

A rancher and a fancier of horses signed the following writing: "For \$5,000, the rancher will sell to the fancier a gray horse that the fancier may choose from among the grays on the rancher's ranch."

The fancier refused to accept delivery of a gray horse timely tendered by the rancher or to choose among those remaining, on the grounds that during their negotiations the rancher had orally agreed to include a saddle, worth \$100, and also to give the fancier the option to choose a gray or a brown horse. The fancier insisted on one of the rancher's brown horses, but the rancher refused to part with any of his browns or with the saddle as demanded by the fancier.

If the fancier sues the rancher for damages and seeks to introduce evidence of the alleged oral agreement, what evidence will the court likely admit?

- A. Both the saddle and the option to choose a brown horse.
- B. The saddle, but not the option to choose a brown horse.
- C. The option to choose a brown horse, but not the saddle.
- D. Neither the saddle nor the option to choose a brown horse.

## Explanation:

### Admissibility of consistent additional terms

(not barred by parol evidence rule)

**Common law** Term would *naturally* be omitted from contract under the circumstances

**UCC** Term not so important that, if agreed upon, it *certainly* would have been included in contract

UCC = Uniform Commercial Code

The **UCC parol evidence rule**\* generally bars evidence of a prior or contemporaneous agreement that contradicts the final written contract. But evidence of a **consistent additional term** is **admissible unless** a court determines the term is **so important** that it **would have *certainly* been included** in the contract. Because that standard is difficult to establish, such evidence is usually admissible.

Here, the written contract signed by the parties allowed the fancier to purchase and select a gray horse. As a result, evidence of the oral agreement to allow the fancier to purchase and select a brown horse *contradicted* the contract and is not admissible **(Choices A & C)**. But because the term to include a \$100 saddle would not have *certainly* been included in the contract, evidence of that part of the oral agreement is admissible **(Choice D)**.

\*Contracts for the sale of goods (eg, horses) are governed by Article 2 of the Uniform Commercial Code (UCC).

### Educational objective:

Under the UCC parol evidence rule, evidence of consistent additional terms is admissible unless the court determines the term is so important that, if agreed upon, it would have certainly been included in the contract.

### References

- U.C.C. § 2-202 (Am. Law Inst. & Unif. Law Comm'n 2020) (when parol evidence of consistent additional term is admissible).

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