# Drake Law Review

Vol. No. 10 MAY, 1961 No. 2

## CONTRACTS IN IOWA REVISITED—SCOPE AND MEANING OF CONTRACTS

RICHARD S. HUDSON*

Previous articles[1] have collected and analyzed cases concerning various facets of Iowa contract law which have been decided since those referred to in the book *Iowa Annotations to the Restatement of Contracts*.[2] Substantially all chapters of the *Restatement of Contracts*[3] have thus been covered except that entitled "Scope and Meaning of Contracts",[4] to which attention is now directed in this article. This area might be more recognizable by some with the statement that the subject matter discussed will be that of the Parol Evidence Rule and of Interpretation.

The story of the Parol Evidence Rule is the story of continuous reiteration of a rule that parol evidence is not admissible to add to, vary, or contradict the terms of a written instrument[5] and of a reverence for the sanctity of a written document that in some applications is so strong the Court is led to completely close its eyes (and ears) to what the parties may orally[6] have

*Professor of Law, Drake University Law School.

[1] *Contracts in Iowa Revisited—Performance, Breach and Remedies*, 9 DRAKE L. REV. 66 (1960); *Contracts in Iowa Revisited—Fraud and Misrepresentation, Duress and Undue Influence*, 9 DRAKE L. REV. 3 (1959); *Contracts in Iowa Revisited—Offer and Acceptance*, 8 DRAKE L. REV. 91 (1959); *Contracts in Iowa Revisited—Illegality*, 8 DRAKE L. REV. 3 (1958); *Contracts in Iowa Revisited—Mistake*, 7(2) DRAKE L. REV. 3 (1958); *Contracts in Iowa Revisited—Statute of Frauds*, 6 DRAKE L. REV. 63 (1957); *Contracts in Iowa Revisited—Third Party Beneficiaries and Assignments*, 6 DRAKE L. REV. 3 (1956); *Doctrine of Consideration in Iowa Revisited—The Bargain Element*, 5 DRAKE L. REV. 67 (1956); *Doctrine of Consideration in Iowa Revisited—Discharge or Modification of Duties*, 5 DRAKE L. REV. 3 (1955).

[2] This work was published in 1934. It is referred to herein, subsequently, as IOWA ANNOTATIONS. Cases prior to volume 215 of the Iowa Reports may be found in IOWA ANNOTATIONS under appropriate RESTATEMENT, CONTRACTS (1932) section numbers. Other volumes covering part of the earlier period are: ZEUCH, IOWA PAROL EVIDENCE RULE (1925), and MCCARTY, IOWA APPLIED EVIDENCE §§ 4326-4451 (1927).

[3] RESTATEMENT, CONTRACTS (1932), is subsequently referred to herein as RESTATEMENT. Chapter 4 on Sealed Contracts, and Chapter 5 on Joint Promisors and Joint Promises, have not been covered in the articles referred to in note 1, *supra*, and are not covered in this article.

[4] RESTATEMENT §§ 226-49. These subjects are extensively discussed in the standard treatises, 3 CORBIN, CONTRACTS (1960), and WILLISTON, CONTRACTS (rev. ed. 1936), which will be referred to subsequently as CORBIN and WILLISTON. CORBIN sections are: Interpretation, §§ 332-560; Parol Evidence Rule, §§ 573-96. WILLISTON sections are §§ 601-47. See also MCCORMICK, EVIDENCE §§ 210-22 (1954), referred to as MCCORMICK. All these sources refer extensively to WIGMORE, EVIDENCE §§ 2400-76 (3d ed. 1940), referred to as WIGMORE. See also SIMPSON, CONTRACTS §§ 63-67 (1954).

[5] RESTATEMENT § 237 applies the rule to integrated agreements, and defines integration in § 228 as: "an agreement where the parties thereto adopt a writing or writing as the final and complete expression of the agreement. An integration is the writing or writings so adopted." Comment *a* to § 228 emphasizes that there must be assent not only to the provisions of the agreement but also to the writing as a final statement of the agreement. As noted in IOWA ANNOTATIONS § 228, the Iowa cases have seemed, with a few exceptions, to refer only to the presence of a written contract, the form of the writing, rather than to a requirement that the parties have adopted a writing as the final expression of the agreement, and they have not generally used the phrase "integrated agreement". See further discussion in notes 20-29, *infra*, and accompanying text.

[6] RESTATEMENT § 237 also excludes prior written agreements, but does not exclude contemporaneous written agreements. Exclusion of prior written agreements is appropriate because of the theory that a later agreement should be a substitute for the former. Non-exclusion of contemporaneous written agreements is supported in Comment *a*, by the statement that, where writings relating to the same subject matter are contemporaneous, both form a part of the integration. However, see Fidelity Sav. Bank v. Wormhoudt Lumber Co., 251 Iowa 1121, 104 N.W.2d 462 (1960), the facts of which are referred to in the text accompanying note 21, *infra*, in which the Court excluded a contemporaneous writing without discussing the pos-

agreed to, prior to or contemporaneously with the written document. At the same time it is a story of exceptions or refusals to apply the Rule that are so numerous as to almost completely deny the existence of such a rule. It should be noted immediately that, in spite of its name, this is not a rule of evidence, but is a rule of substantive law[7] to govern the courts in determining the legally effective scope of the agreement of the parties; this principle is especially recognized in the holding[8] that the Rule is applicable even though no objection was made at the time such evidence was introduced. Also, it should be noted that the Rule has no application to oral agreements subsequent to a written instrument even though they may alter or abrogate the writing.[9]

The period under surveillance begins with *In re Simplot's Estate*,[10] an extensive opinion by Justice Evans. It concludes, essentially, with another extensive opinion by Judge Graven of the federal court for the Northern District of Iowa, in *Nutrena Mills, Inc. v. Yoder*,[11] with quotes from the earlier Iowa case. Also of interest is an article in 1935 by Loth and Jennings[12] commenting on the cases collected in *Iowa Annotations to the Restatement of Contracts*, and a few subsequent cases, disagreeing with certain of the conclusions stated in the *Iowa Annotations*,[13] expressing the hope that the Iowa Court would spend less time examining case precedents and more time in

---

sibility of different treatment for a contemporaneous written agreement. See also IOWA ANNOTATIONS § 235-IV-B, p. 372, referring to two earlier cases for the proposition that where the instrument is complete and unambiguous the two writings are not to be construed together.

[7] CORBIN § 573; WILLISTON § 631; MCCORMICK § 213.

[8] Williams v. Williams, 251 Iowa 260, 100 N.W.2d 185 (1959); Martin v. Stewart Motor Sales, 247 Iowa 204, 73 N.W.2d 204 (1955). See Ladd, *Procedural Aspect of the Parol Evidence Rule*, 1 IOWA BAR REV. 17 (1934). Also see the holding in Nutrena Mills, Inc. v. Yoder, 187 F. Supp. 415 (N.D. Iowa 1960), that the federal court will be governed by state rules and not by some federal rule in connection with application of the Parol Evidence Rule.

[9] Kaltoft v. Nielsen, —— Iowa ——, 106 N.W.2d 597 (1960); Gard v. Razanskas, 248 Iowa 1333, 85 N.W.2d 612 (1957) (plaintiff-lessee's testimony relative to a claimed oral agreement with defendant-lessor about crediting insurance money on purchase price held admissible because Parol Evidence Rule not applicable to subsequent agreement); Baie v. Nordstrom, 238 Iowa 866, 29 N.W.2d 211 (1947) (subsequent oral extension of written lease); Berg v. Kucharo Constr. Co., 237 Iowa 478, 21 N.W.2d 561 (1946) (subsequent oral agreement to pay for extra work in construction project may be effective even through written agreement purported to forbid oral modifications); Iowa Elec. Light & Power Co. v. Hopp, 221 Iowa 680, 266 N.W. 512 (1936) (refusing admission of oral statements of architect, was distinguished in the *Berg* case, *supra*, on basis of lack of authority of architect to waive clauses requiring writing); Webster County Buick Co. v. Nebraska Auto Co., 216 Iowa 485, 249 N.W. 303 (1933); IOWA ANNOTATIONS § 407.

The Parol Evidence Rule was used in Jacobsen v. Moss, 221 Iowa 1342, 268 N.W. 162 (1936), as a reason for denying the validity of an alleged compromise. In an action for rent, the Court approved striking from the answer an allegation that, although the written lease provided for a certain rental, this was entered into only after an oral assurance that the lessor would not expect any more than the farm would reasonably produce, and an allegation that subsequent to the written lease the lessor accepted a certain amount in full settlement. The Court, after observing that a written lease is presumed to embody all terms of an agreement, stated that, accordingly, there could be no good faith dispute to support a defense of accord and satisfaction, in the absence of competent evidence. This is an amazing proposition, that the good faith of a controversy should turn on what the Court says about the Parol Evidence Rule. It is difficult enough for lawyers to predict the application of the Rule.

[10] 215 Iowa 578, 246 N.W. 396 (1933), prior opinion in 238 N.W. 91 (1931).

[11] 187 F. Supp. 415 (N.D. Iowa 1960).

