

**QUESTION 1**  
**(One hour)**

Dontools, Inc., a well known company, manufactured nail guns. Peter bought one of the nail guns for some home repair work. With the nail gun came a brochure, which read: "Safest nail gun in the west. Won't fire with the safety on." The next day while Peter was working on his backyard deck he accidentally shot himself in the head with the nail gun. A nail entered his skull and caused damage to his brain. When the nail gun was recovered investigators for both Peter and Dontools, Inc. examined it and agreed that the safety was on at the time of the accident, but that a critical screw had been inadvertently left out of the nail gun at the factory, causing the safety to malfunction. Peter couldn't remember the facts of the accident or whether he had read the brochure before purchase.

Other than failing to regain his memory about what happened in the nail gun accident, Peter fully recovered from his brain injury. Angry about his injury, Peter placed an ad in the New York Times, which said: "Dontools products are all defective, all the time!" As a result of this ad, Dontools, Inc. suffered a 5% loss in business for six months. Dontools, Inc. issued a press release in response to Peter's ad. It stated: "Peter misused our product and is now brain damaged and mentally ill. The poor man is simply not to be believed." In the litigation that followed, Peter, to retaliate against Dontools, Inc. for the press release, and in an effort to disrupt the company's business, served deposition notices on all 20 of Dontools, Inc.'s managers, requiring all of them to appear over two consecutive days.

What causes of action does Peter have against Dontools, Inc., and what are its defenses, if any? Analyze.

What causes of action does Dontools, Inc. have against Peter, and what are Peter's defenses, if any? Analyze.

**QUESTION 2**  
**(One hour)**

Dave owned a grocery store. He found out his cashier, Penny, was going to quit and open a grocery store of her own nearby. Angry, Dave fired Penny and called the police, falsely accusing her of stealing money from the cash register. Penny was arrested, but the case was dismissed due to insufficient evidence.

After her release from custody, Penny opened her store. She knew that Willie worked for Dave as his night manager. She invited Willie to quit his job with Dave and come work as night manager at her grocery store. Willie accepted, stopped working for Dave and immediately started his employment with Penny.

A few weeks later Dave was out walking his pet ferret when he saw Penny sitting on her front porch. Dave decided to approach Penny to apologize for what had gone on between them. His ferret, which had never been aggressive before, suddenly slipped out of its leash and attacked Penny, biting her leg. Dave rushed in to help and as soon as he grabbed the ferret, Penny, afraid Dave was attacking her too, punched Dave in the eye. The ferret escaped. Penny found it later that evening hiding in her back yard and killed the ferret with a shovel. Dave knew that Penny killed the ferret because he saw her do it: he had climbed a tree near her house and was taking pictures of Penny in her back yard using a camera equipped with a telephoto lens. When he got out of the tree, Dave started walking home. When Dave reached the middle of a crosswalk, he was struck by a car driven by a distracted Willie, who was now working for Penny and was returning to her store after purchasing cleaning supplies for use on the store counters.

What causes of action does Penny have against Dave, and what are Dave's defenses, if any? Analyze.

What are Dave's causes of action against Penny, and what are her defenses, if any? Analyze.