

In a contract drafted by the owner of a commercial fishing company, the company agreed to provide a specified quantity of fresh tuna to a seafood cannery each week during the "summer season" at an agreed-upon rate. The owner of the fishing company honestly understood "summer season" to mean June 15 to September 15. The cannery's president honestly understood the term to mean May 15 to September 15, as it is understood according to trade usage in the parties' industry.

The parties have now discovered that they attach different meanings to the term "summer season."

How would a court likely resolve the different meanings attached to the term by the parties?

- A. Because both parties were acting in good faith, they will be excused from performing under the contract.
- B. Because the fishing company drafted the contract, the meaning of the term "summer season" will be construed against it, and the cannery's meaning will be used.
- C. Because the fishing company works in the industry, it will be bound by the meaning supplied by trade usage.
- D. Because the parties have attached different meanings to a key term of the contract, there is no contract.

Incorrect

Correct answer C

Collecting Statistics

01 min, 42 secsTime Spent

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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 parol evidence rule**, evidence of a prior or contemporaneous agreement cannot be used to contradict the terms of a final written agreement. However, the UCC **permits** express terms to be **explained or supplemented** by evidence of the parties' course of performance, course of dealing, or **trade usage**. Trade usage is any practice or method of dealing in the particular business or industry that is observed with such regularity so as to justify an expectation that it will be observed in the instant case.

Here, the contract stated that the fishing company would provide a specified quantity of tuna to the seafood cannery each week during the "summer season." However, the term "summer season" was not defined in the contract, and the parties honestly applied different meanings to this term. To resolve these different meanings, a court will likely bind the fishing company to the meaning supplied by trade usage since it works in the industry. Therefore, the term "summer season" will be held to mean May 15 to September 15.

(Choice A) Although both parties were acting in good faith in attaching different meanings to "summer season," they will not be excused from performing under the contract. Instead, they must perform pursuant to the meaning supplied by trade usage.

(Choice B) The canon of contract construction known as *contra proferentem* construes an *ambiguous* term's meaning against the party who drafted the writing in which the term is

used. But since trade usage provides an *unambiguous* meaning here, this rule is unnecessary.

(Choice D) Even though the parties have attached different meanings to a key term, they have a contract since trade usage can be used to supply the term's meaning.

Educational objective:

Under the UCC, a party may explain or supplement the terms of a written contract with evidence of trade usage—any practice or method of dealing in the particular business or industry that is observed with such regularity so as to justify an expectation that it will be observed in the instant case.

References

U.C.C. § 1-303 (discussing course of performance, course of dealing, and trade usage).

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