Sample Exam Question #3 - Model Answer

Leon James is the developer of a subdivision near Henderson. On February 15, 2001, he entered into a written contract to sell a lot in the subdivision to Pablo Thomas for $50,000. During negotiations, James assured Thomas that the property was zoned outside of the 50-year flood plain, but the written contract, which contained a conspicuous merger clause, made no mention of this. When, after signing the contract and paying James for the lot, Thomas applied for a building permit, he was notified that the lot was within the 50-year flood plain (meaning both that it is substantially more prone to flooding and that it will be much more expensive to insure the house that Thomas intends to build on the lot).

If Thomas sues James for breach of contract, would evidence of James’s oral representation be admissible at trial, notwithstanding the parol evidence rule? Please explain.

The parol evidence rule bars evidence of a prior or contemporaneous oral agreement or representation or a prior written agreement or representation when the evidence is offered to contradict, alter, add to, or subtract from a fully integrated, unambiguous written agreement. Given the facts of the question, there is no issue of ambiguity, and the facts that the parties negotiated the agreement and then included in their writing a conspicuous merger clause weigh heavily in favor of finding the contract to be fully integrated.

However, that does not end the matter. Even if the trial court finds the contract to be unambiguous and fully integrated as a matter of law, there are numerous exceptions to the parol evidence rule that might permit the admission of James’s oral assurance to Thomas that the property was zoned outside of the 50-year flood plain. At least five might apply in this case:

First, if both James and Thomas were mistaken at the time they entered into the contract as to the flood-plain zoning of the property, and that zoning materially affected the value of the transaction to one or both parties, parol evidence may be admissible to establish a mutual mistake that would void the contract.

Second, if James should have known that the property was within the 50-year flood plain or did not know one way or the other whether the property was outside the 50-year flood plain, parol evidence may be admissible to establish a material misrepresentation that would void the contract.

Third, if James knew that, in fact, the property was inside the 50-year flood plain, parol evidence may be admissible to establish fraudulent inducement.
Fourth, if Thomas would never have purchased the property if he had known it was zoned within the 50-year flood plain, but did so believing that he was receiving a non-flood prone property in exchange for his promise to pay James, parol evidence may be admissible to establish lack or failure of consideration.

Fifth, if Thomas’s agreement to purchase the property was conditioned on its not being situated within the 50-year flood plain, parol evidence may be admissible to establish the existence of an unsatisfied condition precedent.