

Application of the Contra Proferentem Rule in Business Contract Interpretation: Lessons Learnt from Singapore Court Decisions

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Abstract

Ambiguity in contractual clauses is a frequent source of disputes and provides the basis for applying the contra proferentem principle under Article 1349 of the Indonesian Civil Code. However, Indonesian contract law lacks an adequate methodological framework to determine when a clause should be classified as ambiguous, resulting in the risk that contra proferentem is applied intuitively and inconsistently. This research seeks to formulate a systematic ambiguity-testing framework as a prerequisite for the application of contra proferentem, by examining and reconstructing judicial practice in Singapore, particularly through an analysis of *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna*. This research employs normative legal research, using a case approach and a conceptual approach. Primary legal materials in the form of Singapore court decisions are analysed alongside secondary materials from scholarly literature and journals to develop a coherent conceptual framework for testing ambiguity. This research finds that ambiguity must be assessed through four sequential stages: (i) examination of the contractual text; (ii) analysis of the relevant factual context; (iii) determination of the parties' objective intention; and (iv) evaluation of whether the remaining meaning is reasonably acceptable within commercial reality. The contra proferentem principle may be applied only as a last resort, where more than one equally rational interpretation remains after these stages have been exhausted. The novelty of this study lies in its formulation of a structured ambiguity-testing framework that can be transplanted into Indonesian contract law practice to enhance legal certainty and strengthen party autonomy.

1. Introduction

A contract constitutes a complex document. Despite its formulation through an extensive negotiation process, the clauses contained within it may not be entirely clear in terms of wording or structure. Certain terms may remain undefined, and the language utilized may contain ambiguities, resulting in various possible interpretations. Consequently, the parties may interpret the contract differently.¹ Ambiguities within contractual language can lead to misunderstandings, disputes, and, in some cases, litigation. Ultimately, it is the responsibility of the judge to interpret the contract and ascertain the intended meaning of the normative provisions contained therein. This interpretation enables the formulation of the legal norms that are embedded within the contractual text.²

Under Indonesian law, Article 1349 of the Indonesian Civil Code ["ICC"] establishes the following principle "In case of doubt, an agreement shall be interpreted to the disadvantage of

¹ Kritagya Upadhyay et al., "Is Your Legal Contract Ambiguous? Convert to a Smart Legal Contract," in *IEEE International Conference on Blockchain (Blockchain)*, 2020, 273–274, <https://doi.org/10.1109/Blockchain50366.2020.00041>.

² Abaron Barak, *Purposive Interpretation in Law* (New Jersey: Princenton University Press, 2005).

the party who requested the stipulation of a certain provision and to the benefit of the party who bound themselves under the agreement." The phrasing "In case of doubt..." indicates that this provision is applicable solely in situations of uncertainty. Therefore, if a contractual clause presents ambiguity, its interpretation should be disadvantage to the party that proposed it.³ The underlying rationale for this provision is that the initiative to introduce a clause usually originates from the party in a stronger negotiating position, who inherently determines the language used. Consequently, when an interpretation of an agreement results in disadvantages for one party, the interpretation must aim to safeguard the interests of the weaker party.⁴

Contract interpretation, grounded in the principle of "disadvantage to the proposing party" as stipulated in Article 1349 of the ICC, reflects an interpretive approach analogous to the *contra proferentem* rule in common law. This principle, articulated as "*verba cartarum fortius accipiuntur contra proferentem*," asserts that the wording of a document should be construed unfavorably toward the party that drafted it. In instances where a contractual provision is ambiguous or susceptible to varied interpretations, it should be interpreted in a manner that is disadvantageous to the party that initially formulated, introduced, or solicited the inclusion of that provision.⁵ In White's view, the law should not endorse such a result. Allowing a party to obtain an advantage that was never previously agreed upon merely because of contractual ambiguity would, in fact, undermine the value of the contract itself. Given that all language inherently contains a degree of indeterminacy, preventing one party from deriving an unbargained-for benefit as a consequence of ambiguity instead serves to promote the integrity and formation of contractual agreements.⁶

In the context of the common law system, the *contra proferentem* principle originally pertained solely to standard-form contracts wherein the parties involved exhibited unequal bargaining power. However, over time, both judges and legal practitioners have refined the application of this principle to align with the evolving conceptual framework of contract law.⁷ The primary focus is no longer on whether a contract is in standard or non-standard form, but rather on the interpretation of ambiguous contractual terms.⁸

On the other side, within the context of civil law systems, as articulated by Ravi, the *contra proferentem* principle originally did not hold a predominant position in Roman Law. Contract interpretation primarily emphasized the parties' intentions, the objectives of the

³ Zam Zam Jamilah et al., "Penafsiran Klausul Perjanjian Kerja Sama Program Pengembangan Operasional Antara PT. Bank X Dengan Universitas Y," *Locus Journal of Academic Literature Review*, vol. 1, no. 5 (2022): 275, <https://doi.org/10.56128/ljoalr.v1i5.75>.

⁴ Hanoch Dagan and Mark P. Gergen, "Autonomy, Implication, and Interpretation," *SSRN*, 2024, 33-34, <https://dx.doi.org/10.2139/ssrn.4928208>.

⁵ Julie Young, "Contra Proferentem Rule: How It Works and Examples," 2024, <https://www.investopedia.com/terms/c/contra-proferentem-rule.asp>.

⁶ Nancy J. White, "The Contract Interpretation Two-Step: Step One, Ambiguity Determination and Step Two, the Battle of the Two Reasonable Meanings," *Journal of Management Policy and Practice*, vol. 21, no. 4 (2020): 11, <http://dx.doi.org/10.33423/jmpp.v21i4.3239>.

⁷ Joanna McCunn, "The Contra Proferentem Rule: Contract Law's Great Survivor," *Oxford Journal of Legal Studies*, vol. 39, no. 3 (2019): 1-2, <https://doi.org/10.1093/ojls/gqz002>.

⁸ Zheng Sophia Tang, *Jurisdiction and Arbitration Agreements in International Commercial Law*, 2nd ed. (United Kingdom: Routledge, 2016), p. 2013.

contract, and its legal nature. The application of the rule of ambiguity occurred only when these interpretative methods failed to provide clarity.

