
Contract Content and Meaning

1. If the owner's spouse disapproves of the design and the owner refuses to allow the landscape architect to proceed with the work, is evidence of the oral agreement admissible in the landscape architect's action against the owner for breach of contract?

Shortly before the agreement was signed, the owner and landscape architect orally agreed that the writing would not become binding on either party unless the owner's spouse should approve the landscaping design. A property owner and a landscape architect signed a detailed writing in which the landscape architect agreed to landscape the owner's residential property in accordance with a design prepared by the landscape architect and incorporated in the writing. The owner agreed to pay $10,000 for the work upon its completion. The owner's spouse was not a party to the agreement and had no ownership interest in the premises.

- Yes, because the oral agreement required approval by a third party
- **Yes, because the evidence shows that the writing was intended to take effect only if the approval occurred**
- No, because the parol evidence rule bars evidence of a prior oral agreement even if the latter is consistent with the terms of a partial integration
- No, because the prior oral agreement contradicted the writing by making the parties' duties conditional

Note:
The parol evidence rule bars evidence of prior or contemporaneous agreements that contradict a written agreement. Essentially, the law operates to exclude evidence intended to show that the parties had agreed to something different from what was included in the written agreement.

If a court determines that a contract contains all of the terms regarding the parties' agreement, the parol evidence rule bars evidence of all prior or contemporaneous evidence that contradicts or modifies the written agreement. Courts often look to whether there is a merger clause as evidence that a written agreement is intended to be a completely integrated contract. Merger clauses, however, are not conclusive evidence that a writing is completely integrated. If a written agreement contains only partial information, or certain terms are missing, courts will allow certain extrinsic evidence to supplement or explain terms and provisions of the written agreement. The parol evidence rule, however, will still bar outside evidence of prior or contemporaneous agreements that contradict the written contract. In short, if a contract is partially integrated, prior consistent additional terms may be shown.

There are exceptions to the parol evidence rule when evidence is offered for the following purposes: to aid in the interpretation of existing terms; to show that a writing is or is not an integration; to establish that an integration is complete or partial; to establish subsequent agreements or modifications; to show that the terms were the product of illegality, fraud, duress, or mistake; and to show a written agreement is contingent on a condition precedent. When parties orally agree that a written contract is contingent on a condition precedent (the occurrence of an event or some other condition), the oral agreement may be introduced as evidence of the condition.

B is correct. Here, evidence of the owner and landscaper's oral agreement that the writing would not become binding on either party unless the owner's spouse should approve the landscaping design, is a condition precedent. As such, it falls within the exception to the parol evidence rule that allows evidence that shows a contract is contingent on a condition precedent. This answer choice correctly identifies that there is an exception to the admissibility of evidence showing the existence of a condition precedent prior to a binding agreement, and, as such, is correct.

A is incorrect. The parol evidence rule bars evidence of prior oral agreements that contradict or add terms to a written agreement unless the evidence of the oral agreement falls within an exception. This answer choice is incorrect because it does not acknowledge that the reason the oral agreement is admissible is that it falls within the "condition precedent" exception to the parol evidence rule.

C is incorrect. This answer choice does not acknowledge that the parol evidence rule does not bar evidence of a prior oral agreement when that evidence shows a condition precedent to the binding agreement. There are exceptions to the parol evidence rule when evidence is offered to show a written agreement is contingent on a condition precedent. When parties orally agree that a written contract is contingent on a condition precedent (the occurrence of an event or some other condition), the oral agreement may be introduced as evidence of the condition.

D is incorrect. The prior oral agreement falls within the exception of the parol evidence rule. When parties orally agree that a written contract is contingent on a condition precedent (the occurrence of an event or some other condition), the oral agreement may be introduced as evidence of the condition. This answer choice is incorrect because the prior oral agreement does not contradict the written agreement, it merely evidences that the writing would not become binding unless the owner's spouse approved the landscaping design.

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2. The trial court will probably rule that the evidence proffered by the retailer is

In an action by the manufacturer against the retailer for damages due to return of the 25 radios, the manufacturer introduces the written agreement, which expressly permitted the buyer to return defective radios for credit but was silent as to the return of undefective radios for credit. The retailer seeks to introduce evidence that during the three years of the agreement it had returned, for various reasons, 125 undefective radios, for which the manufacturer had granted full credit. The manufacturer objects to the admissibility of this evidence. A radio manufacturer and a retailer, after extensive negotiations, entered into a final written agreement in which the manufacturer agreed to sell and the retailer agreed to buy all of its requirements of radios, estimated at 20 units per month, during the period January 1, 1988, and December 31, 1990, at a price of $50 per unit. A dispute arose in December, 1990, when the retailer returned 25 undefective radios to the manufacturer for full credit after the manufacturer had refused to extend the contract for a second three-year period.

