TABLE OF CONTENTS

| Table of Cases | | xvii | |
|-----------------------|------|--|-------|
| Table of Legislation | | xxiii | |
| List of Abbreviations | | | XXV |
| Prol | ogu | e | |
| | A. | The Nature of the Interpretative Process | Pr.01 |
| | B. | The Purpose of this Book | Pr.06 |
| | C. | Why is It Important? | Pr.10 |
| | D. | The Principles | Pr.22 |
| | E. | Principles, Rules, and Precedent | Pr.25 |
| | F. | Recent Developments | Pr.27 |
| | G. | The Two Opposing Views | Pr.32 |
| | | I THE GUIDING PRINCIPLE | |
| 1. | Prin | nciple 1: Objective Intention | |
| | A. | Intention | 1.01 |
| | B. | Objectivity | 1.04 |
| | C. | Is Intention Still Relevant? | 1.10 |
| | D. | Why an Objective Approach? | 1.15 |
| | E. | Freedom of Contract and its Limits | 1.29 |
| | F. | The Guiding Principle | 1.38 |
| | | II TEXT AND CONTEXT | |
| 2. | Prir | nciple 2: The Text | |
| | A. | The Primacy of the Text | 2.01 |
| | В. | What is the Contract? | 2.08 |

| | C. The Parol Evidence Rule | 2.14 |
|----|---|-------|
| | D. Entire Agreement Clauses | 2.25 |
| | E. Parol Evidence, Entire Agreement Clauses, and Interpretation | 2.32 |
| | F. Categorization and Shams | 2.34 |
| 3. | Principle 3: The Whole Text | |
| | A. Two Concepts | 3.01 |
| | B. The Contract as a Whole | 3.03 |
| | C. Limiting Words | 3.08 |
| | D. Extending Words | 3.21 |
| | E. The Transaction as a Whole | 3.24 |
| | F. Dealing with Conflicting Provisions | 3.29 |
| | G. Giving Effect to Each Part of the Contract | 3.43 |
| | H. Deleted Words | 3.47 |
| | I. When Contracts Are Not Read as a Whole | 3.48 |
| 4. | Principle 4: The Context | |
| | A. The Issue | 4.01 |
| | B. One View: Stick to the Contract | 4.09 |
| | C. The Other View: Use the Context | 4.10 |
| | D. Where Are We Now? | 4.20 |
| | E. No Need for Ambiguity | 4.20 |
| | F. What are the Relevant Background Facts? | 4.33 |
| | G. Limitations Based on Principle | 4.30 |
| | H. Limitations Based on Pragmatism | 4.49 |
| | I. Summary of Limitations | 4.63 |
| | J. The Knowledge of the Parties | 4.65 |
| | K. Declarations of Subjective Intention | 4.67 |
| | L. Prior Negotiations | 4.69 |
| | M. Deleted Words | 4.92 |
| | N. Subsequent Conduct | 4.90 |
| | O. Third Parties | 4.109 |
| | P. What Background Facts Should be Admissible? | 4.114 |

| | III UNDERSTANDING WORDS | |
|----|--|------|
| 5. | Principle 5: Natural Meanings | |
| | A. Do Words Have an Ordinary Meaning? | 5.01 |
| | B. The Context | 5.10 |
| | C. The Context at the Time of the Contract | 5.13 |
| | D. The Ordinary Meaning in Context, However Odd the Result | 5.19 |
| | E. Definitions Clauses | 5.28 |
| | F. Private Dictionaries | 5.30 |
| | G. Technical Terms | 5.37 |
| | H. Common Expressions | 5.41 |
| | I. Standard Form Contracts | 5.44 |
| | J. Canons of Construction | 5.49 |
| | K. Eiusdem Generis | 5.64 |
| | L. Distinguishing Interpretation from Categorization | 5.76 |
| 6. | Principle 6: Ambiguities | |
| | A. The Principle | 6.01 |
| | B. Is Ambiguity Still Important? | 6.02 |
| | C. When are Words Ambiguous? | 6.10 |
| | D. How is Ambiguity Resolved? | 6.21 |
| | E. Examples | 6.24 |
| | F. The Contra Proferentem Rule | 6.35 |
| 7. | Principle 7: Unnatural Meanings | |
| | A. The Issue | 7.01 |
| | B. The Expansive View | 7.06 |
| | C. The Restrictive View | 7.12 |
| | D. So Where Are We? | 7.18 |
| | E. Requirements | 7.24 |
| | F. Something Has Gone Wrong | 7.26 |
| | G. It is Clear What Was Intended | 7.34 |
| | H. Correcting Clear Drafting Errors | 7.39 |
| | I. Going Beyond Correcting Clear Drafting Errors | 7.48 |

| | J. Fraud | 7.49 |
|----|---|-------|
| | K. Taking Advantage of One's Own Breach of Contract | 7.50 |
| | L. Exclusion and Limitation Clauses | 7.52 |
| | M. Liability for Negligence | 7.69 |
| | N. Guarantees | 7.84 |
| | O. Termination for Minor Breach | 7.90 |
| | P. Recent Cases | 7.95 |
| | Q. Resisting the Temptation to Rewrite the Contract | 7.121 |
| | R. Conclusion | 7.134 |
| | IV ADDING WORDS | |
| 8. | Principle 8: Implied Terms | |
| | A. The Principle | 8.01 |
| | B. Distinguishing Express Terms | 8.11 |
| | C. Terms are Rarely Implied | 8.12 |
| | D. The Traditional Tests for Implication of Terms | 8.15 |
| | E. Other Potential Requirements | 8.26 |
| | F. What Needs to be Established? | 8.31 |
| | G. Examples | 8.36 |
| | H. Terms Implied in Law | 8.54 |
| | I. Which Side of the Line? | 8.57 |
| | V CHANGING WORDS | |
| 9. | Principle 9: Rectification | |
| | A. Types of Rectification | 9.01 |
| | B. Common Intention Rectification | 9.07 |
| | C. The Requirements | 9.11 |
| | D. Common Intention at the Time of the Contract | 9.16 |
| | E. The Subjective View | 9.20 |
| | F. The Objective View | 9.25 |
| | G. Where Are We Now? | 9.28 |
| | H. Objective or Subjective: the Pros and Cons | 9.38 |

| I. The Nature of the Mistake | 9.52 |
|--|-------|
| J. A Continuing Intention | 9.58 |
| K. Available Materials | 9.60 |
| L. Third Party Rights | 9.62 |
| M. Unilateral Mistake Rectification | 9.67 |
| 10. Principle 10: Estoppel by Convention | |
| A. Estoppel | 10.01 |
| B. The Authorities | 10.05 |
| C. The Principles | 10.12 |
| D. Examples | 10.20 |
| Epilogue | |
| A. Drafting Contracts | Ep.01 |
| B. Using the Interpretation Principles when Drafting | Ep.04 |
| C. Principles of Drafting | Ep.39 |
| Principles of Drafting | 179 |
| An Interpretation Clause | 181 |
| Index | 183 |