During the Middle Ages, legal scholars began to implement the *contra proferentem* principle to resolve ambiguities in contractual language. This development was largely driven by the prevalent practice of contract drafters prioritizing their own interests at the expense of the other party's concerns. The application of this principle was, however, confined primarily to standard-form contracts.⁹ In theoretical terms, in Indonesia, a civil law jurisdiction, scholars such as J. Satrio¹⁰, Kartini Muljadi¹¹, Isnaeni¹², Hernoko¹³, Susanto¹⁴, Risdiana¹⁵, Zamroni¹⁶, and Gunawan¹⁷ uniformly associate the *contra proferentem* principle with standardized clauses that are designed and unilaterally drafted by one party in standard-form contracts. As a result, the principle is focused on safeguarding the interests of the debtor. This interpretation has prompted Gunawan to advocate for the revitalization of the *contra proferentem* principle within future amendments to Law No. 8 of 1999 on Consumer Protection, suggesting that its applicability be extended to encompass all standardized clauses present in standard-form contracts used by consumers.¹⁸

In practical terms, the effective application of the *contra proferentem* principle necessitates that judges possess clear guidelines regarding the extent of contextual analysis required to address ambiguities and the specific elements of contractual interpretation that must be considered.¹⁹ However, neither Article 1349 ICC nor the prevailing legal doctrine offers a definitive standard for evaluating ambiguity. Consequently, the reasoning employed by courts in determining whether to invoke the *contra proferentem* principle frequently lacks rigor. This deficiency is exemplified in the study conducted by Hafilda et al. concerning the case of Sumito Viansyah v. PT Securindo Packatama Indonesia, adjudicated in Decision No. 2078

⁹ O. N. Ravi, "The Contractual Interpretation Rule - Contra Proferentem: It's Relevance in Modern Law," *CMR University Journal for Contemporary Legal Affairs*, vol. 2, no. 1 (2020): 116, <https://www.cmr.edu.in/school-of-legal-studies/journal/wp-content/uploads/2021/03/Article-4-2.pdf>.

¹⁰ J Satrio, *Hukum Perikatan: Perikatan Yang Lahir Dari Perjanjian* (Bandung: PT Citra Aditya Bakti, 2001), p. 293.

¹¹ Kartini Muljadi and Gunawan Widjaja, *Perikatan Yang Lahir Dari Perjanjian* (Jakarta: RajaGrafindo Persada, 2004), pp. 189-190.

¹² Moch. Isnaeni, *Seberkas Diorama Hukum Kontrak* (Surabaya: Revka Petra Media, 2018), pp. 294-295.

¹³ Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial* (Jakarta: Prenadamedia Group, 2014), p. 236.

¹⁴ Marko Cahya Sutanto, *Prospek Penggunaan CISG Sebagai Model Pembentukan Hukum Kontrak Jual-Beli Internasional* (Bandung: P.T. Alumni, 2019), p. 366.

¹⁵ Yana Risdiana, *Penafsiran Kontrak Komersial Antara Teks Dan Konteks* (Jakarta: Inboeku Media Ilmu, 2016), p. 84.

¹⁶ M Zamroni, *Penafsiran Hakim Dalam Sengketa Kontrak* (Surabaya: Scopindo Media Pustaka, 2020), pp. 28-29.

¹⁷ Johannes Gunawan, "Revitalisasi Prinsip Contra Proferentem Dalam Perlindungan Konsumen," in *Bunga Rampai Hukum Keperdataan*, ed. Yanly Gandawidjaja (Bandung: Nuansa Aulia, 2019), pp. 110-111.

¹⁸ Gunawan.

¹⁹ Strahilevitz, Omri Ben-Shahar, and Lior Jacob, "Interpreting Contracts Via Surveys And Experiments," *New York University Law Review* vol. 92, no. 6 (2017): 1762-1764, <http://dx.doi.org/10.2139/ssrn.2905873>.

K/Pdt/2009. The primary issue in this case was whether the parking agreement in question should be classified as a bailment or a lease. Although the court ultimately assigned liability to the parking operator (creditor), this determination was based on the legal characterization of the relationship as that of a bailee within a contract of goods deposit, rather than on the *contra proferentem* principle.²⁰

A further notable example arises from the research conducted by Sasono and Isharyanto, in their research on the case between PT Bank Mandiri (Persero) Tbk and Ny. Kadima Hamado, Zulkifly Sukarto, S. Pdi, and PT Asuransi Jiwa Bumi Asih Jaya, decided by the Palu High Court in Decision No. 64/PDT/2016/PT PAL, observed that at the District Court level, the judge applied the *contra proferentem* principle due to the ambiguity of Bank Mandiri's banker clause, but they did not provide an explanatory rationale for its adoption of this the *contra proferentem* principle.²¹ Another illustration can be found in Musjab's research on the Balikpapan District Court Decision No. 62/Pdt.G/2020/PN.Bpp, which addressed the case between PT Alatas Marine Services and PT Asuransi Tugu Pratama Indonesia. The court acknowledged the presence of ambiguity in the insurance contract clause but primarily relied on the principle of utmost good faith as a fundamental doctrine in insurance law.²² Lastly, in the context of ambiguity regarding the terms onsite storage and offsite storage, the arbitral tribunal in Decision No. 001/MedArbId-SRb/2021 opted not to apply the *contra proferentem* principle as delineated in Article 1349 of the Indonesian Civil Code. Instead, it referred to Article 1343, which stipulates that "When the terms of an agreement allow for multiple interpretations, priority should be given to ascertaining the intentions of the parties involved..."²³

The foregoing demonstrates the absence of a clear methodological framework governing when and how the *contra proferentem* principle may be applied by judges, particularly in commercial contracts. This deficiency risks forcing judges to apply *contra proferentem* intuitively, thereby creating the potential for inconsistent judicial reasoning. The urgency of legal certainty and the risks arising from uncertainty in business contracts have been highlighted, inter alia, by Al Machrusy, Wahjoeono, and Razaq. In their research on tenants' rights under property lease agreements following bankruptcy, they point out that uncertainty in contract interpretation and inconsistency in judicial decisions have the potential to weaken the protection of parties' rights within contractual relationships and to expose contracting parties to new legal risks that were never contemplated at the time the agreement was

²⁰ Nurul Hafilda, Marlia Sastro, and Elidar Sari, "Interpretasi Hakim Terhadap Penerapan Klausula Baku Berdasarkan Undang-Undang Perlindungan Konsumen (Studi Putusan Mahkamah Agung No.2078/K/PDT/2009)," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, vol. 12, no. 1 (2024): 21, <https://doi.org/10.29103/sjp.v12i1.15674>.

²¹ Wasis Singgih Sasono and Isharyanto, "Prinsip Contra Proferentem Pada Banker Clause (Studi Pada Putusan Pengadilan Tinggi Nomor 64/PDT/2016/ PT PAL)," *Jurnal Hukum Dan Pembangunan Ekonomi*, vol. 11, no. 2 (2023): 191, <https://doi.org/10.20961/hpe.v11i2.66709>.

²² Imam Musjab, "Application of Utmost Good Faith Principles in Resolving Insurance Claim Disputes in Indonesian Courts," *Journal of Law, Politics and Humanities*, vol. 4, no. 4 (2024): 975, <https://doi.org/10.38035/jlph.v4i4>.

