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Izvesnost ugovora i pravilo *contra proferentem*: kada pravilo treba da se primenjuje u sporovima o osiguranju? Studija kojom će se utvrditi kada se ovo pravilo pojavljuje u sporovima o osiguranju na Malti

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Apstrakt

Pravilo *contra proferentem* je pravni princip koji se primenjuje u slučajevima kada postoji nejasnoća u tumačenju ugovora. U njemu se navodi da tamo gde postoji nejasnoća, ugovor treba tumačiti protiv strane koja ga je sastavila. U sporovima o osiguranju, ovo pravilo se često javlja kada postoji spor između osiguravača i osiguranika oko uslova ili pokrića po polisi osiguranja. U ovom radu se ispituje primena pravila *contra proferentem* u sporovima u vezi sa osiguranjem na Malti. Studija ima za cilj da utvrdi uticaj pravila i pravni ishod u tim slučajevima. Metodologija istraživanja podrazumevala je pregled relevantne sudske prakse i pravne literature o primeni pravila *contra proferentem* u sporovima. Pored toga, obavljeni su odgovori pravnika koji imaju iskustva u vođenju sporova u vezi sa osiguranjem. Nalazi ove studije doprinose razumevanju kako pravilo *contra proferentem* funkcioniše u kontekstu sporova o osiguranju, ističući važnost jasnog i nedvosmislenog sastavljanja ugovora, ulogu sudova u tumačenju i primeni pravila i uticaj pravila na izvesnost ugovora i rešavanje sporova. Rezultati bacaju svetlo na okolnosti u kojima se ovo pravilo primenjuje i njegov uticaj na ishod takvih slučajeva. Nalazi ove studije takođe naglašavaju neka od ograničenja pravila *contra proferentem* i sugerišu da pravilo ima tendenciju da rezultira povoljnijim ishodom po osiguranika. Ova studija će doprineti razvoju boljeg razumevanja uloge pravila *contra proferentem* u sudskim sporovima u vezi sa osiguranjem, posebno na Malti, i njegovih posledica na pravnu praksu i politiku. Rad doprinosi akademskom istraživanju sintezom postojeće literature i sudske prakse o ovoj temi i pruža smernice za osiguravače i osiguranike o tome kako da se kreću u tumačenju i sprovođenju ugovora o osiguranju. Nalazi i zaključci u ovom radu mogli bi da doprinesu razvoju politike i regulative u industriji osiguranja i da pomognu da se poboljša izvesnost ugovora i smanji broj sporova u budućnosti.

Ključne reči: ugovor o osiguranju, contra proferentem, preuzimanje rizika, izvesnost ugovora, sporovi o osiguranju

1. UVOD

1.1. Tumačenje ugovora o osiguranju

Ugovor je sporazum između strana, bilo fizičkih ili pravnih lica. Strane u ugovoru su slobodne da se dogovore šta god žele, sve dok se poštuju sastojci koji čine ugovor punovažnim. Pored ostalih zahteva, ugovor mora da ima *consensus ad idem* pri čemu ugovorne strane moraju da budu jasne u pogledu uslova na koje pristaju, obezbeđujući da je ono što se dogovore pošteno, pravično i razumno (Parsons, 2016).

Ova pozicija se menja kada strane nemaju istu mogućnost da učestvuju u pregovorima o uslovima ugovora. Većina ovih ugovora su trgovački ugovori u kojima je sastavljač ugovora privredni subjekt koji unapred raspolaže ugovorima sa standardnim formulacijama i uslovima o kojima se obično ne može pregovarati. Sistemski zakon u ovim slučajevima služi tome da su ugovori sastavljeni pošteno i pravično u slučajevima kada formulacije ugovornih odredbi obično sastavlja subjekt koji ima jači pravni položaj od nesvesnog potrošača kome je potrebna usluga ili proizvod.

Ugovori o osiguranju su tipično složeni pravni dokumenti koji često izazivaju dosta nejasnoća i nesigurnosti u njihovom tumačenju. Pravilo *contra proferentem*

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je pravni princip na koji se često poziva u sporovima o osiguranju kada postoji nesigurnost u pogledu značenja posebnih odredbi u ugovoru. Pravilo kaže da u slučajevima nejasnoća ugovor treba tumačiti protiv strane koja ga je sastavila.

Primena pravila *contra proferentem* u sudskim sporovima u vezi sa osiguranjem ima značajne implikacije i za osiguravače i za osiguranike. Za osiguravače, pravilo može dovesti do toga da moraju da isplate odštetne zahteve koje nisu nameravali da pokriju, dok za osiguranike to može značiti da primaju manju nadoknadu nego što su verovali da imaju pravo (Johnson, 2004).

1.2. Primer Malte

U ovom radu se ispituje primenu pravila *contra proferentem* u sporovima u vezi sa osiguranjem na Malti, kao maloj ostrvskoj državi na Mediteranu koja ima relativno malo, ali aktivno tržište osiguranja. Pravilo *contra proferentem* ima svoje korene u engleskom običajnom pravu, a njegova primena je priznata i na Malti.

U kontekstu ugovora o osiguranju, na pravilo *contra proferentem* se često poziva u slučajevima kada postoji spor između osiguravača i osiguranika oko značenja posebnih odredbi uslova osiguranja. To znači da ako je polisa dvosmislena o tome da li je određeni događaj pokriven ili ne, pravilo se može koristiti za tumačenje polise u korist osiguranika. Primena pravila *contra proferentem* u sporovima u vezi sa osiguranjem je opširno ispitivana u pravnoj literaturi. Naučnici su istakli značaj ovog pravila u zaštiti interesa slabije strane u ugovornom odnosu. Ovo pravilo je „poslednje sredstvo" i na njega bi se trebalo pozivati samo u slučajevima istinske dvosmislenosti. Drugi naučnici su tvrdili da pravilo ne treba primenjivati brzopleto, jer može odvratiti ugovorne strane od opreznosti prilikom sastavljanja ugovornih uslova (Mendelson, 2019).

1.3. Uticaj studije

Studija je značajna iz više razloga. Prvo, rezultati studije će pružiti uvid u okolnosti u kojima se pravilo *contra proferentem* obično primenjuje u sporovima osiguranja na Malti. Ovo će biti korisno za osiguravače na Malti, jer će pružiti smernice o tome kako da sastavljaju uslove osiguranja koji će biti jasni i nedvosmisleni. Na taj način osiguravači mogu smanjiti verovatnoću sporova i primenu pravila *contra proferentem*, što može rezultirati neočekivanim finansijskim obavezama.

Drugo, studija će pružiti smernice pravnim praktičarima na Malti o tumačenju uslova osiguranja u slučajevima nejasnoća. Ona može da usmeri njihov proces donošenja odluka u sporovima u vezi sa osiguranjem i da poveća verovatnoću postizanja pravičnog ishoda za obe ugovorne strane.

Konačno, studija ima uticaj na zakonodavce na Malti. Identifikovanjem okolnosti u kojima pravilo *contra proferentem* ima tendenciju da se primenjuje u slučajevima sporova u osiguranju, studija može da pruži informacije o razvoju okvira politike koji promovišu sastavljanje jasnih i nedvosmislenih ugovora o osiguranju. Ovo može dovesti do efikasnijih procesa rešavanja sporova i smanjiti opterećenje sudova.

1.4. Organizacija istraživanja

Rad je struktuiran prema sledećim glavama: Glava 1 obuhvata studiju, cilj, obim i implikacije, Glava 2. pruža detaljan pregled pravila *contra proferentem* i njegove primene u sporovima o osiguranju. U Glavi 3. opisana je istraživačka metodologija korišćena u ovoj studiji, uključujući pregled sudske prakse, pregled pravne literature i ankete sa pravnicima iz industrije osiguranja. U Glavi 4. predstaviće se nalazi studije, uključujući okolnosti u kojima se primenjuje pravilo *contra proferentem* u sporovima o osiguranju na Malti i njegov uticaj na ishod sporova. U Glavi 5. biće reči o implikacijama studije na osiguravače, pravnike i zakonodavce na Malti i izloženi odgovarajući zaključci.

1.5. Ciljevi

Studija ima sledeće ciljeve: identifikacija okolnosti u kojima se pravilo obično pojavljuje u slučajevima u vezi sa osiguranjem na Malti i utvrđivanje stava koji su sudovi zauzeli prilikom primene pravila i procena uticaja pravila *contra proferentem* na ishod sporova o osiguranju na Malti.

2. PREGLED LITERATURE

Princip *contra proferentem* u ugovornom pravu dugo se koristi za rešavanje ugovornih nejasnoća u korist strane koja je sastvila ugovor (Leib, Thel, 2015). U sudskim sporovima u vezi sa osiguranjem, ovo pravilo igra značajnu ulogu u tumačenju uslova osiguranja i rešavanju sporova između osiguravača i osiguranika. Ovaj naučni pregled ima za cilj da ispita primenu pravila *contra proferentem* u parnicama, istraži situacije u kojima se ono obično koristi, analizira njegov uticaj na tumačenje uslova osiguranja i proceni njegov značaj za osiguravače, osiguranike i pravnike. Pregled će se oslanjati na različite izvore, uključujući sudsku praksu, komentare zakona i akademsku literaturu.

2.1. Primena principa

Na primenu pravila *contra proferentem* utiče nekoliko faktora, a jedan od ključnih faktora je relativna pregovaračka moć između ugovornih strana. Obično se na pravilo poziva u slučajevima kada postoji neravnoteža moći, pri čemu slabija ugovorna strana nije u mogućnosti da pregovara o uslovima ugovora na ravnopravnoj osnovi sa jačom stranom. U oblasti sudskih sporova u vezi sa osiguranjem, ovo se odnosi na osiguranike kojima možda nedostaje isti nivo pravnog znanja kao osiguravačima ili koji dobijaju osiguranje kao deo uslova većeg trgovačkog posla (McCarry, 2018).

