# Parol evidence rule

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The **parol evidence rule** is a substantive common law rule in contract cases that prevents a party to a written contract from presenting extrinsic evidence that discloses an ambiguity and clarifies it or adds to the written terms of the contract that appears to be whole.[1] The term of art *parol* literally means "word" and comes from Anglo-French, Anglo-Norman, or Legal French, which in turn is derived from ecclesiastical Latin *parabola*, which means "speech". It does not directly translate as "oral", which has a different origin in modern English, coming from the Latin *oralis*, which meant "mouth".

The supporting rationale for this rule is that since the contracting parties have reduced their agreement to a single and final writing, extrinsic evidence of past agreements or terms should not be considered when interpreting that writing, as the parties had decided to ultimately leave them out of the contract. In other words, one may not use evidence made prior to the written contract to contradict the writing. A common misconception is that it is a rule of evidence (like the Federal Rules of Evidence), but that is not the case.[2]

## Contents



## Overview

The rule applies to parol evidence, as well as other extrinsic evidence (such as written correspondence that does not form a separate contract) regarding a contract. If a contract is in writing and final to at least one term (integrated), parol or extrinsic evidence will generally be excluded.[3] However, there are a number of exceptions to this general rule, including for partially integrated contracts, agreements with separate consideration, to resolve ambiguities, or to establish contract defenses.

To take an example, Carl agrees in writing to sell Betty a car for $1,000, but later, Betty argues that Carl earlier told her that she would only need to pay Carl $800. The parol evidence rule would generally prevent Betty from testifying to this alleged conversation because the testimony ($800) would directly contradict the written contract's terms ($1,000).

In order for the rule to be effective, the contract in question must first be a final integrated writing; it must, in the judgment of the court, be the final agreement between the parties (as opposed to a mere draft, for example).

A final agreement is either a partial or complete integration, provided that it has an agreement on its face indicating its finality.[4] If it contains some, but not all, of the terms as to which the parties have agreed then it is a partial integration. This means that the writing was a final agreement between the parties (and not mere preliminary negotiations) as to some terms, but not as to others. On the other hand, if the writing were to contain all of the terms as to which the parties agreed, then it would be a complete integration. One way to ensure that the contract will be found to be a final and complete integration is through the inclusion of a merger clause, which recites that the contract is, in fact, the whole agreement between the parties. However, many modern cases have found merger clauses to be only a rebuttable presumption.

The importance of the distinction between partial and complete integrations is relevant to what evidence is excluded under the parol evidence rule. For both complete and partial integrations, evidence contradicting the writing is excluded under the parol evidence rule. However, for a partial integration, terms that supplement the writing are admissible. To put it mildly, this can be an extremely subtle (and subjective) distinction.

To put it simply, (1) If the parties intend a complete integration of the contract terms, no parol evidence within the scope of agreement is permitted. (2) If the parties intended a partial integrated agreement, no parol evidence that contradicts anything integrated is permitted. And (3), if the parol evidence is collateral, meaning it regards a different agreement, and does not contradict the integrated terms, and are not terms any reasonable person would always naturally integrate, then the rule does not apply and the evidence is admissible.

In a minority of U.S. states, (Florida, Colorado, and Wisconsin), the parol evidence rule is extremely strong and extrinsic evidence is always barred from being used to interpret a contract. This is called the Four Corners Rule, and it is traditional/old. In a Four Corners Rule jurisdiction, there are two basic rules. First, the court will never allow parol evidence if the parties intended a full and completely integrated

agreement, and second, the court will only turn to parol evidence if the terms available are wholly ambiguous. The policy is to prevent lying, to protect against doubtful veracity, to enable parties to rely dearly on written contracts, and for judicial efficiency.

In most jurisdictions there are numerous exceptions to this rule, and in those jurisdictions, extrinsic evidence may be admitted for the following purposes. This is called the Admission Rule. It favors liberalizing the admission of evidence to determine if the contract was fully integrated and to determine if the parol evidence is relevant. In these jurisdictions, such as California, one can bring in parol evidence even if the contract is unambiguous on its face, if the parol evidence creates ambiguity. The policy is to get to the actual truth.

The third and final admissibility rule is that under the UCC § 2-202: Parol evidence cannot contradict a writing intended to be the "final expression" of the agreement integrated but may be explained or supplemented by (a) a course of dealing/usage of trade/ course of performance, and by (b) evidence of consistent additional terms unless the writing was also intended to be a complete and exclusive statement of the terms of the agreement.