²³ Arbitral Tribunal Decision No. 001/MedArbId-SRb/2021, p. 103.

formed.²⁴ Bayuaji, Abadi, and Indriastuty raise the issue that legal certainty in contracts, specifically in the context of bank guarantee agreements, constitutes a fundamental element of legal protection, particularly where the meaning of contractual clauses directly determines the rights and obligations of the parties involved, namely the bank, the guaranteed customer, and the beneficiary of the guarantee.²⁵ These findings demonstrate that contractual ambiguity is not merely a linguistic problem, but directly implicates the core function of contract law as an instrument of legal certainty and risk allocation in business transactions. Accordingly, the need for a systematic framework for testing ambiguity becomes increasingly important, so that the *contra proferentem* principle is not applied intuitively, but only where contractual ambiguity has been objectively established.

As a normative solution, this research aims to address the legal “gap” concerning the framework that governs when and how the *contra proferentem* principle may be applied by judges by examining the application of the *contra proferentem* principle under Singapore law, specifically through case law, with particular attention to judge-made rules governing the application of the *contra proferentem* principle within Singaporean contract law.²⁶ Singaporean law was selected as a reference due to its emphasis on contract interpretation and the implications of contractual clauses as critical legal issues.²⁷ Furthermore, contract law cases in Singapore have had a significant impact not only on contract law itself but also across various areas of the law of obligations.²⁸ These judicial decisions serve both to reaffirm existing general principles and to provide essential guidelines ensuring that contract interpretation remains aligned with established legal standards.²⁹

The High Court decision [2015] SGHC 204 and the subsequent Court of Appeal decision [2016] SGCA 19, examined in this research, constitute the most recent case³⁰ and serve as a landmark ruling and key precedent concerning contractual ambiguity and the application of the *contra proferentem* principle.³¹ Within Singapore’s judicial hierarchy, the High Court [“SGHC”] and the Court of Appeal [“SGCA”] form the second-tier judiciary, collectively

²⁴ Maula Maduri Al Machrusy, Dipo Wahjoeono, and Tayyaba Razaq, “Tenant Rights in Post-Bankruptcy Property Lease Agreements: A Legal Analysis of Curator-Controlled Rental Contracts,” *Jurnal Hukum Bisnis Bonum Commune*, vol. 8, no. 1 (2025): 1, <https://doi.org/10.30996/jhbhc.v8i1.12144>.

²⁵ Rihantoro Bayuaji, Suwarno Abadi, and Dwi Elok Indriastuty, “Ensuring Legal Certainty: The Disbursement of Bank Guarantees,” *Jurnal Hukum Bisnis Bonum Commune*, vol. 7, no. 1 (2024): 22, <https://doi.org/10.30996/jhbhc.v7i1>.

²⁶ Judy Yueh Ling Song and Esther Tan, “Beyond Traditional Contracts: The Legal Recognition and Challenges of Smart Contracts in Malaysia and Singapore,” *Journal of Law, Market & Innovation*, vol. 3, no. 3 (2024): 332, <https://doi.org/1.13135/2785-7867/11334>.

²⁷ Goh Yihan, *The Interpretation and Implication of Contractual Terms in Singapore* (United Kingdom: Oxford University Press, 2020), p. 339.

²⁸ Andrew Phang, “Contract Law,” *Singapore Academy of Law Annual Review of Singapore Cases* Vol. 3, 2002, https://ink.library.smu.edu.sg/sol_research/667, p. 122.

²⁹ Phang.

³⁰ Andrew B.L Phang and Goh Yihan, *Contract Law in Singapore*, 2nd ed. (The Netherlands: Kluwer Law International B.V, 2021).

³¹ Toh Kok Seng and Andrew Tan Jian Ming, “Case Update,” 2018, <https://www.leenlee.com.sg/wp-content/uploads/2018/01/Landlord-Tenant-Dispute-Application-of-Contra-Proferentem-Rule-Adverse-Inference-Right-of-Peaceful-Re-Entry-and-Right-to-Appeal.pdf>.

known as the Supreme Court, with the SGCA serving as the appellate body for SGHC decisions.³² Cases adjudicated at the SGCA and SGHC levels are frequently reported in legal publications, as their judgments are of precedential significance in the common law system, binding lower courts.³³

This study examines the judicial reasoning in determining the existence of ambiguity as a prerequisite for applying the *contra proferentem* principle. This study adopts Andrew Phang's framework of contract interpretation as an analytical lens, which particularly underscores a four-stage ambiguity test. Andrew Phang's four-stage ambiguity test has not only been applied by the courts as precedent in subsequent cases, but has also been recognized as constituting general principles of Singapore contract law.³⁴

The findings of this research offer a new perspective by systematically reconstructing the stages of ambiguity testing and directly linking them to the validity of applying the *contra proferentem* principle. This constitutes the novelty of the study, as prior research has tended to stop at the final outcome of a case without examining judicial reasoning step by step. This novelty provides valuable insights for various stakeholders, including legal drafters (for example, in the preparation of the Draft National Law of Obligations), legal scholars in developing doctrinal approaches to contract interpretation based on the *contra proferentem* principle that may subsequently be relied upon by judges as a source of legal reasoning, and other researchers, for whom the findings of this study open avenues for more comprehensive future research.

2. Methods

This study uses a normative juridical method with a case study approach to court decisions in Singapore that apply the doctrine of *contra proferentem* in the context of business contracts. The normative juridical approach is used to analyze applicable legal principles, both derived from laws and regulations, doctrines, and jurisprudence. Thus, this study not only examines legal texts formally, but also examines their application in judicial practice to understand the extent to which courts interpret ambiguous contractual provisions and relate them to the principles of justice and legal certainty. The main data sources in this study consist of Singapore court rulings, particularly from the Singapore Court of Appeal and the High Court, which explicitly discuss the application of the *contra proferentem* doctrine in business contracts. Secondary data include legal literature, such as textbooks, academic journals, as well as legal commentaries relevant to contract interpretation theory and business law practice in Singapore. The data collection technique was carried out through library research by browsing legal databases such as LawNet, LexisNexis, and the Singapore Academy of Law Journal. Data analysis was carried out qualitatively-descriptively, by interpreting and comparing the judges'

³² Jerrold Soh and Yihan Goh, "How and Why Do Judges Cite Academics? Evidence From The Singapore High Court," *Asian Journal of Comparative Law*, vol. 17, no. 1 (2022): 140, <https://doi.org/10.1017/asjcl.2022.10>.

³³ Kevin Chua, "Contract Smart: Understanding Contract Law in Singapore", 2nd ed. (Singapore: Marshall Cavendish Business, 2022).

³⁴ Justice Andrew Phang, "Recent Developments in Singapore Contract Law," *Journal of The Malaysian Judiciary*, Vol. 100 (2020): 104, https://ink.library.smu.edu.sg/sol_research/4259/; Tan Zeauwei and Melissa Mak, "Singapore," in *The Complex Commercial Litigation Law Review*, ed. Steven M Bierman, vol. 3 (Singapore: Law Business Research Ltd, 2020), p. 260.

reasoning patterns in each case to find the consistency and development of the *contra proferentem* doctrine in Singapore's contract law. Accordingly, the nature of this research may be characterized as not merely descriptive, but prescriptive, as the principles of contract interpretation based on the *contra proferentem* doctrine are elaborated in conjunction with their practical application.³⁵ The results of the analysis are expected to contribute to the academic and legal practice understanding of how the *contra proferentem* doctrine can strengthen substantive fairness in the interpretation of business contracts.

