1)

======== Start of Answer #1 (1214 words) ========

Common law applies as this fact pattern is dealing with services

Significance of 17 page contract?

The facts state the Bob (B) and Low Rent Law School (LS) entered into a 17 page written contract to build classrooms at a price of 1 million dollars. B would take 6 months to build and would be paid $100,000 in equal installments with 200,000 after completion.

Consideration is an act or forbearance (or promise thereof) by the promisee given as part of a bargain for exchange.

Bob would build the classrooms in exchange for $1 million. The is valid consideration

This is a valid contract.

What is the importance of the mistake in the soil report?

Ordinarily the contractor is deemed to have been allocated the risk for any mistake made about the building conditions, but here the report was supplied by LS. Since LS supplied the reports it is reasonable to assume that they assumed any risk associated with the soil reports. Since they assumed the risk they cannot claim it was a mutual mistake on an essential term of the contract. From the facts it seems that B was justified in asking for more money and time because of the issues with the soil.

Was LS deduction of $50,000 a breach of the contract?

a condition is an event , that is not certain to occur, which must occur before the other party is obligated to perform. Express conditions are met with strict compliance and constructive conditions are implied by law, and are met by substantial performance.

Here it is a constructive condition that LS would make payments of 100,000 dollars according to a specific time table, and B would progress in completion of the classrooms. When LS deducted the payment it could be considered a material breach, meaning they did not substantially perform their condition. If it is determined that it was a material breach then B was justified in stopping work.

LS will argue that it was not a material breach as they were allowed to withhold the money because B was 10 days behind schedule and there was a clause in the contract that addressed that. There was a liquidated damages clause in the contract that stated a $5,000 delay for each day there is a delay. Liquidated damages clauses are only enforceable if it is a reasonable. estimation of actual damages. They are not enforcable if they are punitive.

the facts are unclear how LS came to the number of $5,000 for damages, but if they are enforceable B will argue that they had an understanding that he would be allowed short term extentions if they were reasonable.

The parol evidence rule bars the admission of evidence relating to written or oral side deals formed prior to the signing of a written contract, as well as contemporaneous oral side deals. Here the facts state that this side deal was formed orally at the time of the signing of the contract.

If the contract is fully integrated than no evidence at all would be allowed in to contradict or supplement the contract. If it is only partially integrated than evidence

supplementing the contract will be allowed in but no evidence contradicting.

THe facts state that it is a 17 page detailed contract, and as long as it is determined that this information would not be naturally left out of the contract(which it does not appear that would).the evidence will be barred for being admitted

Good

Parol evidence does not bar evince relating to invalidating the contract, reforming or clearing up ambiguities in the language used in the contract. It does not appear any of these apply and the evidence will most likely be barred.

Good

B can introduce evidence that the liquidated damages clause was ment to be used after august 1st however. As it does not appear that LS and B have and prior dealings B could introduce evidence that the common trade usage in the industry is to apply damages once the contract date has passed, as this is most likely the case. Construction is hard to predict and contractors usually leave extra time to make up for delay in work.

SO the fact that LS withheld the money before the date of completion had arrived probably means he materially breached his condition to pay and B was justified in stopping work.

Good

LS will also argue that even if he was not justified in withholding the money, the fact that he withheld $50,000 on the next to last payment of a million dollar contract was only a minor breach and not a material one. SInce the final payment would be doubled and $50,000 was 1/2 of the payment due it seems that this would be a material breach and not a minor one.

Was B assignment to Quick funds (QF) a valid assignment?

An assignment is a present transfer of rights. Under UCC article accounts(assignments of rights to money) are alway assignable. Contract are usually assignable

unless they increase the burden or risk on the obligor, impair the likelihood or return performance, or there is contractual language prohibiting assignment. Even though there is language prohibiting assignment it was only taking the right not the power(didn't have the null and void language needed) and since it was an account being assigned, and those are alway assignable this was a valid assignable

Great

QF steps into the shoes of B and is subject to any defenses the LS can raise against. Also since B assigned away his rights he no longer can bring a cause of action against LS.

Yes

QF v. LS

If it is determined that LS breached the contract(as it appears they have) QF is entitled to damages. SInce they materially breached the contract LS must pay the $50,000 ut withheld from B as well as the final payment minus cost saved that B would have spent in finishing the project. QF could also sue for damages resulting in B spending extra money because of the mistake in the soil report. LS supplied it, it will likely be determined that they assumed the risk of it being correct and would be liable for the extra cost that B incurred.

B v. LS

As discussed earlier B assigned there rights over to QF and it was a valid assignment. By doing this they gave up there right to sue LS. SInce LS materially breached the contract B is not obligated to perform the rest of the contract.

LS v QF

Even it is determined that LS was not the breaching party they have no cause of action

as it was only the benefit being assigned and it is unreasonable to think they bank would take on the obligations of B.

LS v. B

If LS was not in breach of contract the fact B stopped performance would be a material breach. LS would be allowed to hire another company to finish the job and B would be liable for the extra cost LS had to spend to finish the job. As it is unclear if the liquidated damages clause was a valid clause(as there is no way to tell if it is punitive based on the facts) it is unclear if B was in breach they would be liable for those damages.

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

2)

======== Start of Answer #2 (1305 words) ========

since this is deal with the sale of goods UCC article 2 applies

Significance of 3-1 call between Wendy (W) and Sid(S)?