[12] Loth and Jennings, *The Parol Evidence Rule in Iowa*, 20 IOWA L. REV. 713 (1935).

[13] *Id.* at 718 consider the discussion in IOWA ANNOTATIONS § 237-V to be inadequate on the question whether a third person, not a party to the writing, is bound by the Rule. IOWA ANNOTATIONS seeks to explain the cases on a different basis than that the Parol Evidence Rule does not apply. Andrew v. Naglestad, 216 Iowa 248, 249 N.W. 131 (1933), involving, in part, an attempt to recover from a grantee on an assumption of mortgage clause contained in a deed, repeats the statement that the Parol Evidence Rule is not applicable to strangers to the deed (i.e., the creditors); however, it should be noted that the parol evidence in this case was introduced to prove there was never any agreement to pay the mortgage, that the deed with such a clause was in error, and that there was no consideration for such a promise in the deed, sufficient reasons in themselves to allow parol evidence. See discussion in CORBIN § 596, and WILLISTON § 647.

Loth and Jennings, in 20 IOWA L. REV. at 726, disagree with the statement in IOWA ANNOTATIONS § 241, that the Iowa rule admitting proof of conditional delivery corresponds to that of the RESTATEMENT. See discussion, *infra*, notes 38-52, and accompanying text.

applying the *Restatement* as a juristic base for solution of problems,[14] and in general seeming to hope there would be a general tightening up of the application of the Rule in the direction of not permitting the written document to be affected by extrinsic evidence.[15] Examination of the cases decided during this period does not indicate that the Court has consistently adhered to the *Restatement* formula, or that it has given up examining case precedents. However, recent Iowa cases,[16] at least, indicate no reluctance to apply the Rule to prevent consideration of extrinsic evidence.

Extensive analysis or reconciliation of Iowa cases during the period under surveillance is not deemed to be worthwhile, or even possible. However, primarily for illustrative purposes, some of the cases are discussed below. First will be a reference to some cases in which the Rule was applied to prevent use of such extrinsic evidence. *In re Simplot's Estate*[17] involved an action for damages for breach of an alleged oral promise to leave certain property inherited by the promisor, although there was a written stipulation which did not recite any such promise but only recited a promise to pay to the plaintiff a sum of five hundred dollars in full settlement of claims against the estate through which the promisor inherited. The Court refused to permit admission of evidence of such an alleged oral promise, stating it was not admissible under one of the possible exceptions as a collateral, independent contract[18] because there was no separate consideration for the promise, nor under another possible exception of a contract, partly in writing and partly oral,[19] because for this exception to be operative the instrument must appear to be incomplete from the terms of the writing itself.

Next we jump over the years to some more recent cases. In 1957, in *Stebens v. Wilkinson*,[20] sustaining a motion to dismiss based on the statute of limitations, in an action on a note, the Court held that a note, payable in express terms on demand, could not be affected by an allegation that the note was delivered, executed and accepted with the intent and understanding that it would not be due and payable immediately, in the absence of an allegation of fraud, accident or mistake. In *Fidelity Savings Bank v. Wormhoudt Lumber Co.*,[21] a 1960 case, a suit on a guaranty of a note, the Court struck certain allegations in the answer to the effect that the note was to be paid solely from profits derived from building operations and that plaintiff knew defendant would not have signed the note and accompanying contract unless assured control of disbursements as provided in another written agreement[22] allegedly

[14] Loth and Jennings, *The Parol Evidence Rule in Iowa*, 20 IOWA L. REV. 713, 737 (1935).

[15] *Id.* at 727, not favoring exceptions to the rule under the guise of conditional delivery when the conditions relate only to performance.

[16] See, particularly, the cases in notes 20-21, *infra*.

[17] 215 Iowa 578, 246 N.W. 396 (1933), prior opinion in 238 N.W. 91 (1931).

[18] CORBIN § 594; WILLISTON §§ 637-45; MCCORMICK § 211; Loth and Jennings, *supra* note 12, 732. See notes 53-54, *infra*, and accompanying text, for cases permitting admission of parol evidence under this exception.

[19] WILLISTON § 636; MCCORMICK § 212; Loth and Jennings, *supra* note 12, 730. See notes 55-57, *infra*, and accompanying text, for cases permitting parol evidence to be admitted under this exception. In MacLaughlin v. MacLaughlin, 250 Iowa 616, 93 N.W.2d 591 (1958), a contempt proceedings to enforce alimony payments, testimony tending to show future citations for contempt were relinquished was apparently thought not to be competent, under the theory of a partly written, partly oral agreement, because the written agreement specifically referred only to a ten-months limitation on further proceedings.

[20] 249 Iowa 365, 87 N.W.2d 16 (1957).

[21] 251 Iowa 1121, 104 N.W.2d 462 (1960).

[22] The Court acknowledges that a contemporaneous agreement in writing is to be considered in connection with another instrument, but then flatly states that the Parol Evidence Rule prohibits this variation. See the reference in note 6, *supra*, to Comment *a* to RESTATEMENT § 237, that where contemporaneous writings relate to the same subject matter they are a part

executed at the same time between the maker of the note and his employer in a home building project. Note that in these two state court cases the Court completely closed its eyes and ears, in sustaining the motion to dismiss and the motion to strike parts of an answer, to the alleged oral agreements, even though such claims seem believable and possible.[23] Also note that the Rule was phrased in terms of applicability to written contracts without reference to the *Restatement* or to its terminology of applicability of the Rule to integrated contracts,[24] where the parties have not only assented to the provisions of the agreement, but also to the writing as a final statement of their intentions.

Two other Iowa cases did use the *Restatement* terminology of integration. In *City of Des Moines v. City of West Des Moines*[25] the Court, on a motion for judgment on the pleadings, refused to grant relief for the plaintiff city so as to limit the terms of a contract, for use by defendant city of plaintiff's sanitary sewer system, to the boundaries of the defendant city as of the time of the execution of the contract, even though plaintiff pleaded that was the parties' intention, understanding and agreement, because the plaintiff did not plead fraud, duress or mistake. *Restatement* section 237, about exclusion of parol evidence, was quoted in support, with apparently an assumption that this was an integration, in spite of the allegation that the words used did not correspond to the agreement. Even though this disposition of the action did not give plaintiff an opportunity to support his allegations, the Court seemed also to find support in the agreement and negotiations for its interpretation and apparently did not consider the contention of plaintiff believable. This tends to weaken the relevance of the Parol Evidence Rule in the case. In *Weik v. Ace Rents*[26] the Court affirmed sustaining a motion to dismiss, on a motion for judgment on the pleadings, the petition for damages from a rented lawnmower. In dismissing a count as to alleged oral warranty, the Court relied on section 237, and then stated that the "pleadings show the parties

---

of the same integration. There would seem to be no reason to prefer one contemporaneous writing over another.

[23] In another case the Court struck an answer because it apparently did not believe it. In Hillje v. Tri-City Equipment Co., 224 Iowa 43, 275 N.W. 880 (1937), a suit on a note, the Court sustained a motion to strike an answer that the instrument was intended to be merely a receipt, for the reason that the pleading showed on its face that this was false, and that parol evidence would be admitted only where ambiguous or there is doubt that the instrument is the final agreement of the parties. The Court obviously could not believe that a businessman would sign a note intending it to be a receipt.

[24] RESTATEMENT §§ 228, 237.

[25] 244 Iowa 310, 56 N.W.2d 904 (1953). This case was cited in Rice v. Sioux City Memorial Park Cemetery, Inc., 245 Iowa 147, 60 N.W.2d 110 (1953), an action for refusal to bury a Winnebago Indian in a lot reserved for "Caucasians", as authority for refusing to pay any attention to an allegation that the defendant knew the person to be buried was a Winnebago Indian. The statement was that the Parol Evidence Rule prevented such proof even if a separate agreement or a misunderstanding of terms of a later executed agreement is claimed, and that although an independent oral contract may be entered into by parties to a written contract contemporaneously therewith, it must be truly independent in fact and not a contradiction of the writing. See discussion, notes 53-54, *infra*, and accompanying text, about the exception of collateral, independent agreement and RESTATEMENT § 240 permitting evidence of other agreements than in the integration only if not inconsistent with it.

[26] 249 Iowa 510, 87 N.W.2d 314 (1958). In Rasmus v. A. O. Smith Corp., 158 F. Supp. 70, 88 (N.D. Iowa 1958), the court discussed the effect of the Parol Evidence Rule on warranty liability, and although holding no warranty liability because of other clauses in the agreement, concluded that a clause stating "This order form is the entire and only agreement between the seller and buyer; and no oral statements or agreements not confirmed herein, or by a subsequent written agreement, shall be binding on either the seller or buyer" would not exclude implied warranty as to fitness and testimony was admissible to show the knowledge of the seller of the particular purpose for which the product was desired, citing in support Rowe Mfg. Co. v. Curtis-Straub Co., 223 Iowa 858, 273 N.W. 895 (1937), and Hughes v. National Equipment Corp., 216 Iowa 1000, 250 N.W. 154 (1933), with substantially similar clauses. See CORBIN § 578; WILLISTON § 643.

adopted Exhibit A [a writing exonerating defendant from all liability for damages or loss in use of the lawnmower] as the final and complete expression of the agreement between them."[27] The reference to the pleadings must be a reference to the fact that apparently there was no reply to defendant's answer that Exhibit A represented the entire agreement. Here at least is some emphasis on the requirement that parol evidence is inadmissible only if there is consent not only to the terms but also to the expression of those terms.