Prilikom tumačenja uslova osiguranja, sudije uglavnom počinju pripisivanjem uobičajenog značenja rečima koje se koriste u uslovima osiguranja. Ovo je u skladu sa osnovnim principima tumačenja ugovora, po kojem sud treba da se pridržava namera koje su strane izrazile u ugovoru (Leib, Thel, 2015). Međutim, u slučajevima kada dvosmislenost proizilazi iz jezika uslova osiguranja, primena pravila *contra proferentem* može biti opravdana.

Važno je istaći da je primena pravila *contra proferentem* ograničena na situacije u kojima postoji dvosmislenost u tekstu ugovora. Pravilo se smatra poslednjim sredstvom, primenjuje se samo kada su uslovi ugovora nejasni, a nije dostupan drugi metod rešavanja. Prema tome, pravilo se mora primeniti na način koji neopravdano ne ograničava slobodu ugovornih strana da oblikuju svoje sporazume kako smatraju prikladnim (Merkin, 2016).

Tradicionalno, osiguravač je ugovorna strana koja sastavlja uslove osiguranja, iako se javljaju slučajevi u kojima ugovarač osiguranja takođe može učestvovati u procesu izrade. Na primer, kada ugovarač polise pruži informacije koje se koriste za utvrđivanje uslova osiguranja, može se smatrati da su oni igrali ulogu u izradi ugovora. U takvim slučajevima, ako osiguranik potpiše ugovor koji je sastavljen na dvosmislen način, protiv njega se može primeniti pravilo *contra proferentem* (Liggett, 2008).

Pravilo *contra proferentem* ima tendenciju da se češće primenjuje u sporovima osiguranja lica za razliku od osiguranja pravnih lica. Ovo neslaganje proizilazi iz toga što polise osiguranja lica kupuju pojedinci koji mogu imati niži nivo pravne stručnosti u poređenju sa privrednim subjektima. Shodno tome, ovi pojedinci se smatraju slabijom stranom u ugovoru, zbog čega je veća verovatnoća da će imati koristi od primene pravila *contra proferentem* (Duncan, 2006).

Iako su klauzule o isključenjima u polisama osiguranja primarni ciljevi za primkenu pravila *contra proferentem*, ono se takođe može proširiti na nejasnoće u pogledu obeštećenja kada je nejasan obim pokrića. Pored toga, bilo je slučajeva u kojima je pravilo primenjeno na klauzulu o subrogaciji, koje omogućavaju osiguravačima da povrate isplaćene iznose od trećih lica (Merkin, 2016).

2.2. Postupanje sudova i nedoumice

Kada se suoče sa dvosmislenim jezikom u uslovima osiguranja, sudije u početku nastoje da tumače uslove u skladu sa namerama strana. Međutim, kada se tumačenjem ne razreši dvosmislenost, može se primeniti pravilo *contra proferentem* da bi se rešio spor. Ovo podrazumeva tumačenje uslova osiguranja protiv ugovorne strane koja ih je sastavila, sa ciljem da se podrže razumna očekivanja druge strane (Boardman, 2006). Važno je napomenuti da pravilo može imati značajne implikacije na ugovarače tako što će dovesti do ishoda koji su u suprotnosti sa njihovim namerama. Stoga, sudije primenjuju pravilo samo kao poslednje sredstvo kada je to neophodno da bi se podržala razumna očekivanja strana (Duncan, 2006).

Jedan od izazova u primeni pravila *contra proferentem* u sporovima u vezi sa osiguranjem je uspostavljanje ravnoteže između namera ugovornih strana i potrebe da se reše ugovorne nejasnoće. Iako pravilo ima za cilj da zaštiti slabiju ugovornu stranu, ono se mora primeniti na način koji ne podriva namere ugovarača ili sveobuhvatnu svrhu ugovora. Shodno tome, sudije često nastoje da uravnoteže namere ugovornih strana sa neophodnošću rešavanja nejasnoća, težeći pravičnom i razumnom ishodu (Merkin, 2016).

Prilikom primene pravila *contra proferentem*, sudije obično usvajaju liberalan pristup tumačenju, a ne strogo doslovno tumačenje. To znači da oni uzimaju u obzir širi kontekst u kome je ugovor pregovaran, idući van okvira formulacija sadržanih u uslovima ugovora. Ovaj pristup ima za cilj da uvaži razumna očekivanja ugovornih strana, a ne da se oslanja samo na doslovno tumačenje zakona (Boardman, 2006).

Iako pravilo *contra proferentem* može biti dragoceno sredstvo u rešavanju nejasnoća u ugovorima o osiguranju, postoji rizik da se sudije preterano oslanjaju na njega. Ovo preterano oslanjanje može ugroziti opštu svrhu ugovora i namere ugovornih strana. Stoga, sudije treba da budu oprezne kada primenjuju pravilo, nastojeći da uspostave ravnotežu uzimajući u obzir i druge principe tumačenja ugovora, pored njega (Boardman, 2006).

Važno je napomenuti da je pravilo *contra proferentem* primenljivo na ugovore, a ne na zakone, jer je namenjeno rešavanju ugovornih nejasnoća. U kontekstu osiguranja, primarni cilj pravila je da osigura da osiguranici ne budu nepravedno u nepovoljnom položaju zbog nejasnih ili dvosmislenih uslova osiguranja. Iako

se pravilo *contra proferentem* široko koristi u sporovima o osiguranju, to pravilo može stvoriti neizvesnost i nepredvidivost u tumačenju ugovora i učiniti izazovom za osiguravače, osiguranike i pravnike da predvide kako će se pravilo primeniti u datoj situaciji (Merkin, 2016).

2.3. Budući razvoj i posledice

Kao odgovor na prethodno pomenute nedoumice, neki naučnici se zalažu za alternativne pristupe tumačenju ugovora koji daju prioritet objektivnim namerama strana ili trgovačkoj svrsi ugovora. Ovi alternativni pristupi nastoje da uspostave ravnotežu između podržavanja razumnih očekivanja ugovornih strana i održavanja sveukupne koherentnosti i efikasnosti ugovornog prava. Međutim, pravilo *contra proferentem* i dalje se smatra dragocenim sredstvom u slučajevima kada dvosmislenost i dalje postoji, a druge metode tumačenja nisu dovoljne (Merkin, 2016). Primena pravila *contra proferentem* u sudskim sporovima o osiguranju je oblast prava koja se razvija, pod uticajem promene društvene i trgovačke dinamike. Kako se industrija osiguranja prilagođava novim rizicima i izazovima, verovatno će se tumačenje uslova osiguranja i uloga pravila *contra proferentem* nastaviti da se razvija. Pravnici, zakonodavci i naučnici će morati da pažljivo prate razvoj u ovoj oblasti kako bi obezbedili da pravilo uspostavi odgovarajuću ravnotežu između ugovarača (Chartered Insurance Institute, 2020).

Pored toga, napredak u tehnologiji i sve veća složenost proizvoda osiguranja mogu predstavljati nove izazove u primeni pravila contra proferentem. Kako politike uključuju složene odredbe i veštačku inteligenciju ili blokčejn tehnologiju, potencijal ugovornih nejasnoća i sporova može postati izraženiji. Biće od ključnog značaja da pravni praktičari i sudovi prilagode svoje pristupe tumačenju i obezbede da pravilo contra proferentem ostane relevantno i efikasno u rešavanju ovih novonastalih složenosti (McCun, 2019).

Kao zaključak možemo istaći da pravilo *contra proferentem* igra značajnu ulogu u sporovima o osiguranju tako što rešava ugovorne nejasnoće protiv ugovorne strane koja je sastavila uslove osiguranja. Iako na njegovu primenu utiču faktori kao što je relativna pregovaračka moć, pravilo služi da zaštiti razumna očekivanja ugovornih strana. Međutim, njegova primena zahteva pažljivu ravnotežu kako bi se izbeglo podrivanje namera ugovarača i svrhe ugovora. Kako se poslovno okruženje osiguranja menja, biće neophodno stalno ispitivanje i prilagođavanje pravila kako bi se osigurala njegova trajna efikasnost u rešavanju nejasnoća i zaštiti interesa kako osiguranika, tako i osiguravača.

2.4. Precedenti

Princip *contra proferentem* je nastao u engleskom pravu iz odluke (Kraljevskog) Privatnog saveta[1] u sporu *Canada Steamship Lines Ltd* (*R v Canada SS Lines Ltd [1952] 1 DLR 49 (SCC).* Vremenom se vodila opsežna diskusija oko pravila *contra proferentem*, a smernice iznete u sporu *Canada Steamship* primenjivane su sa više fleksibilnosti, a ne uz njegovo strogo poštovanje. Što se tiče tumačenja klauzula o obeštećenju i izuzeću koje ne spadaju pod Zakon o nepoštenim ugovornim uslovima (engleski zakon *Unfair Contract Terms Act* – prim. prev.), engleski sud je pokazao sklonost ka više komercijalno orijentisanom pristupu, udaljavajući se od rigidne primene principa utvrđenih u sporu *Canada Steamship*.

Pored ostalog, spor *Canada Steamship* odnosio se na spor oko toga da li se ugovorna strana može osloniti na klauzulu o obeštećenju u ugovoru o zakupu nakon što je prouzrokovala štetu zbog nepažnje. *Canada Steamship Lines Ltd*. je zakupila zemljište i šupu od Krune, a zakup je uključivao odredbu po kojoj će Kruna održavati šupu u dobrom stanju.

