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===== Start of Answer #1 (3353 words) =====

Question 1

UCC or Common Law

The UCC governs contracts for the sale of goods and the common law will govern all other contracts. In this case we have a contract for services, so it will be governed by the Common Law.

Bob v Cal

Did they have a valid contract?

A contract is an exchange of a promise for a promise or a promise for a performance. A promise for a promise would be a bilateral contract, and this case would be an example of a bi-lateral contract. Bob promised to build the house and Cal promised to pay Bob for his services. The contract must have specific terms on the subject, and in this case it did, the building of house by September 1st in exchange for the payment of \$750,000 payable to Bob in equal monthly installments. These are specific enough terms to make a valid contract.

Was the use of specific elk horns an express condition or a promise?

An express condition is an event that is not certain to occur that must occur in order for the contract to be valid. In this case the language used around the elk horns does not seem strong enough to make it an express condition. The plans called for using elk horns from specific hunting grounds, but it did not state that payment was conditional upon such use. It was simply one provision in the plans along with many others that would be in plans to build a home, but more are not stated in the fact pattern. It is most

likely that the court would treat this term as a promise and not as a condition to the valid completion of the contract.

Will the extra 2 months Bob claims Cal agreed to give him if necessary be excluded as parol evidence?

Parol evidence is evidence that is extrinsic to the four corners of the contract and is generally part of a discussion prior to the signing of the contract, but is not included in the final terms of the contract. it will be excluded unless an exception applies.

In this case the contract stated that the completion date was September 1st. Bob claims however that prior to signing the contract Cal agreed that due to the difficulty in getting the elk horn requested, Bob could have an extra two months if necessary. This is evidence that strictly contradicts the express term in the contract and most likely will not be allowed to be utilized in court. If it was an ambiguous term, it could be brought in, but the completion date was very clear and left no room for question. Bob's only hope to have this admitted would be to prove that the contract was not fully integrated. However it seems that all of the terms were clear in the contract and if Bob did not intend to agree to completing the guest house by September 1st, he would have asked for a term in the contract stating he could have extra time without penalty. The fact that there is no such term here, indicates that Bob fully assented to the terms as is, and this contract appears to be fully integrated.

This would indicate that this dispute will be governed by the Sept 1st completion date.

Was Bob in breach when he would not be able to complete on time?

Bob was bound by contract to complete by September 1st, however not be able to do so would not necessarily be a material breach. A material breach is one that would essentially greatly impinge on the other party receiving the benefit of the contract. In this case it would certainly cost Cal some profit (as will be discussed infra), but a delay

in completion would not cause him to completely lose out on the benefit of the bargain here. Therefore the court would most likely categorize a failure to complete on time as a minor breach. Additionally he was putting in a good faith effort to complete the project, which would show that he was not intentionally trying to breach or repudiate the contract.

Was Bob in breach when he planned to use the elk horn from a different hunting ground than specified?

As discussed, supra, the use of elk horn would most likely be construed as one term or promise in this contract and not as an express condition. It was dishonest of Bob not to tell Cal he would have to use different elk horn, but had he completed the project with said elk horn, it would most likely not be a material breach, since it was one term, but not the entire purpose of or express condition of the contract. If he had completed this work it would most likely be considered a minor breach, but he would also be afforded the defense of impossibility.

Impossibility is when a supervening act occurs that was not expected in the contract that makes the contract or a part of it impossible to perform. It can be legal or physical. In this case there would be a legal impossibility to comply with the term if it had become against the law after the contract was made for elk to be hunted on the specified hunting ground. Additionally the risk of this impossibility would most likely not be allocated to either party, but if it was, it should be allocated to Cal, because he had made the request and if it was that important to him he shouldve made sure it was possible. Bob should have just told Cal of this fact, but he would most likely still be afforded this defense if completing with the alternate elk horns became an issue and the law was passed after the contract was made.

If the law was passed before the contract was made, Bob could possibly argue mutual mistake here, because neither party knew that elk horn couldn't be hunted there prior to signing the contract. Again if there was a risk allocated here, it would most likely be to

Cal as stated supra, and Bob would most likely enjoy the defense and not be in breach for using alternate elk horn.

Did Cal breach when he stated he was withholding payment from Bob?

Breach explained supra. In this case, refusing to pay someone would completely deprive them of the benefit of the bargain. This would most likely be a material breach, which would justify Bob from walking off the job. It could also be considered anticipatory repudiation of the future payments owed, because the payments made here were to be in monthly installments. Therefore this would be material breach for refusing to pay for the work completed to the current month, and ar for the months not yet owed. Both would justify Bob to decide not to complete the work.

