(1) What is the contractual delivery date for the collard greens and soybeans? Does the contract contain a warranty of merchantability?

**Assume the Sowle and Brill are both merchants.**

To determine the delivery date for the collard greens and soybeans, we first have to determine whether Sowle’s signed purchase order was an offer and whether Brill accepted it. Sowle’s signed purchase order is an offer if (1) it was a manifestation of a willingness to enter a bargain (2) so made as to justify Brill in thinking his assent would conclude the bargain. (1) The signed purchase order was clearly a manifestation of a willingness to enter a bargain. This is clearly indicated by Sowle’s saying, “I have signed the purchase order agreement, and include it and this note for your immediate acceptance.” (2) Brill is justified in thinking is assent will conclude the bargain. This is shown by Sowle’s saying I have signed the purchase order agreement, and include it and this note for your immediate acceptance.” “For your immediate acceptance” indicates to Brill that his assent is all that is needed to conclude the bargain. Sowle’s signed purchase order is an offer provided it is definite and complete. An offer is definite and complete if the terms it specifies are sufficiently definite to allow a court to determine a remedy if the contract was breached. The offer specifies all relevant details of the deal including price and quantity; this is enough for a court to be able to fashion a remedy, so the offer is definite and complete. The next issue is whether Brill accepted the offer. Chitterlings and hog maws are goods—tangible moveable objects, so UCC 2-207 applies. Under 2-207 a definite and seasonable expression of acceptance operates as an acceptance even if it includes terms that differ from the offer, unless the acceptance was made expressly conditional on assent to the different terms. Was Brill’s returning the signed purchase order form with the notes an expression of acceptance? The question is whether Brill was trying to accept the offer. There is good indication that this was so as Brill and Sowle both regard him as having done so when Sowle calls and says “Great. Glad our deal is done.” Further, the signed purchase order, which was clearly an offer, is an indication of an intent to accept. The mere rejection of the warranty of merchantability is not typically interpreted as showing there was no expression of acceptance. Was the expression of acceptance definite and seasonable? It was definite. As noted in the discussion of the offer issue, the offer is definite and complete and the expression of acceptance just is the offer with an additional note. Is it seasonable? An expression of acceptance is seasonable if it is made within a reasonable time or within the time specified in the offer if the offer specifies a time. There is no indication that the offer specified a time, and Brill immediately signs and returns it by special messenger the same day he receives it. There is no indication that this is not reasonable. There is a definite and seasonable expression of acceptance. Under 2-207, a definite and seasonable expression of acceptance operates as an acceptance even if its terms differ—as here with the rejection of the warranty of merchantability—from the terms of the offer, unless the acceptance is made expressly conditional on assent to the additional terms. There is nothing in the acceptance that makes the acceptance is made expressly conditional on assent to the additional terms. This would require language like this: “This acceptance is expressly conditional on . . .” So Brill accepted Sowle’s offer. What is the delivery date in the contract thus formed? The terms of the contract are determined by 2-207(2). To apply, 2-207(2) we first need to determine whether Sowle and Brill are merchants. It is given that they are. Between merchants, the terms of the acceptance are the terms of the contract unless:

(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.

The terms of the acceptance include the terms of the offer and those terms include the August 28 delivery date. None of the three exceptions above are relevant since they apply to terms not include in the offer. Thus the delivery date is August 28.

Does the written contract contain a warranty of merchantability? I have already determined above that a written contract was formed under UCC 2-207(1), and I incorporate that discussion here. Sowle and Brill are merchants. Therefore, under 2-207(2), the terms of the acceptance are the terms of the contract unless:

(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.