Tokom zakupa, Kruna je pokušala da popravi deo šupe, ali je nepažnjom izazvala požar koji je uništio šupu i imovinu trećih lica u njoj. Oštećena treća lica tužila su *Canada Steamship Lines Ltd*. za gubitak, a kada je kompanija zahtevala regresiranje od Krune iznosa koji je platila, Kruna se pozvala na klauzulu o obeštećenju iz ugovora o zakupu. Kruna je svoju odbranu zasnivala na dve klauzule u zakupu; zakupac (*Canada Steamship Lines Ltd*.) neće imati nikakvih potraživanja ili zahteva protiv zakupodavca (Krune) za bilo kakvu štetu ili narušavanje zemljišta, šupe, platforme, vozila, materijala, dobara ili drugih stvari na imovini i zakupac (*Canada Steamship Lines Ltd*.) će obeštetiti i zaštititi zakupodavca (Krunu) od bilo kakvih potraživanja, gubitaka, troškova, štete, radnji ili postupaka koji proisteknu iz izvršenja ugovora o zakupu ili korišćenja prava datih na osnovu istog.

Vrhovni sud Kanade je presudio da je namera strana, kao što je zaključeno iz celog dokumenta, bila da *Canada Steamship Lines Ltd*. obešteti Krunu za odgovornost koja je nastala iz nepažnje. Sudija je tvrdio da nepažnja nije bila izričito ili prećutno isključena,

[1] Radi se o organu sastavljenom od savetnika monarhu Velike Britanije, koje ima ovlašćenje da donosi izvršne naredbe kojima se van snage stavljaju odluke sudova ili odredbe zakona. Njegov Pravosudni komitet, pored ostalih poslova, služi kao konačni žalbeni sud za zavisne države britanske krune, britanske prekomorske teritorije, neke države Komonvelta (Kanada, Australija itd.), oblasti vojnih suverenih baza i nekoliko institucija u Ujedinjenom Kraljevstvu (prim. prev.)

tako da je Krunu smatrao odgovornom za sopstvenu nepažnju (Law teacher, 2013).

U daljoj žalbi (Kraljevskom) Privatnom savetu preko Vrhovnog suda Kanade, utvrđeno je da klauzula o obeštećenju nije pružila dovoljno jasnoće da bi zaštitila Krunu od odgovornosti za sopstvenu nepažnju. Savet je naveo da ako se želi nametnuti odgovornost za nepažnju drugih, to mora biti učinjeno nedvosmislenim jezikom.

Precedentom u sporu *Canada Steamship*, uspostavljen je pristup u tri faze za klauzule kojima se želi isključiti odgovornost za nepažnju. U prvom slučaju, kada je formulacija jasna i nedvosmislena, odgovornost će biti isključena. U slučajevima opšte formulacije, svaka nejasnoća će se tumačiti protiv ugovorne strane koja se poziva na klauzulu. Pored toga, ako je nepažnja jedini prihvatljiv osnov za odgovornost, on se može isključiti opštom formulacijom. Međutim, ako postoje drugi potencijalni razlozi za odgovornost, isključiće se samo odgovornost koja nije nastala zbog nepažnje, osim ako nije previše udaljena (McCarry, 2018).

U drugom značajnom pravnom sporu, investitor u građevinarstvu po imenu *Persimmon*, podneo je tužbu za odštetu protiv *Arup*-a, konsultanta na projektu, zbog njihovog neuspeha da identifikuju značajne količine azbesta na gradilištu u Južnom Velsu (*Persimmon Homes Ltd and others v Ove Arup & Partners Ltd and another /2017/ EWCA Civ 373*). *Arup* se pozvao na ugovornu klauzulu o izuzeću koja je izričito isključivala „odgovornost za bilo koje potraživanje u vezi sa azbestom" i ograničila „odgovornost za zagađenje i kontaminaciju" na određeni iznos.

Persimmon je tvrdio da klauzulu o izuzeću treba tumačiti kao primenljivu samo na odgovornost za azbest, zagađenje i kontaminaciju koje je *Arup* direktno „prouzrokovao", tvrdeći da potencijalna nepažnja *Arup*-a da identifikuje azbest ne treba da bude zaštićena klauzulom o izuzeću.

Međutim, sudija je odbacio *Persimmon*-ove argumente i zaključio da predmetne klauzule nisu ograničene samo na odgovornost za azbest, zagađenje i kontaminaciju koje bi „prouzrokovao" *Arup*. Umesto toga, oni su obuhvatali svu odgovornost u vezi sa azbestom, bez obzira na nepažnju. Presuda Apelacionog suda u predmetu *Persimmon Homes v Ove Arup* potvrđuje sve veće prihvatanje engleskog suda da privredni subjekti imaju pravo da ograniče ili isključe odgovornost kao sredstvo raspodele rizika. Iako potencijalna primena pravila *contra proferentem* na klauzule o obeštećenju u trgovačkim ugovorima ostaje otvorena, čini se da će tumačenje i klauzule o izuzeću i klauzule o obeštećenju prvenstveno zavisiti od uobičajenih principa razumevanja u njihovom kontekstu. Ovo naglašava važnost pedantnog sastavljanja ugovornih odredbi tokom pregovora o ugovoru.

Apelacioni sud u sporu *Persimmon* takođe je sugerisao da je trostepeni test koji je lord Morton izneo u sporu *Canada Steamship* relevantniji za tumačenje klauzula o obeštećenju, a ne klauzula o isključenju. Tipično, pravilo *contra proferentem* može se primenjivati na dve vrste klauzula: klauzule o isključenju, gde osiguravač pokušava da ograniči svoju izloženost odgovornosti i klauzule o obeštećenju, koje čine osnovu za obavezu osiguravača da pokrije punovažne odštetne zahteve.

Sudovi će verovatno prihvatati sporazum ugovornih strana i uzdržati se od prećutnog uvođenja dodatnih uslova u ugovoru putem tumačenja. Prirodno značenje upotrebljenih reči, uz komercijalni smisao i kontekst, ostaju ključni faktori u tumačenju i sastavljanju ugovora o izgradnji (Edwards, 2023).

U trećem sporu, sporno je bilo pitanje *contra proferentem* u predmetima subrogacije. U martu 2007. godine, umetnička slika je vraćena nakon što ju je trgovac umetninama identifikovao kroz njenu listu u Registru gubitaka umetnina. Jezik koji se nalazi u dokazu glasio je kao „...ugovarač osiguranja ovim prenosi i ustupa osiguravaču sva prava, vlasništvo i interes u imovini za koju se podnosi potraživanje po ovoj polisi. Ugovarač osiguranja je takođe saglasan da odmah obavesti osiguravača u slučaju bilo kakvog povraćaja navedene imovine i pružiće punu pomoć u svim nastojanjima da pomenutu imovinu vrati u svoj posed. Pored toga, ugovarač osiguranja je saglasan da u potpunosti nadoknadi osiguravaču iznos uplaćen u vezi sa vraćenom imovinom." Osiguravač, *OneBeacon Company Ltd*, bio je subrogiran u prava osiguranika, a ne u svoje interese na *OneBeacon*, dajući pravo osiguraniku da zadrži umetničku sliku nakon što osiguranik isplati osiguravajućem društvu prethodno plaćeni iznos (Trupin, 2011).

Na Malti se na pravilo *contra proferentem* pozivalo u brojnim sporovima o osiguranju. Jedan takav spor je *Camilleri v Mapfre Middlesea plc [2015] MTCA 33*, u kojem je tužilac tvrdio da je klauzula o isključenju u polisi osiguranja dvosmislena i da je treba tumačiti protiv osiguravača. Sud se na kraju složio sa tužiocem, presudivši da je klauzula zaista dvosmislena.

Još jedan spor povodom primene pravila *contra proferentem* je *Cutajar v Atlas Insurance PCC Ltd [2018] MTCA 19*. U ovom sporu, tužilac je tvrdio da je formulacija u uslovima osiguranja nejasna i da treba primeniti pravilo *contra proferentem*. Sud se složio sa tužiocem i smatrao da polisu treba tumačiti protiv osiguravača.

3. METODOLOGIJA

3.1. Uvod

Metodologija istraživanja u ovoj studiji uključivala je pregled relevantne sudske prakse i pravne literature o primeni pravila *contra proferentem* u sporovima o osiguranju na Malti. Zasnovano na literaturi koja je iscrpno prikupljena putem metodologije PRISMA za prikupljanje literature, pitanja za anketu su bila organizovana kao istraživačko sredstvo za proveru spora na Malti u pogledu primene pravila *contra proferentem*. Anketa je vođena sa pravnim i tehničkim stručnjacima koji imaju iskustva u vođenju sporova u osiguranju.

3.2. Anketa

Pregled pravne literature usmeren je na pretragu relevantne akademske i praktične literature o primeni pravila *contra proferentem* u sporovima o osiguranju. Literatura je analizirala trendove i obrasce u primeni pravila i pružila teorijski okvir za tumačenje nalaza sudske prakse. Pregled sudske prakse podrazumevao je sistematsko pretraživanje sudskih predmeta u kojim je primenjivano pravilo *contra proferentem* u sporovima. Sporovi su analizirani da bi se identifikovale okolnosti u kojima je pravilo primenjeno, obrazloženje koje stoji iza odluke suda i uticaj pravila na ishod spora. Ovo istraživanje je omogućilo strukturiranje pitanja za anketu koja su se sastojala od upita za potvrdu ili na drugi način informacija u vezi sa pravilom i pružilo uvid u primenu pravila *contra proferentem* na Malti.

