

CONSTRUING CONTRACT CLAUSE: THE LITERAL RULE

CHAI SLAW HIONG

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Faculty of Built Environment  
Universiti Teknologi Malaysia

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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.

Signature : .....  .....

Name : CHAI SIAW HIONG .....

Date : 10 / 9 / 2012 .....

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## ABSTRACT

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 Proferentem 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

Dalam merangkai kontrak, pihak berkontrak akan berunding terma kontrak mereka dan seterusnya menterjemahkan dalam bentuk tulisan. Ia adalah sangat penting untuk memastikan perkataan yang digunakan dalam kontrak dapat menunjukkan tujuan sebenar mereka. Ini adalah kerana kes undang-undang yang berhubungan dengan salah tafsiran dalam kontrak akan membenarkan mahkamah untuk mentafsirkan perkataan asas dengan pendapat mereka. Percanggahan pendapat dengan pendapat yang berbeza oleh pihak berkontrak sering berlaku dalam industri pembinaan. Terdapat banyak kaedah yang boleh digunakan oleh hakim dalam mentafsirkan fasal kontrak pembinaan, seperti "*Literal Rule*", "*Golden Rule*", "*Mischief Rule*", "*Purposive Rule*", "*Contra Proferentem Rule*" dan sebagainya. Mahkamah menggunakan kaedah tersebut untuk menyelesaikan masalah tafsiran and percanggahan. "*Literal Rule*" adalah kaedah yang paling lama digunakan dan masih digunakan hari ini. Oleh kerana sentiasa terdapat bahaya bahawa tafsiran tertentu mungkin dianggap sebagai merangka undang-undang, jadi hakim lebih suka berpegang kepada "*Literal Rule*". Walau bagaimanapun, terdapat beberapa kritikan terhadap penggunaan "*Literal Rule*" bahawa peraturan tersebut bergantung kepada andaian salah di mana perkataan mempunyai makna yang tetap. Malah, sesuatu perkataan jika tidak mempunyai makna yang tepat, hakim akan mentafsirkan perkataan mengikut prasangka mereka sendiri untuk menentukan makna statut. Objektif kajian ini adalah untuk mengenal pasti kesesuaian menggunakan "*Literal Rule*" sebagai pendekatan tafsiran dalam industri pembinaan. Kes yang telah dianalisis adalah berkaitan dengan terma dalam fasal "*Pay When Paid*", "*Performance Bond*" and "*Termination*". Kajian ini mendapati bahawa, tidak semua fasal sesuai ditafsirkan dengan "*Literal Rule*".