3. Results and Discussion

The decisions of the High Court [2015] SGHC 204 and the Court of Appeal [2016] SGCA 19 may, in broad terms, be summarized as follows: Network for Electronic Transfers (Singapore) Pte Ltd (NETS) had been using “Tandem” servers supplied by Hewlett-Packard Singapore (Sales) Pte Ltd (HP) through its NonStop Enterprise Division (HP’s NED) to support its electronic payment system. When the HP’s NED platform reached the point at which replacement was required, NETS began to consider an alternative, namely replacing it with servers from International Business Machines Corporation (IBM). Given the critical importance of NETS’ electronic payment services to the public, the existing HP system had to remain online until the migration process was completed. Accordingly, during the migration period, NETS continued to use the old Tandem system to meet its business needs. In addition, pursuant to the maintenance contract, HP continued to provide maintenance services to NETS during this period, and NETS continued to pay software licence fees to HP.

During the migration process, IBM ultimately failed to provide a system that was satisfactory to NETS. Corinna Chin Shu Hwa (Corinna) and her team, acting as HP’s sales representatives, eventually succeeded in persuading NETS to cancel the migration to IBM and to purchase a new HP system, culminating in HP entering into a contract with NETS (the NETS Contract). After securing the NETS Contract, Corinna submitted a claim seeking approval of the NETS Contract as “new business” so that she would be entitled to incentive compensation for the acquisition of such “new business.”

This gave rise to a dispute concerning ambiguity: whether the NETS Contract could be classified as “new business,” or whether NETS should instead be categorized as a “win-back” client, namely a client that had left HP but subsequently returned. The SGHC judge, Edmund Leow JC, took the view that the meaning of the term “new business” was ambiguous and interpreted it *contra proferentem* to the detriment of HP as the drafter of the term. By contrast, the SGCA judge, Andrew Phang, held that there was no ambiguity in relation to the issue of “new business,” and accordingly, the *contra proferentem* rule could not be applied.³⁶

3.1. First Ambiguity Test: Examining the Contract Text

According to Andrew Phang, the primary principle of contract interpretation is to examine the text used by the parties. This guideline refers to “Lucky Realty Co Pte Ltd v HSBC

³⁵ Yati Nurhayati, Ifrani, and M.Yasir Said, “Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum,” *Jurnal Penegakan Hukum Indonesia*, vol. 2, no. 1 (2021): 9-10, <https://doi.org/10.51749/jphi.v2i1.14>.

³⁶ Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna [2016] SGCA 19., p. 24.

Trustee (Singapore) Ltd [2016] 1 SLR 1069”, [2].³⁷ In line with this first test, scholars of contract interpretation may begin with a straightforward inquiry: “What would the parties have understood the disputed phrase to mean at the time the contract was concluded?”.³⁸ Accordingly, while both the contractual text and the factual context form integral components of contract interpretation, the text of the agreement remains paramount.³⁹ At this stage, the court examines the language employed in the contract, both with respect to the specific clause in dispute and within the broader linguistic context of the contract as a whole.⁴⁰

As a starting point for contract interpretation, the SGCA judges in *Hewlett-Packard v. Corinna* considered the text of the New Business Metric [NBM] Guidelines, specifically what NBM aimed to achieve. The text of NBM outlines the understanding of “new business” based on the status of the NonStop server purchaser. A purchaser is classified as a “new end-user customer” if the acquisition of the NonStop server constitutes “new business.” If the purchaser is an “existing end-user customer,” the purchase of a NonStop server will only be categorized as “new business” if the server is used for a “new area” or if a “new application” is run on the server.⁴¹ Therefore, the SGCA judge took the view that, [46] in this case there was no ambiguity, and thus the *contra proferentem* rule could not be applied to the facts of the case.⁴²

Based on the first-stage test, a methodological framework is established for assessing whether the *contra proferentem* principle may be applied, as follows:

Table 1. Conceptual Framework of the First-Stage Ambiguity Test

Dimension	Conceptual Content	Doctrinal Implication
Object of the Test	Contractual text as the first and dominant source of meaning	The contract constitutes the <i>primary source of meaning</i>
Key Question	Does the contractual language, viewed objectively, generate more than one reasonable meaning?	Meaning is tested ex ante, not corrected ex post
Method	Linguistic and systematic reading of the contract as a whole, without recourse to external evidence	Prevents isolated or selective reading of contractual terms
Ambiguity Standard	Objective ambiguity assessed from the perspective of a reasonable commercial person	Excludes subjective interpretive disagreements between the parties

³⁷ Andrew B.L. Phang, “Recent Developments in Singapore Contract Law,” *Journal of The Malaysian Judiciary* 100 (2020): 104.

³⁸ Yonathan A. Arbel and David A. Hoffman, “Generative Interpretation,” in *Public Law and Legal Theory Research Paper Series* (Pennsylvania: University of Pennsylvania, 2023), 23–27, Penn Carey Law, University of Pennsylvania, p. 8, <http://dx.doi.org/10.48550/arXiv.2308.06907>.

³⁹ Franz T Schwarz, John A Trenor, and Helmut Ortner, eds., *Contractual Performance and COVID-19: An In-Depth Comparative Law Analysis* (The Netherlands: Kluwer Law International, 2022); Benjamin Wong Yong Quan, “Endeavours Clauses in Singapore Contract Law,” *Endeavours Clauses in Singapore Contract Law*, vol. 31, no. 2 (2019): 1071, <https://search.informit.org/doi/epdf/10.3316/informit.783633943585784>.

⁴⁰ Justyn Jagger and Stephen Cheong, “Interpretation of Contracts under English and Singapore Law,” 2021, <https://sjlaw.com.sg/wp-content/uploads/2021/09/2021.09.30-Commercial-Interpretation-of-Contracts-under-Singapore-and-English-law.pdf>.

⁴¹ SGCA 19, *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* (2016).

