

In order to establish a prima facie case of negligence, one must determine that the following four elements are established: 1.) P must have suffered an injury and must demonstrate that the injury was suffered due to D's actions; 2.) D must have owed a duty not to cause injury; 3.) D breached that duty, and; 4.) D's breach was an actual and proximate cause of P's injury.

Both Chris and Burt suffered injuries while partaking in activities that Danny, (D) the proprietor of Ye Old Sawmill advocated. Both Chris and Burt are invitees of Danny as they are patrons of the establishment, and as a result of this special relationship, Danny owed a higher duty of care to each of them. Also, the injuries both Chris and Burt suffered would be reasonably foreseeable consequences of Danny's conduct.

Not only was Danny negligent in allowing the ultra-hazardous conditions and activities to occur on his property, but as the proprietor, Danny also had a higher duty to rescue Chris. In *Osterland v. Hill* the court found that a defendant does not have a duty to rescue when the plaintiff is not in a helpless condition and is able to take steps to protect himself. The present case is different in that Chris exhibited signs of a concussion which rendered him helpless under a table, and Danny did nothing to assist Chris. As a result of Danny's inaction in this case, Chris fell into a coma.

Burt has severed limbs caused by "lumber surfing." Danny encouraged Burt to "ride" a log toward moving saw blades which were to cut the lumber into pieces and jump off at the last minute. This activity would be considered ultra-hazardous, and a reasonable person could foresee that if one engaged in this activity, one could get injured. In *Theobald v. Dolcimascola*, the plaintiff's son died while playing Russian Roulette. The decedent took it upon himself to play the "game," and those around him, defendants,

were neither active participants nor did they encourage him to play. In this case, Danny offered the chance to try “lumber surfing.” This encouragement by Danny illustrates a key difference between this instance and that in *Theobald*. In *Theobald*, summary judgment was granted for the defendants. The court held that there was no duty to take action because the defendants were merely onlookers. Danny’s active participation increases his responsibility.

OSHA has safety regulations that would apply to employees, which establish the standard of care that would have otherwise been established by common industry standards. Specific dangers included floppy shoes, baggy clothing, and an affixed flashing light on the machine with saw blades measuring 12 inches or more. Although Chris, Abby, and Burt were patrons as opposed to employees, they were performing duties that employees normally would. Therefore, the safety regulations could reasonably be applied to them as well, and Danny defied the expressed safety regulations.

As explained in *TJ Hooper*, the reasonable person standard should hold sway even in cases where an industry standard is in place if the reasonable person would adhere to a higher standard of care than the industry. Also, given his supervisory responsibilities, Danny should have taken precautionary measures. In *TJ Hooper*, and *Carrol Towing*, The court established an algebraic way of determining liability. This is called the "BPL analysis," in which "B" is the burden placed on the defendant, "P" is the probability of an injury, and "L" is the cost of the injury itself. If $B > PL$, then there is no liability. In this case, one could apply BPL analysis to determine whether it would have been prudent for Danny to put a red light at the end of the belt where Burt was “lumber surfing.”

Danny breached the duty established by OSHA regulations by actively subjecting the patrons to danger by providing OSHA-prohibited clothing. Danny also didn't affix the flashing light required for the 12 inch saw. Patrons signed contracts to mitigate Danny's liability, however the agreements do not protect against grossly negligent actions. Danny willfully and wantonly subjected the guests to dangerous conditions which nullifies the agreement in the situation.

But for Danny's actions, neither Chris, nor Burt would have been injured. Danny not only allowed, but encouraged very dangerous activities like "lumber surfing." Also, it was Danny who frightened Burt who knocked over Chris who fell into a coma due to a concussion that was not properly tended to. In determining liability with regards to Burt's injury sustained from "lumber surfing," the doctrine of comparative negligence could be applied. When determining comparative negligence, liability is divided between the plaintiff and defendant in proportion to the respective degrees of fault. Because Danny owed a duty of reasonable care to keep Burt safe, as an invitee, Danny could be held liable. Before the incident occurred Danny warned Burt of the danger and possibility of death, and Burt, despite being aware of the danger, jumped on the log and chose not to jump off until the last possible second. Thus, Burt can be found to have partially contributed to his injury. It is likely that Danny will hold the higher degree of liability. Even though he warned Burt of the danger, Danny failed to prevent Burt from partaking in the dangerous activity.

If the logic and holding of *MacPherson v. Buick* is applied to this case, it clear that Danny was negligent and placed his customers in an imminently dangerous situation. The court reasoned in *MacPherson* that the duty of care was extended to a situation, "if

the nature of a thing is such that it is reasonably certain to place life and limb in peril." Additionally, the court reasoned that, "danger was to be expected as reasonably certain; there was a duty of vigilance." A reasonable person in Danny's situation would have acknowledged the danger inherent in the actions carried out. In fact, Danny did recognize the potential dangers when addressing the issue of injuries previously incurred by experiences workers.

In addition Danny's customers, it is also possible that he could be held responsible for the hunters who were killed on his land by the IMAX Dome. The *res ipsa loquitur* doctrine recognizes that some accidents by their very nature would ordinarily not happen without negligence. In order to prove a breach of duty by Danny under *res ipsa loquitur*, three conditions must be satisfied. 1) The event would not occur if it were not for the negligence of another, which is satisfied by Danny negligently running a tourist business. Applying rule of *Byrne v. Boadle*, Danny had a duty to protect others from any harm that might arise out of his business operations. 2) The injurious act must be caused by an agency or instrumentality within the exclusive control of the defendant. This element is satisfied in that Danny had a duty to ensure that the IMAX Dome was properly secure and that the activities performed by Ye Ole Sawmill would not harm anyone. Danny had exclusive responsibility to properly secure the Dome and prevent injuries on the premises. 3) The act must not have been due to any voluntary action on the part of plaintiff. Plaintiff must provide supporting evidence that the injury was more likely than not caused by defendant's negligence. Much like *Byrne*, the hunters were merely walking past when they were crushed by the IMAX Dome. In proving *res ipsa loquitur* a

jury may infer negligence merely from the happening of an event and Danny's related responsibilities.

In *Salaman v. Cit of Waterbury*, the court held that "the status of the entrant on another's land, be it trespasser, licensee, or invitee, determines the duty that is owed to the entrant while he or she is on the landowner's property." Danny did not post any signs warning of dangers or prohibiting entrance. Therefore, the hunters could be considered licensees as persons "privileged to enter or remain upon land by virtue of the possessor's consent whether given by invitation or permission."

Possible damages for Abby for negligent infliction of emotional distress, depending on the precedent followed in this jurisdiction might include the following: cost of the medical treatment (medicine), cost of treatment for post-traumatic-stress-syndrome, reimbursement for cost of the trip, and pain and suffering related with negligent infliction of emotional distress. Possible damages for Burt could include the following: hospital bills, cost of prosthetic limbs, lost wages from the time spent in hospital, value of the loss of two ankles/feet, and pain and suffering. Chris might be able to recover the following damages: lost wages for 18 months, loss of potential earning from the loss of his business, hospital bills from an 18 month coma, and pain and suffering. The people of the town are probably not allowed to recover because the breach of duty present is too far removed to hold Danny responsible.