A recent Iowa federal district court case, *Nutrena Mills, Inc. v. Yoder*,[28] also applied the Parol Evidence Rule to prevent use of an alleged oral agreement. The suit was one for recovery of advancements to the defendant to finance turkey and hog raising operations, made pursuant to certain written agreements which provided for financial assistance not to exceed a certain amount, and which also provided that the contract contained all the agreements between the parties in connection with the transaction and could not be varied orally. The defendants alleged, apparently trying to come within one of the often-applied exceptions to the Parol Evidence Rule of conditional delivery,[29] that the contracts were delivered on the oral condition that the plaintiff was to furnish sufficient feed to completely feed out the turkeys for the 1957 season and that this was not done. The court granted a summary judgment for plaintiff, after depositions were taken covering evidence in the case, stating that the Parol Evidence Rule prevents consideration of such evidence of extrinsic oral agreements, and that, accordingly, no actual dispute existed. The court considered that the so-called exception of conditional delivery did not apply because the argument or condition related to performance rather than to the legal existence of the contract, and that even if it were a condition precedent to legal existence it could not be shown because it was inconsistent with the express terms of the writing. The opinion cites the *Restatement* but does not discuss the possible argument that the document was not really an integrated document, although there was a deposition in which defendant stated he signed the written document, but that, having read it, he did not deliver it until plaintiff had acquiesced in a request to continue to supply feed throughout the season.

Next we should examine some cases in which parol evidence has been admitted, either under the notion the Rule did not apply, or, more commonly, under the guise of some "so-called" exception to the Rule. The opinion in *In re Simplot's Estate* contains a listing of so-called exceptions which were quoted in *Nutrena Mills, Inc. v. Yoder*, the federal case just referred to. As stated in the *Simplot* case, they are, in pertinent part:

1. The rule has no application to suits in equity for reformation of written contracts. . . .

2. Where the written contract is unilateral only, such as a promissory note, the nature of the consideration therefor may always be shown by parol evidence unless the note itself specifies such consideration.

---

[27] 249 Iowa 510, 515, 87 N.W.2d 314, 318 (1958).

[28] 187 F. Supp. 415 (N.D. Iowa 1960).

[29] RESTATEMENT § 241, CORBIN § 589; WILLISTON § 634. See notes 31-43, *infra*, and accompanying text, for cases authorizing admission of parol testimony under the exception of conditional delivery, and for further discussion.

3. An oral contract contemporaneous with a written one which is purely collateral is provable by parol evidence, provided that such oral contract is complete in itself, and does not contradict or vary any of the terms of the written contract. The alleged oral collateral contract may not become a part of the written contract. Each must stand upon its own terms and upon its own consideration. . . .

4. Parol evidence is admissible to prove that the delivery of a contract in a given case was conditional only, and that compliance with the condition failed. Such parol evidence must be directed solely to the fact of *delivery* and to the conditions thereof. Such parol evidence does not operate to alter in any way the *terms* of the contract. If conditional delivery be proved, and that compliance with the condition failed, then the *entire contract* fails, regardless of its terms. The entire contract is deemed not to have become effective.

5. A single contract may be expressed partly in writing and partly in parol. However, a written contract is presumed to be complete and to comprise the entire transaction unless it otherwise appears from the terms of the written contract itself. . . .[30]

The *Restatement* approaches the problem in a somewhat different way. Section 237 starts by applying the rule to integrated agreements. Integration is defined in section 228 as "an agreement . . . where the parties thereto adopt a writing or writings as the final and complete expression of the agreement," which requires that the parties assent not only to the provisions but also to the writing as a final statement of their intentions as to the matters contained herein. Section 238, among other statements,[31] admits extrinsic evidence of agreements prior to or contemporaneous, to prove facts rendering the agreement void or voidable for illegality, fraud, duress, mistake or insufficiency of consideration, to prove facts in a suit for rescission or reformation of the written agreement which show such mistake as affords ground for the desired remedy. Section 241 permits evidence of oral agreements that what purports to be an integration is not to be binding until the happening of a future event, if there is nothing in the writing inconsistent therewith. Section 240(1) states that an oral agreement is not superseded or invalidated by a subsequent or contemporaneous integration, nor a written agreement by a subsequent integration, if the agreement is not inconsistent with the integrated contract, and is made for a separate consideration or is such an agreement as might naturally be made as a separate agreement by parties situated as were the parties to the written contract.[32] In section 239 it is stated that where there is a partial integration other evidence is operative to vary those

---

[30] 215 Iowa 578, 581, 246 N.W. 396, 397 (1933).

[31] RESTATEMENT § 238(a) admits such evidence to establish meaning of an integration when required for application of standards in §§ 230-31. § 238(d) admits such evidence in a suit for specific performance, to show such grounds as mistake, oppression or unfairness so as to deny such relief.

[32] Language similar to this is used in First Nat'l Bank of Logan v. Mether, 217 Iowa 695, 700, 251 N.W. 505, 507 (1934), in permitting judgment against a wife who signed a note for her husband and who claimed, inter alia, that she signed the notes only to waive dower and that oral evidence should be introduced to add words of conveyance to the note. The Court observed that, under the circumstances, there was "nothing appropriate in promissory notes to convey the dower interest in real estate. The notes do not even have a remote appropriateness to make such conveyance." Accordingly the Court did not admit oral testimony to nullify, modify, or change the character of the written obligation itself. It did not, apparently, believe this is something that might naturally be made in a separate agreement.

terms only to the same extent as if the whole contract had been integrated.[33] A partial integration is possible, but under section 229 an integration, unless it appears when interpreted to be a statement of only part of the agreement, will be considered to be an integration of the whole, subject to section 240. Comment *a* to section 229 states that, except as qualified by section 240, if a writing does not show it is incomplete, there are but two possible alternatives: either the writing is no integration or it is an integration of the whole agreement. Comment *a* to section 240 states: "To the extent stated in the Section an integration which does not show on its face that it is partial may be shown to be so, and the extrinsic matter given effect."

The simplest cases for the admission of parol evidence are those illustrated in exception one of the *Simplot* opinion, in *Restatement* section 238, in *Bales v. Massey*[34] which permitted parol evidence to show fraud in alleged misrepresentation of the newness of a grand piano even though the written contract signed by the purchaser contained a clause purporting to exclude liability of seller for any promise other than those written in the agreement, and in *Schmidt v. Schurke*[35] which used parol evidence to establish reformation of a deed so as to remove stated rental payments. Some difficulty may be experienced here with the degree of proof required to establish the claim,[36] as illustrated in *Steere v. Green*,[37] which refused to reform a lease by deleting a provision giving the lessees an option to renew for five years, the Court observing that reformation of a written contract is done only when there is evidence of fraud, duress or mistake which is clear, satisfactory and convincing.

Another entrance through which parol evidence has been admitted is the one of conditional delivery, an oral agreement that a writing shall not become binding until some future event or date, expressed in *Restatement* section 241 and exception four of the *Simplot* opinion.[38] A standard illustration of this idea is contained in *Walker v. Todd*.[39] This was an action on a note which was signed in connection with a lease with option to purchase; parol evidence was held admissible to show the note was delivered on the oral condition that the signer would not be obligated unless the option was taken up. A distinction between admitting such evidence where there is a condition precedent but not admitting it where there is only a condition subsequent relating to performance was taken in *Hoover v. Hoover*,[40] an action on a note given by a vendor of land when a contract for its sale was cancelled, where the Court refused to permit evidence that payment was only

[33] Loth and Jennings, *supra*, note 12, at 730, state that the RESTATEMENT treats separately the two cases referred to by Justice Evans in *In re* Simplot's Estate, 215 Iowa 578, 246 N.W. 396 (1933), of a single contract, partly written and partly oral, and of two contracts, one in writing and the other separate and collateral, citing §§ 239-40. The statements in §§ 239-40 would seem to indicate the RESTATEMENT makes no such distinction.

[34] 241 Iowa 1084, 43 N.W.2d 671 (1950). See CORBIN § 580; WILLISTON § 1552. Parol evidence was held admissible to prove fraud in the execution of lease and rent notes, in an effort to defeat creditors, so plaintiff could not recover thereon. Schmidt v. Twedt, 219 Iowa 128, 257 N.W. 325 (1934). Parol evidence also was held admissible, in an action for damages, to prove fraud in being induced to enter into the contract. Lamasters v. Springer, 251 Iowa 69, 99 N.W.2d 300 (1959).

[35] 238 Iowa 121, 25 N.W.2d 876 (1947).