- The court may first determine if the agreement was in fact totally reduced to a written document. In the case of *State Rail Authority of New South Wales v Heath Outdoor Pty Ltd* (1986) 7 NSWLR 170, NSW Court of Appeal, at 191, per McHugh JA, the parol evidence rule has 'no operation until it is first determined' that all the terms of the contract are in writing.
- In Australia, the case of "Saleh v Romanous" [2010] NSWCA 373, it was held that equitable estoppel triumphs common law rules of parol evidence.[5]
- To prove the parties to a contract. In *Gilberto v Kenny* [1983] 48 CLR 620, a written agreement to sell land signed by Mrs Kenny at times made reference to Mr Kenny, and the court held that oral evidence was admissible and that she was signing for herself and as an agent for her husband.
- To prove a condition precedent. In *Pym v Campbell* (1865) 119 ER 903, Pym entered into a written contract with Campbell to sell an interest in an invention. The court allowed Campbell to include the oral terms of acknowledgement that the sale was subject to an inspection and approval by an engineer. The engineer did not approve the invention.
- To prove that the written document is only part of the contract as in *Hospital Products Limited v United States Surgical Corporation* [1984] 156 CLR 41 where the court found for a written contract to be only part of an agreement. In *State Rail Authority of NSW* v Heath Outdoor Pty Ltd[1986] 7 NSWLR 170, the court held that the parol evidence rule is persuasive and the evidenciary burden is on the party wishing to rebut the claim that the whole contract was not in writing.
- To prove that an implied term of custom or trade usage or past dealings is part of a contract even if not in a written agreement, as in *Hutton v Warren* [1836] 1 M and W 466, where the party wishing to add the term bears the evidenciary burden and in this case a lease had to be read in the light of established custom.
- To prove what is true consideration, not something added to avoid taxes.
- To prove the term or promise is part of a collateral contract.[6]
- To aid in the interpretation of existing terms.[7]
- To resolve ambiguity using the *contra proferentem* rule.
- To show, particularly in California, that (1) in light of all the circumstances surrounding the making of the contract, the contract is actually ambiguous (regardless of whether the contract's meaning appears unambiguous at first glance), (2) thus necessitating the use of extrinsic evidence to determine its *actual* meaning.[8]
- To disprove the validity of the contract.
- To show that an unambiguous term in the contract is in fact a mistaken transcription of a prior valid agreement. Such a claim must be established by clear and convincing evidence, and not merely by the preponderance of the evidence.
- To correct mistakes.
- To show wrongful conduct such as misrepresentation, fraud, duress, unconscionability (276 N.E.2d 144, 147), or illegal purpose on the part of one or both parties.[9]
- To show that consideration has not actually been paid. For example, if the contract states that A has paid B $1,000 in exchange for a painting, B can introduce evidence that A had never actually conveyed the $1,000.
- To identify the parties, especially if the parties have changed names.
- To imply or incorporate a term of the contract.[7]
- To make changes in the contract after the original final contract has been agreed to. That is, oral statements can be admitted unless they are barred by a clause in the written contract.[9]

In order for evidence to fall within this rule, it must involve either (1) a written or oral communication made prior to execution of the written contract; or (2) an oral communication made contemporaneous with execution of the written contract. Evidence of a *later* communication will not be barred by this rule, as it is admissible to show a later modification of the contract (although it might be inadmissible for some other reason, such as the Statute of frauds). Similarly, evidence of a collateral agreement - one that would naturally and normally be included in a separate writing - will not be barred. For example, if A contracts with B to paint B's house for $1,000, B can introduce extrinsic evidence to show that A also contracted to paint B's storage shed for $100. The agreement to paint the shed would logically be in a separate document from the agreement to paint the house.

Though its name suggests that it is a procedural evidence rule, the consensus of courts and commentators is that the parol evidence rule constitutes substantive contract law.

Additional information on the parol evidence rule may be found in Restatement (Second) of Contracts § 213.

# Examples

The parol evidence rule is a common trap for consumers. For example:

- Health club contracts. You enroll in a health club, and the salesperson tells you that the contract can be cancelled. You later decide you would like to cancel, but the written contract provides that it is non-cancellable. The oral promises of the salesperson are generally non-enforceable. However, the salesperson in misleading you into the terms of the contract constitutes a misrepresentation and you may seek to rescind the contract.
- Auto sales agreements. You purchase a used car, and the salesperson tells you it is "good as new", but the contract provides that the sale is as is. Again, in most circumstances the written contract controls. However, this may constitute misrepresentation if it exceeds reasonably accepted "puffing" or "dealers' talk".[10]
- Timeshares. While in certain jurisdictions, and in certain circumstances, a consumer may have a right of rescission, some people attend real estate sales presentations at which they may feel pressured into immediately signing binding contracts. Evidence that the contract was entered into under duress will not be precluded by the parol evidence rule.

