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Exam ID: 917
Course: Torts
Professor Name: C. Suzuki
Exam Date: Thursday, December 13, 2007

Very good!

Problem One

I would take on the case for Chico and Pinky. I believe they have a reasonably strong case for negligence against the FOSS group even after a cursory look at their case. Although several points are arguable, the Trentinos were most certainly wronged and suffered damages as a result of what appears to be negligent conduct on the part of FOSS and its instructors.

In analyzing the Trentino's claims, we must first look at the alleged ground of negligence they are making. In other words, who might be potential defendants against their claims. Here, as in most cases, there are potential claims of misfeasance (meaning the FOSS group's actions caused the harm) or they are nonfeasance (meaning the FOSS group committed an omission even though they had a duty to act). Although we might prefer a misfeasance claim over a nonfeasance claim, there appear to be both in this case because FOSS may not have adequately prepared Chico for this trek and because FOSS didn't come to his aid when it knew he was possibly in trouble. The defense, however, is probably going to claim this is a case of nonfeasance because they will claim they had no duty to act on behalf of Chico and because Chico was responsobile for his own care while on this trek.

In terms of analyzing the alleged grounds, we must first establish who are potential plaintiffs and defendants in this case. Platiniffs are, of course, both Trentinos because Chcio was injured and his wife amy have suffered harm, too, because of her relationship to her husband. Potential defendants in this case are the instructors or guides

who led this wildernsess trek and FOSS itself because of the doctrine of vicarious liability that holds an empooyer respoonsbile for teh conduct of its employees when those employees are acting within the scope of their duties. Because Instructors Mark and Rufus were acting as trek guides, I believe vicarious liability will follow in this case because neigher guide appears to have gone on a folic of sorts while on this trip that would separate them from their employment duties. Throughout this analaysis, I will refer to the instructors and Foss simultaneously as the Foss group or as defendants.

DUTY

We generally define duty as existing when there is a foreseeable harm to a particular class of plaintiffs with a foreseeable type of injury, and for policy reasons. Under a misfeasance claim, there is a duty to use reasonable care under the circumstances to protect those who are foreseeably exposed to risks of harm arising from one's conduct. Here ther duty question seems to be whether Chico and his wife were within the clas of plaintiffs who might have been injured when FOSS didn't adequately prepare, train or notify Chico of the harms he might suffer as a member of this outdoor trek.

I think that when FOSS relied on the use of a prepared course materials and a waiver it was foreseeable that chico or any other camper might not be adequately prepared for this trek.

In the non-feasance claim there is usually no general duty to act at all on behalf of another unless one created the harm or there was a special relationship between the parties, or a limited duty rule applies because of special circumstances.

Here we need not search far to believe that FOSS had a limited duty to assist or to rescue on behalf of Chico when it became apprant to other campers and instructors that he was failing during the first day of the trek. Chico was vomiting and showing signs of deyhrdation and was breathing poorly. Upon notice of this, FOSS instructors told Chico to eat pine needles. I would argue that by taking notice of Chico's condition the FOSs instructors effectively intervened on his behalf. They noticed his condition and advised him to improve his condition. Additionally, because the instructors had an emergency reserve of water on hand that they had used for other campers, the instructors seem to have failed their duty to aid when they had the means to help and knew of Chico's failings.

As the representative of the Chicos, I would be curious to see if there may be additionally liability owed to them from the FOSS group under the landowner/occupiers of land doctrine used in many courts.

Here, FOSS did not own the forest land, but it did have a permit of use from the US Forest Service. As such, Foss had a right of use of the land that seems to me to be occupier similar to that of a landowner. Under the landowner doctrine, the courts may follow two separate methods to determine a landowner's and occupier's responsibility to a plaintiff. The first method is to employ the Status Trichotomoy which was applied in the American Industries Life Ins. V. Ruvalcaba case. In landowner cases, a duty is owed to an injured party based on that party's status as either a licensee, invitee or trespasser. We must determine which of these Chico was in relation to Foss. An invittee is someone who enters with the owner's knowledge for the mutual benefit of both parties. A licensee is

someone who enters with the consent of the landowner but for his own convienince. A trespasser is someone with no legal right to be on the land. The duty to an invittee is to use reasonable care to protect from any dangers the owner knows cour could reasonably discover. The duty to an invitee is to not cause injury willfully or through gross negligence and to protect from any dangers which the owner might actually know of. The duty to a trespasser is simply to not cause injury either willfully or through gross negligence.

