

A ceramics studio contracted with an artist to produce cups and saucers designed by the artist. The artist was an established designer of collectible ceramic dinnerware, and the studio did production work for many artists who created ceramic dinnerware. The price and quantity term of the contract read: "2,000 sets of the cups and saucers at \$5 each, payable on delivery." The contract contained a merger clause.

The studio produced the cups and saucers and delivered them along with a bill for \$20,000 (4,000 pieces at \$5 per piece). The artist refused to pay more than \$10,000 (2,000 sets at \$5 per set).

At the trial of the studio's action against the artist for breach of contract, the studio introduced evidence of an established practice in the studio industry to price cup-and-saucer sets on a per-piece, not a per-set, basis.

Is the studio's evidence admissible?

- A. No, because such evidence would vary an unambiguous term of the contract.
- B. No, because the agreement was completely integrated.
- C. Yes, because evidence of trade usage is always admissible.
- D. Yes, because the usage of trade is offered to give meaning to the contract.

## Explanation:

Under the **UCC parol evidence rule**, evidence of any prior agreement (or any contemporaneous oral agreement) cannot be used to *contradict* the terms of a final written agreement. But the **following evidence can always be used to *explain or supplement*** those terms, regardless of whether the terms appear ambiguous:\*

- **Course of performance** – sequence of conduct that is relevant to understanding an agreement between the parties if (1) the agreement involves repeated occasions for performance by a party and (2) the other party accepts performance without objection
- **Course of dealing** – sequence of conduct concerning previous transactions between the parties that establishes a common basis of understanding for interpreting their conduct
- **Trade usage** – any **practice or method of dealing** in the parties' **business or industry** that is practiced with enough regularity to justify an expectation that it will be practiced in the instant case

Therefore, the studio's evidence of an established practice in the studio industry to price cup-and-saucer sets on a per-piece (not a per-set) basis is admissible because it is offered to give meaning to the contract.

\*Priority is given as follows: (1) express contract terms prevail over all others, (2) course of performance prevails over course of dealing and trade usage, and (3) course of dealing prevails over trade usage.

**(Choice A)** Even if the terms of a written contract appear unambiguous, the UCC allows a party to explain or supplement the terms by evidence of trade usage, course of dealing, or course of performance.

**(Choice B)** If the agreement was completely integrated (ie, intended as a final and complete statement of the parties' agreement), then the studio could not explain or supplement its terms with evidence of *consistent additional terms*. But integration has no effect on the studio's ability to do so with evidence of *trade usage* (or course of dealing or performance).

**(Choice C)** Evidence of trade usage is admissible only to explain or supplement (not contradict) the terms of a final written agreement.

## Educational objective:

The UCC parol evidence rule always allows use of the following evidence to explain or supplement the terms of a final written agreement: course of performance, course of dealing, and trade usage.

## References

- U.C.C. § 2-202 (Am. Law Inst. & Unif. Law Comm'n 2020) (parol evidence rule).

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## **UCC evidence hierarchy**



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