[36] See Hudson, *Contracts in Iowa Revisited—Mistake*, 7(2) DRAKE L. REV. 3, 8 (1958), and Hudson, *Contracts in Iowa Revisited—Fraud and Misrepresentation, Duress and Undue Influence*, 9 DRAKE L. REV. 3, 6 (1959).

[37] 247 Iowa 1085, 77 N.W.2d 924 (1956).

[38] CORBIN § 589; WILLISTON § 634.

[39] 225 Iowa 276, 280 N.W. 512 (1938).

[40] 228 Iowa 981, 291 N.W. 54 (1940).

to be made out of profit on the land, and pointed out the condition was only as to the manner of payment. Certain Iowa cases pointed out by Loth and Jennings,[41] and others during this period, have not adhered to such a distinction and have admitted such parol evidence when it relates more properly to performance than to a condition precedent to being a legally binding agreement.[42] One notable case of fairly recent vintage is *Brierly v. Dunnick*,[43] an action on a note for $11,000, allegedly executed in substitution for a previous $12,000 note on which about $4,000 was unpaid, and allegedly with an oral agreement that the maker would pay only a small amount per year and that the stated principal sum would be cancelled on death of the payee, now deceased. Apparently the small amounts were paid only for three years. The Court affirmed the trial court's refusal to strike defendant's answer and to keep out evidence of the alleged oral agreement. In the Court's opinion the only significant statement in support was: "The briefs discuss the legal propositions at some length and refer to various texts and decisions. However, the precise proposition here involved has already been determined by this court."[44] There was no specific articulation of what the "precise proposition" was, and the Court cited three Iowa cases referred to and criticized in the Loth and Jennings article.[45] Examination of the briefs and arguments in the case indicates that the appellant tried to persuade the Court to follow what he conceived to be the *Restatement* position, but the Court apparently was satisfied to rely on stare decisis. Judge Graven, who refused to apply the exception in *Nutrena Mills* because he believed the condition did not go to legal liability but to performance and that in any event the oral agreement was inconsistent with the writing,[46] stated that it was difficult to reconcile such decisions as *Brierly v. Dunnick* and the cases referred to therein with other Iowa decisions, and then took refuge in the argument that conditional delivery was only an alternative ground for the decision, with such other grounds as showing the real consideration[47] and methods of discharge, and

---

[41] *Supra*, note 12, at 725.

[42] Of course, as has been pointed out, this argument that the parties intended a condition precedent to legal existence of a binding contract is probably not in accord with the parties' intent as concerns such a matter as revocability after the agreement was made. Also, if the argument were really based on no legal contract, the statement in the Rule that the condition must be consistent with the writing would be out of place. CORBIN § 589.

[43] 240 Iowa 1359, 39 N.W.2d 645 (1949).

[44] *Id.* at 1361, 39 N.W.2d at 647.

[45] Herron v. Brenton, 188 Iowa 60, 175 N.W. 831 (1920); Ball v. James, 176 Iowa 647, 158 N.W. 684 (1916); Oakland Cemetery Ass'n v. Lakins, 126 Iowa 121, 101 N.W. 778 (1904), referred to in Loth and Jennings, *supra*, note 12, at 727 n. 80.

[46] Reliance for this aspect of the argument was placed upon RESTATEMENT § 241 and Travers-Newton Chautauqua System v. Naab, 196 Iowa 1313, 196 N.W. 36 (1923), holding that where in written words a subscription contract was made conditional on obtaining ten signatures, oral evidence could not be admitted that the parties agreed instead that there should be ten signatures of financially responsible persons. CORBIN criticizes this decision, § 589, n. 72.

[47] Reference to the "real consideration" or "methods of discharge" as a reason for doing away with the application of the Parol Evidence Rule, although frequently referred to, is not particularly meaningful because there is still the problem of the written document with its promises that may be altered or varied by the evidence introduced. However, in addition to the argument, mentioned below in the text accompanying notes 67-72, justifying the admission of such evidence, including that of "real consideration", etc., to show that the parties did not intend to integrate their agreement or make the written document the final embodiment of their agreement, there are some situations calling for admission of parol evidence as to consideration or the lack of it, as outlined in the RESTATEMENT. RESTATEMENT § 238(b) refers to admitting parol evidence to prove insufficiency of consideration to establish that the agreement is void; § 240 provides that, where no consideration is stated, facts showing such consideration and the nature of it may be admitted, even if it was a promise. This would not be necessary in Iowa because, both in IOWA CODE § 541.24 (1958), as to negotiable instruments, and § 537.2, as to informal contracts, consideration is presumed. RESTATEMENT § 244 states that false recitals of fact may be shown to be untrue. In Northern Trust Co. v. Anderson, 222 Iowa 590, 262 N.W. 529 (1935), an action against the wife on a note, for money going to the husband, the Court, reversing for plaintiff the trial court's

that in any event the holdings should not be extended to bilateral contracts.[48] He preferred to rely upon *State Bank of Fort Dodge v. Central Flour & Feed Co.*,[49] an action on trade acceptances signed by a wholesaler pursuant to a written agreement, in which the Court had refused to admit parol evidence to establish an alleged oral condition that the acceptances were delivered on condition of performance by the seller of terms of a contract which included furnishing a salesman.

Two other cases used the conditional delivery statement as at least an alternative ground for permitting parol evidence. In *Kruse v. Wickham*,[50] an action to foreclose a mortgage and for judgment on a $2,400 note, the Court permitted parol evidence to show that the note and mortgage were given only as security for a promise under an agreement for professional services to be rendered with payments to be made only for services rendered and not at the flat rate the face amount of the note would indicate. The stated argument, by quotation from an early Iowa case,[51] was one of conditional delivery and discharge by performance of the agreement it was intended to secure. In *Short v. Anderson*,[52] an action of foreclosure of a note and mortgage, the Court permitted parol evidence that the purpose of the note and mortgage was to keep alive the rights of the parties so as to permit a later adjustment of accounts which included a prior oral agreement for services rendered to the mortgagee. The Court's stated reasons were that this fell squarely within the conditional delivery exception and that the note and mortgage were unilateral and did not reveal what was the obligation of the payee-mortgagee. Even though there may be other reasons for admission of parol evidence, the use of the conditional delivery exception seems particularly strained in those two cases, relating to performance and not to conditions precedent to the existence of a contract.

Two cases used language like that in exception three in the *Simplot* opinion, of being collateral, contemporary, and independent. In *Andrew v. Brooks*,[53] an action to recover on a note given to a bank, the defendant pleaded that the note was given for the purchase of corn on fifty acres with the understanding that should any corn be removed by someone other than defendant the reasonable value of such corn would be deducted. In reversing the trial court which had refused to admit such evidence, the Court merely stated that the evidence did not tend to vary or contradict, was contemporary, independent, and consistent with the agreement. Note that there was no

---

refusal to sustain plaintiff's demurrer to an answer which raised the question of no consideration, observed that consideration is imported, that parol evidence may be received to show no consideration, but that there was insufficient evidence to show there was none in this case.

[48] Exception number two of the *Simplot* opinion refers to an exception of showing the nature of the consideration where the written contract is unilateral only. This kind of a distinction may be justified because in "unilateral" contracts it is perhaps easier to assume that the parties did not intend the writing to be an integration of all the terms. However, the writing should not be conclusive in either the "unilateral" or "bilateral" case. The RESTATEMENT makes no special mention of such an exception for "unilateral" except as may be implied in the statement the Rule applies to integrated contracts and the statement in § 240(1)(b) that it would not apply where the agreement is such as might naturally be made as a separate agreement. See CORBIN § 587.

[49] 227 Iowa 596, 288 N.W. 614 (1939) (the opinion here seems to show disbelief of the story of the alleged oral agreement).

[50] 228 Iowa 617, 292 N.W. 518 (1940).

[51] Oakland Cemetery Ass'n v. Lakins, 126 Iowa 121, 101 N.W. 778 (1904), referred to in note 45, *supra*.

[52] 233 Iowa 238, 8 N.W.2d 740 (1943).

[53] 219 Iowa 134, 257 N.W. 315 (1935), cited with approval in CORBIN § 587 n. 42.

separate consideration for this arrangement such as apparently is contemplated by the *Simplot* opinion. In *Iltis v. Gentilly*,[54] basically a suit to foreclose a mechanic's lien but also involving a controversy between the owner of the land and a Savings and Loan Association for alleged failure of the Association to perform an alleged oral promise to exercise proper control over disbursements of the money borrowed for construction of a house, the Court simply observed on the Parol Evidence Rule aspect of the case that the oral agreement was "purely collateral" and not contrary to the mortgage which was silent on this point. Although the opinion does not point to this specifically in support of its conclusion, there was apparently a certain amount paid for the services of the Association, including disbursement; this would bring it within exception three, because of the separate consideration.

