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| Article: | Critical Analysis of Parol Evidence in Law of Contract |
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ABSTRACT

The parol evidence rule is an important part of contract law. It says that outside evidence can't be used to change or disprove the terms of a letter of intent. The concept is grounded on the notion that once parties have documented their contract in writing, the written contract should be regarded as a comprehensive and definitive representation of their intentions. While there are exceptions and limitations to the rule, it generally applies to integrated written agreements and is designed to promote certainty and predictability in contractual relationships. Courts have issued numerous decisions interpreting and applying the parol evidence rule, and it remains an important and often litigated aspect of contract law.

Key words: Parol Evidence, extrinsic evidence, integration clause.

Introduction:

In contract law, the parol evidence concept pertains to the utilization of extrinsic evidence to elucidate or construe the provisions of a written contract. This evidence can include statements, documents, or other information that is not included in the written contract itself. (Corbin, A. L. 1943).

In contract law, the use of parol evidence can be traced back to the common law tradition, when courts were mostly concerned with making sure that written contracts were followed exactly as written. This approach was known as the "parol evidence rule," which held that any evidence outside of the written contract was inadmissible in court. (Wigmore, J. H. 1904).

However, over time, courts began to recognize that there were situations where the use of extrinsic evidence was necessary to fully comprehend the aim and meaning of the parties involved in a contract. This led to the development of exceptions to the "parol evidence rule", allowing for the usage of the evidence in certain situations. (Ross, S. F., & Tranen, D. 1998). One of the first exemptions to the parol evidence rule was the "integration clause" exception, which permitted the utilization of extrinsic evidence to demonstrate that a written contract was not the final and complete agreement between the parties. This exception was often used in cases where a written contract was missing important details or where the parties had made oral agreements before or after the written contract was signed. (Strahorn Jr, J. S. 1929). The "fraud" exception was another way that the "parol evidence rule" could be broken. This meant that extrinsic evidence could be used to show that a contract was won through fraud or misrepresentation. This exception was often used in cases where one party had made false statements or concealed important information during the negotiation of a contract. (Strahorn Jr, J. S. 1929).

Extrinsic evidence is now more widely accepted in contract law, and courts often examine it when assessing the intent and meaning of a contract. (Glasser, M. K., & Rowley, K. A. 1997). The modern approach to parol evidence in contract law focuses on the principle of fairness, allowing for the use of extrinsic evidence when necessary to prevent one party from taking advantage of the other. (Epstein, D. G., Archer, T., & Davis, S. 2014).

In summary, the history of parol evidence in contract law has evolved from a strict adherence to the written contract to a more flexible approach that allows for the use of extrinsic evidence in certain situations, such as showing that a contract was not the final and complete agreement or that a contract was procured by fraud or misrepresentation.

Applicability:

The applicability of parol evidence in contract law is determined by the principle of fairness, which allows for the use of extrinsic evidence when necessary to prevent one party from taking advantage of the other. This means that courts will consider the use of extrinsic evidence when determining the intent and meaning of a contract. (Metzger, M. B. 1983).

Parol evidence is most commonly used in the following situations:

1. To clarify ambiguous terms in a contract: In cases where a contract is ambiguous or unclear, courts may consider extrinsic evidence to help determine the intent and meaning of the parties.
2. To show that a contract is not the final and complete agreement: In cases where a written contract is missing important details or where the parties had made oral agreements before or

after the written contract was signed, courts may consider extrinsic evidence to show that the written contract is not the final and complete agreement.

3. To prove fraud or misrepresentation: In cases where one party has made false statements or concealed important information during the negotiation of a contract, courts may consider extrinsic evidence to show that the contract was procured by fraud or misrepresentation. (Harvey, W. B. 1955).
4. To show that a contract was formed by mistake: In cases where a contract was formed by mistake, courts may consider extrinsic evidence to show that the parties did not intend to be bound by the contract.
5. To show that a contract was modified or rescinded: In cases where a contract has been modified or rescinded, courts may consider extrinsic evidence to show that the parties intended to make changes to the contract.

It's worth noting that, even though courts will consider the use of parol evidence in certain situations, it's not always admissible. The court will consider the evidence's reliability, relevance, and materiality to the contract's terms and decide if it's appropriate to use it or not.

