

Notice: The "A" answer is one to which most professors would very likely give a grade of "A." The grades assigned to the non-A answers indicate our opinion of their relative merit; however, given the great variation in grading practices, professors will almost certainly not universally agree on what grades they would give the answers. What is important is not the grade, but why the answers fall progressively short of the "A" answer.

The "B" Answer

The Call of the Question:

Is the agreement concerning the originality of the tape enforceable under the Parol Evidence rule?

In discussing scope, please use only the "normal inclusion" test.

Issue - The issue is whether, assuming that the purchase order is an enforceable written contract, the oral agreement is rendered *unenforceable* by the parol evidence rule.

Commentary – No difference from the "A" answer.

Rule - Assuming that the purchase order is an enforceable written contract, then, under the parol evidence rule, a prior oral or written agreement or contemporaneous oral agreement is enforceable unless (i) it contradicts the written agreement, or (ii) the written agreement is a complete integration and the oral agreement falls within its scope.

Commentary – Same as the "A" answer.

The "B" Answer: common Blunder – overlooking and failing to apply an essential part of the rule.

Commentary – The "B" answer is the same as the "A" answer except that it fails to include the following:

"The oral agreement does not contradict the written agreement, as the latter says nothing at all about whether the tape is the original tape made from the CD."

This is costly because it overlooks a necessary part of the rule, i.e., the analysis must first answer whether the oral agreement contradicts the written agreement.

Only if the oral agreement does not contradict the written agreement can the analysis continue to the question of whether the written agreement represents a complete integration.

Application - The oral agreement is enforceable unless the court decides that the written agreement is a complete integration and the oral agreement falls within its scope.

Is the Written Agreement a Complete Integration? The Parties' Intent - Is the written agreement a complete integration? The contract is a complete integration if the parties intend it to be the complete and exclusive statement of the parties' obligations to each other. There is evidence for and against such intent.

Evidence Favoring A Finding That The Parties Intended The Contract To Be The Complete And Exclusive Statement Of Their Obligations To Each Other – A complete integration is a contract the parties intend to be the complete and exclusive statement of their obligations.

The relevant evidence is the signed contract containing the 'entire agreement' clause, which explicitly states that the contract is the complete and exclusive statement of the parties' obligations. In this regard, it does not matter whether Sowle and Wright read the contract.

The "duty to read" applies here, i.e., where, as here, the parties had an adequate opportunity to read and understand the contract, the law treats them as if they read and understood it, whether or not they in fact did so.

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Thus, the argument is that Sowle and Wright read, understood, and signed a contract that stated that it was the complete and exclusive statement of their obligations. If this were not true, why would they sign?

Jurisdictions differ in the weight they give this argument, with some jurisdictions treating the "entire agreement" clause as very strong evidence of the intent that the contract be the complete and exclusive statement of the parties' obligations to each other.

Evidence Favoring A Finding That The Parties Intended The Contract To Be The Complete And Exclusive Statement Of Their Obligations To Each Other - The evidence against thinking that Sowle and Wright intended the contract to be the complete and exclusive statement of their obligations to each other is the oral agreement they make prior to signing the contract. When Wright asks if the tape is original, Sowle promises that it is and both parties agree that the promise will be "part of our deal."

They clearly do intend that the promise be legally enforceable and hence cannot also consistently intend that the written contract represent the complete and exclusive statement of their obligations to each other.

Policy Analysis: Balancing Two Goals - The way in which the court resolves this conflict in the evidence will depend how it balances two goals:

1. Preserving the value of the written contract as a basis for business planning and dispute resolution, and
2. Enforcing the agreements the parties clearly intended to be enforceable.

The written agreement loses value as a basis for business planning and dispute resolution the more the parties or the courts have to look outside the document to determine the parties' obligations.

Consequently, it promotes (1) to find that the contract is a complete integration and thereby rendering the oral agreement unenforceable; it promotes (2) to hold the opposite. Jurisdictions differ in how they strike the balance between these goals.

See the **Conclusion** discussion.

Does the Oral Agreement Fall Within The Scope of the Written Contract? The Normal Inclusion Test - Does the oral agreement fall within the scope of the written contract? Under the normal inclusion test, the oral agreement *presumptively* falls within the scope of the complete integration if the parties would normally have included the subject matter of the oral agreement in the written agreement.

Evidence In Favor Of Thinking The Parties Would Normally Have Include The Obligations Orally Agreed To In The Latter Written Contract - There is a strong argument that the parties would normally have included the oral agreement in the written agreement. The promise about the originality of the tape was critical to Wright, and it is reasonable to assume that parties would include such an important element of their agreement when memorializing their agreement in writing.

If the court rejects this argument, then the oral agreement falls outside the scope of the written contract, and is enforceable. If the court accepts the argument, the oral agreement is *presumptively* in the scope of the written contract and is *unenforceable*.

Evidence Against Thinking The Parties Would Normally Have Include The Obligations Orally Agreed To In The Latter Written Contract - The presumption may be rebutted by a sufficient explanation of why the parties did not include the oral agreement in the written agreement even though they intended the oral agreement to be enforceable.

As discussed above, it is clear that Sowle and Wright intended the oral agreement to be enforceable, and there is an explanation of why they did not write it into the written agreement. The explanation is that they did not realize that not doing so might well render the oral agreement unenforceable.

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Neither Sowle nor Wright is a lawyer, and neither consulted with a lawyer; moreover, neither read the contract carefully, and, even if they had, they almost certainly would not, without legal training, understand that, under the parol evidence rule, not including the oral agreement would possibly make the oral agreement unenforceable.

Policy Analysis: Balancing Two Goals - If the court accepts this argument, the oral agreement falls outside the scope of the written agreement and is enforceable. Whether the court finds this sufficient to rebut the presumption will again depend how it balances two goals, as described above and as follows in the **Conclusion** discussion.

Conclusion: Whether the oral agreement is enforceable depends on how the court balances two goals:

1. Preserving the value of the written contract as a basis for business planning and dispute resolution, and
2. Enforcing the agreements the parties clearly intended to be enforceable.

The court must balance these goals in answering the question of whether the written contract is a complete integration and, if it answers that question "yes," in determining if the oral agreement falls in the scope of the complete integration.

As noted, if the court determines that the written contract is *not* a complete integration, the oral agreement is enforceable. If it determines the written contract is a complete integration, the oral agreement is enforceable unless the court determines it falls in the scope of the complete integration.

Commentary – Same as the "A" answer