The "partly written, partly oral" exception, number five in the *Simplot* opinion, is referred to in *Andreas & Son v. Hempy*,[55] involving an agreement for storage and sale of corn to plaintiff with "seller's option as to time [of sale and determining price at 15c under average Chicago price less storage]." Approximately a year later the buyer attempted to get the seller to name a date, but, after he did not respond, the buyer sold the corn and sued for the difference between the amount advanced and the price for which it was sold less storage. Defendant seller attempted to prove an oral agreement that he was to be able to wait for a higher price, even if that took ten years. The trial court refused to permit such evidence, directing a verdict for plaintiff. The Court reversed, stating that when the agreement is partly in writing and partly oral such evidence is admissible, because the entire agreement is not contained in the written agreement. It is questionable if it can be said here the incompleteness appears on its face, as called for in the *Simplot* opinion. An additional reason given was that the words were ambiguous, that because no time for option was given this must mean a reasonable time, and this was for a jury to resolve. The same exception is referred to in *Sol Popofsky Co., Inc. v. Wearmouth*,[56] in which plaintiff had garnisheed a savings account (of $14.40) and the bank defended on the basis that the amount in the account was not due because, although by statute savings accounts are payable on demand, in this case by oral agreement between the bank and the employer which made deductions from salary to be put in a "Maytag Employee's Special Savings Account", the account was not to be withdrawn for five years. The Court admitted the oral evidence, stating that so long as it covers a matter not in the writing and is harmonious with the writing the parol part may be admitted. Note here also there is no apparent incompleteness; in fact the statute and resulting legal implications in the contract would suggest an inconsistency.[57] Also the Court thought the description of the account on the pass book indicated an ambiguity which could be resolved by parol evidence.

---

[54] 234 Iowa 689, 13 N.W.2d 699 (1944).

[55] 224 Iowa 561, 276 N.W. 791 (1937).

[56] 216 Iowa 114, 248 N.W. 358 (1933). This case was cited in Blunk v. Kuyper, 241 Iowa 1138, 44 N.W.2d 651 (1950), in support of its conclusion that parol evidence was admissible to contradict the apparent admission in a document that a debt was unpaid, which might act as a revivor of the barred debt. The alternative ground for admission of the parol evidence is referred to in note 63, *infra*, and accompanying text, that the admission was not a contract and only evidentiary.

[57] Loth and Jennings, *supra*, note 12, at 724, n. 66-67, apparently disapprove of this case. CORBIN § 583 n. 68, apparently approves.

Parol evidence was admitted in another case on the theory that it was merely contradicting a recital in a check. In answer to a claim for nursing services the defense was made that a check was given and cashed with words "For Board Room & Care in full." Without stating precisely what the evidence was, the Court approved admission of evidence to show the check was not in full satisfaction, stating that recitals in a check do not control and may be explained.[58] Regardless of the fact that prior case authority may support such a conclusion and that the conclusion may be supported on the theory, referred to below, that acceptance of the check does not really constitute it an integration so as to prevent introduction of parol testimony, it should be noted that the phrase "For Board Room & Care in full" is really more than a recital; it is an offer of discharge which is accepted by the offeree in cashing the check.[59] *Restatement* section 244 observes that, although a recital of fact in an integration may be shown to be untrue, words of promise or of present transfer or present discharge are not mere recitals of fact.

The same idea, that the Parol Evidence Rule relates only to jural acts,[60] to those writings which are the basis of a suit or defense, which vest, pass or extinguish a right, and not to those which are mere recitals of fact or are merely evidentiary, was illustrated in the recent case of *Cornick v. Southwest Broadcasting Co.*,[61] a suit for sums allegedly due under the Federal Fair Labor Standards Act, in which defendant complained of the introduction of parol evidence to contradict certain time sheets submitted by the plaintiffs. The Court approved admission of such testimony, stating time sheets did not vest a right, but that the right to pay was vested by the contract of employment. Similar cases are *Bales v. Massey*,[62] in which the Court reversed the trial court's striking of testimony, of a party to a contract for a piano, that the document when signed did not contain the word "used" in describing a piano when she was claiming there were representations it was new, on the basis it was merely evidentiary against the alleged admission in the document; and *Blunk v. Kuyper*,[63] an action to recover on a promissory note in which, answering the defense of statute of limitations, the plaintiff claimed there was an admission in a document filed in a divorce action that the debt was unpaid and that this operated as a revivor of the debt.[64] In *Blunk* the Court sustained the trial court's refusal to strike allegations that the written admission was not intended to be a revivor but was for an entirely different purpose, for the reason that revival of a barred debt was not a contract and this was merely an admission as evidence.

Parol evidence has also been admitted to prove that an absolute deed was intended to operate as a mortgage.[65] It is not clear upon just what theory

---

[58] *In re* Gollobit's Estate, 231 Iowa 1074, 3 N.W.2d 19 (1942).

[59] See Hudson, *Contracts in Iowa Revisited—Offer and Acceptance*, 8 DRAKE L. REV. 91, 104 (1959).

[60] See WIGMORE §§ 2401, 2404, 2406.

[61] —— Iowa ——, 107 N.W.2d 920 (1961).

[62] 241 Iowa 1084, 43 N.W.2d 671 (1950).

[63] 241 Iowa 1138, 44 N.W.2d 651 (1950) (alternative basis for decision was compromise and settlement).

[64] For discussion of this and other cases relating to the subject of revival of barred debts, see Hudson, *Doctrine of Consideration in Iowa Revisited—The Bargain Element*, 8 DRAKE L. REV. 67, 72 (1956).

[65] Kleinsorge v. Clark, 232 Iowa 313, 4 N.W.2d 433 (1942); CORBIN § 587, p. 507; WILLISTON § 635. The evidence must be clear, satisfactory and convincing: Green v. Bride & Son Constr. Co., —— Iowa ——, 106 N.W.2d 603 (1960); Moeller v. Strahbeen, 232 Iowa 1282, 8 N.W.2d 254 (1943). No attempt is made here to collect all the cases or to discuss the elements necessary

this idea was rested.[66] In any event, however, the idea now has the force of case precedent, a specific rule of law, behind it.

Corbin,[67] apparently approving many cases letting in parol evidence, suggests that a better explanation than many of the theories referred to above, for admitting such evidence, is that the written document was not really an integrated one, that it was not the complete agreement and was not intended to be. He decries the too ready acceptance in many cases that the written document is such an integration, and suggests that the document by itself does not prove that the parties adopted the writing as the final and complete expression of their agreement. He notes that, although the *Restatement* in section 237 describes the Rule as applying only to integrated contracts, when it comes to sections 240 and 241 it is really describing some circumstances in which it is likely that the parties did not intend an integration. He urges that the proper approach should be first to decide, by such evidence as is available, whether the written document is an integration, and thus a replacement of all previous expressions of agreement and of contemporaneous agreements (which he suggests is by definition inconsistent with the idea of an integration). The problem should be simply whether the writing was intended to replace all other agreements together with the problem of believability of stories about all other agreements. The recent Iowa cases referred to above, *Fidelity Savings Bank v. Wormhoudt Lumber Co.*[68] and *Stebens v. Wilkinson*,[69] do not indicate any inclination to move in the direction of such emphasis when they sustain motions to dismiss and motions to strike allegations, in situations in which the allegations do not appear to be inherently unbelievable. One 1950 Iowa case is especially worthy of note as being closer to the suggested *Corbin* approach. This case, *Whiting v. Cochran*,[70] a several cornered law suit, involved a law action to enforce a landlord's lien, in which a chattel mortgagee of certain personal property objected to certain testimony that at the time a chattel mortgage was executed in Iowa over the same property and for the same debt as previously covered by a South Dakota chattel mortgage, he agreed to cancel and release the South Dakota mortgage.[71] The Court affirmed admission of such testimony, and after noting that the Iowa mortgage did not refer to any other prior indebtedness, stated:

> The rule is well established that parties may prove "the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, if from the circumstances of the case, the court infers that the parties did not intend the document to be a complete and final settlement . . . between them."[72]

---

to convince a court that it was intended to operate as a mortgage. See Note, *Equitable Mortgages in Iowa*, 44 IOWA L. REV. 716, 717 (1959).

Parol evidence was admissible to identify property covered by a chattel mortgage: *In re* Zenith Air Conditioning Corp., 93 F. Supp. 604 (S.D. Iowa 1950).

[66] See IOWA ANNOTATIONS § 238-II-F-1.

[67] This attitude is evident throughout the entire discussion in CORBIN §§ 573-96, but see particularly §§ 582-83.

[68] 251 Iowa 1121, 104 N.W.2d 462 (1960).

[69] 249 Iowa 365, 87 N.W.2d 16 (1957).

[70] 241 Iowa 590, 41 N.W.2d 666 (1950).

[71] This was apparently important because of the possible invalidity of the Iowa mortgage because of the failure of the spouse to sign in Iowa the mortgage on exempt property.

[72] 241 Iowa 590, 592, 41 N.W. 2d 666, 667 (1950), quoting from JONES, EVIDENCE § 439 (3d ed. 1924), which refers to a distinct, contemporary and independent agreement.

Note that there was no separate consideration supporting the Iowa mortgage and the alleged release, and that the written agreement did not appear incomplete on its face, so as to bring the case within the exceptions referred to in *Simplot,* of collateral and independent, or of partly written and partly oral. Neither does it appear to be a case clearly within the *Restatement* reference, in section 240, to an agreement "as might naturally be made a separate agreement by parties situated as were the parties to the written contract." The plain fact is that the Court was apparently not overawed by the written agreement but was convinced by the evidence that the parties had not intended the written document to be a complete statement of their agreement.

