1)

======== Start of Answer #1 (1385 words) ========

I. CONTROLING LAW: COMMONLAW OR UNIFORM COMMERCIAL CODE (SERVICES OR SALE OF GOODS)? UCC controls the sales of goods. All other contracts are controlled by common law. Goods are defined as any movable item for sale.

Here, we have the sale of goods, i.e. long stem roses. Therefore, UCC controls.

The formation of a contract requires three essential elements: (1) offer, (2) acceptance, and (3) consideration.

II. WHAT IS THE LEGAL SIGNIFICANCE OF BUYER'S MAY 1, 2012 PHONE CALL TO SELLER? -- OFFER: An offer is a manifestation of present intent to be bound to bargained-for definite terms communicated to, and creating the power of acceptance in, an identifiable offeree whose assent concludes the bargain and creates a contract.

A. **Present Intent To Be Bound:** Here, when Buyer (Hereafter "B") placed an order for 1,000 long stem roses at 60 cents each, it appears B has the present contractual intent to be bound as a reasonable person would interpret it as such, and as inferred from past dealings, as well as evinced from her "customary email reiterating the terms of the deal."

B. **Definite and Certain Terms:** Here, too, the terms are definite and certain. B calls (communication) Seller (identifiable offeree -- Hereafter "S") and states she wanted "1000" (quantity) "roses" (subject matter) at 60 cents a peice (price). These terms are more than sufficient to constitute an offer under the UCC as all other terms can be provided by UCC Gap Fillers (time for performance must be reasonable). Further, it appears the communication was intended to create the power of acceptance in S, as that was the purpose of the call.

Therefore, there was an offer.

III. LEGAL SIGNIFICANCE OF S's "ORAL ACCEPTANCE." -- ACCEPTANCE: Is defined as an unequivocable assent to the terms of the offer. One must have capacity to accept an offer, and acceptance must be communicated in the method anticipated and/or required. Under UCC 2-606, acceptance may be manifested in any reasonable manner under the circumstances, unless otherwise specified/required by the offer.

A. **Capacity:** Here, S has the capcity to accept B's offer. S's offer presumeably identified and was communicated to S.

B. **Reasonably Anticipated Manner:** Here, effective assent to the terms of B's offer were unequivocably assented to when S "orally accepted the order" over the phone. Further, a reasonable person would anticipate acceptance over the phone, orally, when the offer/order was made in like way.

Therefore, there was a valid acceptance.

IV. LEGAL SIGNIFICANCE OF B's "EMAIL" SENT ON MAY 1, 2012 WHICH "REITERATED THE TERMS OF THE DEAL, AND ADDED LANGUAGE 'CASH DISCOUNT: 10%.'" -- NEW TERMS:

A. **Sale of goods:** UCC applies. See supra.

B. **2-207(1) Whether there was K formation.** If there was seasonable and definite acceptance of the terms of the offer, a contract was formed. Here, the acceptance, made orally over the phone, was immediate, and therefore seasonable and definite.

1. Was ***acceptance*** expressly conditioned on the new terms? If acceptance is expreessly conditioned on new terms there no contract. Here, however, the acceptance was *NOT expressly conditioned on B's assent to the new terms.*

C. **2-207(2) Determining the terms of the K.** If the contracting parties are *NOT merchants*, then the new terms will be deemed mere proposals, and would require seperate assent to become apart of the k. But if parties *ARE merchants,* new terms may be added in special circumstances.

1. **Merchants**: Merchants are defined as individuals who put themselves out to

have specialized knowledge of the goods being bought/sold. New terms between merchants are categorized and distinuished as either **additional terms** or **different terms**. Here, being that B is a "florest," and that S is "flower wholesaler", a reasonable person would conclude that they have specialized knowledge of flowers. ***Therefore both parties are merchants.***

Additional Terms: Between merchants, additional terms are terms that do not contradict the original terms of the contract, i.e. only add to them. Additional terms are made part of the K unless (1) the terms of the ***offer*** communicated as expressly conditional; (2) the new terms material alter the risks or duties of the contracting parties; or (3) seasonable objection to the new terms are made. **Different Terms**: Between merchants, different terms are those that *contradict the original terms*. If different terms are made byway of a confirmation, they are "knocked out." If different terms are made through the offer or acceptance, they are either (1) "knocked out" (White); or (2) the terms of the offer control (Summers).

Here, B will argue that B's email adding a "10% discount should be deemed as additional terms and therefore should be made part of the K. However, even if they were deemed additional, i.e. not different, they still likely would be excluded as they materally alter the price term and S's overall benefit. The only way it could apply is if it was agreed to over the phone, or past dealings indicate that it always applies. But on these facts we can not determine as much so we must say it is excluded.

However, S will more correctly arue that B's email adding a "10% discount would be deemed as contradicting original price terms ***and therefore would be considered different terms***. Given that the different terms were added byway of a confirmation, the Knock Out Doctrine applies. **Therefore, either way, B's new terms are not apart of the K.**

VI. LEGAL SIGNIFICANCE OF S's "NEW ACKNOWLEDGEMENT FORM" SENT ON MAY 2, 2012 -- NEW TERMS:

UCC RULES CONTROL, SEE SUPRA. Arbitration clauses are generally deemed as different terms (Majority rule). Disclaimer/waiver of implied terms, i.e. warranties, good faith, etc. requires assent. Further, the UCC provides/implies in all sales that a

buyer may have reasonable time to inspect goods upon reciept and ***may return, all, or any part of non-conforming good to sender.***

Here, because the arbitration clause would likely be deemed as different terms (majority) and because it was added in an "acknowledgement form" (ie. a confirmation), it likely would knocked out.

