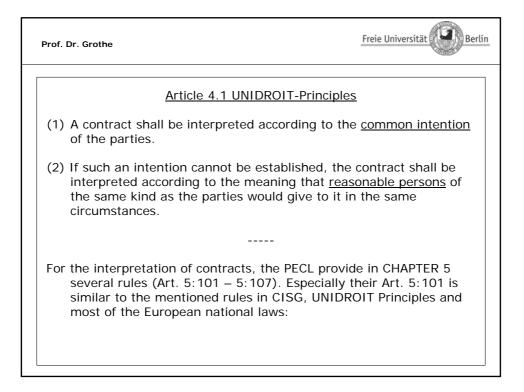
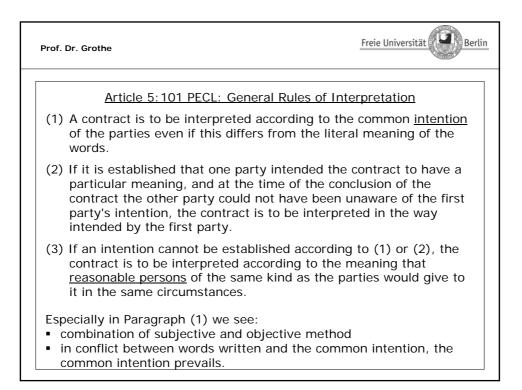


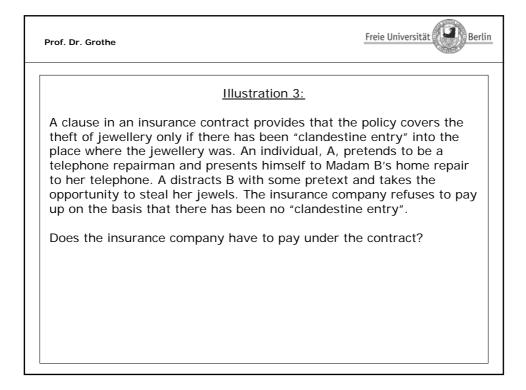
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Article 8 CISG (1) For the purposes of this Convention statements made by and other
conduct of a party are to be interpreted according to his <u>intent</u> where the other party knew or could not have been unaware what that intent was.
(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a <u>reasonable person</u> of the same kind as the other party would have had in the same circumstances.
(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.





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	<u>Illustration 1:</u> The owner of a large building employs a painting firm to repaint the "Exterior window frames". The painters repaint the outsides of the frames of the exterior windows and claim that they have finished the job. The owner claims that the inside surfaces of the frames to exterior windows should also have been painted. It is proved that the owner and the representative of the painting firm had clearly contemplated both surfaces being done. Is the owners' claim right?

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Illustration 2: A, a fur trader, offers to sell B, another fur trader, hare skins at € 1 kilo; this is a typing error for € 1 a piece. In the trade hare skins ar usually sold by the piece and, as there are about six skins a kilo, th stated price is absurdly low. B nonetheless purport to accept.	e
What contract have the two of them agreed?	



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CASE 1:

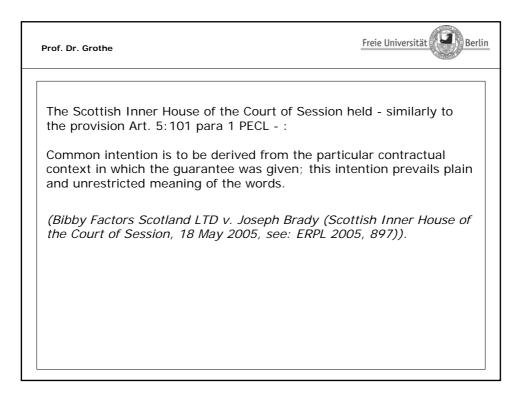
Bibby Factors Ltd. (Bibby) obtained a guarantee from J. Brady (Brady) to secure Bibby's rights arising from a Factoring Agreement between Bibby and another company. The guarantee stated the following:

"B. In consideration of your agreeing to conclude an agreement with the Company ("the Factoring Agreement")... " Brady

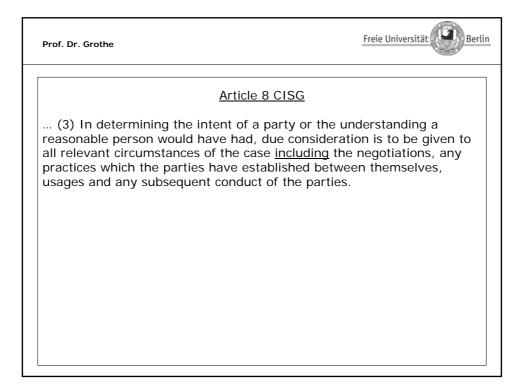
"2. Undertake to pay you (Bibby) on demand all money now or at any time owing to you (Bibby) by the company."

Later Bibby sought to recover from Brady, in terms of the guarantee, all sums which were owed to them by the company. Brady maintained that, on a proper construction of the guarantee, its scope was restricted to sums properly payable by the company to Bibby <u>under the Factoring Agreement</u>, and that he, Brady, was not liable in respect of certain sums advanced by Bibby to the company without any relation to the Factoring Agreement.

