**(1)** Did Sowle and Stein satisfy the requirements of offer and acceptance with regard to the agreement for the delivery of trapezes, free ropes, aerial silks? Begin your analysis with Sowle’s initial communication to Stein. Assume that Sowle and Stein are merchants. You may assume that if there is an expression of acceptance, it is definite and seasonable.

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|  | Possible | Actual |
| Sowle to Stein |  |  |
|  Is Sowle’s initial communication an offer? | 2 |  |
|  Definition of an offer | 2 |  |
|  Manifestation of a willingness to enter a bargain | 2 |  |
|  No bargain defined | 2 |  |
|  Sowle justified in thinking his acceptance will conclude the  bargain?  | 2 |  |
|  Conclusion: not an offer | 2 |  |
|  |  |  |
| Stein to Sowle |  |  |
|  Is Stein’s sending the purchase order form an offer? | 2 |  |
|  Definition of an offer | 2 |  |
|  Manifestation of a willingness to enter a bargain | 2 |  |
|  No, bargain defined, check options | 2 |  |
|  Sowle justified in thinking his acceptance will conclude the  bargain?  | 2 |  |
|  Unsigned, double check | 3 |  |
|  Conclusion: not an offer | 2 |  |
|  |  |  |
| Sowle to Stein  |  |  |
| Is Sowle’s sending back the purchase order an offer? | 2 |  |
|  Definition of an offer | 2 |  |
|  Manifestation of a willingness to enter a bargain, options  Checked | 2 |  |
|  Stein justified in thinking his acceptance will conclude the  bargain? | 2 |  |
|  Signed | 1 |  |
|  Context of the communication | 2 |  |
|  Conclusion: an offer | 2 |  |
|  |  |  |
|  Did Stein accept? | 2 |  |
|  Sale of goods, so 2-207(1) applies | 2 |  |
|  Was Stein’s response an expression of  acceptance? Yes, context of the communications. | 2 |  |
|  “Sending back . . .” | 2 |  |
|  Different terms matter? No. | 2 |  |
|  Conditional? No. Required language. | 2 |  |
|  Stein accepted. | 2 |  |

(2) No matter how you answer question (1), assume Sowle and Stein did satisfy the requirements of offer and acceptance. Does the resulting agreement contain an arbitration clause? You may assume that the offer did not contain any limitations on changing its terms. You may also assume that Sowle and Stein are merchants.

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| The arbitration clause. | 2 |  |
| 2-207(2) applies.  | 2 |  |
| Between merchants, the terms of the agreement are the terms of the acceptance unless one the exceptions applies. | 2 |  |
|  Offer expressly limit terms of the offer to the terms of the  acceptance? No.  | 2 |  |
|  Material alteration? Yes. | 2 |  |
|  Objection by Sowle? No, no further communication. | 2 |  |
| No arbitration clause. | 2 |  |

**(3)** Assume that Sowle and Stein’s oral agreement concerning the blue aerial silks satisfies the requirements of offer, acceptance, and consideration, and assume that the agreement concerning the delivery of trapezes, free ropes, aerial silks is an enforceable agreement. Does the parol evidence rule make the oral agreement unenforceable?

**Use parol evidence the rule as stated in class, and use only the normal inclusion test for scope. Even you find the written agreement is not a complete integration, consider the issue of scope by assuming that it is a complete integration.**

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| Statement of the rule. | 3 |  |
|  Contradiction? | 2 |  |
|  Complete integration? | 2 |  |
|  Statement of definition. | 2 |  |
|  Evidence of intent. | 2 |  |
|  Entire agreement clause | 3 |  |
|  Conversation | 3 |  |
| Enforceable. | 2 |  |
|  If complete integration, in the scope? | 2 |  |
|  Normal inclusion test.  | 2 |  |
|  Normally included? Yes | 2 |  |
|  Rebuttable? Same considerations as complete integration. | 2 |  |
| The oral agreement is arguably enforceable. | 2 |  |

**(4)** (4) Is Sowle correct when he claims that Dr. O’s offer is revocable? Assume that Dr. O made an offer when she sent the written proposal.

