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# ADVANCED CONTRACTUAL INTERPRETATION: CONSTRUCTION CONTRACTS: A PRACTICAL POLICY- ORIENTED

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Advt. Dr Rajdeepsinh B. Jadeja, High Court of Gujarat, Ahmedabad

Adv. Dr Honey Govindbhai Thakkar, High Court of Gujarat, Ahmedabad

## ABSTRACT

This paper thoroughly investigates the difficulties related to understanding construction agreements, which are naturally intricate because they involve numerous stakeholders, intricate technical details, and significant financial implications. The main aim of this research is to assess how courts and arbitration panels resolve unclear aspects within these agreements while upholding the effective execution of contractual duties. A doctrinal approach is utilised for this study, enhanced by an in-depth examination of past judicial rulings and arbitration methodologies.

The research encompasses a review of the principles that govern contractual interpretation, including the literal interpretation rule, the test for business efficacy, and the doctrine of contra proferentem. The focus is particularly on how these principles are applied in construction conflicts, where the terms of contracts often must be interpreted with consideration of both technicalities and business matters. The article investigates if these interpretive frameworks bring adequate clarity and uniformity to dispute resolution.

The outcomes reveal that while these principles present a systematic basis for interpretation, their real-world application tends to be variable. This variability is often a result of factors like unclear wording, the inclusion of specialised jargon, and the unequal bargaining strength among those involved in the contracts. Such issues frequently result in unpredictability and a rise in litigation or arbitration processes.

To address this, the research highlights critical areas that need reform, such as the necessity for clearer contract wording, better standardisation of terms, and more efficient dispute resolution procedures. The article concludes that a more unified strategy, merging established legal principles with practical aspects, is crucial to guarantee reliability, justice, and efficiency in the interpretation of construction agreements.

**Keywords:** Risk Allocation; Judicial Trends; Policy-Oriented Interpretation; Infrastructure Law; Dispute Resolution; Contract Drafting; Economic Efficiency; Legal Certainty; Construction Law.

## **INTRODUCTION**

The construction industry is a fundamental driver of economic growth, especially in emerging economies such as India. Infrastructure initiatives—from highways to urban development projects—are governed by complex construction contracts that allocate risks, define responsibilities, and set timelines among involved parties. However, the intricacy of these agreements frequently results in disputes, often stemming from challenges in contractual interpretation. Courts and arbitral tribunals regularly face the task of interpreting provisions related to delays, variation orders, liquidated damages, and force majeure events. The key challenge is to strike a balance between strict textual reading and the commercial realities underlying the contracts. Over time, legal doctrines like the “intention of the parties,” the “business efficacy test,” and contextual interpretation have been developed to manage these complexities.

Despite these advances, inconsistencies persist in judicial and arbitral interpretations, creating uncertainty and fuelling litigation. This situation brings to the fore critical policy issues concerning efficiency, fairness, and the need for standardised interpretative approaches in construction contracts. This paper argues that adopting a more structured, policy-oriented framework for contractual interpretation is essential to promote consistency, minimise disputes, and ensure that legal outcomes better reflect commercial expectations in the construction sector.

## **RESEARCH PROBLEM**

Disputes often arise in construction contracts because they contain ambiguous clauses, conflicting documents, and the conditions of a developing project. Despite using standard forms like FIDIC, parties often interpret duties differently, leading to delays, increased costs, and litigation. The main problem is the lack of a consistent and commercially appropriate approach to contractual interpretation, especially in complex infrastructure projects.

## **RESEARCH OBJECTIVES**

- 1 To Analyse principles of contractual interpretation
- 2 To Examine judicial principles of contract interpretation

- 3 To Identify practical challenges in drafting
- 4 To Suggest policy-level reforms

### **RESEARCH QUESTION**

1. How do courts decide when to follow the exact words of a contract versus using common sense in construction agreements?
2. What part do policy issues play in how contracts are understood during construction disagreements?
3. What steps can be taken to reduce differences in how contracts are interpreted to make construction law more certain?

