

A cattle rancher owns property near the bottom of a steep mountain slope. A logging company recently clear-cut all of the standing timber on the slope and transported it to an out-of-state lumber processing plant.

Soon thereafter, a heavy rainstorm triggered several landslides in the mountain range where the rancher's property is located. One of the landslides dumped masses of earth, rock, and debris from the cleared slope onto the rancher's property, destroying several structures and rendering much of the land unsuitable for grazing cattle. The rancher has brought an action in strict liability against the logging company.

Which of the following facts, if true, best supports the logging company's defense to this action?

- A. Commercial logging is prevalent in the area and requires specialized equipment, skills, and permits before a person can engage in this activity.
- B. New housing starts are on the rise in the community and the need for lumber is high.
- C. The heavy rainstorm triggered landslides in forested and unforested areas throughout the mountain range.
- D. The logging company conducted the work according to industry-wide safety standards.

## Explanation:

### Abnormally dangerous activity

<b>Definition</b>	Activity is abnormally dangerous if it: is not commonly engaged in <i>and</i> presents foreseeable & highly significant risk of harm even when reasonable care is used
<b>Relevant factors</b>	Gravity of harm resulting from activity Inappropriateness of place where activity is conducted Limited value of activity to community

A defendant engaged in an **abnormally dangerous activity** may be held strictly liable for personal injuries or property damage caused by the activity. Abnormally dangerous means the activity (1) is **not commonly engaged in** and (2) presents a **foreseeable and highly significant risk** of physical harm even when reasonable care is exercised. In determining whether an activity meets these criteria, courts often consider these factors:

The **gravity of the harm** resulting from the activity

The **inappropriateness of the place** where the activity is being conducted

The **limited value of the activity** to the community in which it is performed

Here, although commercial logging is prevalent in the area, it can only be carried out by persons having specialized equipment, skills, and permits. This tends to show that logging is not carried out by a large percentage of the population (uncommon activity) **(Choice A)**. And though the need for lumber is high in the community, the logging company sent all of its timber out-of-state (limited value to community) **(Choice B)**. As a result, both of these facts weigh in favor of a finding that the logging company's activity was abnormally dangerous.

However, even if that activity was abnormally dangerous, the logging company can successfully defend this action on the ground that it did not cause the rancher's property damage. The fact that the rainstorm triggered landslides in both forested *and* unforested areas tends to show that clear-cutting the slope was not the but-for cause of the rancher's property damage (ie, the damage would have occurred anyway). So this fact, if proved, best supports the logging company's defense to the rancher's action.

**(Choice D)** Strict liability for an abnormally dangerous activity cannot be negated by the use of reasonable care, so the logging company's compliance with industry-wide safety standards would not affect the outcome of this action.

**Educational objective:**

In deciding whether an activity is abnormally dangerous, courts often consider (1) the gravity of the harm resulting from the activity, (2) the inappropriateness of the place where it is being conducted, and (3) its limited value to the community.

**References**

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 20 (Am. Law Inst. 2010) (abnormally dangerous activities).

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