

A farmer contracted to sell 100,000 bushels of wheat to a buyer. When the wheat arrived at the destination, the buyer discovered that the farmer had delivered only 96,000 bushels. The buyer sued the farmer for breach of contract. At the trial of the case, the court found that the written contract was intended as a complete and exclusive statement of the terms of the agreement. The farmer offered to prove that in the wheat business, a promise to deliver a specified quantity is considered to be satisfied if the delivered quantity is within 5% of the specified quantity. The buyer objected to the offered evidence.

Is the court likely to admit the evidence offered by the farmer?

- A. No, because the offered evidence is inconsistent with the express language of the agreement.
- B. No, because the written contract was totally integrated.
- C. Yes, because the offered evidence demonstrates that the farmer substantially performed the contract.
- D. Yes, because the offered evidence explains or supplements the agreement by usage of trade.

Explanation:

UCC parol evidence rule

	Description	Priority of evidence
Inadmissible	Prior/contemporaneous agreements that contradict written contract	Express terms always control
Admissible	Course of performance	Sequence of conduct under contract involving repeated occasions for performance
	Course of dealing	Sequence of conduct pertaining to previous contracts
	Trade usage	Regular practice or method of dealing in that particular business/industry
		Course of performance > course of dealing & trade usage
		Course of dealing > trade usage
		N/A

UCC = Uniform Commercial Code.

Under the **UCC's parol evidence rule**, the express terms of a **completely integrated, written contract** cannot be contradicted by evidence of inconsistent prior or contemporaneous agreements. However, evidence of **trade usage** can be **admitted to explain or supplement** contract terms so long as that evidence is reasonably consistent with the contract's express language.* Trade usage refers to a **practice or method of dealing** that is observed with such **regularity in the industry** that the parties to a contract would be expected to observe it.

Here, the farmer delivered 96,000 bushels of wheat instead of the 100,000 bushels expressly required by the completely integrated contract. However, evidence shows that in the wheat industry, a delivery is satisfied if the delivered quantity is within 5% of the quantity specified in the contract. And since this evidence of trade usage is reasonably consistent with the contract's express language, the court is likely to admit the farmer's evidence of trade usage to supplement the contract **(Choices A & B)**.

*Under the majority rule, trade usage is consistent with express language in the contract unless the usage completely negates specific express language.

(Choice C) Under the UCC's perfect-tender rule, a seller breaches a contract for the sale of goods when those goods or their delivery do not *perfectly* conform to the contract's terms (as seen here). Therefore, evidence showing that the farmer substantially performed is unlikely to be admitted because it does not excuse the farmer's breach.

Educational objective:

The UCC parol evidence rule allows the admission of evidence of trade usage to explain or supplement a contract's terms if that evidence is reasonably consistent with the express language of the contract.

References

- U.C.C. § 2-202 (Am. Law Inst. & Unif. Law Comm'n 2020) (trade usage is admissible to explain or supplement contract's terms).
- U.C.C. § 1-303 (Am. Law Inst. & Unif. Law Comm'n 2020) (definition of trade usage).

Copyright © 2011 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.