### **RESEARCH METHODOLOGY**

This research uses a doctrinal and analytical method to look into the rules that guide how contracts are interpreted in construction projects, with a special focus on policy-based approaches. The doctrinal method means looking at legal rules, court decisions, and established contract law principles, especially as they apply to disputes in construction. The study mainly uses secondary sources like important court cases, laws, standard construction contracts (such as FIDIC and NEC), textbooks, academic papers, and expert opinions on construction law and contract interpretation. Key court cases such as *Investors Compensation Scheme Ltd v West Bromwich Building Society*, *Arnold v Britton*, and *Wood v Capita Insurance Services Ltd* are closely looked at to understand how interpretive rules have changed over time.

An analytical approach is used to compare different ways of interpreting contracts, such as the literal rule, contextual interpretation, and the idea of common sense in business. This helps in understanding how courts handle situations where the words in a contract are clear, but the context or real-life practicality might be complex, especially in construction contracts. The research also includes a comparative aspect, looking at both English and Indian court decisions to see how similar or different they are in interpreting contracts. This helps in identifying what works well and where there might be gaps in the current legal systems. A policy-focused analysis is done to see how factors like fairness, risk sharing, economic efficiency, and clear business terms influence how judges interpret contracts. This goes beyond just looking at the

law itself and considers the wider effects of interpretation on the construction industry and infrastructure projects. The overall method is qualitative, focusing on how legal principles are applied rather than using numerical data. Real-life examples from construction disputes, such as issues around delay clauses, contract changes, and payment terms, are used to show how legal rules are put into practice.

It is mainly based on published court rulings and secondary materials, which might not fully cover real industry practices or decisions made by arbitrators that haven't been published. Also, since there is no fieldwork, the study doesn't include views from people involved in construction like contractors, engineers, or arbitrators. Even with these limitations, the chosen method offers a thorough and critical way to understand how contracts are interpreted in construction. It helps in creating a more consistent and fair approach to contract interpretation that takes policy into account.

## **PRINCIPLES OF CONTRACTUAL INTERPRETATION**

The essential principle guiding the interpretation of contracts is to determine the genuine intentions of the parties at the moment they agreed. Courts do not simply depend on the personal understandings of the parties; rather, they take an objective view, concentrating on how a reasonable person in the same situation would perceive the terms of the contract. This principle is well established in legal precedent, especially in the case of *Investors Compensation Scheme Ltd v West Bromwich Building Society*, where Lord Hoffmann explained that the task of interpreting a contract involves discovering the meaning that the document would express to a reasonable individual who possesses all the contextual knowledge available to the parties. In construction contracts, this process becomes much more complicated because of the technical terms involved, the detailed requirements, and how risks are shared between different parties, like employers, contractors, subcontractors, and consultants. Because of this, courts don't just look at the exact words in the contract. They also consider the bigger picture, like how things usually work in the industry, common business practices, and the main goal of the agreement.

**Literal Rule:** The literal rule is the first method used to interpret contracts. Judges start by looking at the plain and usual meaning of the words in the contract. If the language is clear and has only one meaning, it must be followed, even if the result seems unfair.<sup>1</sup> This method

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<sup>1</sup> *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 (HL).

ensures that business deals are clear and predictable. However, being too strict with the literal rule has been criticised in construction cases. Rigid interpretation can lead to results that are not practical or fair in the real world. The case of *Arnold v Britton* shows that the natural meaning of the words should be considered, even if it might be tough for one party. This case highlights that common sense is important, but it can't change the clear language in a contract.<sup>2</sup>

**Contextual Interpretation:** Today, courts often use a contextual or purposive approach. This means looking at the whole contract and understanding each part in relation to the rest. This helps avoid misinterpreting parts of the contract in a way that changes the overall meaning. This method also lets courts consider the background of the agreement, such as the facts, industry standards, and the purpose of the deal. In construction contracts, this is especially important because different parts like timelines, changes, and risk sharing are connected. This approach evolved from the case of *Investors Compensation Scheme*, where the court said that interpreting a contract should not only look at the words but also the context in which the contract was made.<sup>3</sup>

**Commercial Common Sense:** The idea of commercial common sense has become more important in how contracts are interpreted. Courts try to understand contracts in a way that makes business sense and avoids decisions that are illogical or unreasonable for business purposes. In the case of *Rainy Sky SA v Kookmin Bank*,<sup>4</sup> the Supreme Court ruled that if a part of a contract can be read in more than one way, the court should choose the interpretation that makes the most sense from a business perspective. In construction contracts, this principle is very important when dealing with issues like delay clauses, how payments are made, and how changes are handled. Because these contracts involve large sums of money and long-term projects, courts usually avoid interpretations that could harm the project's chances of success.

