I. Basic UCC Rule: § 2-202 & § 2A-202: Terms set forth in
   A. a writing that is
      1. intended by the parties
      2. as a final expression of their agreement
      3. with respect to such terms as are included therein
   B. may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement,
   C. but may be explained or supplemented
      1. by evidence of a relevant course of dealing (§§ 1-205; R1-303), usage of trade (id.), or course of performance (§§ 2-208 &2A-207; R1-303),
      2. to the extent not clearly negated or varied by the terms of the written agreement, any relevant UCC gap fillers, and
      3. if the written agreement of the parties is not fully integrated, by evidence of consistent additional terms.
   ♦ UCC Hierarchy [§§ 1-205(4), 2-208(3) & 2A-207(2); R1-303(e)]:
      (1) Express Terms trump
      (2) Course of Performance trump
      (3) Course of Dealing trump
      (4) Usage of Trade trump
      (5) Terms Implied as a Matter of Law trump
      (6) Consistent Additional Terms.
II. **Discarded Presumptions:** The UCC specifically **discards** the following common law presumptions:

A. a written agreement is presumed to be fully integrated, § 2-202 cmt. 1(a);

B. the parties intended that the terms of their agreement be given their “plain” meaning, rather than some other meaning that might be discovered by looking outside the four corners of the document to the circumstances surrounding the contract’s formation, § 2-202 cmt. 1(b); and

C. a contract must be ambiguous before the court may admit evidence of, *inter alia*, course of performance, course of dealing, or usage of trade, § 2-202 cmt. 1(c).

III. **Written Contracts May Be Fully or Partially Integrated**

A. A **fully integrated** contract is one that is a final and complete expression of all the terms agreed upon between (or among) the parties.

B. A **partially integrated** contract is one that is the final expression of one or more the terms contained in that agreement, but not a final and complete expression of all the terms agreed upon between (or among) the parties.

C. **Whether, and the Extent to Which, a Written Contract is Integrated is an Issue of Law for the Court**

1. **The Issue:** While a written, facially integrated, and unambiguous contract signed by both parties *may* be decisive of the extent of integration, a writing cannot of itself prove its own completeness.

2. Thus, while the court must determine whether the agreement is integrated before any parol evidence other than that specified in § 2-202(a) may be admitted for the trier of fact’s consideration, the trial court is free to rely on that parol evidence in reaching its threshold determination that the agreement is fully integrated, partially integrated, or not integrated.

3. **Extent of Negotiations:** Did the parties negotiate the term in question prior to signing the writing? If so, the party who signed the writing containing the term she now wants to dispute is going to fight an uphill battle.

4. **The Significance of “Merger” Clauses**

   a. **Rule of Thumb:** Typically, to manifest their intention of creating a completely integrated agreement, parties will include a clause stating something to the effect that “there are no representations, promises, or agreements between the parties except those found in this writing.”
b. **But, on the Other Thumb...**: The mere fact that a written contract contains a merger or integration provision does not guarantee full integration.

IV. **Evidentiary Consequences**

A. If the writing is *fully integrated*, then § 2-202 will only permit the court to admit evidence of course of performance, course of dealing, and trade usages in order to explain or supplement the terms of the writing itself.

B. If the writing is *partially integrated*, then § 2-202 will also allow the court to admit evidence of consistent additional terms.

C. *“Additional” vs. “Inconsistent” Terms*: Even in those instances where § 2-202 permits the court to admit evidence of prior or contemporaneous terms or agreements, it may only do so if the evidence reflects terms that are *additional* to – as distinct from *inconsistent* with – the integrated terms of the written contract.

D. *“Prior or Contemporaneous” vs. Subsequent*: § 2-202 only bars consideration of prior or contemporaneous agreements; it does not bar the consideration of subsequent agreements, even if they modify the terms of the integrated writing.

   **Caveat:** If the writing requires that any subsequent modifications or agreements be in writing, then subsequent oral agreements are unenforceable. §§ 2-209(2) & 2A-208(2).

E. Evidence of *trade usage, course of dealing*, and *course of performance* may be considered, even if the writing is fully integrated, as long as the express terms of the writing do not “carefully negate” a particular trade usage, course of dealing, and course of performance.

V. **Parol Evidence Under the CISG**

A. **No Parol Evidence Rule:** Article 11 provides that “[a] contract of sale need not be concluded in or evidenced by writing” and “may be proved by any means, including witnesses.”

B. **Interpretive Guidance**

   1. **Subjective Intent:** Like § 201(2) of the *Restatement (Second) of Contracts*, the CISG gives effect to the subjective intent of one party to the contract if the other party knew or should have known the first party’s intent. CISG art. 8(1).

      ♦ Unlike § 201(2), the CISG does not explicitly require that, in order to bind party X to party Y’s subjective intent, party Y must be
actually and constructively unaware of party X’s intent. However, it seems fair to imply that requirement in Article 8(1).

2. **Objective Intent:** If neither party knew or should have known the other party’s subjective intent (or if both parties knew or should have known the others’ intent and also know their own intent to be different), statements made by and other conduct of a party are to be interpreted using a “reasonable person” test. CISG art. 8(2).

C. **Relevant Circumstances:** Article 8(3) provides that, in determining contractual intent, courts should give “due consideration” to all relevant circumstances of the case including

1. the negotiations,

2. any practices which the parties have established between themselves,

3. usages and

4. subsequent conduct of the parties.