

# HANDSHAKES AND WINEGRAPES: WHY “BRAIDED” WINEGRAPE AGREEMENTS BETWEEN GROWERS AND WINERIES MAY BE THE ANSWER

*Madeline Hills*<sup>†</sup>

Abstract .....	52
I. The American Wine Industry .....	54
II. Relational Contract Theory: Braiding Formal and Informal Contracting	
Methods.....	56
III. Formal and Informal WGSAs and Common Points of Tension. ....	59
A. WGSAs are Diverse Business Instruments. ....	59
B. Formal WGSAs Use Industry and Party-Specific Provisions that Can Provide Stability but May Sacrifice Handshake Culture.....	61
C. Informal WGSAs Preserve the Industry’s Handshake Culture but are Vulnerable to Exploitative Behavior. ....	66
D. Power Disparity and Contemporary Points of Contention in WGSAs .....	69
1. Grape Weight .....	70
2. Grape Quality .....	71
3. Supply & Demand .....	71
IV. Enforcement: Informal WGSAs May be Enforceable.....	72
A. Enforceable Agreements: Statute of Frauds and Promissory Estoppel .....	72
B. Illustrative Disputes Over Informal WGSAs .....	73
V. Analysis: Braiding Formal and Informal Contracting in Winegrape Agreements Can Provide Stability While Preserving Handshake Culture in the Wine Industry.....	76

## ABSTRACT

*In Prairie Du Sac, Wisconsin, owner and head winemaker of Wollersheim Winery, Philippe Coquard, explained frankly that he does not use any formal contracts for his outsourced winegrapes, and that there has never been a need for*

---

<sup>†</sup> Madeline E. Hills, University of Wisconsin Law School, J.D. Class of 2023. 2023 recipient of the Stewart Macaulay Award for Excellence and Leadership in Contracts Law. The Author would like to thank Professor Steph Tai for their invaluable feedback and direction. Thank you also to the interviewees: Philippe Coquard, Céline Coquard Lenerz, Anthony Meyer, Josh Devore, John Trinidad, and Alex Oh for your time and industry insight. Thank you to Kathleen Hessel and Maria Pimentel Diaz for your helpful suggestions.

them.<sup>1</sup> Grapevines were first planted on the Wollersheim vineyard before Wisconsin's statehood in the early 1840s by Hungarian immigrant Agoston Haraszthy, who later migrated west to California and ultimately became the "Father of California Viticulture."<sup>2</sup> Haraszthy's innovative hillside wine cellar still sits atop the picturesque estate.<sup>3</sup>

Wollersheim, like most wineries, sources a portion of its winegrapes from third party growers.<sup>4</sup> The winery's predominant use of purely oral, informal agreements with its growers is also not unusual in the wine industry.<sup>5</sup> Like most agricultural ventures, winegrape supply agreements (WGSAs) are deeply rooted in a culture of "handshake" dealings.<sup>6</sup> As the American wine industry becomes more complex, such reliance on trust and communication without formalized contract terms in place may seem like a relic, and a threat to company value, when that trust unravels. Nevertheless, there is something to be said for time-tested, grower-winery agreements like Wollersheim's. Coquard fondly describes the decades-long dealings with his out-of-state winegrape growers as successful, symbiotic relationships built on mutual respect.<sup>7</sup>

This essay posits that the implications of choosing formal or informal contracting between growers and winemakers are nuanced; there are benefits to a handshake deal beyond simply avoiding the lawyer's fees and paperwork. By employing a "braiding" theory of relational contracting—incorporating minimal, flexible contract formalities into the grower-winery relationship—could bolster the existing relational self-governance mechanisms unique to this industry without

1. Video Interview with Philippe Coquard, Owner and Head Winemaker, Céline Coquard Lenerz, Enologist, and Anthony Meyer, Productions and Operations Coordinator, Wollersheim Winery & Distillery (March 3, 2022) (on file with author).

2. Keith Beavers, *American Wine History Part II*, WINE 101, at 20:10–45 (Jan.13, 2022), <https://vinepair.com/articles/wine-101-american-wine-history-part-ii/> [<https://perma.cc/STU4-PD9S>] (downloaded using Apple Podcasts); *Happy Birthday to Agoston Haraszthy!*, WOLLERSHEIM WINERY, DISTILLERY & BISTRO (Aug. 30, 2016), <https://www.wollersheim.com/happy-birthday-agoston-haraszthy/> [<https://perma.cc/83Y8-2JN5>]; THOMAS PINNEY, *A HISTORY OF WINE IN AMERICA: FROM BEGINNINGS TO PROHIBITION* 269–74 (2007).

3. PINNEY, *supra* note 2, at 269–74.

4. *Do All Wineries Grow Their Own Grapes?*, OLD FRIENDS WINE (Mar. 26, 2023 3:03 PM CST), <https://oldfriendswine.com/do-all-wineries-grow-their-own-grapes/> [<https://perma.cc/5LWH-K9S3>]; RICHARD MENDELSON, *WINE IN AMERICA: LAW AND POLICY* 149 (Vicki Been et al. eds., 2011).

5. Video Interview with Philippe Coquard et al., *supra* note 1; MENDELSON, *supra* note 4, at 176.

6. MENDELSON, *supra* note 4, at 176.

7. Video Interview with Philippe Coquard et al., *supra* note 1.

*the crowding-out effect of elaborate formal contracts. Growers and wineries operating on informal WGSAs should consider employing the contract braiding approach.*

*Section I below provides a brief backdrop of the American wine industry. Section II introduces braiding, a relational contract theory that endorses—particularly in industries of heightened uncertainty—intertwining elements of formal and informal contracting in a way that allows parties to cooperate effectively without the full imposition of legally enforceable obligations.<sup>8</sup> Section III introduces WGSAs between growers and wineries, both formal and informal varieties. This section also illustrates the prominent points of tension in the grower-winery relationship. Section IV considers legal enforcement options for both formal and informal contracts through the lens of three grower-winery disputes. Finally, Section V explores how braided contracts can provide protection and stability to both growers and wineries while preserving relational enforcement mechanisms of the wine industry’s handshake culture.*

## I. THE AMERICAN WINE INDUSTRY

Now at an estimated value of \$88 billion,<sup>9</sup> the United States wine industry is increasingly commercialized.<sup>10</sup> In 2020, there were over 11,000 wineries producing wine in the United State, a 50 percent increase since 2009.<sup>11</sup> The United States is currently the world’s fourth largest wine producer behind Italy, France, and Spain, primarily thanks to California.<sup>12</sup> But it’s not just California; wine is now

---

8. Ronald J. Gilson et al., *Braiding: The Interaction of Formal and Informal Contracting in Theory, Practice, and Doctrine*, 110 COLUM. L. REV. 1377, 1377 (2010).

9. *Global Wine Market Report 2021*, BUS. WIRE (Aug. 6, 2021, 10:58 AM), <https://www.businesswire.com/news/home/20210806005389/en/Global-Wine-Market-Report-2021-Market-to-Reach-434.6-Billion-by-2027---Substantial-Opportunities-Outside-Europe---ResearchAndMarkets.com> [<https://perma.cc/A4GL-XHWL>].

10. See Mike Veseth, *Has U.S. Wine Industry Consolidation Gone Too Far?*, THE WINE ECONOMIST (Feb. 8, 2022), <https://wineeconomist.com/2022/02/08/consolidation-2022/> [<https://perma.cc/JNX3-E3T4>]; Melissa Dowling, *America’s Fastest-Growing Wine Brands*, BEVERAGE DYNAMICS (Apr. 20, 2020), <https://beveragedynamics.com/2020/04/20/best-selling-wine-brands/> [<https://perma.cc/Z25A-GRWK>]; Larry Walker, *The Top Five US Companies*, MEININGER’S WINE BUS. INT’L (Aug. 26, 2013), <https://www.wine-business-international.com/wine/power-lists/top-five-us-companies> [<https://perma.cc/7SGJ-54ZP>].

11. Jan Conway, *Total Number of Wineries in the United States from 2009 to 2021*, STATISTA (Jan. 15, 2021), <https://www.statista.com/statistics/259353/number-of-wineries-in-the-us/> [<https://perma.cc/7KBG-EHHA>].

12. *Wine in America: How the Gold Rush, Prohibition, and a 1990s News Report Helped Define American Wine Consumption*, PBS (Dec. 2017), <https://www.pbs.org/wgbh/american-experience/features/wine-america/> [<https://perma.cc/A5CN-XMWV>].

produced in all fifty states.<sup>13</sup> The contemporary path from vine to glass involves multiple parties, including grape growers, grower cooperatives, grape transporters, grape crushers, winemakers, bottlers, wholesalers, and retailers.<sup>14</sup> This essay focuses on arguably the most important link in the chain: grape-supply agreements between growers and winemakers.