⁴² *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* [2016] SGCA 19., p. 24

Type of Ambiguity Examined	Ambiguity arising from the contractual text itself, whether explicit or implicit	Determines whether contextual analysis (Stage Two) may be engaged
Constitutional Function	Serves as the gateway before external evidence and the <i>contra proferentem</i> principle may be invoked	<i>Contra proferentem</i> operates as a last resort, not an interpretive shortcut

Source: Compiled by the author, 2026

This first test gives rise to several important lesson drawn: first, courts must exercise caution in commencing their analysis by identifying ambiguity solely through reference to the disputed words themselves. Even where ambiguity is found, courts are not permitted to immediately resort to the *contra proferentem* principle without first considering the relevant context and employing other available interpretative tools to ascertain the purpose of the contract. The premature application of *contra proferentem* carries the risk of effectively “creating” an ambiguity where none in fact exists.⁴³

Second, the ambiguity assessment at this first stage may be understood as a pre-constitutional prerequisite for the application of the *contra proferentem* principle. In other words, absent a finding of objective ambiguity (namely, latent ambiguity) within the contractual text, the judicial application of *contra proferentem* risks undermining the foundational pillars of contract law, namely, freedom of contract and the principle of *pacta sunt servanda*, as well as legal certainty in commercial relations (in this case, certainty regarding the legal relationship between NETS and HP). This approach reflects the Singapore courts’ insistence that the *contra proferentem* principle cannot operate in the absence of genuine ambiguity (genuine or latent ambiguity), thereby preventing its transformation into a tool of judicial risk redistribution in contractual relations.

Third, the first ambiguity test adopted by the SGHC demonstrates a deliberate effort to strictly confine the use of the *contra proferentem* rule and to ensure that the principle is not applied as an instrument of judicial intervention in contracts, but rather as a safeguard of contractual certainty in commercial transactions. In other words, the *contra proferentem* principle is not intended to function as an ex post corrective mechanism for contractual imbalance.

3.2. Second Ambiguity Test: Examining the Contract Text Alongside Relevant Context

According to Andrew Phang, in addition to examining the contract text, an assessment of the relevant context must also be conducted. Such an evaluation may only be conducted if the contextual elements relevant to the matter at hand are not only explicitly clear and unmistakably evident but also fully recognized, understood, and acknowledged by both parties involved in the agreement. This guideline refers to Zurich Insurance (Singapore) Pte Ltd v. B-Gold Interior Design & Construction Pte Ltd [2008] 3 SLR (R) 1029, [125], [128], and [129].⁴⁴

⁴³ Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna [2016] SGCA 19, p. 27-28

⁴⁴ Phang, “Recent Developments in Singapore Contract Law,” 2020.

The decision in Zurich Insurance constitutes a milestone in the acceptance and recognition by Singapore courts of the use of extrinsic evidence or the factual matrix for contextual contract interpretation. The underlying rationale is that, even where contractual language appears clear, its legal effect does not flow solely from the words of the contract.⁴⁵ Through contextual interpretation, the normative meaning embedded in the text can be identified, allowing the substance of the norm that is “captured” within the text to be properly contextualized.⁴⁶ This, in turn, assists the court in understanding contractual language as it would be understood by a “reasonable person”.⁴⁷ With respect to the relationship between text and context, Yihan observes that the courts have “...emphasized the interaction between both text and context in every case, even as the text ought always to be the first port of call for the court. Thus, what might at first glance appear to be plain and unambiguous text may not in fact be so, once the court has examined the relevant context.”⁴⁸ Nevertheless, it must be borne in mind that an assessment based on the specific context existing at the time the contract was concluded may only be undertaken after the first test on the contractual text has been conducted.⁴⁹ Likewise, extrinsic evidence may only be used where the contractual text exhibits latent ambiguity.⁵⁰ The factual matrix includes the nature of the relevant industry or market; practices applicable within the scope of the contract; the transactional history between the parties; the parties’ relative knowledge and experience; the legal background, including statutory provisions; the origin of the contract; the parties’ particular problems and needs; related contracts or subcontracts; and, where applicable, the commercial purpose underlying the contract.⁵¹

In the outcome of the first ambiguity test, the text of the NBM setting out the understanding of “new business” did not disclose any patent ambiguity. To determine whether latent ambiguity existed, the SGCA judge in *Hewlett-Packard v Corinna* examined the contractual text (the phrase “new business”) together with the relevant context, namely the “commercial purpose underlying the contract,” as reflected in the NBM Guidelines that set out the objectives to be achieved by the NBM. This factual matrix represents the parties’

⁴⁵ Gregory Klass, “Contracts, Constitutions, and Getting the Interpretation-Construction Distinction Right,” *The Georgetown Journal of Law and Public Policy*, vol. 18, no. 13 (2020): 19, <https://www.law.georgetown.edu/public-policy-journal/wp-content/uploads/sites/23/2020/04/18-1-Klass.pdf>.

⁴⁶ Barak, *Purposive Interpretation in Law*, p. 26.

⁴⁷ Fajar Sugianto, Velliana Tanaya, and Tomy Michael, “A Brief Comparative Study Between Indonesian Contract Law Under Indonesian Civil Code and Singapore Contract Law,” *JITAL: Journal of International Trade, Logistics and Law*, vol. 9, no. 2 (2023): 140, <https://www.jital.org/index.php/jital/article/view/407>.

⁴⁸ Yihan Goh, “The Interpretation and Implication of Contractual Terms in Singapore,” *Studies in the Contract Laws of Asia III*, 2020, p. 350.

⁴⁹ Nicholas A Tiverios, “Accuracy, Utility and Gateways: Justifications(?) For Controlling the Use of Surrounding Circumstances in Contractual Interpretation,” *Sydney Law Review*, vol. 43, no. 4 (2021): 548, <https://openjournals.library.sydney.edu.au/SLR/article/view/19566>.

⁵⁰ Goh, “The Interpretation and Implication of Contractual Terms in Singapore,” pp. 339-341

⁵¹ Helen Winkelmann, Susan Glazebrook, and Ellen France, “Contractual Interpretation,” *Victoria University of Wellington Law Review*, vol. 51, no. 3 (2020): 478-79, <https://doi.org/10.26686/vuwlr.v51i3.6612>.

expectations and the commercial purpose of the contract. The use of the text itself as context in conducting contextual interpretation, as noted by Wielsch, is indeed permissible.⁵²

Referring to *Hewlett-Packard v Corinna*, [39] the business of HP’s NonStop Enterprise Division [“HP’s NED”] had historically been derived predominantly from existing customers through “technology refreshes” and/or “up-sells,” rather than from new customers. Accordingly, the NBM was designed to encourage sales personnel to “sell to new customers and seed new customer accounts” and to “expand the footprint of the NonStop.” In other words, the objective of the NBM was to secure revenue streams from sources that were completely new or fresh, rather than merely from “technology refreshes” and “up-sells.”⁵³ Based on this objective, [43] HP provided incentives to sales personnel to seek “new business” by selling HP NonStop servers to businesses that had never used HP servers at all, and by encouraging sales personnel to persuade businesses that were already using HP servers in certain applications or operational areas to purchase HP NonStop servers for other applications or areas that were still using non-HP servers.⁵⁴ Based on its examination of the commercial purpose of the NBM, the SGCA judge took the view [58] that the phrase “new end-user customer” was objectively unambiguous.⁵⁵

Another general context investigated by the SGCA judges was the contractual practices applied within the contract’s scope. According to the NBM Guidelines, the concept of “new end-user customer” referred to a business that had never used an HP server. However, in this case, NETS was an existing HP server user, meaning it did not qualify as a “new end-user customer.” Similarly, it did not meet the criteria for “new application and/or new area for the existing end-user customer” because this condition is only satisfied if the application results in an expansion of HP’s NED footprint. The facts of this case showed that the applications running on the new NonStop server were identical to those on the old Tandem server. Based on these facts and the general context, the SGCA judges concluded that the NETS Contract was merely a “technology refresh” since the new NonStop Server was used in the same area as the old Tandem server. Moreover, the newly acquired software did not introduce any new features, implying that HP’s NED “footprint” remained unchanged.⁵⁶ Based on the two stages of contract interpretation – namely, the examination of the text and the general context – the SGCA judge found no latent ambiguity in the term “new business.” Accordingly, the term was not ambiguous, and the *contra proferentem* principle could not be applied.

