**Final Examination**

**Contracts, Fall 2022**

Prof. Warner

The exam is 2 hours long.

The exam is open book. You may use material on your computers, as well as commercial or personal printed materials.

Steve Solwe owns and operates Sowlestice Cruises, whose motto is “Relax! Stand Still With Us!” He is negotiating with Noah “The Smithy” Drelich for his band Just Tortes to provide entertainment during the cruise. They are discussing how much dance music Just Tortes will play during each performance. Drelich tells Sowle, “We are not really a dance band, you know—no unless you want to dance to rap.” After discussion, they agree that Just Tortes will play an hour of popular dance tunes from the 70s and 80s during each performance with the selection of other music pieces at Just Tortes’ sole discretion. Drelich asks Sowle, “This means we can play rap or what we want along long as we also play the hour of dance music?” Sowle replies, “Exactly.” **Sowle then signs and sends Drelich Sowlestice Cruises’ standard form entertainment contract specifying all the relevant details for the hiring of Just Tortes. Sowle includes a note that says, “This spells out everything, including this clause:**

**You will play one hour per performance of popular dance music from the 70s and 80s with the rest chosen at your sole discretion.**

**Just sign and return and we have a deal!”** Drelich signs the agreement and returns it with a note that says, “Great. Our deal is done! I am reaffirming that we can play rap.”

When Just Tortes plays The Eurythmics, “Sweet Dreams (Are Made of This)” as part of the hour of popular dance music, Sowle claims that is not a popular dance song of the 1980s. He says, "That is not what I had in mind by the expression “dance music.” Drelich disagrees. He says, “We agreed to play ‘*popular* dance music of the '70s and 80's'", and he correctly points out that "Sweet Dreams" is universally recognized as one of the most popular dance tunes of the 80s.

Sowle contacts Aya, the owner of Heavenly Pastries, to discuss making 100 apple galettes and 500 cakes with the icing showing a celestial map of the Summer Solstice. Sowle says, “For the cakes, can we agree that the background is black, star maps in blue, and the sun in yellow?” Aya replies, “Agreed.” Sowle sends Aya a signed written agreement that describes all pertinent details of the galette and cake deal. The details include a June 13 delivery date. Sowle includes a note that says, " reads, “Here you go, for your acceptance. Sign and we have a deal." The written document contains this clause:

*Entire agreement clause*: This agreement represents the complete and final statement of the parties’ obligations.

The written document also contains this clause:

Heavenly Pastries warrants that the cakes will stay fresh for 10 days.

The document does not say anything about the icing requirements—black background, blue star maps, and yellow sun. When she notices that, Aya calls Sowle and says, “There is nothing in the written document about the icing requirements. Do you still want the black background, blue star maps, and yellow sun?” Sowle replies, “Oh my goodness, yes, I do! I don’t want to buy the cakes without that!” Aya says, “I thought so. So we are agreed on that then?” Sowle says, “Yes. It would be a deal breaker for me otherwise.” Aya then says, “What about this ‘entire agreement’ clause? Do we have to worry about that?” Sowle replies, “No. That is all lawyer talk. Do you have any idea what it really means? I don’t.” Aya says, “Same for me. Our word is our bond, right?” Sowle replies, “Indeed it is!”

Aya adds the following clause to the written document:

Heavenly Pastries makes no warranties in regard to freshness.

She signs the document sends it back to Sowle with a note that says, “Here is my acceptance. Glad our deal is done.” **Sowle and Aya have no further communication about the documents.**

Heavenly Pastries uses wheat flour for the galettes and all-purpose flour for the cakes. It has enough flour for both stored in at its bakery. However, on May 31, their fire prevention sprinkler system unexpectedly malfunctions and douses part of the wheat flour and all the all-purpose flour with water. The malfunction was the result of a flaw in the software that controls the system. The wet flour is ruined and unusable. Heavenly Pastries recovers enough unspoiled wheat flour to make the galettes, but they deliver them on June 16 and Sowle accepts. As a result, Sowle has to revise his dessert offerings for the cruise ship dinners at a cost to Sowle of $25,000 as clearly demonstrated by his receipts for expenses. Heavenly Pastries is able to purchase replacement all-purpose flour from suppliers in time to deliver the cakes on June 13. The additional cost of acquiring the replacement flour means that supplying the cases costs them $15,000 over and above the contract price for the cakes.

**Questions (1) – (5)**

1. (a) Does the agreement between Sowle and Drelich meet the requirements of offer and acceptance?

The rule is that Sowle’s sending the written agreement is an offer if it is (1) a manifestation of a willingness to enter a bargain, (2) so made as to justify Drelich in thinking his assent will conclude the bargain.

