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A capstone course
for contract
professionals on the
principles of contract
interpretation and
the developing body
of guidance to use in
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Interpretation of Government Contracts

Including Grants, Cooperative Agreements, Cooperative
Research and Development Agreements, and Other
Transactions

- How to apply the general rules of contract interpretation proactively to protect yourself and your organization
- Communications issues during the contracting process
- The principles of contract interpretation
- The subjects of contract interpretation
- The process of contract interpretation
- Practical examples
- Case studies

March 4-5, 2009 • Las Vegas, NV

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Interpretation of Government Contracts

This course is based on a simple premise: the more you know about how contracts are interpreted by boards and courts, the more proactive you can be in preventing disputes and the more reactive you can be in presenting your position if misunderstandings arise. In shirt-sleeve English, contract interpretation has been defined as a way to determine what the parties to a contract agreed to — the intent of the parties.

Contract interpretation takes place at every stage of an acquisition:

- When the solicitation is drafted
- When proposals are made
- When proposals are evaluated and awarded
- When the contract is performed
- When the parties to a contract dispute its meaning

A primary goal of this course is to examine and apply the principles of contract interpretation to avoid misunderstandings and disputes. But when parties disagree, a judge will interpret their contract for them, generally following the principles and rules outlined in this course. Predicting how a judge may decide a case or resolve an issue is critical in assessing your own position; convincing the other side; or, if necessary, preparing your arguments for litigation. . .

In summary, this course is important to all contract professionals in:

- Communicating and drafting all contract-related documents to ensure understanding and protect your interests.
- Providing guidance on how to explain your position and demonstrate how and why your interpretation is the better one.

We can't guarantee that your contract will always be interpreted according to these principles. We are confident, however, that the explanations and analyses covered in this course will provide you with insight and guidance in your quest to create understanding in your contract activities.

We look forward to your participation.

Course Director

Kenneth J. Allen, now the general counsel for a government contractor, practiced law for the federal government for over 32 years, mostly in contracting and fiscal law. His assignments while in government included Defense and Army information systems commands, medical research and materiel commands, and the Defense Business Management University, where he served as the legal advisor on fiscal law, as well as on fiscal law training and syllabi requirements. For the past fifteen years, Ken has also taught in the government and private sector, and has authored over thirty course manuals on several subjects including government contracting, federal appropriations and fiscal law, contract interpretation, federal grant practice, trial advocacy, and leadership and management. He has taught fiscal law for the American Society of Military Comptrollers (both at the National and Chapter levels), the Army War College, and numerous federal agencies. He is also now (2006-present) an adjunct faculty member of the Naval Postgraduate School, for whom he taught at their campus at Monterey, CA and at sites overseas.

Ken is consistently evaluated by our students as making this subject comprehensible through real-world examples, and praised for his energetic and entertaining approach to a subject that many anticipate as being dull and academic. His fiscal law course manual is a comprehensive fleshed-in textbook that is replete with key laws, case quotes, and citations, making it an invaluable reference resource.

Ken is a graduate of the Brandeis School of Law at the University of Louisville, the Army JAG School resident basic and advanced courses, the Army Management Staff College, the Defense Business Management University, and the Army War College.

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Interpretation of Government Contracts Course Curriculum

COURSE INTRODUCTION

Course Goals
Methodology

PART I BACKGROUND

A. Introduction

B. Communications

C. English and Language

D. The Law of Contract

1. Modern Contract Law
2. Contract Definitions
3. The Elements of a Contract
4. Types of Contracts

E. Government Contract Law

1. Introduction
2. Elements of a Government Contract
3. The Role of Authority in Government Contracting
4. Sources of Government Contract Law
5. Government Contract Personnel

F. Types of Contractual Relationships with the Federal Government

G. Evidence

5. The Legal Status of Contract Interpretation
6. The Objective and Subjective Theories of Contract Interpretation
7. The Subject Matter of Contract Interpretation
 - a. Intrinsic evidence
 - b. Extrinsic evidence
8. The Principles of Contract Interpretation
 - a. Rules in aid of interpretation
 - b. Preferences in interpretation
9. The Interconnection of Contract Interpretation Arguments
10. The Model of Contract Interpretation Analysis
11. What Judges Do When They Interpret a Contract
12. Board and Claims Court Decisions

B. Intrinsic Evidence

1. Introduction
2. Common Usage
3. Contract Definitions
4. Dictionary Meanings
5. Technical Terms
6. Contractual Orders of Precedence
 - a. Introduction
 - b. Order of preference clauses
 - c. Uniform contract format
 - d. Construction
 - e. Sealed bidding
 - f. Commercial items
 - g. Elements of a contractual order of precedence resolution
 - h. Legally-effective clause
 - i. Conflict
 - j. Conflict covered by the clause
 - k. Relationship of contractual orders of precedence to other interpretation principles

- l. The intent of the parties
- m. Patent ambiguities, and Contra Proferentem

7. Common Law Orders of Precedence
8. Enumeration and Lists
 - a. Inclusive
 - b. Exclusive

C. Extrinsic Evidence

1. Introduction
2. Use of Extrinsic Evidence in Contract Disputes
3. Categories of Extrinsic Evidence
 - a. Before the contract award
 - b. After award, or during performance; but before a dispute arises
 - c. After the dispute arises
 - d. Other or previous contracts between the parties
 - e. "Custom" or "trade usage"
 - f. Dictionaries
4. Current Issues Concerning the Use of Extrinsic Evidence
5. Extrinsic Evidence Scenarios
 - a. During solicitation process (site visits and written questions)
 - b. During proposal evaluation (negotiations and oral presentations)
 - c. During contract performance, but before the dispute
 - d. Communications after the dispute arises
 - e. Communications in the parties' other contracts (prior course of dealing)
6. Waiver and Estoppel
7. Trade Usage and Custom

D. Resolving Ambiguities

1. Introduction
2. Determining an Ambiguity
3. The Doctrine of Contra Proferentem
4. The Elements of Contra Proferentem
 - a. Identifiable draftsman
 - b. Reasonable interpretation
 - c. Reliance on interpretation
5. The Federal Exception to Contra Proferentem
 - a. Patent ambiguities
 - b. Latent ambiguities

PART II CONTRACT INTERPRETATION

A. Introduction

1. Contract Interpretation Defined
 - a. Interpreting disputed words or phrases
 - b. Resolving apparently conflicting portions of the contract
 - c. Determining obligations when the contract is ambiguous
 - d. Filling gaps when key terms are omitted
2. The Cardinal Rule of Contract Interpretation
3. Contract Interpretation vs. Construction
4. Contract Interpretation vs. Contract Performance

Government Contract Changes, 3d

by Ralph C. Nash and Steven W. Feldman

This work combines the expert authors' detailed analysis of statutes, regulations, contract clauses, and decisions, with a discussion of practical considerations for addressing changes from the viewpoint of both the contractor and the government. It includes:

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- *Constructive changes, special changes provisions*
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- *Changes clause*



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PART III THE CONTEXT OF CONTRACT INTERPRETATION

A. Contract Types and Specifications

B. Changes

C. Inspection and Acceptance

D. Defaults

E. Contract Disputes

Detach and mail to the exact address stated below.

Interpretation of Government Contracts

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