

## Cover your bases when dealing with contracts

This is the second in a series of articles on contracts. Last time, I wrote about the first part of the process: creating contracts. This time we deal with interpreting contracts.

Contracts define our way of life. They're everywhere, on computer screens, in printed word, faxes, even text messages. In today's world, any person can create a contract about anything through any means.

Our legal system reveres contracts. Once a contract is made, the law requires each contracting party to live up to its agreement. If one should falter, the law will give the other a remedy.

Courts enforce contracts. Under our system of law, judges have a duty to interpret and enforce contracts according to the intent of the parties. That can be difficult, especially when a contract is poorly written. The simplicity of creating a contract often gives rise to the difficulty of interpreting it.

Since contracts are vital to the stability of the marketplace, courts have adopted specific "rules of consideration" for interpreting them. The rules provide basic standards that ensure contracts are interpreted consistently.

All these rules are predicated on one fundamental concept: A court must ascertain and carry out the intent of the parties, regardless of the outcome. Judges have no authority to judge the result of a contract, or to change the results, regardless of how unjust the outcome may be. The court's only function is to determine and carry out parties' intent.

### Rules to contract by

Four basic rules must be applied on a priority basis. Here's a summary, by priority:

**Rule 1:** A court must ascertain the intent of the parties from the plain meaning of the words in the contract. The law presumes each party knew the meaning



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when they agreed to the contract.

**Rule 2:** If those words lack clarity, a judge may then consider the circumstances of the parties. Here's an example of how that works:

Billy Bob owns a drive-in that is a well-known burger joint. He contracts with XYZ Bakery for "10 dozen buns to be delivered to Billy Bob's Drive-In." The words don't clarify the type of bun to deliver, so in this case the judge may look to the circumstances of the parties. The court may consider that Billy Bob's is a burger joint.

**Rule 3:** A judge may also consider the past dealings of the parties. Using the same example, the fact that XYZ Bakery delivered hamburger buns on three previous occasions becomes relevant for consideration.

**Rule 4:** When all else fails, the court may consider "parole evidence," including oral testimony that sheds light on parties' intent.

To illustrate, let's assume Billy Bob sells hamburgers and hot dogs at the drive-in, and that XYZ Bakery delivered different types of buns in the past. In this case, neither circumstances nor past dealings shed any meaningful light on the type of bun described in the contract. When this happens, a judge may consider oral testimony of the parties, including verbal statements exchanged when the contract was made. The fact

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that Billy Bob told XYZ that he wanted the buns for his upcoming “Burger for a Buck” program becomes a vital piece of evidence.

## **Be diligent**

Getting a judge involved in your contract is expensive. If you have to go to court, keep the involvement short and simple. The easy way is to cover your bases.

Make sure your contract says what

you want it to say. Also see that it has an “attorney fee provision” requiring the other party to pay your attorney fees. It’s a great way to keep someone from breaching the contract.

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