# Specific jurisdictions

**Australia**

- In New South Wales, if an entire agreement clause[11] does not exist in the contract terms, parol evidence rule is a default rule of a completely written contract that the admission of extrinsic evidence is not allowed, and the contract should be understood in an objective approach.[12]

- However there are two exceptions that could overcome the parol evidence rule that extrinsic evidence is admissible:

Exception 1: the contract is an oral contract or partly written. Exception 2: parties may have entered into a collateral contract[13] or are establishing an estoppel,[14] with rectification, condition precedent, the true consideration, ACL, implied terms.

- There are also exceptions to the parol evidence rule in construing a contract. The first exception is that there is evidence of trade usage, which is well-known, uniform and certain. Appleby v Pursell [1973] 2 NSWLR 879. [15]

Also, a narrow view of admissibility of extrinsic evidence has been taken, where evidence of surrounding circumstances is only admissible to resolve patent ambiguity, Cameron v Slutzkin (1923) 32CLR 81,[16] latent ambiguity, Mainteck Services Pty v Stein Heurtey [2014] NSWCA 184 Lemming JA,[17] and inherent ambiguity in the meaning of the words of a contract.[18] The High Court in *Electricity Generation Corporation v Woodside Energy Ltd*[19] took a different approach to interpreting commercial contracts, considering the "language used by the parties, the surrounding circumstances known to them and the commercial purpose or objects to be secured by the contract" at the "genesis of the transaction". This necessarily implies consideration of surrounding circumstances and indicates a broader approach may be adopted by the court in the future. The latest view is the narrow view which was described in *Mount Bruce Mining Pty Limited v Wright Prospecting Pty Limited*.

- See · *'L G Throne v Thomas Borthwick per Herron (dissent) which has been subsequently adopted*.[20]

**South Africa**

- In South Africa the Supreme Court of Appeal, beginning with the landmark ruling in *KPMG Chartered Accountants (SA) v Securefin Ltd*,[21] redefined the rules relating to the admissibility of evidence that may be used in the interpretation of contracts in South Africa and in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd* [22] the Supreme Court of Appeal gave further clarity on these rules. The starting point is the language of the document and the parol evidence rule prevents evidence to add to, detract from or modify the words contained in the document. However, evidence to prove the meaning of the words, expressions, sentences and terms that constitute the contract, is admissible from the outset irrespective of whether there is any uncertainty or ambiguity in the text – as long as the evidence concerned points to a meaning which the text can reasonably have and the evidence is relevant to prove the common intention of the parties.[23]

