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===== Start of Answer #5 (2364 words) =====

**1. WHAT CLAIMS MAY HARRY REASONABLY RAISE AGAINST DOUG,
WHAT DEFENSES MAY DOUG REASONABLY ASSERT, AND WHAT IS THE
LIKELY OUTCOME?**

Harry may reasonably raise the following claims against Doug:

Negligence *The elements of Negligence are: Duty (Standard of Care) Breach (of the Duty/Standard of Care) Actual / Proximate Cause of the Injury and Damages.*

Duty

Doug has a duty to act in a reasonable and prudent manner when operating his vehicle. In part, when one signs their driver's license they are acknowledging that they will follow and abide by the rules of the road. As such, Doug has a duty to not act unreasonably, and put others in harms way while he is driving.

Foreseeable persons would be pedestrians, other vehicle drivers, and owners of property adjacent to the roads in which he travels, among others.

Breach

Here, Doug was driving down a busy street, he was texting on his cell phone, which was likely diverting his attention from his main duty of driving cautiously. As the facts state, Doug lost control of his car, slipped off the road, and hit the utility pole.

Doug therefore breached his duty to drive like a reasonable and prudent person, by allowing himself to be distracted by the cell phone.

Negligence per Se (NPS) - *Under the doctrine of NPS, when a statute is violated that is in effect to protect a certain class/type of person from the type of*

harm that the statute seeks to protect them from, the Duty and Breach portion of Negligence are thus presumed.

Here, the facts state that the legislature had enacted a statute in the MVC regarding texting and driving, and that no persons should be texting while the vehicle is in motion. This statute was likely promulgated to improve safety, by decreasing distracted driving, and has roots in public policy to benefit a large class of people who are likely protected, by not being put at risk by distracted drivers.

Doug's violation of the statute, by driving down a busy street and texting, allow for a presumption, that the burden of proving Doug's duty to other drivers, and his breach of the duty is satisfied. To prove negligence, both cause and damages still must be proven.

Causation

Actual - is the actual cause of the injury, while Proximate is the legal cause of the injury.

Here, Doug's breach caused him to lose control of the car. "But For" Doug's breach, he would not have slipped off the road, and crashed into the utility pole. This is also the proximate (legal) cause of the injury, which can be a limitation based on foreseeability of plaintiff.

Damages

Here, Doug caused damages to the utility pole and in the process of causing those damages, damage to Harry's house.

Foreseeable intervening / Supervening causes.

Doug's Defenses to Negligence

Doug will argue that although he was texting/Driving, that it as not foreseeable that if he caused an accident by doing so, that the collision with the utility pole would cause sparks that could ignite paper that would then blow down the street due to wind, and land on the roof of Harry's house.

The Cordozo View (majority) is that the plaintiff must be foreseeable, and much like in the *Palsgraff* case, it may be difficult to stretch the foreseeability that far, to include the damages to Harry's house. This would be a fact for the jury to decide, and may be based on the proximity of Harry's house to the pole etc. The facts are silent as to how far away Harry's house was, but if it was several blocks away, it would be less foreseeable then if it was a house or two down.

The Andrews View (minority) is that defendant's are liable no matter how un foreseeable the plaintiff may be.

Trespass to Property (T2P) *The intentional entry on to the property of another, absent defense, necessity. Damages need not be proven, if nominal.* Here the entry of the burning paper that blew down the street, and landed on the house would qualify as a trespass (It does not have to be a person, it may be an instrumentality of the person.

Doug's Defense to T2P

Here, Doug would argue that he did not have any control over the paper (instrumentality) nor did he have any intention for it to land on Harry's property. He would likely be successful in his defense.

Trespass to Chattel (TPC)/Conversion *The intentional taking and asportation of the personal property of another, depriving the owner of it's use. If damaged/destroyed, TPC becomes an action for Conversion.* Because the fire

destroyed and burned down the home, Harry would be permanently deprived of his belongings in the house.

