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===== Start of Answer #5 (1794 words) =====

Harry (H) v. Doug

1. What claims may Harry (H) raise against Doug (D) and what defenses may D reasonably assert?

Negligence

Under the theory of negligence, a party owes a duty to exercise a reasonable standard of care. Under minority jurisdiction (Andrews), there is a party owed to all. Under the majority jurisdiction (Cardozo), there is a duty owed to all foreseeable plaintiffs within the zone of danger.

Duty

D, as driver, owes a duty to drive as a reasonably prudent person would. Additionally, D as driver owes a duty to all foreseeable plaintiffs. D will argue that there is no duty owed to H because H was not a pedestrian walking down the street. However, it is foreseeable that texting and driving may cause harm not just to pedestrians on the street but also to those who lives nearby the road as accident to home and cars may occur. Under the majority jurisdiction, it will likely be found that Harry, as homeowner, was within the foreseeable zone of danger because he lived nearby the busy street and it is reasonable to find newspaper will fly down the street.

Negligence Per Se

Under negligence per se, a plaintiff has to show that (a) statute is intended to protect the type of harm that plaintiff suffered and (b) plaintiff is within the type of class the statute is trying to protect.

Protect the Harm Plaintiff Suffered

Here, the statute that was enacted was that no one who is operating a motor

vehicle should use a mobile phone to text while the vehicle is in motion. D will argue that the type of harm that the statute is intending to protect is vehicle accidents as texting may be a distraction for drivers and take their eyes off the road while they are driving. Further, D will argue that the type of harm that H suffered was not being hit by D but instead, it was a burning newspaper that flew onto H's roof. On the other hand, H will argue that many types of accidents are foreseeable when a driver is texting and driving not just car accidents. H's argument may prevail because when such code is enacted, it is foreseeing all types of harm and injury that may arise when a driver is not paying attention. Thus, H will prevail in meeting this prong of negligence per se.

Plaintiff within Class of People Statute is Trying to Protect

H will additionally assert that he is within the class of people the statute is trying to protect. H will state that by having the statute, Department of Motor Vehicle wants to protect everyone who may be a victim to a driver who is texting and driving. On the other hand, D will contend that the law is only to protect other drivers on the road as it poses a danger on them. When drivers are texting, the types of accident go beyond simply car accidents as it is possible for a driver to drive into a store, home or building. As such, it may have been foreseeable when the Legislature enacted the law to foresee the code will protect from someone's house to burn down when the driver is texting, runs into a utility pole causing sparks to fly, lands on a paper and subsequently landing on someone's roof.

As such, H will be able to assert a claim of negligence per se against D. However, in the event, the Court does not find a negligence per se, H may raise a claim for negligence as discussed below.

Breach

As discussed above, D owes a duty to all foreseeable plaintiffs within the zone of danger. Additionally, D breached his duty to act as a reasonably prudent person who is operating a vehicle. A reasonably prudent person would not be texting on

his cell phone while driving as it is a distraction when you have to focus your eyes on the road rather than a small cell phone screen.

D will be found to have breached his duty.

Causation - Actual and Proximate

Actual Cause

Under actual cause, we must use the but for test to show for but for defendant's act, plaintiff would not suffer the injury.

Here, but for D's driving while texting, H's house would not have burned down.

If D did not text while driving, he would not have ran into the utility pole, sparks would not be flying and H's house would not have caught fire and burned down. Thus, there is actual causation between D's act and H's injury.

Proximate Cause

Proximate cause is whether or not the injury was foreseeable as a result of D's act.

D will argue that it was not foreseeable that H's house would burn down when he ran into the utility pole. D will further contend that he would not expect sparks to be flying when the utility pole fell to the ground. On the other hand, H will argue that it was foreseeable because utility poles often hold many wires and are tied and protected by a casing for a purpose. H's argument will prevail because when your car slips off the road, it is foreseeable that it may hit something on the road and anything it hits may cause further injuries. Here, it was foreseeable that if D texted while driving would lose control of the vehicle and it will hit something on the road. In turn, it is foreseeable that by his car hitting a utility pole, it would cause sparks to fly and may cause further damage to someone's property when

the sparks land on a newspaper that is on the floor.

