is assumed that, that party got a complete chance to clear the contract language. This approach appreciates preparation of clear and accurate draft and protects the party who had no chance to draft it.

3.8.1 APPLICATION OF CONTRA PROFERENTEM RULE TO INTERPRET TECHNICAL TERMS:

There are ambiguities and technical language, which has not been explained in simple words so that it can be explained and disclose to the policy holder. Further, there is nowhere mentioned in the policy documents that at the time of selling the policy to an illiterate person or having little knowledge of language or technicalities of the policy documents, advise of any family member is/was available to the policy holder to understand the technicalities, therefore, the policy holder is entitled to take the benefits of these ambiguities created by the respondent/company.

These examples show that courts in Pakistan uses different methods to solve the ambiguity of the contract, in which understanding of intentions of parties is given

⁹⁵ Al-Shafi'i (1987) Risala: Treatise on the Foundations of Islamic Jurisprudence, 2nd edition, (translator: Khadduri Majid, Cambridge Islamic Texts Society, p.66 (quoting several Qur'anic verses in support of this point, including 14:1, 16:46, 91, 42:52).

⁹⁶ The Qur'an 6:38.

emphasis and making sure justice and equity in the relationships of contract. As soon as legal systems are developing, ways for interpretation of ambiguous words will be slope to achieve the criteria of modern ways of trade and justice.

3.9 INTERPRETATION OF TECHNICAL AND NON-TECHNICAL

TERM:

According to Pakistani law of contract, it is necessary to differentiate technical and non-technical terms to understand the provisions of the contract accurately. For non-technical terms, reference to language of daily routine is given whereas technical terms have specific meanings in specific industry or field. It is very important to express the intentions of the parties in the contract and to resolve all the ambiguities in the contract for making certain the accurate interpretation and to recognize terms of the contract. In Pakistan legal system, difference between technical and non technical terms in the interpretation of contract is developed with the broader trends in legal practice. Initial legal systems give preference to literal meaning of the words. However, as soon as contracts became more complicated and specific, court recognized the need of attention towards terms of context and meanings related to specific industry. With the passage of time, different methods of interpretation are developed to resolve technical and non-technical language subtlety.

3.9.1 DIFFERENT APPROACHES TO INTERPRET TECHNICAL AND NON-TECHNICAL TERMS OF THE CONTRACT:

In current legal practice, courts apply different approaches to interpret technical and non-technical terms of the contract:

3.9.1.1 PLAIN MEANING RULE:

Courts usually apply **plain meaning rule** to interpret nontechnical terms of the contract, which gives preference to plain and natural meaning of the terms.⁹⁷ If the language of the contract is clear and unambiguous then courts will interpret non-technical terms according to their plain meaning.⁹⁸

3.9.1.2 CUSTOM AND USAGE:

For the interpretation of technical terms, courts can consider *custom and usage* for the relevant industry or business. The evidence of how the term can be used regarding specific industry can be very helpful in the interpretation of technical terms of the contract.⁹⁹

3.9.1.3 TESTIMONY OF EXPERT:

Courts can rely on the *testimony of expert* for the interpretation of technical terms of the contract, in such matters where more technical terms and specific industries are involved. Experts can give insights about the required meanings of the technical terms and standards and methods of industry.¹⁰⁰

These examples shows that how courts in Pakistan applies different methods of interpretation for the interpretation of technical and non-technical terms of the contract,

⁹⁷ Thomas, H. Randolph, Gary R. Smith, and Robert E. Mellott. "Interpretation of construction contracts." *Journal of construction engineering and management* 120, no. 2 (1994): 321-336.

⁹⁸ Schauer, Frederick. "Is law a technical language." *San Diego L. Rev.* 52 (2015): 501.

⁹⁹ Alexander, Anthony. "" But that's not what that means": when can evidence of technical jargon, industry custom and trade practice be used to interpret or augment a commercial contract?."

¹⁰⁰ Cecil, Joe S., and Thomas E. Willging. "Accepting Daubert's invitation: Defining a role for court-appointed experts in assessing scientific validity." *Emory LJ* 43 (1994): 995.

in which emphasis is given on the importance of context, standards of industry and to achieve correct and justified interpretations.

3.10 INTERPRETATION OF AMBIGUOUS CONTRACT:

Interpretation of ambiguous contracts is an essential part of the Pakistan law of contract, because it involves solution of incompatibility or uncertain situation in the terms of contract for the determination of intentions and responsibilities of the contract. Ambiguity arises when the reasonable interpretation of the language of the contract is possible in different ways, by which situation of uncertainty develops. Solution of the ambiguity is essential for the enforcement of the contracts and making sure justice and equity between the parties. With the passage of time, in the Pakistan legal system different rules and approaches are made for the guideline of courts in the interpretation of ambiguous terms.

3.10.1 EVOLUTION OF THIS PRINCIPLE:

In Pakistan law approach regarding interpretation of ambiguous contracts is developed in decades. Mostly initial legal systems rely on strict textualism, where literal meaning of the language of the contract is the most important thing. However, as soon as contracts became complicated and specific, courts accepted the boundaries of this approach and started to adopt more interpretational methods. In Pakistan, modern interpretation of contracts emphasized on the comprehensive approach which not only considers language of the contract but also surrounding circumstances, intentions of the parties and wide context in which contract was formed.

3.11 EXPRESSED TERMS, COURSE OF PRIOR PERFORMANCE

AND USAGE OF TRADE:

In Pakistani law, interpretation of contract, it is important to understand intentions of parties, scope of contract, clear terms, methods of prior performance and trade usage. Expressed terms gives reference to clear provisions of contract, whereas course of prior performance is related with how parties have worked in past under the contract. Trade usage includes industrial customs and traditions which can effect interpretation of terms of contract. These elements provides noteworthy contexts to resolve disputes and interpretation of contract. This subject would explore noteworthy caselaws regarding use of evolution, current practices, conditions of expression under Pakistan law, course of prior performance and trade usage in the interpretation of contract.