Ankeat sa pravnim praktičarima vođene je polustrukturiranim pristupom, sa ciljem da se stekne uvid u njihova iskustva sa primenom pravila *contra proferentem* u sporovima o osiguranju na Malti. Anketa je obavljena sa osamnaest ispitanika i usvojeno je svrsishodno uzorkovanje oslanjajući se na iskustvo istraživača kako bi se identifikovali najvažniji stručnjaci u ovoj oblasti na osnovu iskustva i oni koji bi mogli dati logična i utemeljena mišljenja o istraživanju. U anketi broj ispitanika nije bio unapred određen, a tačka zasićenja (dostignuta nakon otprilike četrnaest odgovora) je identifikovana kada odgovori na pitanja nisu doprineli novom ili smislenijem znanju od onoga što je prikupljeno (Mack, et al., 2005; Petty, et al., 2012; Suen, et al., 2014). Posebna pažnja je posvećena vodičima za intervjuisanje o tome šta treba pitati i kako izbeći pristrasnost ili sugestivne odgovore koji bi mogli da iskrive rezultate. Merriam (1998) predlaže koja pitanja treba izbegavati, kako pitanja treba da budu formulisana, kako treba uvesti bilo kakvu komunikaciju sa ispitanicima i kako treba uspostaviti komunikativni odnos da bi se obezbedila jasnoća odgovora.

3.3. Zaštita podataka i obuhvat

Istraživanje je obezbedilo anonimnost tako što su izostavljeni svi lični podaci koji bi mogli da se identifikuju, a upućeni su i dostupni kanali komunikacije u slučaju da je učesniku bilo potrebno više informacija o obimu istraživanja, prikupljanju podataka, obradi, analizi i izveštavanju o rezultatima.

Anketa je vođena uglavnom preko Interneta i telefonom radi olakšanja i ubrzavanja procesa. Odgovori iz ankete su snimljeni, analizirani i podvrgnuti tematskoj analizi za identifikaciju, analizu i izveštavanje o šablonima (Braun, Clarke, 2006) kako bi se izveli zaključci o pravnom sistemu Malte.

3. 4. Objašnjenje istraživačkih pitanja

Pitanja u anketi sa obrazloženjem iza njihovog nameravanog uvida u informacije su sledeća: prvo pitanje je zahtevalo od ispitanika da pruži pravnu definiciju pravila kako bi procenio tačku gledišta ispitanika o njegovom značenju, da bi mogao da proceni tačnost znanja *contra proferentem* i njegovu doslednost o tome kako praktičari ovo razumeju. U prilog ovome i da podrže ovu definiciju, od praktičara je zatim zatraženo da daju primere situacija u kojima se može primeniti pravilo *contra proferentem*. Ovo je bilo podstaknuto da se identifikuju scenariji u kojima je pravilo *contra proferentem* relevantno da bi se ilustrovalo njegovo razumevanje.

Postavljanjem pitanja o tome kako pravilo *contra proferentem* utiče na tumačenje uslova ugovora, ispitanikovo znanje o praktičnim implikacijama tog pravila je propisno testirano, dok se povezano pitanje odnosilo na utvrđivanje izuzetaka ili ograničenja pravila *contra proferentem* koje je bilo namenjeno ispitivanju razumevanja potencijalnih izuzetaka ili situacija u kojima se pravilo *contra proferentem* možda ne primenjuje. Ispitanici su takođe zamoljeni da daju neke kritike ili kontroverze u vezi sa pravilom *contra proferentem*, a razlog za to je bio da se utvrdi sposobnost ispitanika da razgovaraju o potencijalnim nedostacima ili argumentima protiv pravila *contra proferentem*.

Konkretno, kada je zatraženo da objasne kako se pravilo *contra proferentem* razlikuje u različitim pravnim sistemima, pitanje je služilo da istraži znanje ispitanika o varijabilnosti pravila *contra proferentem* u različitim državama kako bi mogli da naprave međunarodni scenario primenljivosti u svrhu uporedivosti.

Postavljena praktična pitanja bila su direktna i sažeta, a od ispitanika je traženo da objasne da li postoje alternativna pravila ili pristupi *contra proferentem* da bi se ispitalo znanje ispitanika o istim, koji bi se mogli koristiti u tumačenju ugovora. Postavljeno je direktno

pitanje kako sudovi utvrđuju da li je ugovorna odredba dvosmislena da bi se ispitalo znanje sagovornika o tome kako se dvosmislenost utvrđuje u kontekstu pravila *contra proferentem*. Ovo je poslužilo da se pokuša razumeti tumačenje i stav koji sudije usvajaju u stvarnim činjeničnim stanjima i da se proveri da li odgovori pružaju neki zajednički i dosledan stav prilikom tumačenja pravila. Drugo praktično pitanje bilo je da li ispitanici i dalje smatraju da je pravilo *contra proferentem* relevantno u modernom ugovornom pravu, kako bi se procenio njegov kontinuirani i poseban značaj za osiguranje prema stavovima stručnjaka.

Detaljnije analizirajući stanje na Malti, ispitanici su upitani da li smatraju da su ugovori o osiguranju jasni i nedvosmisleni, da li misle da polise osiguranja na Malti karakteriše ugovorna izvesnost, da li ispitanici smatraju da su razmatranja javne politike uticajna i da li je osiguranik strana u nepovoljnom položaju kod ugovora o osiguranju. Ova praktična pitanja su postavljena da oslikaju poziciju Malte u pogledu toga kako se pravilo karakteriše i primenjuje na praktične scenarije vezane za osiguranje.

4. NALAZI

4. . Uvod

Većina odgovora na pitanja bila je slična i konzistentna dajući istraživaču uverenje o komplementarnim odgovorima, što je rad učinilo kredibilnijim i robusnijim. Kvalitativna pitanja su služila za razumevanje primene pravila *contra proferentem* iz praktične perspektive, zbog čega su praktičari mogli da povežu i daju praktične primere iz svog iskustva.

4.2. Dobijeni odgovori od sagovornika

Na pitanje o definiciji pravila *contra proferentem* u pravnom kontekstu, ispitanici su uglavnom bili dosledni kada su rekli da je pravilo poslednjeg utočišta da se primenjuje u slučajevima kada se pojave dvosmisleni ili nejasni uslovi ugovora, kada se dvosmislene okolnosti tumače protiv ugovorne strane koja je sastavila ugovor. Navedeni su primeri iz prethodnog iskustva, a neki su čak naveli kako je njihova kompanija prenela tumačenje svom odeljenju za osiguranje kako bi izvršila neophodne promene. U jednom slučaju dovedene su sumnju formulacije koje se odnose na mesto na kojem važi osiguranje i nastao je spor oko toga da li je Gozo (sestrinsko ostrvo Malte – prim. aut.) trebalo da bude lokacija obuhvaćena polisom osiguranja u slučajevima kada se koristi formulacija „Malta" za mesto na kojem važi osiguranje. Sudija se oslanjao na pravilo *contra proferentem* da bi presudio na štetu osiguravača rekavši da se pod pojmom „Malta" mislilo na sva Malteška ostrva, nakon čega je osiguravač propisno izmenio sve uslove osiguranja polise kako bi se uskladio sa tom sudskom odlukom.

Većina ispitanika se složila da pravilo *contra proferentem* ima za cilj da zaštiti ugovornu stranu koja nije sastavila nacrt ugovora, obezbeđujući pravičnost i podstičući jasnije i preciznije sastavljanje ugovora i rešavanje svake nejasnoće ili neizvesnosti u uslovima ugovora protiv strane koja ga je sastavila. Ovo stavlja teret dokazivanja svake dvosmislenosti na stranu sastavljača ugovora.

Što se tiče pitanja o ograničenjima i kontroverzama, jedan broj ispitanika je rekao da ugovori o kojima se pregovaraju dve strane moraju imati jednaku pregovaračku moć i stoga malo šta ugovarač osiguranja može da uradi, s obzirom na činjenicu da je polisa većinu vremena potrebna da bi se zadovoljio zakonski zahtev ili za ugovorne svrhe. Dva ispitanika su tvrdila da nedostatak jasnog i preciznog nacrta može stvoriti nesigurnost i povećati broj sporova koji bi zauzvrat mogli imati drugačiji konačni ishod, u zavisnosti od toga kako nadležni pravni sistem primenjuje ovo pravilo.

Pomenuti su alternativni principi ili pravila koja se koriste u tumačenju ugovora, kao što je doktrina razumnih očekivanja, koja se fokusira na razumna očekivanja ugovornih strana, a ne na nameru sastavljača, a takođe se pominje upotreba principa u krajnjoj nuždi, po kojoj se ovo pravilo primenjuje nakon što sva moguća tumačenja budu iscrpljena.

Neki ispitanici su objasnili da sudovi obično procenjuju da li ugovorna odredba može da se višestruko tumači u skladu sa razumnim očekivanjima. Napomenuli su da sudovi uzimaju u obzir faktore kao što su jezik koji je upotrebljen, običaji osiguranja i kontekst ugovora pre nego što se okrenu primeni pravila *contra proferentem*, kao svoju poslednju liniju odbrane.

Praktičari su odgovorili na pitanje koliko je ovo pravilo danas relevantno, rekavši da pravilo *contra proferentem* ostaje relevantno, jer štiti slabije ugovorne strane i podstiče sastavljanje jasnih ugovornih uslova. Drugi su predložili alternativne pristupe koji daju prioritet namerama ugovarača i tvrde da bi primena pravila trebalo da bude ograničena u određenim slučajevima. Većina ispitanika se složila da je stalna važnost pravila u zaštiti ugovornih strana sa slabijom pregovaračkom moći u svetu prava potrošača i zadovoljstva kupaca visoko na poslovnom planu.