The use of extrinsic evidence in contract law and its evolution:

In contract law the use of extrinsic evidence has evolved over time, as courts and legal scholars have debated the proper position of such evidence in determining the meaning of a contract. Extrinsic evidence is any evidence that isn't in the written contract itself but is used to figure out what the parties meant or to figure out what the contract says. (Epstein, D. G., Archer, T., & Davis, S. 2014).

Early in the history of common law, courts established the "parol evidence rule," which generally prohibited the use of extrinsic evidence to alter or invalidate a written contract's terms. (Thayer, J. B. 1892). However, over time, courts have established exceptions to this rule and have grown more receptive to using extrinsic evidence in specific situations.

One of the most significant developments in the use of extrinsic evidence has been the recognition that it may be used to prove the parties' intent, even if it does not directly contradict the written contract. For example, in cases involving ambiguities or latent ambiguities in the contract, courts may consider extrinsic evidence to determine the parties' intent. This allows for a more accurate interpretation of the contract and ensures that the parties' intent is given effect. (Sulentic, A. M. 2000).

Another important development has been the recognition of the doctrine of "course of performance." This doctrine holds that the parties' prior conduct in performing their contractual obligations may be considered as evidence of their intent. This is particularly relevant in cases involving long-term contracts where the parties may have developed an unwritten understanding of their obligations over time. (Richards, D. R., & Hermansen, K. E. 1995).

In recent years, courts have also recognized the importance of considering extrinsic evidence in cases involving contracts that are drafted in highly specialized fields, such as construction contracts or software licenses. In these cases, industry-specific custom and practice may be relevant in determining the meaning of the contract terms.

In conclusion, the use of extrinsic evidence in contract law has evolved over time, as courts have become more willing to consider such evidence in determining the parties' intent and in interpreting the terms of the contract. (Corbin, A. L. 1964).. This has helped to ensure

that contracts are interpreted in a way that gives effect to the parties' intent and promotes fairness and predictability in commercial transactions.

Principle of fairness and its affect on the applicability of parol evidence in contract law:

The principle of fairness is a fundamental principle in contract law that requires contracts to be interpreted and enforced in a manner that is fair and reasonable to both parties. This principle is closely related to the concept of equity and is often invoked in situations where the strict application of the contract terms would lead to an unjust result. (Calamari, J. D., & Perillo, J. M. 1966).

In the case of parol evidence, the principle of fairness can change how the parol evidence rule works. In general, the parol evidence rule says that extrinsic evidence can't be used to change or contradict what's written in a contract. When the parol evidence rule would lead to an unfair result, a court may be more likely to look at evidence from outside the case in order to give effect to the parties' intentions and make sure the contract is fair and reasonable. (Birnbaum, G. L., Stahl, L. A., & West, M. P. 1984).

For example, in cases involving latent ambiguities or terms that are vague or unclear, the court may consider extrinsic evidence to regulate the parties' intent and settle the vagueness. This is because following the parol evidence rule to the letter in these situations would be unfair to one or both parties because it wouldn't let them say what they meant to say. (Linzer, P. 2002). Similarly, in cases involving contracts that are drafted in specialized fields, such as construction contracts or software licenses, the court may consider industry-specific custom and practice as extrinsic evidence in order to determine the parties' intent. This is because the terms of such contracts are often highly technical and may be difficult for a court to interpret without the benefit of extrinsic evidence. Sulentic, A. M. (2000).

In conclusion, the principle of fairness can have a significant impact on the applicability of the parol evidence rule in contract law. When the strict application of the rule would lead to an unjust result, the court may be inclined to consider extrinsic evidence in order to give effect to the parties' intent and to ensure that the contract is fair and reasonable.

Situations in which extrinsic evidence can be used:

The use of extrinsic evidence is most commonly used in contract law in the following situations:

Ambiguity or latent ambiguity: When the terms of a contract are ambiguous or unclear, courts may consider extrinsic evidence to determine the parties' intent and resolve the ambiguity. For example, in cases involving terms that have more than one possible meaning, extrinsic evidence may be used to determine which meaning the parties intended. (Glasser, M. K., & Rowley, K. A. 1997).