3.11.1 EVOLUTION OF THIS PRINCIPLE:

In Pakistani law, consideration of expressed terms, course of prior performance and usage of trade is developed overtime in the interpretation of the contract. Initially, interpretation of contract relied excessively on strict textualism, which emphasized on the literal meanings of the language of the contract. However, as soon as contracts became more complex and specific, courts recognized the importance of consideration of surrounding circumstances and industrial customs. Over the years, courts of Pakistan adopted a more subtle approach for the consideration of intentions of parties and collective purpose of the contract.

3.12 APPLICATION OF RULES OF INTERPRETATION:

In contemporary Pakistani legal practice, courts consider clear terms, course of prior performance and trade usage for the interpretation of contracts.

3.12.1 EXPRESSED TERMS:

Expressed Terms are those specific terms which are clearly mentioned in contract. Pakistani courts give weightage to expression of terms while interpreting contracts because it represents agreed upon terms by the parties. However, to ensure justified and reasonable interpretation of contract, interpretation of clear terms of whole contract and surrounding circumstances should be done.

3.12.2 COURSE OF PRIOR PERFORMANCE:

Course of prior performance is meant that how parties have worked in past according to contract. Courts in Pakistan can consider prior performance and actions of parties for the understanding of practical application of aims of parties and terms of contract. A consistent performance according to contract can provide insights to the expectations of parties and interpretation of ambiguous terms.

3.12.3 USAGE OF TRADE:

Usage of trade includes industrial customs, conduct and standards which affect the interpretation of terms of contract. Courts can rely on customs and trade usage of industry for the understanding of the meaning of technical terms or to remove the ambiguity of the language of the contract. Usage of trade provides worthwhile context for the interpretation of contracts and to ensure that terms of contract must be

understood in its industrial context. The Supreme Court of Pakistan interpreted a construction contract involving ambiguous terms related to project timelines and completion milestones. The court considered both express terms and the course of prior performance, examining how the parties had performed under similar contracts in the past to resolve the ambiguity and determine their respective obligations.

3.12.3.1 “Wasif Ali Vs Mrs. Fakhra Jabeen”

In this case titled, “*Wasif Ali Vs Mrs. Fakhra Jabeen*” it was decided that in construing a document, one must read the same as a whole and not by picking and choosing a particular paragraph or portion thereof. Deed of contract must be construed strictly and literally without deviating or implying anything which was not supported by the intention of parties and language of the document. Nothing can be implied in a contract, which was inconsistent with its expressed terms. Intent and purpose of a document should be inferred from the language employed and its ordinary meanings should be adhered to and given preference rather than the far-fetched meanings. Primary object of interpretation of any contract is to find out intention of parties to agreement. By looking to words used one must construe intention which persuaded the parties to enter into the agreement. Cardinal presumption is that parties have intended what they have in fact said, so that their words must be construed as they stand. Meaning of document or of a particular part of it is to be sought in the document itself. One must consider meaning of words used, not what one may guess to be intention of the parties. No contract is made in a vacuum; in construing the documents, Court may resolve an ambiguity by looking at its commercial/social purpose and factual background against which it was made. PLD 2014

Supreme Court 506 "Liaqat Ali Khan and others v. Falak Sher and other), PLD 2014 Lahore 26 'Khushi Muhammad and others v. Muhammad Ashfaq and others".¹⁰¹

3.12.3.2 Uniprix Inc. vs. Gestion Gosselin Et Berube Inc:

In this case; *Uniprix Inc. vs. Gestion Gosselin Et Berube Inc.* First step in interpreting a contract was to determine whether its words were clear or ambiguous, to prevent court from departing, deliberately or unexpectedly, from a clearly expressed intention of the parties. Court must defer to a clear contract. Said step served as a bulwark against the risk of an interpretation that deviated from the true intention of the parties and subverted the scheme of their agreement. Where the words of the contract were clear, the court's role was limited to applying them to the facts before it. On the other hand, if the court identified an ambiguity, it must resolve the ambiguity by proceeding to the second step of contractual interpretation. Cardinal principle that guided the second step was that the common intention of the parties rather than adherence to the literal meaning of the words shall be sought in such exercise it was necessary to consider intrinsic aspects of the contract, such as the words of the clause at issue and the other clauses, in order to ensure that each of them was given a meaningful effect and that each was interpreted in light of the others. Interpretation of a contract also required consideration of the nature of the contract and of the context extrinsic to it, including the factual circumstances in which it was formed, how the parties had interpreted it, and usage.¹⁰² These examples illustrate how Pakistani courts interpret contracts by considering express terms, the

¹⁰¹ 2023 CLC 1021 LAHORE-HIGH-COURT-

¹⁰² 2017 SCMR 1734 SUPREME-COURT-OF-CANADA

course of prior performance, and usage of trade, emphasizing the importance of context, industry standards, and fairness in achieving accurate and just interpretations.

CHAPTER 4

COMPARISON BETWEEN APPLICATION OF PRINCIPLES OF CONTRACTUAL INTERPRETATION IN PAKISTANI LAW & ENGLISH LAW

4.1 INTRODUCTION:

The doctrines of contractual interpretation work equally in both Pakistani and English legal systems, emphasized on the interpretation of law and contracts according to their literal meaning. However, there are different approaches of contractual interpretation has been developed and applied in different legal systems. This comparison shows growing similarities between the sets of interpretative principles as applied to the different contracts. Interpreting a contract in Pakistan and England consists of ascertaining a meaning (or effect) to a term that is ambiguous, doubtful or in contradiction with other terms or contractual documents. Interpretation does not happen in a vacuum; it reflects the balance struck between the contract values of each legal system. Pakistan and English law share a common theory of contract based upon freedom of contract and sanctity of contract.

4.2 OBJECTIVE APPROACH OF CONTRACT INTERPRETATION:

Contractual Interpretations in England are always considered the questions of law, which fall under the control of the UK Supreme Court. This classification is linked to the objective approach to interpretation with the aim of bring legal certainty to th interpretative process and has historical justifications.