- Inadmissible, because the evidence is barred by the parol evidence rule
- Inadmissible, because the express terms of the agreement control when those terms are inconsistent with the course of performance
- Admissible, because the evidence supports an agreement that is not within the relevant Statute of Frauds
- **Admissible, because course-of-performance evidence, when available, is considered the best indication of what the parties intended the writing to mean**

Note:
The parol evidence rule bars parties to a written contract from presenting "extrinsic" evidence of terms in a contract that contradicts, modifies, or varies the terms of a written agreement when that written agreement is considered complete and finalized. A completely integrated agreement is an unambiguous written agreement that leaves no doubt that the parties intended it to be the final contract, and expresses the parties' full and exclusive agreement on a matter. The parol evidence rule, however, does not bar extrinsic evidence offered to aid in the interpretation of existing terms.

Under § 2-202 of the Uniform Commercial Code (UCC), contract terms that are intended by the parties to be the final expression of their agreement can't be contradicted by evidence of any previous agreement or contemporaneous oral agreement but may be explained or supplemented by evidence of (i) course of performance; (ii) course of dealing; and (iii) trade usage. Course-of-performance is a pattern in the performance of the contract. If a contract involves repeated occasions for performance by either party, and the other party knows of the nature of the performance and has an opportunity to object to such performance, any course of performance accepted or acquiesced to without objection is relevant to the meaning of the agreement. (UCC § 1-303(a)). Evidence of course-of-performance can be introduced to explain or supplement a written contract for the sale of goods, as long as the evidence doesn't expressly negate the express terms in the written contract.

D is correct. As discussed above, the parol evidence rule bars the introduction of extrinsic evidence of oral agreements made prior to, or simultaneous to, the adoption of a final written agreement. Evidence of course-of-performance, however, can be introduced as evidence to explain or supplement a final written agreement for the sale of goods, so long as the evidence doesn't expressly negate the express terms in the written contract. In this case, the final written agreement between the manufacturer and the retailer is silent on the issue of returning undefective radios for credit. Accordingly, this answer choice is correct, and evidence of the parties' performance during the first three years of the agreement on this issue is admissible to interpret the writing.

A is incorrect. The parol evidence rule bars admission of extrinsic evidence that contradicts a final written agreement. contract terms that are intended by the parties to be the final may be explained or supplemented by evidence of course-of-performance as long as the evidence doesn't expressly negate the express terms in the written contract. Here, the written agreement is silent as to the return of the undefective radios for credit. As such, evidence of the parties' course of performance is admissible to supplement the written agreement.

B is incorrect. This answer choice correctly states the law but misapplies the facts. Here, the express terms of the contract are silent on the issue of returning undefective radios. Because the parties' course of performance is not inconsistent with express terms of the agreement (considering the express terms are silent), evidence of course-of-performance is admissible to explain the written agreement.

C is incorrect. The Statute of Frauds is a statute requiring certain contracts to be in writing and signed by the parties bound by the contract. The purpose is to prevent fraud. The statute of Frauds applies to certain types of contracts, for instance, contracts for the sale of goods over $500. In this case, however, the Statute of Frauds is not relevant to the issue of contract interpretation.

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3. If the fancier sues the rancher for damages and seeks to introduce evidence of the alleged oral agreement, the court probably will

The fancier refused to accept delivery of a gray horse timely tendered by the rancher or to choose among those remaining, on the ground that during their negotiations the rancher had orally agreed to include a saddle, worth $100, and also to give the fancier the option to choose a gray or a brown horse. The fancier insisted on one of the rancher's brown horses, but the rancher refused to part with any of his browns or with the saddle as demanded by the fancier. A rancher and a fancier of horses signed the following writing: "For $5,000, the rancher will sell to the fancier a gray horse that the fancier may choose from among the grays on the rancher's ranch."

- Admit the evidence as to both the saddle and the option to choose a brown horse
- **Admit the evidence as to the saddle but not the option to choose a brown horse**
- Admit the evidence as to the option to choose a brown horse but not the promise to include the saddle
- Not admit any of the evidence

Note:
The parol evidence rule bars evidence of all prior or contemporaneous agreements that contradict a written agreement. Essentially, the law operates to exclude evidence intended to show that the parties had agreed to something different from what was included in the written agreement.

