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===== Start of Answer #5 (1711 words) =====

1. Harry v. Doug

Negligence

Negligence occurs where there is a (1) duty; (2) breach of that duty; (3) causation; and (4) damages.

Duty

Under the Cardozo majority view, a duty is owed to all foreseeable plaintiffs in the zone of danger. Under the Andrews minority rule, a duty is owed to all foreseeable plaintiffs. Moreover, the standard of care that applies is one of a reasonably prudent person.

Here, Doug was driving and therefore would be held to the standard of a reasonably prudent driver.

Breach

Breach is committed where there has been a breach of the duty of care owed.

Here, Doug is held to the standard of a reasonably prudent driver. Doug will argue that a reasonably prudent driver would not be texting as he is driving on a busy street. Most people are aware of the dangers of driving while texting.

Therefore, by driving on a busy street while texting, he breached his duty of a reasonably prudent driver.

Negligence Per Se

Negligence per se applies where there is a statute put in place and that state is meant to protect the harm that was caused by the defendant. Moreover, if negligence per se is established it establishes both the duty and breach elements of negligence.

Here, there is a recently enacted Motor Vehicle Code that states: "No person shall operate a motor vehicle upon a public road while using a mobile telephone

to send or receive a text message while such vehicle is in motion." Here, it is obvious that Doug violated the code because he was driving down a busy street while texting which is against the code. Thus, he violated the statute.

Yet, the issue here is determining if the type harm that occurred to Harry was the type of harm the statute was meant to protect. Here, Harry's house burned down due to Doug hitting a utility pole, which lead to sparks flying onto a piece of newspaper which then lead to it flying down the street and burning Harry's house. The burning of Harry's house is unlikely the type of harm the statute was meant to protect. Here, it is more likely that the statute was enacted in order to keep roads safe and other drivers safe from those who are not paying attention because they are texting an driving. Therefore, there is no negligence per se here.

Causation

There must be actual cause and proximate cause.

Actual Cause

To determined actual cause the "But For" test is used. When there is more than one possible tortfeasor, the substantial factor test is used.

Here, Harry will claim that but for Doug driving into the utility pole, Harry's house would still exist and would have no burned down. Doug will likely argue that the substantial factor test be used because the Electric Company is the reason why this harm occurred since the Electric Company could have updated their old wiring system and thus they were a substantial factor. Moreover, if Doug would not have hit the utility pole, the harm would not have occurred and therefore there is actual cause.

Proximate Cause

In order to determine proximate cause it must be foreseeable.

Here, Harry will argue that it is foreseeable that an accident could occur which would lead to the utility pole catching sparks and subsequently burning his house

down. Although it is likely that if someone loses control of their car and hits a utility pole that it will spark, it is not foreseeable that the one mere spark will land on a piece of newspaper will then go down the street landing on the roof of Harry's house. It might be more foreseeable if the house was located right in front of the utility pole or closely connected, but is doubtful that it is foreseeable under these circumstances.

Moreover, superseeding causes will breach the chain of causation. As discussed above, the lighting of the newspaper on fire and going down the street to Harry's house seems to be a superseeding cause that would break the chain of causation. Therefore, although there is actual cause, there seems to not be any proximate cause because the superseeding cause (newspaper on fire going down a block and lighting Harry's house on fire) breaks the chain of causation.

Damages

If the court were to find that negligence exists, Harry would be able to claim damages for his property damage and personal injury if he was in the house at the time the fire occurred and he was injured. Moreover, if Harry has to live in a hotel for the time being while his house is rebuilt, he should be compensated for that as well. Moreover, Harry's damages must be certain, foreseeable and unavoidable.