4.3 RULE OF LITERAL/OBJECTIVE INTERPRETATION:

Although this doctrine maintains importance of plain meaning rule/literal interpretation. But if the language of the contract is ambiguous then courts are bound to focus on other relevant factors. In *Investors Compensation Scheme v West Bromwich Building Society*, Lord Hoffmann lays out the principles of a contextualist (purposive) approach whereas in *Arnold v Britton*, Lord Neuberger asserts a textualist (literal) approach. Afterwards, in *Wood v Capita*, Lord Hodge seems to settle on an iterative process which seeks to reconcile the conflicting paradigms of textualism and contextualism as “(a) process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated.”¹⁰³ This approach promotes fairness and avoids overly technical interpretations that could lead to unjust outcomes, aligning judicial interpretation with common-sense understanding.

4.3.1 RULE OF LITERAL/OBJECTIVE INTERPRETATION IN PAKISTAN:

¹⁰³ Wood v Capita Insurance Services Ltd [2017] UKSC 24, [2017] AC 1173.

In contemporary Pakistani legal practice, doctrine of natural meaning is the basic rule of interpretation of contract. Courts usually interpret with the focusing on plain language of the contract and gives preference to its plain and natural meaning. However, this doctrine gets effected by other rules like contextual approach and intentions of the legislation, by which courts get permission to consider extrinsic evidence if the language of the contract is unclear or ambiguous.

In the case, *"House Building Finance Corporation vs. Shaheen Shah Humayun Cooperative House Building Society and Others"* it has been decided that the deed of contract has to be construed strictly and literally without deviating or anything which was not supported by the intention of the parties and the language of the document nothing can be implied in a contract that was inconsistent with it.¹⁰⁴

4.4 RULE OF CONTRA PROFERENTUM:

Contra Proferentum Rule which also known as *"interpret against the draftsman"* is an important rule in the interpretation of contract. This rule applies when there is any ambiguity in the contract, by focusing that interpretation of the ambiguous words or unclear terms must be against the party who drafted the contract.

4.4.1 RULE OF CONTRA PROFERENTUM IN ENGLAND:

¹⁰⁴ 1992 SCMR 19

In English law, the contra proferentem rule is being applied for the interpretation of commercial contracts. As held by Lord Neuberger in *K/S Victoria Street v House of Fraser*, this rule has lost relevance in the interpretation of commercial contracts as “rarely decisive as to the meaning of any provisions of a commercial contract.” English courts therefore constrain the use of the contra proferentem maxim in the interpretation of commercial contracts.

When Contract contains ambiguous conditions, Contra Proferentum Rule guides courts to resolve this ambiguity by the party who have drafted the contract. The party who drafted the contract is expected that it will resolve or clear the ambiguity, they had the control over the contract. It protects the non-drafting party from the unjust interpretation of ambiguous provisions. Courts applied the same rule for interpreting of unclear provisions of the contracts. For example, in *Ailsa Craig Fishing Co vs. Malvern Fishing Co Ltd*, Court maintained the provisions of limitations of the contract which were ambiguous or unclear. The Contra Proferentum Rule is necessary to ensure that the non-drafting party is protected from the loss of unclear provisions, which is in compliance with the *Hillford vs. Price*, where interpretation of unenforceable provisions of penalty was done against the drafting party.

4.4.2 RULE OF CONTRA PROFERENTUM IN PAKISTAN:

In Pakistani law, Contra Proferentum rule is evolved from the inherited law of partnership and equity from British colonial rule. Initially this rule was adapted according to the Pakistani legal scenario for the promotion of justice and equity in the relationships

of contract, in which emphasis was given on the protection of parties which may suffer losses in contract negotiations. The Hon'ble Supreme Court of Pakistan while interpreting the principle of contra-proferentem in ***PLD 2021 SC 906 titled "Universal Insurance Company and another vs. Karim Gul and another"*** has beautifully observed as under:

- “It can safely be concluded that the contract (notwithstanding its typographical errors) was the creation of the appellant. It is the entity in the insurance business and can be taken to know the sense in which the term "total loss" is used in the industry”.

In ***Muhammad Amin Brothers (Pvt.) Limited vs. Pakistan Agricultural Storage and Services Corporation Limited***, 2007 CLD 1445 (Lahore), and ***Bari Rice Mills Limited vs. Passco***, 2007 CLD 857 (Lahore), the Lahore High Court highlighted the scope of the principle:

... Principle of contra proferentem can be resorted to if there is an ambiguity which makes the contract difficult to ascertain the intention of the contracting parties

However, both Legal systems allow the contextual interpretation for the matters of ambiguity, Pakistani law more frequently includes extrinsic evidence, which reflects more flexible approach for interpretation. Collectively, where basic rule remains same in both legal systems, in Pakistan application of doctrine of natural meaning is developed to maintain balance between literal meaning and context, whereas English law maintained this balance more consistently.

4.5 READING THE DOCUMENT AS A WHOLE:

A few maxims of interpretation are common to Pakistani and English law. the way they are applied however depends on the values promoted in each legal order. This principle is

common in Pakistan and English law and appears in the international legal instruments given their wide acceptance.

4.6 APPLICATION OF RULE IN PAKISTAN:

In Pakistani law of contract, principle of reading the document as a whole has been evolved overtime with traditions and methods of legal interpretation. Its roots are in the ancient legal traditions but it got importance as a result of prosperity of the modern legal systems. As soon as legal texts became complex and sophisticated, courts realize the need of interpretation of contracts in a way which reflects whole context and intentions. This rule has been reinforced with the passage of time through judicial decisions, academic writings, and legislature. Courts must therefore consider the contract as a whole to extract a meaning which is consistent with the other terms or the other contracts of the same operation. Overall, it is not disputed that a contract must be interpreted as whole, and not as a collection of terms, in both jurisdictions.

