Question MEE 2 – July 2022 – Selected Answer 1

01. The first issue is whether Seller and Buyer's oral agreement regarding Seller's picture on the red wine labels is enforceable even though it was not included in the written agreement, which will turn on whether the agreement was fully or partially integrated.

The parol evidence rule provides that where the parties have an agreement that is fully integrated, the parties cannot introduce evidence of prior negotiations. Nevertheless, where an agreement is only partially integrated, the parties can introduce evidence of terms that supplement the agreement (but not terms that contradict the agreement). Under the common law, courts will look to the four corners of the document to determine whether the agreement is fully integrated. Typically, if the agreement appears to be detailed, a court will assume that an agreement has been fully integrated. Although a merger clause provides additional clarification on whether an agreement is fully integrated, it is not required.

Here, the parties had orally agreed that Buyer would continue to use the label with Seller's pictures. Nevertheless, the parties then entered into a "lengthy written agreement." The agreement included the parties, the purchase price, a non-compete clause, and more. Still, the parties did not include an "integration" or "merger" clause. The parties also did not include information such as what constituted a "fair share of the winery's profits." Looking at the four-corners of the agreement, a court might conclude that the agreement was fully integrated because of its length and detail, even though there is not an integration clause. On the other hand, a court might look at the lack of definition for terms such as a "fair share of the winery's profits," which is significant to Buyer's payment to Seller, and determine that the agreement was only partially integrated.

If a court concludes that the agreement is fully integrated, then Seller will not be able to introduce evidence about the oral agreement, and that oral agreement will not be enforceable. If the court concludes that the agreement was only partially integrated, then the court might permit Seller to introduce evidence of that oral agreement because it does not contradict anything else included in the contract. Instead, it supplements the contract. Because of the lengthiness and completeness of the contract, however, a court will likely conclude that this is a fully integrated writing and not permit Seller to introduce evidence regarding this oral agreement about the label.

02. The second issue is whether Seller could introduce evidence of the negotiations about what would constitute a fair share of the winery's first-year profits to help explain the meaning of what that term means, which will turn on whether courts permit this under the parol evidence rule.

Under the parol evidence rule, regardless of whether an agreement is fully or partially integrated, a court will allow the parties to introduce evidence to help define words or terms within the contract, including terms that are ambiguous. Here, the parties used the phrase "fair share of the winery's profits" in the agreement. Even under the parol evidence rule, a court will permit Seller to introduce evidence regarding the meaning of this term, including evidence of Seller and Buyer's previous conversations that the fair value would be between 20% (Buyer's opinion) and 25% (Seller's opinion).

03. The third issue is whether, assuming Buyer is not in breach of any of his obligations under the purchase agreement, Buyer would prevail on a claim that Seller breached her obligations under the agreement by opening her new winery, which will turn on whether the non-compete agreement is enforceable and whether Seller breached.

Although courts are generally hesitant to enforce specific performance of a party under breach due to forced work issues, courts will typically enforce non-compete agreements within contracts. Thus, if a party that has agreed to the non-compete agreement and then proceeds to enter into an enterprise in which that party is competing against the other party, that party will be deemed to have breached the contract. Nevertheless, courts look to the reasonableness of the non-compete agreement and may not enforce one that is overly broad or limiting.
Here, the parties both agreed that Seller "was not permitted to own or operate a winery anywhere in the United States for 10 years after the closing," which was included in the parties' written agreement. However, Seller ultimately opened and began operating a winery in the United States that was "fair from her original winery." Although Seller's actions appear to breach the non-compete agreement, a court may not enforce this non-compete agreement because it is so broad. It not only prohibits Seller from owning or operating a winery for 10 years but also prohibits Seller from doing so anywhere in the United States, even if location is located far away. Because the non-compete agreement is so broad here, a court will likely not enforce it. If a court does not enforce it, then Seller will not have breached and Buyer will not prevail on his claim. If a court does enforce it, then Seller did breach and Buyer will prevail.

Question MEE 2 – July 2022 – Selected Answer 2

1. Enforceability of the Wine-Label Agreement

The agreement between Buyer and Seller regarding use of Seller's label is likely enforceable, even though it was not included in the written contract. The issue is whether the parol-evidence rule permits the parties to supplement their written

contract with evidence of the oral agreement regarding Buyer's use of Seller's label. The parol-evidence rule generally prohibits evidence of agreements made before or contemporaneously with the parties' entering into a written agreement, if the written agreement was intended to be a full and complete expression of the parties' agreement. (It does not apply to agreements entered into after the integrated writing.)

