1)
Question 1

This is a contract for the sale of goods between merchants so it is governed by the Uniform Commercial Code (UCC).

Best v. Strong

Will a dispute brought by Best against Strong be settled through arbitration in Cleveland, Ohio?

First, we must determine whether Best and Strong entered into a valid contract, and if so, what terms of their contract would apply. Because we are concerned with two merchants regarding the sale of goods, and a dispute regarding new or additional terms, we must look at UCC 2-207 for further assistance. On 3/1/09, Best ordered 200 trusses at standard price, which constitutes an offer. Strong on 3/4/09 accepted this offer and acknowledged a sale of 200 trusses at $2,000. Therefore, it appears we have a valid contract because there was bargained-for-exchange (goods for money) consideration, but was there mutual assent between the parties regarding the new terms? 2-207 (1) states that an acceptance is valid even if there are new or different terms in the writing, unless the the acceptance is expressly conditional upon the assent to those additional or different terms. Subsection 2 states that these new terms will become proposals for additional terms UNLESS they materially alter the contract, notice of objection has already been given, or the contract expressly limits acceptance to the original terms. The Buyer failed to notify the Seller (Strong) of any objection to the arbitration clause. However, he also did not express assent to this clause either. Best paid Strong for the trusses without any acknowledgment of the arbitration clause. Subsection 3 of 2-207 says the two merchants enter into a valid contract by their conduct even though there would be no contract otherwise based on their conflicting terms. In this case, the terms that are agreed upon will become the terms of the contract, and all conflicting terms will be eliminated. This is also called the Knockout Doctrine. Because of subsection 3, we can conclude that the arbitration clause will not be valid as a new term even though Best neither assented or objected to the clause. Furthermore, there is a traditional judicial hostility towards forum selection clauses becuase it removes power from the courts. For these reasons, it is likely Best will not have to settle the dispute in Cleveland, but most likely in Santa Rosa.

Harris v. Best

Can Harris sue Best for breach of contract when Harris rejected the trusses because they were not up to regulations?

Best and Harris entered into a valid written contract. The Perfect Tender doctrine states that there is no room for substantial performance when it comes to the sale of goods in a commercial context. Either the goods are "perfect" and they conform or they are insufficient or non-conforming due to the quantity, quality or delivery method. These goods were non-conforming because they did not comply with building codes. Upon the delivery of non-conforming goods, Harris had the option of rejecting the goods, accepting the goods, or rejecting some and accepting some. Harris was well within his contractual rights to reject all 50 trusses because they were not up to Uniform Building Code regulations. Harris may argue that due to the non-conforming goods he was forced to find another buyer at a higher price. If Harris were to succeed in a lawsuit he would be able to recover the extra $100 per item plus any incidental/consequential damages that resulted from the breach. These damages could include extra shipping or delivery fees. This is called the buyer's market price differential

remedy. Best has very few options for a defense. He has no statute of frauds defense because the contract was in writing. Best may be able to argue that he bought the trusses in reliance on the fact that he had heard that Harris was going to build a subdivision. This is also a weak argument because Best made the purchase at his own risk and before Harris had even contracted with him. Best's best move would be to possibly sue Strong for the misrepresenting the trusses.

Harris v. Strong

Can Harris sue Strong on a claim that they was a third party beneficiary (3PB) of the Best-Strong (BS) contract?

In order for Harris to have legal standing to sue Strong he would need to prove that he was an intended or direct beneficiary of the BS contract. What was the parties' intent when they made the contract? Did the parties intend to benefit Harris when they entered into contractual relations? If Harris was simply an incidental or indirect beneficiary he has no standing to sue. Only a Creditor benficiary or donee beneficiary may sue the promisee (Strong). There is no evidence that Best and Strong intended Harris to receive a benefit of any kind when they entered into their contract. Best purchased the trusses from Strong with the intention of re-selling them to Harris, and therefore Harris would definitely not be classified as a Donee beneficiary. A creditor beneficiary is the recipient of an obligation by the promisor to the promisee. In this case their was no debt owed to Harris by Strong or Best. In conclusion, it is not likely that HArris has standing to sue Strong on a 3PB claim.

TIME

2)
Question 2

This contract is a contract for money and services and therefore is governed by the Common Law (Restatement).

1. Would Borrower succeed in a suit against Planet for breach of contract?

We must determine whether Borrower and Planet entered into a valid contract when Greedy agreed with Borrower that if he could come up with $12k and expenses incurred by Planet then Planet would reinstate the loan. Was there bargained-for consideration? The Pre-existing Duty Rule states that Borrower already has a pre-existing duty to pay the $12k so there might be no new consideration. However, Greedy, an agent of Planet, agreed that Planet Money would surrender their right to to foreclose on Borrower's house should he come up with the money. At this point, it appears there is valid consideration (money, past payments plus expenses in return for surrendering a foreclosure). When Greedy told Borrow not to worry and to get the cash as soon as he could, Borrower and Planet were entering into a unilateral contract, which is a contract where one party has fulfilled their promise while the other party (Borrower) has yet to perform. When did performance begin? Borrower may argue that performance of the contract started the following day when he put his rental property on the market for sale. However, if Planet did not have notice of this then they would be able to argue that they were unaware of the performance. HOwever the facts state that Borrower emailed Greedy notifying him that the property was already in escrow. This would seem to satisfy the notification requirement. Planet may argue in defense that Greedy, on their behalf, made a unilateral offer to Borrower which is revocable at anytime before acceptance. They could argue that acceptance would not be valid until Borrower had paid the money to Planet, and because Borrower had failed to do this before the revocation, then the revocation of the offer was in fact effective. The mailbox rule states that acceptance is effective upon dispatch whereas revocation is effective upon receipt. According to the facts, Borrower received the notice that his house was being foreclosed before he even sent the money to Planet. Furthermore this was not an option contract. Borrower did not pay Greedy/Planet to keep the offer open during those 60 days. There was no bargained-for-exchange, benefit to the promisor, or detriment to the promisee to keep the offer open. This means that Planet had the ability to revoke the offer at any point before acceptance, which it appears they did. In conclusion it is likely that Borrower will NOT succeed in a lawsuit against Planet.

2. Are other types of action available for Borrower to pursue?

Borrower has a very strong case through a theory of promissory estoppel. To demonstarte promissory estoppel, Borrower must show that Planet made a promise to Borrower, that Planet could reasonably foresee Borrower relying on the promise, that Borrower did in fact rely on the promise and that there was some sort of injustice that needed to be avoided. This is a strong argument because Greedy, through Planet, made a promise that he would surrender the foreclosure proceedings if Borrower was able to come up with the $12k and the extra expenses. Planet could definitely foresee Borrower relying on this promise because Borrower stated to Greedy that he owned a small rental property that he could sell to come up with the money. Greedy acknowledged this. Furthermore, Borrower did in fact rely on the promise because he went through with the sale of the rental. Finally, one could argue that it would be an injustice to allow Planet to foreclose on Borrower's house after promising him they would not if he could come up with the money, which he did, and all of this, after Planet sold his rental property, which he no longer owns or could possibly move into. This is a very strong argument that Borrower could possibly win.

3. Are there any defense Planet can raise against any suit brought against it by Borrower?

Planet's strongest defense is one of the Statute of Frauds. According to this statute, contracts must be in writing if the contract cannot be fully performed within one year, if the contract is for the sale of goods at or over $500, if the contract involves an interest in real property and suretyships must be in writing. THis contract involves the transfered interest of real property. Planet can argue that the agreement between Greedy and Borrower was never put in writing or signed by any parties and therefore has no legal validity.

TIME

END OF EXAM