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===== Start of Answer #1 (1609 words) =====

This fact pattern is governed by UCC Article 2 because it is a contract for the sale of goods.

Significance of June 1st call from Contractor (C) to Dozer (D)?

An offer is an manifestation of willingness on the part of the offeror to enter into a bargain, which creates the power of acceptance in the offeree.

When C called D and said they wanted to purchase a specific model of bulldozer at the standard list price, with terms of payment it appears that this was an offer. The UCC is more liberal than the common law, and terms which were mentioned but not specific, like the 'standard list price' can be implied, especially when there are prior dealings between the parties. Because of the prior dealings between the C and D, and the specifics of the request to buy by C, all the essential terms of the deal were laid out and the D could 'just say yes' to seal the deal.

Significance of the sales form sent the next day by D to C?

An acceptance is assent to the terms of the offer. In common law, the acceptance must mirror the offer exactly under the 'mirror image' rule. Under UCC 2-207, the acceptance can add additional terms as long as the offer is not limited to the offer's express terms, the offeror objects to the additional terms, or

the additional terms materially change the deal.

Excellent!

D sent its sales form to C the next day, and it appears that D accepted C's offer to buy another bulldozer. Here, it appears that there are additional terms included in the acceptance, which triggers UCC 2-207. C looked at the front of the form, and it appears he assented to all the terms he saw there, including the price and the liquidated damages clause. The term on the reverse side regarding the disclaimer of warranties, although in capital letters, was probably in small font because the back side had 32 paragraphs. C said he didn't see this clause. Because of their prior dealings with this same standard sales form, it may be found that C assented to this term also because he didn't object in prior dealings. More likely, this clause will be excluded from the contract because any disclaimer of warranties materially changes the deal as C was probably not willing to risk buying an expensive machine without any warranty. That term would surprise C, and materially change the deal, so it will not be part of the contract.

Consideration is an act or forbearance or promise thereof given as a bargained-for exchange. Here, the C agreed to pay the price for the bulldozer, and D agreed to give the bulldozer in exchange for the money. There is valid consideration.

A contract is an agreement which the law will enforce. The elements of a contract are offer, acceptance, and consideration. All the elements are present here, so a valid contract was formed.

Significance of oral side-deal regarding keeping the dozer in the county?

The parol evidence rule bars admission of evidence relating to written or oral side deals prior to the signing of a written contract, and also of contemporaneous oral deals.

Here, they discussed the term of keeping the dozer in the county. It appears that the contract had already been formed when they discussed this. If the contract had not yet been formed, then that evidence would be excluded under the parol evidence rule. If instead the contract was already written with all the specifics included, and thus fully integrated [and signed, under UCC the form which was signed by the D would also be binding on C], then the parol evidence rule would not bar this side-deal which was discussed after formation. Because D had already accepted the offer, the contract was already formed at the time of this discussion. C said the term of keeping it in the county was 'no problem,' so evidence will be allowed and this term will be included in the contract.

Significance of C taking the dozer out of the county?

Because the C agreed to not take the dozer out of the county, and that term was included in the contract as discussed above, the C breached the contract when he took the dozer out of the county. Did this trigger the liquidated damages clause? Liquidated damages clauses are enforceable if they are a reasonable estimation of actual damages which will be incurred by the non-breaching party in the event of a breach of contract. They are not enforceable if they are punitive. Here, it appears that C had already paid half of the purchase price to D at the time of the breach. If D is allowed to recover the dozer [which was not used until that point] and resell it, and also keep all the money that C had already paid, it appears that D would get a windfall. Even though C assented to that term, it

probably is not enforceable because it is punitive to C and not a reasonable estimation of actual damages by D.

Significance of the dozer having engine difficulties?

As discussed above, the disclaimer of warranties was probably excluded from the contract under 2-207. The dozer hadn't been used before that point, so misuse by C probably couldn't have caused the engine problems, and we can probably assume that the problems made the dozer unable to run properly and that the dozer was built wrong or had some other problem which was not C's fault.

Because the disclaimer was excluded, the law implies a warranty of merchantability, which means that the product sold is fit for its ordinary use. C wasn't using it in an extraordinary way, so D is liable for breach of an implied warranty of merchantability.