Today's wine and winegrape business is a particularly volatile industry.<sup>15</sup> Weather events, spiking fertilizer costs, or a glut year in grape supply are just a few factors that can quickly shift the power dynamic between growers and wineries.<sup>16</sup> Formalized contracts can offer both growers and wineries heightened protection and predictability when the unpredictable strikes, such as wildfires causing smoke taint in grapes or early frost resulting in a decreased yield.<sup>17</sup>

But even with formalized contracts in place, relational forces tend to drive conflict resolution between growers and wineries.<sup>18</sup> The national wine industry is growing in value, but the community of growers and wineries driving it is still relatively tight-knit.<sup>19</sup> Whether out of fear of being “blacklisted”<sup>20</sup> from a region's

---

13. *Id.*

14. Savannah Billingham-Hemminger, *Resolving Disputes Before They Decant: An Alternative Dispute Resolution System for Growers and Wine Producers*, 20(2) PEPP. DISP. RESOL. L.J. 149, 149 (2020); MENDELSON, *supra* note 4, at 161–69.

15. Billingham-Hemminger, *supra* note 14, at 153; James W. Terry & Carol A. Kingery, *Grape Purchase Agreements: Why a Handshake Deal May Not Simplify Your Business*, CAL. CONTINUING EDUC. OF THE BAR, CAL. WINE LAW FORUM, 2008, at 1 (Terry and Kingery explain that the industry is characterized by frequent changes in control and “subject to the will of Mother Nature.”).

16. *See, e.g.*, ROB McMILLAN, SILICON VALLEY BANK, STATE OF THE US WINE INDUSTRY 4 (2022), <https://www.svb.com/globalassets/trendsandinsights/reports/wine/svb-state-of-the-wine-industry-report-2022.pdf> [<https://perma.cc/PE6B-SH2B>]; ALLIED GRAPE GROWERS, WINTER REPORT 2022: UP, UP, AND AWAY 2 (2022), <http://www.alliedgrapegrowers.org/pdfs/AGG%20Report%20Winter%202022.pdf> [<https://perma.cc/UV75-HH7R>].

17. *See e.g.*, Kelly Ball, *Smoky Grapes: Why the Risk of Smoke Exposure Should Modify Grape Contracts*, 11(3) KY. J. EQUINE AGRIC. & NAT. RES. L. 415, 415–17 (2019).

18. Telephone Interview with John Trinidad, Partner at Dickerson, Peatman & Fogarty in Napa, CA (March 16, 2022) (on file with author) (“There is definitely a sense of ‘we’re a small community.’ People know each other.”); Video Interview with Alex Oh, Owner of Aluel Cellars in Seattle, WA (March 24, 2022) (on file with author).

19. Dean Gloster & Matt Lewis, *Managing Risk: How Growers and Suppliers Can Protect Themselves from Winery Insolvencies*, WINES & VINES ANALYTICS (Oct. 2009), <https://winesvinesanalytics.com/columns/section/71/article/67367/Managing-Risk> [<https://perma.cc/KCT9-TMAW>] (“One of the advantages of a small, tight-knit sector like the wine industry is that reputations are often quickly established and well known. One of the disadvantages is that those reputations are not always accurate or current.”).

20. *See, e.g.*, *Davenport v. Gallo*, No. C006484 (Cal. Ct. App. filed Dec. 24, 1990)

wine community and losing future business, or out of genuine mutual respect, growers and wineries are often flexible with one another.<sup>21</sup> Seattle winery owner Alex Oh explained that when growers' crops come up short of their agreement:

We just adjust our plates. Instead of releasing two bottles to every wine club member, we might just do one. Or instead of pouring [that wine] in the tasting room, we might reserve it to wine club members only. You're not going to go ruin a relationship because you were expecting a certain amount [of grapes] . . . It comes down to trust and relationships.<sup>22</sup>

Particularly during time-sensitive harvest season, growers and wineries are in constant contact, assessing the inevitable crop-related crises for the year and adapting accordingly,<sup>23</sup> often without reference to the detailed contract terms and procedures in place.<sup>24</sup> Oh observed, “[i]f somebody burns you big time you just don't work with them anymore. And word spreads fast.”<sup>25</sup>

## II. RELATIONAL CONTRACT THEORY: BRAIDING FORMAL AND INFORMAL CONTRACTING METHODS

Braided WGSAs can best provide predictability and protection for growers and wineries while maintaining the industry's handshake culture. Braided WGSAs would employ limited contract formalities that guide and reinforce informal modes of relational self-governance. This section surveys the relational contract theory that will be applied to WGSAs in Section VI.

Traditionally, academic literature recognized two discrete and mutually exclusive contracting methods: (1) formal and legally enforceable contracts, and (2) informal agreements subject only to self-enforcement.<sup>26</sup> They each have their

---

(Grower alleged winery circulated a “blacklist” to all major wineries in Northern California to control and discount the prices paid to grape growers.).

21. Video Interview with Alex Oh, *supra* note 18; *see, e.g.* Kerana Todorov, *Smoke Exposure Language Included in Winegrape Contracts*, WINE BUS. MONTHLY (Oct. 2019), <https://www.winebusiness.com/wbm/?go=getArticleSignIn&dataId=219729> [<https://perma.cc/N4KC-TDMT>] (describing some wineries' offers to pay a portion of growers' insurance costs as a “genuine gesture of care”).

22. Video Interview with Alex Oh, *supra* note 18.

23. Video Interview with Philippe Coquard et al., *supra* note 1; Telephone Interview with John Trinidad, *supra* note 18.

24. Telephone Interview with John Trinidad, *supra* note 18.

25. Video Interview with Alex Oh, *supra* note 18.

26. *Id.*; *see also* David Charny, *Nonlegal Sanctions in Commercial Relationships*, 104 HARV. L. REV. 373, 376–78 (1990); Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOCIO. REV. 55, 56–57, 62–63 (1963); John McMillan &

pitfalls: formal contract enforcement has long been understood to crowd out informal social norms among parties,<sup>27</sup> while informal agreements survive only at the mercy of the transacting parties.<sup>28</sup> Early relational contracting theorists often framed formal and informal agreements as substitutes for one another.<sup>29</sup> However, contract theorists have since recognized a myriad of hybrid approaches, sparked by Macauley's landmark paper, which presented empirical evidence that flexible formal contractual relationships are achieved through informal norms.<sup>30</sup>

One such hybrid approach is the braided agreement. In a braided agreement, formal contract provisions establish information-sharing regimes which make behavior observable enough to reinforce informal contracting governance mechanisms between the parties, such as compliance based on trust, reciprocity, and reputation.<sup>31</sup> Gilson, Sabel, and Scott (GSS) observed in their 2010 article, “[p]arties respond to rising uncertainty by writing contracts that intertwine formal and informal mechanisms—what we call ‘braiding’—in a way that allows each to assess the disposition and capacity of the other to respond cooperatively and effectively to unforeseen circumstances.”<sup>32</sup> GSS describe contract braiding as an “information-sharing regime that braids the formal and informal elements of the contract, endogenizes trust, and thereby supports the informal enforcement of the parties’ substantive performance.”<sup>33</sup> The resulting agreement facilitating this collaborative relationship depends upon: (1) formal contract provisions, enforceable in court, and (2) informal relational constraints, enforceable only through extra-legal sanctions, such as reputational damage and refusing future dealings.<sup>34</sup>

By taking a braiding approach, parties need not necessarily choose between absolute formality and informality in their agreement.<sup>35</sup> Rather, they can utilize intentionally subjective contract terms that build flexibility into the relationship, such as “best efforts” and “according to the parties’ mutual agreement at the

---

Christopher Woodruff, *Private Order Under Dysfunctional Public Order*, 98 MICH. L. REV. 2421, 2421 (2000).

27. Matthew Jennejohn, *Braided Agreements and New Frontiers for Relational Contract Theory*, 45 J. CORP. L. 885, 891 (2020).

28. Charny, *supra* note 26, at 376.

29. Jennejohn, *supra* note 27, at 891.

30. Macaulay, *supra* note 26, at 62–65.

31. Gilson, *supra* note 8, at 1398–1402.

32. *Id.* at 1377.

33. *Id.* at 1384.

34. Ronald J. Gilson et al., *Contracting for Innovation: Vertical Disintegration and Interfirm Collaboration*, 109 COLUM. L. REV. 431, 435 (2009).

