

Defences to negligence annotated problem question

Ben, Graeme and Andy are old school friends. Every year they go camping together in Snowdonia National Park. After they arrive on the Friday night, they decide to go to the pub where Ben and Graeme spend several hours reminiscing and by the time they leave they are both over the legal driving limit. Andy has not been drinking. On their way back to the campsite they pass a farm and notice a tractor with its keys in the ignition. Graeme gets in and starts the engine. Ben and Andy quickly jump in beside him. None of them wear a seat belt. At first, Graeme drives slowly around the farmyard but when Ben says 'Is that the best you can do?' he decides to go 'off-road' and drives it into a field. Unfortunately, on the rough ground Graeme loses control of the tractor and it overturns. Ben and Andy are thrown out onto the field. Ben is seriously injured. Though Andy escapes with only minor physical injuries, he later develops post-traumatic stress disorder (PTSD) as a result of the incident. One day while walking home from work Andy 'snaps' lashing out at an innocent passer-by and causing them serious injury. Though it is recognised that his actions were as a result of his PTSD, he is jailed for six months and loses his job.

Advise the parties (you should assume that, in the absence of applicable defences, Ben and Andy would have a good claim in negligence).

You need to address this point both in relation to *volenti* (is Ben too drunk to consent to the risk?) and contributory negligence (has Ben failed to exercise reasonable care for his own safety?).

Can Ben's failure to wear a seat belt (together with his jumping in quickly alongside Graeme) be used to argue that he accepted the nature and extent of the risk he was exposed to? The cases to consider here are *Morris v Murray* [1991] and *Dann v Hamilton* [1939]—which one is close to the facts you have been given? What about Andy? As he *hadn't* been drinking, is *volenti* more likely to be made out?

Consider why this piece of information is included here—can Ben's active encouragement be used to argue that Ben and Graeme are engaging in a joint criminal enterprise (as in *Pitts v Hunt* [1991])? It may also be helpful in arguments relating to contributory negligence.

You should consider each defence in turn. Remember when considering contributory negligence you should work through each of the three requirements: (1) failure to exercise reasonable care for his own safety; (2) whether his actions contributed to his damage; and (3) what would be a just and equitable reduction? Consider the guidelines in *Froom v Butcher* [1976].

This is an important detail. It means the Road Traffic Act 1988 would not apply and so the defence of *volenti* is arguable.

Will Andy's claim against Graeme be defeated by the defence of illegality? You should consider the application of *Gray v Thames Trains* [2009] here.