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===== Start of Answer #1 (860 words) =====

This question deals with the sale of goods and is controlled by Article 2 of the UCC.

There is no evidence of an illusory contract.

Is the current contract between Mario's Pizza Shack (M) and Pills S. Burry (P) valid?

A contract requires an offer, acceptance, and bargained for consideration.

An offer is an act by one person that confers upon another the power to create contractual relationship between them.

It requires a manifestation of present contractual intent, essential terms, and communication to the offeree.

As set forth in §2-201 of the UCC, The statute of frauds requires a signed written agreement (current agreement) for all sales of goods (pizza dough). As they are both a current offer, they know and per prior dealings they formed intent by performance. The essential terms are also present (500lb of dough a month, \$1000, next 6 months).

An acceptance is a manifestation of assent to the terms of an offer.

As per the facts, we know that there has been an acceptance under §2-206 of the UCC as per shipment. P has been sending dough and M has been accepting it.

Consideration is the bargaining for something of legal value.

M is bargained for a dough and P is bargained for the \$1000/month.

There is a valid Bilateral contract present. (Promise to sell dough if promise to pay)

Significance when P tells M about unable to deliver.

Two days before M's expected shipment, P tells him that he is not able to deliver the 500lbs of dough unless M pays \$1250 (an extra \$250). P uses the excuse that the price of flour has unexpectedly increased. It seems that P is trying to claim that it would commercially damage him. This will not fly because he would be required to prove that the expenditures are grossly out of line and that it would put P in a spot of closing his business. This is obviously not the case as \$250 for a month is not in the scope of open or bankrupt.

Significance when M calls other suppliers.

M is in a crunch as he has only two days to come up with a way to buy 500lbs of dough. During his search M learns that it will take too long and nobody can supply his demand that quickly. M realizes that if he does not go with what P is modifying to the offer, then he will have to close his business for four weeks (\$5000 loss). M then calls P and agrees to his modification proposal. P ships, and M accepts but refuses to pay the extra \$250.

Modifying of contract between merchants.

§2-209 of the UCC controls what is required between merchants that would like to modify a contract. It states that no consideration is required for the modification, that it is in writing and signed (which this is not), and finally, it has to be in accordance with good faith (which it is also not).

This modification would most likely not be accepted by the courts and the new or

altered terms will be "knocked out".

P will argue that this price increase is not a material term and that it will fall in the scope of §2-207 of the UCC.

§2-207 Governs Additional Terms.

- (1) An acceptance can contain additional terms unless the acceptance expressly limits assent to those terms.
- (2) Additional terms are proposals for addition to the contract; between merchants, they become part of the contract unless:
 - (a) Offer expressly limits acceptance to terms of offer.
 - (b) Proposals materially alter terms
 - (c) Party proposing additional terms reasonably notified of objection.
- (3) If the writings do not establish a contract, conduct by both parties consistent with existence of a contract establishes a contract.

P will fail in his argument because changing the price he expressly limited acceptance to his new price (not deliver unless you pay \$1250).

M's accepting shipment of new priced dough.

P will argue that the USS allows a reasonable time to the confirmatory memo rule allowing stating that since M did not object to the terms at all and accepted the dough, that the altered price is binding. This is P's best route to take because was never told by M at the time of increase the he objected.

M's acceptance under undo influence.

M will argue that P was taking advantage of him by knowing that M had no other choice but to accept. This is a strong point. Even though M did not expressly tell P that he will not pay, we can see in M's attempt to look for other suppliers. M may have not wanted

to ruin the good faith business relationship with P over \$250 as he still needed dough because he was unable to get it anywhere else.

Will P Prevail in a lawsuit for \$1250?

No. As seen supra. M was under a form of duress when he accepted P's increased price. The court will find that M is responsible for the original \$1000 but that is it.

The court would find restitution, and put the parties back to where they were prior to the P's breach in changing the price.

===== End of Answer #1 =====

2)

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===== Start of Answer #2 (1115 words) =====

This is a contract primarily for a service, installation of a window and painting of the frame, and is governed by the common-law.