35. Jennejohn, *supra* note 27, at 892.

time.”<sup>36</sup> From a purely legal perspective, intentional flexibility is often regarded suspiciously, as it threatens to undermine the foundational assumptions of why parties contract in the first place.<sup>37</sup> However, from a business-oriented perspective, intentionally flexible contracts can facilitate successful long-term cohesion between parties.<sup>38</sup>

So, why does this all matter? In analyzing and expanding upon GSS’s trilogy of relational contracting papers,<sup>39</sup> Jennejohn’s 2020 article explains:

Understanding whether formal and informal contracts are substitutes or complements to one another matters because it steers how we think about court intervention. For instance, if informal governance is a substitute for formal contracting, then judicial involvement may “crowd out” efficient informal institutions. On the other hand, if informal contracts complement formal agreements, then judicial intervention may be beneficial.<sup>40</sup>

Informal enforcement depends entirely on private sanctions, such as reducing future dealings with the party and reputational damage.<sup>41</sup> Formal enforcement depends on court verification of a contract breach.<sup>42</sup> But breaches may be difficult for a court to verify when the contracted activity or relationship is complex, and contract terms use more open-ended standards.<sup>43</sup> GSS explain in their 2014 article:

[M]any commercial parties do business in a deeply nuanced world where formal and informal understandings mix in a mélange of explicit terms and underlying practice whose joint application to the particular contract can be illuminated by the parties’ course of dealings.<sup>44</sup>

Thus, contextual information can help a court determine whether a contract was breached when the contracted activity and relationship is complex.<sup>45</sup> However, the traditional notion in contract theory and experimental research is that courts’ over-inquiry into the context of a contractual relationship crowds out effective

---

36. *Id.*

37. Thomas D. Barton, *Flexibility in Contracting*, 2015(2) LAMPLAND L. REV. 1, 1 (2015).

38. *Id.*

39. See generally Gilson, *supra* note 8; Gilson, *supra* note 34; Ronald J. Gilson et al., *Contract and Innovation: The Limited Role of Generalist Courts in the Evolution of Novel Contractual Forms*, 88 N.Y.U. L. REV. 170 (2013).

40. Jennejohn, *supra* note 27, at 887.

41. Gilson, *supra* note 8, at 1392.

42. See *id.* at 1389.

43. *Id.* at 1390.

44. Ronald J. Gilson et al., *Text and Context: Contract Interpretation as Contract Design*, 100(1) CORNELL L. REV. 23, 27 (2014).

45. See generally *id.*

informal governance restraints.<sup>46</sup> Relational contract theorists advise in some instances that reviewing courts may take a contextual approach to a braided contract without crowding out informal self-governance.<sup>47</sup> One of the typical benefits of the braided approach is that information actually shared according to the formalized “information-sharing regime” is considered the informal, relational thread of the braid, and thus should not be deeply analyzed by a reviewing court.<sup>48</sup> In that way, the formal-informal braid reinforces itself.<sup>49</sup>

This essay proposes that WGSAs formally establish the information-sharing regime characteristic of braided agreements. The formal information-sharing regime buttresses the informal relational constraints that police the parties. By employing intentionally open-ended contract provisions, braided WGSAs can adapt to unpredictable circumstances that are common in the venture as they would under a handshake deal with the increased protection of a contract.

### III. FORMAL AND INFORMAL WGSAS AND COMMON POINTS OF TENSION

This section illustrates the general goals of a WGSAs and how these objectives are pursued through both formal and informal contracts. Formal WGSAs employ an assortment of industry and party-specific provisions that seek to define performance, foresee issues, and guide conflict-resolution.<sup>50</sup> Informal WGSAs range from strictly oral, handshake agreements to agreements with very few written terms in place.<sup>51</sup> These parties generally resolve issues as they unfold and develop problem-solving tactics over time within a long-term relationship.<sup>52</sup> Finally, this section delineates three common points of tension in the grower-winery relationship that breed disputes.

#### *A. WGSAs are Diverse Business Instruments.*

WGSAs are agreements between a grape grower and winery wherein the winery compensates the grower for supplying grapes intended to be fermented and processed into wine for sale and consumption.<sup>53</sup> WGSAs are as diverse as the grapes and wines they govern. WGSAs can be informal agreements—pure

---

46. Gilson, *supra* note 8, at 1398–99.

47. Jennejohn, *supra* note 27, at 892.

48. *Id.* at 887–88.

49. *Id.* at 888.

50. MENDELSON, *supra* note 4, at 176.

51. *Id.*

52. *Id.* at 176–77.

53. MENDELSON, *supra* note 4, at 163–64 (wineries also sometimes deal with an intermediary grape supplier or “crusher” which in turn has its own agreements with various growers). For simplification, this paper focuses on direct agreements between growers and wineries.



handshake deals and majority-oral dealings—or formalized contracts with carefully crafted provisions which contemplate, on paper, everything from smoke exposure thresholds to viticultural practices.<sup>54</sup> It is difficult to assess the true extent of formal contract use in WGSAs.<sup>55</sup> However, the proliferation of contemporary practitioner articles advocating for formalized contracts over handshake deals suggests that informal WGSAs still dominate the industry.<sup>56</sup> The distinction between informal and formal WGSAs can also be hazy, such as when a formal contract has been created and signed but remains stored away while the parties manage their dealings orally.<sup>57</sup>

Whether formal or informal, all WGSAs identify the parties to the agreement and the variety of grapes to be supplied and contemplate a pricing model to some degree.<sup>58</sup> There are three main pricing models for WGSAs: tonnage, acreage, and bottle.<sup>59</sup> Tonnage pricing, the most common model, calculates the winery's fees based on weight of the grapes.<sup>60</sup> Acreage pricing, a less common model, sets a winery's fee for the entire harvest of a particular vineyard or segment thereof.<sup>61</sup> Acreage pricing is more common among higher end wineries that prefer greater control over the grower's viticultural practices and value *terroir*, the distinctive taste and flavor imparted on a wine by the grapevines' environment.<sup>62</sup> Finally, bottle pricing, the least common model, sets or affects the winery's fee based on the ultimate sale price of the resulting wine.<sup>63</sup> Bottle pricing is most common for grapes that will produce high-end to luxury wines.<sup>64</sup> The idea is that, as the retail prices for a wine soars, a grower with sufficient bargaining power can utilize the bottle pricing model to get their slice of the pie, whereas tonnage or acreage pricing

---

54. See Downey Brand, LLP, *Legal Analysis: 2020 Winegrape Rejections*, ALLIED GRAPE GROWERS 3–4 (July 7, 2021), <http://www.alliedgrapegrowers.org/pdfs/Legal%20Analysis%20-%202020%20Winegrape%20Rejections.pdf> [<https://perma.cc/EG3Q-LKP5>]; MENDELSON, *supra* note 4, at 175–82.

55. See Iain Fraser, *The Role of Contracts in Wine Grape Supply Coordination: An Overview*, 11 AGRIBUSINESS REV., 2003, at 7–10 (noting that in a 1995 study, over half of the WGSAs in the Australia wine industry were informal, long-term relationships with no written contracts).

56. See Terry & Kingery, *supra* note 15, at 1.

57. Fraser, *supra* note 55, at 10.

58. MENDELSON, *supra* note 4, at 178.

59. *Id.* at 178–79.

60. *Id.* at 178.

61. *Id.*

62. See Paul Franson, *Win-Win Grape Contracts*, 90(7) WINES & VINES (2009); Terry & Kingery, *supra* note 15, at 5–6; MENDELSON, *supra* note 4, at 11 (*Terroir* refers to the environment and geographical location where the grapes were grown).

63. MENDELSON, *supra* note 4, at 179.

64. *Id.* at 178–79.

don't adequately reflect the grower's contribution to a successful product.<sup>65</sup> By employing this pricing model, growers assume a greater stake in the commercial success of the final product.<sup>66</sup>

Temporally, WGSAs might be fixed to one-off transactions within a single harvest year or may govern multiple transactions spanning several years.<sup>67</sup> However, WGSAs are predominantly multiyear dealings.<sup>68</sup> Typically, a single contract document or mutual understanding governs a long-term relationship over several years, supplemented with yearly transaction-specific agreements.<sup>69</sup> Payment timelines are equally diverse; a single-harvest-season transaction might involve one lump sum to the grower, while a more formalized long-term WGSAs might dictate comprehensive algorithms governing payment plans, fixed periods for price adjustments after grape inspection, and bonus payments for meeting various quality and quantity thresholds.<sup>70</sup>

*B. Formal WGSAs Use Industry and Party-Specific Provisions that Can Provide Stability but May Sacrifice Handshake Culture.*

Formal WGSAs track the traditional concept of a contract: offer, acceptance, and consideration, memorialized on paper and signed by the contracting parties.<sup>71</sup> Practitioner pieces abound advocating for formalized WGSAs and instructing growers and wineries on how to craft contract provisions that best protect their interests.<sup>72</sup> John Trinidad, a wine lawyer in California, explains that when there is a dispute, it is much easier to resolve and avoid litigation if there is a written

---

65. *Id.* at 177, 179.

66. *Id.* at 179.

67. Franson, *supra* note 62.

68. MENDELSON, *supra* note 4, at 176; Ball, *supra* note 17, at 425.

69. MENDELSON, *supra* note 4, at 176–77.

70. *Id.* at 179; Rachael Goodhue et al., *Contract Usage in the California Winegrape Economy*, UNIV. CAL. AG. ISSUES CTR. 3 (Dec. 1999), <https://cail.ucdavis.edu/pub/briefs/brief11.pdf> [<https://perma.cc/S8DK-RXZL>]; Ball, *supra* note 17, at 425.

