

Wine hosting

Attempt to accept; prior discuss + note suggest 2 agreements; offer and accept match exactly; W accepts under MI rule

Wine Delivery

W attempt accept immediately = season; additional term OK b/c not xprs. cond. on S's assent; 2-day delivery not mat. alter offer;

Question

Steve Sowle owns and operates "Sowlefully Yours," an online dating service and wine store. Richard Wright owns and operates "Wright Wine," a wine distribution business. Sowle and Wright have been discussing the possibility of holding an online wine tasting on Sowlefully Yours. Participants would all taste the same wine at the same time and discuss it via an online chat system.

Sowle prepares **two written offers** in the form of detailed written agreements specifying the relevant aspects of their proposed deals. In one, Wright agrees to serve as an online host for the online wine tasting, and Sowle agrees to advertise Wright Wine during the tasting (**the wine hosting offer**). In the other, Wright agrees to deliver certain wines to the participants prior to the online event and Sowle agrees to pay for the wine (**the wine delivery offer**). The wine delivery offer specifies that the acceptance may not change the types and quantities of wine identified in the agreement, but it does not otherwise impose any conditions on the acceptance.

Sowle signs the offers and sends them to Wright with a note that reads, "Here are my two offers, signed and ready for you to sign." **Neither** agreement **specifies a time** within which Wright must accept; however, both Sowle and Wright understand, from their **prior discussions**, that Wright will respond within a day or two of receiving the offers.

As soon as he receives them, Wright **signs** both agreements and **returns** them. He attaches the following **note** to the wine hosting agreement.

We have a deal! I am accepting the wine hosting offer as specified in the written agreement I have signed and enclosed. **I hope you will agree** to the following additional terms:

Sowle acknowledges that Wright is not a trained wine-tasting professional and that his knowledge of wine is simply the knowledge of an amateur. In consideration of Wright's hosting the wine tasting, Sowle agrees that, should Wright make mistakes in what he says about the wines during the wine tasting, Sowle will not, on that basis, or any other basis, sue Wright for misrepresentation.

Sowle and Wright had discussed the additional terms in the note, and Wright told Sowle that he would attach such a note when he returned the offer. **Sowle told Wright** that he thought attaching the note would be a good idea. "Attach it with your signature on it," Sowle said, "and I will sign it and return it to you so that we have a record of our agreement in regard to the points in the note."

Wright also attaches a **note to the wine delivery agreement**. The note reads, "**Great! We have a deal! Delivery** of wine to participants **may be within two days** of the time scheduled for the wine tasting." **This is a reasonable time at which to make the deliveries.** The wine delivery contract does not address the timing of the wine deliveries at all. When Sowle receives the agreements, he calls Wright and says, "Got the contacts. Everything is a go!"

- (1) Assume Sowle's signed agreement concerning the wine hosting is an offer. Did Wright's inclusion of the note about his amateur status mean that he failed accept Sowle's wine hosting offer?
- (2) Assume Sowle's signed agreement concerning the wine delivery is an offer. Did Wright accept the wine delivery offer?
- (3) Assume Wright accepted Sowle's wine delivery offer and that as a result they formed a contract, a legally enforceable bargain. Does that bargain include the provision that the delivery of wine to the participants may be within two days of the time scheduled for the wine tasting?