4.6.1 APPLICATION OF RULE IN ENGLAND:

English Courts apply this rule during the formation of contracts, laws, principles, and legal instruments. This approach not only includes to analyze language of contract but also to analyze its structure, context, purpose and history of legislation. Court tries to have impact on collective scheme of law, purpose of law making and intentions of parties.

4.7 PRINCIPLE OF GOOD FAITH:

The good faith principle comprises the prescribed laws, religious, and cultural-backed obligations, as well as trust and fair dealing. Therefore, the good faith principles of different

regions, countries, cultures, and religions need to be investigated in order to increase the efficiency of international business.

4.7.1 PRINCIPLE OF GOOD FAITH IN ENGLAND:

English law currently recognizes no such general principle even though the traditional hostility towards a duty of good faith may now appear “overstated”. Interestingly, fairness in English law still plays a role in contract. The principles of contractual interpretation must therefore be read in light of these general principles of contract law and their underlying values.

4.7.2 PRINCIPLE OF GOOD FAITH IN PAKISTAN:

The good faith principle of Islamic contract law is more business friendly, comprehensive, simple, and realistic, based on honesty and fairness in a business transaction. The good faith principle of Islamic contract law covers all stages of a contract. Pakistani law, influenced by Islamic principles, often incorporates the notion of good faith or "iman" (honesty and fairness) in contract formation and execution. While not as prominent as in some other legal systems (e.g., civil law countries), good faith can still play a role in contractual interpretation, particularly where one party's actions may be deemed unfair or unconscionable.

4.8 PRINCIPLE OF EQUITY:

In the field of jurisprudence, equity is the particular body of law, developed in the English Court of Chancery, with the general purpose of providing legal remedies for cases wherein the common law is inflexible and cannot fairly resolve the disputed legal matter.

4.8.1 PRINCIPLE OF EQUITY IN ENGLAND:

English courts are less likely to apply equitable principles in contract interpretation unless specifically required by law or the contract itself. Courts often take a strict approach to enforce the terms as written, prioritizing certainty and predictability in contractual relationships.

4.8.2 PRINCIPLE OF EQUITY IN PAKISTAN:

The courts of Pakistan are applying on both Islamic jurisprudence and equitable principles while deciding the cases. They may use equitable doctrines more liberally to avoid unjust or unconscionable results. This allows for greater judicial intervention to enforce fairness, particularly in cases where strict enforcement of contract terms would lead to an unjust outcome.

4.9 PRINCIPLE OF FAIRNESS:

Principles of fairness tells that all equals should be treated equally, and those who are unequal due to relevant differences, should be treated differently in a manner that is fair and proportionate to, or commensurate with, their difference.

4.9.1 PRINCIPLE OF FAIRNESS IN ENGLAND:

In the case of standard form contracts, English law tends to enforce the terms unless they are found to be unfair or contrary to public policy. Courts may focus on the clarity of the terms and the fairness of the contract, particularly in consumer law and under legislation like the Unfair Contract Terms Act 1977.

4.9.2 PRINCIPLE OF FAIRNESS IN PAKISTAN:

In Pakistan, the courts are also concerned with fairness, particularly in consumer contracts. However, they may place more emphasis on the good faith of the contracting parties, and could set aside terms that appear to be unjust, even if they are in standard form contracts. Islamic principles of fairness may influence the courts' approach to such contracts

4.10 DOCTRINE OF STARE DECISIS:

The policy of the courts, and the principle upon which rests the authority of judicial decisions as precedents in subsequent litigations, is embodied in the maxim, Stare decisis “to abide by the precedents and not to 'disturb settled points’”. Its meaning is, that when a point of law has been once solemnly and necessarily settled by the decision of a competent court, it will no longer be considered open to examination, or to a new ruling, by the same tribunal or those which are bound to follow its adjudications.

4.10.1 DOCTRINE OF STARE DECISIS IN ENGLAND:

English law strongly adheres to the doctrine of stare decisis, meaning that judicial precedents are binding on future cases. This gives rise to a more consistent and predictable approach to interpreting contracts.

4.10.2 DOCTRINE OF STARE DECISIS IN PAKISTAN:

Pakistani law also follows the doctrine of stare decisis, but the influence of Islamic jurisprudence and the flexibility afforded by the Civil Code allows judges more discretion. This could lead to some variation in the application of contractual principles, depending on the specific circumstances and the judge's interpretation.

However, when disputes arise, parties' disagreements over the proper meaning of a term or word leave the judge as the ultimate arbiter. Whilst courts in both legal systems engage in the interpretative process, they must "identify what the parties have agreed, not what (they) think that they should have agreed," thus drawing a limit to their power of interpretation.

CHAPTER 5

CONCLUSION

Contract is a widely recognized legal concept that holds immense significance in our society, as it forms the foundation of our political, economic, and social interactions. A contract is a form of agreement where parties exchange promises that are legally enforceable.¹⁰⁵ Contract interpretation becomes essential when a disagreement arises concerning the terms or language used in a contract. In cases where the parties cannot mutually agree on the interpretation, resorting to legal action may be necessary to seek resolution through a court's review of the contract.¹⁰⁶

In the realm of interpreting contracts under English law, several foundational principles guide the process when faced with ambiguous or unclear terms.¹⁰⁷ *Firstly*, the contra proferentem rule is invoked when ambiguity arises, signifying that any unclear language is

¹⁰⁵ Mehren, Arthur Taylor von. 2023. "Contract | Definition, History, & Facts | Britannica Money." [http://: www.britannica.com](http://www.britannica.com). September 7, 2023.

¹⁰⁶ "The Basics: What Are the Key Points on Contractual Interpretation?" 2018. Gowling WLG. 2018.

