

A power company operated a 100-turbine wind farm. The turbines began experiencing mechanical problems and required 10 new gearboxes in order to produce electricity at full capacity. Because the manufacturer of the gearboxes was unable to guarantee speedy delivery, the power company contacted a separate shipping company. The two companies signed a fully integrated writing in which the shipping company promised to deliver the gearboxes by June 1. Before the agreement was executed, the power company told the shipping company, "If you do not deliver the gearboxes by June 1, we will be unable to produce enough electricity to meet our existing contractual obligation to a nearby town."

The shipping company was inexcusably late in delivering the gearboxes, and, as a result, the power company breached its contract with the nearby town and was found liable for damages. The power company then sued the shipping company, which was found to have breached its contract with the power company. At a hearing on damages, the shipping company now seeks to exclude any evidence of the conversation regarding timely delivery.

How will the court likely rule?

- A. Admit the evidence as proof of a collateral agreement.
- B. Admit the evidence as proof of the foreseeability of consequential damages.
- C. Exclude the evidence as a prior oral agreement even if it is consistent with the terms of the parties' written agreement.
- D. Exclude the evidence on the basis that the parties' written agreement was a fully integrated contract.

Explanation:

Integration

Type	Definition	Effect
Complete integration	Writing that sets forth parties' final agreement about <i>all</i> terms	<ul style="list-style-type: none">• Excludes parol evidence within scope of agreement• Parol evidence <i>inadmissible</i> to supplement (ie, add to) or contradict contract
Partial integration	Writing that sets forth parties' final agreement about <i>some</i> terms	<ul style="list-style-type: none">• Excludes parol evidence inconsistent with agreement• Parol evidence <i>admissible</i> to supplement (not contradict) contract

The **parol evidence rule bars** evidence of **prior or contemporaneous communications** between contracting parties that **supplement or contradict** a written contract that is **completely or fully integrated**. However, this rule **does not apply**, and such evidence is always admissible, when the evidence is used to determine **remedies for breach**. For example, parol evidence is admissible to prove that **consequential damages** were foreseeable and are therefore recoverable.

Here, the two companies signed a fully integrated contract for the delivery of 10 gearboxes. Before doing so, the power company had told the shipping company that it would be unable to meet its contractual obligation to the town if the gearboxes were not delivered on time. Evidence of this conversation shows it was foreseeable that late delivery would cause the power company to suffer consequential damages arising from its contract with the town. Therefore, the court will likely admit the evidence as proof of the foreseeability of consequential damages.

(Choice A) The parol evidence rule does not bar evidence of a collateral agreement—ie, a separate deal with its own consideration. But here, the conversation about the delivery deadline pertained directly to the companies' written contract—not a separate deal.

(Choices C & D) Prior oral (or written) agreements are inadmissible to supplement or contradict the terms of a fully integrated contract, even if they are consistent with the terms of the contract as written. But here, the conversation regarding delivery is admissible for a different purpose—to prove the foreseeability of consequential damages.

Educational objective:

The parol evidence rule bars evidence of prior or contemporaneous communications that supplement or contradict the terms of a fully integrated, written contract. But such

evidence is admissible to determine remedies for breach (eg, to prove the foreseeability of consequential damages).

References

- Barnett v. Hughey, 15 S.W. 464, 465 (Ark. 1891) (holding that parol evidence is admissible to determine damages in a contract dispute).

Copyright © UWorld. All rights reserved.