

Essay Review

Question 1

Roofer contracted with Hal to replace the roof on Hal's house. The usual practice among roofers was to place tarpaulins on the ground around the house to catch the nails and other materials that were scraped off during the removal of the old roof. On this occasion, Roofer did not have enough tarpaulins, and he failed to place one on the ground at the rear of Hal's house. As a result, many nails and old roofing material fell into the grass of Hal's back yard. At the end of the job, Roofer did his best to clean up the back yard but missed some of the nails that were imbedded in the grass.

About six months later, as Hal was mowing his back lawn, his lawnmower ran over one of the nails and propelled it over the fence into the back yard of Ned, his neighbor. A few days later, as Ned was walking barefoot in his back yard, he stepped on the nail, which pierced his foot, causing him severe injury.

In an action brought by Ned against Roofer for negligence, what defenses might Roofer reasonably assert, and what is the likely outcome on each? Explain fully.

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Question 2

Buyer manufactures mattresses, which feature an outer layer composed of a cotton material called "batting." Unexpectedly, Buyer's supply of batting ran out, which brought the entire production line to a halt at a time when Buyer was trying to fill a large, special order from Sleepco, one of his customers. Buyer's regular supplier of batting refused to deliver any more batting because Buyer was behind on his payments to the supplier.

On May 1, Buyer telephoned Cotton Co. and told Cotton Co. that he urgently needed a large bale of batting and that he was willing to pay "top dollar" if Cotton Co. would deliver the bale of batting by the end of the day. On May 1, Cotton Co. delivered the bale of batting and told Buyer it would send him Cotton Co.'s invoice for \$5,000 later in the week. Buyer was upset because the price was about 30% higher than that charged by his regular supplier but, because of his urgent need, Buyer opened the bale and began using the batting to make mattresses.

On May 2, at a time when Buyer had used about 5% of the batting, Sleepco called and cancelled the order. This cancellation was such a major blow to Buyer's financial condition that he announced that he would immediately close his manufacturing plant.

On May 5, Cotton Co. learned that, in fact, Buyer had been insolvent for the past 60 days. On May 6, Cotton Co. demanded that Buyer either pay the invoice or return the unused part of the bale of batting immediately. Buyer refused, asserting that he and Cotton Co. had never entered into an enforceable contract, and informed Cotton Co. that he had sold the remaining batting to another mattress manufacturer.

1. Can Cotton Co. prevail in an action for breach of contract against Buyer? Explain fully.
2. Does Cotton Co. have the right to reclaim the unused batting? Explain fully.

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Question 3

After drinking heavily, Art and Ben decided that they would rob the local all-night convenience store. They drove Art's truck to the store, entered, and yelled, "This is a stickup," while brandishing their unloaded pistols. They discovered that the only persons in the store were Mark, who worked at the store, and Fran, a customer. Art became enraged, since he regarded Fran as his steady girlfriend and was jealous that she had been spending time with Mark. Art announced, "We'll chill these lovers out," and loaded them into the truck. Art drove a very short distance down the dirt road behind the store to a large refrigerator. Art locked Fran and Mark in the refrigerator. Art then returned to the store to pick up Ben, who took \$250 from the cash register on his way out of the store.

The next day, the store manager saw that things were amiss and called police, who rescued Fran and Mark from the refrigerator. Fran suffered no significant injury, but Mark soon developed pneumonia and died as a result of it several weeks later. The coroner's report showed that Mark had an extraordinary susceptibility to pneumonia and that it was triggered by exposure to the combination of viruses and the intense cold of the refrigerator.

1. What criminal charges, if any, should be brought against Art and Ben? Discuss.
2. What defenses, if any, do Art and Ben have to the criminal charges? Discuss.