Steve Sowle owns and operates Sowle’s Never Soleless, a charitable organization that collects and distributes shoes to the shoeless. Sowle’s campaign, “A New Sole Is A New Soul,” has collected a large amount of money to purchase new shoes to distribute for free. To purchase the shoes, Sowle contacts David “the Red” Stone, owner of Red Stein, which operates a national chain of retail shoe stores. Stone sends Sowle an unsigned purchase order agreement—the purchase agreement—specifying price, quantity, and all other relevant details. Stone includes a note that says, “Take a look. I did not put in a delivery date. What about December 28? Or something around there? Let me know what you think. Put in terms you need, and I will see if I can agree.”

Did Stein make an offer?

(a) Yes

(b) No

Sowle signs and returns the form. He leaves everything on the form unchanged and includes a note that reads “Delivery date to be December 29. I left everything else the same, and have signed the purchase order. I return it to you for your consideration and acceptance.”

Did Sowle make an offer?

(a) Yes

(b) No

When Stone receives the form, he signs it and returns it to Sowle with a note that says, “Here I my acceptance. Note that I disclaim the implied warranty of merchantability. I look forward to working with you. Glad our deal is done.” Neither the purchase order nor the notes assert the warranty of merchantability.

Did Stein accept Sowle’s offer?

(a) Yes

(b) No

Does the contract assert the warranty of merchantability?

(a) Yes

(b) No

A few days later, Stone calls Sowle to say he has learned how, in his youth, Sowle was known as “Soleless Sowle,” because his family was too poor to buy shoes, and how, when still a boy, Sowle vowed that, when he was a man, “As long as Sowle is, sole is.” Stone says he wants to help, and he offers Sowle the use of his chain of Red Stein stores as a distribution outlet to the shoeless for the shoes Sowle purchases from Stone. Stone says he will have to charge a little to cover some employee expenses, but that is all. Stone sends Sowle an unsigned agreement—the distribution agreement—specifying the details of the distribution. Stone adds a note that says, “Look it over; see if it is OK. If so, sign and return; I will review any changes and sign myself unless I have questions.” In the agreement, Stone promises that information about the distribution will be accessible on the Red Stein web site for a month before the distribution begins. Stone includes the following note, “I had the lawyers write this up, but I forgot to have them add this provision: “David “the Red” Stone and Red Stein shall be the sole distributors for the shoes purchased and distributed under Steve Sowle’s campaign, A New Sole Is A New Soul. I am adding it in this note.” When Sowle receives the agreement, he calls Stone and says, “Great. All looks good. This is the whole deal, right?” Stone responds, “Right.” Sowle signs and returns the agreement with the following note attached: “Fantastic. Glad our deal is done.” Stone signs and returns the agreement.

Is there a parol evidence rule issue?

(a) Yes

(b) No