4. 3. Dobijeni odgovori za pravni sistem Malte

U odgovoru na pitanje kada sudije moraju da pribegnu pravilu *contra proferentem* na Malti, ispitani-

ci su rekli da se ono obično primenjuje kada postoji nejasnoća ili nesigurnost u jeziku ili uslovima ugovora. Ako je ugovorna odredba jasna i nedvosmislena, ne može se pozvati na to pravilo, a kada su ispitanici upitani da li smatraju da su ugovori o osiguranju jasni i nedvosmisleni, ispitanici su rekli da sudski sporovi većinu vremena zapravo tumače formulacije uslova osiguranja da bi doneli odluku da li postoji element nejasnoće, bar iz ugla ugovarača. Međutim, većina se slaže da su sudije većinu vremena u stanju da reše spor na osnovu tumačenja ugovora objašnjavajući kako su tumačili ugovorne odredbe. Iako neke formulacije možda nisu potpuno jasne, ovo pokazuje da su sudije u stanju da zaključe u meritumu o terminologiji ugovora i da ne pribegavaju primeni pravila *contra proferentem* da bi doneli svoju odluku.

U vezi sa istim pitanjem, na pitanje da li ispitanici misle da uslovi osiguranja na Malti imaju potrebnu jasnoću i da li su u velikoj meri nedvosmisleni, dva učesnika su rekla da su tokom godina u industriji osiguranja bili uključeni u nekoliko promena formulacije uslova osiguranja radi njihove bolje jasnoće. Naveden je jedan primer gde je u uslovima osiguranja lica uvedena klauzula o definicijama da bi se objasnila namera u vezi sa određenim rečima. Neki drugi ispitanici su rekli da osiguravači analiziraju odluke sudova i kada izgube spor i onda pokušavaju da formulacije ugovora učine jasnijim.

Pitanja u anketi su takođe imala za cilj da utvrde da li ispitanici smatraju da odluke javne politike vrše uticaj, što zauzvrat može uticati na sudove. Troje ispitanika je reklo da društveni pritisci, uključujući medije, uvek igraju ulogu iako većina ispitanika smatra da sudije nikada neće suditi na osnovu pritiska javnosti, već na osnovu zakona i osiguravajućeg pokrića, uslova i odredbi ugovora o osiguranju. Međutim, neki ispitanici su rekli da, iako sudovi nastoje da obezbede pravičnost, izgleda da štite slabije ugovorne strane.

Na pitanje da li je osiguranik ugovorna strana u nepovoljnom položaju i koliko je relevantno pravilo *contra proferentem* za osiguranje, iako nisu imali dovoljno primera, većina ispitanika je odgovorila da se obično dešava da to utiče na ugovarača koji nije svestan formulacije ugovora o osiguranju da je kupio osiguranje za obavezno motorno osiguranje ili kupovinu životnog osiguranja kao garancije za dobijanje kredita.

4.4. Završni komentar

Anketa sugeriše da se pravilo *contra proferentem* ponekad primenjuje u sporovima o osiguranju na Malti. Pravilo ima tendenciju da se pojavljuje u slučajevima kada postoji nejasnoća ili nesigurnost u formulaciji posebnih odredbi uslova osiguranja. Primena pravila često dovodi do toga da osiguranik ostvari povoljniji ishod nego što bi imao da pravilo nije primenjeno.

5. REZIME I ZAKLJUČCI

Zaključci izvedeni iz ove studije otkrivaju da pravni stručnjaci sa kojima se razgovara poznaju pravilo *contra proferentem*, da pokazuju jasno razumevanje njegove definicije i primene i da su u stanju da daju relevantne primere kada se ono može primeniti, što ukazuje na praktično iskustvo i poznavanje različitih ugovornih okolnosti u kojima se može pojaviti nejasnoća.

Ispitanici prepoznaju obrazloženje pravila *contra proferentem*, naglašavajući njegovu funkciju u zaštiti ugovorne strane koja nije sastavila ugovor i promovisanju pravične i precizne prakse sastavljanja uslova osiguranja. Pravni stručnjaci su svesni činjenice da se sve nejasnoće rešavaju protiv ugovorne strane koja je sastavila ugovor i priznaju da se pravilo *contra proferentem* može razlikovati u različitim pravnim sistemima, pa je potrebno uzeti u obzir specifični pravni okvir i sudsku praksu određenog pravnog sistema prilikom primene pravila.

Alternativna pravila ili principi koji se mogu koristiti u tumačenju ugovora umesto pravila *contra proferentem*, kao što su doktrina „razumnih očekivanja" ili princip „načina poslovanja", sugerišu šire razumevanje metoda tumačenja ugovora. Stručnjaci su svesni da sudovi određuju da li je odredba ugovora dvosmislena procenom njegovog potencijala za višestruka razumna tumačenja, uzimajući u obzir faktore kao što su jezik, običaji u industriji i opšti kontekst ugovora.

U ovoj studiji istraživano je pravilo *contra proferentem* i njegov značaj u rešavanju sporova u sektoru osiguranja u kontekstu savremenih poslovnih praksi. Kroz dubinsku analizu sudske prakse, pravnih principa i stavova nauke, ovo istraživanje je bacilo svetlo na to kada, kako i zašto sudije koriste ovo pravilo za tumačenje i rešavanje ugovornih nejasnoća.

U pogledu načina na koji sudije koriste pravilo *contra proferentem*, ono služi kao vodeći princip za tumačenje uslova ugovora u slučajevima kada je jezik podložan višestrukim tumačenjima. Pravilo zahteva od sudova da reše sve nejasnoće u korist ugovarača osiguranja, promovišući razuman i dosledan pristup tumačenju ugovora. Kroz ovaj proces, sudije nastoje da vode računa o razumnim očekivanjima osiguranika i zaštiti njihovog interesa u kontekstu osiguranja.

Upotreba pravila *contra proferentem* u savremenoj poslovnoj praksi služi višestrukim svrhama. Pre svega, doprinosi zaštiti prava osiguranika, koji se često nalaze

u relativno nepovoljnom položaju prilikom zaključenja ugovora o osiguranju. Tumačeći dvosmislene uslove protiv interesa osiguravača, pravilo pomaže u sprečavanju nepravednih ishoda i obezbeđuje da osiguranici ne trpe štetu zbog skrivenih ili nejasnih odredbi uslova osiguranja.

Pored navedenog, pravilo *contra proferentem* podstiče jasnoću i preciznost u ugovorima o osiguranju. Osiguravači su podstaknuti da sastavljaju ugovore koji su jasni, dostupni i bez dvosmislenosti. Ovo unapređuje komunikaciju između ugovornih strana i smanjuje potencijal za sporove koji proističu iz različitih tumačenja uslova ugovora. U eri sve složenijih proizvoda osiguranja i sporazuma, uloga pravila u omogućavanju transparentnosti i razumevanja je ključna za održavanje poverenja i pouzdanja u industriju osiguranja.

Iako je pravilo *contra proferentem* dragoceno sredstvo za rešavanje sporova osiguranja, njegova primena zahteva pažljivo razmatranje. Sudovi moraju uspostaviti ravnotežu između zaštite osiguranika i obezbeđivanja održivosti i konkurentnosti tržišta osiguranja. Neophodan je nijansiran pristup specifičan za date okolnosti kako bi se izbegle neželjene posledice koje mogu ometati inovacije ili stvoriti prevelika opterećenja za osiguravače. Sudije moraju uzimati u obzir jedinstvene okolnosti svakog slučaja, razvojnu prirodu industrije osiguranja i šire ciljeve uslova osiguranja prilikom primene pravila.

Podržavajući razumna očekivanja osiguranika i podstičući transparentnost, pravilo pomaže u održavanju ravnoteže moći i pravičnosti u industriji osiguranja. Od suštinskog je značaja za sudove da ispolje diskreciono pravo i prilagode primenu pravila dinamici razvoja moderne poslovne prakse kako bi obezbedili njenu kontinuiranu efikasnost u postizanju pravednih ishoda u sporovima u vezi sa osiguranjem.

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Contract certainty and the contra proferentem rule: when should the rule apply in insurance litigation? A study to determine how this rule tends to feature in Insurance disputed cases in Malta

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Abstract

The contra proferentem rule is a legal principle that applies in cases where there is uncertainty in the interpretation of a contract. It states that where there is ambiguity, the contract should be interpreted against the party who drafted it. In insurance litigation, this rule often arises when there is a dispute between the insurer and the insured over the terms or cover under an insurance policy. This paper examined the application of the contra proferentem rule in insurance litigation cases in Malta. The study aims to determine the impact the rule has and the legal outcome of such cases. The research methodology involved a review of relevant case law and legal literature on the application of the contra proferentem rule in disputes. In addition, interviews were conducted with legal practitioners who have experience in handling insurance litigation cases. The findings of this study contribute towards the understanding of how the contra proferentem rule operates in the context of insurance disputes, highlighting the importance of clear and unambiguous contract drafting, the role of the judiciary in interpreting and applying the rule, and the impact of the rule on contract certainty and dispute resolution. The results shed light on the circumstances in which this rule tends to be applied and its impact on the outcome of such cases. The findings of this study also highlight some of the limitations of the contra proferentem rule and suggest that the rule tends to result in the insured party receiving a more favourable outcome. Overall, this study will contribute to the development of a better understanding of the role of the contra proferentem rule in insurance litigation, particularly in Malta, and its implications for legal practice and policy. The paper contributes to academic research by synthesizing the existing literature and case law on the topic and provides guidance for insurers and policyholders on how to navigate the interpretation and enforcement of insurance contracts. The findings and conclusions of this paper could inform policy and regulatory developments in the insurance industry and help to improve contract certainty and reduce disputes in the future.