**Contra Proferentem Rule:** The contra proferentem rule is a rule that is used only when there's no other way to resolve a problem in a contract. It means that if there's any unclear part in a contract clause, it should be understood in a way that's not favourable to the person who wrote it. This rule is especially important in standard form construction contracts where one side, like the employer or main contractor, has more power in the agreement. However, in recent times, courts have been more careful with how they use this rule. They say it should only be applied

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<sup>2</sup>*Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 (HL).

<sup>3</sup> *ibid.*

<sup>4</sup> *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, [2011] 1 WLR 2900.

if other methods of understanding the contract don't work. In contracts between experienced parties, courts are less likely to use this rule strictly.

**Judicial Trends in Construction Contract Interpretation:** Judges are moving away from strictly following the exact words of a contract and are instead looking at the whole picture. They now understand that construction contracts should be considered in a way that makes sense for the real-world situation of the project. In the case of **Wood v Capita Insurance Services Ltd**,<sup>5</sup> the Supreme Court said that looking at the exact words and the overall context of a contract are not conflicting ways to understand it. The court explained that how much weight to give to each method depends on the contract's nature, formality, and how complicated it is. This approach is especially important in construction law because contracts are usually very detailed and worked on by parties who understand the law. Courts pay close attention to the actual language used in the contract but also take into account the broader business context to ensure fair results.

**Indian courts have also followed similar trends:** The Supreme Court of India has often said that contracts should be read in a way that shows the intention of the parties and avoids strange or unreasonable outcomes. In construction disputes, Indian courts often look at how the parties acted and the surrounding situation to find out what the contract really meant.

**Policy-Oriented Interpretation in Construction Contracts:** Today, courts are thinking more about the bigger picture when interpreting construction contracts. They are not only trying to solve disagreements between the parties but also ensuring fairness, efficiency, and stability in the construction industry.

**One important policy issue is dividing up risks:** Construction contracts are meant to assign who is responsible for delays, cost increases, and unexpected problems. Courts aim to follow the risk division agreed upon unless it causes serious unfairness.

**Another key factor is economic efficiency:** Construction projects often involve large investments and have wider impacts on the economy. So, courts prefer interpretations that help the project finish on time and avoid major problems.

**Fairness and equity are also central to this way of thinking:** Courts are careful not to enforce

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<sup>5</sup> *Wood v Capita Insurance Services Ltd* [2017] UKSC 24, [2017] AC 1173.

contract terms in a way that leads to unfair benefits or too much hardship, especially in cases where one party has more power or the contract is a standard one. A policy-oriented approach also helps create certainty and predictability, which are important for getting investment in the construction sector. By using consistent methods to interpret contracts, courts help create a stable legal environment that supports business activity.

## LITERATURE REVIEW

The topic of interpreting construction contracts has been a big discussion in legal studies, especially when it comes to finding a balance between clear, exact wording and practical business needs. Legal experts have looked closely at how courts handle complicated contracts while making sure things are fair and efficient in construction projects.

**Sir Guenter Treitel, in his book *The Law of Contract*,**<sup>6</sup> says that the main goal of interpreting a contract is to figure out what the people involved intended, using an objective point of view. He explains that while sticking strictly to the words is important, modern courts are more likely to use the surrounding context to avoid unfair results. This is especially important in construction contracts, where being too strict about the words could hurt the business goals.

**Ewan Mc Kendrick**<sup>7</sup> also talks about how interpretation has changed over time, moving away from a strict reading of the text to a more purpose-driven approach. In his book ***Contract Law: Text, Cases, and Materials***, he mentions that courts now take into account common business sense, especially in areas like construction, where things can be very complicated. His work shows that judges are increasingly looking for meanings that make sense for the business. Hugh Beale adds to this by discussing the role of good faith and fairness in interpreting contracts. Although English law doesn't officially have a rule about good faith, courts often consider fairness and reasonableness when dealing with unclear parts of a contract. This is especially relevant in construction cases where one party might have more power than the other.

