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 "D" 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 "D" answer: common blunder - colloquial statement of the issue.

Issue – Can Wright make Sowle live up to his statements?

Commentary - The following observations are in order:

a) Imprecision of the Statement – As with the "C" issue statement, 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.

b) Use of Colloquial Language - Using colloquial language on a law school exam is hazardous for two related reasons:

(i) The law relies on the use of doctrinal language to provide the precision that is needed to argue and distinguish legal reasoning; and

(ii) A failure to use doctrinal language may send an unfortunate signal to your professor that your understanding of the law is imprecise and your ability to apply the law is underdeveloped.

The "D" Answer: common blunder – erroneous statement of the rule

Rule – The oral agreement is enforceable unless (i) it contradicts the written agreement, or (ii) the written agreement is a complete integration, in which case the oral agreement falls within the scope of the written agreement.

Commentary – This statement misstates the law. Note that in the (ii) clause, the first statement ignores the following "...and the oral agreement falls within its scope."

This misstatement assumes that the "side agreement" falls within the scope of the written agreement if it is a complete integration. Also, it talks only of an "oral agreement," not prior or written oral agreements or a contemporaneous oral agreement.

The "D" Answer: common blunder - creating facts and arguing from them

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.

Evidence Disfavoring Intent for a Complete Integration – On the other hand, the fact that Sowle and Wright made the oral agreement before signing the contract suggests that they want the oral agreement to be "part of our deal."

Assume instead that Sowle and Wright signed the contract. It does not matter whether they read it or not as long as they would have understood it if they did read it, and they would have understood it. They have to abide by what they signed.

On these facts, the argument for excluding the oral agreement is stronger. If the court decides in favor or a complete integration, then the oral agreement is deemed to fall within the scope of the written agreement and is therefore unenforceable.

> Commentary – The “D” answer fails to ask whether the oral agreement contradicted the written agreement. It’s analysis of whether the written agreement was a complete integration is weak, as we’ll see in a moment. And it provides no analysis of whether the oral agreement would fall within the scope of the written agreement, using the normal inclusion test.
>
> With respect to the issue of whether the written agreement was a complete integration, consider the following statement from the “D” answer:
>
> "Evidence Disfavoring Intent for a Complete Integration " - Sowle and Wright signed the contract. It does not matter whether they read it or not as long as they would have understood it if they did read it, and they would have understood it. They have to abide by what they signed."
>
> Observation - Saying that "...it does not matter whether they read it or not as long as they would have understood it if they did read it" is a misunderstanding of the duty to read.
>
> Further, saying that "...and they would have understood it" makes up a fact that is really irrelevant under the correct understanding of the duty to read.
>
> This is a classic example of creating facts and arguing from them.

The “D” answer: common blunder – no Conclusion Statement

Commentary - Sometimes a student will get to the end of his answer and realize that his rule statement or (worse) applications discussion was deficient in important ways.

When this happens, use the Conclusion discussion to get your thoughts into the answer. Even if the thoughts are not well ordered and stated elegantly, if you get them into the answer, you will give your professor an opportunity to award partial credit.

For example, assume that the student, while successful in arguing the facts regarding each part of the rule, forgot to reach the policy issue regarding the balancing of two goals.

For that student, a conclusion statement like the following can be effective:

> ”Whether the written agreement was a complete integration depends upon the parties’ intent, as evidenced by the facts. But the facts are not dispositive here.
>
> The parties’ written agreement contains an “exclusive agreement” clause, which they could have read more carefully or marked out (with notations) but didn’t.
>
> Plus, it seems clear that they intended to be bound by the oral agreement and that therefore the oral agreement would normally be included within the scope of the written agreement.
>
> This dichotomy raises the policy issue of whether to:
>
> Favor the written agreement, in order to preserve the value of written documents for business planning and other purposes; versus

Favor the oral agreement when it is clear that the parties intended to be bound by such oral agreements.

The jurisdictions are split on this policy issue."