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1. H v. D

Negligence

In order to prevail on a negligence claim, a plaintiff must show that the defendant owed a duty of care to foreseeable plaintiffs (and that he was one), breached the duty, causing the defendant's damages.

Here, D breached his duty of care to H not to cause H's house to burn down by texting while driving.

Thus, H can prevail on a negligence claim against D.

Duty of Care

The duty of care standard varies based on the defendant's type of activity, relevant expertise, age, and other factors. Ordinary persons generally owe a duty of care to everyone in their zone of danger to act as a reasonably prudent person would in that situation.

Here, D was driving down a busy street. No facts indicate he was under unique circumstances that might require a different standard of care than a normal driver. A reasonably prudent person would be expected to drive more cautiously down a busy street than an empty, private area with nothing to crash into. In either situation, a reasonably prudent person would be expected to drive in compliance with vehicle regulations and the street signs subject to them and the knowledge and training required for a driving license.

With respect to vehicle ownership, a vehicle owner who operates the vehicle or provides it to others to operate would have a duty to regularly maintain the vehicle and fix apparent and dangerous defects. However, there are insufficient facts for this to come into issue here.

Zone of Danger/Foreseeable Plaintiffs

Vehicle operators owe this standard of care to the drivers, pedestrians, other persons in the vicinities through which they drive, property in those vicinities. When a vehicle operator falls below the standard of care and injures a person or property, other plaintiffs are also foreseeable, such as rescuers who come into the zone of danger as a result of the defendant's breach.

Here, D was driving in the vicinity of H's house when he hit the utility pole.

Thus, H was a foreseeable plaintiff owed a duty of care.

Breach

The duty of care is breached when the defendant falls below the standard of care.

Here, D drove down the busy street while texting on his cell phone. D will argue that the simultaneous operation of a cell phone did not preclude him from paying attention to his surroundings, and no express fact states D's attention to the car's operation and surroundings was any different than it would have been were he not operating the phone. D will argue that numerous events on the street could potentially have diverted his attention to the same extent. None of these arguments support a finding that D met his duty of care.

Thus, D breached his duty of care to H.

Causation

To prove negligence, a plaintiff must also demonstrate that the damages were actually and proximately caused by the defendant's breach.

Actual Causation

The test for establishing actual causation is "but-for" the defendant's conduct, the damages would not have occurred.

H will argue that but-for D's driving into the utility pole while texting, the pole would not have fallen and ignited the newspaper which burned down H's house. D will argue that even if he had not been texting, the car could have spontaneously went out of his control as it did. D will argue that the sparking resulted from EC's knowing failure to upgrade the wires to the trade's customary wires. At best, these attempts at defenses are grounds for indemnifying WBF and/or EC, and H is still entitled to recover from the original tortfeasor.

Thus, D's conduct actually caused H's damages.

Proximate Causation

The plaintiff must also establish that the type of harm could have reasonably been foreseen to result from the defendant's negligence.

Here, D's texting while driving set off a chain reaction resulting in H's house burning down. Even though texting while driving may not ordinarily result in building fires, it can be reasonably foreseen to result in vehicle crashes (as further established by the statute) and further damages arising out of the crash. Even if D had crashed into a glass storefront instead of the pole, for example, subsequent theft and looting of the store would still be foreseeable. D might want to argue that his driving did not retroactively cause EC's decision not to change the wiring, but again, that is irrelevant to the rule.

Thus, H can establish proximate causation.

Res Ipsa Loquitur

When there is no direct evidence of causation, but the harm clearly would not have occurred if not for negligence and the defendant is in exclusive control of

the space, a plaintiff can still demonstrate causation by the *res ipsa loquitur* doctrine.

Again, no facts indicate there was an intervening problem with D's car. If H could not establish by direct evidence that D was texting or negligent in driving, he might try to argue that a spontaneous loss of control over the car constituted *res ipsa loquitur*. This argument is unlikely to prevail since D was in exclusive control over the car, but not the area around and including H's house.

Damages

The complete burning of H's house is sufficient to show damages.

Negligence Per Se

If the plaintiff shows that the negligence occurred when the defendant violated a statute designed to protect the public (or other intended class), the plaintiff can establish a case of negligence per se, shifting the burden to defendant to show that the statute was not intended to protect the plaintiff and that the type of harm that occurred was not foreseeable.

Here P violated a Motor Vehicle Code section prohibiting use of mobile phones to send or receive text messages while in motion. The Legislature enacted the statute because they were "[c]oncerned about the dangers of texting while driving," demonstrating the intent to prevent this type of harm. There are no facts to support an argument by D that he did not violate the statute. He will likely try to argue that the statute was not intended to prevent electric fires, but will fail for the same reasons stated above.

For all the foregoing reasons, H can also prevail on a negligence per se claim against D.

Trespass of Land/Chattel

Trespass of land and or chattel are other causes of action that provide for damage to property. However, these "intentional" torts require the plaintiff to show that the defendant intentionally trespassed or interfered with the property.

H cannot reasonably raise a trespass claim against D.

2. H v. EC

Negligence

See rule above

Here, EC breached its duty of care to H, causing his house to burn down.

Thus, H can recover against EC for negligence.

Duty of Care

A utility company has a duty of care to its customers, persons who might subsequently transact with or be around those customers, its products, and its operations.

Whether or not H was a customer of EC, EC operated the utility pole beside his home. At a minimum, EC owed H a standard of care to prevent its utility pole not to bring harm to H's home.

Thus, EC owed a duty of care to H.

Custom

The standard of that care can be measured by observing customs within that trade, or practices common to other utility companies.

Here, an available product called the WBF prevented sparks from downed

electric wires, and was demonstrated by studies to vastly increase safety and reliability. However, EC believed that the WBF had yet to gain widespread acceptance.

Further information is required to establish an industry custom which EC impermissibly failed to follow.

Breach

See rule above.

Whether or not the WBF could be shown as an industry custom, the utility pole crashed onto the ground after being struck by D's car. In addition to the fact that D was texting, the street was busy, suggesting that D's driving speed and the force of the impact was rather limited. The reaction further indicates that the pole's foundation was not designed to resist this level of force. There were no apparent safeguards on the adjacent, connected utility poles preventing the wires from coming down along with the pole. It does not seem as if EC took reasonable measures to prevent its utility pole from causing harm.

Thus, EC breached its duty of care.

Causation - Actual

See rule above.

EC will argue that the spark would not have occurred but-for the impact of D's car. EC will argue that the house would not have caught fire but-for the newspaper. These attempts at defenses do not negate H's claim that his house would not have burned down but for that spark from EC's power line. Prior, foreseeable torts do not preclude a subsequent negligent tortfeasor from liability, and EC can only use such arguments to indemnify D.

Thus, EC actually caused H's house to burn down.

Causation - Proximate

See rule above.

By operating a utility pole by H's house, H became a foreseeable plaintiff.

Thus, EC proximately caused H's house to burn down.

Damages

See rule and analysis above.

Conclusion

H can prevail on a negligence claim against EC.

Strict Liability - Inherently dangerous activities

Products Liability - Unreasonably dangerous products (manufacturer/vendors)

3. Damage Apportionment

If H prevails against both D and EC in the same action, he can enforce the judgment against either tortfeasor. The burden then shifts to D and EC to apportion liability, the result of which is contingent upon the applicable rule in the jurisdiction.

Pure Comparative Rule

Partial Comparative Rule

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