

Outline: Ye Olde Sawmill Tort Class Midterm
Call: Potential Claims and liabilities of the parties

1. Waiver Release/assumption of Risk
 - a. Unreasonable waiver for all 3
 - i. Wanton/willful
 - ii. Unconscionable
 - b. Assumption of Risk does not negate comparative negligence
2. Burt
 - a. Negligence per se against Danny
 - b. Negligence against Danny
3. Abby against Danny
 - a. Whether she has a claim of outrage
 - i. Elements:
 1. Act
 2. Intent or recklessness
 3. Extreme and outrageous conduct
 4. Causation
 5. Severe emotional distress
 - a. Sought medical attention
4. Chris against Danny
 - a. Negligence
 - i. Proximate cause of falling (Chris)
 - ii. Negligence for lack of care
 - iii. Pure economic loss
5. Strict liability
6. Hunters against Danny
 - a. Negligence
7. Chris claim against Burt

Issue 1. Is the Waiver, Release of Liability form signed by Abby, Burt, and Chris is legally binding?

Analysis: Even though the three participants signed the Waiver Release of Liability, Assumption of Risk Agreement, the wanton and willful conduct of Danny invalidates the contract due to the fact the mill was operating in an unsafe manner. Danny had to shut down the mill because he was not in compliance with OSHA standards, and would not be able to be in compliance by the deadline required. He could not provide a safe working environment for either his employees or for others doing the similar activities. OSHA told him that wearing loose clothing and floppy shoes was dangerous at the mill and had caused many severe injuries. OSHA also required a red flashing light for blades over 12 inches to warn employees the blades were running, thus to promote greater caution when working around them.

If Danny were to say the participants consented to participation in the dangerous activities and were aware of the dangers as a defense, his argument would not be persuasive because he omitted some of the key dangers involved with the visitors' role-playing and misrepresented the risks involved in many mill activities. The consent is lacking merit, because it can be shown the participants had no meaningful alternative, no bargaining power in signing the waiver. The waiver, if looked upon as a contract, would be considered

unconscionable. Courts tend to not enforce a contract unfair to the party seeking to escape from the release of liability waiver.

The participants may not have believed or even understood the waiver form. It is unrealistic a reasonable person would not sign it with the understanding they would be subjected to extreme danger. The participants could claim they understood the waiver was part of the overall experience, setting the stage for an authentic experience or role-play by the CEO himself.

Conclusion: Abby, Chris, and Burt would be able to successfully bring their claims for negligence and outrage to court, despite, having signed the waiver. It would be difficult for Danny to substantiate the validity of the release of liability waiver.

Issue # 2 Does Burt have a claim of negligence against Danny?

Rule: The elements for Negligence are:

1. Duty
2. Standard of Care
3. Breach of Duty
4. Actual Causation
5. Proximate Causation
6. Damages

Analysis

Duty: Danny has the duty to Burt as an invitee on his property. He has a duty to warn or make safe any known or concealed dangers. He

knew that the operation of the sawmill was a potentially dangerous. That is implicit in the fact that he had to shut down the mill since he was not in compliance with OSHA standards. He did not provide a safe working environment for employees, therefore he could not providing a safe environment for people doing the same activities.

Standard of Care: The standard of care is that of a reasonable person, and as the experienced operator of the sawmill. Danny violated the standard of care by allowing Abby, Chris and Burt to work as regular saw mill employees, with no known training, knowing that the saw mill was not up to OSHA standards.

Breach of Duty: Danny had a duty to make safe any known dangers. Details of the dangers in regards to working at a sawmill was supposed to have been given to the participants prior to having signed the waiver. Having omitted this vital precaution, Danny breached his duty to Abby, Chris and Burt.

Actual Causation: At the start of the tour, Danny had made a joke. Burt reacted in a way that caused Danny to tell Burt he would make a terrible lumberjack. This taunting by Danny bruised Burt's ego. Therefore, despite Danny's warning of the dangers regarding log riding, Burt rode anyway. Burt's lapse in judgment would not have occurred but for the Danny's demoting comments.

