**Chapter 11: The Interpretation of Contracts**

**Construing –** interpreting

If both parties believe that his interpretation of the contract is the only sensible one and that the other party must be dishonest to suggest that there is any other, we are dealing with the problem of construing. When parties go to court, the court seeks the most reasonable meaning that can be attributed to the words in the circumstances.

Two Approaches to Interpretation: **1) Strict or Plain-Meaning Approach** – an approach that restricts interpretation to the **ordinary** or dictionary meaning of a word

**2) Liberal Approach** – an approach that looks to the intent of the parties and surrounding circumstances, and tends to minimize but does not ignore, the importance of the words actually used  
- what did they intend?

A court will emphasize one approach more than the other since they are not really distinct approaches. One is used to the exclusion of the other. The court must decide in the circumstances of each case, how far it should look beyond the words used to explain their meanings

Ex. To “build” – does it include supplying materials?

Literally, “to build” means only to “construct” but in many circumstances (building a home), it may include supplying materials. Since words are ambiguous, the court will look outside the contract to the surrounding circumstances as a means of clearing up this uncertainty. It will hear any evidence of past transactions between the parties and evidence of the negotiations leading up to the contract.

**Contra Proferentem** – a rule of contract interpretation that prefers the interpretation of a clause that is least favourable to the party that drafted the clause

**Exemption Clause** – a clause in a contract that exempts a party from liability

When creating a formal document signed by both parties where there may be an omission of something one party believed was part of the agreement. In this case it may be due to a mistake in writing down the terms but if there is no clear evidence that a term was omitted by error, they will be held to the contract as it is written.

**Parol Evidence Rule** – a rule preventing a party to a contract from later adding a term previously agreed upon but not included in the final written contract

Sometimes parties agree to omit a term from the final form of the contract, still intending it to be part of their whole agreement if they feel it will be confusing or someone may object to it. Courts are however reluctant to relax the parol evidence rule so that people do not abuse the system in place by claiming that favourable terms not agreed upon are part of their contracts.

The parol evidence doesn’t exclude evidence of an oral agreement after the parties have entered into the written agreement, but it may change the terms of the written agreement or may even rescind the prior contract altogether.

**Collateral Agreement** – a separate agreement between the parties made at the same time as, but not included in, the written document

**Condition Precedent** – any set of circumstances or events that the parties stipulate must be satisfied or must happen before their contract takes effect

It may be an event beyond the control of either party and it need not be in writing. If the party claiming that a condition precedent was agreed on and not met and can produce evidence to support this, a court will recognize it despite the existence of a complete and unconditional written form of the contract, and will declare the contract void.

Parties often present the courts with disagreements that they didn’t foresee when they made their contract. One approach the courts use is to determine the most reasonable interpretation of express terms. A second approach is to consider whether the intention of the parties can be achieved only by admitting the existence of an *implied term.*

**Implied Term** – a term not expressly included by the parties in their agreement but which, as reasonable people, they would have included had they thought about it

- a term will be implied if it is obviously necessary to accomplish the purpose of the contract

When parties deal expressly with a matter in their contract, a court will not find an implied term that deals with the same matter in a different way. If the parties have been diligent in looking over the foreseeable possibilities for future dispute, a court may conclude that they intend to deal in a comprehensive way with all future events, so that no further terms should be implied.