CONSTRUING CONTRACT CLAUSE: THE LITERAL RULE

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DECLARATION

I declare that this thesis entitled "Construing Contract Clause: The Literal Rule" is the result of my own research except as cited in the references. The thesis has not been accepted for any degree and is not concurrently submitted in candidature of any other degree.

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In drafting a contract, contracting parties will negotiate terms of their contract and subsequently translate them in writing. It is very important to ensure the words used effectively reflect their true intentions. This is because the law cases relating to ambiguous terms in contracts would allow the courts to construe the word base on their opinion. The disagreements and differing opinions by the parties as to the true construction of particular terms frequently happened in construction industry. There are many approaches that judge use to construing construction contract clauses, such as Literal Rule, Golden Rule, Mischief Rule, Purposive Rule, Contra Proferentiem Rule and etc. The courts use those rules to the ambiguous express terms to resolve the ambiguity or inconsistency or discrepancy. Literal Rule is the oldest of the rules of construction and is still used today. As there is always the danger that a particular interpretation may be the equivalent of making law, some judges prefer to adhere to the law's literal wording. However, there some criticism against the use of Literal Rule which the rule rests on the erroneous assumption that words has a fixed meaning. In fact, words are imprecise, leading judges to impose their own prejudices to determine the meaning of a statute. The objective of this study is to identify suitability of using Literal Rule in interpretation approach in construction industry. The law cases that been analyzed was under “Pay When Paid”, “Performance Bond” and “Termination” clauses. The finding of this study stated that, not all the construction clauses are suitable to be construed using Literal Rule approach.
ABSTRAK