

No matter what Danny's job is at Ye Olde Lumber Experience, we look to sue under respondeat superior.

Standard of care: Absent the waiver, the standard of care would be invitee. Assuming the contracts valid, Danny would make the defense of the assumption of risk by express agreement. That is not valid for gross negligence and willful and wanton acts. So if the court finds the waiver valid, the standard of care will be gross negligence, or wanton and willful.

Abby:

1. Abby potentially could sue for negligent infliction of emotional distress if she falls under the category of plaintiffs who can sue for this under local law as she was in the zone of danger while witnessing the damage to Burt, assuming that the damage to Burt is bad enough to fulfill the local statute.

Burt:

1. Burt can sue Danny for the loss of his legs due to the negligent acts of Danny.
  - a. Duty: As we have said, shows that Danny has a general duty of care to all foreseeable plaintiffs.
  - b. Standard of Care: He violated his standard of care because he was willful and wanton in his acts towards Burt.
  - c. Breach of Duty: He breached his duty by telling Burt to jump on the log for 'log surfing'.
  - d. Actual Causation: But for Danny's taunting of the three, Burt would not have gotten up on the logs, attempted to 'log surf,' and lost his legs.
  - e. Proximate Causation: Getting your leg chopped off by the saw blade while standing on a log that is being processed by a spinning saw blade is foreseeable because it has happened in the past, and Danny had warned them. "[Obviously, very dangerous. It's amazing no one died. Does anyone want to try?"]"
2. Given these elements, Danny is negligent.
  - a. In Danny's defense, Burt was also negligent.
    - i. What effect this has on the case depends on state law.
    - ii. If the state has contributory negligence as their standard, then Burt cannot recover.
    - iii. If it is comparative negligence, then he will be able to recover somewhat.
      1. This will be reduced depending on how big of an idiot the jury would find him.

- b. He can also say that Burt impliedly assumed the risk, because Burt jumped on the log himself.
    - i. The risk was implied, because Danny said it was very dangerous.
- 3. Similar to Abby, Burt can have a claim of negligent infliction of emotional distress.
  - a. In Danny's defense, there is no evidence, however, that Burt sought medical help for his emotional distress so it is unclear whether he would recover.

Chris:

- 4. Chris can sue Danny for damages resulting from his concussion, coma, and possibly loss of business.
  - a. Duty: Normally, there is no affirmative duty to act to help someone unless, as in this case, the person is in peril because of the defendant's negligence.
  - b. Standard of Care: Still gross negligence
  - c. Breach of Duty: In order to show breach of duty, we need to show that Danny's act showed willful and wanton disregard for Chris's safety.
    - i. After his head trauma, Chris exhibited wooziness and nausea. He also suggested that he thought he may have had a concussion.
    - ii. In light of these facts and the NELIA First Aid posting of the suggestions for possible concussion, Danny's failure to contact emergency authorities was willful and wanton.
  - d. Actual Causation: But for his negligent acts toward Burt, the concussion wouldn't have happened, and but for his willful and wanton refusal to get Chris medical attention, Chris lapsed into a coma.
  - e. Proximate Cause: It is foreseeable that Chris, standing next to Burt, could be injured from Burt reacting to Danny's shouts of false warning while playing his prank. Danny's negligence is a proximate cause of Chris's head injury. As a result of Danny's negligent failure to help Chris, he fell into a coma. This was foreseeable and the exact type of risk-within-the-harm. Danny's failure to act was a proximate cause of Chris's coma. As for the loss of Chris's business, it is more problematic in its immediacy, but this would be for a jury to decide.
  - f. Defenses: Danny could say that he relied on Abby's purported medical expertise in assessing Chris's condition. If the jury agrees, they may find both partially at fault.

5. Chris can sue Abby for her dangerous medical attention.
  - a. Duty: Ordinarily Abby wouldn't have a duty; however, she assumed duty by acting to help him.
  - b. Standard of Care: As she is not a medical professional, her standard of care is as a reasonable person.
  - c. Breach of Duty: She breached the duty by failing to treat his concussion, the procedures for which were posted throughout the sawmill.
  - d. Actual Cause: But for her medical assessment, Danny may have acted on Chris's condition and Chris might not have lapsed into a coma.
  - e. Proximate Cause: His coma was a directly foreseeable consequence of her failure to attain actual medical attention for him.
  - f. Defenses: Her defense would be the accusation of Danny.

#### Hunters

The hunters were undiscovered trespassers, so Danny has no duty to begin with. The fact that he knew hunters frequented the area near his property does not prove he knew they trespassed on his property. Even if he did, this accident clearly fails the harm-within-the-risk test.