Keywords: insurance contract, contra proferentem, underwriting, contract certainty, insurance litigation

1. INTRODUCTION

1.1. Interpretation of insurance contracts

A contract is an agreement between parties, be them natural or artificial persons. Parties to a contract are free to agree whatever they wish, as long as the elements constituting a valid contract are observed. A contract, among other requirements, must have *consensus ad idem* wherein the parties must be clear on the terms and conditions that they are agreeing to, ensuring that what they agree is fair, equitable and reasonable (Parsons, 2016).

This position changes when the parties do not have the same opportunity to participate in the negotiation of the terms under the agreement. Most of these contracts are commercial contracts wherein the drafter of the agreement is the commercial entity that will have tailor-made pre- designed contracts with standard wording

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and conditions, and which are usually not negotiable. Statute law has, in these cases, come forward to ensure that contracts are fair and equitable in cases where the contract wording is usually drafted by the entity who holds a stronger position than the oblivious consumer who needs the service or product.

Insurance contracts are typically complex legal documents that often give rise to a great deal of ambiguity and uncertainty in their interpretation. The contra proferentem rule is a legal principle that is frequently invoked in insurance litigation cases where there is uncertainty regarding the meaning of specific provisions in the contract. The rule states that in cases of ambiguity, the contract should be interpreted against the party who drafted it.

The application of the contra proferentem rule in insurance litigation has significant implications for both insurers and policyholders. For insurers, the rule may result in them having to pay out on claims that they did not intend to cover, while for policyholders, it may mean that they receive less compensation than they believed they were entitled to (Johnson, 2004).

1.2. The case of Malta

This paper examines the application of the contra proferentem rule in insurance litigation cases in Malta, being a small island nation in the Mediterranean that has a relatively small but active insurance market. The contra proferentem rule has its roots in English common law, and its application has also been recognised in Malta.

In the context of insurance contracts, the contra proferentem rule is often invoked in cases where there is a dispute between the insurer and the insured over the meaning of specific provisions in the policy. This means that if a policy is ambiguous about whether a particular event is covered or not, the rule may be used to interpret the policy in favour of the insured. The application of the contra proferentem rule in insurance litigation has been extensively examined in legal literature. Scholars have highlighted the importance of this rule in protecting the interests of the weaker party in the contractual relationship. The rule is a "last resort" and should only be invoked in cases of genuine ambiguity. Other scholars have argued that the rule should not be applied too readily, as it may discourage parties from being careful in their drafting (Mendelson, 2019).

1.3. Implications of the study

The study is significant for several reasons. Firstly, the results of the study will provide insights into the circumstances in which the contra proferentem rule tends to be applied in insurance litigation cases in Malta. This will be useful for insurers in Malta, as it will provide guidance on how to draft insurance policies that are clear and unambiguous. By doing so, insurers can reduce the likelihood of disputes and the application of the contra proferentem rule, which can result in unexpected pay-outs.

Secondly, the study will provide guidance to legal practitioners in Malta on the interpretation of insurance policies in cases of uncertainty. This can inform their decision-making process in insurance litigation cases and improve the likelihood of reaching a fair outcome for both parties.

Finally, the study has implications for policymakers in Malta. By identifying the circumstances in which the contra proferentem rule tends to be applied in insurance litigation cases, the study can inform the development of policy frameworks that promote clear and unambiguous drafting of insurance contracts. This can lead to more efficient dispute resolution processes and reduce the burden on the courts.

1.4. Structure of the research

The paper is structured in the following sections:

Section 1 introduces the study, aim, scope and implications, Section 2 will provide a detailed overview of the contra proferentem rule and its application in insurance disputes. Section 3 will describe the research methodology used in this study, including the case law review, legal literature review and interviews with legal practitioners. Section 4 will present the findings of the study, including the circumstances in which the contra proferentem rule is applied in insurance disputes in Malta and its impact on the outcome of such cases. Section 5 will discuss the implications of the findings for insurers, legal practitioners, and policymakers in Malta and corresponding conclusions.

1.5. Objectives

The study has the following objectives:

To identify the circumstances in which the rule tends to feature in insurance litigation cases in Malta and determine the position taken by the courts when applying the rule. To assess the impact of the contra proferentem rule on the outcome of insurance disputes in Malta.

2. LITERATURE REVIEW

The principle of contra proferentem in contract law has long been utilized to address contractual

ambiguities in favour of the party responsible for drafting the contract (Leib, Thel, 2015). Within insurance litigation, this rule plays a significant role in interpreting policy terms and resolving disputes between insurers and policyholders. This scholarly review aims to examine the application of the contra proferentem rule in litigation, explore the situations in which it is commonly employed, analyse its impact on the interpretation of insurance policies, and assess its significance for insurers, policyholders, and legal practitioners. The review will draw upon various sources, including case law, legal commentary, and academic literature.

2.1. Application of the principle

The application of the contra proferentem rule is influenced by several factors, with one key factor being the relative bargaining power between the contracting parties. Typically, the rule is invoked in cases where there is a power imbalance, with a weaker party unable to negotiate contract terms on an equal footing with a stronger party. In the realm of insurance litigation, this often includes policyholders who may lack the same level of legal expertise as insurers or who obtain insurance as part of a larger commercial transaction requirement (McCarry, 2018).

When interpreting the terms of an insurance policy, judges generally start by ascribing the ordinary meaning to the words used in the policy. This aligns with the fundamental principles of contract interpretation, which necessitate the court‘s adherence to the parties‘ expressed intentions in the contract (Leib, Thel, 2015). However, in cases where ambiguity arises from the policy‘s language, the contra proferentem rule may come into play.

It is crucial to note that the application of the contra proferentem rule is limited to situations where ambiguity exists within the contract‘s wording. The rule is considered a last resort, applied only when contract terms are unclear and no other resolution method is available. Therefore, the rule must be employed in a manner that does not unduly restrict the freedom of the contracting parties to shape their agreements as they deem fit (Merkin, 2016).

Traditionally, the insurer is the party responsible for drafting the policy terms, although instances arise where the policyholder may also participate in the drafting process. For instance, when the policyholder provides information used to establish the policy‘s terms, they may be deemed to have played a role in the drafting. In such cases, if the policyholder signs the contract in an ambiguous manner, the contra proferentem rule may be applied against them (Liggett, 2008).

The contra proferentem rule tends to be more frequently applied in personal lines insurance cases compared to commercial insurance. This discrepancy arises from personal lines policies being purchased by individuals who may possess a lower level of legal expertise compared to commercial entities. Consequently, these individuals are considered the weaker party in the contract, making them more likely to benefit from the rule‘s application (Duncan, 2006).

While exclusion clauses in insurance policies are the primary targets for the contra proferentem rule, it may also extend to indemnity ambiguities where the coverage‘s scope is unclear. Furthermore, there have been instances where the rule has been applied to subrogation clauses, which permit insurers to recover losses from third parties (Merkin, 2016).

2.2. Judicial application and challenges

When confronted with ambiguous language in an insurance policy, judges initially strive to interpret the policy terms according to the parties‘ intentions. However, when interpretation fails to resolve the ambiguity, the contra proferentem rule may be employed to settle the dispute. This entails interpreting the policy terms against the party responsible for drafting them, with the aim of upholding the reasonable expectations of the other party (Boardman, 2006). It is critical to note that the rule can have significant implications for the contracting parties, potentially leading to outcomes that contradict their intentions. Therefore, judges only apply the rule as a last resort when necessary to uphold the reasonable expectations of the parties (Duncan, 2006).

One of the challenges in applying the contra proferentem rule in insurance litigation is striking a balance between the parties’ intentions and the need to resolve contractual ambiguities. While the rule aims to protect the weaker party, it must be employed in a manner that does not undermine the parties‘ intentions or the overarching purpose of the contract. Consequently, judges often seek to balance the parties‘ intentions with the necessity of resolving ambiguities, striving for a fair and reasonable outcome (Merkin, 2016).

When applying the contra proferentem rule, judges typically adopt a liberal approach to interpretation rather than a strict literal interpretation. This means they consider the broader context in which the contract was negotiated, going beyond the exact wording of the contract terms. This approach intends to honour

the parties‘ reasonable expectations, rather than relying solely on the literal interpretation of the law (Boardman, 2006).

While the contra proferentem rule can be a valuable tool in resolving ambiguities in insurance contracts, there is a risk of excessive reliance on the rule by judges. This over-reliance may undermine the overall purpose of the contract and the intentions of the parties involved. Therefore, judges should exercise caution when applying the rule, striving to strike a balance by considering other principles of contract interpretation alongside it (Boardman, 2006).

It is important to note that the contra proferentem rule is applicable to contracts rather than statutes, as it is meant to address contractual ambiguities. In the context of insurance, the primary objective of the rule is to ensure that policyholders are not unfairly disadvantaged by unclear or ambiguous policy terms. While the contra proferentem rule has been widely employed in insurance litigation, the rule can create uncertainty and unpredictability in contract interpretation and make it challenging for insurers, policyholders, and legal practitioners to anticipate how the rule will be applied in a given situation (Merkin, 2016).

2.3. Future directions and implications

In response to these concerns, some scholars argue for alternative approaches to contract interpretation that prioritise the objective intentions of the parties or the commercial purpose of the contract. These alternative approaches seek to strike a balance between upholding the parties‘ reasonable expectations and maintaining the overall coherence and efficiency of contract law. However, the contra proferentem rule continues to be regarded as a valuable tool in cases where ambiguity persists, and other interpretative methods are insufficient (Merkin, 2016). The application of the contra proferentem rule in insurance litigation is an evolving area of law, influenced by changing societal and commercial dynamics. As the insurance industry adapts to new risks and challenges, it is likely that the interpretation of policy terms and the role of the contra proferentem rule will continue to evolve. Legal practitioners, policymakers, and scholars will need to closely monitor developments in this area to ensure that the rule strikes an appropriate balance between the contracting parties (Chartered Insurance Institute, 2020).