71. See Terry & Kingery, *supra* note 15, at 1.

72. See, e.g., *id.* at 1; WINTER REPORT 2022: UP, UP, AND AWAY, *supra* note 16; Samuel D. Hinkle et al., *Contract Negotiations and Considerations for the Winegrape Grower*, CAL. ASS'N WINEGRAPE GROWERS (July 2005), <https://lamorindawinegrowers.com/wp-content/uploads/2014/06/contractWinegrowerand-maker.pdf> [<https://perma.cc/AJ7U-L248>]; *Getting Paid: Tools for Washington Grape Growers*, WASH. WINE INDUS. FOUND. 8–10 (Dec. 2015), [https://washingtonwinefoundation.org/wp-content/uploads/2015/12/GettingPaid\\_FINAL\\_lowres.pdf](https://washingtonwinefoundation.org/wp-content/uploads/2015/12/GettingPaid_FINAL_lowres.pdf) [<https://perma.cc/B8FN-B9FQ>]; David E. Stoll, *Understanding the Issue of Control in Grape Contracts: Designing Agreements that Protect the Rights of Growers and Buyers*, N. BAY BUS. J. 6, 6 (2008).

contract in place.<sup>73</sup> Wine business lawyers Terry and Kingery observe that formal WGSAs contain five key elements: “term, pricing mechanisms, viticultural practices (including farming, picking, and delivery), quality standards, and dispute resolution techniques.”<sup>74</sup> They note that special care should also be afforded the “seemingly generic terms governing assignment, force majeure, and events of default” for long-term contracts.<sup>75</sup>

Formal WGSAs usually contain “evergreen” provisions, where the term is perpetually extended unless either party notifies the other of its intent to terminate.<sup>76</sup> Evergreen contracts typically stipulate that the contract will continue for a certain period after notice of termination, so that both parties have time to find new buyers/suppliers.<sup>77</sup> The term provision in a formal WGSAs between R.H. Phillips, Inc. and JK Vineyards is illustrative of evergreen contracts:

**Term.** The initial term of this Agreement will be for fifteen (15) harvest years or, if Winery shall so elect and shall so notify Grower on or before December 31 of the fourteenth harvest year, then twenty(20) harvest years (“Original Term”); and the term will continue from year to year thereafter (“Evergreen Period”), unless, no later than December 31 following the last harvest of the Original Term or the same date for any year during the Evergreen Period, Notice of termination is given by either party (“Notice of Termination”), Upon Notice of Termination to the other party, for each harvest thereafter, Winery’s obligation to buy and Grower’s obligation to sell the Grapes will be reduced by twenty percent (20%) of the total acreage of the Property devoted to each variety, with the Agreement expiring following the fifth harvest after Notice of termination is given.<sup>78</sup>

When growers and wineries opt to formally contract, creative WGSAs provisions tailored to the peculiarities of the industry and the parties’ specific needs can promote a synergistic business relationship. This is particularly true for grape quality provisions. Well-crafted grape quality provisions can protect both the winery from bad grapes and the grower from bogus grape rejections.<sup>79</sup> Related inspection provisions can also govern whether and how often the winery can visit the grower’s

---

73. Telephone Interview with John Trinidad, *supra* note 18.

74. Terry & Kingery, *supra* note 15, at 1.

75. *Id.*

76. MENDELSON, *supra* note 4, at 177.

77. *Id.*

78. JK Vineyards, L.L.C. v. Constellation Wines U.S., Inc., No. CPF-10-510681, 2011 Cal. Super. LEXIS 5721, at \*18-19 (Cal. Super. Ct. 2011) (this contract utilized the acreage pricing model, the Court ultimately affirmed the arbitration award).

79. See generally *Getting Paid: Tools for Washington Grape Growers*, *supra* note 72.

vineyard, inspect vines, and test samples.<sup>80</sup> Formal WGSAs traditionally only broadly required grapes to be “sound and suitable” for making a particular quality of wine.<sup>81</sup> Contemporary formal WGSAs contain much more detailed provisions regarding quality attributes such as brix level, pH content, color, grape defect thresholds (including mold, rot, and smoke taint), and even the subjective tastes of the winemaker.<sup>82</sup> For example, the grape quality provision in a 2017 multiyear WGSAs between Santa Rosa City Schools and Jackson Family Wines directs:

QUALITY STANDARDS: Winery will provide Grower with general guidelines with respect to levels of acid, pH, and crop size (based on generally accepted tonnages per acre for the production of high quality wine, given the variety and vineyard location and the specific growing conditions affecting the given harvest). Grower hereby agrees to use its best efforts to follow such guidelines. Sugar levels shall be as agreed in Appendix 1. All grapes, when delivered, will conform to the Minimum Quality Standards set forth in Appendix 1 hereto. **Winery’s Grower Relation staff shall conclusively determine compliance with the Minimum Quality Standards and may reject any load or portion thereof deemed unsuitable**, based on such Minimum Quality Standards, for the production of high quality wine.<sup>83</sup>

---

80. See Terry & Kingery, *supra* note 15, at 9–12.

81. MENDELSON, *supra* note 4, at 177; *Legal Analysis: 2020 Winegrape Rejections*, *supra* note 54, at 3.

82. *Legal Analysis: 2020 Winegrape Rejections*, *supra* note 54, at 3–4 (formal WGSAs postdating the increasingly prevalent California wildfires often address smoke exposure standards in even greater detail).

83. Santa Rosa City Schools and Jackson Family Wines, Inc., *MULTIPLE YEAR VITICULTURAL PRACTICES AND GRAPE PURCHASE CONTRACT 2* (Mar. 16, 2017), <https://agendaonline.net/public/Meeting/Attachments/Display-Attachment.aspx?AttachmentID=558254&IsArchive=0> [<https://perma.cc/4VWU-Q3RW>] (emphasis added) [hereinafter *Santa Rosa Contract*] (Santa Rosa High School operates a 3-acre chardonnay vineyard which is the primary fundraiser for the school’s agriculture department); *Volunteer Page*, SANTA ROSA HIGH SCHOOL, (Mar. 26, 2023 3:43 PM), <https://web.archive.org/web/20210922084149/https://www.santarosahighschool.net/index.php/parent-organizations> [<https://perma.cc/NTX2-K98S>].

An appendix to the WGSA provision further delineates the quality standards regarding defects:<sup>84</sup>

<b><i>DEFECT</i></b>	<b><i>SOUND GRAPES</i></b>	<b><i>NOT SOUND GRAPES</i></b>
<i>Powdery mildew on grapes</i>	0%	<i>Zero tolerance</i>
<i>Downy mildew</i>	0%	<i>Zero tolerance</i>
<i>Botrytis and other bunch rots (except <i>Aspergillus carbonarius</i>)</i>	<2%	≥2%
<i>Aspergillus carbonarius (Ochratoxin A producing black mold)</i>	0%	<i>Zero tolerance</i>
<i>Bird/insect damage</i>	<3%	≥3%
<i>Sunburn/dry berries</i>	<3%	≥3%
<i>Material Other than Grapes (MOG)*</i>	<2%	≥2%

\* MOG includes, without limitation, matter such as leaves, canes, old vine arms, sticks, wire, stones, trellis parts, etc.

Two key provisions in formal WGSAs which informal WGSAs fail to contemplate are dispute resolution procedures and *force majeure*.<sup>85</sup> Dispute resolution provisions may dictate whether a future dispute will be arbitrated, by whom, under what law, and with what available damages.<sup>86</sup> Foreseeing that general courts often lack specialized industry knowledge, formal WGSA dispute resolution provisions often dictate that disputes will be resolved using an arbitrator with industry knowledge.<sup>87</sup> In *JK Vineyards*, for example, the Superior Court of San Francisco confirmed an arbitration award that followed the WGSA's dispute resolution provision:

**Arbitration and Dispute Resolution.** The parties-waive their right to seek remedies in court, including any right to a jury trial, with, respect to any claim, or dispute arising out of or related to this Agreement The parties agree that in the event the parties are unable to resolve a claim or dispute arising out of or related to this Agreement, including without limitation (i) a dispute as to

84. *Santa Rosa Contract*, *supra* note 83, at 7.

85. *Terry & Kingery*, *supra* note 15, at 1.

86. *See id.* at 11.