Here, the parties' transaction was put down into a written agreement, but it omitted their prior oral agreement that Buyer would use Seller's label for as long as he sold red wines. To determine whether this orally-agreed-upon term is admissible, the court would first determine whether the written agreement was fully integrated. In so deciding, the court would note that the agreement lacks an integration or merger clause, which would state something to the effect of: "This agreement represents the entirety of the agreement between Buyer and Seller." Such a clause would strongly suggest that the writing was fully integrated, and may not be supplemented with other terms. However, here, there was no such clause, favoring a finding that the writing was only partially integrated. Moreover, the term that Seller wants to enforce is not an *inconsistent* term; it does not conflict with any terms in the writing. It is an unrelated, added term, governing Buyer's use of Seller's wine labels, an issue that does not elsewhere appear in the writing. Because the writing was likely not fully integrated, and because the wine-label term purports to supplement rather than supplant a term in the writing, it is likely independently enforceable.

(Not also that the agreement, even if construed as a "term" in the subsequent writing, appears to be an independent contract supported by consideration. The Seller made an offer to Buyer, which he accepted, and the agreement is supported by consideration--a bargained-for exchange of legal value. Specifically, Seller agreed to sell the winery, and Buyer agreed to use Seller's label.)

2. Negotiations Regarding "Fair Share"

Seller could likely introduce evidence of the parties' negotiations regarding "fair share" of the winery's first-year profits. When interpreting a contract, the court first attempts to apply the plain meaning of the contract's language, with the goal of giving effect to the parties' mutual intent. Where the plain terms are ambiguous, however, the court may look to extrinsic evidence to ascertain the parties' intended meaning. A term is ambiguous if it is susceptible to more than one meaning as understood by a reasonable person familiar with industry customs and practices.

Here, the term "fair share of the winery's profits" is an ambiguous term in Seller's and Buyer's contract, because reasonable people could disagree about what constitutes a "fair share." Because the term is ambiguous, the court may look to extrinsic evidence,

including the negotiations between Buyer and Seller. Those negotiations reveal a mutual understanding that "fair share" is in the range of 20-25% of first-year profits. Faced with this evidence, the court would likely hold that Buyer's offer of 2% of the profits is not a fair share.

Note also that a court may look to industry and trade custom to interpret ambiguous terms. Here, the fact that Seller and Buyer both agreed that 20-25% might be fair share suggests that such a share may be standard in the winery industry. This evidence, too, supports Seller's reading of the contract.

3. Seller's Opening of a New Winery

Even if Buyer is not in breach of the parties' agreement Buyer will likely not prevail in a claim of breach against Seller on the grounds that Seller opened a new winery. The issue is the enforceability of a covenant not to compete. A covenant not to compete is generally enforceable, as long as it is subject to reasonable geographic and temporal restraints.

Here, the covenant not to compete prohibits Seller from owning or operating a winery anywhere in the United States for ten years. This restriction is likely too far reaching to be enforced as written. Most glaringly, the geographic scope includes the entire United States, which is far too broad. Buyer's interest in avoiding competition nearby might justify a covenant prohibiting Seller from running a winery in the same city, or even region--or, depending on its size--possibly the state. But in no circumstances would a nationwide non-compete be enforced. If a court declined to enforce the geographic scope, Seller would not be in breach, because she opened a new winery in a different state, far away.

Moreover, the time restriction may be unreasonable as well. Ten years is a long time for Seller to refrain from the prohibited activity, and Buyer's interest in avoiding competition is likely sufficiently satisfied by a briefer prohibition that would still give him time to establish his business and avoid undue competition with Seller.

For these reasons, the court is unlikely to enforce the covenant not to compete contained in Buyer's contract. If the provision were not enforced, Seller would not be in breach by opening her new winery.

Question MEE 2 – July 2022 – Selected Answer 3

The sale of an ongoing business in this jurisdiction is governed by the common law of contracts. Therefore, all issues below apply the common law and not Article 2, which applies to the sale of goods.

(1) Seller and Buyer's oral agreement that Buyer would use Seller's picture on red wine labels is enforceable even though it was not included in the written agreement. The issue is whether the parol evidence rule precludes evidence about a term discussed in negotiations but not included in the final written agreement. The parol evidence rule states that in a final integration of a contract, evidence of prior or contemporaneous negotiations are not admissible to prove or contradict the existence of the prior or contemporaneous term. The parties are limited to the four corners of their contract. If a contract is a partial integration, then the parol evidence does not bar evidence contradicting the written terms of the contract because the parties did not intend the contract to be the final writing. An integration or a merger clause is an indication the parties intended a writing to be a final integration, but the existence of or absence of these clauses is not dispositive. Additionally, the parol evidence rule only bars contradicting evidence prior to or contemporaneous with the written contract. The parol evidence rule does bar introduction of additional terms not in the final written agreement, it does not bar interpretation of vague terms in the agreement, and it does not bar evidence of negotiations after the written agreement was entered into.

In this case, the Buyer and Seller negotiated orally about the Buyer continuing to use the label for as long as he sold red wines before the contract was entered into. Therefore, if the contract is a final integration and this oral negotiation contradicts a term in the contract, the evidence of the oral negotiation is not permitted.