Based on the second-stage test, a methodological framework is derived for assessing whether the *contra proferentem* principle may be applied, as follows:

Table 2. Conceptual Framework of the Second-Stage Ambiguity Test

Dimension	Conceptual Content	Function within the Interpretive Framework
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⁵² Dan Wielsch, “Contract Interpretation Regimes,” *The Modern Law Review*, vol. 81, no. 6 (2018): 959, <https://doi.org/10.1111/1468-2230.12375>.

⁵³ *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* [2016] SGCA 19, p. 19.

⁵⁴ *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* [2016] SGCA 19, p. 22.

⁵⁵ *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* [2016] SGCA 19, p. 33.

⁵⁶ SGCA 19, *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna*, 2016.

Object of the Test	Contractual text examined together with the relevant factual context	Prevents erroneous conclusions derived from purely literal interpretation
Type of Context	Only context that is clear, objective, and known to both parties at the time of contract formation	Prevents unilateral or ex post reconstruction of context
Sources of Context	Factual matrix (<i>Zurich Insurance</i>): industry or market conditions, business practices, relationship between the parties, commercial purpose of the contract, and transaction structure, to the extent admissible	Provides objective meaning to the contractual text while preserving textual primacy
Type of Ambiguity Examined	Used solely to detect latent ambiguity	Not intended to create ambiguity from text that can otherwise be understood in a reasonable manner
Standard of Assessment	Perspective of a reasonable commercial person	Ensures objective, not subjective, contextual interpretation
Doctrinal Function	Tests whether contractual language that appears clear becomes ambiguous when applied to the commercial reality	Filters out artificial or contrived claims of ambiguity

Source: Compiled by the author, 2026

The lessons drawn from this second test may be summarized as follows. First, the contractual text remains a crucial element that constrains the ultimate meaning adopted by the court. However, it is impossible to determine whether contractual language is clear or ambiguous without examining its context. Extrinsic evidence is therefore required at the initial stage to assess whether the contractual text is clear or ambiguous. At this stage, the court must grapple with the contractual context before resorting to the *contra proferentem* principle. Accordingly, the court's primary task is always to interpret the contract in accordance with established principles of contract interpretation, including consideration of the surrounding context and the purpose of the agreement.

Second, the lesson from the second stage demonstrates that extrinsic evidence may only be used in relation to latent ambiguity, and not patent ambiguity. Latent ambiguity refers to ambiguity that is not apparent on the face of the contractual document, but arises from external factors and becomes apparent when the relevant term is applied. By contrast, patent ambiguity is ambiguity that is evident on the face of the contract itself, arising directly from the language used.⁵⁷ Third, in this case, the SGCA judge's use of the NBM Guidelines as relevant context was not based solely on considerations of business commonsense. Rather, it functioned as a tool to test the internal consistency of the parties' competing interpretations of the meaning of "new end-user customer" and the structure of sales incentives, as well as to assess whether alternative interpretations would undermine the design of the sales incentive structure. In this

⁵⁷ Patrick Butler, *Key Case Law Rules for Government Contract Formation* (United States of America: Management Concepts Press, 2014), p. 1982.

sense, context did not operate as a means of policy justification, but as a rational framework for evaluating the coherence of the sales incentive policy.

Fourth, in determining the existence of ambiguity, the SGCA applied an objective standard, assessing ambiguity from the perspective of a person with reasonable business knowledge, rather than the subjective perceptions of either party. Consequently, not every disagreement between the parties as to the meaning of a contractual clause constitutes ambiguity. Contextual interpretation is thus not a tool for “creating” ambiguity, but a means of eliminating ambiguity that may arise from a purely textual reading. In this respect, contextual interpretation in Singapore operates defensively in the interest of contractual certainty, rather than expansively in pursuit of judicial discretion.

3.3. Test for the Existence of the Third Ambiguity: Ensuring the Objective Intent of the Parties

As the third principle of contract interpretation, Andrew Phang states that, by taking the relevant context into account, the court may ascertain the parties’ objective intention by interpreting the expressions used by the parties within their proper context. This guideline refers to *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [72] and *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [30].⁵⁸

What is meant by “objective intention” is the intention of a “reasonable person,” namely a person who possesses the background knowledge that would reasonably have been available to the parties at the time the contract was formed.⁵⁹ Singapore courts do not take into account the subjective intentions of the individual parties who entered into the contract in identifying a reasonable meaning.⁶⁰ Instead, the courts interpret the contract by adopting a broadly material-based approach that takes into consideration the background of the contract.⁶¹

In *Hewlett-Packard v. Corinna*, the SGCA judge determined the parties' objective intent by considering specific facts and context. These included NETS' decision to sign a split contract, indicating its intention to transition away from HP. However, despite this, NETS maintained its contractual relationship with HP and continued using HP servers, ultimately never formally terminating its agreement with HP. The fact that there was a motive to migrate and switch to IBM servers can be disregarded because it never materialized. Instead, what

⁵⁸ Phang, “Recent Developments in Singapore Contract Law,” 2020.

⁵⁹ Lisang Nyathi, “A Comparative Analysis of Contract Law Interpretation Approaches in English and French Law: A Focus on Business-to-Business (B2B) and Business-to-Consumer (B2C) Transactions,” *SSRN Electronic Journal*, 2023: 4, <https://doi.org/10.2139/ssrn.4676467>.

⁶⁰ Jagger and Cheong, “Interpretation of Contracts under English and Singapore Law,” (on-line) <https://srlaw.com.sg/wp-content/uploads/2021/09/2021.09.30-Commercial-Interpretation-of-Contracts-under-Singapore-and-English-law.pdf> (30 September 2021): 1.

