


Objective Doctrine

1

The classic statement of objective doctrine of interpretation is that of J. Blackburn in *Smith vs. Hughes* made in 1871: "If, whatever, a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, and that the other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other

party's terms"

 Unbekanntes Makro: 'footnote'

2

It can be seen clearly from the objective doctrine, that the court will look at the outward appearance of agreement and will endorse what the parties objectively appear to have intended in which means that the contract does not depend upon the state of the parties' minds. The meaning and the effect of the written agreement will be determined by the "literal" interpretation of the words. If the contract is unambiguous, the court will not even admit evidence of what the parties may have thought the meaning to be. In other words, if the text is clear then the purpose of the contract (the legal effect) is clear. Therefore, there is no need for further inquiry regarding the hidden intention of the parties in case they targeted different purpose that was not expressed by the contractual text.

3

In practice, the objective doctrine is based upon two stages. The first focuses on the text and the intention of the parties which derived from the text as the second deals with the external circumstances and the intentions of the parties which derived from those circumstances. This is the Literal Rule according to the British law system.

4

However, the passage from the first stage to the second will be decided upon the "clear language" test. If the text is clear, the interpretation process will consider the parties intentions as they were expressed by the clear text without examining the external circumstances (without passing on to the second stage). In case the text is not clear, the interpretation process will consider the intentions of the parties according to the external circumstances.

5


One of the major consequences of disregarding the subjective intention of the parties in the common law is the presence of the Parole Evidence Rule which states that "if the parties have a final written agreement, no prior oral or written negotiations or contemporaneous oral negotiations are admissible to add to, vary or contradict the writing".

6

This way of literally interpreting contracts has brought many difficulties to the law executor for several reasons. First of all, the security and the certainty in regard to the objective doctrine are fictitious. The decision whether the contract language is clear or not is not done according to legal rules, but according to the judge's "feeling", which leads naturally to uncertainty. What was perceived by one judge as a clear text can be perceived by another as unclear language. Arbitrary distinction of clarity tongue must not be a central standard interpretation of legal text.

7

Another reason is that the objective doctrine is different between the internal interpretation (which interpret the contract language without examining the external circumstances) and the external interpretation (which interpret the contract on the base of external elements). No place to check the external elements/evidence regarding the common subjective intention of the parties as the contract language is clear. The inherent difficulty in this interpretation approach is that the clearness of the contract is supposed to be decided only in the end of the interpretation procedure not at the beginning. The clearness of the text should be set according to the interpreter conclusion in the end of the interpretation procedure. Examining the external resources will provide the adequate instruments to decide whether the contract is clear or not.

 Unbekanntes Makro: 'display-footnotes'



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Autoren: [Quang Ngoc Dam](#), [Eva Garmpi](#), [Maria Felicia Chacon Diaz](#), [Bishara Jabaly](#), [Helena Pavlin](#)

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