Proximate Causation: Proximate causation requires an element of foreseeability. Danny had mentioned three times the dangers of log

riding. Yet despite, his own warnings, he allowed Burt to ride the logs. Danny, as an experienced sawmill worker, should have known, like a reasonable person would, that injuries are prone to happen in an ultrahazardous environment like the sawmill.

Damages: Burt lacerated both of his feet, requiring extensive medical treatment including prosthetic limbs. He would be able to receive actual damages for medical expenses, loss of work, and probably punitive damages because of Danny's wanton and reckless conduct.

Defense: Danny will claim comparative negligence. Danny will substantiate this claim by asserting that Burt knew of the risks involved in log riding. Danny will further claim that Burt rode the logs willingly and gave up his right to sue, when he assumed the risk by signing the waiver.

Conclusion: Burt satisfies all of the elements for negligence against Danny. No reasonable person would have participated in the activity knowing there is a possibility of serious injury. Burt did participate willingly, but was unaware of the dangers associated with log riding due to a bruised ego. Burt was afraid of flashing red lights due to a childhood trauma he had experienced. Had Danny installed the cheap safety feature, as required by OSHA, Burt might not have even rode the logs. A jury will find that Danny is guilty of negligence. He had a duty to Burt, he breached that duty when he allowed Burt to ride the logs and was injured as a direct result.

Issue 3. Does Abby have a claim for Outrage against Danny?

Rule: The elements for outrage are:

1. Act
2. Intent or recklessness
3. Extreme and outrageous conduct
4. Causation
5. Severe emotional distress

Analysis

Act: Abby witnessed Burt's accident of riding the logs and running into the saws severing both of his feet, resulting in a bloody mess.

Intent or recklessness: Danny's reckless teasing of Burt led to Burt's reckless log riding. One might even argue that Danny intended to spook his visitors, attempting to enhance the spectacle and atmosphere of working in a sawmill.

Extreme and outrageous conduct: Danny hurt Burt's ego, which led to Bert's decision to ride the logs. Once on the logs, Danny cheered Burt on, leading to Burt staying on the logs much too long.

Causation: Witnessing the laceration of Burt's feet was the cause of her emotional distress.

Severe Emotional Distress: Abby sought medical attention resulting in a diagnosis of Post Traumatic Stress Disorder. The treatment required antidepressants and sleep aids, as a direct result of visually witnessing Burt's injuries.

Defense: In defense of Abby's claim Danny will state Burt rode the logs willingly, knowing the possible, even probable risks. To add to his defense Danny will defend his operation by way of the signed consent forms. In furtherance of Danny's defense, he will state he mentioned the dangers involved with log riding three times.

Conclusion: Abby meets the elements of outrage. Abby witnessed her fiancé's injuries, which led her to the use anti-depressants and the diagnosis of Post Traumatic Stress Disorder.

Issue #4 Chris has a negligence claim against Danny?

Rule: The elements for Negligence are:

1. Duty
2. Standard of Care
3. Breach of Duty
4. Actual Causation
5. Proximate Causation
6. Damages

Analysis

Duty: Danny had a duty to the Chris as an invitee on his property. He has a duty to warn or make safe any known or concealed dangers.

Standard of Care: The standard of care is that of a reasonable person, and as an experienced operator of a sawmill.

Breach of Duty: The joke Danny played on Chris was dangerous, especially using the sawmill equipment in the manner of a joke. A

reasonable person would not subject anyone to such a dangerous situation.

Actual Causation: Chris would not have been injured but for the joke Danny played on Burt. Burt's falling tripped Chris in a manner that led to his head hitting the ground.

Proximate Causation: It was foreseeable that someone would be injured as a result of Danny's joke, especially given the ultrahazardous environment.

Damages: Chris suffered a concussion and went into a coma for 18 months. It resulted in the loss of his business and 200 employees lost their jobs. He will most likely be able to receive damages for the personal injury.

Defense: Danny will claim that the chain of events from his joke was unforeseeable and that Burt was comparatively negligent.

Conclusion: Chris meets the elements for negligence. Danny's joke was inappropriate and for a dangerous environment such as the sawmill and resulted in a tortious injury to Chris.

