

ASSEMBLY BILL

No. 824

Introduced by Assembly Member Jones

February 21, 2013

An act to amend Section 1856 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 824, as introduced, Jones. Written agreements: exclusion of evidence.

Existing law provides that the terms set forth in a writing intended by the parties as a final expression of their agreement with respect to the terms may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement. Existing law defines the term “agreement” to include deeds and wills, as well as contracts between parties.

This bill would include trust instruments in the definition of the term “agreement.”

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1856 of the Code of Civil Procedure is
2 amended to read:
3 1856. (a) Terms set forth in a writing intended by the parties
4 as a final expression of their agreement with respect to ~~such~~ *the*
5 terms ~~as are~~ included therein may not be contradicted by evidence
6 of ~~any~~ a prior agreement or of a contemporaneous oral agreement.

1 (b) The terms set forth in a writing described in subdivision (a)
2 may be explained or supplemented by evidence of consistent
3 additional terms unless the writing is intended also as a complete
4 and exclusive statement of the terms of the agreement.

5 (c) The terms set forth in a writing described in subdivision (a)
6 may be explained or supplemented by course of dealing or usage
7 of trade or by course of performance.

8 (d) The court shall determine whether the writing is intended
9 by the parties as a final expression of their agreement with respect
10 to ~~such~~ *the* terms ~~as are~~ included therein and whether the writing
11 is intended also as a complete and exclusive statement of the terms
12 of the agreement.

13 (e) Where a mistake or imperfection of the writing is put in
14 issue by the pleadings, this section does not exclude evidence
15 relevant to that issue.

16 (f) Where the validity of the agreement is the fact in dispute,
17 this section does not exclude evidence relevant to that issue.

18 (g) This section does not exclude other evidence of the
19 circumstances under which the agreement was made or to which
20 it relates, as defined in Section 1860, or to explain an extrinsic
21 ambiguity or otherwise interpret the terms of the agreement, or to
22 establish illegality or fraud.

23 (h) As used in this section, ~~the term agreement~~ “*agreement*”
24 includes *trust instruments, deeds and deeds, wills, as well as and*
25 contracts between parties.