87. *See id.*

the purchase price of Grapes purchased and sold hereunder, and (ii) a dispute as to ‘whether ‘Winery’ requests regarding yield levels under Section 7.2 are reasonable, such claim or dispute shall be resolved by exclusively by arbitration to be conducted in San Francisco, California in accordance with the rules of the Judicial Arbitration and Mediation Service (“JAMS”) applying the laws of California. The parties agree that [sic] **arbitration shall be conducted by a retired judge who is experienced in dispute resolution regarding the disputed matter**, that discovery shall not be permitted except as required by the rules of JAMS or as otherwise permitted by California civil Code of Procedure Section 1283.05, that the arbitration award shall not include factual findings or conclusions of law, and that no punitive damages shall be awarded. The parties understand that any party’s right to appeal or to seek modification of any ruling or award of the arbitrator is severely limited. Any award rendered by the arbitrator, shall be final and binding on the parties, and judgment may be entered on it in any court of competent jurisdiction or as otherwise provided by law.<sup>88</sup>

*Force majeure* provisions, which usually enter contracts as boilerplate language, can play an important role in protecting growers’ and wineries’ unique interests in formal WGSAs.<sup>89</sup> *Force majeure* provisions contemplate unforeseen circumstances which relieve, in whole or in part, the parties’ obligation to perform.<sup>90</sup> California law defines a force majeure event as an: “irresistible, superhuman cause” or an “act of public enemies of this state or of the United States.”<sup>91</sup> Winegrape growing is a particularly delicate process that exists at the whim of Mother Nature.<sup>92</sup> Thus, growers and wineries can tailor this provision to their idiosyncrasies. For example, the formal WGSAs might define severe frost damage to vines as a *force majeure* event and stipulate how the grower should proceed.<sup>93</sup>

---

88. JK Vineyards, L.L.C. v. Constellation Wines U.S., Inc., No. CPF-10-510681, 2011 Cal. Super. LEXIS 5721, at \*40–41 (Cal. Super. Ct. 2011) (emphasis added).

89. Terry & Kingery, *supra* note 15, at 20.

90. *Id.*; Robyn S. Lessans, *Force Majeure and the Coronavirus: Exposing the “Foreseeable” Clash Between Force Majeure’s Common Law and Contractual Significance*, 80(3) MD. L. REV. 799, 802–06 (2021).

91. CAL. CIV. CODE § 1511.

92. See, e.g., *Winter in the Vineyard: What Happens to Vines During Winter*, WE SPEAK WINE (Jan. 28, 2023, 11:33 PM), <https://www.wespeakwine.com/blog/winter-in-the-vineyard-what-happens> [<https://perma.cc/73A5-8MTC>]; Terry & Kingery *supra* note 4, at 1.

93. *Id.* at 20 (additionally, after the COVID-19 pandemic, many contracting parties now include pandemic-related events in the provision); Ryan Franklin & Nicholas Wind, *Force Majeure Clauses in the Aftermath of the Covid-19 Pandemic and the Implications for Government Entities*, AM. BAR ASS’N (Mar. 14, 2022), [https://www.americanbar.org/groups/government\\_public/publications/pass-it-on/spring-2022/spring22-franklin-wind-forcemajeure/](https://www.americanbar.org/groups/government_public/publications/pass-it-on/spring-2022/spring22-franklin-wind-forcemajeure/) [<https://perma.cc/ES8G-CB79>].

Nevertheless, tailored *force majeure* provisions can be a double-edged sword. Reviewing courts typically employ the *ejusdem generis* canon of construction, meaning general phrases in a list are interpreted “of the same kind or class” as preceding items.<sup>94</sup> Thus, a highly detailed and tailored force majeure provision may ultimately be less forgiving regarding circumstances not included in the provision but that the parties would have otherwise considered a *force majeure* event.<sup>95</sup>

In sum, formal WGSAs offer growers and wineries several unique opportunities to stabilize their long-term relationship with detailed and tailored provisions. However, this elaborate document can also crowd out relational forces in the industry like flexibility, collaborative problem-solving, and trust—which can be called the industry’s handshake culture.

*C. Informal WGSAs Preserve the Industry’s Handshake Culture but are Vulnerable to Exploitative Behavior*

Informal WGSAs range from purely oral handshake agreements to majority-oral agreements with very few terms memorialized on paper.<sup>96</sup> As with many agricultural trades, a culture persists among growers and wineries to do business “on a handshake,” avoiding the formality and cost of engaging legal counsel to draft a formal contract.<sup>97</sup>

Terry and Kingery observe, “[g]rape growers are farmers who would rather tend their land than deal with lawyers and contracts.”<sup>98</sup> Informal WGSAs generally subscribe to this deeply rooted handshake culture.<sup>99</sup> Growers and wineries transacting through informal WGSAs typically have multi-year relationships and rely on mutual respect, integrity, communication, and trust that the other party will deal fairly and honestly.<sup>100</sup> Lack of formality doesn’t mean a lack of agreement though.<sup>101</sup> To the contrary, informal WGSAs contemplate many of the same matters belabored in formal WGSA provisions and appendices, such as pricing models, viticultural practices, quality standards, and deliveries.<sup>102</sup>

Wollersheim Winery in Wisconsin, for example, uses a combination of purely oral and majority-oral WGSAs, coordinating most of its quality standards

---

94. Lessans, *supra* note 90, at 804.

95. *Id.*

96. MENDELSON, *supra* note 4, at 176.

97. *Id.*

98. Terry & Kingery, *supra* note 15, at 1.

99. MENDELSON, *supra* note 4, at 176.

100. *See id.* at 176–77.

101. MENDELSON, *supra* note 4, at 176.

102. *See id.* at 176–82.

2023]

*Handshakes and Winegrapes*

67

governance over informal phone calls with its growers and intermittent taste-testing of samples.<sup>103</sup> The written material between Wollersheim and its growers is shockingly minimal, consisting mostly of season-specific correspondence about orders, prices, and quality expectations.<sup>104</sup> In a one-page, self-prepared pricing table, Wollersheim outlines the price-per-ton that it is willing to pay its growers based on (1) brix level and (2) the percentage of grapes that it deems damaged, with separate scales for red grapes, white grapes, and La Crosse grapes, respectively:<sup>105</sup>

## 2018 Grape Pricing

RED GRAPES	CONDITION →	5% Damage	10% Damage	20% Damage	30% Damage
° BRIX ↓		A	B	C	D
19.9 – 19.0	Tier 1	\$1,500	\$1,400	\$1,300	\$1,200
18.9 – 18.0	Tier 2	\$1,400	\$1,300	\$1,200	\$1,100
17.9 – 17.0	Tier 3	\$1,300	\$1,200	\$1,100	\$1,000
Below 17.0	Tier 4	\$1,200	\$1,000	REJECTED	REJECTED

WHITE GRAPES	CONDITION →	5% Damage	10% Damage	20% Damage	30% Damage
° BRIX ↓		A	B	C	D
17.0 – 16.0	Tier 1	\$1,500	\$1,400	\$1,300	\$1,200
15.9 – 15.0	Tier 2	\$1,300	\$1,200	\$1,100	\$1,000
14.9 – 14.0	Tier 3	\$1,100	\$1,000	\$900	\$800
13.9 – 13.0	Tier 4	\$900	\$800	REJECTED	REJECTED
Below 13.0		REJECTED	REJECTED	REJECTED	REJECTED

LA CROSSE GRAPES	CONDITION →	5% Damage	10% Damage	20% Damage	30% Damage
° BRIX ↓		A	B	C	D
16.0 – 15.0		\$1,500	\$1,400	\$1,300	\$1,200
14.9 – 14.0		\$1,300	\$1,200	\$1,100	\$1,000
13.9 – 13.0		\$1,100	\$1,000	\$900	\$800
Below 13.0		REJECTED	REJECTED	REJECTED	REJECTED

- Considerations will be made for specific varieties and their harvest potential.
- Refer to attached examples of optimal fruit condition and low quality (unacceptable) fruit.

*Estate Reds Average: 19.4° brix*

*Estate Whites Average: 16.1° brix*

103. Video Interview with Philippe Coquard et al., *supra* note 1.

104. *Id.*

105. Wollersheim Winery & Distillery, Winegrape Pricing Matrix (2018) (on file with author).



Aluel Cellars in Seattle, Washington similarly takes a combination-approach to its informal WGSAs. Owner Alex Oh, a practicing lawyer himself, explains, “[w]ith some of our grape growers we don’t have contracts, it’s just handshakes. And then even [with] the others, it’s maybe a two-page document . . . With typos.”<sup>106</sup> Aside from general stylistic preferences, Oh describes Aluel’s oversight regarding grape quality as primarily hands-off: “I tell growers stylistically what I’m going for. But then I kind of trust them. They’re the experts.”<sup>107</sup>

Both wineries variously described quality control within their informal WGSAs as a collaborative process with the growers that improves over time.<sup>108</sup> Through constant communication with growers regarding what worked, and what did not work, the growers learn what qualities the winery expects and which grape faults that the winery disfavors, while the winery learns what quality-level it can realistically expect the grower to deliver moving forward.<sup>109</sup>

A key contrast between formal and informal WGSAs is that informal WGSAs rarely contemplate the end of the relationship in detail. That is, informal WGSAs seldom (1) stipulate the relationship term, (2) define breaches, or (3) establish dispute-resolution procedures at the outset of the relationship.<sup>110</sup> As to the term, Wollersheim’s WGSAs mirror the evergreen provisions in formal WGSAs; the relationships with their growers have gone smoothly for decades, and both Wollersheim and the growers expect the relationship to continue indefinitely.<sup>111</sup> If one party were to end the relationship, the mutual respect and integrity central to the relationship would lead both parties to expect the withdrawing party to provide ample notice to the other.<sup>112</sup>

As to defining breaches and establishing dispute-resolution procedures, informal WGSAs are similarly silent. As Wollersheim’s head winemaker since 1985, Coquard struggled to identify any noteworthy behavior that he might consider a breach.<sup>113</sup> He recalled one occasion fifteen years prior when a cabernet grape delivery was late, causing the fruit to begin fermenting in the truck; he refused the

---

106. Video Interview with Alex Oh, *supra* note 18.

107. *Id.* (for example, Oh explains Aluel’s stylistic preferences: “For the style of wines that we make, we tend to do higher acid whites. We tend to not allow malolactic fermentation. We want to retain a lot of that green apple quality, so I don’t want the grapes to go through too much respiration and lose its acidity.”).