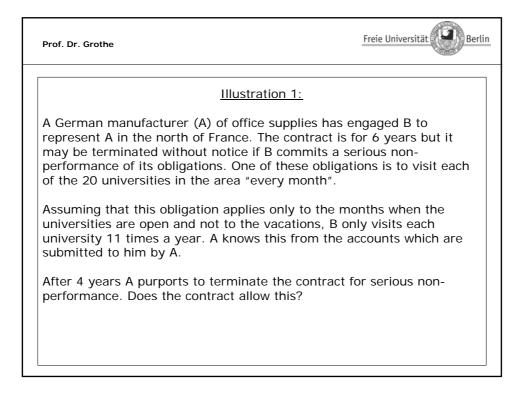
Who is right?



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The unified laws (UNIDROIT Principles, CISG and details concerning the <u>relevant circumstances</u> that interpreting the contract:	
ARTICLE 4.3 UNIDROIT Princip In applying Articles 4.1 and 4.2, regard sha circumstances, including (a) preliminary negotiations between the parties; (b) practices which the parties have established (c) the conduct of the parties subsequent to the contract; (d) the nature and purpose of the contract; (e) the meaning commonly given to terms and e concerned; (f) usages.	Il be had to all the between themselves; conclusion of the



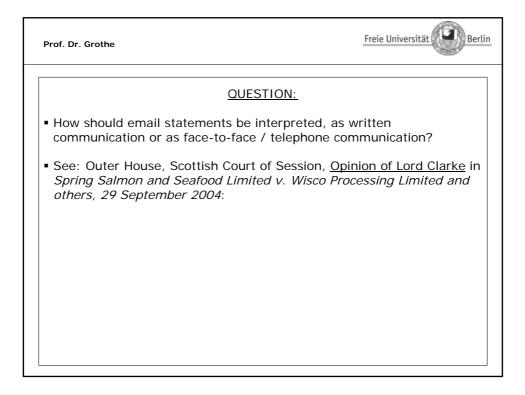
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Article 5: 102 PECL: Relevant Circumstances	
In interpreting the contract, regard shall be had, in particular, to:	
 (a) the circumstances in which it was concluded, including the preliminary negotiations; 	
 (b) the conduct of the parties, even subsequent to the conclusion of the contract; 	
(c) the nature and purpose of the contract;	
(d) the interpretation which has already been given to similar clauses by the parties and the practices they have established between themselves:	
 (e) the meaning commonly given to terms and expressions in the branch of activity concerned and the interpretation similar clauses may already have received ; 	
(f) usages; and	
(g) good faith and fair dealing.	



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Illustration 2: The manager of a large real estate development makes a fixed price contract with a gardening company for the maintenance of the "green spaces". The manager later complains that A has not repaired the boundary wall. Does the contract allow this?
<u>Illustration 3:</u> A has made a franchise contract with B. One of the clauses provides that B shall pay for goods that he receives from A within 10 days. For a three month period B pays within 10 working days. Then A demands payment within 10 days including holidays. Does the contract entitle him to this?

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<u>Illustration 4:</u> A wine merchant from Hamburg buys 2,000 barrels of Beaujolais Villages from a co-operative cellar B. In Beaujolais a barrel contains 216 litres, whereas a Burgundian barrel contains more.
<u>Illustration 5:</u> A film producer A and a distributor B make a distribution contract in which there is a clause providing for payment of a certain sum if the number of exclusive screenings (i.e. screenings only in a single cinema or chain of cinemac) is loss than 200 000. A mount exclusive for the
or chain of cinemas) is less than 300,000. A meant exclusive for the whole of France, B only for the Paris region. According to usages in the French film industry, exclusivity means exclusivity only in the Paris region.

 <u>Situation in the national laws:</u> Similar to these rules: French, Belgian, German, Austrian, Italian, Greek, Portuguese, Spanish, Danish, Swedish and Scottish law (see QUESTION). English and Irish Law are <u>different</u>: no consideration of pre-contractual negotiations and subsequent conduct of the parties (see QUESTIC). 	Prof. Dr. Grothe	Freie Universität
CASE 2).	 Similar to these rules: French, Belgian, German, Greek, Portuguese, Spanish, Danish, Swedish an QUESTION). English and Irish Law are <u>different</u>: no considera 	Austrian, Italian, Id Scottish law (see tion of pre-



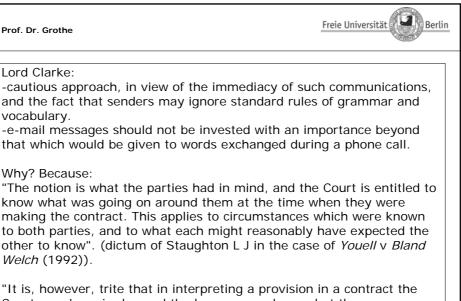
Prof. Dr. Grothe

Lord Clarke:

vocabulary.

Why? Because:

Welch (1992)).



Court may 'enquire beyond the language and see what the circumstances were with reference to which the words were used ..." (dictum of Lord President Rodger in Bank of Scotland v Dunedin Property Investment Company Limited).