# See also

- English contract law
- English trusts law
- Statute of frauds

# Notes

1. *Codelfa Construction Pty Ltd v State Rail Authority of NSW* [1982] 7 NSWLR 170, 191. Austlii (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high_ct/149clr337.html?stem=0&synonyms=0&query=title%20(%20%22codelfa%22%20)
2. *Casa Herrera, Inc. v. Beydoun (http://scholar.google.com/scholar_case?case=17812765538668910988)*, 32 Cal. 4th 336, 9 Cal. Rptr. 3d 97, 83 P.3d 497 (2004). This case reaffirmed that the parol evidence rule is a substantive rule of law and not a mere procedural or evidentiary defense, and then held on that basis that a dismissal of a case on the basis of the parol evidence rule is a favorable termination on the merits sufficient to support a subsequent action for malicious prosecution.
3. Austlii (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high_ct/149clr337.html?stem=0&synonyms=0&query=title%20(%20%22codelfa%22%20)) (1982) 149 CLR 337, 347.
4. Corbin, Arthur L. (1965). "The Interpretation of Words and the Parol Evidence Rule". *Cornell Law Quarterly*. Cornell Law School. **50**: 161.
5. *Saleh v Romanous* [2010] NSWCA 373 Austlii (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWCA/2010/373.html?stem=0&synonyms=0&query=saleh%202010)
6. Hoyt's Pty Ltd v Spencer [1919] HCA 64 (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1919/64.html)
7. *Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* (1982) 149 CLR 337 AustLII (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high_ct/149clr337.html?stem=0&synonyms=0&query=title%20(%20%22codelfa%22%20))
8. *Pacific Gas & Elec. Co. v. G. W. Thomas Drayage Co. (http://scholar.google.com/scholar_case?case=3574754840919265063)*, 69 Cal. 2d 33, 39, 69 Cal. Rptr. 561, 442 P.2d 641 (1968). *Pacific Gas & Electric* is one of Roger Traynor's most famous (and controversial) opinions, which has been criticized by a number of prominent jurists, including Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit. See *Trident Center v. Connecticut Gen. Life Ins. Co.*, 847 F.2d 564 (9th Cir. 1988) and Jeffrey W. Stempel, *Stempel on Insurance Contracts*, 3rd ed., § 4.02, 4-9, n.16 (2006).
9. Wollner KS. (1999). How to Draft and Interpret Insurance Policies, p 10. Casualty Risk Publishing LLC.
10. *Vulcan Metals Co. v. Simmons Mfg. Co.*, 248 F. 853, 856 (2d Cir. 1918).
11. *Codelfa Construction Pty Ltd v State Rail Authority of New South Wales5 (Codelfa) (1982) 149 CLR 352 austill [1] (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high_ct/149clr337.html?stem=0&synonyms=0&query=title%20(%20%22codelfa%22%20)*
12. *Mount Bruce Mining Pty Limited v Wright Prospecting Pty Limited* [2015] HCA 37 AustLII (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2015/37.html?stem=0&synonyms=0&query=title(%222015%20HCA%2037%22))
13. *Hoyt's Pty Ltd v Spencer* (1919) HCA 64 (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1919/64.html?stem=0&synonyms=0&query=title(hoyt%27s%20pty%20ltd%20and%20spencer%20))
14. *Saleh v Romanous* [2010] NSWCA 373 [2] (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWCA/2010/373.html?stem=0&synonyms=0&query=title(saleh%20and%20romanous%20))
15. *Appleby v Pursell* [1973] 2 NSWLR 879 [3] (http://nswca.jc.nsw.gov.au/menus/courtofappeal_search_adv.php?current_page=2&display_form=f&decision_type=&year=2014&court=WASC&country=)
16. *Cameron v Slutzkin* (1923) 32CLR 81 [4] (http://www.austlii.edu.au/au/journals/AURELawJl/2003/102.pdf)
17. *Mainteck Services Pty v Stein Heurtey* [2014] NSWCA 184 [5] (http://nswlr.com.au/case/2014-nswca-184/)
18. *Royal Botanic Gardens and Domain Trust v South Sydney City Council* [2002] HCA 5 AustLII (http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/HCA/2002/5.html?stem=0&synonyms=0&query=title(Royal%20Botanic%20Gardens%20and%20Domain%20Trust%20v%20South%20Sydney%20City%20Council%20)); also see *Codelfa Construction Pty Ltd v State Rail Authority of NSW* [1982] HCA 24; (1982) 149 CLR 337 (11 May 1982) AustLII (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1982/24.html?stem=0&synonyms=0&query=Codelfa)
19. "Electricity Generation Corporation v Woodside Energy Ltd [2014] HCA 7" (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2014/7.html?stem=0&synonyms=0&query=electricity%20woodside).
20. *L G Throne v Thomas Borthwick per Herron* Ltd [1956] SR (NSW) 81[6] (https://books.google.com.au/books?id=_t7Y1FafwD8C&pg=PA193&lpg=PA193&dq=Thorne+v+Thomas+Borthwick+per+Herron&source=bl&ots=rlWeQaGj2k&sig=Cl7XIRUny6hRNTxjcEeb5DV3XrE&hl=en&sa=X&ved=0ahUKEwiY2KKdh8bSAhWIxbwKHYuVAd0Q6AEIOzAF#v=onepage&q=Thorne%20v%20Thomas%20Borthwick%20per%20Herron&f=false)
21. (2009) 2 All SA 523 (SCA) (http://www.saflii.org/za/cases/ZASCA/2009/7.html) par 39.
22. 2013 6 SA 520 (SCA). (http://www.saflii.org/za/cases/ZASCA/2013/120.html)
23. Cornelius, Steve Redefining the Rules for the Admissibility of Evidence in the Interpretation of Contracts (https://www.academia.edu/11379276/Redefining_the_Rules_for_the_Admissibility_of_Evidence_in_the_Interpretation_of_Contracts) 2014 De Jure 363.

# References


- Cornelius, Steve Redefining thee Rules for the Admissibility of Evidence in the Interpretation of Contracts (https://www.academia.edu/11379276/Redefining_the_Rules_for_the_Admissibility_of_Evidence_in_the_Interpretation_of_Contracts) 2014 De Jure 363
- *Electricity Generation Corporation v Woodside Energy Ltd (http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2014/7.html?stem=0&synonyms=0&query=electricity%20woodside)* [2014] HCA 7.