108. *Id.*; Video Interview with Philippe Coquard et al., *supra* note 1.

109. Video Interview with Alex Oh, *supra* note 18.

110. *See* Video Interview with Philippe Coquard et al., *supra* note 1.

111. *Id.*

112. *Id.*

113. *Id.*

grapes and notified the bank to act as a witness.<sup>114</sup> However, Coquard clarified that the trucking company was at fault, not the grower.<sup>115</sup> The operations coordinator added, “[o]ur relationships with the growers, they’re transparent enough that they will tell us if it’s something they’re at fault for.”<sup>116</sup> Otherwise, both Wollersheim and Aluel described short crops as the only major problem under their informal WGSAs.<sup>117</sup> Both wineries described their procedure regarding short orders similarly: they communicate constantly with the grower regarding crop estimates, accept what grapes they can get, and adapt their business accordingly to preserve the relationship.<sup>118</sup>

#### *D. Power Disparity and Contemporary Points of Contention in WGSAs*

The wine industry and grower-winery dynamic engender significant power disparity in the WGSA relationship. This essay identifies three specific tension points that tend to weaken the grower-winery relationship and breed disputes, whether the parties opt for formal or informal WGSAs: (1) grape weight, (2) grape quality, and (3) shifting market supply and demand.<sup>119</sup> All three tensions can overlap and exacerbate the power disparity.

A significant power disparity between winegrape growers and wineries underpins all WGSAs.<sup>120</sup> Growers overwhelmingly have less bargaining power and are more vulnerable to the winery’s exploitative behavior.<sup>121</sup> Winegrape growers are usually legally unsophisticated farmers,<sup>122</sup> and formal WGSAs are predominantly prepared by the winery’s attorney.<sup>123</sup> Beyond legal naivete, the grape growing process itself makes growers the more vulnerable party.<sup>124</sup> First, winegrape

114. *Id.*

115. *Id.* (The Wollersheim team relayed that many of their “major” problems regarding grape sourcing are third-party grape transportation issues, rather than acts by the growers.).

116. *Id.*

117. *Id.*; Video Interview with Alex Oh, *supra* note 18.

118. Video Interview with Philippe Coquard et al., *supra* note 1; Video Interview with Alex Oh, *supra* note 18.

119. See Billingham-Hemminger, *supra* note 14, at 151–52; see MENDELSON, *supra* note 4, at 177; see WINTER REPORT 2022: UP, UP, AND AWAY, *supra* note 16, at 9–10.

120. Billingham-Hemminger, *supra* note 14, at 151–52.

121. *Id.*

122. Terry & Kingery, *supra* note 15, at 1.

123. See Cary Blake, *8 Keys to a Better Wine Grape Grower Contract*, FARMPROGRESS (May 22, 2013), <https://www.farmprogress.com/orchard-crops/8-keys-to-a-better-wine-grape-grower-contract> [<https://perma.cc/H2SS-3S7B>].

124. See generally CALANIT BARAM ET AL., A WINEGROWERS’ GUIDE TO NAVIGATING RISKS, CAL. SUSTAINABLE WINEGROWING ALL., U.S. DEP’T OF AGRIC., (2016),

cultivation has particularly steep entry and input costs, along with delayed return.<sup>125</sup> Further, growers take the brunt of uncontrollable weather and climate-related loss.<sup>126</sup> Winegrapes are a delicate and perishable crop; the grower's bargaining power significantly weakens as harvest season approaches.<sup>127</sup> Weather forces can impact grape quality. Because the winery usually makes all quality determinations and can reject grapes that do not meet its standards, growers in both formal and informal WGSAs are left vulnerable.<sup>128</sup> Particularly during the time-sensitive period after picking the grapes but before delivery, growers have severely diminished bargaining power in any necessary adjustments or negotiations with the winery.<sup>129</sup> Any delivery delay or improper handling can be the difference between profit and total loss.<sup>130</sup>

### 1. Grape Weight

Grape weight tensions involve both underweight deliveries due to a short harvest yield and opposing interests over hang time. Underweight grape deliveries simply involve growers supplying less product than the formal or informal WGA contemplated. Whereas Wollersheim and Aluel choose to respond to underweight deliveries flexibly, formal WGSAs may stipulate downward price adjustments for underweight deliveries, or wineries might reject the delivery entirely.<sup>131</sup> Growers can avoid this risk by using acreage pricing models and allowing wineries more control over viticultural practices; the common understanding is that the greater control the winery has over farming decisions, the less the grower should be penalized for an inadequate yield.<sup>132</sup>

Hang time is the period between when winegrapes are ready for harvest and when they are actually picked.<sup>133</sup> As ripe grapes hang on the vines, they decrease

---

[https://www.sustainablewinegrowing.org/docs/Risk\\_Guide\\_Second\\_Edition.pdf](https://www.sustainablewinegrowing.org/docs/Risk_Guide_Second_Edition.pdf)  
[<https://perma.cc/SYE6-97ZY>].

125. Goodhue, *supra* note 70, at 7; Gloster & Lewis, *supra* note 19; WINTER REPORT 2022: UP, UP, AND AWAY, *supra* note 16, at 1 ("Input costs have escalated at an unsustainable clip over the last year.").

126. See generally BARAM ET AL., *supra* note 124; *Legal Analysis: 2020 Winegrape Rejections*, *supra* note 54, at 8.

127. Goodhue, *supra* note 70, at 7.

128. See generally MENDELSON, *supra* note 4, at 177.

129. *Id.* at 181.

130. *Getting Paid: Tools for Washington Grape Growers*, *supra* note 72, at 22.

131. Video Interview with Philippe Coquard et al., *supra* note 1.

132. MENDELSON, *supra* note 4, at 177; see also Stoll, *supra* note 72, at 1–2.

133. MENDELSON, *supra* note 4, at 179.

in weight, increase in brix, and become more prone to damage.<sup>134</sup> This period causes tension because wineries typically prefer a longer hang time, which results in higher sugar content; meanwhile, growers prefer a shorter hang time, in order to avoid weight loss (in tonnage pricing models) or crop damage, which can compromise grape quality.<sup>135</sup> Ideally, where the winery controls when grapes are harvested, growers should not be penalized with less compensation for lighter yields.<sup>136</sup>

## 2. Grape Quality

Grape quality issues are a major source of tension between growers and wineries that can result in the winery rejecting grapes. Wineries, as the buyer, set quality standards in WGSAs.<sup>137</sup> WGSAs contemplate increasingly detailed quality standards.<sup>138</sup> However, even when quality standards are detailed, WGSAs often fail to describe the methods used to measure them.<sup>139</sup> For example, the recent California wildfires prompted wineries to more clearly define smoke exposure faults in their contracts.<sup>140</sup> But even as formal WGSAs lengthen, growers argue that quality determinations are overly subjective and arbitrary, affording wineries too much leverage to opportunistically undercut growers at salvage rates or reject grapes entirely.<sup>141</sup> When wineries reject the grapes, growers are left scrambling to find new buyers.<sup>142</sup>

## 3. Supply & Demand

Wine sales and grape supply fluctuate each year.<sup>143</sup> The preceding tensions can be aggravated by shifts in supply and demand for both wine and grapes.<sup>144</sup> For example, in a “glut” year—when there is an overproduction of grapes in the

---

134. *Id.*; Melissa Hansen, *Hang Time Pits Growers Against Winemakers: Washington State’s Wine Industry Discusses Hot-Button Issue in Search of Common Ground*, GOOD FRUIT GROWER MAG. (Mar. 15, 2006), <https://www.goodfruit.com/hang-time-pits-growers-against-winemakers/> [<https://perma.cc/7THT-GUFM>].

135. MENDELSON, *supra* note 4, at 179.

136. *See generally* Stoll, *supra* note 71.

137. Billingham-Hemminger, *supra* note 14, at 151–52.

138. *See Legal Analysis: 2020 Winegrape Rejections*, *supra* note 54, at 3; *see generally* Terry & Kingery, *supra* note 4; *see generally* *Getting Paid: Tools for Washington Grape Growers*, *supra* note 72.

139. Billingham-Hemminger, *supra* note 14, at 155.

140. *Legal Analysis: 2020 Winegrape Rejections*, *supra* note 54, at 3.

141. *Id.* at 7.

142. *Id.* at 5.

143. *See, e.g.*, WINTER REPORT 2022: UP, UP, AND AWAY, *supra* note 16, at 9–10.