Furthermore, advancements in technology and the increasing complexity of insurance products may present new challenges in applying the contra proferentem rule. As policies incorporate intricate provisions and incorporate artificial intelligence or blockchain technology, the potential for contractual ambiguities and disputes may become more pronounced. It will be crucial for legal practitioners and courts to adapt their interpretative approaches and ensure that the contra proferentem rule remains relevant and effective in addressing these emerging complexities (McCunn, 2019).

In conclusion, the contra proferentem rule plays a significant role in insurance litigation by resolving contractual ambiguities against the party responsible for drafting the contract terms. While its application is influenced by factors such as relative bargaining power, the rule serves to protect the reasonable expectations of the contracting parties. However, its implementation requires a careful balance to avoid undermining the intentions and purpose of the contract. As the insurance landscape evolves, ongoing examination and adaptation of the rule will be necessary to ensure its continued effectiveness in addressing ambiguity and protecting the interests of policyholders and insurers alike.

2.4. Case law

The principle of contra proferentem, originated in English law from the decision of the Privy Council in the Canada Steamship Lines Ltd case (R v Canada SS Lines Ltd [1952] 1 DLR 49 (SCC). Over time, there has been extensive discussion surrounding the contra proferentem rule, and the guidelines set forth in the Canada Steamship case have been applied with more flexibility rather than in strict adherence. Regarding the interpretation of indemnity and exemption clauses that fall outside the scope of the Unfair Contract Terms Act, the English court has shown a preference for a more commercially oriented approach, moving away from a rigid application of the principles established in the Canada Steamship case.

The case of Canada Steamship involved a dispute over whether a party could rely on an indemnity clause in a lease agreement after causing damage due to negligence. Canada Steamship Lines Ltd. leased land and a shed from the Crown, and the lease included a provision stating that the Crown would maintain the shed in good condition.

During the lease, the Crown attempted to repair part of the shed but negligently caused a fire that destroyed the shed and the property of third parties inside. The affected third parties sued Canada Steamship Lines Ltd. for the loss, and when the company sought to recover from the Crown, the Crown invoked the indemnity

clause included in the lease. The Crown based its defence on two clauses in the lease; the lessee (Canada Steamship Lines Ltd.) would not have any claims or demands against the lessor (the Crown) for any damage or injury to the land, shed, platform, vehicles, materials, goods, or other belongings on the property and the lessee (Canada Steamship Lines Ltd.) would indemnify and protect the lessor (the Crown) from any claims, losses, costs, damages, actions, or proceedings arising from the execution of the lease or the exercise of rights granted therein.

The Supreme Court of Canada, ruled that the intention of the parties, as deduced from the entire document, was for Canada Steamship Lines Ltd. to indemnify the Crown against liability resulting from negligence. The Judge argued that negligence had not been explicitly or implicitly excluded, thus holding the Crown responsible for its own negligence (Law Teacher, 2013).

On further appeal to the Privy Council from the Supreme Court of Canada, it was determined that the indemnity clause did not provide sufficient clarity to shield the Crown from liability for its own negligence. The council stated that if liability for the negligence of others is to be imposed, it must be done so with unmistakable language.

The case of Canada Steamship, established a three-stage approach for clauses seeking to exclude liability for negligence. In the first instance, when the wording is clear and unambiguous, liability will be excluded. In cases of general wording, any ambiguity will be resolved against the party relying on the clause. Moreover, if negligence is the only plausible basis for liability, it can be excluded by general wording. However, if there are other potential grounds for liability, only non-negligent liability will be excluded unless it is too remote (McCarry, 2018).

In another landmark legal dispute, property developer by the name of Persimmon, filed claims for damages against Arup, the project consultant, for their failure to identify significant amounts of asbestos at a development site in South Wales (Persimmon Homes Ltd and others v Ove Arup & Partners Ltd and another (2017) EWCA Civ 373). Arup relied on a contractual exemption clause which explicitly excluded "liability for any claim in relation to asbestos" and limited "liability for pollution and contamination" to a specific amount.

Persimmon argued that the exemption clause should be interpreted as applicable only to liability for asbestos, pollution, and contamination that was directly "caused" by Arup, contending that Arup's potential negligence in failing to identify asbestos should not be shielded by the exemption clause.

However, the judge dismissed Persimmon's arguments and concluded that the clauses in question were not restricted solely to liability for asbestos, pollution, and contamination "caused" by Arup. Instead, they encompassed all liability related to asbestos, regardless of negligence. The Court of Appeal's ruling in Persimmon Homes v Ove Arup reaffirms the increasing acceptance by the English court that commercial parties possess the right to limit or exclude liability as a means of allocating risk. While the potential application of the contra proferentem rule to indemnity clauses in commercial contracts remains open, it appears that the interpretation of both exemption and indemnity clauses will primarily depend on ordinary principles of understanding within their context. This emphasizes the importance of meticulous drafting during contract negotiations.

The Court of Appeal in the Persimmon case also suggested that the three-stage test outlined by Lord Morton in the Canada Steamship case is more relevant to interpreting indemnity clauses rather than exclusion clauses. Typically, the contra proferentem rule may be applicable to two types of clauses: exclusion clauses, where an insurer attempts to limit its exposure, and indemnity clauses, which form the basis for an insurer's obligation to cover valid claims.

Courts are likely to uphold the parties' agreement and refrain from implying additional terms into the contract. The natural meaning of the words used, along with commercial sense and context, remain the key factors in interpreting and drafting construction contracts (Edwards, 2023).

In another case the issue of contra proferentem in subrogation cases was in dispute. In March 2007, a painting was retrieved after an art dealer identified it through its listing in the Art Loss Register. The language found in the proof, read as "…the policyholder hereby transfers and assigns to the insurer all rights, ownership, and interest in the property for which a claim is being made under this policy. The policyholder also agrees to promptly notify the insurer in the event of any recovery of the said property and will provide full assistance in any efforts to regain possession of the aforementioned property. Additionally, the policyholder agrees to fully reimburse the insurer for the amount paid in relation to the recovered property". The insurer, OneBeacon Company Ltd, was subrogated to the insured's rights and not its interests to OneBeacon, entitling the insured to retain the painting upon paying the claim payment back to the insurance company (Trupin, 2011).

In Malta, the contra proferentem rule has been invoked in several insurance disputes. One such case is Camilleri v Mapfre Middlesea plc [2015] MTCA 33,

in which the plaintiff argued that an exclusion clause in the insurance policy was ambiguous and should be interpreted against the insurer. The court ultimately agreed with the plaintiff, ruling that the clause was indeed ambiguous.

Another case that featured the application of the contra proferentem rule is Cutajar v Atlas Insurance PCC Ltd [2018] MTCA 19. In this case, the plaintiff argued that the wording of the insurance policy was unclear and that the contra proferentem rule should be applied. The court agreed with the plaintiff and held that the policy should be interpreted against the insurer.

3. METHODOLOGY

3.1. Introduction

The research methodology of this study involved a review of relevant case law and legal literature on the application of the contra proferentem rule in insurance disputes in Malta. Based upon literature, which was exhaustively sourced via the PRISMA methodology of literature collection, interview questions were structured serving as the investigative tool to verify the case of Malta with respect to the application of the contra proferentem rule. The interviews were held with legal and technical practitioners who have experience in handling insurance litigation cases.

3.2. Interviews

The legal literature review involved a search of relevant academic and practitioner literature on the application of the contra proferentem rule in insurance disputes. The literature analysed trends and patterns in the application of the rule and provided a theoretical framework for interpreting the findings of the case law review. The case law review involved a systematic search of court cases that have applied the application of the contra proferentem rule in disputes. The cases were analysed to identify the circumstances in which the rule was applied, the reasoning behind the court‘s decision, and the impact of the rule on the outcome of the case. This research enabled the structuring of interview questions which consisted of enquiries to confirm or otherwise the information related to the rule and provided insight into the application of contra proferentem as it is applied to a specific jurisdiction namely, Malta.

The interviews with legal practitioners were conducted using a semi-structured approach and aimed at gathering insights into their experiences with the application of the contra proferentem rule in insurance disputes in Malta. The interviews were carried out with eighteen respondents and purposive sampling was adopted relying on the researcher’s experience to identify the most relevant experts in the field, based on experience, and those who could provide meaningful and grounded opinions to the research. In the case of the interviews, the number of respondents was not set prior, and the saturation point (reached after approximately fourteen responses) was identified when the answers to the interview questions did not contribute to new or more meaningful knowledge than what had been collected (Mack, et al., 2005; Petty, et al., 2012) and (Suen, et al., 2014). Special care was given to interview guides on what to ask and how to avoid bias or leading answers that could distort the results. Merriam (1998) suggests what questions to avoid, how the questions should be worded, how any communication with the respondents should be introduced and how a communicative rapport should be established to ensure clarity of responses.

3.3. Data protection and outreach

The research ensured anonymity by omitting any identifiable personal data, and reference was made to the communication channels available in case the participant required more information about the research scope, collection of data, processing, analysis and result reporting.

Interviews were carried out mostly online and over the phone, facilitating and expediating the process. The responses of the interviews were recorded, analysed and subjected to a thematic analysis for identifying, analysing, and reporting of patterns (Braun & Clarke, 2006) to derive conclusions on the case of Malta.

3.4. Explanation of research questions

The interview questions with the rationale behind their intended information insight is as follows: The first question required the respondent to provide a legal definition of the rule to assesses the interviewee‘s point of view of its meaning and to be able to gauge the accuracy of the knowledge of contra proferentem and its consistency on how practitioners understand this. In furtherance to this and to support this definition, practitioners were then asked to provide examples of situations where the contra proferentem rule may be applied. This was prompted to identify scenarios where the contra proferentem rule was relevant to illustrate its understanding.