All of the foregoing, however, suggests that the statement by Loth and Jennings[73] is still true, that "Continual rethreshing in Iowa as in other jurisdictions has not produced clarity in the understanding of this 'most discouraging subject in the whole field of evidence'."

## INTERPRETATION

The Parol Evidence Rule is not, strictly speaking, applicable to the problem of interpretation, or construction, as it is sometimes called,[74] because any evidence offered is not offered to annex to or to replace words in a written document, is not offered to alter, vary or contradict the words, but is offered to determine their meaning.[75] However, it is commonly repeated that when the terms of a writing are clear and unambiguous parol evidence is inadmissible to prove what the parties intended,[76] as was illustrated in the recent case of *Burns v. Burns,*[77] an action by an executor to cancel a joint tenancy agreement in a bank account, which held that parol evidence could not be introduced to show that the "joint tenancy" was created only for convenience of the father rather than to transfer ownership at death. Of course this should mean that parol evidence would be admissible in cases of ambiguity, as was illustrated in *Williams v. Williams,*[78] where extrinsic evidence, as to the intent of the parties concerning an alleged "joint" savings

---

[73] *Supra,* note 12, at 713.
[74] See CORBIN § 534; WILLISTON § 602.
[75] CORBIN § 579; MCCORMICK § 217.
[76] WILLISTON § 609; MCCORMICK § 219.

[77] —— Iowa ——, 105 N.W.2d 217 (1960); see the cases cited therein, particularly Hill v. Havens, 242 Iowa 920, 48 N.W.2d 870 (1951), for other examples of joint bank accounts, and *In re* Miller's Estate, 248 Iowa 19, 79 N.W.2d 315 (1956), applying the same philosophy to debentures with words "or the survivor"; *accord,* Marty v. Champlin Refining Co., 240 Iowa 325, 36 N.W.2d 360 (1949) (terms of lease as to removal of airlift and compressor after period of leaseheld unambiguous, so no parol evidence admissible); Federal Cartridge Corp. v. Western Auto Specialty Co., 219 Iowa 271, 257 N.W. 785 (1934) (meaning of "present indebtedness" in composition of creditors agreement considered so plain and unambiguous that no evidence of meaning admissible).

[78] 251 Iowa 280, 100 N.W.2d 185 (1959). Additional cases admitting oral evidence of the parties' intent on the basis of ambiguity are: Aultman v. Meyers, 239 Iowa 940, 33 N.W.2d 400 (1948); Iowa Elec. Co. v. Home Ins. Co., 235 Iowa 672, 17 N.W.2d 414 (1945) (word "additions" in fire insurance policy held ambiguous as to application to building twenty-four feet away but connected only by underground conduit to main building, so parol testimony as to conversation with representative of plaintiff that other building would not be covered was admissible); State v. Butka, 230 Iowa 928, 299 N.W. 420 (1941) (parol evidence of facts and circumstances at time of making of contract admissible, apparently to include oral conversations between the parties, so as to resolve ambiguity of words "relative location . . . to be approximately as at present" so that as interpreted relocated gas station was to stay by connection of two highways); Vorthmann v. Great Lakes Pipe Line Co., 228 Iowa 53, 289 N.W. 746 (1940) (dissent of three judges thought words not ambiguous, in documents in connection with right-of-way agreement); Zimbelman v. Boone Coal, Inc., 220 Iowa 1310, 263 N.W. 335 (1935) (Court agreed that parol evidence was admissible to explain ambiguous terms and that the terms were obscure, but did not believe it should admit evidence of understanding of one party as to the understanding which a later party should have); Dunn v. Dunn Trust, 219 Iowa 349, 258 N.W. 695 (1935) (competent to show situations of parties, subject matter, and acts of parties).

account, was held admissible because of the ambiguity of the agreement, but that concerning a checking account was not held admissible, although the oral testimony seemed equally applicable to both accounts. It has been repeated that accompanying circumstances may be introduced to aid in interpretation of either an ambiguous or an unambiguous agreement, although the cases in which it was repeated also concluded the agreement was ambiguous.[79] In one case, *McManigol v. Hiatt*,[80] the Court refused to consider circumstances attending a hiring contract so as to reach a conclusion that the words "hereafter" in a salesman's contract, entered into at the dissoluion of a partnership, meant "permanent". The Court's observation was that the word "hereafter", using a dictionary definition, referred to direction in time and not to duration, and that there simply was not anything in any of the provisions to indicate duration. This ignores the fact that words do not have meaning except in context of circumstances, and that evidence of circumstances should be admitted whether the words are ambiguous or not.[81]

So-called rules of interpretation are many, in addition to the foregoing ones, but it is doubtful what effect the announcement of a rule has on the result. The *Restatement* starts out with "standards of interpretation" for integrated and for unintegrated agreements. The standard for an integrated agreement is stated to be, except where it produces an ambiguous result, that which would be attached by a reasonably intelligent person acquainted with all the operative usages and knowing all the circumstances prior to and contemporaneous with the making of the integration, other than oral statements of what the parties intended it to mean.[82] For unintegrated agreements (and integrated agreements, when ambiguous) the standard stated is primarily the meaning which a party making the manifestation should reasonably expect the other party to have.[83] There follow certain rules[84] to aid in the application of the standards and certain secondary rules to be applied if the standards and rules do not produce a certain meaning.[85] The Iowa cases do not appear

[79] Harrison Sheet Steel Co. v. Morgan, 268 F.2d 538 (8th Cir. 1959) (question whether buyer obligated to buy any specific number of units); City of Harlan v. Duncan Parking Meter Co., 231 F.2d 840 (8th Cir. 1956); Aultman v. Meyers, 239 Iowa 940, 33 N.W.2d 400 (1948); State v. Butka, 230 Iowa 928, 299 N.W. 420 (1941) (citing RESTATEMENT §§ 235, 230); West Branch State Bank v. Farmers Union Exchange, 221 Iowa 1382, 268 N.W. 55 (1936) (question as to extent of guaranty of indebtedness). Admission of surrounding facts and circumstances, including statements of the insured himself, were held admissible in Krimlofski v. United States 190 F. Supp. 734 (N.D. Iowa 1961), an action to recover National Service Life Insurance involving explanation of ambiguity in designation of beneficiary. Evidence of circumstances accompanying or attending execution of wills, claimed to be reciprocal wills, may be admitted: Child v. Smith, 225 Iowa 1205, 282 N.W. 313 (1938).

Evidence of officers of one party to a bluegrass seed operation contract as to their interpretation of certain terms of the contract was held admissible, in Winn v. Rudy-Patrick Seed Co., 249 Iowa 431, 86 N.W.2d 678 (1957), on authority of a statement from 32 C.J.S. *Evidence* § 1015 (1942) that it is admissible to explain the true nature of the transaction, and a statement by the Court that it was used to convey their meaning so as to be understood by laymen as well as by professional bluegrass seed men. The opinion does not so articulate, but this is probably a case of giving technical terms their technical meaning, as indicated in RESTATEMENT § 235(d).

[80] 240 Iowa 541, 36 N.W.2d 651 (1949).

[81] See CORBIN §§ 536-37, 542; WILLISTON § 629; RESTATEMENT §§ 230, 235(a),(d), 238 (a).

[82] RESTATEMENT § 230. In Rotterman v. General Mills, Inc., 245 Iowa 229, 238, 61 N.W.2d 718, 723 (1953), the Court in the process of determining that there was a sale of corn instead of a bailment stated the rule of interpretation to be: "We seek the intent a reasonably intelligent person would derive from the expressions used under the circumstances and the knowledge of the parties at the time of the transaction." This is the language of RESTATEMENT § 230, but reference is made in the opinion to IOWA ANNOTATIONS § 227, p. 532, which does not seem to be relevant. Furthermore, the contract involved was not an integrated one, nor even written. Carson v. Great Lakes Pipe Line Co., 238 Iowa 50, 25 N.W.2d 855 (1947), quotes RESTATEMENT § 230 with its reference to the meaning which a reasonably intelligent person would attach as being the rule applicable for construction of a contract, especially where it is ambiguous, although § 230 specifically excludes application where it produces an ambiguous result.

[83] RESTATEMENT § 233.

[84] *Id.* § 235; WILLISTON § 618.

[85] RESTATEMENT § 236; WILLISTON §§ 619-26.

to have adopted generally the approach of distinguishing between integrated and unintegrated, between standards and primary and secondary rules of interpretation,[86] but seem to have relied more on a distinction between ambiguous and unambiguous expression. *Iowa Code* section 622.22 does state that words should be interpreted in the light that a person should reasonably expect it to be interpreted, but this has been held to apply only to an ambiguous expression.[87]

The interpretative process in Iowa, of course, has been a continuous and frequent one, with the process usually one of reciting various and sundry rules of interpretation to support a conclusion, but, sometimes, without any so-called rules at all. Except for a few cases referred to below, it is not considered worthwhile to do other than engage in a footnote collection of some of the cases under the heading of rules, when stated, covering much the same ideas as expressed by the *Restatement* as standards, and primary and secondary rules of interpretation, announced as: intent of the parties controls,[88] objective view of intent and not necessarily the actual intent is sought;[89] agreement is to be interpreted as a whole;[90] writings executed at the same time are to be interpreted together;[91] general words are limited by specific words; [92] interpretation which does not result in a violation of law preferred;[93] reasonable construction is favored;[94] contract is interpreted, or con-

---

[86] IOWA ANNOTATIONS §§ 230, 233. This is not to say the RESTATEMENT has not been cited. See note 82, *supra*.