For the determination of whether the contract is the parties' final integration, the absence of an integration and merger clause indicates the writing is not final, although the absence of these clauses is not dispositive. The Buyer and Seller entered into a lengthy written agreement after intensive negotiations. Parties included other key terms in the written agreement, such as the price of the winery and a non-compete clause. Because of hte lengthy and intensive negotiations and the lengthy written agreement, this is likely a fully integrated writing that the Buyer and Seller intended to be their final integrated writing. Although there is no merger clause, that is not dispositive in determining whether the agreement is fully integrated.

Since the contract is fully integrated, the evidence of the oral negotiation about the wine labels is only admissible if it does not contradict a term in the writing. The agreement did not include any provision about future use of the red wine label with Seller's picture on it. Therefore, the oral agreement would not contradict anything in

the writing because the writing is silent on this issue. The oral agreement would be in addition to the writing, so it is not barred by the parol evidence rule.

Therefore, the seller and buyer's oral agreement that buyer would use Seller's picture on red wine labels is enforceable, even though it was not included in the written agreement.

(2). Seller could introduce evidence of the negotiations about what would constitute a fair share of the winery's first year profits to help explain the meaning of that term. The issue is whether extrinsic evidence can be introduced to explain a vague term in a fully integrated writing. The parol evidence rule bars evidence of prior or contemporaneous oral discussions that contradict a fully integrated writing. As discussed above, the written contract is a fully integrated agreement, even though there was no merger or integration clause, because the parties negotiated heavily and signed a lengthy agreement with other key terms, signifying they intended this writing to be the final integration of their agreement. Additionally, the negotiation about what "fair share" of the profits meant was discussed prior to the written agreement. Therefore, this negotiation would be barred by the parol evidence rule if it contradicts the writing.

On the other hand, evidence may be introduced to explain a vague term in the writing, even if it is fully integrated. The term "fair share of the winery's profits" is inherently vague because there is nothing in the contract that explains what the Buyer and Seller meant by this term "fair share." ITherefore, the evidence of the negotiations about what would constitute a fair share would not contradict the writing, but instead it would explain a vague term. THe Buyer expected 20% to be a fair share of the profits, and the Seller orally said 25% would be fair. The two parties were close enough together on this issue that the whole agreement will not fail because a term will be left out. When the Buyer sent the Seller only 5% of the winery's profits after the first year of ownership, the Seller then reminded the Buyer of their understanding that the profits would be in the 20-25% range. Buyer cannot escape from the negotiation for 20-25% of the profits by saying that the agreement did not say fair share would be that high.

The parol evidence rule does not bar the introduction of this negotiation. The court will give effect to the parties' interpretation of the vague term.

(3) Assuming that Buyer is not in breach of any of his obligations under the purchase agreement, Buyer would prevail on a claim that Seller breached her obligations under the agreement by opening her new winery. The issue is whether the Seller can escape the Seller's contractual obligations by arguing the Buyer did not substantially perform.

Contracts entered into under the common law must be substantially performed. If a party to the contract has a minor breach, then they are still able to substantially perform and the other party is not excused from the contract. The non-breaching party is limited to damages for the other party's minor breach. However, if one of the parties materially breaches, then the other party is excused from their performance under the contract. Substantial performance is a question of degree.

In this case, if we assume the Buyer did not breach any of his obligations under the purchase agreement, then the Buyer has substantially performed. If the buyer has substantially performed, the Seller is not able to cancel their actions under the contract without being in breach them self. The Seller would still be required to perform under the contract, and any issue the Seller has with the Buyer's actions would be limited to contractual remedies.

Seller's only argument can be that the non-competition clause is void for illegality because it is a very broad restraint on the Seller's ability to work. Non-competition clauses are generally upheld when they leave open the ability for the party to continue to work. But in this case, the Seller was not permitted to open a winery anywhere in the US for 10 years after the closing. This is an extremely broad prohibition since it covers the entire US and for a very long period of time. The Seller might be able to argue that this broad and long-term restraint on the Seller's ability to work is illegal or void as against public policy.

Even if the Seller was happy with the term when entering into the agreement, if the term is illegal or void for public policy, then the Seller could escape liability for failing ot perform with the illegal or void provision. If the provision is illegal or void, courts try to enforce the rest of the contract and only limit the section that is void or illegal (in this case the non-competition clause). If that were the case, the rest of the contract would be enforceable, just without the non-competition provision.

Therefore, the Buyer will likely prevail on a claim that the Seller breached her obligations under the agreement because the buyer did not breach the contract, and therefore substantially performed. If the buyer substantially performed, the seller's performance is not excused. The Buyer might fail if the Seller successfully argues that the non-compete clause is too broad and is void as against public policy, but this is a tough argument since the Seller entered into the contract voluntarily and with full knowledge of the situation.