¹⁰⁷ "Chernykh, Yuliya. 2022. "Contract Interpretation as the Incidental Issue." Brill.com. Brill Nijhoff. January 7, 2022.

construed against the party responsible for drafting the contract.¹⁰⁸ **Secondly**, a paramount principle emphasizes giving effect to the parties' intentions, urging that contract terms should, to the greatest extent possible, be imbued with a reasonable, lawful, and effective meaning. The holistic approach comes into play as well, emphasizing the interpretation of a contract as an integrated whole, harmonizing its diverse provisions to achieve a cohesive expression of intent. Another significant principle underscores that non-technical terms adopt their ordinary, commonly-accepted meanings, while technical terms assume their specialized significance unless expressly indicated otherwise by the parties. Additionally, the consideration of industry practices, prior dealings, and the performance history of the contract is crucial in interpreting ambiguous contracts, aligning with the hierarchy that places express terms above prior performance, which, in turn, takes precedence over the course of dealing, and all of these supersede usage of trade. **Lastly**, the principles of natural meaning and the objective approach are integral, emphasizing an interpretation grounded in contextual understanding, flowing naturally and aligning with the ordinary understanding of language, and adopting an objective perspective akin to that of a reasonable person.¹⁰⁹ Together, these principles construct a comprehensive framework, guiding English courts in navigating the complexities of contractual interpretation to unravel and give effect to the genuine intentions of the contracting parties.

Contracts are fundamental legal instruments that govern relationships, transactions, and agreements in modern society. By providing clarity, certainty, and

¹⁰⁸ Ullman, Jill. 2023. "Contract Ambiguity: I Know What It Says, but What Does It Mean?" Berman Fink van Horn P.C. July 12, 2023.

¹⁰⁹ "Klass, Gregory. 2018. "Scholarship @ GEORGETOWN LAW Scholarship @ GEORGETOWN LAW 2018 Interpretation and Construction in Contract Law Interpretation and Construction in Contract Law." National Law Institute University 2018.

enforceability to agreements, contracts facilitate trust, cooperation, and fairness among the parties. Effective contract drafting and interpretation require careful attention to detail, clear communication, and adherence to legal principles and practices. As such, understanding contracts and their interpretation is essential for individuals, businesses, and legal professionals alike, enabling them to navigate contractual relationships with confidence and clarity. By understanding the elements, types, formation process, enforceability requirements, and key considerations of contracts, parties can effectively negotiate, draft, and enforce agreements that protect their rights and promote mutual cooperation and trust. Whether written or oral, contracts serve as the cornerstone of a well-functioning legal system, providing stability, predictability, and recourse for parties to assert their rights and fulfill their obligations.

The founding principles of contractual interpretation within English law serve as crucial mechanisms for accurately establishing the rights of parties involved in legal agreements. The meticulous application of these principles is instrumental in fostering a comprehensive understanding of the rights and obligations delineated within a contract. Contractual interpretation is a nuanced process that requires careful consideration of the parties' intentions, the language of the contract, and surrounding circumstances. By adhering to principles such as the objective approach, literal rule, and contextual analysis, and considering methods like textual analysis and extrinsic evidence, parties can minimize ambiguity and avoid disputes. Understanding the principles and methods of contractual interpretation is essential for drafting clear, enforceable contracts and resolving disputes effectively.

The principles of contractual interpretation involve understanding the contract's

meaning as it would appear to a reasonable person with the background knowledge available at the time. This includes relevant background information but excludes prior negotiations and subjective intentions. The contract's meaning extends beyond literal wording to what the parties reasonably intended, allowing judges to address apparent linguistic mistakes if the context suggests such errors. The principle of unilateral contracts and the impact of advertisement as a proposal when they contain clear and specific conditions. *Carlill v. Carbolic Smoke Ball Co* clarifies the importance of consideration in the implementation of contracts through public advertisement and formation of contract.¹¹⁰

Purposive approach in contractual interpretation is prepared by legal interpretation preference. Specially, in scope of common law this traditional approach came as a response to limitations which preferred to apply literal meaning rule instead of considering wide context or purpose of the contract. This approach is widely applied in courts during interpretation of contracts, especially in complex business transactions or ambiguous or unclear language. Courts considers business context, intentions of parties and collective purpose of contract so that its meaning could be determined.

The principle of reading the document as a whole is prepared in decades of legal practice. Its roots can be tracked down in ancient legal traditions.it is also considered a basic rule of legal interpretation to read the document as a whole for which courts need to consider any document like agreement, law or legal instrument rather than only concentrating on isolated words or phrases.¹¹¹ By recognizing document as a complete

¹¹⁰ Wightman, John. "Carlill v Carbolic Smoke Ball Co Ltd (1893)." (2008).

¹¹¹ Menon, Sundaresh. "The Interpretation of Documents: Saying What They Mean or Meaning What They Say." *Sing. L. Rev.* 32 (2014): 3.

integrated, courts aim is to know real meaning, intentions and purpose, in this way ensuring correct and justified interpretation. As soon as legal texts became purified and complex, courts accept need of their interpretation in the way which reflects its context and intentions. With time, this principle got strengthened by judicial decisions, academic writings and legislature.

Approach regarding interpretation of ambiguous terms of contracts is made over the decades of legal practice. Initial legal systems relied on strict contextual analysis, where literal meaning of the terms was important. However, as legal documentation became more complex, need of flexibility and justice increased, courts started to adopt more narrow methods of interpretation. Modern ways of interpretation of ambiguous terms avail from the combination of contextual analysis, intention of law making and judicial precedents.

Different approaches to interpret technical, non-technical and ambiguous terms of the Contract are:

Courts usually apply ***plain meaning rule*** to interpret nontechnical terms of the contract, which gives preference to plain and natural meaning of the terms.¹¹² If the language of the contract is clear and unambiguous then courts will interpret non-technical terms according to their plain meaning.¹¹³

¹¹² Thomas, H. Randolph, Gary R. Smith, and Robert E. Mellott. "Interpretation of Construction Contracts." *Journal of construction engineering and management* 120, no. 2 (1994): 321-336.

¹¹³ Schauer, Frederick. "Is Law A Technical Language." *San Diego L. Rev.* 52 (2015): 501.

