

June 2020 ESSAY QUESTIONS

QUESTION 1

Mel was late for an important meeting with his supervisor one evening and was driving at least 35 miles an hour on a residential road. The posted speed limit on this road was 30 miles per hour.

As Mel rounded a curve in the road, Nigel suddenly backed out of his driveway in front of Mel. Mel's headlights were on, and his lights would have been visible if a driver had looked carefully. To avoid hitting Nigel's car, Mel both braked hard and turned into the center of the street, crossing a yellow (no passing) line and partially entering the lane of on-coming traffic. Even if he had been going substantially slower, he would have had to take these actions to avoid hitting Nigel.

Otto was driving towards Mel while adjusting his car radio. As a result, Otto did not see Mel in time. Had he been attentive, he likely could have avoided an accident. Instead, the two cars collided, left the road, and plowed into Penny who was walking on the sidewalk. Nigel's car was not touched. Penny was seriously injured.

- 1 What claim or claims can Penny reasonably raise against Mel; what arguments can Mel reasonably make; and what is the likely outcome? Discuss.
- 2 What claim or claims can Penny reasonably raise against Otto; what arguments can Otto reasonably make; and what is the likely outcome? Discuss.
- 3 What claim or claims can Penny reasonably raise against Nigel; what arguments can Nigel reasonably make; and what is the likely outcome? Discuss.

QUESTION 2

Seller is a merchant in the business of making fine guitars, which are sold to retail dealers at wholesale prices through an online catalog. Buyer is a merchant who owns a retail music store that sells numerous brands of various stringed instruments.

Buyer emailed Seller asking that ten Model A guitars be delivered to Buyer at the wholesale price of \$5,000 each as listed in the catalog. The next day, Seller emailed an invoice for \$50,000, stating (i) that delivery would be made within 14 days, (ii) that any complaints about the condition or quality of the guitars, and/or return requests, must be made within 10 days of delivery, and (iii) that payment is due on delivery. Those three provisions are customary in the musical instrument industry.

Buyer received the invoice, but did not respond. The guitars were delivered to Buyer 11 days later, but Buyer sent no payment to Seller. Two weeks after the instruments were delivered, after having had several customers buy other guitars instead of the Model A, Buyer sent an email to Seller stating, "These guitars do not satisfy my customers' needs. Therefore I am not paying for them. I am returning them at my expense."

Seller sued Buyer for breach of contract.

What arguments will Seller make in support of her claim; what defenses will Buyer assert; and what is the likely outcome, including what remedies, if any, can Seller expect if her claim succeeds? Discuss.

QUESTION 3

Doug decided to kill Bob, the owner of a small grocery store, because Bob had twice falsely accused Doug of shoplifting. Doug went into Bob's store and killed Bob by shooting him twice with a handgun. After the shooting, Doug noticed the cash register, went over and opened it, and took all of the money out. Doug then saw a customer, Sally, hiding behind some shelves. He pointed the gun at Sally, took her purse, and tied her hands behind her back. Doug then heard police sirens and ordered Sally at gunpoint out of the store and into his car.

Officer Fran, who was responding to a report of gunshots at Bob's store, saw Doug speed out of the parking lot in his car. Officer Fran chased him for several blocks until Doug pulled into an empty parking lot. When he got out of his car, Doug fired several shots at Officer Fran, who responded by firing her gun at Doug. She missed Doug, but one of her bullets went through a window of the car and hit Sally, killing her. As Doug tried to run away, Officer Fran tackled him and knocked the gun from his hand. Doug got up and punched Officer Fran with his fist. Officer Fran then subdued and arrested Doug.

With what crimes can Doug reasonably be charged; what defenses, if any, may he reasonably raise; and what is the likely result? Discuss.

QUESTION 4

Woody lived in a cabin in a rural neighborhood. Woody had an outhouse that created an offensive odor. Woody decided to install an underground septic system so that he could have an indoor bathroom.

Woody discovered that the septic system he planned on installing would not fit on his land and that a portion of the system would have to extend underneath Neighbor's vacant lot, which was situated next to Woody's property. A fence had once stood on the property line between the two lots, but all that remained were some broken fence posts.

Since Woody knew that Neighbor was overseas for a year, he decided to install the septic system during Neighbor's absence. He hired Chuck, an independent licensed contractor, to do the installation.

During construction, Chuck saw the broken fence posts and suspected that they marked Woody's property line. He told Woody that a part of the septic system, if installed, would end up underneath the adjacent lot. Woody scolded Chuck for talking too much and then demanded that Chuck cut down the maple tree on Neighbor's lot to make room for the septic system. Because Chuck needed the work, he cut down the tree, dug up the ground, and installed the septic system. Woody later burned the wood from the tree as firewood because he liked the ambiance burning wood created.

Neighbor returned from overseas and discovered what Woody and Chuck did to his vacant lot and his maple tree. Neighbor sued Woody and Chuck for damages.

- 1 What tort claims can Neighbor reasonably raise against Woody and Chuck; and what defense(s), if any, can each or both of them reasonably make? Discuss.
- 2 If Neighbor prevails against Woody and Contractor, what damages may Neighbor receive and how should such damages be apportioned? Discuss.