Thus, there is proximate cause between D's act and H's injury.

Damages

Here, H's house burned down and his damages would be the cost to rebuild the house or purchase another property along with loss of property inside the house.

Defenses

Contributory Negligence

A defense of contributory negligence may be asserted by the defendant when plaintiff or another party contributes to the negligence and injury of plaintiff.

A defense that D reasonably assert is that Electric Company (EC) is contributorily negligent because of the old wiring system they used. D will assert that EC could make it safer by having string electrical wires that would not spark if downed but chose not to do so.

Conclusion

H will likely have a claim against D for negligence per se or negligence. Additionally, D may be able to raise the defense of contributory negligence on EC's part which may reduce his damages to his percent of fault decided by the jury.

Harry (H) v. Electric Company

2. What claims may H raise against EC and what defenses may EC reasonably assert?

H may bring a claim for products liability for strict liability and negligence.

Strict Liability

Under a claim for strict liability, the plaintiff must show (a) defendant engaged in an abnormally dangerous activity, (b) it is uncommon to the community, (c) defendant knew of the danger it posed and (d) cost of making safe outweighs the risk of harm.

Abnormally Dangerous Activity

EC is a an electric company with a utility pole that is placed on a busy street. This is an abnormally dangerous activity because of the numerous electrical wires it holds and when the pole falls, it causes sparks to fly. Furthermore, when sparks fly it may ignite and cause things to catch fire and burn.

Uncommon to Community

EC will argue that it is not uncommon in the community to have utility poles as there are utility poles on all streets. However, the better argument that have such utility poles may be common but it is uncommon for dangerous pole to be placed on streets when the sparks will fly in the event the poles fall down.

Knew of Danger

EC knew of the danger and knew of the technological advance from Wire Blitz Fuse (WBF) which made it possible that electrical wires would not spark if downed. Thus, EC was well aware of the danger that their poles had because they believed an adoption of the new technology would require significant increase in electric rates and chose not to adopt the new technology.

Cost of Making Safe Outweighs Risk of Harm

EC knew of the technology from WBF but decided against it because of the increase in electrical rates and WBF had not yet gained a widespread acceptance in the industry. However, there were studies done to show that utility companies that replaced their old writing systems with a WBF system experience

vastly increased safety and reliability. Since utility poles are placed on streets where there are residences and businesses, it is important that such poles are made safe. It is foreseeable that pole may fall down either due to natural disasters or car accidents and thus, the cost of ensuring safety is greatly outweighed by the elimination of risk of harm that it may bring to people who live nearby.

Thus, H will successfully assert a products liability claim under the theory of strict liability.

Negligence

Duty

See above.

EC has a duty to all foreseeable plaintiffs which includes those who live near the utility poles.

Breach

See above.

EC breached its duty by not making the utility poles safe by not using the technology that ensured the sparks would not fly if the pole was down.

Actual Cause

See above.

But for EC not making the utility poles safe with WBF technology, H's house will not burn down.

Proximate Cause

See above.

It is foreseeable that by not making the poles safe, sparks would fly and cause H's house to burn down.

Damages

H suffered damages in that his house burned down.

H will likely assert a products liability claim for negligence.

Damages Apportioned

3. If H prevails against D and EC, how should damages be apportioned?

Substantial Factor Alternative Test

Under this test, if one defendant can prove that the accident would have occurred solely by the act of one defendant, then the other party may not be liable.

Here, it may be difficult for either D to prove the pole would fall down and burn H's house without D's car driving into the pole. Furthermore, it will be difficult for EC to prove that if D's car ran into another pole (perhaps safer with WBF technology), H's house will be burned down.

Given that it may be difficult to prove the fault of each party, H and EC will be held jointly and severally liable. H, as plaintiff, will be able to collect damages from either party. Whoever pays may be able to request a contribution from the other party based on their percentage of fault as decided by a jury.

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