Here it seems that if the landowner/occupier rule applies to FOSS, Chico would be a licensee because he paid a fee to pursue his own goals of learning wilderness techniques and FOSS was benefiting from his payment. The defense would argue, however, that FOSS does not own the land and does not owe a duty to Chico under this doctrine. It additionally would argue that Chico was a licensee who was warned of the risks.

In another look at the doctrine, the courts may choose to apply the standard developed in Rowland v. Christiansan where the Calfifornia courts abandoned the trichotomoy in favor of general duty liability under which FOSS would be required to protect Chico from any foreseeable harms arising from the camping trek.

Additionally, there seems to be a duty owed to Pinky, by the FOSS group, because of its relationshiop to her husband. The courts have carved out a duty by people to not cause emotional harm to third parties who might reasonably be affected by another's injury. As Chico's spouse, it seems that by calling her to deliver news of

Chico's demise – without first having confirmed Chico's condition – that it was completely foreseeable that this news might cause her great emotional grief.

Courts at first didn't recognize this duty to prevent emotional distress, but the expanded the rule to permit recovery for those who were within a zone of danger, a space where they were at risk themselves. A second expansion came by recognizing recoverable damages for persons who witnessed the serious injury ot a family member in Clohessy v. Bachelor. Yet another expansion came by recognizing a duty to reasonably protect against foreseeable Emodistriess to someone closely related to an injured party, as was the case in the Burgess case. I think our situation conforms more so with Burgess.

Finally, there appear to be valid policy reasons for imposing a duty against Foss and its instructors. Because the Trentinos suffered a loss, it seems it would be unfair that they should be prevented from recovering. Such a recovery might deter reckless behavior by future outdoor trek companies and there appear to be no serious administrative concerns here by creating a floodgate of outdoor trek litigation suits.

BREACH OF DUTY

In determining breach we consider what the standard of care was that FOSS owed to Chico and his wife and if FOSS acted reasonably in light of this standard of care. In the misfeasance argument that FOSS failed to adequately prepare camprs the duty is to reasonably protect from foreseeable harms in light of that preparation. To determine if the standard was breached there are different forms of evaluation that might be used. The first is the Hand's Risk Calculus set out in Carrol Towing which states that B<P*L. This

means that if the burden of preventing harm by ensuring more adequate preparation of campers is less than the probability that someone would get hurt and the seriousness of the potential injury, then a duty is owed. As such, it doesn't appear that the burden of ensuring more adequate preparation of campers or instructors would be that much more expensive that potential injuries on a trail that might involve permanent disabilities like brain damage or even death. A reasonable person would probably conclude such a burden is slight compared to the potential risks here.

Customary practices of other outdoor trekking companies may also paly a role in determining whether FOSS breached, as was the situation in the Hagerman case involving breeach by construction companies compared to industry practies. The role of custom, however, will not be entirely conclusive in this case.

In the nonfesasance claim we could also use the Hand's risk formula to see if rendering aid at the moment using water that was readily available was somehow greater than the cost of facing potiential injuries. Again the answer appears to be no.

CAUSATION

Casusation is simply showing a connection between the negligent conduct of a defendant to the injuries suffered by a plaintiff. To determine causation we use eithet the but0-for test or the substantial factor tests. They are essentially the same, but sometimes the substantial factor test is more useful in cases involving multiple defendants.

In looking at the but for test against claims here, it seems that it may be diffictult to establish that but for Foss's adequate training that Chico would have suffered a harm.

Conversely, but for Foss' failure to render aid, Chico might not have suffered harm. Using the substantial factor test, it appears causation is more likely. Was Foss failure to adequately prepare Chcio and its instructors a substantial factor in causing his dehydration and injuires. Here is seems the answer is yes. Additionall, was Foss's failure to render aid quidcly a substantial factor in thiese injuries, as well? Yes, it seems Chico would have been beter off if Foss and its instructors helped sooner.