144. *Id.*

harvest—wineries may seize any opportunity to reject grapes in order to cut costs.<sup>145</sup> Growers' cooperatives like Allied Grape Growers were created to protect growers during such fluctuations in the marketplace.<sup>146</sup> However, the tension still leaves growers vulnerable to wineries' exploitation.

#### IV. ENFORCEMENT: INFORMAL WGSAS MAY BE ENFORCEABLE.

When the winery rejects the grower's grapes under a WGSA, the aggrieved grower may believe it is without legal recourse if the agreement was not formalized. However, even informal WGSAs can give rise to equitable remedy. This section reviews the key contracts law doctrines that make informal WGSAs enforceable when a party breaches the agreement. Next, this section considers two relevant legal decisions that apply these doctrines to informal WGSAs. Finally, this section previews a recent grower-winery dispute.

##### *A. Enforceable Agreements: Statute of Frauds and Promissory Estoppel*

The statute of frauds, a common law concept now formalized by statute in all states, requires certain types of contracts to be in writing and signed in order to be legally enforceable.<sup>147</sup> In most wine producing states, the statute of frauds requires (1) contracts for the sale of goods for \$500 or more, and (2) contracts that will be performed more than a year after they are made, to be in writing.<sup>148</sup> In some cases, partial performance of an oral agreement under the statute of frauds may cure the lack of a written contract.<sup>149</sup> The rationale underlying the statute of frauds is that oral promises should not be enforceable because they are prone to fabrication.<sup>150</sup> A majority of cases interpret the statute of frauds strictly, finding that it bars contract actions based on oral agreements.<sup>151</sup>

However, oral agreements that would be unenforceable under the statute of

---

145. MENDELSON, *supra* note 4, at 176.

146. *Valley's Gold: Cooperatives* (Public Broadcasting Service broadcast Nov. 27, 2018), <https://www.pbs.org/video/valleys-gold-cooperatives-dntu0r/> [<https://perma.cc/8UMH-4UGH>].

147. Deborah F. Buckman, Annotation, *Action for Fraud or Deceit Predicated upon Oral Contract Within Statute of Frauds or Transaction of Which Oral Contract Was a Part*, 30 A.L.R.7th 4, § 2 (2017).

148. See, e.g., CAL. COM. CODE § 2201; N.Y. U.C.C. LAW § 2-201 (McKinney's); OR. REV. STAT. § 72.2010 (West); WASH. REV. CODE § 62A.2-201 (West); U.C.C. § 2-201(3) (Am. L. Inst. 1980); RESTATEMENT (SECOND) OF CONT.'S § 110; MENDELSON, *supra* note 4, at 176.

149. See U.C.C. § 2-201(3) (Am. L. Inst. 1980).

150. Buckman, *supra* note 147, at § 2.

151. *Id.* at § 1.

frauds may be nonetheless enforceable under promissory estoppel, an equitable doctrine. Promissory estoppel prevents defendants in an oral contract dispute from using the statute of frauds to argue that the agreement is unenforceable where the defendant's promise foreseeably induced action by the plaintiff as if there was a contract, and when enforcing the agreement is necessary to avoid injustice.<sup>152</sup> While many courts apply the statute of frauds strictly, numerous decisions "have acknowledged that the Statute of Frauds was designed to prevent fraud and not to aid in its perpetration."<sup>153</sup>

### *B. Illustrative Disputes Over Informal WGSAs*

Most disputes between winegrape growers and wineries under WGSAs are not litigated.<sup>154</sup> Litigation is costly, relationship deteriorative, and risks the courts misinterpreting nuances of the specialized trade. Thus, the caselaw deciding disputes over alleged WGSA breaches is markedly limited. However, two early cases are demonstrative of how an informal WGSA dispute may play out in court. *Allied Grape Growers v. Bronco Wine Co.*<sup>155</sup> is an example of a grower-friendly result, while *Davenport v. Gallo*<sup>156</sup> is an example of a winery-friendly result. Finally, in a recent California case,<sup>157</sup> there are indications that these tensions still permeate the industry.

In *Allied Grape Growers v. Bronco Wine*, Allied—a grower cooperative—argued that Bronco's tiered grape quality determination program, which resulted in downgraded grape prices, was totally arbitrary, and breached their contract because the grapes met the quality standards in the contract.<sup>158</sup> The jury awarded damages to Allied for Bronco's breach, and the trial court granted an injunction on Bronco's business practices.<sup>159</sup> On appeal, Bronco contested the damages for undelivered Carnelian winegrapes, arguing that the written contract between the parties did not include Carnelians, thus its rejection of the Carnelians was not a

---

152. RESTATEMENT (SECOND) OF CONT.'S § 90 (Am. L. Inst. 1981); RESTATEMENT (SECOND) OF CONT.'S § 139 cmt. a. (Am. L. Inst. 1981) (is complementary to § 90, which dispenses with the requirement of consideration if the same conditions are met).

153. Buckman, *supra* note 147, at § 2.

154. Telephone Interview with Josh Devore, Partner, Dickerson, Peatman & Fogarty in Napa, CA (Mar. 16, 2022) (on file with author).

155. *Allied Grape Growers v. Bronco Wine Co.*, 203 Cal. App. 3d 432, 438–39 (Cal. Ct. App. 1988).

156. *See generally* *Davenport v. Gallo*, No. C006484 (Cal. Ct. App. filed Dec. 24, 1990).

157. *See* First Amended Complaint, *Langtry Farms L.L.C. v. Hugh Reimers*, No. CV421774 (Cal. Super. Ct. May 3, 2021).

158. *Allied Grape Growers*, 203 Cal. App. 3d at 438–39.

159. *Id.* at 439.

breach.<sup>160</sup> Bronco had accepted and paid for one load of the Carnelians, but rejected delivery of the rest.<sup>161</sup> Allied claimed that the parties had an oral contract for delivery of 850 tons of Carnelians, and thus Bronco's partial acceptance of Carnelians took the oral agreement out of the statute of frauds.<sup>162</sup>

The California Court of Appeals disagreed with Allied's assertion that the partial performance exception took the oral Carnelians agreement outside the statute of frauds regarding Bronco's payment obligation for the *undelivered* Carnelians under the oral agreement.<sup>163</sup> However, the Court found that promissory estoppel nonetheless made the oral agreement an enforceable contract, and thus Bronco was obligated to pay Allied for the undelivered Carnelians as well.<sup>164</sup> All of the elements of promissory estoppel were satisfied in Allied's favor: (1) Allied changed its position to its detriment, because it denied sale of the Carnelians to other potential buyers, (2) Bronco's promise to buy the 850 tons of Carnelians induced this reliance by Allied, and (3) Allied suffered unconscionable injury from Bronco's last-minute rejection of the Carnelians.<sup>165</sup> Notably, the Court found that there was substantial evidence showing unconscionable injury to Bronco because of the weather conditions, the "highly perishable nature of the grapes," and the "glut of grapes on the market in 1982."<sup>166</sup> Thus, the jury could have easily found that after Bronco's last-minute rejection, it was too late for Allied to resell the Carnelians to other wineries.<sup>167</sup> The verdict awarding Allied damages for breach of the oral WGSAs was affirmed.<sup>168</sup>

In another case, *Davenport v. Gallo*, winegrape grower Ray Davenport alleged that Gallo Winery breached their oral contract to purchase Davenport's grapes on a year-to-year basis into "the foreseeable future."<sup>169</sup> Gallo had purchased all of Davenport's grapes for fifteen years.<sup>170</sup>

Davenport alleged that Gallo "suddenly and unreasonably" refused to purchase his grapes, leaving Davenport without a buyer, "with the potential of their

---

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* at 440.

164. *Id.* at 443 (The Court noted that a majority of sister state jurisdictions had held that estoppel can overcome an oral promise that induced detrimental reliance and opted to follow this majority position.).

165. *Id.* at 444.

166. *Id.* at 445.

167. *Id.*

168. *Id.*

169. *Davenport v. Gallo*, No. C006484 at 6 (Cal. Ct. App. filed Dec. 24, 1990).

170. *Id.* at 4.

entire crop being worthless.”<sup>171</sup> Some of Davenport’s claims read like a dramatic novel; Davenport alleged that after he criticized Gallo in a newspaper article, Gallo refused to honor their agreement, and “[n]o other buyer [would] take the Davenports’ grapes, because of a blacklist circulated by Gallo [conspired] between all major wineries in Northern California to control and discount prices paid to growers.”<sup>172</sup> The Court of Appeals of California commented throughout the decision that Davenport—who continued *pro se* after his third amended complaint was dismissed—alleged confused and incomplete causes of action.<sup>173</sup> The Court affirmed the trial court’s decision that California’s statute of frauds prohibited proof of the oral contract.<sup>174</sup> The Court characterized the alleged overarching oral agreement as in fact a series of discreet-transaction written contracts to which Davenport did not allege any breaches.<sup>175</sup>

A more recent case suggests that the grower-winery tensions in *Allied* and *Davenport* are far from obsolete.<sup>176</sup> In May of 2021, Langtry Farms (the winery) sued manager Hugh Reimers and his company, Torick Farms (the grower), alleging that Torick delivered smoked tainted grapes that damaged Langtry’s forty-year-old oak tanks.<sup>177</sup> Langtry alleges Reimers knew that the fruit was “smoke tainted and not welcome” at the winery based on verbal interactions (outside the formal contract).<sup>178</sup> Langtry’s allegations are reminiscent of the buzzworthy claims in *Davenport*; Langtry alleges Reimers was part of a “salvage scheme” with a Langtry insider to launder smoke-tainted wine using Langtry’s equipment.<sup>179</sup> In response, Torick filed a cross complaint, arguing that its grapes were in fact not smoke tainted, and that it relied on a verbal promise from a Langtry employee (also outside the formal contract) for lower wine storage prices than Langtry is

---

171. *Id.* at 6.