From a construction-specific angle, **Keating Chambers, in *Keating on Construction Contracts***<sup>8</sup>, gives a detailed look at how interpretation works in standard forms like FIDIC. The book stresses that construction contracts need a practical and sensible approach because

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<sup>6</sup> Sir Guenter Treitel, *The Law of Contract* (14th edn, Sweet & Maxwell 2015).

<sup>7</sup> Ewan McKendrick, *Contract Law: Text, Cases, and Materials* (8th edn, OUP 2020).

<sup>8</sup> Keating Chambers, *Keating on Construction Contracts* (11th edn, Sweet & Maxwell 2021).

they are complex and long-term. It also points out the importance of reading through the whole contract to keep everything consistent.

**John Uff, in Construction Law**<sup>9</sup>, looks at how courts handle risk distribution in contracts. He argues that courts often interpret clauses to keep the risk as originally agreed, which helps in making the industry more stable. He also explains that unclear risk clauses can lead to major disputes.

In India, **Avatar Singh**<sup>10</sup> provides valuable insights into contract interpretation under the **Indian Contract Act, 1872**. He notes that Indian courts follow similar principles to English law but place more emphasis on fairness and equity. His work shows how important it is to consider the context when resolving construction disputes in India. All these writings show a clear trend towards a balanced approach where courts take both the exact wording and the practical needs of the business into account. While most scholars agree on the importance of context and purpose, there is still debate about how much courts should move away from the strict meaning of the words. This ongoing discussion shows how dynamic and evolving the area of contract interpretation in construction law really is.

## RESEARCH AND ANALYSIS

Standard form contracts, including FIDIC, NEC, and ICE forms, are extensively utilised to establish consistency and predictability in construction projects. Nevertheless, these forms are frequently modified through special conditions, leading to interpretative disputes. Courts usually address these disputes by prioritising specific provisions over general ones and negotiated terms over standard clauses. The complexity escalates when various documents constitute a single contract, such as tender documents, specifications, and drawings. In these instances, courts employ a holistic approach, interpreting all documents collectively to prevent inconsistencies. This method guarantees coherence but necessitates meticulous judicial balancing.

### 1. RISK ALLOCATION AND INTERPRETATIVE ISSUES

Risk allocation is fundamental to construction contracts, and interpretation significantly

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<sup>9</sup> John Uff, *Construction Law* (13th edn, Sweet & Maxwell 2017).

<sup>10</sup> Avtar Singh, *Law of Contract and Specific Relief* (Eastern Book Company 2022).

influences how risks are shared. Provisions concerning delay, liquidated damages, and force majeure often lead to disputes. For example, the interpretation of delay clauses may vary based on whether the contract permits concurrent delay or mandates strict adherence to notice requirements.

Courts typically resist interpretations that misrepresent the agreed risk allocation. In *Arnold v Britton*, the focus was on the natural meaning of contractual terms, even when the result seemed commercially disadvantageous. However, subsequent rulings have softened this stance by integrating commercial reasonableness into the interpretative process.

## 2. ROLE OF EXTRINSIC EVIDENCE

The acceptability of extrinsic evidence in contractual interpretation continues to be a contentious topic. While conventional rules exclude pre-contractual negotiations, contemporary courts permit limited consideration of surrounding circumstances to grasp context. Industry practices and the behaviour of parties during execution may also be taken into account.

In construction disputes, such evidence can prove particularly useful in elucidating technical ambiguities. However, an overreliance on extrinsic evidence may lead to complications.

## 3. JUDICIAL TRENDS IN CONSTRUCTION CONTRACT INTERPRETATION (WITH GUJARAT HIGH COURT PERSPECTIVE)

Judicial trends in the interpretation of contracts, especially in construction disputes, indicate a significant transition from strict literalism to a more practical, commercially focused approach. Courts are increasingly prioritising the interpretation of contractual provisions. This trend is observable not only in English law but also within the Indian judiciary, particularly in the Gujarat High Court, which has been instrumental in resolving infrastructure and arbitration-related disputes.

