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===== Start of Answer #5 (1427 words) =====

1. What claims may Harry raise against Doug and what defenses may Doug assert?

*At issue is whether Doug can be held liable for the fire caused to Harry's house, although he could not have foreseen the burning of the house and although Harry was arguably not a foreseeable plaintiff.

Negligence

To prevail on a claim for negligence, plaintiff must show that defendant owed him a duty, that the duty was breached, that defendant's breach of duty was the actual and proximate cause of plaintiff's injury and that the breach of duty caused damages to plaintiff.

a. Duty

At issue is whether Doug owed a duty to Harry

The general rule is that all persons owe a duty of care to act as a reasonable person to all foreseeable plaintiffs. To determine whether the plaintiff is foreseeable depends on which theory the jurisdiction follows. If the jurisdiction follows the Cardozo view, defendant is liable to all plaintiffs that were in the zone of danger; if the jurisdiction follows the Andrews view, which is the minority view, defendant owes a duty of care to everyone, whether or not in the zone of danger. For purposes of this analysis, the Cardozo view will be applied.

Doug was driving down a "busy" street while texting. There is a statute that prohibits this. A person driving a car owes a duty to everyone to drive the car in a reasonable and safe manner. By driving the car while texting, Doug breached his duty of care.

Harry will argue that the theory of negligence per se should apply, because Doug violated the statute. To prevail on this claim, Harry must prove that he falls within

the group of people that the statute seeks to protect and that he suffered the type of injury that the statute seeks to prevent.

The statute was mostly enacted to prevent drivers from getting distracted by their phone and from hitting pedestrians. It is very unlikely that the statute was enacted to prevent plaintiffs like Harry or to prevent damages such as the burning of a house.

Thus, Harry will not be successful in a claim for negligence per se and so he must still establish that Doug owed him a duty and that the duty was breached.

b. Breach of duty

At issue is whether Doug's conduct fell below the applicable standard of care

A breach of duty occurs when defendant's conduct falls below the standard of care that applies to him.

Doug, was driving carelessly while on his phone when he slipped off the road and hit the cable pole. A reasonable person would not be on the phone while driving, specially when driving down a busy street.

Thus, Doug breached his duty

c. Causation

* At issue is whether Doug's conduct was the actual and proximate cause of the burning of Harry's house

To prevail in a negligence claim, plaintiff must prove that defendant's conduct was the actual and proximate cause of plaintiff's injury

- Actual cause

At issue is whether the fire would have occurred even without Doug's negligence

To prevail, plaintiff must show that his injury or damages would not have occurred but for defendant's negligent conduct

The paper would not have started a fire if Doug did not hit the pole. Doug drove negligently, hit the pole, this caused sparks, the sparks burned the newspaper and then the paper started the fire of Harry's house.

Because the fire would not have occurred for Doug's wrongful conduct, his action was the actual cause of Harry's damages.

- Proximate cause

At issue is whether it was foreseeable that by driving negligently, Doug was going to cause a fire

Gral. rule is that defendant is liable for all foreseeable damages caused to plaintiff.

It is very unlikely that the burning of the house was foreseeable or that Harry was a foreseeable plaintiff. Harry will have a hard time proving that Doug's conduct was the proximate cause of his damages. But if the court finds that his conduct was the proximate cause, Doug will be held liable for negligence and must pay Harry for the damages caused to him.

d. Damages

At issue is whether Harry can recover damages to the house

Gral. rule is that defendant is liable for all foreseeable damages caused by his conduct.

As discussed above, Harry will have a hard time showing that the damages

were foreseeable or that Harry was a foreseeable plaintiff. But if the court finds that the damages were foreseeable, Doug will must pay for the damages caused to the house.

Overall conclusion: if the court finds that Doug's conduct was the proximate cause of the burning of the house, he will be liable for negligence and must pay damages to Harry

***Arson**

At issue is whether Doug can be held liable for arson

Arson is the malicious burning of someone else's dwelling. To prevail on a claim for arson, plaintiff must prove that defendant acted maliciously, meaning with intent or reckless disregard.

Doug did not act maliciously, he did not intend to burn Harry's house.

Because Doug did not have the requisite intent, he cannot be held liable for arson.

Defenses by Doug

*** Harry was not foreseeable plaintiff**

As mentioned above, Doug can raise the defense that Harry was not a foreseeable plaintiff and thus not in the zone of danger; and because he was not in the zone of danger, no duty was owed to him.

*** Damage was not foreseeable**

As discussed above, Doug will can also raise the defense that even if Harry was a foreseeable plaintiff, the burning of his house was not foreseeable, and thus he should not be liable for damages.

*Electric Company was the negligent

Doug can also argue that his negligent is not what caused the burning. He can argue that the fire would not have occurred if electric company had changed his wiring system.

2. What claims may Harry raise against

* Negligence

Same definition as above applies here

a. Duty

Same definition as above applies here

Electric company (EC) owed a duty to all residents near its utility poles and all residents near the wiring system because they were all foreseeable plaintiffs.

EC owed a duty to Harry

b. Breach of duty

Same definition as above applies here

By not changing to a safer wiring system, EC's conduct fell below the duty of care owed to the residents.

EC breached its duty of care

c. Causation

- Actual cause

Same definition applies here

If EC had changed its wiring system to WBF, the wires would not have sparked and would not have started the fire.

EC's decision of not changing its wiring system is the actual cause of the Harry's damages

- Proximate cause

Same definition as above applies here

EC was aware of the existence of better and safer wiring system, but it chose not to switch to it because of the financial burden it would have caused to the company.

EC could have foreseen that if the pole crashed to the ground, the wires would start a fire. Thus, EC's decision of not switching to the new wiring system was the proximate cause of Harry's damages.

d. Damages

Same definition as above applies here

Not changing the wiring caused the damages

EC will be held liable for negligence and must pay damages to Harry

Defenses by electric company

* Doug was also negligent

EC will claim that Doug's negligent conduct was the actual and proximate cause of the fire, and thus, Doug should be liable and not EC

* P was not foreseeable

EC will also argue that it was not foreseeable that a driver would hit the pole and that this would start a fire in someone's house

* Strict products liability definition

EC may also be liable for strict product liability