If a court determines that a contract contains all of the terms regarding the parties' agreement, the parol evidence rule bars evidence of all prior or contemporaneous evidence that contradicts or modifies the written agreement. Often times, courts look to whether there is a merger clause as evidence that a written agreement is intended to be a completely integrated contract. If the agreement is completely integrated, no outside evidence will be permitted to modify the terms of the agreement, even if the modification is in addition to an existing term, rather than a contradiction of the term.

On the other hand, if a written agreement contains only partial information, or certain terms are missing, courts will allow certain extrinsic evidence to supplement or explain terms and provisions of the written agreement. The parol evidence rule, however, will still bar outside evidence of prior or contemporaneous agreements that contradict the written contract. In short, if a contract is partially integrated, prior consistent additional terms may be shown.

B is correct. Here, a court will probably admit the evidence as to the saddle but not the option to choose a brown horse. The written agreement specifically states that the rancher will sell the fancier a gray horse and the fancier may choose from among the grays on the rancher's ranch. A court will likely allow evidence relating to the saddle because it does not contradict the written agreement, it simply supplements the written agreement. Moreover, the parol evidence rule does not bar extrinsic evidence offered to establish that an integration is complete or partial. So, evidence of the saddle agreement is evidence of a partially integrated agreement and will be admissible. On the other hand, evidence that the parties agreed to give the fancier the option to choose a gray or a brown horse, specifically contradicts the agreement. As such, even when a written agreement is partially integrated, the parol evidence rule will bar this contradictory term.

A is incorrect. A court will not admit evidence as to both the saddle and the option to choose a brown horse. Evidence of the option to choose a brown horse directly contradicts the written agreement. Even if the court finds there is partial integration, it will bar this evidence. Though the court will likely allow evidence of the saddle, this answer is wrong because it incorrectly states a court will allow evidence of the option to choose a brown horse.

C is incorrect. As discussed above, a court will not admit evidence as to the option to choose a brown horse because this specifically contradicts the written agreement. The parol evidence rule bars evidence that contradicts the written agreement. As such, this evidence will be barred. Moreover, a court will admit evidence as to the promise to include the saddle because this evidence does not contradict the written agreement and simply supplements it. The parol evidence rule does not bar supplementing information when the written agreement is partially integrated.

D is incorrect. According to Restatement (Second) of Contracts § 214, the parol evidence rule does not bar extrinsic evidence offered to establish that an integration is complete or partial. As such, evidence of the agreement to include a saddle will be admitted as evidence the written agreement is only a partial integration. Moreover, as explained above, if a court finds there is partial integration, evidence of the promise to include a saddle is admissible because it does not contradict the written agreement and simply supplements it.

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4. If the county defends by offering proof of the advertisement concerning the possibility of multiple awards, should the court admit the evidence?

In January 1991, the tire salesman learned that the county was buying some of its tires from one of the tire salesman's competitors. Contending that the tire salesman-county agreement was a requirements contract, the tire salesman sued the county for the damages caused by the county buying some of its tires from the competitor. Responding to the county's written advertisement for bids, a tire salesman was the successful bidder for the sale of tires to the county for the county's vehicles. The tire salesman and the county entered into a signed, written agreement that specified, "It is agreed that the tire salesman will deliver all tires required by this agreement to the county in accordance with the attached bid form and specifications, for a one-year period beginning September 1, 1990." Attached to the agreement was a copy of the bid form and specifications. In the written advertisement to which the tire salesman had responded, but not in the bid form, the county had stated, "Multiple awards may be issued if they are in the best interests of the county." No definite quantity of tires to be bought by the county from the tire salesman was specified in any of these documents.

- **Yes, because the provision in the written agreement, "all tires required by this agreement," is ambiguous**
- Yes, because the advertisement was in writing
- No, because of the parol evidence rule
- No, because it would make the contract illusory

Note:
The parol evidence rule bars the introduction of evidence of prior oral or written agreements that contradicts the terms of a final written contract. If the written agreement is fully integrated, previous oral or written terms may not come in to contradict or supplement it. If it is partially integrated, previous oral or written terms may not come in to contradict it, but may be allowed to add or supplement the written agreement. The rule governs whether parties may introduce evidence of extrinsic agreements to prove the existence of additional or modified terms.

Regardless of whether a contract is completely or partially integrated, parol evidence will, however, be allowed in situations where the writing is incomplete; the writing is not a true statement of the agreement of the parties because of fraud, accident or mistake; subsequent modification, or illegality; or when the writing is ambiguous. If a term of a contract is ambiguous, parol evidence will be admissible to explain the contract so as to make it unambiguous.