Course of performance: The parties' prior conduct in performing their contractual obligations may be considered as evidence of their intent, under the doctrine of "course of performance." This is particularly relevant in cases involving long-term contracts where the parties may have developed an unwritten understanding of their obligations over time. (West Jr, W. R. 1969).

Specialized fields: In cases involving contracts that are drafted in highly specialized fields, such as construction contracts or software licenses, courts may consider extrinsic evidence in the form of industry-specific custom and practice to determine the meaning of the contract terms.

Unconscionable terms: In cases involving contracts with terms that are considered to be unfair or unreasonable, courts may consider extrinsic evidence to determine the parties' intent and to determine whether the terms are enforceable.

Oral agreements: In cases involving oral agreements, extrinsic evidence may be used to prove the existence and terms of the agreement. This may include testimony from witnesses or other evidence of the parties' conduct and course of dealing. (Zuppi, A. L. 2006).

In conclusion, the use of extrinsic evidence in contract law is most commonly used in cases involving ambiguities or uncertainties in the contract terms, in cases involving long-term contracts or specialized fields, and in cases involving terms that are considered to be unfair or unreasonable.

Admissibility of Parol Evidence in Courts:

The admissibility of parol evidence, which includes oral or written statements, negotiations, or agreements, in courts can depend on a variety of factors. In general, courts apply the parol evidence rule, which prohibits the use of extrinsic evidence to vary or contradict the terms of a written contract. However, the rule is subject to several exceptions, and courts will often admit parol evidence to clarify or interpret ambiguous or incomplete terms in a written contract. (Killin, K. 2015)..

The admissibility of parol evidence in courts can depend on several factors, including the context and circumstances of the contract's formation, the parties' bargaining power, the reasonableness of the parties' expectations, and the meaning of any disputed terms in the written agreement.

For example, if a written contract contains an ambiguity or an incomplete term, courts may allow the introduction of extrinsic evidence to clarify the term's meaning or to fill in any gaps. Similarly, if there is evidence of fraud, duress, mistake, or illegality in the formation of a contract, courts may allow the introduction of extrinsic evidence to show that the contract is unenforceable.

Courts may also consider whether the parol evidence is consistent with the written agreement's terms and whether it was contemporaneous with the contract's execution. In some cases, courts may only allow the use of parol evidence to show the parties' course of conduct or the parties' prior or subsequent dealings to help interpret the meaning of the written agreement. (White, T. H. 2012).

In general, the admissibility of parol evidence in courts is a fact-specific inquiry, and courts will consider the specific circumstances of each case when deciding whether to admit extrinsic evidence to interpret or clarify a written contract.

Over the years, courts have issued numerous decisions interpreting and applying the parol evidence rule. Here are a few examples of case law on the parol evidence rule:

Masterson v. Sine (1968): In this case, the California Supreme Court held that the parol evidence rule does not apply when a written contract is not a complete integration of the parties' agreement. In other words, if the parties intended for the written contract to be only a partial expression of their agreement, extrinsic evidence may be admissible to explain or supplement the terms of the contract.

Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co. (1968): The Supreme Court of California held that the parol evidence rule does not apply to evidence that

is offered to show that a written contract is void or voidable due to fraud, mistake, duress, undue influence, illegality, or the like.

Mastondrea v. Occidental Hotels Management (2004): The New York Supreme Court held that the parol evidence rule does not bar the admission of evidence that is consistent with, and would not alter, the terms of a written contract. In this case, the court allowed evidence of an oral agreement between the parties that confirmed, rather than contradicted, the written contract.

Bank of America, N.A. v. Mitchell (2013): The Ninth Circuit Court of Appeals held that the parol evidence rule does not apply to evidence that is offered to explain or interpret ambiguous terms in a written contract. The court noted that ambiguity may be shown by reference to the context in which the contract was made, as well as the conduct of the parties before and after the contract was executed.

These cases illustrate that the parol evidence rule is a complex and nuanced legal doctrine that requires careful analysis of the facts and circumstances of each case. While the rule generally prohibits the admission of extrinsic evidence to contradict or modify the terms of a written contract, there are exceptions and limitations that must be considered.