[87] City of Des Moines v. City of West Des Moines, 244 Iowa 310, 56 N.W.2d 904 (1953); IOWA ANNOTATIONS § 233-I.

[88] Harrison Sheet Metal Co. v. Morgan, 268 F.2nd 538 (8th Cir. 1959) (described as primary rule for construction of contracts in Iowa); Schlosser v. Van Dusseldorp, 251 Iowa 521, 101 N.W.2d 715 (1960) (gravel lease); Iowa Elec. Co. v. Home Ins. Co., 235 Iowa 672, 17 N.W.2d 414 (1945); Osceola v. Gjellefald Constr. Co., 225 Iowa 215, 279 N.W. 590 (1938); CORBIN § 538.

[89] Rotterman v. General Mills, Inc., 245 Iowa 229, 61 N.W.2d 718 (1953); IOWA ANNOTATIONS § 230-II.

[90] Harrison Sheet Steel Co. v. Morgan, 268 F.2d 538 (8th Cir. 1959); City of Harlan v. Duncan Parking Meter Co., 231 F.2d 840 (8th Cir. 1956); Rotterman v. General Mills, Inc., 245 Iowa 229, 61 N.W.2d 718 (1953) (whether a bailment or a sale); Chicago & N.W. Ry. v. Kramme, 244 Iowa 944, 59 N.W.2d 204 (1953) (question of responsibility assumed by licensee in connection with license from railroad for private crossing; dissent thought majority failed to ascertain intent of parties and should have used circumstances as well as language); State v. Sprague, 225 Iowa 766, 281 N.W. 349 (1938); Nylander v. Nylander, 221 Iowa 1358, 268 N.W. 7 (1936) (note without date for payment in main part of instrument but with expression "term of five years" in corner held to be fixed term note for purpose of statute of limitations); CORBIN § 549; WILLISTON § 618; RESTATEMENT § 235(c).

In New England Mut. Life Ins. Co. v. Hinkle, 248 F.2d 879 (8th Cir. 1957), a suit on an alleged temporary contract of life insurance arising out of a document labelled "Conditional Receipt" with the words "immediate coverage" written in the printed form, the majority of the court thought that, construing the agreement as a whole, the printed conditions of good health and insurability were not eliminated, that the words were not ambiguous, and that the document did not provide insurance until a determination of insurability but only if and when there was a determination of insurability under the plan applied for, so that there could be no recovery when applicant died in an airplane accident after the application and before action by the home office. The dissenting judge and the trial court, in 147 F. Supp. 547 (S.D. Iowa 1957), thought differently, that temporary insurance was clearly provided for, without condition.

[91] Quass v. Quass, 250 Iowa 24, 92 N.W.2d 427 (1958) (interpreting clause in deed "subject to farming operations between the grantor and the grantee" to mean only so long as engaged in farming operations set out in partnership agreement); Interstate Finance Co. v. Brink, 232 Iowa 733, 6 N.W.2d 120 (1942) (time of payment of installment different in note than in accompanying conditional sale contract); RESTATEMENT § 235(c); WILLISTON § 628.

[92] Schlosser v. Van Dusseldorp, 251 Iowa 521, 101 N.W.2d 715 (1960) (in action to quiet title to farm, although gravel lease and agreement purported to "affirm the original lease" which contained a greater amount of territory, other division, which limited it to "north of the Skunk River", controlled); Bates v. American Trust & Sav. Bank, 232 Iowa 729, 273 N.W. 867 (1937) (ejusdem generis); RESTATEMENT § 236(c); CORBIN § 547; WILLISTON § 619.

[93] *Compare* Coon Valley Gravel Co. v. Chicago, R.I. & P. Ry., 241 Iowa 497, 41 N.W.2d 676 (1950) (tariff charges for transportation), *with* Sands v. Iowa Mut. Ins. Co., 244 Iowa 16, 55 N.W.2d 572 (1952) (fire insurance policy provided for value limits of $5,500 at rates for $7,000; Court did not permit recovery for $7,000 in spite of possible violation of statute by the insurance company in charging excessive rates, because of the obvious intent of the parties). See RESTATEMENT § 236(a); CORBIN § 546; WILLISTON § 620.

[94] Hoefer v. Fortmann, 219 Iowa 746, 259 N.W. 494 (1935) (acceleration clause in lease about "failure to pay . . . shall mature the whole amount" interpreted to mean only rent for the

strued, most strictly, against the party choosing the language;[95] writing is favored over print;[96] consideration is given to the interpretation placed on the agreement by the parties;[97] words are to be given an ordinary and natural meaning;[98] custom and usage can not prevail over an express contract provision.[99]

It has been stated that the process of interpretation, or construction and meaning, is a matter of law for the court, if the language is plain, clear and unambiguous.[100] This was illustrated in *Rice v. Sioux City Memorial Park Cemetery, Inc.*,[101] in which the word "Caucasian" in a contract for a cemetery lot was held to be clear and unambiguous and thus not a question for the jury, and in *Eckard v. World Insurance Co.*,[102] an action on an accident insurance policy for death and injury of students returning from the state basketball tournament, where the Court apparently considered certain words of the

---

year in which the breach occurred, and not for the whole period of the lease, so prior suit for some installments not a bar to a subsequent suit for others). See IOWA ANNOTATIONS §§ 230-III, 236-II-A; WILLISTON § 620.

[95] Harrison Sheet Steel Co. v. Morgan, 268 F.2d 538 (8th Cir. 1959); City of Harlan v. Duncan Parking Meter Co., 231 F.2d 840 (8th Cir. 1956); American Alliance Ins. Co. v. Brady Trsf. and Storage Co., 101 F.2d 144 (8th Cir. 1939); Nielson v. Travelers Indem. Co., 174 F. Supp. 648 (N.D. Iowa 1959); Huntsman v. Eldon Miller, Inc., 251 Iowa 478, 101 N.W.2d 531 (1960); West v. Hartford Fire Ins. Co., 248 Iowa 993, 83 N.W.2d 465 (1957); Struble v. Square Deal Ins. Co., 237 Iowa 1155, 24 N.W.2d 441 (1946) (word "move" did not require change of residence); Sears, Roebuck & Co. v. Poling, 248 Iowa 582, 81 N.W.2d 462 (1957); Pazawich v. Johnson, 241 Iowa 10, 38 N.W.2d 590 (1949) (held too uncertain to grant specific performance); Marty v. Champlin Refining Co., 240 Iowa 325, 36 N.W.2d 360 (1949) (removal of automobile lift and air compressor after lease); Service Life Ins. Co. v. McCullough, 234 Iowa 817, 16 N.W.2d 440 (1944); Cowan v. Allamakee County Benevolent Soc'y, 232 Iowa 1387, 8 N.W.2d 433 (1943); Brush v. Washington Ins. Co., 230 Iowa 72, 299 N.W. 403 (1941); Vorthmann v. Great Lakes Pipe Line Co., 228 Iowa 53, 289 N.W. 746 (1940); Parker v. Iowa Mut. Tornado Ins. Ass'n, 220 Iowa 262, 260 N.W. 844 (1935); RESTATEMENT § 236(d); CORBIN § 559; WILLISTON § 621.

However, the feature of interpreting (or construing) most strictly against the party drawing up the contract is not applicable where the words are not "subject to construction", *i.e.*, are clear and unambiguous: Ocean Accident & Guarantee Corp. v. Penick & Ford Ltd., 101 F.2d 493 (8th Cir. 1939) (if not ambiguous do not resort to rules of construction); Chicago, G.W. Ry. v. Farmers Produce Co., 164 F. Supp. 532 (N.D. Iowa 1958); Wenthe v. Hospital Service, Inc., 251 Iowa 765, 100 N.W.2d 903 (1960) (considered clear and unambiguous that "Blue Cross" policy excluded from coverage for injuries covered by Workmen's Compensation Act regardless of amount of benefits payable thereunder); Weik v. Ace Rents, 249 Iowa 510, 87 N.W.2d 314 (1958); Meeker v. Shull, 235 Iowa 701, 17 N.W.2d 514 (1945) (lease); Kantor v. New York Life Ins. Co., 219 Iowa 1005, 1007, 258 N.W. 759, 760 (1935) ("It certainly does not mean that the courts will prepare a new contract of insurance or are at liberty to change in any way the contract which was made by the parties."). It has also been stated the instrument will not be construed against the person drawing it up where both parties were represented by legal counsel and words were used which are the common language of both parties: Carter v. Certain-Teed Products Corp., 102 F. Supp. 280 (N.D. Iowa 1952), *modified*, without disapproval of this idea, 200 F.2d 754 (8th Cir. 1953); *accord*, where lease prepared under scrutiny of legal counsel for both parties, Beck v. F. W. Woolworth Co., 111 F. Supp. 824 (N.D. Iowa 1953).