For the interpretation of technical terms, courts can consider *custom and usage* for the relevant industry or business. The evidence of how the term can be used regarding specific industry can be very helpful in the interpretation of technical terms of the contract.¹¹⁴

Courts can rely on the *testimony of expert* for the interpretation of technical terms of the contract, in such matters where more technical terms and specific industries are involved. Experts can give insights about the required meanings of the technical terms and standards and methods of industry.¹¹⁵

When transposing these principles into the legal landscape of Pakistan, a thorough examination is imperative. This involves a nuanced analysis of their relevance within the specific legal framework and cultural context of Pakistan. It is not merely a matter of adopting foreign legal concepts but entails a deliberate inquiry into the extent to which these principles align with and cater to the unique needs of the Pakistani legal system. Furthermore, a critical aspect of this assessment involves evaluating the practical impact of these principles on the resolution of disputes within the Pakistani legal framework. Determining whether these principles effectively contribute to the resolution of conflicts or encounter challenges in the local context is integral to comprehending their true utility. In essence, the inquiry extends beyond the theoretical to the practical, aiming to understand how these principles operate in real-world scenarios within the jurisdiction of Pakistan. This comprehensive examination is essential for gauging the adaptability and effectiveness of

¹¹⁴ Alexander, Anthony. "' But that's not what that means": when can evidence of technical jargon, industry custom and trade practice be used to interpret or augment a commercial contract?."

¹¹⁵ Cecil, Joe S., and Thomas E. Willging. "Accepting Daubert's Invitation: Defining A Role for Court-Appoint Alexander, Anthony Ted Experts in Assessing Scientific Validity." *Emory LJ* 43 (1994): 995.

English law principles of contractual interpretation in facilitating fair and effective dispute resolution among the parties involved in legal transactions in Pakistan.

In Pakistani law, doctrine of natural meaning which also known as plain meaning rule or literal rule is very important in the interpretation of contract. This rule advise that interpretation of laws and contract should be according to their common and meaning of daily routine, instead of taking extrinsic evidence into consideration or without considering intentions of the party who drafted the contract.¹¹⁶ Understanding of evolution, current practices, and noteworthy case laws regarding the application of this approach is very essential for the influential interpretation of contract in Pakistan.

Roots of doctrine of natural meaning in Pakistani legal system are in the traditions of law of partnership inherited from the British colonial rule. This is developed over time to adjust unique legal scenario of Pakistan, in which contextual clarification and prediction of interpretation of contract is emphasized. Basically, initial legal systems relied upon strict contextual approach, which gives preference to literal meaning of the language of the contract. However, as soon as legal system is developed, courts recognized the need of subtlety which balances the contextual interpretation with wide context and purpose of the contract.

In contemporary Pakistani legal practice, *doctrine of natural meaning* is the basic rule of interpretation of contract. Courts usually initiate analysis with the overview of plain language of the contract and gives preference to its plain and natural meaning. However, this doctrine gets effected by other rules like contextual approach and intentions of the

legislation, by which courts get permission to consider extrinsic evidence if the language of the contract is unclear or ambiguous.

In Pakistani law, ***Contra Proferentum Rule*** which also known as “interpret against the draftsman” is an important rule in the interpretation of contract. This rule applies when there is any ambiguity in the contract, by focusing that interpretation of the ambiguous words or unclear terms must be against the party who drafted the contract. Initially this rule was adapted according to the Pakistani legal scenario for the promotion of justice and equity in the relationships of contract, in which emphasis was given on the protection of parties which may suffer losses in contract negotiations. With the passage of time, courts recognized the need of interpretation of ambiguous terms against the party who drafted the contract, about which it is assumed that was given the chance to clear the language of the contract.

In contemporary legal practice, Contra proferentum rule is considered relevant in the interpretation of contract, especially in such situation where contracts are not negotiated or where imbalance of power is present between the parties. Courts usually applies this rule to solve the ambiguity of terms and conditions of the contract, by making sure that the burden of ambiguity will be carried out by the party who drafted the contract. Courts by interpreting the ambiguous terms of the contract against the party who drafted it promotes clear and accurate draft and protects the rights of party who didn't draft the contract. The Hon'ble Supreme Court of Pakistan while interpreting the principle of contra-proferentem in *PLD 2021 SC 906* titled "***Universal Insurance Company and***

another vs. Karim Gul and another" has beautifully observed as under: - "It can safely be concluded that the contract (notwithstanding its typographical errors) was the creation of the appellant. It is the entity in the insurance business and can be taken to know the sense in which the term "total loss" is used in the industry."

In Pakistan, objective approach is developed from the inherited law of partnership of British colonial rule. Initially, it was made to promote certainty and prediction in the relationships of of contract, objective approach is according to the scenario of Pakistani legal system. With the passage of time, courts recognized the importance of implementation of contracts on the basis of what the reasonable person would understand from the language of the contract, context and surrounding circumstances. The strict/objective approach, which is also known as literal rule, is a traditional way of contractual interpretation, which emphasis on the interpretation of contract according to the plain meaning of the terms.

Reading the document is an essential aspect of Pakistani law of contract. It requires courts to interpret the whole document of contract or law rather than considering words or sentences separately. By seeing whole document, courts try to influence whole scheme of law, purpose of legislation and intentions of parties.

In this case titled, "*Wasif Ali Vs Mrs. Fakhra Jabeen*" it was decided that in construing a document, one must read the same as a whole and not by picking and choosing a particular paragraph or portion thereof. In Pakistani legal system, modern ways of interpretation of ambiguous words are achieved through the combination of contextual analysis, interpretation of context, intentions of legislation and judicial precedent. Court

applies several methods for the interpretation of contracts, aimed at the understanding of intentions of parties and implementation of basic purpose of contract.

