QUESTION 1

Painter and Developer entered into a contract under the terms of which Painter was to paint the interior of Developer's new apartment building for a price of $40,000. The contract called for work to begin on June 1 and to be completed on July 1. Painter was ready to start work on June 1, but Developer told Painter that because of problems with the drywall contractor, Painter could not start work until June 15. To avoid the possibility of losing her employees, who might quit if forced to take a two-week layoff, Painter took another job, which was not completed until June 20, at which time Painter started work on Developer's building.

On July 15, Painter informed Developer that she would not be able to complete the project until August 15. Developer told her he would lose substantial rental income if the project was not completed by August 1, when university students, his prime market, began moving in. He asked her to hire additional help, but she refused, saying the job would be finished on August 15 or not at all. In an attempt to get the job completed sooner, Developer fired Painter and looked for another painting contractor.

The best price Developer could get to have another painting contractor finish the job was $30,000. Before firing Painter, Developer had paid Painter one-half of the contract price. Because the painting was completed late, Developer lost $10,000 in rental income. This rental income would not have been lost if the painting had been completed by August 1.

At the time Painter was fired, she was out-of-pocket for $5,000 in materials. She expected a profit of $5,000 had she been allowed to complete the contract. Developer has sued Painter for breach of contract. Painter cross-complained against Developer for breach of contract.

1. Who breached the contract? Discuss.

2. Assuming Painter breached the contract, what damages, if any, would Developer be entitled to? Discuss.

3. Assuming Developer breached the contract, what damages, if any, would Painter be entitled to? Discuss.

QUESTION 2

Bob was an underpaid teller at Bank. On his lunch hour one day, he went into a store where he noticed a valuable necklace on the counter. He picked it up and put it in his pocket. Clare, a clerk at the store, approached Bob and asked him to put the necklace back. Bob punched Clare, returned the necklace to the counter, and fled back to Bank where he began waiting on customers.

One customer was Fred, Bob's close friend, who put down a ten-dollar bill and asked Bob for a roll of quarters. Bob then told Fred that he would secretly pass him one hundred dollars if Fred would later give him one-half. Fred agreed and later the two split the cash.

The next morning when Bob went to work, Marilyn, the bank manager, began questioning him in her office. Alarmed at this, Bob grabbed a letter opener and stabbed Marilyn in her arm. Then Bob fled outside, jumped in a car, and drove to the house of Gina, his girlfriend. He told Gina what had happened. Gina decided to call the police, but Bob knocked her unconscious, put her in his car and went to Fred's house to hide her.

Finding the door to Fred’s house locked, Bob broke in the door and hid Gina inside. At that point Fred appeared and protested to Bob. Bob struck Fred, pushing him down. As Fred fell, he knocked over a lamp and started a fire. Bob panicked and ran out of the house. The house began to burn. Fred got out alive, but Gina died in the fire.

What crimes, if any, did Bob commit? Discuss.

QUESTION 3

David owns a herd of dairy animals from which he produces and sells milk and cheese. The animals in his herd are the product of cross-breeding domestic goats and a wild breed of sheep. They have the appearance and size of large goats, but have the much more aggressive character of bighorn sheep. In fact, the males have large curved horns similar to those of the bighorn and become aggressive when agitated.

One of the locks on a gate into a pen that held 40 of these animals was beginning to pull free from the wooden support post to which the lock was attached; a close inspection would have revealed that the wood was rotting around the screws that attached the lock to the 10-year-old post. Unfortunately, David failed to examine the gate support post when he performed his regular semi-annual inspection of the fencing on his land. Eventually the lock in fact pulled out, the gate swung open, and the animals wandered onto neighboring land.

Peter, David's next-door neighbor, found most of the animals on his land. Peter attempted to herd the animals back onto David's land, using an electric cattle prod to deliver shocks to them when they wouldn't move as he wished. When Peter shocked one of the larger horned males, it turned and rammed him, knocking him to the ground. After Peter was driven to the ground, the animal continued butting him, striking Peter quite a few times in the head and upper body. The attack left Peter with a serious concussion and broken bones.

Peter went to the local hospital emergency room (ER), where his broken bones were set. Even though Peter mentioned having a headache, the ER doctor and nurses didn't examine him for concussion or other head injury. Peter failed to report to them that the animal had directly struck his head. Later that day, Peter suffered a cerebral hemorrhage (bleeding in the brain), with paralysis in his upper limbs.

1. What tort causes of action, if any, can Peter reasonably assert against David?
Discuss.

2. What defenses, if any, can David reasonably raise? Discuss.

3. What damages, if any, will Peter be able to obtain against David? Discuss.

QUESTION 4

Jack, a retiree, plans to build a new home on his vacant property. He decided to use a particular product called “Austin Brown Stone” for the exterior walls, and estimated he would need about 100 tons of stone.

Jack drafted a contract to present to Stone-Co, a local stone distributor, in which Jack agreed: (i) to buy all the Austin Brown Stone he needs to build the exterior walls of his house, (ii) at a price of $200 per ton, (iii) to be delivered to his property in 5-ton lots within 10 days following each request for 5 tons, (iv) to be paid for upon delivery. To ensure timely deliveries, Jack included a liquidated damages clause which provided that Stone-Co would pay $5,000 per day for each day that any requested delivery is late.

Jack signed and dropped off the contract to Stone-Co for its review and signature. That evening, the Stone-Co salesperson, knowing that Austin Brown Stone is often not easily obtained, wrote the following just below Jack’s liquidated damages clause: “Notwithstanding the foregoing, if Stone-Co has difficulty getting Austin Brown Stone, Stone-Co may substitute Austin White Stone.”

The Stone-Co salesperson then signed the contract and returned it to Jack the next day. Jack did not read the modified contract or see the term added by Stone-Co.

One week later, Jack made a request for the first 5 tons of Austin Brown Stone, and Stone-Co started looking for a supplier. Stone-Co quickly discovered that Austin Brown Stone was not available in the United States. Although it could be imported from Canada, importing it would add $25 per ton to Stone-Co’s expenses and reduce its profit margin.

Ten days after Jack’s order, Stone-Co delivered Austin White Stone with a note stating that Austin Brown Stone was not available in the U.S., and a demand for payment at the new price of $225 per ton. Jack immediately called the Stone-Co salesperson, stating he would not accept the substitution because Austin White Stone is a completely different product.

Jack contracted with another supplier for Austin Brown Stone at $225 per ton. Jack thereafter filed a lawsuit against Stone-Co seeking damages for breach of contract and liquidated damages.

1. What is Jack’s likelihood of success in his lawsuit and what damages, if any, would he be entitled to? Discuss.

2. What defenses, if any, can Stone-Co reasonably assert? Discuss.