

Abby, Burt, Chris and the three hunters could pursue claims of negligence against Danny.

The three hunters could claim *res ipsa loquitur* in regards to being killed by the IMAX theater globe. As the “thing speaks for itself” – similar to *Byrne v. Boadle* case wherein a bag of flour injured a person walking by the store. In addition, there is no need for evidence that someone was actually present, but that the injury was inflicted by an item that was in complete control of the defendant. In addition the defendant opened his business to attract hunters and so it was foreseeable that the decedents would be present on the land.

It could be counter argued that Danny is liable for the proximate results of his own actions, but not for remote, unforeseeable, damages caused by that act. In such the death of the hunters was unforeseeable and too removed from the initial act. It is possible for Danny to argue that the hunters would be classified as trespassers therefore there was no duty to protect against the unforeseeable and unknown dangers.

It is likely a court would find in favor of Danny because the result of the negligence act was the logs falling off the conveyer belt not the globe rolling down the hill. It is unforeseeable that the logs would have blown out the wall knocking the globe from its foundation. This is a chain of unforeseeable acts contributing to one another.

Abby, Burt, and Chris were considered invitees, as they were on the premise to conduct business with the owner and the premise was open to the general public. As an inviter, Danny had an affirmative duty to warn or make safe dangerous conditions and also the duty to inspect and render safe any conditions. The invitees were entitled to the level of reasonable care.

The waiver of consent each party signed would be invalid as assumption of risk for gross negligence or willful acts cannot be consented to. As a matter of policy, if employers could waive the duty of care we would have a society wherein employees could be harmed at any time without any liability on the employer.

Burt could bring a claim of negligence against Danny. Danny had a duty of reasonable care, which he breached. In regards to the accident that injured Burt, Danny expressed that this is an area where we have had some bad accidents and expressed it was dangerous. Burt agreed because of his bruised ego after panicking from a previous practical joke by Danny. These facts are similar to *Rogers v. Retrum*, wherein a student left campus after being humiliated and was injured in a car accident. In both cases there is a relationship that establishes a duty of reasonable care, but in this case the injuries resulted from a foreseeable and unreasonable risk. In addition, the federal Occupational Safety and Health Administration required a flashing red start-up warning light for saws with blades of 12 inches or more. The

particular blade in this case was 60 inches. Burt stated he would not have engaged in this activity if there had been a flashing red light prior to the saw starting up.

It could be counter argued that Burt's act was contributory negligence wherein Danny had spoken of the dangers involved in lumber surfing and Burt voluntarily participated in the act even after being discouraged by Abby. Also, Burt has stated that flashing red lights render him paralyzed, thus by not having the flashing red light this act essentially saved Burt's life.

Abby would claim the negligence act of outrage, which is defined as the intentional or reckless infliction, by extreme and outrageous conduct, of severe emotional distress. The intentional act of Danny by encouraging and self-shaming Burt to the activity of lumber surfing resulted in Burt's injuries. But for Danny's invitation to lumber surf, Burt would not have been injured. The severe emotional distress resulted in Abby having to seek treatment for post-traumatic stress disorder, which required her to be on anti-depressants and sleeping aids.

Chris could bring a claim of negligence against Danny. Danny breached a duty of care to Chris by not following the New England Lumber Industry Association procedures and guidelines poster. Danny's conduct was the proximate cause to Chris's coma, loss of income and business. There is a sufficient link between Danny's

negligence of not following the policy poster of guidelines and Chris's injuries. A court would probably find that it was reasonably foreseeable that failure to get medical treatment for Chris would result in injuries to Chris. In addition to Danny's negligence, Abby also assumed a duty of care when she rendered medical advice to Chris stating that he had not sustained a concussion based on her knowledge of playing ice hockey. Abby is not relieved of her duty under the Good Samaritan law as she is not a medical professional. It can be concluded that both Abby and Danny are liable as Danny had an existing duty as an inviter and Abby created a duty by rendering care, to which they both breached. Danny took on Chris as a customer instead of a business partner, thus Danny does not have a duty to the individuals who subsequently lost their jobs due to Chris's coma.

In conclusion a court is likely to find that Danny is not liable to the hunters as their deaths were unforeseeable and too removed from the initial act. Danny is liable to Burt, Abby and Chris as they were invitees and he negligently breached the duty of care he owed to them.