Steve Sowle owns and manages Vegetable Sowle, a restaurant. He is negotiating with the poet and master chef Andrew Marvell to be the celebrity chef for a special event Sowle is planning at the restaurant, *World Enough and Time: Vegetables with Soul*. “It’s going to be big,” Sowle says, “Vaster than empires!” As they are discussing the possibility of Marvell serving as the celebrity chef, Marvell says to Sowle, “One thing, I insist on a Brussel sprout salad. Can we agree on that now?” Sowle replies, “Agreed.”

The doctrine that applies is:

(a) Offer and acceptance

(b) Promissory estoppel

(c) 2-207

After a moment’s thought, Sowle says, “Can you supply the sprouts?” Sowle knows that Marvell runs a Brussel sprout farm, and that he can supply top quality sprouts. Marvell says, “I will send you our standard Brussel sprout written purchase order form.” He sends Sowle an unsigned form, which specifies all relevant details of the deal about the Brussel sprouts. Marvell includes a note that reads, “There are two options on the form. Please check one: absolute top of the line sprouts—a bit expensive but worth it in my opinion. Or, our standard sprouts—less expensive and very good. Sign and return the form to me. I will double check our supply, sign if looks good, and our deal will be done.

Is the form an offer?

(a) Yes

(b) No

Sowle selects “absolute top of the line sprouts,” signs the form, and returns it to Marvell. Marvell signs the form when he receives it and returns it to Sowle with a note that says, “There is no delivery date in the agreement. But June 13 will work. I add that to the agreement in this note as if contained therein.”

Does Sowle make an offer?

(a) Yes

(b) No

Does 2-207 apply?

(a) Yes

(b) No

Marvell also sends separately a second signed written agreement—the food preparation agreement—that describes in detail Marvell’s rights and obligations as the celebrity chef. The food preparation agreement also contains these clauses:

*Entire agreement clause*: This agreement represents the complete and final statement of the parties’ obligations. Neither party is relying on any oral or written representations not contained in this agreement.

*Winged Chariot Sprouts*: Marvell will prepare his signature vegetable dish, Winged Chariot Sprouts. The parties acknowledge that Sowle will organize his marketing campaign for *World Enough and Time: Vegetables with Soul* around this dish and the winged chariot theme.

The food preparation agreement does not mention Marvell’s making a Brussel sprout salad. Sowle notices that the salad is not mentioned and asks Marvell about it. Marvell says, “Oh, as long as I am making the winged chariots dish, I am happy to let the salad go. The entire agreement clause takes care of that.” Sowle responds, “So, no salad then?” Marvell says, “No salad.”

Marvell grows Brussel sprouts on his farm in Monterey County, California. Unfortunately, before Marvell can harvest the sprouts to send them to Sowle a small private plane, suffering from engine trouble and very far off course (planes do not normally fly over his fields) crashes into his fields and destroys half of his absolute top of the line sprouts. There is no other source of sprouts as good as Marvell’s absolute top of the line sprouts. Everything else is of the same quality as his standard sprouts. He delivers, on June 13, half of the contractually specified amount of absolutely top of the line sprouts and uses standard sprouts to make up the other half. He has delivered sprouts to Sowle before and Sowle has always in the past accepted standard sprouts as a substitute for absolute top of the line sprouts when the latter were not available. Marvell also explains, “I am not charging you for the substitute standard sprouts. That’s a savings to you of $1000.”

If Sowle rejected the non-conforming half of the delivery, would Marvell have a right to cure?

(a) Yes

(b) No

(c) Yes, if Mavell seasonably notifies Sowle of his intention to cure.

Sowle accepts the delivery but says, “I will have to charge less. I can mix the sprouts together, but people will notice that some taste much better than others, and I will have to explain that there are two different qualities of sprouts in the dish.” Marvell says, “Yes, I know. Those Brussel sprout eaters are a very discriminating bunch. You can’t fool them. I have seen restaurants try, but it does not work. I knew from the time of contracting that if I did not get you the absolute top of the line sprouts you would have to reduce your price.” In a reasonable step to avoid complaints leading to larger losses, Sowle charges $15 for the Winged Chariot Sprouts instead of the $20 he planned. He can show conclusively that he would have sold as many orders at $20 as he did at $15.

The event, *World Enough and Time*, is a great success, but Sowle is distressed to discover afterwards that the Winged Chariot Sprouts dish contained a bacon-based sauce. Sowle thought it contained no meat products at all. He says to Marvell, “That is what I meant by ‘vegetable dish’!” Marvell replies, “Well, that is obviously not what I meant.” Sowle’s marketing campaign called the dish “vegetarian.” No one complained or was confused, however.

**Questions**

**Note: Where the parol evidence rule is relevant, use the rule as stated in class, and use only the normal inclusion test for scope.**

(1) What is the delivery date for the Brussel sprouts? Begin your analysis with Marvell’s sending the unsigned form specifying details of the Brussel sprouts deal. You may assume that June 13 is a reasonable delivery date and that Sowle and Marvell are merchants.

(2) Does the parol evidence rule make the oral agreement that Marvell will make a Brussel sprout salad unenforceable? You may assume the oral agreement satisfies the requirements of offer, acceptance, and consideration, and you may assume the food preparation agreement is a legally enforceable agreement.

(3) Did Marvell breach on June 13?

(4) What damages, if any, does Marvell owe Sowle?

Whatever your answer to question (3), assume Marvell breached on June 13. Treat the acceptance of the standard sprouts in place of the absolute top of the line sprouts as the same as a reasonable cover purchase by Sowle.

You may also assume that there is no trade usage concerning the phrase “vegetable dish” and that it is a common and well known restaurant practice to prepare the vegetable portion of a meal using a meat-based sauce.