Difference Between Common Law and Civil Law Systems:

The use of parol evidence in contract law can differ between common law and civil law systems. In general, commonlaw systems (such as those in the United States, United Kingdom, Canada, and Australia) tend to place greater emphasis on the written contract and apply the parol evidence rule more strictly, while civil law systems (such as those in France, Germany, and Spain) tend to give more weight to the parties' intentions and may allow for a wider range of evidence to be introduced to establish those intentions (Brown, C. N. 2008).

In common law systems, the parol evidence rule is generally interpreted as barring the introduction of any evidence that would contradict, vary, or add to the terms of a written contract that appears to be complete and final. Exceptions to the rule are narrowly construed and typically require a showing of ambiguity or other factors that suggest that the parties did not intend the written contract to be the final expression of their agreement.

In civil law systems, by contrast, the focus is often on the parties' intentions rather than on the text of the contract. As a result, evidence of negotiations, discussions, and other circumstances surrounding the formation of the contract may be given greater weight in determining the parties' intentions. This may allow for a wider range of evidence to be introduced, including evidence of oral agreements, industry customs, and the parties' prior dealings. (Epstein, D. G., Archer, T., & Davis, S. 2014).

It's important to note that the exact rules governing the use of parol evidence can vary widely within both common law and civil law systems, and may depend on the specific jurisdiction, the nature of the contract, and the circumstances of the case.

Impact of technology on the use of extrinsic evidence:

The impact of technology on the use of extrinsic evidence in contract law has been significant in recent years. Technology has made it easier to create, store, and transmit large amounts of information, which has in turn affected how courts approach the use of extrinsic evidence in contract disputes.

One way in which technology has impacted the use of extrinsic evidence is through the increased use of electronic communications, such as email and instant messaging. These types

of communications may be used as evidence of the parties' intentions and understanding of the terms of the contract, even if they are not contained within the written contract itself (Koster, K. 2000) In some cases, electronic communications may be seen as more reliable evidence than traditional forms of extrinsic evidence, such as oral testimony, due to their permanence and the ability to easily authenticate them.

In addition, technology has made it easier to access and analyze large amounts of data, which may be relevant to a contract dispute. For example, data analytics tools may be used to identify patterns or anomalies in the parties' behavior that could shed light on their intentions or understanding of the terms of the contract.

However, the use of extrinsic evidence in contract disputes remains subject to certain legal limitations and principles, such as the parol evidence rule and the requirement that evidence be relevant, reliable, and admissible under the applicable rules of evidence Starke, J. G. (1990). Evidence: alleged offence by television licensee: rights and responsibilities of jury: admissibility of extrinsic evidence: onus of proof of inapplicability of exemption: whether prejudicial effect of extrinsic evidence outweighs probate value: (Broa. Australian Law Journal, 64(10), 668-670). As such, the impact of technology on the use of extrinsic evidence in contract law is still evolving, and courts and practitioners must continue to grapple with how best to use and analyze the wide range of data and information that is now available.

Parol Evidence in Online and Offline Contracts:

The use of parol evidence in contract law can differ in online and offline contracts, although the basic principles that govern the use of extrinsic evidence to interpret the terms of a contract generally remain the same.

One difference between online and offline contracts is that online contracts are often formed through a series of electronic interactions, such as clicking a button or filling out a form, rather than through a negotiated and signed agreement. As a result, there may be less opportunity for the parties to negotiate specific terms, which could make the use of extrinsic evidence more important in understanding the parties' intentions (Erin Ann, O. H. 2005).

In addition, the terms of online contracts may be more likely to be contained in a standard form agreement that the user must accept in order to use a website or service. This can make it difficult for the user to negotiate specific terms or understand the implications of the agreement. As a result, courts may be more likely to look to extrinsic evidence, such as industry practices or the parties' prior dealings, to interpret the terms of the contract.

Another difference between online and offline contracts is that electronic interactions between the parties may be easier to record and keep than in offline contracts. This could make it easier to use outside evidence to figure out what the contract says. But whether such evidence can be used depends on whether it is relevant, trustworthy, and allowed by the rules of evidence (Gardiner 2022).

