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 relevant issues, even if one issue seems to determine 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

ABC Company manufactures outdoor shelters, ranging from the most basic tents to elaborate gazebos and summer houses. Emma Lavender is in the business of providing floral arrangements for weddings and other parties. She grows many of her flowers and greens on her own land in the country.

In early 2008, Emma realized that her gardens were beautiful in their own right and decided to expand her business to include renting the grounds for weddings, at a price of $10,000 per event. But first she needed a focal point for the garden and a place where the couple could stand and be married.

She went to ABC’s showroom and viewed a variety of garden structures, eventually zeroing in on a delicate white gazebo in vintage style that included small benches attached around the rim of the interior. The name of this model was “Floral Fantasy.”

Emma asked the showroom manager if the benches were for show or could be used. He assured her that the benches were safe for use. She and the manager shook hands on a deal for the gazebo at a price of $50,000, to be delivered on or before June 1, 2008.

Two days later, ABC faxed a signed acknowledgment form stating it had sold one Floral Fantasy gazebo for $50,000 to Emma, to be delivered on or before June 1, 2008. The form also included boilerplate provisions (which Emma did not understand) such as: a clause stating the writing was the entire agreement of the parties; and a clause making repair or replacement of defective parts the sole remedy. Emma put the form aside and did not respond.

ABC shipped the Floral Fantasy gazebo (disassembled) to Emma’s address. When it arrived on June 1, 2008, Emma put a $50,000 check in the mail to ABC.

Emma immediately assembled the gazebo and scheduled her first big event: the wedding of Caroline and Carey Jetset, on June 7, 2008.

When the big day came, the wedding party assembled under the gazebo. The ceremony went well until Caroline’s
aged and heavyset father got tired and took a seat on one of the benches. Instantly the bench collapsed, taking that side of the gazebo with it. No one was hurt, and the wedding was completed, but Caroline departed in tears.

Emma awoke the next morning to discover an angry voice mail from Caroline complaining that Emma had ruined her wedding. Emma checked Caroline’s influential blog and found a review that panned her company.

Emma asked a friend who was an engineer to check out the gazebo. He concluded Emma had assembled the gazebo properly, but the benches weren’t sturdy enough to sit on.

Caroline’s blog had its intended effect: Other couples began to cancel their wedding reservations with Emma.

On June 9, 2008, Emma disassembled the gazebo, loaded the pieces onto a truck, and drove back to ABC. She dumped the gazebo in the parking lot with an angry note about what had happened.

Alvin B. Checker, the President of ABC, called Emma the next day with an offer to fix whatever was wrong, but Emma refused to take the gazebo back and stopped payment on the check she had used to pay for it.

Four months or so later, the economy crashed. The market for gazebos and other garden structures went into a steep decline. ABC cleaned up the gazebo and resold it to another customer for $20,000, which was about $7,500 more than it had cost to manufacture the unit.

Emma gave up on renting her grounds and went back to tending her garden and providing floral arrangements. She expects to make no profit in 2009, and may even have to sell her land if she can’t make the mortgage payments. She blames ABC for this sad state of affairs. She believes she could have made as much as $200,000 in 2009 if the first wedding in the gazebo had gone well. That’s how much a friend of hers in another state made from renting her property to wedding parties in 2008.

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.