Doug's Defense to TPC/ Conversion

Here Doug would argue that he had no intention to cause damage to Harry's property (contents in home, or to permanently deprive him of the use of his home (RP) and belongings (PP). and that because there was no intent of the party of Doug, an action for TPC or Conversion would fail.

Trespass by Fire Trespass by fire occurs when a fire, even if negligently started, is allowed to escape and burn onto the property of another. Damages are allowed for property burned, and depending on the location of the action, attorney fees by statute may also be allowed.

Here, Doug's negligent actions of colliding with the utility pole, sparked a fire, which the burning newspaper, blew down the street, and landed on the roof of Harry's house, igniting it and burning it down. Here, Doug, negligently allowed the fire to escape and burn onto the property of Harry.

Doug's Defense to Trespass by Fire

Doug does not likely have any viable defenses to this cause of action, except that perhaps again, Harry was not a foreseeable plaintiff.

Doug does not appear to have any defenses which would include comparative fault on the part of Harry , or that Harry did not take steps to mitigate his damages.

Likely outcome

Here the likely outcome may be that Doug could be found liable for negligence

in the destruction of Harry's home, if the court finds that Harry would be a foreseeable plaintiff under the cordozo view. The Court may find Doug liable for damages via a theory of trespass by fire also, again only if Harry is a foreseeable plaintiff.

2. WHAT CLAIMS MAY HARRY REASONABLY RAISE AGAINST ELECTRIC COMPANY, WHAT DEFENSES MAY ELECTRIC COMPANY REASONABLE ASSERT AND WHAT IS THE LIKELY OUTCOME?

Negligence (Defined Supra) Harry may claim that the Electric Company (EC) was negligent.

Duty

That the EC had a duty to all the customers, and residents in the area to act within a reasonable standard of care for their business activities, and took reasonable measures to protect the interests of others. It should be noted that some businesses, have an inherently dangerous nature about them. Here, the court may consider the fact that the EC operates in a industry which passes live electricity through it's lines, that the business is ultra hazardous, and that the EC must maintain a higher standard of care, and take additional protections to protect foreseeable plaintiffs.

Breach

Harry may claim that because the EC had retained old wiring systems, and didn't change out the wires to the WBF (new anti spark technology) that they breached their duty of standard of care to the surrounding residents/bystanders/customers, but not using the safer technology.

Causation

The fire caused by the spark, which was transferred by the newspaper, was the

actual cause of the fire that damaged Harry's house. But For the wires sparking when downed, the fire would not have happened.- again proximate cause (legal) cause may be limited by the foreseeability of the plaintiff.

Damages

Harry's house caught fire and burned down.

EC's Defenses to Negligence

Here, the EC will likely argue that Harry was not a foreseeable plaintiff (See discussion supra) That the fact that the sparks flew, and happened to catch a piece of newspaper which caught on fire, and then was blown by the wind down the street landing on Harry's roof, and causing it to burn was too far remote. Conversely, had the sparks, or the live wires landed on Harry's roof directly, and caused the fire, the outcome could be different.

EC increased duty to make safe because of hazardous business activity.

As discussed supra, EC may be held to a higher standard of duty of care than the reasonable person, because it operates a company with what may be an inherently dangerous activity. (live electricity, going through wires) As such, although there is new technology which can make it safer (the WBF), which would now allow wires to spark if downed, the EC may argue that the use of the WFB would cause significant, increase in rates to the customers, and that although studies show that companies who do replace their wiring with the WBF systems show vastly increased safety and reliability, that the technology is not wide spread in the industry at this point.

Here, depending on how dangerous the activity is found (Ultra hazardous for example maintains strict liability no matter how reasonable and prudent the due

care of the company exhibits) a balancing test of whether the amount of safety provided by the new technology would greatly outweigh the significant cost and expense of replacing the wiring, a cost which would then be passed down to its customers in the form of higher monthly rates, which may cause matters of public concern.