[96] Nielson v. Travelers Indem. Co., 174 F. Supp. 648 (N.D. Iowa 1959), referring to IOWA CODE § 622.21 (1958) to same effect; RESTATEMENT § 236(e); CORBIN § 548; WILLISTON § 622.

[97] Carter v. Certain-Teed Products Corp., 102 F. Supp. 280 (N.D. Iowa 1952), *modified*, without disapproval of this idea, 200 F.2d 754 (8th Cir. 1953); Claiborne-Reno Co. v. DuPont, 77 F.2d 565 (8th Cir. 1935); Gilbrech v. Kloberdanz, —— Iowa ——, 107 N.W.2d 574 (1961) (question of interpretation of provision of contract by co-owners of building for sharing fuel bills, etc., after one party put in boiler on his own floor); Darnall v. Day, 240 Iowa 665, 37 N.W.2d 277 (1940); Henriott v. Main, 225 Iowa 20, 279 N.W. 110 (1938); Dodds v. Consolidated School Dist., 220 Iowa 812, 263 N.W. 522 (1935); Fort Dodge Co-op. Dairy Marketing Ass'n v. Ainsworth, 217 Iowa 712, 251 N.W. 85 (1933) (whether to interpret deduction for breach to be $25 per day, or only once); RESTATEMENT § 235(e); CORBIN § 558; WILLISTON § 623.

[98] Ocean Accident & Guarantee Corp. v. Penick & Ford Ltd., 101 F.2d 493 (8th Cir. 1939) (use meaning of common speech); Langlas v. Iowa Life Ins. Co., 245 Iowa 713, 63 N.W.2d 885 (1954) (meaning of "war" in double indemnity policy, as applied to Korean conflict; held to be war); Baker v. Smith, 242 Iowa 606, 47 N.W.2d 810 (1951) (Court disapproved of admission of testimony of realtors that the words "for residence purposes" in a restrictive covenant meant single-family resdence, stating the words are not technical or ambiguous, are in common use, should be given their ordinary meaning, and that their "construction is for the court); Darnall v. Day, 240 Iowa 665, 37 N.W.2d 277 (1949) (end of "war" in lease interpreted to mean end of hostilities); Carson v. Great Lakes Pipe Line Co., 238 Iowa 50, 25 N.W.2d 855 (1947); Nylander v. Nylander, 221 Iowa 1358,268 N.W. 7 (1936); RESTATEMENT § 235(a)); WILLISTON § 168.

[99] Paramount Pictures, Inc. v. Mason, 226 Iowa 308, 284 N.W. 119 (1939) (claimed custom and usage as to change of films after rental for certain rents cannot prevail against fixed dates in writing); RESTATEMENT § 246(b); CORBIN § 555, p. 239; WILLISTON § 656.

[100] Huntsman v. Eldon Miller, Inc., 251 Iowa 478, 101 N.W.2d 531 (1960); Marty v. Champlin Refining Co., 240 Iowa 325, 36 N.W.2d 360 (1949) (lease); see CORBIN § 554; WILLISTON § 616.

[101] 245 Iowa 147, 60 N.W.2d 110 (1953).

[102] 250 Iowa 782, 96 N.W.2d 454 (1959).

policy, particularly those purporting to cover only "extra-curricular, non-social activities (other than as a spectator)," to be ambiguous and susceptible of several interpretations, so their interpretation should go to the jury.

Several Iowa cases offer rather interesting examples of the interpretative process. Two were concerned with the difficult process of determining if words are ambiguous. *Hubbard v. Marsh*[103] involved the interpretation of a writing containing, inter alia, the words: "You shall have a drawing account for personal use of $100 per week, plus traveling expense allowance. In addition to this weekly compensation, you will participate, on my option, in the net profits. . . . This participation will vary with the profits we realize and shall extend from 10% to 33%." The trial court ruled, among other things, that the agreement was not ambiguous and that the agent was not entitled to at least ten percent, as advocated by the plaintiff, that such participation was completely at the option of the defendant. The Supreme Court reversed and sent the case back for new trial on the basis the words were at least ambiguous,[104] but the majority opinion also indicated its approval of plaintiff's position that he was entitled to at least ten percent; the case was sent back because of plaintiff's argument that there was an oral portion of his employment contract. The dissenting judges thought the trial court was correct and that plaintiff was not arguing ambiguity, but the "partly written, partly oral" character of the agreement. The writer of the dissent stated, in rather trenchant fashion:

> It seems an idle waste of words to infer or presume that any man of any business sense or capabilities would be so unsophisticated as to claim or assert that he did not understand what the word "option" meant. It simply does not add up to make common sense and borders upon the absurd.[105]

The dissent was assuming a great deal about the uniformity and certainty of language.

In *Sandon v. John Hancock Mutual Life Insurance Co.*[106] the Court was faced with the problem of interpreting an agreement for payment of commissions on premiums due under a group insurance policy, because percentages of commission were geared to a decreasing scale as premiums increased, and because premiums from another union group, for which plaintiff could not recover, were included in the one master policy. The actual words read: "on that portion of the first $1,000 of the total premium under the Policy which is for insurance on members of Local Union No. 310—20%." Plaintiff wanted to interpret the words to read: "on the first $1,000 of that portion of the total premium under the Policy which is for insurance on members of Local Union No. 310—20%." Because so many premiums from another union local had come in before this local's, the first brackets with higher percentage calculation of commission would have been passed up if the words had been read literally. The trial court directed verdict for the defendant and is quoted as saying there was no ambiguity and that the instrument speaks for itself. The Supreme Court reversed, stating the words

---

[103] 241 Iowa 163, 40 N.W.2d 488 (1950).

[104] Sayre, *A Review of Iowa Contract Law: 1942-1952*, 38 Iowa L. Rev. 506, 526 (1953), incorrectly reports that the majority felt the language permitted the employer to deny any percentage of the profits.

[105] 241 Iowa 163, 172, 40 N.W.2d 488, 494 (1950).

[106] 245 Iowa 390, 62 N.W.2d 247 (1954).

may be interpreted to read as plaintiff claimed, and indicating it believed there was a latent ambiguity sufficient to justify parol evidence bearing on the intent of the parties.

Two somewhat mechanistic approaches to interpretation were rejected during this period. In *Stoffel v. Stoffel*[107] the Court referred to the one-time stated proposition that parol evidence could be introduced to explain a latent ambiguity but not a patent ambiguity except by the reformation route. The Court was interpreting a phrase about furnishing support when no exact terms of duration of payments had been stated, with plaintiff contending it was for life, and with defendant contending this was to be only for a period necessary to be equivalent to the real value of the merchandise and other property offered as consideration for the promise of support. The Court concluded such a distinction had been abandoned and permitted parol evidence of intention. In *Mealy v. Kanealy*[108] the majority rejected the idea of any priority of clauses in interpreting a document. This involved an agreement for a real estate commission which as originally presented stated in essence that "upon the signing of this agreement by both parties hereto, there shall be due and payable . . . as commission"; upon complaint this was retyped and in the same paragraph the sentence was added: "The commission being due and payable upon the transfer of the properties." The trial court, in interpretation, disregarded the last sentence under a rule that where there are two repugnant provisions the former will control. The Supreme Court reversed, preferring the view of taking the contract as a whole unless the proviso is completely repugnant to the general purpose of the instrument. The dissent would admit only that the situation presented a case for reformation.

Finally, there is a situation in which it appears the Court had to pick a meaning "out of the air." In *Martin v. Moeller*[109] there was a contract for the purchase of hybrid seed corn in which the purchaser was to pay to the grower at a rate which was described as a "premium of 25c per bu. above local price" with choice of market to be selected by the grower between certain dates. The grower selected the federal government "sealing price", which was $1.35 per bushel, instead of the elevator price of $1.15 per bushel. It is doubtful if any reader would have any trouble guessing what the Court did—it adopted the interpretation of $1.35, in spite of the fact that in previous years the grower had picked an elevator price; the Court stated that the contract was executed in the light of the price support program to raise prices. There is every reason to believe, though, that this was just one of the circumstances neither of the parties anticipated.

---

[107] 241 Iowa 427, 41 N.W.2d 16 (1950); see WILLISTON § 627.

[108] 226 Iowa 1266, 286 N.W. 500 (1939); see WILLISTON § 624. See however, the apparent adherence by the Iowa Court to the idea of priority of clauses and consequent repugnancy in subsequent clauses, in construction of wills clauses, as discussed in Swenson, *The Iowa Repugnancy Rule in Testamentary Dispositions*, 41 IOWA L. REV. 601 (1956), and illustrated in Schmidt v. Claus, 250 Iowa 314, 93 N.W.2d 592 (1958).

[109] 241 Iowa 1033, 44 N.W.2d 345 (1950).