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CONTRACT INTERPRETATION: WHAT’S IT ALL ABOUT?

The law of contract interpretation is one of the most practically important areas of commercial law. Advising and adjudicating on issues of interpretation occupies a good deal of the time of the busy commercial practitioner and judge.

Nevertheless, the underlying theory remains in a state of confusion and there are fundamental divisions among commentators, practitioners and judges as to what the process of interpretation is and ought to be all about.

For example, does Lord Hoffmann’s restatement of the law in Investors Compensation Scheme Ltd v West Bromwich Building Society, which is now applied by the courts in the United Kingdom and New Zealand, represent the law in Australia? Have the Codelfa principles been superseded? What difference would that make? Even more basically, what in principle is the correct approach to contract interpretation?

Everyone agrees that the approach must be objective, but what does ‘objective’ mean in this context? Is a clearly proven actual intention, communicated in the course of negotiations, to be ignored? If not, can there be a general exclusion of pre-contract negotiations? Professor McLauchlan will address these and other related issues in this seminar.

SPEAKER

David McLauchlan has been Professor of Law at Victoria University of Wellington since 1981.

David is the Sydney Law School’s current McWilliam Visiting Chair in Commercial Law.

David is the author of two books and has published many journal articles, mainly in the areas of the law of contract and commercial law. He has received University of Wellington Awards for Excellence in Teaching and in Research.