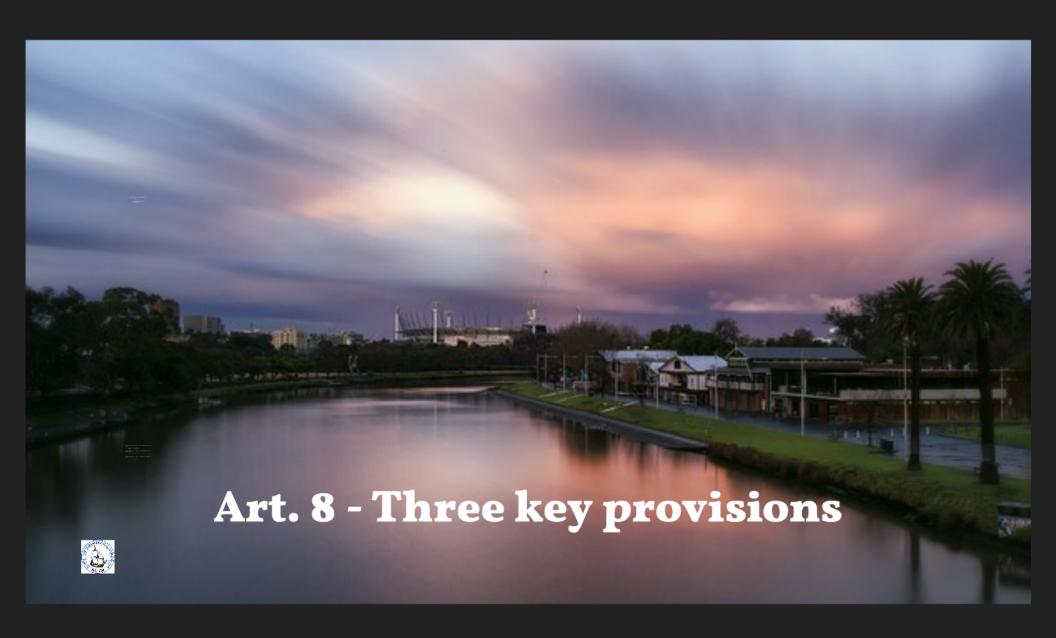


I. Art. 8 - key article governing the intent of the parties

II. Art. 9 - additional article to consider in addition to Art. 8



Art. 8.1 - actual subjective intent of one party over the differing intent of the other party

narrow application in unique circumstances

Art. 8.2 - gives effect to the communication of each party as objectively viewed by a reasonable person

broader application and most typical circumstances

Art. 8.3 - provides for a broad scope of relevant circumstances to consider and apply Arts. 8.1 and 8.2

Article 8 only applies when the parties' actual subjective intent differs

Starting point: assumption that the subjective intent of A differs from that of B

Art. 8.I gives effect to A's intent over B where B knew or could not have been unaware of A's intent (and vise versa)

Note: the language in Art. 8.1 imposes a higher standard than the language from Art. 8.2

B either *knew* or *had to know* as to A's intent

Different views as to what the standard entails

e.g., before the eyes of one who can see, gross negligence standard or estoppel

Art. 8.1 is an exceptional rule

Art. 8.2 gives effect to each communication as objectively viewed by a reasonable person in a position of the recipient the communication

Starting point: what would a reasonable person in the shoes of the parties understand as to their intent

Applies whenever Art. 8.1 *does not* answer the question

Note: Art. 8.1 is the exception, Art. 8.2 is the rule.

Art. 8.3: all relevant circumstances to be considered in applying Arts. 8.1 and 8.2

- contract negotiations,
- established practices (Art. 9.1),
- usages (Arts. 9.1 and 9.2), and
- subsequent conduct in performing the contract

Rule: Art. 8.3 does not preclude any evidence as to the intent

Parties may use *merger clauses* if they want to preclude any evidence outside of their writing agreement

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