Contra proferentem

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Contra proferentem (Latin: "against [the] offeror"),[1] also known as "interpretation against the draftsman", is a doctrine of contractual interpretation providing that, where a promise, agreement or term is ambiguous, the preferred meaning should be the one that works against the interests of the party who provided the wording.[2] The doctrine is often applied to situations involving standardized contracts or where the parties are of unequal bargaining power, but is applicable to other cases.[3] The doctrine is not, however, directly applicable to situations where the language at issue is mandated by law, as is often the case with insurance contracts and bills of lading.[4]

The reasoning behind this rule is to encourage the drafter of a contract to be as clear and explicit as possible and to take into account as many foreseeable situations as it can.

Additionally, the rule reflects the court's inherent dislike of standard-form take-it-or-leave-it contracts also known as contracts of adhesion (e.g., standard form insurance contracts for individual consumers, residential leases, etc.). The court perceives such contracts to be the product of bargaining between parties in unfair or uneven positions. To mitigate this perceived unfairness, legal systems apply the doctrine of *contra proferentem*; giving the benefit of any doubt in favor of the party upon whom the contract was foisted. Some courts when seeking a particular result will use *contra proferentem* to take a strict approach against insurers and other powerful contracting parties and go so far as to interpret terms of the contract in favor of the other party, even where the meaning of a term would appear clear and unambiguous on its face, although this application is disfavored.

Contra proferentem also places the cost of losses on the party who was in the best position to avoid the harm. This is generally the person who drafted the contract. An example of this is the insurance contract mentioned above, which is a good example of an adhesion contract. There, the insurance company is the party completely in control of the terms of the contract and is generally in a better position to, for example, avoid contractual forfeiture. This is a longstanding principle: see, for example, California Civil Code §1654 (“In cases of uncertainty ... the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist"), which was enacted in 1872. Numerous other states have codified the rule as well.

The principle has also been codified in international instruments such as the UNIDROIT Principles and the Principles of European Contract Law.

References

1. Black, Henry C. (2009). Garner, Bryan A., ed. *Black's Law Dictionary* (Print.) (9th ed.). St. Paul, MN: West Publishing. ISBN 0-314-19949-7.
2. American Law Institute (1981). "The Scope of Contractual Obligations". *Restatement (Second) of Contracts*. **2**. St. Paul, Minnesota: American Law Institute Publishers. § 206.
3. (American Law Institute 1981, § 206, cmt. a)
4. (American Law Institute 1981, § 206, cmt. b)

Further reading

- *Oxonica Energy Ltd v Neuftec Ltd (2008) EWHC 2127 (Pat)* (http://www.bailii.org/ew/cases/EWHC/Patents/2008/2127.html), items 88-93 (example where the *contra proferentem* principle was "not adequate enough to supply the answer to the case", with a discussion of the origin of the maxim)
- Péter Cserne, *Policy Considerations In Contract Interpretation: The Contra Proferentem Rule From a Comparative Law and Economics Perspective* (http://works.bepress.com/peter_cserne/28/), Hungarian Association for Law and Economics, 2007 (pdf (http://works.bepress.com/cgi/viewcontent.cgi?article=1027&context=peter_cserne)) (including a list of references relating to the *contra proferentem* principle)

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