AN offer is a manifestation of willingness by the offeror to enter into the bargain, and which creates the power of acceptance in the offeree.

This call was just informational and was not an offer. W was just making her intentions known that she was interested in purchasing gold

When she filled out the brochure and sent it back this was an offer. She manifested her willingness to purchase 10 pounds of gold. Although there was no price listed it did say that it would be the closing price on the NYCE. The UCC allows an open price term and can be filled in with clause such as this. The back of the form states the seller has

35 days to approve this order. This creates the power in S to accept the offer.

This is a valid offer

Did S accept the offer?

An acceptance is a manifestation of assent to the terms of the offer in the manner required or permitted by the offer. The offer is silent on how to accept so any reasonable way is fine. S's confirmation that was mailed was a valid acceptance under the UCC. Since the form had additional terms it triggered UCC section 2-207.

Pursuant to 2-207 a definite and seasonable acceptance that has additional or different terms is still an acceptance as long as the acceptance is not expressly limited to the inclusion of the addition or different terms.

So even though his confirmation had additional terms this was a valid acceptance and it allows section2 of the 2-207 to dictate the terms.

Subsection 2 states that the additional and different terms are merely proposals unless both parties are merchants.

A merchant is a party who deals in goods of the kind or other wise holds themselves out to be an expert in the field.

Both Wendy and SId deal in gold and would both be considered merchants.

Since both parties are merchants than the additional terms become part of the contract unless they are objected to in reasonable timer, or materially alter the contract.

Different terms are subject to a split of authority. The majority applies the knockout doctrine and knocks out the different terms in both the offer and acceptance and gap

fillers are used to fill in the contract. The minority treats the different terms as additional.

In this acceptance there was a boiler plate that include a force majeure clause excusing performance for an act of god, or war. SInce there was a conflict going on in africa, and that is the reason W was placing such a large order, this clause would probably be determined to materially alter the contract. If it is ruled that it materially alters then it would not be included in the contract.

The force majeure clause is most likely excluded from the contract.

Consideration is an act or forbearance (or promise thereof) by the promisee, given as part of a bargain for exchange.

W is giving money in exchange for gold. The is consideration

This is a valid contract

Significance of W's letter trying to cancel her order?

W's letter trying to cancel her order could be considered an anticipatory repudiation. SInce her offer had been accepted she no longer had the power to terminate the power of acceptance. Anticipatory repudiation is a clear and unambiguous act showing a party either will not perform and cannot performance. Her sending a letter stating that she no longer wanted to purchase the gold probably never reached the level or an anticipatory repudiation. THe letter however is grounds for reasonable in securities and S would be justified in demanding adequate assurances that W will perform. However S did not demand assurances and therefore there probably was no breach of the contract.

When S received did receive the letter he made a note to buy the gold for W. He did not purchase any gold for W and gold went up 15%. When he got W letter 2 days later

stating that she still wanted the gold S should have made it known that he believed the contract had be rescinded or that he had no intentions of fulfilling her order. As stated prior W actions probably were not enough to be considered a breach and there was still a contract.

S will argue that he relied on the 3-8 letter and did not purchase any gold before the price shot up 15%. W should have known that S would rely on the letter and it is her fault the gold never got ordered.

Is macy's and Nordstrom's (N) 3rd party beneficiaries (3PB) to W and S contract?

It appears that Macy's and N are just incidental 3PB and are not intended therefore do not have any rights under the contract of W and S. To be an intended 3PB they must be expressly named in the contract with performance running directly to them, with knowledge and intent of both parties and the 3PB right to sue should be appropriate to effectuate the intentions of the parties. W does mention both stores but it does not seem like S intended to benefit the stores or did he think it would be appropriate for the stores to have the right to sue on the contract.

Macy's and N are just incidental 3PB

W v S

If it is determined that S was still responsible to fulfill the order to W than he would be liable for damages. He will argue that the force majeure clause would relieve his liability but as discussed above that is most likely not in the contract. He will also argue that he relied on the letter W sent canceling her order. If it is determined that his reliance was unreasonable then he would still be responsible for money damages to W. He could also argue that it was impractical to perform the contract as gold had doubled. For an impracticability defense to performance there must be a change in circumstances that

cause the cost of perform to rise so high that it changes the nature of the contract. Also the party seeking relief cannot have been allocated the risk. The price of gold doubling could be considered so high to excuse performance. W will argue that he assumed the risk of selling her gold he knew was coming from Africa, but S will argue that he did not assume the risk and the fact that he put a clause in the contract even though it was knocked put should show the risk was not allocated to him.

It appears S 's performance was excused and the risk was probably not allocated to him, therefore W has no cause of action.

Macy's and N v. W

Macy's and N had a contract with W to provide bracelets and rings. W will also use the impracticability defense as well. THe terms of the contract are not really stated in the facts and it is hard to determine if W had the risk allocated to her. If she did not it would be a valid defense to performance. If she did not he would be liable for damages. Macy's and N would be required to cover and W would be responsible for the price difference between her prices and what they bought the new jewelery for plus incidental cost.

Macy's and N have no cause of action against S as they are not intended 3PB and even if they were would be subject to the same defenses that S used on W.

It is assumed that 10 pounds of gold would cost over $500 triggering the statute of frauds, but the statue of frauds is st

======== End of Answer #2 ========
END OF EXAM