

CASEBRIEFS

The Understanding Video Lecture
Series™

Ambiguity

Ambiguous Terms

- A **contract** is considered to be **ambiguous** if the **contract** is reasonably subject to more than one interpretation. Sometimes, this can mean that it's unclear as to what the parties intended overall. But usually, an **ambiguous contract** means that a specific **term**, word, phrase, or definition is vague or unclear

Steps

- If a term is considered to be ambiguous, we look to:
 - Course of Performance
 - same parties, same contract
 - Course of Dealings
 - Same parties, different agreement
 - Usage
 - What is the industry standard?
 - Parol Evidence

Let's try an example

Owner owns a house in Canada.

Paint is an American painting contractor.

They sign a contract calling for Paint to paint O's house for "Twenty-Thousand Dollars."

The document has a merger clause (i.e., that no other oral or written agreement exist).

Owner claims that the contract means "Canadian dollars."

Can Paint testify that the parties discussed this issue before signing, and that O expressly agreed to pay in U.S. dollars?

Dollars or Dollars?

- Yes. Where a term is ambiguous, extrinsic evidence about what the parties meant by the term may be admitted.



Let's try another

In the widget industry, custom is that invoices are payable in 30 days, and 1% per month interest is due on any later payment.

In 8 transactions between Buyer & Seller over last 3 years, Buyer has paid in 45 days w/o paying interest despite statement on invoice saying "Net 30," and Seller has not objected.

Present invoice (sent after goods were ordered and sent) also says "Net 30," and Seller is now insisting on strict 30-day payment.

May Buyer pay net 45 w/o interest?

Answer

- Yes. Buyer's prior payments-net-45-w/o-interest formed a "course of dealing" between the parties.
- A course of dealing may be proved despite the parol evidence rule.
- If course of dealing is proved, it takes priority over a conflicting "trade usage"
 - Which is what the industry interest-after-30-days practice is.

What is a chicken?

- A chef and farmer enter into a contract where the farmer will supply the chef with 12 dozen “chickens”. You may remember this from the *Frigaliment case*. There was a dispute over whether chicken meant “stewing” chicken or “frying” chicken. So, what is a court to do?

Analysis

- First – look to whether there has been performance on THIS particular contract?
- Next – what about prior contracts?
- What about the industry standard?

