PROFESSOR'S INSTRUCTIONS

1. This is the essay portion of your final exam. You should have two pages, excluding this cover page.

2. There is one essay question. I suggest you spend 90 minutes on the question.

3. Discuss all issues, even if one issue determines the outcome. Be thorough but concise. Do not discuss law in the abstract--apply it to the facts.

4. If you need more facts to resolve an issue, identify the facts and explain their relevance.

5. In general, you should apply modern rather than traditional rules, and majority rather than minority rules.

STOP! DO NOT FLIP THIS COVER PAGE UNTIL TOLD TO DO SO BY THE PROCTOR!
QUESTION

Apex Company produces breeding stock for the beef industry. One of its bulls goes by the name of Hercules; he is renowned for his ability to sire offspring which produce meat that is tender yet low in fat.

In 2003, Apex decided to stake its reputation and future financial success on cloning. It hired scientists and laboratory technicians and spent millions of dollars. As a result, by 2005, the company owned ten healthy clones of Hercules.

Meat Market is a company that produces cattle and slaughters them for meat. In June 2005, Meat Market decided it needed more breeding stock. It telephoned Apex and requested five bulls sired by Hercules, at a price of $50,000 per bull. Apex promptly delivered five bulls and Meat Market paid for them.

By March 2006, these five bulls had produced dozens of offspring. Meat Market planned to use some of these offspring as meat and others as breeding stock when they reached maturity.

In October 2007, the Food and Drug Administration approved the sale of meat from cloned animals and their offspring to the public.

On November 10, 2007, Meat Market received a fax from Down Home Foods, a health food chain store. Down Home ordered 10,000 pounds of steaks at a price of $10 per pound, deliveries to occur in 2,000 pound monthly installments beginning on January 1, 2008.

Meat Market promptly faxed back an acknowledgment form committing to provide the 10,000 pounds of steaks on the terms Down Home had stated on the front of its order form. However, neither party read the back of the other’s form.

On November 21, 2007, the state in which Apex, Meat Market, and Down Home are located enacted legislation requiring that all meat from clones or offspring of clones be labeled as such when sold to consumers.
Meat Market delivered the first 2,000 pounds of steaks on schedule. Down Home paid the purchase price and immediately began to resell the steaks to the public at a price of $15 per pound.

On January 14, 2008, Meat Market received a telephone call from Apex. Apex explained that the company had made an error: it had delivered five clones of Hercules. Apex assured Meat Market that the clones were just as healthy as if they had been sired by Hercules the old-fashioned way, and their offspring should be healthy, low fat, and tasty.

On January 15, 2008, Meat Market checked its records and realized that its first shipment of steaks to Down Home had included some meat that came from offspring of the five clones. Once the meat packages left the company, it was not possible to identify the affected ones. Meat Market telephoned Down Home and explained what had happened.

Down Home had already sold 1,000 pounds of the steaks. It pulled the rest of the steaks off the shelves of its stores and returned them to Meat Market along with a letter stating that steaks from offspring of clones were unacceptable. The letter also cancelled the contract on the ground that Meat Market had provided meat from offspring of clones.

A news reporter got wind of the problem and published a scarifying account of how customers of Down Home had been eating “Franken-foods.” Several customers who had purchased and eaten steaks from Down Home read the article and became very angry and upset. A few threatened litigation, even though the meat did not cause them any physical harm.

Meanwhile, Down Home finally got around to reading the acknowledgment form it received from Meat Market. The form did not make the seller’s acceptance conditional. However, the back of the form did include this clause printed in red letters: “Seller makes no warranties, express or implied. This contract does not include any warranties of fitness or merchantability.”

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.