The acceptance, which includes Brill’s note, contains a disclaimer of the warranty of merchantability. Hence, the contract does unless one of the three exceptions above applies. (a) Did the offer expressly limits acceptance to the terms of the offer? There is no indication that the offer contained any such limitation. This would require language like, “This offer expressly limits acceptance to the terms of the offer.” (c) Did Sowle object in a timely fashion to the disclaimer of the warranty of merchantability? No, after Sowle receives the acceptance, he and Brill have no further discussions about the purchase order. (b) Does the disclaimer of the warranty materially alter the terms of the offer? A material alteration is an alteration that substantially affects the legal rights of the parties. The inclusion or disclaimer of a warranty is generally regarded as a material alteration. Therefore, under 2-207(2), the disclaimer is not part of the contract. What about the assertion of the warranty in the offer? Is it part of the contract? Jurisdictions differ. The majority follow the knock-out rule: if a term of the acceptance material alters a term of the offer, the term of the offer is also not in the contract. So the written contract neither asserts nor disclaims the warranty of merchantability. However, under UCC 2-314, a warranty of merchantability is implied in any contract for sale of goods that does not disclaim the warranty. So the warranty is in the contract.

(3) Did the occurrence of the hog maw virus mean that Sowle was not obligated to pay Brill on June 20? Assume that there is otherwise a legally enforceable obligation to pay.

The virus attack on hog maws makes Sowle uncertain that Brill will perform. Does Sowle’s uncertainty excuse him from performing his contractual obligations, in particular from making the partial payment? Under § 2-609, when (1) reasonable grounds for insecurity arise with respect to the performance of either party the other may (2) in writing demand adequate assurance of due performance and (3) until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return. Did reasonable grounds for insecurity arise for Sowle with respect to Brill’s performance? Yes, in light of the the report from the Association of Hog Maw Suppliers which predicted that 90% of suppliers would not be able to fulfill their current contracts without sustaining unacceptable business loses. Did Sowle demand in writing adequate assurance of performance? Yes, when Sowle learned of the virus attack, he sent a letter to Brill, when Sowle learns of the virus attack, he sends a letter to Brill asking him to confirm that he will perform. (3) Did Solwe receive the requested adequate assurance? Yes, he did. Brill responds in a way that provides adequate assurance based on his information from Hog Maws R Us, which Solwe knows to be a reputable supplier. So Sowle’s performance is not excused. It may appear that impracticability doctrine would excuse Brill. But this is not the question since the question is whether Sowle is excused, and impracticability would not apply any way . . .

(4) Brill claims: (a) under Restatement 201, there is no contract for the delivery of the hog maws and chitterlings; (b) under mistake doctrine, there is no contract for the delivery of the hog maws and chitterlings; (c) because of (a) or (b) or both, he is entitled to recover in restitution for the reasonable value of the benefit conferred by delivering the chitterlings and hog maws. Are Brill’s claims (a) and (b) true?

**Assume Restatement 201 applies in this case, and apply the common law mistake doctrine, not any similar UCC doctrine.**

Does the fact that Brill reversed the meaning of “hog maws” and “chitterlings” show that he and Sowle had nto contract for their delivery? Under Restatement 201(2), (2) Where the parties have attached different meanings to a promise or agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made (a) that party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party; or (b) that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party. Otherwise, under 201 (3), (3) neither party is bound by the meaning attached by the other, even though the result may be a failure of mutual assent. So if Brill and Sowle did not understand the terms in the same way, and if neither knew or had reason to know of the misunderstanding, there is no contract. Was there a misunderstanding? This is a question about how to interpret Brill’s words and actions. Did Brill promise what Sowle promised, to 50 pounds of pig intestines (chitterlings) and 100 pounds of pig stomachs (hog maws)? Or did he promise the reverse? In the latter case, there is a misunderstanding, but not the former. The rule is that promised Brill 50 pounds of pig intestines (chitterlings) and 100 pounds of pig stomachs (hog maws) if a reasonable person would so interpret his words in the circumstances. Also, Brill had reason to think there was a misunderstanding since he was just guessing and was unfamiliar with soul food terms . . . [This is just the beginning of the answer.]