

CONTRACT-INTERPRETATION FLOW CHART

Over-arching Principle: Determine the intent of the parties with respect to the provision at issue at the time the contract was made

- **Ask:** Is the provision ambiguous?



What is Ambiguity?

Principle: A contract or provision is ambiguous if it is reasonably susceptible to more than one interpretation

- **Potential Refinements of Principle:**
 - Some courts look at whether the provision is reasonably susceptible to more than one interpretation when read by an *objective reader in the position of the parties*
 - Some courts factor in a reading of the provision “by one who is cognizant of the customs, practices, and terminology as generally understood by particular trade or business”
 - **Potential Exception:** When plain meaning of a word lends itself to only one reasonable interpretation, that interpretation controls
 - The contract should be viewed in light of circumstances under which it was made
 - As between two interpretations, the court will not adopt an interpretation that produces an absurd result
 - Contracts should be construed in a commercially reasonable manner
 - A provision is not ambiguous simply because the parties disagree as to its construction or urge alternative interpretations



Assessing Whether a Provision is Ambiguous

Note: Whether a contract or provision is ambiguous is a determination of law for the court to make on a claim-by-claim basis

Note: Parol evidence cannot be used to create an ambiguity

Principles for Determining Whether a Provision is Ambiguous

- **Holistic Principles**
 - Read the contract as a whole; do not read provisions in a vacuum
 - Provisions and terms should not be interpreted so as to render any provision or term superfluous or meaningless
 - Terms should be “harmonized” and read in context¹
 - Contracts entered into contemporaneously and for the same purpose should be read and interpreted together
- **Canons of Construction**
 - *Ejusdem generis* (when a general word or phrase follows list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed)
 - *Expressio unius est exclusio alterius* (to express or include one thing implies the exclusion of another)
 - The specific governs over the general
 - The same words used in different parts of a writing have the same meaning
- **Other Principles** (in addition to the below, courts might also employ various other principles to assess ambiguity)
 - Preference for construing text as an obligation rather than a condition
 - When dealing with sophisticated parties, the court gives deference to the language used
 - Contractual silence does not necessarily create ambiguity, but an omission as to a material issue can create ambiguity
 - Punctuation is always subordinate to the text and is never allowed to create ambiguity or undermine otherwise clear meaning

Provision is unambiguous →

Court Interprets Contract as a Matter of Law

- **Principle:** If provision is unambiguous, then the court should look **ONLY** to the text of the contract to determine the parties’ intent (“four-corners rule”)
 - Best evidence of intent is the text of the contract
 - Use “manifested intent,” not “actual intent”
 - Parol evidence cannot be used
 - Notions of equity and fairness cannot be used to alter the contract
 - **Exception:** Doctrine of scrivener’s error (very high burden on party seeking to invoke the exception)

Provision is ambiguous →

Parties’ Intent Becomes a Question of Fact

- **Principle:** Parol evidence can be used to determine the intent of the parties
 - Summary judgment is inappropriate
 - **Potential Exception:** Summary judgment might be appropriate if parol evidence is uncontroverted or so one-sided that no reasonable person could decide otherwise
- An ambiguity is generally construed against the drafter (*contra proferentum*)
 - **Potential Exception:** Some courts only apply *contra proferentum* as one of last resort (i.e., only if parol evidence fails to resolve the ambiguity)
 - **Note:** Courts may apply *contra proferentum* without looking at parol evidence in certain types of contracts or when unequal bargaining power

¹ Query whether “harmonize” means (1) to interpret a provision so as to reduce or eliminate surplusage or (2) to let other provisions (which might or might not be superfluous) guide the selection of one alternative interpretation over another. Meaning #2 is slightly broader.