⁶¹ Geerte Heslen and Robert Hardy, “Contract Interpretation – Interpretive Criteria,” in *Economic Analysis of the DCFR: The Work of the Economic Impact Group within the CoPECL Network of Excellence* (Munich: European law Publishers GmbH, 2010), 91; (Munich: European law Publishers GmbH, 2010), p. 91; Benjamin Wong Yong Quan, “Endeavours Clauses in Singapore Contract Law”, *Singapore Academy of Law Journal*, Vol. 31 No. 2, 2019: 1070. <https://search.informit.org/doi/epdf/10.3316/informit.783633943585784> .

happened was that NETS remained in a contractual relationship with HP, which continued at the time the NETS Contract was signed.⁶²

Another fact and context considered by the SGCA judge is that, in everyday understanding, by splitting the contract with IBM, NETS was close to parting ways with HP. However, at the same time, NETS also had another foot still inside HP's door, and most importantly, the truth is, NETS never fully stepped away from HP. Only in such a situation could NETS be said to have "lost" as an HP customer, which did not occur in this case. Based on this fact, the SGCA judge held that, objectively, for all intents and purposes, NETS continued to use HP servers, and the contractual relationship between NETS and HP remained as it was.⁶³ Given these specific contextual facts, it is evident that NETS was retained customer who was ultimately convinced to stay with HP. In other words, NETS was never "lost" as an HP client. Consequently, there was no uncertainty, and the *contra proferentem* rule was inapplicable.

Based on the third-stage test, a methodological framework is derived for assessing whether the *contra proferentem* principle may be applied, as follows:

Table 3. Conceptual Framework of the Third-Stage Ambiguity Test

Dimension	Conceptual Content	Function within the Interpretive Framework
Object of the Test	Contractual text, relevant context, and facts that externally manifest the contractual relationship between the parties	Filters out subjective intentions and post-contractual speculation
What Is Sought	The objective intention of the parties, as understood by a rational observer	Excludes personal motives or unilateral expectations
Standard of Assessment	Perspective of a reasonable commercial person / reasonable person in the position of the parties (choose one and apply consistently)	Ensures objective interpretation
Sources of Facts	Parties' conduct, transaction structure, and continuity of the contractual relationship	Tests meaning as reflected in actual practice
Excluded Considerations	Hidden motives, failed plans, internal intentions, and ex post rationalisations	Prevents post-contractual manipulation
Doctrinal Function	Determines whether, after textual and contextual interpretation, any ambiguity remains irreducible	Serves as the final filter before the application of <i>contra proferentem</i>

Source: Compiled by the author, 2026

The lessons derived from the "objective intention" test are as follows. First, this third test illustrates how courts understand "objective intention," namely that internal motives, undisclosed intentions, or unrealized plans (in this case, NETS' intention to leave HP) have no legal significance in determining objective intention. What is legally relevant is only the intention that is externally manifested through the parties' conduct (the fact that NETS never

⁶² SGCA 19, Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna (2016).

⁶³ SGCA 19.

terminated its contractual relationship with HP) and the nature or essence of the contract itself (NETS' continuous use of HP servers).

Second, for the *contra proferentem* rule to be applied, there must be uncertainty (ambiguity) in the contractual term or provision itself. The series of inquiries under the "objective intention" test at this stage does not operate as a standalone examination, but rather as an integrative function that synthesizes the findings of textual and contextual analysis, enabling the court to reconfirm whether ambiguity truly exists. This approach requires the court to consider the contract as a whole, the words chosen by the parties, and the circumstances in which those words were used, and to assess what should reasonably be regarded as the parties' rational intention in using such words in a contract formed under particular conditions, including in relation to events that were in fact unforeseen (unforeseen events). Accordingly, the difficulty and length of time required to ascertain facts relating to "objective intention" cannot be construed as the existence of uncertainty (ambiguity) in the contractual term itself. Courts are not permitted to identify or "create" ambiguity where none previously existed in the contractual terms or provisions. Therefore, to apply the *contra proferentem* principle, the ambiguity in the contract must be irresolvable, not merely difficult to resolve. For this reason, this third test functions as a final safeguard before the *contra proferentem* principle may be taken into consideration.

Third, the fact that the contract drafter, at the time of drafting, was unable to anticipate the occurrence of circumstances that were initially unforeseen does not mean that a contractual term thereby becomes ambiguous. In drafting a contract, the drafter can't foresee every eventuality. Accordingly, the mere occurrence of circumstances that were not anticipated by the drafter does not render a contractual term ambiguous. Rather, the determination ultimately depends on the court's objective interpretation of the term in question. In his summary of *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* [2016] SGCA 19, Wong notes that post-contractual conduct must be examined with great care and caution. Although Singapore courts do not rigidly exclude post-contractual conduct as evidence capable of assisting in identifying relevant context, such evidence is not positively endorsed. This is based on the concern that post-contractual conduct tends to divert courts from objective interpretation and, instead, introduces greater subjectivity and uncertainty.⁶⁴

Fourth, this third test functions as a final safeguard before the *contra proferentem* principle may be considered. Judges must undertake an objective interpretation to ascertain what the parties intended, grounded in the express contractual language, the internal and external context of the contract, and, more broadly, the purpose of the contract. It is possible [53] that, after the court has carried out an objective interpretation of the disputed term, it may conclude that the term is ambiguous as to whether it governs an unforeseen event. In such circumstances, the application of the *contra proferentem* rule may then be justified.⁶⁵

⁶⁴ Ronald J J Wong, "Case Update: Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna [2016] SGCA 19 - Construction of Contract and Contra Proferentem," January 28, 2016, <https://www.ronaldjjwong.com/2016/03/29/case-update-hewlett-packard-singapore-sales-pte-ltd-v-chin-shu-hwa-corinna-2016-sgca-19-construction-of-contract-and-contra-proferentem/>.

⁶⁵ Wong.

3.4. Test for the Fourth Ambiguity: The Meaning Given to A Contract Clause Must Be One That Can Be Reasonably Accepted by the Parties

As the fourth principle of contract interpretation, Andrew Phang states that the meaning given to a contract clause must be one that can be reasonably accepted by the parties. This guideline refers to *Yap Son On v. Ding Pei Zhen* [2017] 4 SLR 193 at [72]) 1 SLR 219, [31].⁶⁶

To determine an objective meaning that can be reasonably accepted by the parties, the SGCA judge once again put forward the general context, namely the background and purpose of NBM. From the perspective of NBM's objective, a "new end-user customer" refers to a business that has never utilized HP servers before. Meanwhile, the term "new application and/or new area for the existing end-user customer" applies to a business that already employs HP servers but can be encouraged to acquire additional HP servers for specific applications or operational areas that were previously running on non-HP servers.⁶⁷ In this case, NETS was clearly an existing HP server user and, therefore, could not be considered a "new end-user customer."