Was Gil a 3PB to this contract?

A 3PB is someone who both parties intended to benefit from the contract prior to the contract being made. In this case Cal had promised Gil the use of the guest house every summer for 5 summers in a row, however this would not necessarily make Gil a 3pb. This contract was designed to benefit Cal in future profits from renting out this guest house, and it was not designed so that Gil could use the guest house. Gil would most likely be considered an incidental beneficiary in this scenario, as he was going to benefit, but he was not the intentional beneficiary of this contract so no 3pb here.

However it should be noted that because Bob was aware prior to signing the agreement that Cal had made the arrangement for Gil to utilize it each summer for 5 years, the inability of Gil to use it, would be considered a consequential damage if it lost Cal profit.

Who is liable for what damages between Bob and Cal?

Cal breached this contract which would mean that Bob would most likely be able to get some damages here. However Bob did chose to walk off the job, and not complete the house, so he will probably not be able to recover for the full contract price. The payment for this contract was set up on a monthly installment, so Bob would certainly recover payment for his last completed month. If Bob worked partially into another month, he most likely be able to get damages in quantum meruit for the value of any work he completed for that month. It appears he stopped working after the discussion on august 1st, but it does not say when payment was due each month, so this would need to be known to make a full calculation of damages. it additionally does not say how many months he was to work total, but overall he would be owed for the months he worked and the quantum meruit value of the rest of the work completed. He could potentially also recover incidentals if he had any, but it is not clear in this fact pattern if there were any.

Cal could potentially also recover some damages in this case. He chose not to have Bob complete the work, so he would most likely not recover the difference in what he has to pay someone else to finish. He could however, recover any profits he lost, by the fact tha Bob was clearly not going to complete on September 1st. These would most likely be consequential damages for the profits lost on teh booking Gil made with him for the second week of september. He would most likely only recover for that specific lost profit, and not for the possibility that people would not book with him in the future. That would not be a foreseeable type of damage prior to the contract.

overall Bob would get monthly payments owed from divisibility of teh contract plus quantum meruit and any incidentals, and this would be offset by any profits Cal lost due to failure to complete on Sept 1st.

Gil v Cal

Cal had promised Gil that he could use the guest house for 5 summers. However there was no consideration in exchange for this promise, so there was not a contract between

them. Gil did donate money to a charity of Cal's choice, but it says he did so in appreciation. That is making a gift not a promise. It could possibly be argued that Cal promised Gil the use of guest house in exchange for the consideration of making a donation to the charity as a 3pb, but this is really not how the facts state it. Gil making it in appreciation is not the same thing as making it as consideration. Gil could possibly argue that he detrimentally relied on a promise for a future contract to use the guest house, but Gil has not actually suffered anything other than reputational damage (potentially) which would not be something he could recover for on contract. He says he wants damages for the cost of going elsewhere, but this would still most likely not be something that he could recover on a reliance theory for. It was not reasonable for him to assume he could have the house that september (it's questionable if that is even summertime), and tell his friends about it, before confirming with Cal. Gil knew the house was under construction. I don't believe there was any contract here and no recovery could be had.

Gil v Bob

As discussed supra, Gil was not a 3pb in this contract, and therefore he had no rights. Bob had prior knowledge of his planned use but that really only speaks to his contract with Cal and consequential damages, and not to any relation to Gil. Gil cannot sue Bob for anything.

Question 2

UCC or Common Law?

The UCC governs contracts for the sale of goods and the common law will govern all other contracts. In this case we have a contract for services, so it will be governed by

the Common Law.

Terms of the contract

In this case the facts state we have a valid written agreement. The terms of the contract were that the processing facility would be built within 10 months for the price of \$800,000, and then two silos would be built within the next two months for a price of \$100,000 each. The total owed would be one million dollars. This was set up to be made with one large payment of \$200,000 in the beginning, and then \$50,000 a month for each 12 months, and then the final \$200,000 at the end. The way this is set up makes it so that Farmer would essentially complete payment for the processing facility after all 12 months of work was completed, including the silos. The silos would be paid for in the last final payment. It should be noted, that if contractor were to complete the processing plant he would still be owed \$800,000 even if he didn't work for 12 full months. This may be relevant later in the discussion.