By asking the question on how the contra proferentem rule impacts the interpretation of contract terms, the interviewee's knowledge of the practical implications of the contra proferentem rule was being duly tested and a related question was to determine any exceptions or limitations of the contra proferentem rule which the interviewees were aware of intended to explore the interviewees' understanding of potential exceptions or situations where the contra proferentem rule may not apply. The respondents were also asked to provide some criticisms or controversies surrounding the contra proferentem rule and the reason for this was to identify the interviewee's ability to discuss the potential drawbacks or arguments against the contra proferentem rule.

Specifically, when asked to explain how the contra proferentem rule differed across jurisdictions, the question explored the interviewees' knowledge of the variability of the contra proferentem rule in different legal systems to be able to build an international scenario of the applicability across jurisdictions for comparability purposes.

The practical questions asked were direct and succinct and interviewees were asked to explain whether there were any alternative rules or approaches to contra proferentem to investigate the interviewee's awareness of alternative rules or principles that could be used in contract interpretation. A direct question was made on how courts determine whether a contract term is ambiguous to test the interviewee's knowledge of how ambiguity is determined in the context of the contra proferentem rule. This served to try and understand the interpretation and position that judges adopt in real court scenarios and to verify whether the answers provide some common and consistent position of the interpretation of the rule. Another practical question was on whether the interviewees still consider the contra proferentem as relevant in modern contract law, to gauge the continued significance of the contra proferentem rule according to experts with particular relevance to insurance.

Zooming on the Maltese scenario, interviewees were asked whether they feel that insurance contracts are clear and unambiguous, whether they think insurance policies in Malta have contract certainty, whether the interviewees consider public policy considerations to be influential and whether the insured is a disadvantaged party under an insurance contract. These practical questions were asked to depict the position of Malta with respect to how the rule features and applies to practical insurance related scenarios.

4. FINDINGS

4.1. Introduction

Most of the answers to the questions were similar and consistent which gave the researcher assurance of complimentary responses making the work more credible and robust. Qualitative questions served to understand the application of the contra proferentem rule from a practical perspective and practitioners could actually relate and give practical examples from their experience.

4.2. Responses received from the interviews

To the question on the definition of the contra proferentem rule in the legal context, interviewees were generally consistent in saying that it is a last resort rule to decide cases when ambiguous or unclear contract terms surface in which case, the ambiguous circumstances should be construed against the party who drafted the contract. Examples from past experience were given, some even recited how their company relayed the interpretation to their respective underwriting department to make the necessary changes. In one case, doubts were cast on the wording covering location and a dispute arose on whether Gozo (which is a sister island to Malta) was intended to be a location covered under the policy when the wording was classified as "Malta" as a location. The judge relied on the contra proferentem rule to judge against the insurer saying that Malta meant the Maltese islands after which case, the insurer duly amended all policies to reflect this decision.

Most interviewees agreed that the contra proferentem rule aims to protect the party who did not draft the contract, ensuring fairness and encouraging clearer and more precise contract drafting and resolving any ambiguity or uncertainty in contract terms against the party responsible for drafting the contract. This places the burden of any ambiguity on the drafting party.

As to the question on limitations and controversies, a number of respondents said that contracts negotiated between two parties must have equal bargaining power and therefore there is little a policyholder can do, given the fact that the policy is most of the time needed to satisfy a statutory requirement or for contractual purposes. Two respondents argued that lack of clear and precise drafting could create uncertainty and increase litigation which could in turn have a different final result depending on how the relevant jurisdiction views this rule.

Alternative principles or rules used in contract interpretation, such as the reasonable expectations doctrine, which focuses on the parties' reasonable expectations rather than the drafter's intent was mentioned and there was also a mention on the last resort use of the principle, which considers the rule after all possible interpretation/s of the matter would have been exhausted.

Some interviewees explained that courts typically assess whether a contract term is capable of multiple reasonable interpretations. They mentioned that courts consider factors such as the language used, industry customs, and the context of the contract before using the contra proferentem rule as their last line of defence.

Practitioners responded to the question on the relevance of the rule today, by saying that the contra proferentem rule remains relevant, as it protects weaker parties and encourages clear drafting. Others suggested alternative approaches that prioritise party intentions and argue that the rule's application should be limited in certain contexts. Most respondents agreed that the rule's ongoing importance in protecting parties with weaker bargaining power in a world of consumer rights and customer satisfaction being high on the business agenda.

4.3. Responses received on the case of Malta

In response to the question of when judges have to resort to the contra proferentem rule in Malta, respondents said that the contra proferentem rule typically applies when there is ambiguity or uncertainty in the language or terms of the contract. If the contract provision is clear and unambiguous, the rule may not be invoked and when the respondents were asked whether they feel that insurance contracts are clear and unambiguous, the respondents said that court cases most of the time are in fact interpreting the policy wording to decide case so there is an element of uncertainty at least from the litigants' perspective. However most agree that judges are most of the time able to resolve the case based on the interpretation of the contract explaining how they came to interpret the wording. This in itself demonstrates that although some wording might not be outrightly clear, judges are able to conclude on the merits of the contract terminology and not resort to contra proferentem to finalise their ruling.

With reference to the same question asking whether respondents think insurance policies in Malta have contract certainty and whether they are largely unambiguous, two participants said that throughout their years in the insurance sector, they have been involved in several changes to policy wording to make it clearer. One example was given where in personal insurance policies, a definitions clause was introduced to explain the intention of certain words used. Some other respondents said that insurers analyse the decisions of the courts and when they lose a case, they attempt to make the respective contract wording more watertight.

The interview questions also inquired whether the interviewees consider public policy considerations to be influential which in turn may have an effect on the judiciary. Three respondents said that social pressures, including the media, always play a part although most respondents opined that judges would never judge on public pressure but on the basis of the legal and technical cover, terms and conditions of the insurance contract. However, some respondents said that while courts strive to ensure fairness, they seem to protect the weaker parties.

When asked whether the insured is a disadvantaged party and how relevant the contra proferentem rule is related to insurance, most respondents said that although they did not have ample examples it is usually the case affecting a proposer who is oblivious to the insurance contract wording having purchased insurance for compulsory motor insurance or purchased life assurance as a guarantee prior to obtaining a loan.

4.4. Concluding comment

The interviews suggest that the contra proferentem rule is sometimes applied in insurance disputes in Malta. The rule tends to feature in cases where there is ambiguity or uncertainty in the wording of specific provisions in the policy. The application of the rule often results in the insured party receiving a more favourable outcome than they would have if the rule had not been applied.

5. SUMMARY AND CONCLUSIONS

Conclusions drawn from this study reveal that legal specialists being interviewed are knowledgeable about the contra proferentem rule, demonstrating a clear understanding of its definition and application and are able to provide relevant examples where the contra proferentem rule may be applied, indicating practical experience and familiarity with various contractual contexts where ambiguity can arise.

The interviewees recognize the underlying rationale behind the contra proferentem rule, emphasising its function in protecting the party who did not draft

the contract and promoting fair and precise drafting practices. Legal specialists are cognisant of the fact that any ambiguities are resolved against the party responsible for drafting the contract and acknowledge that the contra proferentem rule can differ across jurisdictions thus the need to consider the specific legal framework and precedents of a particular jurisdiction when applying the rule.

Alternative rules or principles that can be used in contract interpretation instead of contra proferentem, such as the "reasonable expectations" doctrine or the "course of dealing" principle, suggest a broader understanding of contract interpretation methods. Specialists are aware that courts determine whether a contract term is ambiguous by assessing its potential for multiple reasonable interpretations, considering factors such as language, industry customs, and the overall context of the contract.

This research has explored the contra proferentem rule and its significance in resolving disputes in the insurance sector within the context of modern business practices. Through an in-depth analysis of case law, legal principles, and scholarly perspectives, this research has shed light on when, how, and why judges employ this rule to interpret and resolve contractual ambiguities.

In terms of how judges use the contra proferentem rule, it serves as a guiding principle for interpreting contract terms in cases where the language is susceptible to multiple interpretations. The rule requires courts to resolve any uncertainties in favour of the policyholder, promoting a reasonable and consistent approach to contractual interpretation. Through this process, judges seek to honour the reasonable expectations of policyholders and safeguard their interests within the insurance context.

The use of the contra proferentem rule in modern business practice serves multiple purposes. First and foremost, it contributes to protecting the rights of policyholders, who often find themselves in a position of relative disadvantage when negotiating insurance contracts. By interpreting ambiguous terms against the insurer, the rule helps prevent unfair outcomes and ensures that policyholders are not burdened by hidden or unclear provisions.

Furthermore, the contra proferentem rule promotes clarity and precision in insurance contracts. Insurers are incentivised to draft contracts that are clear, accessible, and free from ambiguity. This encourages better communication between the parties and reduces the potential for disputes arising from differing interpretations of contract terms. In an era of increasingly complex insurance products and agreements, the rule's role in facilitating transparency and comprehension is crucial for maintaining trust and confidence in the insurance industry.

While the contra proferentem rule is a valuable tool for resolving insurance disputes, its application requires careful consideration. Courts must strike a balance between protecting policyholders and ensuring the viability and competitiveness of the insurance market. A nuanced and context-specific approach is necessary to avoid unintended consequences that may hinder innovation or create excessive burdens on insurers. Judges must consider the unique circumstances of each case, the evolving nature of the insurance industry, and the broader policy objectives when applying the rule.

By upholding the reasonable expectations of policyholders and fostering transparency, the rule helps maintain a balance of power and fairness in the insurance industry. It is essential for courts to exercise discretion and adapt the application of the rule to the evolving dynamics of modern business practice to ensure its continued effectiveness in achieving just outcomes in insurance disputes.

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