Trespass by Fire (defined supra)

Here, the EC's wiring sparked a fire when the wires were downed, which caught fire to newspaper, that then blew down the street, and landed on the roof of Harry's house, igniting it and burning it down. Because the EC did not use the newer technology WBF wires, it maybe argued that the EC negligently allowed the fire to start and then escape and burn onto the property of Harry.

EC's Defense to Trespass by Fire

EC, may also use the defense that Harry was not a foreseeable plaintiff. Further, they will likely counter that although some companies are seeing vastly increased safety and reliability in the WBF technology, that it has yet to gain widespread acceptance in the industry as a standard, and further the cost of changing to the technology, may be prohibitive, and the increased rates to customers, may ultimately not outweigh the safety features.

Likely Outcome

The likely outcome will very much hinge on how foreseeable Harry was as a plaintiff to EC. Depending on several factors of proximity of his house to the lines, and the foreseeability of whether or not a piece of newspaper, which was sparked by the downed line, which suddenly caught fire and then blew down the street will have considerable weight in the consideration.

Again, in *Palsgraff*, a woman who was standing under a clock, a considerable

distance away from the train tracks, where the man dropped the package of fireworks, as the conductor helped him up into the car, that was subsequently run over, causing an explosion, that shook the platform, and knocked the clock down injuring the woman, was not deemed a foreseeable plaintiff. A likely parallel under the Cardozo view may be applicable here.

3. IF HARRY PREVAILS AGAINST DOUG AND ELECTRIC COMPANY, HOW SHOULD DAMAGES BE APPORTIONED?

Types of Damages

Equitable remedies, are used when Legal Remedies are insufficient - examples of Equitable remedies are TROs, injunctions and constructive trusts. Here, none of these remedies would likely be applicable.

Money (legal) damages, are sufficient here. In Tort, damages ordered to put the plaintiff back into the position they would have been in 'but for' the harm. For most types of injury, economic (Money lost/out of pocket for replacement of items, medical bills, wages) and non economic damages (compensation for pain and suffering) are adequate remedies. Punitive damages may also be ordered, if the act of the defendant was considered wanton, extreme and reckless. Typically punitive damages cannot be 10x greater than the other damages ordered.

Joint and Several Liability

Generally, all defendants are Joint and Severally liable for their actions, unless it is clear, where one defendant's damage liability ends and another once begins. In that case, apportionment of liability may be used between the defendants.

Under J&S liability, both defendants may be liable for the total amount of

damages. Either may pay the full amount and then seek contribution from the other for reimbursement.

Defendant's may also make demands of other defendants, or bring in third parties on requests for indemnity, where the person seeking indemnity is asking for the other person to pay the entirety of the damages

Generally when a defendant causes harm, he is liable for all foreseeable harm that can come about later in the action. For example, if a person injury another, and the leg injured becomes infected with gangrene, and the person dies, then the defendant may still be liable for the continuing injury.

Apportionment

How the damages would be apportioned, would typically be left up to the jury to decide, based on the jury instructions given.

The Jury may find that Doug caused the majority of the accident because of his negligence (and if it rises to the level of reckless ness -- which the facts do not state explicitly) then the jury may shoulder him with a greater part of the burden. Conversely, if the jury decides that the EC could have put in the WBF wires, and that the cost didn't outweigh the value, and as such would have stopped the fire from happening due to lack of sparks, they may decide to place more of the burden on the EC.

Further, if the jury finds that somehow Harry contributed to the negligence (either comparatively, or contributorily) they may decrease or bar his recovery. (Facts do not state that Harry had any fault in this) Additionally, Harry must try to mitigate his damages.

If there are statutory provisions for attorney's fees under Trespass by Fire, and

either Doug or the EC are found liable, then Harry maybe able to collect attorney fee's as part of his recovery as well.

Question #2 Final Word Count = 2364

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