The Gujarat High Court has consistently maintained that construction contracts should be interpreted in a comprehensive manner, ensuring that no clause is considered in isolation. In the case of *Larsen & Toubro Ltd v State of Gujarat*, the Court emphasised that infrastructure contracts involving public entities must be interpreted in a way that maintains commercial viability and prevents unjust enrichment of either party. The Court also noted

that causes related to delays and payments should be understood in the context of the realities of project execution rather than through a limited textual interpretation.

In a similar vein, in the case of **State of Gujarat v KEC International Ltd**, the Court addressed disputes arising from delays and performance obligations within a construction contract. It ruled that the interpretation should correspond with the risk allocation agreed upon by the parties and that courts should refrain from altering contractual terms under the pretext of interpretation. This demonstrates judicial restraint while still promoting fairness in contractual results.

In disputes related to arbitration in construction, the Gujarat High Court has exhibited considerable respect for the arbitral interpretation of contracts. In **MSK Projects (India) Ltd v State of Gujarat**, the Court upheld the interpretation of contractual clauses regarding escalation and delay by the arbitral tribunal, underscoring that when two interpretations are possible, the one that aligns with the parties' intentions should prevail.

#### **4. POLICY CONSIDERATIONS AND PRACTICAL CHALLENGES**

The interpretation of contracts within construction law is influenced not only by legal doctrines but also by significant policy factors such as certainty, fairness, and commercial effectiveness. Courts strive to ensure that contracts offer predictability, allowing parties to have a clear understanding of their rights and responsibilities. Nevertheless, a strictly literal interpretation can sometimes lead to inequitable results, particularly in intricate construction projects where unexpected situations often occur. Consequently, contemporary interpretation employs a balanced methodology, considering both the language of the contract and its commercial intent.

Fairness represents another crucial policy issue. Construction contracts frequently involve disparities in bargaining power, especially in government contracts or standard form agreements. Courts typically interpret vague clauses in a way that avoids unjust enrichment or excessive penalties, particularly in instances of delays and liquidated damages. Simultaneously, it is vital to uphold contractual discipline. Provisions like notice clauses and time-bar conditions are enforced to guarantee effective project management, although courts may ease strict adherence when equity necessitates it.

In addition to these policy objectives, practical challenges greatly influence interpretation. Construction contracts are often extensive and comprise numerous documents, resulting in inconsistencies and ambiguities. The technical complexity further hinders interpretation, necessitating that courts take into account engineering considerations alongside legal analysis. Problems such as concurrent delays and insufficient documentation also pose challenges in establishing liability.

## **RECOMMENDATIONS**

To reduce interpretative conflicts, parties need to emphasise clarity and precision in their drafting. Standard form contracts should be utilised with caution, ensuring that any modifications are thoroughly examined to prevent inconsistencies. Well-articulated risk allocation clauses and clearly defined procedures for claims and dispute resolution can greatly diminish ambiguity. Furthermore, keeping accurate documentation throughout the project execution can aid in addressing interpretative challenges. Legal and technical experts must work in close collaboration to guarantee that the contractual terms genuinely represent the commercial intentions of the parties.

## **CONCLUSION**

To summarise, the interpretation of construction contracts has transitioned from a strict, text-focused practice to a more equitable and commercially aware process. Contemporary legal methodologies acknowledge that construction projects function within intricate and evolving contexts where rigid literalism may not always yield fair results. Simultaneously, the ongoing issues of vague language, technical intricacies, and insufficient documentation reveal that many conflicts stem not from the law itself but from inadequate contract management. This highlights the necessity for precise drafting, consistent record-keeping, and proactive risk management in construction endeavours.

The effectiveness of interpreting construction contracts relies on a collaborative effort among courts, arbitrators, and contracting parties. A practical, policy-driven strategy—bolstered by meticulous drafting and efficient management—can greatly minimise disputes and facilitate timely project completion. Such a strategy ensures that the interpretation of contracts not only addresses conflicts but also advances the broader goals of fairness, efficiency, and commercial reliability within the construction sector.

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