

5)

1. Harry v. Doug

H will not prevail on any tort cause of action against D because of foreseeability.

Negligence

When a party breaches the duty of care owed to someone which foreseeably causes injury, they are entitled to damages.

Duty

Under the majority rule, a person must act as a reasonably prudent person and owes a duty to all foreseeable plaintiffs. Under the minority rule, a person owes a duty to act as a reasonable person to all persons. Different standards of care exist for different classes of individuals (professionals, children, landowners...)

Here, H will argue that D owed him a duty of care to act as a reasonable person. There does not appear to be any special standards of care to which D will be held to.

Thus, D owes H a reasonable standard of care.

Statutory - negligence per se

Sometimes duty is prescribed by statute. The statute in question must be one that imposes criminal liability on an individual for violating it and the harm suffered by the P must be the same type of harm that the statute is trying to protect.

Here, the Legislature recently enacted the following section of the Motor Vehicle Code: "No person shall operate a motor vehicle upon a public road while using a mobile telephon to send or receive a text message while such vehicle is in motion." The accident was caused because D was texting while he drove and lost control of his car. H will argue that the statute was enacted to prevent this

type of harm; it was enacted to prevent distracted driving. If D followed the code, he would not have hit the pole which caused a chain of events ending with a homeless D.

However, D will argue that the type of harm here is not anticipated by the statute. The statute was enacted to prevent pedestrian deaths and automobile accidents, not house fires. While it is true that accidents can cause sparks and those sparks can ignite disastrous fires, the statute was not enacted to prevent house fires. On balance, D has the better argument.

Thus, there is no negligence per se in this instance.

Breach

When one fails to act pursuant to their duty, they have breached their duty of care.

H will argue that A reasonable person does not text while driving. A reasonable person would adhere to traffic laws and give the road their full attention. Here, D was driving down a busy street while texting on his cell phone. Because he was texting he did not pay attention and lost control of his car. His car hit a telephone pole which fell and caused sparks to fly into the air. A newspaper was lit on fire and carried down the street to H's house. When it landed on the roof of H's house it caused the house to burn down. If D would have acted as a reasonable person and paid attention to the road, he would have not hit the pole. However, D did not act reasonable. Because D failed to meet the standard of care, he has breached his duty.

Thus, element met.

Actual Cause

The injury must be one that occurred "but for" the Defendants conduct. The

breach must actually cause the injury.

Here, H's house would not have burnt down but for D hitting the pole.

Thus, D's conduct was the actual cause of the harm.

Proximate cause

The harm must be foreseeable.

Here, the actual fire started because a spark flew onto a newspaper and the newspaper travelled to H's roof. D will argue that it is not foreseeable that a car accident would cause a fire down the street. It is foreseeable that a spark from the pole would ignite a building 20 feet from the pole, but not down the street. D would argue that this is just too attenuated to his breach. H will argue that accidents do cause fires and it is foreseeable that a newspaper could catch fire and then ignite something down the street. On balance, D has the stronger argument.

Thus, D's breach is not the proximate cause of H's harm.

Damages

No damages will be available because negligence is not met.

Defenses!

Trespass to land

P must prove that the D intentionally interfered with his real property (light is not enough) and caused injury. One does not need to intend to commit the trespass.

Here, H will argue that D committed a trespass when he caused the spark which ignited the newspaper that eventually burned his house down. However, D did not own the newspaper, nor did they own the electrical lines.

Thus, H will not recover for this action.

Conversion

A trespass to chattel that is so severe it warrants recovery of the full value of the chattel.

Here, H will argue that the trespass was so severe that D should have to pay for his entire house. However, there is no trespass here.

Thus, H will not recover for this action.

Negligent infliction of emotional distress

To prevail under this theory, a P must prove that D's negligent conduct caused severe emotional distress. In most instances, this is where someone is injured or killed near the P. In order to recover under this theory, the P must either be in the zone of danger (minority rule) or a close relative of the person who was injured (modern).

Here, even if H was home when the fire started and he was traumatized from having his home burned down, NIED is not available for purely property damage.

Thus, H will not recover for this action.

2. Harry v. Electric company

Strict liability - hazard

a D will be strictly liable if they are conducting an activity that is ultra hazardous. An activity is ultra hazardous if it cannot be made safe by any safety measures, it is not common in the community, and the type of injury suffered is one that

stems from the hazardous activity.

Here, EC owed the utility pole. EC is in the business of producing electricity. Producing electricity is however, not an ultrahazardous activity.

Thus, H will not recover or Strict liability regarding ultra hazardous activity.

Private Nuisance

P will need to prove that EC's conduct was an unreasonable interference with the enjoyment of his property.

Here, H will allege that EC interfered with the enjoyment of his proeprty when its wires caused a fire which entered it's proeprty. Fire is a tangible object, but the conduct of EC (providing electricity to the town) is not one that was unreasonable.

Thus, H will not recover for this

capture of fire

If one starts a fire, they must contain it.

Here, H will allege that the fire started because of EC's wires and thus EC was responsible for extinguishing the blaze. However, this would be true if EC was some wild fire breather, but again, an electric company is not one that normally starts fires.

Thus, H will not recover on this theory.

Strict Product Liability

In order to recover on this theory, the product must have been sold by a commercial seller, there must be a defect, and an injury must have occured.

Product liability may be strict and/or negligent.

In order to recover under a theory of SPL, the seller must be a commercial seller. Here, EC is not in the business of selling wires and EC was not harmed when it purchased one of the wires, thus the only plausible COA is negligent product liability.

Strict product liability negligence/defect

A Defect can be proven by a manufacture defect (one single product differs from the line), failure to warn, or a design defect (all products unsafe).

Design defect: If the product could be made safer with not much added cost, the court will likely find a design defect.

Here WBF made a product that would not spark if downed. Nevertheless, EC used its old wiring system because it and other utility companies have not adopted the new technology yet. The cost of adopting the new wiring system would be substantial for customers. However, the new system was shown to vastly increase safety and reliability. Because the cost is so high, a court will not likely find that it is reasonable to order this design change.

duty: EC owed a duty to act as a reasonable company.

Breach:

Here, H will argue that because EC did not install the latest technological advance, they breached their duty of care. However as indicated above, the new system is expensive and it would be unfair to hold EC to install this. HHowever, a reasonable person would make this change if it would decrease fires caused by downed lines. Thus, EC breached its duty to H.

Causation: the fire started but for the wire spark. It is foreseeable that a spark from an outdated wiring system could catch debris on fire which could land on a rooftop and burn someone's house down. Thus it is the actual and proximate cause.

3. Damages if H prevails in both suits.

Negligence: Compensatory damages, punitive if wanton, malice or reckless. H will likely be able to recover the cost of his house from EC. Although he may not be able to recover anything from D because of the proximate cause issue.

SPL - H will recover for negligent products liability, compensatory/legal damages.

No restitution because there is no unjust enrichment.

Question #2 Final Word Count = 1570