Evidentiary Consequences of the Parol Evidence Rule

Professor Rowley - Spring 2011

Is the contract fully integrated?

Who decides?: Judge
How?: Matter-of-law
What may TJ consider?:
(1) "Objectivist" approach: K only ("four corners")
(2) "Modified Objectivist" approach: K + surrounding circumstances, etc.
(3) UCC approach: K plus, at a minimum, trade usage, course of dealing, and course of performance

Yes → Is the fully integrated K unambiguous?

Yes → Extrinsic evidence is **inadmissible** for any purpose unless an exception applies or the UCC governs*

No → Extrinsic evidence **may explain**, but **may not contradict**, an integrated term unless an exception applies

Who decides?: Judge
How?: Matter-of-law
What may TJ consider?:
Same as before, plus
Rules of C&I

No → Is the K partially integrated?

Yes → Is the partially integrated K unambiguous?

Yes → Extrinsic evidence **may explain or supplement**, but **may not alter or contradict**, an integrated term unless an exception applies

No → Extrinsic evidence is **freely admissible** with respect to an **unintegrated term**, and **may explain or supplement**, but **not alter or contradict**, an **integrated term**, unless an exception applies

Who decides?: Judge
How?: Matter-of-law
What may TJ consider?:
Same as before, plus
Rules of C&I

No → Is the unintegrated K unambiguous?

Yes → Extrinsic evidence is **admissible for all purposes**

No → Extrinsic evidence is **admissible for all purposes**

* The UCC is agnostic about ambiguity but instructs courts to admit usages of trade, course of dealing, and course of performance to explain or supplement even integrated terms. Additionally, if the contract is not fully integrated, the UCC also allows evidence of consistent additional terms to explain or supplement the writing.