Additionally, although courts do not award punitive damages in negligence cases, Harry could ask for punitive damages because Harry was violating a statute and conducting himself in a way that could harm many people. The court might award punitive damages, because Harry's behavior was reckless, in order to make sure to deter this behavior from happening in the future. But, punitive damages cannot be 10x more than compensatory damages

Doug's Defenses

Defenses for negligence are contributory negligence, comparative fault, and

assumption of the risk. None of these would apply here because Harry was not contributorily negligent nor was he at fault, it just so happened to be that his house was the one that caught on fire. Moreover, just because one has a home does not mean that one assumes the risk that their home might potentially get burned down in a freakish accident. Therefore, if the court were to state that negligence existed, Doug does not have any valid defenses.

2. Harry v. Electric Company

Negligence

See rule above.

Duty

See rule above.

Here, Harry will argue that the Electric Company (EC) owed a duty of care which is that of professional. This is due to the fact that the EC is a utility provider. Therefore, the standard of care will be that of a reasonably prudent electrical company.

Breach

See rule above.

Here, Harry will state that the EC breach their duty because they retained an old wiring system. Although many other companies used this wiring system for years, a new technological advancement called the Wire Blitz Fuse (WBF) made it possible to string electrical wires that would not spark if downed. Moreover, the WBF system increased safety and reliability. EC will argue that just because the technology is out there, it does not mean that EC must use it. Additionally, the facts show that the WBF system has not yet gained widespread acceptance in the industry. Therefore, it is likely that the EC did not breach its duty. But, if the

court were to find that the duty was breached, we would analyze the remaining factors of negligence.

Causation

See rule above.

Actual Cause

See rule above.

Here, the but for would be difficult to apply in regards to the EC, since Doug was also involved. Therefore, we must look at the substantial factor. Here, the substantial factors were that Doug crashed into a utility pole owned by EC which was not equipped with the WBF technology is what substantially caused his harm. This is likely the case here, and both are the actual cause.

Probable Cause

See rule above.

Here, it would be foreseeable that if the EC did not update their utility poles with the WBF technology that if someone were to crash into the pole that sparks would occur and a fire would result. EC will state that although yes, the previously mentioned is foreseeable, that it is unforeseeable that a house down the street would burn down. EC would claim that the newspaper was the intervening cause. Intervening causes do not break the chain of causation. Here, it is likely that the newspaper landing on Harry's roof was a superseding cause which would break the chain of causation. As discussed above, superseding causes break the chain of causation. Therefore, there might not be probable cause.

Damages

As discussed above, if the court were to find that negligence existed on behalf of EC, Harry would be able to claim damages for his property damage and personal injury if he was in the house at the time the fire occurred and he was injured.

Moreover, if Harry has to live in a hotel for the time being while his house is rebuilt, he should be compensated for that as well. Moreover, Harry's damages must be certain, foreseeable and unavoidable.

It is unlikely that punitive damages would be allowed in this case because nothing in the facts show that EC was being reckless by not using the WBF.

Defenses

Same as in the above section, please see discussion above.

Strict Liability

Harry could claim that the EC is strictly liable for their harm. He would also have to prove breach, causation, and damages. Depending on the issues that might occur with causation, it might be unlikely strict liability applies.

Abnormally Dangerous Activity

An abnormally dangerous activity is one that cannot be made safe, poses a risk to the community, and is uncommon in the community.

Harry might argue that the utility company conducts an activity which is abnormally dangerous. Here, the activity can be made safe by installing the WBF. Although it would require a significant increase in electrical rates, the burden of the cost might be worth the potential benefit to the community. The issue here is with the fact that WBF had still not regained widespread recognition. Either way, since the activity can be made safer by installing the WBF, it is likely that this element is met. Additionally, there is a risk in the community because any car could hit a pole either do to negligence or in attempt to avoid an accident by swerving off the road. Therefore, there is a risk to the community if the proper safety measures are not in place. Finally, the activity is that of common use. Utility poles are located everywhere nowadays. Therefore, it is likely that it is not an abnormally dangerous activity.

They will likely be held jointly and severally liable for the issues if negligence is found. And collateral source rule with allow him

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