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| The offer was irrevocable on Thursday if there was an option contract to hold the offer for five days.  | 2 |  |
| Was there an option contract? An option contract is a promise to hold an offer open. | 2 |  |
| Did Dr. O promise to hold the offer open to for five days?  | 2 |  |
| The objective intent test: The words are a promise to hold the offer open for five days if a reasonable person in the circumstances would so interpret the words.  | 2 |  |
| Without special circumstances, a reasonable person would not interpret an expression of intent as a promise.  | 2 |  |
| Therefore, Dr. O did not promise to hold the offer open for five days. | 2 |  |
| The lack of consideration argument: there is no consideration for the promise, but that does not matter as option contracts are enforceable without consideration (although the Restatement requires a written recitation of consideration signed by the party to be charged).  | 3 |  |

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| The offer is irrevocable if Dr. O invited acceptance by performance and Sowle tendered or began performance.Would a reasonable person in the circumstances interpret  | 2 |  |
| Did Dr. O invite acceptance by performance? No, the exchange of written documents and the conversation show that a promissory acceptance was invited.  | 2 |  |
| In addition, Sowle did not tender or begin performance. Instead, he indicated his intention to provide a promissory acceptance within five days. | 2 |  |
| But, as argued above, Dr. O did invite a promissory acceptance.  | 2 |  |
| Did Sowle rely on the offer?  | 2 |  |
| No, so revocable. | 2 |  |

(5) Did Sowle breach when he refused to pay on June 5?

**Note this question only asks if Sowle breached. It does *not* ask you to calculate Stein’s damages, if any.**

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| Statement of the common law (or 2-609).  | 2 |  |
| Did Sowle have reasonable insecurity about Stein’s performance? | 2 |  |
| Yes, respected magazine. | 2 |  |
| Did he request adequate assurance? Yes. | 2 |  |
| Did he receive adequate assurance? Yes | 2 |  |
| So his non-payment is a breach. | 2 |  |

(6) Stein claims he owes no damages to Sowle. Evaluate that claim and explain what damages, if any, Stein owes Sowle. Assume that the amount Sowle paid Stein for the blue silks is the same at the market price at the time and place at which Sowle learned of the breach by Stein.

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| Is Stein excused by impracticability doctrine? | 2 |  |
|  Statement of the doctrine. | 2 |  |
|  Unforeseen event? Yes, the fire. | 2 |  |
|  Impracticable? Fire + market = practically impossible. | 2 |  |
|  Stein ought not to bear the risk of loss? | 3 |  |
|  Who is best cost avoider?  | 3 |  |
|  Better information? Stein | 2 |  |
|  Better control? Stein | 2 |  |

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|  Who is best insurer? | 2 |  |
|  Stein can insure against fire, Sowle against delays, both  against business losses. | 3 |  |
| Not excused. | 2 |  |

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| 2-508(1) stated | 2 |  |
| Delivery before delivery date? Yes | 2 |  |
| Announce intention to cure? Yes. | 2 |  |
| Until delivery date to cure | 2 |  |
| No delivery then, so breach | 2 |  |
| Does 2-508(2) apply? | 2 |  |

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| Only if Stein had reason to think red acceptable. | 2 |  |
| He had no such reason. | 2 |  |

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| Sowle gets UCC 2-712 damages: CP – KP + ID + CD – ES. | 2 |  |
| MP – KP = $0 | 3 |  |
| NO IDs mentioned. | 2 |  |
| CDs are reasonably foreseeable damages under 2-715: “any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise”  | 3 |  |
| Could not be prevented by cover. “Unavoidable.” | 3 |  |
| Stein had reason to know, conversation | 2 |  |
| CDs = $50,000.  | 2 |  |
| Damages = $50,000.  | 2 |  |

(7) Assume Sowle and Wright have an enforceable written agreement for Wright’s services as a choreographer. Sowle claims that the agreement requires Wright to use Benesh Movement Notation. Is Sowle correct? Assume there is no trade usage with regard to “dance notation.”

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| The objective intent test: The words are a promise to hold the offer open to Friday if a reasonable person in the circumstances would so interpret the words. | 2 |  |
| A reasonable person would interpret “sole discretion” to mean “sole discretion.” | 2 |  |
| The fact that they had different notations in mind does not matter. | 3 |  |
| So 201 is relevant. | 3 |  |