Is it a manifestation of a willingness to enter a bargain? Note, the bargain must be definite and complete. The written document defines a definite and complete bargain. The **standard form entertainment contract specifies all the relevant details for the hiring of Just Tortes.** Did Sowle manifest a willingness to enter that bargain? Sowle’s sending the agreement occurs in the context of a contract negotiation and when he sends it he says “**Just sign and return and we have a deal!”** This clearly manifests a willingness to enter a bargain.

Is Drelich justified in thinking his assent will conclude the bargain?

He is. Sowle says **Just sign and return and we have a deal!”** That tells Drelich that his assent will conclude the bargain. In addition, Sowle makes a manifestation of a willingness to enter a bargain in a contract negotiation context, and in that context the manifestation is reasonably understood as telling Drelich that his assent will conclude the bargain.

Did Drelich accept?

An acceptance is a manifestation of willingness to enter a bargain proposed by the offer in way invited by the offer.

The offer invites acceptance by signing and returning the standard form agreement. Drelich does so and adds with a note that says, “Great. Our deal is done! I am reaffirming that we can play rap.” That addition manifests his willingness to enter the proposed bargain as does returning the form in the context of the negotiations. There is no mirror image rule issue. The mirror image rule requires that offer and acceptance exactly match. There is an exact match here. Drelich’s acceptance is the returned standard form agreement plus a note, but the note adds no new terms, just repeats a term in the written agreement.

(b) Whatever your answer to (a), assume the agreement does meet the requirements of offer and acceptance. Does the expression “popular dance music from the 70s and 80's” include The Eurythmics, “Sweet Dreams (Are Made of This)”? There is no trade usage for "popular dance music from the 70s and 80s.”

(2) Does the written agreement between Sowle and Heavenly Pastries warrant that the cakes will stay fresh for 10 days?

**Begin your analysis with the question of whether the agreement Sowle sends Aya is an offer.**

**Assume Sowle and Aya are merchants.**

**Assume that *IF* there is an expression of acceptance, it is seasonable.**

**Assume you are in a jurisdiction that follows the knock-out rule.**

Offer first.

Did Aya accept?

This is sale of goods (cakes and pastries are tangible moveable objects), so 2-207(1) applies. Under 2-207(1), A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

Is there an expression of acceptance? An expression of acceptance is a manifestation of a willingness to enter the bargain proposed by the offer in a manner invited by the offer. The following facts indicate she was expressing her acceptance. She signs the document sends it back to Sowle with a note that says, “Here is my acceptance. Glad our deal is done.” She is trying to say yes to the deal. Sowle invites acceptance in this way, “Here you go, for your acceptance. Sign and we have a deal." That is what Aya did. Is Aya’s expression of acceptance effective as an acceptance even though it contains a term not the offer--the term that there will be no warranty?

It is effective. Under 2-207(1), A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms. The different terms do not prevent it from being an acceptance.

Was the acceptance expressly made conditional on assent to the additional or different terms? No, this would require explicit language tantamount to “my acceptance is expressly made conditional on assent to the “no warranty” term. There is no such language.

Aya accepted.

Is the 10 days fresh warranty part of the agreement?

Sowle and Aya are merchants (given). Between merchants, the terms of the agreement are the terms of the acceptance unless one of the following exceptions applies:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

**Aya’s no warranty clause is not part of the agreement.**

Under the knock out rule, Sowle’s assertion of the warranty is also not part of the agreement. . . . explanation . . .

(3) Assume that Sowle and Aya orally agree that the cake icing will have a black background, blue star maps, and yellow sun. Assume the agreement meets the requirements of offer and acceptance and consideration. (a) Is it enforceable under the Parol Evidence rule? (b) Even if you decide the written agreement is not a complete integration, assume it is and give the best argument you can that the oral agreement is still enforceable.

**NOTE: USE THE PAROL EVIDENCE RULE *AS STATED IN CLASS*, AND USE ONLY THE NORMAL INCLUSION TEST FOR SCOPE.**

(4) Assume the late delivery of the galettes is a breach. What damages does Heavenly Pastries owe Sowle? Assume Sowle made no cover purchase in regard to the galettes and has no other damages in addition to the $25,000.

Aya will not owe Sowle damages if her breach by failing to deliver on June 13 is excused under impracticability doctrine.

**However, on May 31, their fire prevention sprinkler system unexpectedly malfunctions and douses part of the wheat flour and all the all-purpose flour with water. The malfunction was the result of a flaw in the software that controls the system. The wet flour is ruined and unusable. Heavenly Pastries recovers enough unspoiled wheat flour to make the galettes, but they deliver them on June 16.** As a result, Sowle has to revise his dessert offerings for the cruise ship dinners at a cost to Sowle of $25,000 as clearly demonstrated by his receipts for expenses.

State the rule.

What questions does the rule tell me to ask?

Not excused.

UCC damage rules.

(5) Can Heavenly Pastries recover $15,000 from Sowle in restitution?