172. *Id.* at 5.

173. *See generally id.* at 4–5 (Court commented, “[The Davenports] have made our task upon review difficult by not clearly setting out the elements of the causes of action.”).

174. *Id.* at 7.

175. *Id.* at 7–8.

176. *See generally id.*; *see generally also* *Allied Grape Growers v. Bronco Wine Co.*, 203 Cal. App. 3d 432 (Cal. Ct. App. 1988).

177. First Amended Complaint, *Langtry Farms L.L.C v. Reimers*. No. CV421774 (Cal. Super. Ct. May 3, 2021); Kerana Todorov, *Dispute Over the Shipment of Alleged Smoke-Tainted Fruit to Langtry Farms LLC Evolves, Winemaker To Be Named In Amended Complaint*, WINE BUSINESS (Sep. 22, 2021), <https://www.winebusiness.com/news/article/251497> [<https://perma.cc/5X8Y-FPJ4>]; Lewis Perdue, *Grape Insurance Fraud Allegations, Smoke Taint Damages to Oak Tanks, Handshake Deals Play Out in Lake County Courtroom*, WINE INDUS. INSIGHT (June 18, 2021), <https://wineindustryinsight.com/?p=119607> [<https://perma.cc/TZF7-QV7J>].

178. Todorov, *supra* note 177.

179. Perdue, *supra* note 177.



demanding.<sup>180</sup> The allegations evoke a complex web of poor interparty communication. Wine Industry Insight writer Lewis Perdue observed that the dispute “raises caution flags against handshake deals — performing work without a signed, written contract.”<sup>181</sup>

V. ANALYSIS: BRAIDING FORMAL AND INFORMAL CONTRACTING IN WINEGRAPE AGREEMENTS CAN PROVIDE STABILITY WHILE PRESERVING HANDSHAKE CULTURE IN THE WINE INDUSTRY.

Wine industry advocates for formal WGSAs misrepresent the decision to use formal or informal WGSAs as a dichotomy of extremes: deal strictly on a handshake with no legal protections and expose your business to certain risk, or operate by a legally enforceable and increasingly elaborate formal contract, prepared by a specialized lawyer and signed by both parties. However, growers and wineries like Wollersheim who discover that they are on the “wrong” side of this supposed chasm should not rush to the other just yet.<sup>182</sup> Rather, the decision is better characterized as a spectrum.

The grower-winery relationship would uniquely benefit from braided WGSAs—an ideal middle ground between these two extremes. Braided WGSAs would involve a formalized information-sharing regime that facilitates informal relational enforcement mechanisms, such as flexibility and reciprocity. A braided approach would provide security for both parties while preserving the industry’s deeply-rooted handshake culture.

The WGSA models the type of business relationship that relational contracting theorists posit would benefit from a braiding approach: the relationship involves high levels of uncertainty and requires constant information exchange between the parties in order to be successful. All agricultural ventures necessarily involve heightened levels of unpredictability to some degree, as they are at the mercy of Mother Nature. However, winegrapes are a particularly delicate and perishable crop.<sup>183</sup> One frost or wildfire can make or break the results. The parties

---

180. *Id.* (summarizing the complaints and cross complaints in *Langtry Farms*).

181. *Id.*

182. *See generally* Video Interview with Philippe Coquard et al., *supra* note 1.

183. *Climate Change & Wine*, CLIMATE CENTRAL (Sept. 29, 2021), <https://www.climatecentral.org/climate-matters/climate-change-wine> [<https://perma.cc/7YMS-QFZL>] (“Among agricultural products, wine grapes are one of the most sensitive crops to variations in temperature and precipitation.”); Susan Gaidos, *Grape expectations*, SCIENCE NEWS (Jan. 24, 2014, 3:50 PM), <https://www.sciencenews.org/article/grape-expectations> [<https://perma.cc/X69B-QPL4>] (“[S]cientists say the plant’s extraordinary sensitivity to temperature makes the industry a strong early-warning system for problems that all food crops are expected to confront as climates continue to change.”)

simply do not know at the outset of the relationship how these forces will change their expectations about performance. Further, the tensions and disputes between wineries and growers have a consistent theme: a disconnect in communication between the parties. Where communication is constant, honest, and reciprocal, the relationship flourishes. Where communication is disorganized or one-sided, it unravels. A formal information-sharing regime characterizing a braided agreement would guide full, honest, and organized communication. Finally, the grower-winery relationship is conducive to braiding because the industry remains tight-knit. Reputation, a central relational enforcement mechanism, is incredibly powerful in the wine and winegrape industry. The WGSAs relationship may seem like a far cry from the complex commercial aerospace projects and collaborative biotechnology relationships through which braided contracting has been analyzed.<sup>184</sup> But upon closer inspection, it is evident that the WGSAs relationship would similarly benefit from the information-sharing regime and flexible contract terms; the process is volatile, the communications are highly specialized, and success requires constant contact and flexibility between parties.

The braiding approach recognizes the disadvantages of both formal and informal WGSAs. A truly pure handshake agreement is a romantic ideal that can foster strong relationships and self-policing, and may even be enforceable pursuant to promissory estoppel, but such deals are indeed risky. A handshake deal is vulnerable to exploitation and more likely unenforceable in court pursuant to the statute of frauds. Long, formal WGSAs, on the other hand, offer a myriad of opportunities to craft detailed provisions that are tailored to the wine industry and the contracting parties. But, as illustrated by quality standard provisions and *force majeure* clauses, all that detail can be counterproductive, opening opportunities for one party to exploit holes in the contract language at the other's expense. In that way, formalized WGSAs can crowd out the relational forces that would otherwise govern the parties' conduct.

A braided WGSAs would have a formal contract component: written provisions that guide the relationship. However, as opposed to a traditional formal WGSAs, the provisions would be intentionally flexible and sparse. This way, the deal can adapt to unpredictable circumstances as they come through informal negotiations. Further, the formal contract would craft a structured information-sharing regime. This component is the key. The information-sharing regime is in essence a tradeoff for overly detailed contract provisions, establishing an expansive line of communication to fill the vulnerabilities left by flexible contract terms. For example, a braided WGSAs might delineate several types of circumstances that mandate a tele-meeting between the parties and how quickly notification should

---

184. See, e.g., Jennejohn, *supra* note 27, at 886–87.

occur. In the same way that formal WGSAs offer the benefit of tailoring, the structure of the information-sharing regime may be tailored to the parties. The grower and winery should consider what information in the other party's possession they would want to know, and how they would want to be notified of it, in order to best assess the state of the relationship.

In this way, a braided agreement is less formal than a traditional contract without crowding out the constant and candid dialogue characteristic of an informal WGSAs. The expansive information-sharing regime promotes stability and structure in an otherwise unpredictable endeavor *and* serves as a relational enforcement mechanism for each party. That is, parties are less likely to cheat when they've been showing all their cards. Ideally, the braided agreement provides sufficient formal foundation for a self-enforcing informal relationship. However, in the event of a breach, the written contract provisions act as a safety valve so that neither party is left without legal recourse.

Both contract scholars and wine lawyers should consider braided WGSAs as a new frontier to be further explored and employed. Contract theorists should consider other industry relationships that are similar to the WGSAs relationship between winegrape growers and wineries as viable conduits for braided contracts. Contracts scholars should seek to discover how a braided WGSAs strategy materializes and governs, and how effective the strategy is for the success of both parties and preservation of the relationship. Finally, wine lawyers should be hesitant to pressure wineries and growers to transition to elaborate formal WGSAs where informal WGSAs have served their needs sufficiently in the past. Some formal contract protections should be encouraged due to the volatility of winegrapes as a crop. However, formal WGSAs can crowd out the relational forces that have bolstered the relationship in the past; such as integrity, trust, reputation, and respect. Instead, wine lawyers should encourage their handshake clients to employ a braided contract: minimal, flexible contract terms that formally establish an information-sharing regime.

For Wollersheim, the shift to a braided WGSAs would largely just formalize a longstanding understanding with its growers: both parties agree to be open and honest with each other about their expectations and capabilities. The flexible terms and formalized information-sharing regime would facilitate, rather than quash, their decades-long relational enforcement mechanisms.