Issue #5 Will Danny be held to a strict liability standard?

Absolute responsibility and safety: The operation of the sawmill is an ultrahazardous activity.

Rule: Factors of an ultrahazardous activity:

1. Degree of danger
2. Inability to render safe

The sawmill is an ultra hazardous activity, especially when exposing innocent, untrained parties to the process of logs flowing, with many exposed moving parts, and blades running.

Elements of strict liability

Actual causation: If Danny acted in a responsible manner the injuries would not have occurred. Danny knew that the operation of the sawmill was a potential danger. Danny shut down the mill because he was not in compliance with OSHA standards. He was unable to provide a safe working environment for employees; therefore he could not provide a safe environment for people doing the same activities.

Proximate causation: The extent of harm was clearly foreseeable. Danny knew that riding the logs was an extremely dangerous activity. Danny knew that leaving the mill running unattended had potential for jamming and causing further damage. Danny displayed a lack of judgment in the area of medical attention when he allowed Chris to fall asleep with a concussion.

Damages: Each party sustained either personal or economic damages, and some incurred both. Burt incurred the loss of his feet and needed prosthetics. Abby suffered from posttraumatic stress disorder. Chris fell into a coma for 18 months, losing his business and affecting the employment of 200 employees, adversely affecting the local economy. The three hunters lost their lives.

Analysis: Danny, as the owner and operator of the sawmill has an absolute responsibility for the safe operation of the mill and persons who have permission to be on the premises, including invitees and licensees. A sawmill is indubitably an ultrahazardous activity.

Issue 6: Was Danny negligent for the death of the three hunters?

Rule: Res ipsa loquitur The very occurrence of the accident would not normally occur during absent negligence thus making the instrumentality of the accident (the dome) in the defendant's sole control. The Δ was clearly in sole control because he previously lost all of his employees.

Analysis: Danny knew that hunters frequented the forests around Ye Olde Sawmill. He anticipated they might purchase the experience package while in the area. The hunters were on Danny's property as licensees and Danny was aware of their presence. Danny's duty to them is to warn or make safe any known or concealed dangerous conditions whether natural or artificial.

In *MacPherson v. Buick*; Judge Cardozo found for the plaintiff, stating "If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. There must be knowledge of the danger, not merely possible, but probable."

The accident would not have occurred absent negligence. If the sawmill had been properly supervised, Danny would have observed the machinery jamming and would have turned it off, thus preventing the chain of events that caused the death of the hunters. Danny left the sawmill running and unattended. Danny had previously operated the sawmill as a business.

There is no direct evidence to Δ 's fault, so the burden would be shifted to Danny to show that he did not act negligently.

Defense: Danny will claim that Chris was left behind and could have turned off the machinery. Danny could also try to claim that Chris operated the machinery after he left the premises to take Burt to the hospital. Chris would then deny touching the machinery, claiming he slept through the entire event. It would be presumptuous to suggest that Chris knew that it was necessary to turn off the machines. This was his first visit to the sawmill and he did not know how it operated.

Danny could also claim it is impossible to have foreseen the chain of events leading to the IMAX dome rolling down the hill and killing three hunters. The danger was unknown and unforeseeable to him and therefore he will claim he did not breach a duty of care to the hunters.

Danny will also claim that the hunters assumed risk by being on his property.

Conclusion: The accident would not ordinarily have happened unless someone was negligent, and since Danny had exclusive control of the sawmill, as the owner and operator, he would be held responsible for the deaths of the three hunters under the Res ipsa locuitur doctrine.

Additional Claims: An additional claim is in the case of the 200 workers. The workers could file a class action lawsuit against Danny. The lawsuit against Danny would be for unlawfully and negligently endangering Chris' life. Danny would not be held liable though, because it would put undue hardship on Danny and be found too far removed for the workers to collect damages.

Chris could also have a possible claim against Abby. Chris could state that it was Abby's fault for improper diagnosis of his concussion. Chris would state she misrepresented herself when claiming she had enough experiences with concussions simply because she played hockey. Danny may have taken Chris' concussion fears more seriously had Abby not been so quick to assert that Chris was just fine.