Overall, the use of parol evidence in both online and offline contracts will depend on the facts of the case, such as the nature of the contract, how the parties behaved and talked to each other, and the laws that apply. As with any contract, the key is to figure out what the parties want and then figure out what the terms of the contract mean in light of those wants.

Parol Evidence and Principle of Freedom of Contract:

In contract law, parol evidence is proof of verbal or written statements, conversations, or agreements that happened before or at the same time as the signing of a written contract.

The "parol evidence rule," which says that such evidence can't be used to change or contradict the terms of a written contract, can make it harder to use parol evidence.

The principle of freedom of contract refers to the legal ability of parties to enter into a contract and to negotiate and agree upon its terms and conditions freely, without undue influence or coercion (Khan, A. S. et al 2014). It is a fundamental principle of contract law and an essential element of the free market system.

The use of parol evidence in contract law is related to the principle of freedom of contract in that it helps to ensure that the parties' written agreement reflects their true intentions and the full scope of their agreement. By limiting the admissibility of evidence that could contradict or vary the terms of the written agreement, the parol evidence rule helps to promote the parties' freedom of contract by giving effect to their written agreement (Ali, A., Khan, A. S., & Ali, A. M. 2021).

In other words, the parol evidence rule helps to protect the parties' freedom of contract by promoting certainty and predictability in the interpretation of their written agreement, while also preserving their ability to negotiate and agree upon its terms without interference from external evidence.

Duty of Courts in balance the principle of fairness and the integrity:

The use of extrinsic evidence, including parol evidence, in contract law can be a delicate balancing act between the principle of fairness and the integrity of written contracts. In general, courts seek to balance these principles by applying a two-part test to determine whether extrinsic evidence is admissible in a given case (Lombard, M. 2021).

The first part of the test considers whether the written contract is complete on its face. If the written contract is thought to be complete, the parol evidence rule says that evidence from outside the agreement can't change or contradict what's written in the contract.

The second part of the test looks at how clear or vague the contract seems to be. If the written contract is thought to be unclear or ambiguous, then extrinsic evidence may be used to help figure out what it means. However, courts will generally only consider extrinsic evidence that is consistent with the written terms of the agreement and that does not contradict its plain meaning. (Sulentic, A. M. 2000).

In order to find a balance between fairness and the validity of written contracts, courts will look at a number of factors, such as the relative bargaining power of the parties, the circumstances surrounding the creation of the contract, and whether or not the parties' expectations are reasonable. Courts may also consider whether the use of extrinsic evidence is necessary to prevent injustice or to correct a mistake in the written agreement.

In the end, the goal is to make sure that the written agreement reflects the parties' true intentions and expectations while also making sure that contractual obligations are clear and easy to understand. The right balance between fairness and honesty will depend on the details of each case, and the courts will use the relevant legal principles to decide what should happen.

Conclusion:

The parol evidence rule is an important part of the law of contracts. Its goal is to protect the integrity of written agreements and encourage the freedom of contract between the parties. However, the rule is not without its limitations and has been subject to criticism in recent years. One criticism of the parol evidence rule is that it can lead to injustice and unfairness in some cases. For example, if a written contract isn't clear or doesn't reflect the parties' true intentions,

the parol evidence rule may stop the parties from bringing in evidence that could help explain what the contract means or fix a mistake. In such cases, the rule could result in a party being held to a contract that they did not intend to enter into.

Another problem with the parol evidence rule is that it might not always be in line with how contracts are made today. Parties may have a lot of talks and negotiations before signing a written contract, and the rule may prevent them from using evidence of these talks to explain or clarify what the written contract means.

But people who support the parol evidence rule say that it is necessary to make sure that contractual obligations are clear and easy to understand. The rule helps make sure that the written agreement is the final way for the parties to say what they want, and that outside evidence can't easily change or contradict the agreement's terms.

In conclusion, the parol evidence rule is an important part of contract law and the fact that it is still used shows that there is a balance between the parties freedom to contract and the need for contractual obligations to be clear and predictable. While there may be some limitations and criticisms of the rule, its overall benefits in preserving the integrity of written agreements and promoting certainty in contractual relations make it an essential principle in modern contract law.

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