CONTENTS

Preface xi 1. Goals, Tasks, and Theories 1 § 1.1. Goals of Contract Interpretation 1 § 1.1.1. The Contractual Freedoms 3 § 1.1.2. Other Goals 7 § 1.2. Tasks in Contract Interpretation 8 § 1.2.1. Unambiguous Terms 9 § 1.2.2. Kinds of Ambiguous Terms 12 § 1.2.3. Resolving Ambiguities 14 § 1.2.4. The Limits of Parties' Intention § 1.3. Theories of Contract Interpretation 17 § 1.3.1. Literalism 17 § 1.3.2. Objectivism 21 § 1.3.3. Subjectivism 28 2. The Elements 35 § 2.1. Literalist Elements 36 § 2.1.1. The Words of the Contract 37 § 2.1.2. Dictionaries 38 § 2.1.3. Literalism and Context 38 § 2.2. Objectivist Elements 41 § 2.2.1. The Whole Contract 41 § 2.2.2. Objective Circumstances 42

§ 2.2.3. Purpose(s) 44

VIII CONTENTS

	§ 2.2.4. Ordinary Meanings 45
	§ 2.2.5. Trade Usages and Customs 47
	§ 2.2.6. Legal Precedents and Statutory Definitions 48
	§ 2.2.7. Practical Construction (Course
	of Performance) 50
§ 2.3.	Subjectivist Elements 51
	§ 2.3.1. Prior Course of Dealing 52
	§ 2.3.2. The Course of Negotiations 54
	§ 2.3.3. A Party's Testimony as to Its Intention 56
	§ 2.3.4. Subjective Circumstances 56
§ 2.4.	Guides to Interpretation 57
	§ 2.4.1. "Standards of Preference in Interpretation" 57
	§ 2.4.2. Canons of Interpretation 59
	§ 2.4.3. Good Faith in Interpretation 60
§ 2.5.	Relevant Non-Interpretive Rules 61
3. Identi	ifying the Terms 63
	The Parol Evidence Rule 63
* ****	§ 3.1.1. Statement of the Rule 64
	§ 3.1.2. Goals of the Rule 69
§ 3.2.	Integrated Written Contracts 70
	§ 3.2.1. Writings and Electronic Records 71
	§ 3.2.2. Kinds of Integrated Agreements 74
	§ 3.2.3. Establishing a Document's State of Integration 77
§ 3.3.	Non-Consequences of Integration 93
	§ 3.3.1. Collateral Agreements 94
	§ 3.3.2. Formation, Invalidating Causes, and
	Conditions 97
	§ 3.3.3. Finding and Resolving Ambiguity 103
4. The A	ambiguity Question 105
	The Nature of Ambiguity 106
	The Law of Ambiguity 109
J 1.2.	§ 4.2.1. The Plain Meaning and Four Corners Rules 109
	§ 4.2.2. Decision Procedures 111
	J Halas Decision Frocusios III

CONTENTS

§ 4.2.3. Judge and Jury 118	
§ 4.2.4. The Parol Evidence Rule Distinguished 120	0
§ 4.3. Unambiguous Contracts 122	
§ 4.3.1. Literal Meaning of a Word or Phrase 123	
§ 4.3.2. The Plain Meaning of a Document 126	
§ 4.3.3. Extrinsic Evidence 128	
§ 4.4. Ambiguous Contracts 134	
§ 4.4.1. Term Ambiguity 134	
§ 4.4.2. Sentence Ambiguity 134	
§ 4.4.3. Structural Ambiguity 136	
§ 4.4.4. Vagueness 137	
§ 4.5. No Need to Find Ambiguity? 138	
§ 4.5.1. Corbin 138	
§ 4.5.2. The Restatement (Second) of Contracts 13	9
§ 4.5.3. The Uniform Commercial Code 140	
§ 4.6. Criticisms of the Plain Meaning and Four	
Corners Rules 143	
§ 4.6.1. Subjectivist Criticisms 144	
§ 4.6.2. Objectivist Rejoinders 146	
5. Resolving Ambiguities 151	
§ 5.1. The Roles of Judge and Jury 152	
§ 5.1.1. Question of Law or Fact? 152	
§ 5.1.2. Literalism, Judge, and Jury 155	
§ 5.1.3. Objectivism, Judge, and Jury 156	
§ 5.1.4. Subjectivism, Judge, and Jury 157	
§ 5.1.5. Jury Instructions 157	
§ 5.2. Judicial Resolution of Ambiguity 158	
§ 5.2.1. Ordinary Meanings 159	
§ 5.2.2. The Whole Contract 162	
§ 5.2.3. The Course of Negotiations 165	
§ 5.2.4. The Circumstances 168	
§ 5.2.5. Purpose(s) 170	
§ 5.2.6. Statements of the Parties' Intention or	
Understanding 172	

CONTENTS

§ 5.2.7. Trade Usages and Customs 173
§ 5.2.8. Course of Dealing 176
§ 5.2.9. Practical Construction (Course of
Performance) 178
§ 5.2.10. Statutes and Judicial Precedents 180
§ 5.2.11. Standardized Agreements 181
§ 5.2.12. Reasonableness, Lawfulness, and Fairness 182
§ 5.3. Non-Existent or Ambiguous Contexts 186
§ 5.3.1. Default Rules 186
§ 5.3.2. Interpretation Against the Drafter 187
§ 5.3.3. No Agreement 188
§ 5.4. Special Kinds of Contracts 189
§ 5.4.1. Insurance Contracts 189
§ 5.4.2. Others 191
6. Objective Contextual Interpretation 193
§ 6.1. The Three Tasks in Contract Interpretation 194
§ 6.1.1. Identifying Contract Terms 195
§ 6.1.2. The Question of Ambiguity 203
§ 6.1.3. Resolving Ambiguity 211
§ 6.2. Pluralism, Economic Analysis, and Conventionalism 214
§ 6.2.1. Pluralist and Monist Theories 214
§ 6.2.2. Economic Analysis 218
§ 6.3.3. The Conventions of Language Use 220
§ 6.3. Summary of Major Points 223
Index 227