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 wears a seat at 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).

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)?

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

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 and Dann v Hamilton—which one is close to the facts you have been given? What about Andy? As he hasn’t been drinking, is volenti more likely to be made out?

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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.