The SGCA judge also interpreted the "meaning that can be reasonably accepted by the parties" by considering the extended duration of the migration period and the fact that, throughout this time, NETS continued utilizing HP servers. The length of the migration period provided an opportunity for sales representatives to persuade NETS to continue using HP servers. Notwithstanding the fact that NETS had entered into a contract with IBM, during the migration period NETS was, from the perspective of the sales representative, regarded as an HP customer with the potential to be retained. For that reason, it was reasonable for Corinna, as the sales representative, to seek to retain that customer. Viewing NETS as her "business expectation," Corinna continued to persuade NETS, even after it had signed a contract with IBM, to remain an HP customer. Only a few weeks following NETS' strategic decision to proceed with the acquisition of IBM servers, well before any technical difficulties, operational complications, or unforeseen challenges related to NETS' migration process had even begun to materialize, Corinna, along with her dedicated team, had proactively initiated and formulated comprehensive strategies aimed at dissuading NETS from transitioning to IBM's server infrastructure. Instead, their concerted efforts were directed toward influencing and persuading NETS to reconsider their decision and opt for the procurement of newly developed NonStop hardware systems offered by HP as a preferable alternative.⁶⁸

Based on the entirety of the facts and context at each stage of the ambiguity test in contract interpretation, in their ruling, the SGCA judge affirmed that the phrase "new end-user customer" had an unambiguous meaning. In law, in the absence of termination, novation, or substitution of the contractual relationship, a customer's legal status objectively continues. Consequently, an interpretation characterizing NETS as a "new end-user customer" cannot be accepted. Likewise, when this understanding is applied to the facts and context, NETS does not fall within the criteria of "new business," as NETS was an existing customer that had already been using HP servers. Accordingly, in contrast to the SGHC judge's view, which held that the phrase "new end-user customer" was unclear and ambiguous and therefore applied

⁶⁶ Phang, "Recent Developments in Singapore Contract Law," 2020.

⁶⁷ SGCA 19, *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna*, 2016.

⁶⁸ SGCA 19.

the *contra proferentem* doctrine, the SGCA judge took the position that, in this case, there was no ambiguity, and thus the *contra proferentem* rule could not be applied to the facts of the case.⁶⁹

Based on the fourth-stage test, a methodological framework is derived for assessing whether the *contra proferentem* principle may be applied, as follows:

Table 4. Conceptual Framework of the Fourth-Stage Ambiguity Test

Dimension	Conceptual Content	Function within the Interpretive Framework
Object of the Test	The remaining meaning(s) after integrating the contractual text, relevant context, and the parties' objective intention	Final rationality check
Standard	Contractual reality and business practices at the time of contract formation	Preserves business rationality (not an ex post correction)
Nature of the Test	Factual-objective (<i>business reasonableness test</i>)	Not a matter of judicial policy
What Is Examined	Whether the meaning can be accepted by a reasonable business person in the position of the parties at the time of contracting	Prevents absurd or implausible meanings
What Is Filtered Out	Meanings that may be linguistically possible but commercially unreasonable	Elimination of extreme outcomes
Doctrinal Function	Determines whether two or more remaining meanings are equally rational and commercially reasonable	Determines whether <i>contra proferentem</i> may be applied

Source: Compiled by the author, 2026

The lessons derived from this test may be summarized as follows. First, the phrase “a meaning that can be reasonably accepted by the parties” in this fourth test is not merely a factual description, but constitutes a normative legal standard. “Reasonable acceptance” is an objective test, rather than a psychological inquiry into what the parties actually believed or desired. The meaning in question must be one that would be acceptable to a reasonable business actor in the position of the parties at the time the contract was concluded.

Second, this test operates as a final rationality check. Even where a particular meaning remains linguistically possible, it must be rejected if it would not have been rationally acceptable to the parties at the time of contract formation. Accordingly, the *contra proferentem* principle cannot be used to impose a meaning that contradicts business rationality; it may only be applied where more than one meaning remains and each is equally rational.

Finally, the entire workflow of ambiguity control as a gateway to the application of the *contra proferentem* principle is presented in a unified schematic structure referred to as the “Four-Stage Ambiguity Control Framework,” as follows:

Table 5. Four-Stage Ambiguity Control Framework

Stage	Focus of the Test	Key Question	Elements Examined	Standard of Assessment	Function within the System	Implication for <i>Contra</i>
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⁶⁹ SGCA 19.

						<i>Proferentem</i>
Stage One: Textual Analysis	Contractual language	Does the contractual language, read as a whole, objectively generate more than one reasonable meaning?	Words, phrases, sentence structure, and inter-clause relations within the contract	Reasonable commercial person	Filters ambiguity originating strictly from the text	If no objective ambiguity → <i>contra proferentem</i> is excluded
Stage Two: Text + Relevant Context	Text within admissible factual context	Does language that appears clear become ambiguous when applied to the relevant factual matrix known at the time of contracting?	Industry practice, commercial purpose, transaction structure, parties' relationship (<i>Zurich Insurance</i> factual matrix)	Reasonable commercial person	Detects latent ambiguity and eliminates artificial ambiguity	If no latent ambiguity → <i>contra proferentem</i> remains unavailable
Stage Three: Objective Intention of the Parties	External manifestation of intent	Taking text and context together, what meaning would objectively be attributed to the parties' agreement?	Parties' conduct, continuity of contractual relations, structure of the transaction	Reasonable commercial person in the position of the parties	Identifies whether a dominant objective meaning emerges	If a single objective meaning exists → <i>contra proferentem</i> is barred
Stage Four: Business Reasonableness	Commercial rationality of remaining meanings	Do two or more remaining meanings remain equally	Plausibility of meanings in contractual reality	Factual-objective (<i>business reasonableness test</i>)	Final rationality filter before judicial	<i>Contra proferentem</i> applies only if ≥2 meanings remain

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Source: Compiled by the author, 2026

4. Conclusions

This research affirms that the contra proferentem principle may only be applied where contractual ambiguity is genuinely established as a matter of law through a systematic testing process. In Singapore judicial practice, ambiguity is not determined by the parties’ subjective differences in interpretation but is assessed through a layered four-stage interpretative process, namely: reading the contractual text, analyzing the relevant factual context, determining the parties’ objective intention, and testing whether any remaining meaning remains factually and commercially reasonable.

An analysis of *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* demonstrates that the contra proferentem principle operates strictly as a last-resort mechanism. Where the full interpretative process yields a single meaning that is objectively and rationally acceptable within the parties’ commercial relationship, no ambiguity exists in the legal sense, even if alternative interpretations remain linguistically possible. Accordingly, the Singapore approach sets a high threshold for ambiguity in order to protect legal certainty and party autonomy, and to prevent contra proferentem from being used as an ex post instrument for redistributing contractual risk.

In the context of Indonesian law, these findings address a methodological gap in the application of Article 1349 ICC, which requires the existence of “doubt” without providing criteria for its assessment. This research therefore recommends that Indonesian courts adopt a structured ambiguity-testing framework similar to that developed in Singapore law, by requiring proof—step by step—that ambiguity persists after textual, contextual, and objective interpretation, and that more than one equally reasonable meaning remains. Such an approach would not only prevent the premature application of contra proferentem, but would also strengthen legal certainty in commercial contracts and merits consideration in the future formulation of the National Law of Obligations Bill.

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