COIN WORLD

Exceptions to the rules

By Armen R. Vartian | 07-05-13
Article first published in July-2013, Expert Advice section of Coin World

I spend a lot of my time negotiating and writing contracts for clients, and interpreting contracts written by others for my clients.

While lawyers have been doing this for hundreds of years, there are no absolutely clear rules in certain areas, and clients are often puzzled by what I tell them about the principles of contract interpretation.

One such puzzling principle is called the Parol Evidence Rule. This is not, strictly speaking, a rule of evidence such as would apply to hearsay at trial. Rather, it is a principle that once a contract is finalized and in writing, a court will not consider other documents or testimony involving the agreement.

The word “parol,” meaning oral or word of mouth, is somewhat of a misnomer, because the rule applies equally to written evidence and to oral evidence.

Here’s an example. Dealer A issues a written invoice to Customer B selling a coin for $3,000. Customer B pays $2,500 in cash, and Dealer A files a lawsuit to recover an additional $500. Customer B offers as evidence an email from Dealer A the day of the transaction saying “I’ll take $2,500 if you pay in cash.” Is that admissible?

Admissible or not

The answer varies. In some states, it would almost certainly be inadmissible, because it varies the terms of the written invoice. If the parties had intended to include a cash discount in their agreement, they could have (and presumably would have) done so. In other states, however, it might be admissible because it (1) came from Dealer A himself; and (2) isn’t entirely inconsistent with the written document.

So if Customer B had sent the email “confirming” a cash discount, courts might not be so willing to consider it, and if the invoice had said “No cash discounts,” probably that would likewise be fatal to introducing the email into evidence.

Who’s liable?

Here’s a different example. Dealer C issues a written invoice to Dealer D selling a group of coins for $100,000. Dealer D doesn’t pay, saying that she was acting as an agent for Dealer E and isn’t liable herself. In all but the strictest parol evidence states, Dealer D will be able to introduce a letter she sent to Dealer C prior to the sale stating that she was acting as Dealer E’s agent and that Dealer E would be paying for the coin.

So exceptions do exist, usually where a contract provision is ambiguous, or where there’s alleged fraud or misrepresentation.

In cases of ambiguity, courts may look at the parties’ pre-contract correspondence to better understand the meaning of the ambiguous terms. And where one party claims that it was fraudulently induced into signing the contract, evidence of such fraud is often received by the court.

For example, if a dealer refers to a coin as having a certain provenance in correspondence with the buyer but forgets to include those representations in the

final invoice, a court might accept the correspondence as evidence if the customer contends that he was induced to buy the coin because of its provenance and that the representations were false.

None of this, of course, affects the rule that where terms in a contract are defined by industry custom and practice, evidence of such custom and practice will be admitted to interpret the contract.

I'll tackle that in my next column.

Armen R. Vartian is an attorney and author of *A Legal Guide to Buying and Selling Art and Collectibles*.