This contract is set up up to be divisible and has a condition each month that the Engineer certify the work. Because this was clearly stated as a requirement for each monthly payment, it would be considered an express condition. Therefore there is an express condition in this contract that the Engineer must certify the work each month prior to the \$50k payment being made. It is also a condition that the processing facility be completed within 10 months in order to receive the \$800k and the silos must be built in no more than two months for the total price of \$200k. It could be construed that the court would apply an overall constructive condition that for the whole contract, it must be completed within a year to get the whole payment of one million. However this contract is set up to be divisible, so if there is a dispute, payment would be made for each portion completed, even if the entire contract was not completed.

Yes.

Significance of farmer making payments in months 5 and 6 without Engineers inspection

In this case the condition here was set up to benefit farmer. He wanted an inspection complete before payment, and he therefore had the right to waive the condition. He did so for months 5 and 6, but he had a reason for doing so. Engineer was unavailable. Because each month was set up as it's own condition for payment, it is valid for farmer to waive this for only the two months specified. This would not necessarily be interpreted that he waived his right for inspection for the rest of the 6 months. However, waiving this right could present a problem down the road, if work that was not inspected at this time later causes a problem. In the fact patter it is unclear when the sensors that become an issue were installed, and in which month they should've been inspected. If farmer failed to have the inspection at the time and didn't discover the issue until it was more expensive to fix it, then he may not be able to recover the full damages from the lack of these inspections he chose to waive. ? not sure that's fair...

In the 7th month, farmer has Engineer start certifying again, so this makes it clear he did not intend to waive his right to all future certification conditions.

Significance of Farmer instructing engineer not to issue cert and refusing to pay?

In order for contractor to get paid, the work must be certified each month per farmer's express condition. In this case farmer purposely refuses to have the condition met. This would be considered bad faith and would excuse the condition. contractor would have the right to get paid for month 8th, without the inspection, because the condition would be excused due to this breach of bad faith by farmer. Yes.

This could also be considered a material breach of the whole contract on the part of the farmer, because if contractor is not getting paid, he is not benefiting from the bargain of this contract. refusal to pay could be considered anticipatory repudiation by the farmer as well. He is not stating clearly that he will not pay any future months owed, but the fact that he will not pay this month would give contractor the right to be concerned that he won't pay in the future either. This would trigger contractors ability to demand adequate assurances that he be paid in order to continue. It would be

reasonable grounds because he is not getting paid for the last month he worked and he would be justified in stopping work until farmer provided him assurance he would make future payments. he would have to put this in writing and farmer would have 30 days to respond before contractor could sue for all future damages. However in this case contractor does not chose to demand an assurance, he rather choses to continue working despite not getting paid. Contractor has the right to do so, and continuing to work does not forfeit any right he has to continue to be paid under the contract. He may have a history with farmer and therefore beleives he will pay in the future, so he keeps working. However, if farmer could not make any more payments, contractor may not be able to recover the price of all the work he did, because he chose to continue working after farmer was in clear breach. contractor is resposible for mitigating his own damages, and so the court may not award damages for work done after farmer had breached.

Article

Significance of the two deviations found when engineer inspected in month 10?

At this point contractor had completed the facility. Engineer then found two issues that did not meet inspectiong. However contractor could argue that there was no longer a condition to be met for monthly payments with each inspection because in month 8 farmer had told engineer to stop inspecting. This action could be considered a waiver of this condition for the rest of the contract because he said not to issue any more-certs at all. If this condition is excused, then contractor would be owed for all of the 10 months of work and payments which would be \$800,000 in total. At this point it seems he'd been paid for 6 months of work (possibily 7 but it's not totally clear, well go with 6) and therefore would be owed a total of \$200,000.

However, even though passing the inspection was no longer a condition for each months payment, not building the house according to certain specifications would still be considered breach of the contract on part of contractor. So damages would have to be assessed for each one.

The use of stainless steel different brand would be considered ~~minor~~ and would most likely not be required to be replaced because it would be economic waste. There would probably not be damages awarded for this unless farmer could prove that the stainless steel used had less value and decreased the value to his building.

However the sensor issue could be considered a material breach and damages could be awarded for that. The cooling system would be essential to this facility so without it's proper work, farmer would not have his benefit of the bargain. The damages would be \$200,000 which means he would owe contractor nothing because the damage would cancel out the payment he owed to contractor essentially.

However contractor might be able to prove that he should have allowed mitigation of those damages because he had alternate theories and not allowing that would put farmer in continued breach for lack of payment owed. This would justify contractor in not continuing to work on the silos. This would still leave the total owed as \$800k for facility built minus any damages. contractor could potentially get money if he showed the damages for sensors could have been less than \$200k.

farmer would likely not recover any damages for lack of silos.

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

END OF EXAM