Significance of C refusing to pay because of the engine problems?

A condition is an event, not certain to occur, which must occur before the duty of the other party arises. Express conditions as terms of a contract will be strictly enforced. Constructive conditions are implied by law and substantial satisfaction will suffice.

Here, there was a constructive condition that D would give C a working bulldozer before C was obligated to begin the installment payments. If the dozer mostly worked but was just difficult to start or something, then D did substantially satisfy the condition. If instead the dozer was not fit to use for the work that C needed it

for, then there would be a major breach by D in providing a non-working machine, which would discharge C's duty to pay for it. Because this was a new machine, and C needed to use it, we may be able to assume that the engine difficulties were major because if they were minor, perhaps C would just fix it himself and then ask for indemnity from D. Let us assume that the problems were major for the sake of argument. Because of the major engine problems, C's duty to pay was suspended until D fixed the engine or made some other arrangement with C.

Unconscionability is where the deal is so unjust that the law will not enforce it. It has two forks: procedural and substantive.

Good
C claims that the liquidated damages clause would be 'totally unfair.' He may be arguing unconscionability. Here, the procedure of formation of the contract was not unconscionable because of the equal bargaining power of the parties, and because C could go buy their dozer from somewhere else. The deal is also not substantively unconscionable because as discussed above, the liquidated damages clause is not enforceable. If the court decided it was enforceable, then C would have an argument for unconscionability.

Significance of assignment from D to Bank?

An assignment is a present transfer of rights.

Contracts are usually assignable unless they create a burden on the promiser, or impair the promisor's chances of return performance. Under UCC Article 9, accounts receivable are always assignable. Here, it appears that D assigned to

the Bank their right to the account receivable from C. It appears that the duties were not delegated, however, because the Bank probably didn't assume the duty to sell the dozer or to fix it if it was broken or in breach of an implied warranty. The assignment to the Bank was valid.

Bank v. C

The Bank is trying to enforce the liquidated damages clause in the C/D contract by taking back the dozer and also keeping the money already paid by C.

Because the obligor [C] can raise any defenses against the assignee [Bank] that they could raise against the assignor [D], the bank cannot recover both the money and the dozer because of the previously discussed breach of implied warranty of merchantability in the contract between C and D.

Bank v. D

If the Bank bought the assignment from D, they could recover from D under a theory of breach of warranty of assignment. *why? which warranty?*

D v. C

Because D assigned its rights to the Bank, it has no right to recover from C at all.

C v. D

As discussed above, it appears that the Bank had only an assignment of rights under the contract and not a delegation of duties, so C cannot recover from the bank.

C v. D

Because D sold a dozer which didn't work, it appears that C could return the defective dozer and recover the previously made payments. If instead the dozer worked some, then C may not be able to recover all their payments, and would have to pay D some for the amount of use they did get out of the dozer.

Very impressive answer!!

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End of Answer #1
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2)

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Start of Answer #2 (1172 words)
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Agreement between Copy Cat and Dealer?

This fact pattern could be governed by the UCC because the main purpose of the contract is for the sale of a photocopier. It could instead be governed by the common law because of the extended service contract which the agreement also contains. The facts are silent as to whether the contract was divided by price of item versus the price of maintenance. Because copiers are very expensive, and the price of maintaining one over two years is probably less than the price of the copier, we can assume that the main purpose of the contract was for the sale of goods, and is thus governed by the UCC article 2.

It appears that a valid contract was made between Copy Cat [CC] and Dealer [D] because they had a written agreement, CC paid the agreed price, and D delivered the machine.

Significance of CC selling to Self-Serv [SS]?

An assignment is a present transfer of rights. A delegation is a delegation of duties under a contract.

Usually when a business is sold, the selling business assigns its rights and delegates its duties under its existing contracts to the new buyer. Here, we have an anti-assignment clause in the original contract between D and CC. However, it appears that although the clause restricts CC's right to assign the contract, it does not revoke the power to assign it [that would require language such as 'all assignments under this contract are void and null']. Therefore, CC's assignment of the D contract to SS was valid, but D can recover for the breach which occurred by the assignment.

