

## Problem 5-1

### 1. Argument for A & B against admission of the evidence:

(a) Complete Integration: The written agreement constitutes a full integration ("complete, final and exclusive") because it was entered into after negotiation and contains a merger clause. The writing is substantial, covers all necessary terms, and incorporates the policy manual to cover additional aspects of the arrangement. The intention of the parties to have an integration is further supported by section 6, allowing for additional provisions. The existence of this section shows that the parties could have included additional terms in their written agreement. (Indeed, they did include one, covering moving expenses.) A court that takes a "four corners" approach and emphasizes the face of the document (as in *Thompson v. Libby*) will almost certainly conclude that the writing is a complete integration. Even a court that takes a more liberal "contextualist" approach (as in the Restatement 2d) would very probably conclude that this agreement is a complete integration.

(b) Partial Integration: If the agreement is a complete integration, evidence that would supplement the agreement is inadmissible. Moreover, even if the contract was somehow deemed to be a partial integration, only consistent additional terms could be proved. Keynes's testimony would clearly contradict the agreement. Section 6.1 of the manual, which is part of the agreement, states that A & B reserves the right to change profit percentages after two years; Keynes wishes to testify that the company did not have this right or that the right is limited. The purported term would directly negate the ability of A & B to exercise its express right to change the percentage. Further, the inability to change the percentage whenever necessary for the health of the company would not be in reasonable harmony with the express term. And lastly, if the parties had agreed to the limitation asserted by Keynes, then it should have been included in the writing.

(c) Plain Meaning Rule: Anticipating that Keynes might try to use the extrinsic evidence for purposes of interpretation, A & B might also argue that the paragraph in question has an obvious and plain meaning giving to A & B the unfettered ability to adjust the profit percentage. Thus, the evidence of oral discussions would also not be admissible for purposes of interpretation.

### 2. Argument for Keynes in favor of admission of the evidence:

(a) Partial Integration: If the court decides that the contract is a complete integration, Keynes would not be able to supplement the agreement with the oral term. Keynes would thus need to argue that the writing, though final, is only a partial integration. He could argue that while the contract contains a merger clause, that should not be conclusive on the issue of whether the writing is a full integration. See Restatement (Second) §216, Comment *e* discussed in Note 3 on page 387-88. Keynes would note that the context is one in which A & B imposed an adhesion contract on him and that the merger clause was not freely negotiated.

In addition to arguing that the contract is only partly integrated, Keynes would also need to argue that the oral term is consistent with and does not contradict the writing. He would assert that as in

the Nanakuli case, the collateral term does not negate the written term concerning adjustment of the profit percentage but merely qualifies it. Additionally, Keynes would argue that the purported oral term is the type that might have been omitted from the writing given the circumstances of the standard form agreement. These arguments from Keynes to try to supplement the written term with the oral qualification would be tough to win. Thus he would need to argue that the evidence should be admitted under a number of exceptions to the parol evidence rule.

(b) Interpretation: The parol evidence rule does not bar evidence offered to explain an ambiguity in the agreement. Section 6.1 of the manual states that the company reserves the right to change profit percentages based on "profitability" of the local branch. The section is ambiguous on its face. Does this mean that the company may change percentages if the branch is more profitable than expected, if it is less profitable than expected, or in either event? The testimony offered by Keynes will show that the parties intended that the company could only raise the percentage if the branch was less profitable than projected. Thus, the evidence is offered to explain an ambiguity in the agreement, not to supplement or contradict it.

(c) Fraud: The parol evidence rule does not apply to evidence offered to establish that the contract is invalid for any reason, such as fraud. If Adams told Keynes that he should not worry about the company changing percentages if he met company projections for profitability and if Adams did not intend to keep his word when he made the statement, he would have committed fraud. Fraud could also be found if Adams told Keynes that it was the company's established practice not to change percentages and this was not a true statement. In either case, Keynes would argue that the contract was induced by fraud and that it is unenforceable. A problem with this argument is that Keynes would thus end up without a contract and that is not what he wants. Perhaps he could argue that the court should declare paragraph 6.1 of the manual invalid because of this fraud but enforce the rest of the contract.

(d) Detrimental Reliance: Section 90 of the Restatement of Contracts, also known as promissory estoppel, provides that a promise which has been detrimentally relied on by the promisee may be enforced to the extent necessary to avoid injustice. The evidence will show that Adams made a promise to Keynes that the company would not reduce profit percentages if a manager met company projections of profitability, and Keynes relied on the promise to his detriment by resigning his job, moving to California, and building up the new business. Promissory estoppel has been used to create exceptions to a number of rules of contract law, including the statute of frauds, and has been used by a minority of courts to justify relief in cases where the parol evidence rule would otherwise apply. Keynes would argue that it should apply here to prevent injustice by application of the parol evidence rule. This argument is not very likely to succeed, but Keynes could make it.

(e) Policy Argument: In addition, counsel for Keynes could make the following argument about overarching policy. Although Adams may deny that he made the statements attributed to him by Keynes, this issue of credibility is for the jury to decide; it is not a basis for excluding the evidence. The court should trust the jury to ascertain who is telling the truth and allow the evidence of the oral statement in under one of the foregoing theories.

### 3. Decision of the court:

The outcome of the case may well depend on the policy orientation of the court. A court of the Willistonian mold that prefers to give greater priority to the written agreement is likely to decide that the writing is a complete integration and that it cannot be supplemented. Additionally, that type of court might well conclude that the writing has a plain meaning and that the evidence cannot be used to interpret the contract.

Even a court more inclined toward the Restatement (2d) or Corbin contextual approach might well conclude that the writing is a complete integration. Such a court might also conclude, however, that there is a latent ambiguity in Paragraph 6.1 and that the extrinsic evidence is admissible to interpret the contract.