Whilst analyzing the legal system of both the countries, the main aspects of judicial interpretation of contracts have been explored, it is noted that there are various approaches to interpret a contract. It is also observed that mostly legal systems rely on the express wording agreed by the parties as the starting point, if that does not provide a clear answer, then different approaches of interpretation would be followed. This is certainly the case when one considers the civil law emphasis on the actual and subjective intention of the parties, but even between common law systems there are differences as one can see from the application of the doctrines which is to deal with the ambiguity in Pakistani legal system as opposed to English law. Further, I have highlighted the similarities and differences between the English and Pakistan legal systems.

Matters of interpretation have traditionally been considered as questions of fact, and the principles of interpretation as question of law. As a result, the court may be able to review the way lower courts apply these interpretative principles. This would be closer to the English law position of considering interpretative questions as matters of law and the principles of interpretation as binding.

Where the courts imply terms in both jurisdictions, each system treats this in the opposite manner, meaning that terms implied as a matter of fact are decided by English lower courts without review by the UK Supreme Court whereas terms implied under Pakistani law are subject to the control of the superior courts. The implication of terms in both jurisdictions is subject to different tests. Whether they are part of a unitary interpretative

exercise or distinct processes, these two facets of interpretation give judges room for discretion to interpret or supplement the expressed intentions of the parties with nevertheless different degrees of review by the higher national courts.

By contrast, the English evidentiary basis is limited to intrinsic evidence. It is however undisputed in English law that words must be read in the context of the facts. It is therefore not surprising that commercial parties from both sides of drafted contracts seek to mitigate the risk of uncertainty by limiting the evidence available for interpretation through the use of entire agreement clauses and even aim to constrain the interpretative power of the judge with the inclusion of interpretation clauses.

In Pakistan and England, the validity of these clauses is an undisputed part of contractual freedom, but paradoxically and ultimately, they are also subject to interpretation and as such, under judicial scrutiny. English and courts in Pakistan first look at the words of the contract for the meaning of the terms confirming the shared principle of the primacy of the contractual language. If the ordinary meaning makes sense, that language must be given effect. When the meaning remains unclear or ambiguous, courts resort to similar maxims of interpretation, such as considering the contract as a whole and common business sense. However, there is divergence on one maxim of interpretation, which is *contra proferentem*. Similarities in the interpretative principles can be explained by a shared respect for contractual freedom and sanctity of contract with an understanding that commercial parties need legal certainty.

Naturally, differences persist, which reflect distinct contract law values embedded in each legal order. In the function of the judge, Pakistani Courts are expected to consider

the contract as a whole in the wider context placing weight on the type of contractual relationship between the parties and whether the contract is freely negotiated or a standard form agreement.

BIBLIOGRAPHY:

1. Alexander and Anthony." But That's Not What That Means (When Can Evidence of Technical Jargon, Industry Custom And Trade Practice Be Used To Interpret Or Augment A Commercial Contract)". *Oxford Journal of Legal Studies*. 51 Advoc. Q. 541(2020-2021), accessed November 28, 2023. <https://heinonline.org/>
2. Austen-Baker. and Richard., "Terms implied in fact (In Implied Terms in English Contract Law)." Edward Elgar Publishing. pp. 136-170 (2017) accessed November 22, 2023.
3. <https://www.elgaronline.com/>
4. B Steven J, "Elements of Contract Interpretation". *Oxford Journal of Legal Studies* 23, No. 2 (2003), accessed November 25, 2023. <https://books.google.com/>
5. Birmingham and Robert L., "Holmes on Peerless: (Raffles v. Wichelhaus and the Objective Theory of Contract)." *U. Pitt. L. Rev.* 47 (1985), accessed November 26, 2023. <https://heinonline.org/>
6. Cecil, Joe S And Thomas E. Willging., "Accepting Daubert's Invitation: Defining A Role for Court-Appointed Experts in Assessing Scientific Validity." *Emory LJ* 43 (1994), accessed November 23, 2023. <https://heinonline.org/>
7. Cohen and Morris R., "The Basis of Contract." *Harv. L. Rev.* 46 (1932) accessed November 25, 2023. <https://www.researchgate.net/>
8. DiMatteo and Larry A., "Contract terms and standard form contracting. (In Principles of Contract Law and Theory)." Edward Elgar Publishing, 2023 accessed November 25, 2023. www.elgaronline.com/
9. Goh and Yihan., "From Context to Text in Contractual Interpretation (Is There Really a Problem with a Plain Meaning Rule)." *Common Law World Review*. 45, 4 (2016) accessed November 29, 2023

10. Herbots and Jacques H., "Interpretation of Contracts." Edward Elgar Publishing. (2012) accessed January 2, 2024
11. Kaushik and Ankit., "Golden Rule of Interpretation." SSRN 4676773. (2023) accessed January 25, 2024.
12. Crowe And Jonathan., "The Role of Contextual Meaning In Judicial Interpretation." Federal Law Review. 41, 3 (2013): 417-442.
13. Kenneth Reed Construction Corp. V. United States, 475 F.2d 583, 586 (Ct. Cl. 1973)
14. Kramer and Adam. "Common Sense Principles of Contract Interpretation (and how we've been using them all along)." Oxford Journal of Legal Studies 23, 2 (2003): 173-196.
15. Martorana and Vincent R., "A Guide to Contract Interpretation." (2014)
16. Mansoori, Muhamamd Tahir., (2015). Law of Islamic Law of Contracts and Business Transactions. Islamabad: Shariah Academy, IIUI. 27
17. Nyazee, Imran Ahsan (1995) Theories of Islamic Law: The Methodology of Ijtihad, Chicago,. Kazi Publications. Page 22.
18. Ilias Bantekas, Jonathan G. Ercanbrack, Umar A. Oseni, Ikram Ullah (2024) Islamic Contract Law. Oxford University Press.
19. Kramer and Adam. "Common Sense Principles of Contract Interpretation (and how we've been using them all along)." Oxford Journal of Legal Studies 23, 2 (2003): 173-196.
20. Mayson and Tom F., "The Use of Extrinsic Evidence in the Interpretation of Written Agreements in Alberta." Alta Law Review 42 (2004): 499.
21. McCunn and Joanna., "The contra proferentem rule: contract law's great survivor." Oxford Journal of Legal Studies 39, 3 (2019): 483-506.
22. McLauchlan and David., "Interpretation and Rectification: Lord Hoffmann's Last Stand." New Zealand Law Review, 3 (2009): 431-453.
23. Menon and Sundaresh., "The Interpretation of Documents: Saying What They Mean or Meaning What They Say." Sing Law Review 32 (2014): 3.
24. Miric and Marija Karanikic., "A Critical Look at the Subjective and Objective Purposes of Contract in Aharon Barak's Theory of Interpretation." Baltic Journal of Law & Politics, 2 (2016): 1.
25. Mitchell and Catherine., "Interpretation of contracts." Routledge-Cavendish, (2018).
26. Moore and Michael S., "A natural law theory of interpretation." *Southern California Law Review* Rev. 58 (1985): 277.

