

Faithfulness of the Interpreter

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An interpreter, whose mission is to convey a certain message, is a mediator between the message and its addressees. Such a mission involves intricate questions which have been thoroughly examined in the literary context: what are the relations between the author, the message (the text) and the interpreter? Should the text be the focal point of interpretation or, rather, the author? Is the text a separate entity and should it therefore be independently interpreted? How should the function of interpretation be regarded, as a mere shadow of the original text or a new creative work?

These questions also apply within the context of law, and will be examined here mainly through the framework of business-contract interpretation. The three points of the interpretive triangle – text (the contract), authors (the parties), and interpreter (the judge) – will be conceptually exposed, and their interrelations discussed. Special scrutiny will be dedicated to Aprofim, the most important, albeit controversial, Israeli case of contract interpretation. The view advocated in the article is that this case unjustifiably changed the basic rule of contract interpretation as provided in section 25(a) of the General Contract Law (before the 2011 amendment). The ruling deviated from the appropriate interpretive mandate given to the court by imposing upon the contract, despite the lack of any defect in the parties' will, a punitive remedial clause for the benefit of the state, which had drafted the contract. This was done by virtue of the principle of good faith. The case was later approved by the court, but drew fierce criticism. Consequently, the Israeli Knesset initiated a bill towards the cancellation or change of the ruling.

The question whether the final legislation has accomplished its goal is dealt with through the tripartite interpretive triangle – the text (the legislation), its author (the parliament), and its interpreter (the court). The article points at the paradox resulting from the contrast between the legislator's intention to facilitate a change and the obscure wording of the legislative text. Yet a faithful interpretation leads to the conclusion that the rule of Aprofim has indeed been changed. The article concludes with a short remark on the faithfulness of the interpreter as a trustee of the author, and a note of appreciation to Justice Mazza for faithfully performing his mission.