When Cathy (C) came to Wally's house she quoted him a price for the window. This was merely a quote and not an offer. An offer conveys in the offeree the power to establish a contract (K) between the parties. An offer must be a manifestation of the offeror current intent to enter into a K, it must be certain and definite in its terms and it must be communicated to the offeree. The quote lacks definiteness because doesn't expressly state when the work should be performed.

Wally (W) makes Cathy an offer when he says that he will pay her \$400 for the window, and a bonus of \$95 if she finishes the job by Friday and paints the frame egg-shell white. It is an expression of his intent to be bound to K, it is communicated to C and its terms are definite as it contains a quantity (1 window), a time of performance (by Friday for the bonus), the parties (W and C), a price and subject (window and painting.)

C writes down the agreement on of her form contracts. The second portion of the written K contains a merger clause, which states that the writing is the "complete, final and exclusive expression of all terms." The use of the merger clause renders this writing a fully integrated contract, which will hold relevance when we look at the parol evidence rule.

The parol evidence rule is a rule of substantive law which states that parol evidence (that is oral, or otherwise not within the writing of the K) shall not be permitted to add additional or conflicting terms to a K if it is fully integrated, meaning that the courts recognize it as the absolute full expression of all terms of

the K. If it is partially integrated, parol evidence may be used to establish that additional terms existed but not conflicting terms. Here the use of the merger clause makes this a fully integrated writing and no evidence supporting additional or conflicting terms will be allowed.

However, parol evidence may be allowed when the terms are ambiguous or need some clarification, or to establish fraud or misrepresentation in the formation. Here, the written agreement is vague or ambiguous in two ways. The first ambiguity is the term "eggshell white" and the second is the bonus, as there is no specificity to its amount. Where there is an ambiguity in terms the courts have various ways of approaching the problem and of defining the ambiguous terms. Generally, it will be interpreted against the writer, in this Cathy. First, it will give the words their plain meaning, if no express meaning has been given. Here there was no express meaning given to the term "eggshell white." Next it will look to custom and usage within the trade, as well as past practice and past performance. Thus if it can determine that the trade uses the term eggshell white, to refer specifically to a color rather than a brand, it may lean toward interpreting in Wally's favor. If there was past practice between the two parties where C had used the same Egg Shell brand paint, then this would be given weight in favor of interpretation for Cathy.

Cathy will be able to introduce evidence to support her definition of eggshell white and the amount of her intended bonus, as these are not additional or in conflict with any of the terms of the agreement.

In most jurisdictions extrinsic evidence is only allowed if when the court finds that the writing is ambiguous on its face. However, in a minority of jurisdictions, CA included, extrinsic evidence will be allowed if a party can successfully argue that there is any possible way that the writing can be interpreted in a way contrary to its plain meaning.

Wally will argue that there is no K because of material mutual ambiguity, where each party had something different and there was no meeting of the minds and therefore no K formed, as in the *Peerless* case. Wally will argue for a finding of no K, as he believed egg-shell white meant one thing and C apparently believed it meant something else. In this case the court might agree that there was mutual ambiguity, but would most likely find that the ambiguity was immaterial as it is impossible to discern the Egg Shell brand "white" paint from other brands "eggshell white."

Even if Cathy is unable to enter any parol evidence, because of the fully integrated writing, as to the definition of egg shell white she is still likely to prevail, at least to the amount of \$400. Technically, the court may find that there was a breach if it follows W's definition of egg-shell white. However, it would deem this an immaterial breach. It does not truly affect the outcome as what he wanted was for the frame to be painted "eggshell white" and no one could possibly tell the difference. The immaterial breach would not allow him to forgo the contract. He may, however, be able to avoid the bonus. If the parol evidence wasn't allowed (which is unlikely) then the court would not be able to ascertain what the bonus should be valued at and could not enforce it.

The more likely outcome is that the parol evidence would be allowed and the term "eggshell white" would receive some further clarification or the breach would be found immaterial, and C would be able to enter evidence as to the amount of the intended bonus. Given these outcomes she would C would prevail and be able to collect the full \$495.

If for some reason the court found that this was a material breach, Cathy would still most likely be able to collect in equity for the value of her work or quantum meruit.

