PAROLE EVIDENCE AND INTERPRETATION

Restatement (Second) of Contracts

- §213. EFFECT OF INTEGRATED AGREEMENT ON PRIOR AGREEMENTS (PAROL EVIDENCE RULE)

- (1) A binding integrated agreement discharges prior agreements to the extent that it is inconsistent with them.

- (2) A binding completely integrated agreement discharges prior agreements to the extent that they are within its scope.

- Comments:
- a. Parol evidence rule. This Section states what is commonly known as the parol evidence rule.... It renders inoperative prior written agreements as well as prior oral agreements. Where writings relating to the same subject matter are assented to as parts of one transaction, both form part of the integrated agreement.

§215. Contradiction of Integrated Terms

- Except as stated in the preceding Section, where there is a binding agreement, either completely or partially integrated, evidence of prior or contemporaneous agreements or negotiations is not admissible in evidence to contradict a term of the writing.

- "It will become obvious that intricate webs of rules have been constructed by Various minds. There is no unanimity as to the content of the parol evidence rule or the process of its interpretation. The rules re complex, technical, and difficult to apply."

  Joseph M. Perillo, Calamari & Perillo on Contracts, 6th Edition, pg. 196

Introduction to the Parol Evidence Rule

- Basic Rule - Final agreement supersedes tentative terms discussed in earlier negotiations.
- Parol Evidence Rule only comes into play when there is a written and binding contract.
- Completely Integrated Contract - No Parol Evidence
- Partially Integrated Contract - No Parol Evidence as to Integrated Aspects of Contract

Prior, Contemporaneous, and Subsequent Agreements

- Prior Agreements - Barred
- Contemporaneous Agreements - Disputed
- Williston/Restatement First –
  Oral = Prior Agreements
  Written = Part of Integration and Admissible
- Corbin - There is no "Contemporaneous"
- Majority - Williston Rule
- The Roles of Judge and Jury - Integration, though seemingly a question of fact, is treated as a question of law.

Is the Writing Integrated? Finality

- Is there a written document and do the Parties intend the document to be a FINAL embodiment of their agreement?
- Any relevant evidence may be introduced to show the document was not intended to be final.
- Is the Writing a Total Integration? Completeness
- Total vs. Partial Integration - While intended as a final embodiment of an agreement, how much of the agreement does it embody?

Tests Used to Determine Completeness:

- The "Four Corners" Rule - If it looks like a duck.... If the agreement appears to be complete, it will be treated as complete. - View is on the decline, but still used frequently

- The "Collateral Contract" Concept - Independent agreements maybe introduced so long as they do not contradict the integrated writing

Tests Used to Determine Completeness:

- Williston's Rules - Presence of a merger clause creates a rebuttable assumption that the agreement is fully integrated.
  - Rebutted if a) The document is obviously incomplete or b) merger was included by mistake.
  - If no merger clause, look to the writing. If it would appear to a reasonable person to be complete, it is deemed a total integration
- Corbin's Approach - Set out above, substitutes intent of parties for reasonable person test.

Tests Used to Determine Completeness:

- The UCC Rule
- § 2-202. Final Written Expression: Parol or Extrinsic Evidence.
- Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

- (a) by course of dealing or usage of trade (Section 1-205) or by course of performance (Section 2-208); and

- (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Is the Offered Term Consistent or Contradictory?

- Actual contradiction (differing terms) vs. inferred contradiction (absence of an obligation when other obligations are listed)
- Contradiction of unstated but implied terms (i.e., delivery) - no clear rule
- Merger Clauses - a provision in a contract that declares it to be the complete and final agreement between the parties. Such a provision in a contract is treated as proof that no varied or additional conditions exist with respect to the performance of the contract except those that are in the writing. It may also be called an integration clause.
  http://definitions.uslegal.com/m/merger-clause/
- Most courts - definitive absent mistake or fraud or document is obviously incomplete
- Minority rule - just one factor to look at

Inapplicability of Parol Evidence Rule to Non-Contractual Writings

- Parol Evidence may be used to show that no contract was formed, is void, voidable, was signed under duress, because of fraud, or any other issue that would lead to a determination that no contract formed or, if formed, was modified, terminated or terminable

- No contract = No Integration

- Parol Evidence may be introduced to prove any of the following:

- 1. That the writing was not intended to be a contract
- 2. That the contract was subject to an express condition
- 3. Fraud
- 4. Mistake
- 5. Illegality and Unconscionability
- 6. Absence of consideration
- 7. Identity of Parties

Application of the Rule to Third Persons

- Related 3rd parties (3rd Party Beneficiaries) - The rule applies

- Unrelated 3rd Parties - No reason to apply rule

Contract Interpretation

- Interpretation as distinct from the parole evidence rule:
- Parol Evidence Rule relates to the identification of the terms incorporated into the agreement.
- Interpretation relates to the meaning of the terms incorporated into the agreement
- The Plain Meaning Rule vs. Ambiguity
- The Plain Meaning Rule is the interpretive equivalent of the Parole Evidence Rule. It states that if the writing, or a term, is plain and unambiguous on its face, then its meaning must be determined from the four corners of the document.
- Some jurisdictions allow outside evidence to show that the term or writing is, in fact, ambiguous.
- Majority of jurisdictions use the rule, although it has been widely criticized for lacking context.

Williston vs. Corbin

- Williston: The written agreement has a unique and powerful force of influence. To the extent that the written agreement is clear in meaning to a reasonable person, that written agreement is the superseding force that dictates the terms of the contract (to the exclusion of parol evidence to the contrary).
  - FOCUS: The integration practices of reasonable persons acting normally and naturally.
- Corbin: The written agreement only contains the unique and powerful force when the parties intend the agreement to have such a force at the time the written agreement is executed. If there is compelling evidence that one of the parties did not intend for the written agreement to be the final say on the matter, then that evidence must be considered by a jury if the evidence is sufficiently compelling.
  - FOCUS: The intention of the parties.
- The UCC § 2-202 adopts Corbin's view.

UCC § 1-205

- (4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

- Deciding Omitted Terms - If the parties did not consider a certain event or contingency, the court may have to "fill the gap" in the contract.

Restatement 2d Section 204:

- §204. SUPPLYING AN OMITTED ESSENTIAL TERM

- When the parties to a bargain sufficiently defined to be a contract have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the court.

- Comment: d. ...But where there is in fact no agreement, the court should supply a term which comports with community standards of fairness and policy rather than analyze a hypothetical model of the bargaining process. Thus where a contract calls for a single performance such as the rendering of a service or the delivery of goods, the parties are most unlikely to agree explicitly that performance will be rendered within a "reasonable time;" but if no time is specified, a term calling for performance within a reasonable time is supplied. See Uniform Commercial Code §§1-204, 2-309(1). Similarly, where there is a contract for the sale of goods but nothing is said as to price the price is a reasonable price at the time for delivery.