Good!

Rights under a contract are assignable unless it burdens the original obligor or impairs their chances of return performance. In this case, it would appear that D was burdened by the assignment because SS allowed its customers to use the machines themselves, which may increase the maintenance costs. However, the contract for maintenance was for maintenance of the machine for a flat fee, regardless of how many copies were made. If the assignment increases D's burden under the contract, it will not be enforceable.

excellent

Duties under a contract are delegable unless the original obligee has a substantial interest in the original party's performance. Here, it appears that CC delegated its duty to SS to pay John Jay [JJ]. As long as SS is equally able to pay, the delegation should be valid. As discussed below, JJ may believe that SS was less likely to pay. Because at the time of the delegation of duties SS agreed to pay JJ, JJ became a third-party beneficiary of the contract between CC and SS, giving him rights against both CC and SS absent a novation [which it appears is lacking].

Significance of D assigning CC contract to Maintenance Co [M]?

As previously discussed, because D assigned its CC contract to M, it appears that M was assigned the rights of D under the CC contract [right to collect money from CC/SS] as well as the duty to maintain the machine owned by SS [formerly CC]. It appears that M didn't know that that CC was sold to SS. Did D know that CC was sold? If they did, and they knew that the use of the machine had changed, but they didn't tell M at the time of the assignment of the contract, then M could recover from D under a breach of warranty of assignment if the assignment had less benefit to them than they thought it did at the time of the assignment *actually this is not one of the warranties*

Significance of M telling SS that they were suspending service calls?

Because assignment of contract was valid under the CC/SS agreement, it appears that M was the breaching party when they refused to perform under the

D contract. As discussed above, the assignment of the D contract to SS when CC sold was valid, but D had rights to recover if the assignment burdened them more than the original contract. M also was obliged to accept the assignment of the contract to SS, but M can recover for the additional expense of the maintenance if there is any. When M said they were not going to perform, M was the party that had a material breach.

Significance of the letter from JJ to M?

It appears that JJ was trying to assert rights as a third party beneficiary under the D contract with CC [which became the D/SS contract, then the M/SS contract]. He is trying to get adequate assurances from M. A request for adequate assurances can be made where there is a reasonable fear of a breach by the other party. Here, JJ is owed money by SS [originally by CC] and the fact that M may breach one contract with SS does not give him the right to ask for adequate assurances by M. He could however ask for adequate assurances that SS will pay him, because a delegation of duties gives the obligee the right to ask for assurances by the delegatee.

Significance of the fact that JJ had previously given negligent advice to CC?

SS can assert any defenses against JJ that arise from the CC/JJ contract. If JJ had in fact given negligent advice to SS and it caused SS damages, CC can assert those when JJ tries to recover under the CC/JJ contract. They still would have a duty to pay JJ, minus the damages arising from his breach by giving bad advice.

JJ = 3PB - CC = Pee
SS = Por

Por cannot assert
Pee's defenses v 3PB

JJ v SS

JJ can recover from SS under its original contract with CC. CC can assert the defenses discussed in the above paragraph.

JJ v CC

Because a JJ and CC had a contract originally, CC is still liable for what it owes JJ if SS doesn't pay him. They can use defenses arising from the original JJ/CC contract.

CC v SS

If SS does not pay JJ [minus damages discussed above], and CC has to pay JJ, then CC can recover in indemnity from SS.

SS v. M

SS can recover from M for their breach by not continuing to maintain the copier, which would include the difference between the contract price and a higher market price to get someone else to finish the maintenance contract.

SS v CC

SS can recover from CC if the warranty of assignability is breached because SS has to pay D damages from the improper assignment.

SS v JJ

SS could possibly recover from JJ if his negligent advice created large damages for their company [fines for bad taxes, etc].

M v SS

M could recover from SS for the reasonable value of their services if any remained unpaid.

M v CC

M could recover from CC for the breach of the anti assignment clause in the original CC/D contract.

M v D

M could recover from D if D knew that CC had been sold to SS and that changed the rights and duties under that contract. It would be recovery for breach of an implied warranty of assignment.

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===== End of Answer #2 =====

END OF EXAM