27. Havelock and Rohan., "Return to Tradition in Contractual Interpretation." *King's Law Journal*
28. Ottinger and Patrick S., "Principles of Contractual Interpretation." *Louisiana Law Review*
29. . 60 (1999): 765.
30. Spigelman and James., "From Text to Context: Contemporary Contractual Interpretation." *Australian Law Journal*, 81 (2007): 322.
31. Patterson and Edwin W., "The Interpretation and Construction of Contracts." *Columbia Law Review*, 64 (1964): 833
32. Perillo and Joseph M., "The Origins of The Objective Theory Of Contract Formation and Interpretation." *Fordham Law Review*, 69 (2000): 427.
33. Ravi O. N., "The Contractual Interpretation Rule-Contra Proferentum: (It's Relevance in Modern Law)." *CMR University Journal for Contemporary Legal Affairs*, 2 (2020): 112.
34. Reinecke, M. F. B and G. F. Lubbe., "Contracts of Insurance and the Objective Approach to Interpretation of Contracts." *JS Afr. L.*, (2021): 346.
35. Reiter and Barry J, "Good Faith in Contracts." *Valparaiso University Law Review*
36. ,17 (1983): 705.
37. Richardson and Lorna., "Commercial Common Sense Revisited: Further Developments in Contract Interpretation and Commercial Leasing." *Edinburgh Law Review* 20, 3 (2016): 342-348.
38. Robertson and Andrew. "Purposive contractual interpretation." *Legal Studies* 39, 2 (2019): 230-246.
39. Schauer, Frederick. "Is Law a Technical Language." *San Diego Law Review*. Vol. 52 (2015): 501.
40. Schwartz, Alan, and Joel Watson. "Conceptualizing Contractual Interpretation." *The Journal of Legal Studies* 42, No. 1 (2013): 1-34.
41. Stern, Esther. "Objectivity, Legal Doctrine and the Law of Mistaken Identity." *Journal of Contract Law* 8, no. 2 (1995): 154-192.
42. Stewart, Andrew, Warren Swain, and Karen Fairweather. *Contract Law: Principles and Context*. Cambridge University Press, 2019.
43. Sundaram, Jae. "Transfield Shipping Inc v Mercator Shipping Inc the Achilleas [2007] 2 *Lloyds Rep* 555." *The Denning Law Journal* 20, no. 1 (2008): 187-195.
44. Vukadinovic, Slobodan. "The Scope of The Contra Proferentem Rule in The Interpretation of The General Terms of Contract." *Union UI Sch. Rev.* 11 (2020): 141 at <https://www.heinonline.org/>

45. Wielsch, Dan. "Contract Interpretation Regimes." *The Modern Law Review* 81, no. 6 (2018): 958- 988.
46. Wightman, John. "Carlill v Carbolic Smoke Ball Co Ltd (1893)." (2008).
47. Wightman, John. *Contract: A Critical Commentary*. Pluto Press, 1996.
48. Zamir, Eyal. "The Inverted Hierarchy of Contract Interpretation and Supplementation." *Colum. Law Review*. (1997)
49. Zar Rokh, Ehsan. "Practical Concepts in Contract Law." MPRA Paper No. 10077, accessed on 01 Jan 2024 <https://mpa.ub.uni-muenchen.de/10077/>

CASELAWS:

PAKISTANI CASELAWS:

- i. Wasif Ali verses Fakhra Jabeen, 2023 CLC 1021 LHC
- ii. The State---Appellant verses. Syed Qaim Ali Shah 1992 SCMR 19
- iii. Karachi Shipyard & Engineering Works Ltd Karachi verses. General Iron & Steel Works Ltd
PLD 1971 Karachi 501
- iv. Sezai Turkes Feyzi Akkaya Construction Co. Lahore verses. Crescent Services Lahore
1997 SCMR 1928.
- v. Asma Qamar verses. Jubilee Life Insurance, 2023 CLD 1283 Insurance Tribunal Lahore
- vi. Province Of Punjab & GMK Enterprises verses. Shaheen Builders
1999 CLC1698.
- vii. Muhammad Azam Muhammad Fazil & Co Karachi V Na Industries Karachi
P L D 1977 Karachi 21
- viii. 2017 SCMR 1734
- ix.
- x.
- xi.
- xii.

ENGLISH CASE LAWS:

- xiii. Lefkowitz verses. Great Minneapolis Surplus Store, Inc 86 NW 2d 689 (Minn, 1957)
- xiv. Kenneth Reed Construction Corporation verses. United States, 475 F.2d 583, 586 (Ct. Cl. 1973)
- xv. Arnold (Respondent) verses. Britton & Others (Appellants) [2015] UKSC 36
- xvi. Chartbrook Ltd. verses. Persimmon Homes Ltd [2009] 1 AC 1101
- xvii. R verses. Kennedy (No 2) [2007] UKHL 38.
- xviii. Coventry verses. Lawrence [2014] UKSC 13
- xix. Raffles verses. Wichelhaus [1864] EWHC Exch J19

