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The “C” 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.

The “C” Answer: common blunder - imprecise framing of the issue

Issue – Is the oral agreement valid?

Commentary - This statement fails to state the issue in terms of the effect of the parol evidence rule on the oral and written agreements. The student has missed an opportunity to signal to the professor that she understands that the parol evidence rule is implicated here.

The “C” Answer: common blunder – brain dump

Rule – Under the parol evidence rule, the 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.

Whether the written agreement represents a complete integration depends upon the parties’ intent, to be decided on the basis of the facts. If the written agreement represents a complete integration, then the oral agreement is unenforceable if it falls within the scope of the written contract.

To decide whether the oral agreement falls within the scope of the written contract requires the application of the normal inclusion test, by which 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.

The presumption may be rebutted based upon the facts and the balancing of two opposing 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.

Commentary - A 'brain dump' rule statement is one that provides too much detail.

There are several versions. In one version, the student recites all versions of a rule, including not only the version that is appropriate to the test question at hand but also all other versions that are irrelevant to the question at hand. (You will see examples of this type of 'brain dump' in other test prep sessions published by Law Study Systems.)

Here, the flaw is to state too much of the rule here. There are three problems with this approach:

- a) The student is creating the risk of forgetting to discuss some or all of the previously stated rules once the student is in the flow of writing the answer;

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b) If the student avoids (a) by restating the rule during the Applications discussion, the result is a costly waste of time; and

c) By stating all parts of a lengthy and complicated rule, and then restating them in the Applications discussion, the student is making the answer harder to grade

Many professors like the rule to be rule stated near the application. This relieves the professor of having to remember whether the rule was stated properly and it signals the professor that the student can apply the relevant rule at precisely the correct point.

The "C" Answer: common blunder - faulty legal analysis; failure to use available facts

Application

Commentary - Following are two comparisons of the use of facts regarding the issue of whether the written agreement represented a complete integration.

Consider this statement first, from the "C" answer:

Evidence Favoring Intent for a Complete Integration - The parties signed a form that contained an "entire agreement" clause, which explicitly states that the contract is the complete and exclusive statement of the parties' obligations.

Now, compare the preceding statement with the following statement, which is drawn from the "A" answer:

"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 that 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.

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."

Notice how the first statement is incomplete: it fails to reference and analyze the duty to read; it fails to ask why Wright and Sowle would sign the written agreement if they did not intend to be bound by it; and it fails to refer to jurisdictional differences.

Continuing to the evidence disfavoring an intent for a complete integration:

Consider this statement first, from the "C" answer:

"Evidence Disfavoring Intent for a Complete Integration – On the other hand, Sowle and Wright

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agreed that the oral agreement is "part of our deal."

Now, compare the preceding statement with the following statement, which is drawn from the "A" answer:

"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."

The "A" statement confirms that the parties made the oral agreement before executing the written agreement. And it combines that fact with the fact that the parties agreed that the oral agreement was "...part of our deal."

The deficient analysis is associated with the sample essay answer that is graded "C."

Application – Is the Written Agreement a Complete Integration? The Parties' Intent –

Evidence Favoring Intent for a Complete Integration - The parties signed a form that contained an "entire agreement" clause, which explicitly states that the contract is the complete and exclusive statement of the parties' obligations.

Evidence Disfavoring Intent for a Complete Integration – On the other hand, Sowle and Wright agreed that the oral agreement is "part of our deal."

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 Normal Inclusion - 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.

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, then the oral agreement is *presumptively* in the scope of the written contract.

Evidence Against Normal Inclusion - 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.

The "C" Answer: common blunder – imprecise reference to the language of the rule

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Conclusion - If the court accepts this argument, the oral agreement falls outside the scope of the written agreement and is enforceable. In two instances, the court will have to balance the goal of preserving the value of a written contract against the goal of enforcing oral agreements by which the parties clearly intend to be bound.

Commentary - This analysis is not wrong but it is far less complete than the “A” and “B” answers in connecting the outcome to the language of the rule.