Also, because the disclaimer/waiver of warranties clause contradicts the orignal implied terms it would be considered a different term and because it was added in an "acknowledgement form" (ie. a confirmation), it likely would knocked out.

Last, because the waiver of right to inspect clause contradicts the orignal implied terms it would be considered a different term and because it was added in an "acknowledgement form" (ie. a confirmation), it likely would knocked out.

But even if any of the above terms were deemed as additional, they wouldn't make it in the contract, because they all materially alter the original terms and B seasonably objected.

Therefore no new terms are added.

VII. CONSIDERATION: Is bargained-for exchange of promises/performance in which parties undertake detriment/benefit. Alternatively, *where no consideration is established*, **Restatement 90--Promissory Estoppel** ("The Pinko Commie Rule for Consideration") may be applied when 1. a promise is 2. relied upon (reasonably, foreseeably, and to the detriment of offeree), 3. to the extent that injustice can be prevented only by its enforcement.

Here, B and S bargained for the exchange of roses. Each benefited/suffered detriment (B gets roses/loses $; S gets $/loses roses). Therefore the K is supported by adequate consideration.

VIII. DEFENSES TO ENFORCEMENT:

1. Statute of Frauds: Applies to all sales over $500. Requires signed writing against paty charged. Alternatively, **Restatement 139** ("The Pinko Commie Rule for The Statute of Frauds") may be applied, *even if the Statute is not satisfied*, when 1. a promise is 2. relied upon (reasonably, foreseeably, and to the detriment of offeree), 3.

to the extent that injustice can be prevented only by its enforcement. Here, SOF applies bec its over $500, but it also is satisfied as there is a signed wirting by S the party to be charge. But even if it wasn't satisfied R139 applies so the K is enforcible because B relied to her detriment and justice so requires.

IX. DEFENSES TO THE CONTRACT:

1. Capacity. Yes.
2. Fraud. Maybe
3. Mistake. No.
4. illegality. No.

X. CONCLUSION:

B has right to send back any portion of the non-conforming order pursuant to the implied warranty of fitness -- which she did not waive. See implied warranties supra. The arbitration clause was not part of the K. See supra. B has a very good chance to prevail.

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

2)

======== Start of Answer #2 (769 words) ========

Buyer v. Seller

I. What law governs this case?

This case is primarily a transaction of goods and is governed by therefore governed by the Uniform Commercial Code (UCC), as opposed to common law.

II. Did the parties intend to enter an agreement?

Both parties can be assumed to have capacity to enter an agreement, and did so without duress, since the fact pattern does not state otherwise. The party known as Seller is a selling bees and hives; Buyer is a person who has bought bees and hives in the past from Seller.

On January 3 Seller and Buyer had a conversation. The facts are silent as to how they conversed, but it looks like it was face to face. Seller said he needed to get rid of his bees and hives within 20 days, and was offering them to Buyer for $3000, and if Buyer gives Seller a $100 as a deposit in the next ten days, he has the first option at that price. Buyer said he would let seller know.

This was a bilateral agreement, in which each party experienced some detriment and some gain. Buyer would lose money and gain bees and hives. Seller would lose bees and hives and gain money.

III. What was the significance of the letter sent by Buyer?

On January 10 Buyer sent Sller a letter, saying he was willing to the bees and hives. He requested that the price be reduced to $2500 because of the condition of the hives. Because the original price of the bees

and hives was listed at $3000, Buyer's request that the price be reduced is just a grumbling acceptance, but it is still just a beg that the seller sell for less, and would still make the price $3000.
The Mailbox Rule states that at the time an acceptance is sent by mail the contract becomes valid. This can be negated if both a rejection and an acceptance is sent; whichever one is received first is enforceable. In this case only an acceptance was sent.

IV. Did the Buyer make an offer to Seller?
Seller told Buyer that if Buyer would pay Seller $100 in the next day days that he would be the first one available to buy the bees and hives at $3000. There was a discussion of quantity (all bees and hives), time to be performed ($100 deposit within ten days and deliver of bees and hives wthin twenty), a price, and the parties knew their subject of conversation.

V. Was the offer to Buyer revocable?
Seller, a businessman, made a firm, and irrevocable, offer to Buyer by giving Buyer a specific time to put down a deposit.
On January 13, ten days after the initial conversation between the parites, Buyer visited Seller's business at 1:00pm. Seller was opening the mail Buyer had sent on January 10, which had just arrived. Buyer told Seller to forget the letter, and handed Seller $100. By doing this Buyer fulfilled his part of the contract up to this point, and made the contract enforceable by giving Seller the $100 dollars.
Buyer further acted in compliance with the agreement by putting $3000 into Seller's account. When no specific method of acceptance is required to fulfill a contract, any reasonable method is acceptable, and Seller had not specified a method for acceptance. Although it is unusual to put money directly into a person's bank to fulfill a deal, and even more unusual to do this without telling them, there is nothing inherently wrong with this.

V. Buyer's rights against Seller.
Seller put an ad in the newspapers on January 12, or before, which offered the bees and hives at a public auction, to take place on January 24. Buyer had until January 13, according to the agreement, to give Seller $100 and have the first option for buying the bees and hives. Seller broke his agreement.

VI. Defense: Statute of Frauds?
The Statute of Frauds requires that there is some memorandum, or writing, to evidence a deal between parties. The initial conversation between Buyer and Seller is not said to be in writing, and appears to be face to face. Although this would initially make the contract void under the Statute, Buyer sent a letter on

January 10, referencing the conversation on the 3rd, and listed the price. This qualifies as a memorandum.

VII. Buyer is likely to be able to have the right to be the first buyer of the bees at $3000 because of he can show that Seller intended to give him an irrevocable option and Seller go with the agreement.

═══ End of Answer #2 ═══

END OF EXAM