A is correct. Here, the written agreement between the tire salesman and the county provided for the sale to the county of "all tires required by this agreement." It is not clear whether this language evidences an intent by the parties to enter into a requirements contract. Requirements contracts are a type of sales contract that obligates the buyer to purchase all of its requirements of a good, in this case, tires, from the seller. Because the written contract is ambiguous on this issue, the advertisement may be admitted to demonstrate that the county did not intend to create an exclusive requirements contract, and was not obligated to purchase tires exclusively from the tire salesman.

B is incorrect. As mentioned above, the parol evidence does not solely apply when a prior agreement is made orally. The parol evidence rule bars all oral or written agreements made prior to the final written agreement when the prior agreements contradict the final written contract. Regardless of whether a contract is completely or partially integrated, parol evidence is allowed when there is an ambiguity in the contract itself. As such, this answer is incorrect because it makes no difference that the extrinsic evidence, in this case, the advertisement, is in writing.

C is incorrect. As discussed above, parol evidence is admissible when there is an ambiguity in the written contract. In this case, there is an ambiguity concerning what was meant by the term, "all tires required by this agreement." This answer is incorrect because the parol evidence rule has an exception concerning the admissibility of extrinsic evidence to resolve ambiguities.

D is incorrect. An illusory promise is a promise that is indefinite or lacks mutuality, where only one side is bound to perform and is unenforceable. Here, the issue is not whether the contract in question is enforceable or not. Rather, the question is whether evidence of extrinsic evidence, the advertisement, is admissible to resolve whether the county intended to reserve the right to grant multiple awards.

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5. If the court concludes that the tire salesman-county contract is an agreement by the county to buy its tire requirements from the tire salesman, the tire salesman probably will

In January 1991, the tire salesman learned that the county was buying some of its tires from one of the tire salesman's competitors. Contending that the tire salesman-county agreement was a requirements contract, the tire salesman sued the county for the damages caused by the county buying some of its tires from the competitor. Responding to the county's written advertisement for bids, a tire salesman was the successful bidder for the sale of tires to the county for the county's vehicles. The tire salesman and the county entered into a signed, written agreement that specified, "It is agreed that the tire salesman will deliver all tires required by this agreement to the county in accordance with the attached bid form and specifications, for a one-year period beginning September 1, 1990." Attached to the agreement was a copy of the bid form and specifications. In the written advertisement to which the tire salesman had responded, but not in the bid form, the county had stated, "Multiple awards may be issued if they are in the best interests of the county." No definite quantity of tires to be bought by the county from the tire salesman was specified in any of these documents.

- Recover under the Contracts Clause of the United States Constitution
- **Recover under the provisions of the Uniform Commercial Code**
- Not recover, because the agreement lacks mutuality of obligation
- Not recover, because the agreement is indefinite as to quantity

Note:
According to UCC § 2-204(3), even though one or more terms are left open, a contract for the sale of goods does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. If, for example, the quantity term is indefinite but is supplied by the "requirements" of the buyer, then it may be a requirements contract which will not fail for indefiniteness. This situation is governed by UCC § 2-306(1): "A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded."

Essentially, requirements contracts are a type of sales contract that obligates the buyer to purchase all of its requirements of a good (in this case, tires) exclusively from the seller.

B is correct. Here, if the court concludes that the tire salesman-county contract is a requirements contract, then, the county would be in breach of the requirements contract by buying some of its tires from the salesman's competitor. This breach of the requirements contract would entitle the salesman to damages.

A is incorrect. The Contracts Clause is found in Article I of the United States Constitution. This clause was added to the Constitution in order to prohibit states from interfering with private contracts. As mentioned above, the Contracts Clause is not at issue here.

C is incorrect. Mutuality of obligations refers to the "meeting of the minds" contract formation requirement. Mutuality of obligation requires that everyone signing a contract agree to the specifics outlined in its terms. As discussed above, requirements contracts do not fail for indefiniteness; when parties agree to a requirements contract, the agreement does not fail because of the lack of mutuality of agreement. Mutuality of agreement exists when parties agree to, and enter into, a requirements contract, unless there truly was no "meeting of the minds."

D is incorrect. Quantity is an essential term in UCC contracts. Contracts that do not specifically contain a quantity term but contain a definite way to ascertain the quantity, like requirements contracts, are valid under the UCC. Requirements contracts do not fail for indefiniteness because they provide an objective, definite way to determine the quantity term: how many units of the good are required by the buyer. Here, the salesman-county contract states that "the tire salesman will deliver all tires required by this agreement to the county in accordance with the attached bid form and specifications, for a one-year period beginning September 1, 1990." This is sufficiently definite as to quantity for a court to enforce.