We need to consider that courts may find some problems with causation because teh defense will argue that Chico caused his own injuries by failitng to adequately prepare himself. Or they may argue he was simply not fit for this trip. But in the Ingersol case seee that a plaintiff doesn't need to rule out all possible causes of an injury, jsut that the cause claimed be a reasonable cause.

Additionally, we may want to consider introducing expert or scientific evidence on behalf of Chico to show how the conditions of the trek may have contributed to his dehydration and futerh condtions such as his coma. Any attempt to use scittific evidence, however, will likely be fought by the defense on the grounds that it is insuffieint or irrelevant to the case. The court, however, likely will want to weight such proposed evidence according to the rules spelled out in the Daubert Triology. Those rules state that to introduce scientific evidence, we must show that (1) the conclusions reached by our expertsw have been tested to see if they can be replicated or disproven, (2) that the epxerts' opinions have been subjected to peer review, (3) that we know what the potential error rates of the experts' methodology are and that (4) that the experts' conslucsoins are generally accepted within the scientific community.

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SCOPE OF LIABILITY

The purpose of determining scope of liability is to set out the outer bounds of liability. By doing this, we essentially examine whether the careless conduct of a defendant is sufificently related to a pliantiff's injury.l Scope is based almost entirely on foreseeability and policy. We usually ask three questions to determine scope: were the plaintiff's foreseeable victims; were the injuires caused foreseeable; and were there any intervening causes that would block laiblity by the defendant's conduct?

In the present case, it does not seem out of the ordinary that a camper miht not comprehend training matieroals for a multi-day wildnerss trek and might become injured because of the inadequate preparation. It neither seems out of the ordinary that experienced guides should recoginize a novice camper's abilities and should render aid when they notice the camper is in need of assistance. Even if it was out of the oridinary some courts will still send the question to a jury unless, as a matter of law, that no reasonable juror could differ on the opinion of these duties and conduct being reasonable.

In the case of intervening causes, the defense may want to argue that Chico simply wasn't up to the task of such a trip and that he himself failed to prepape well for a this hike. They may argue that his large food consumption before hand and his normal water intake were factors in liiting his abilities along this hike. But it looks here like these arguments might fail because the hiking group itself was made up off experts and probably knew of the foreseeability of some of these factors simply by virtute of the fact that they used a liability waiver here.

Scope, however, is a matter of framing questions properly. As such I would want to frame this issue in terms of whether it was foreseeable that a novice camper might not adeeuately understand the demands of a long hike and might require the assistance of trained guiedes who were accompanying him. In fact, I would say that is exactly why the novice hired the trained guides in the first place.

There are exceptions to the foreseeability test used here, however. The first is a medical malpractice rule that says a defendant is responsible for harm caused by negligent treatment after the inital injury that was caused by the initial defendant. That doesn't seem to apply here since on one is arguing Chico's care was inadequate at the hospital.

The second excepton that does seem to apply is the eggshell plaintiff rule where defendants basically accept plaintiffs as they find them. If in fact Chico's health was a factor prior to this trek, it shouldn't matter because defendants under this rule must accept that plaintiffs may have preexisting conditions that make potential harms even worse.

DAMAGES

Assuming that we can successfully enter a claim on behalf of Chico and Pinky, we should focus on what kinds of damages might be avilaable. The first is a category of compensatory damages that might include future and past medical expsenses and future and past lost wages. Here, because Chico no longer requires care, it seems he should be granted past lost wages and medical care up until the point his recovery is accepted. He

may, however, require future care because it remains unknown if there are lingering brain injuries from his ordeal. In determining these medical expsness, we need to be mindful of the fact that such expenses should be reasonable and necessary. In looking at Chico's and his wife's earnings losses, such a recovery might be possible for past losses from the date of his injury up until the present when both renenter the workforce. Future losses, however seem to be limited here because all agree that Chico will return to work soon and that his wife may, as well. Nonethless, the defense would want to limit any future medical and wage losses because both partners here seem ready to renenter the workforce. If there were future loss recoveries avialible, we would have to discount them according to future inflation rates and present-day values of the money used in a recovery.

A second category of damages that may be available here are for pain and suffering and emotional damages. Pain and suffering must be perceived by Chico because of his injuires to be recoverable. Unfortunately, because he was comatose for a period of time, these probably won't be recoverable on his part. Pinky, however, may be able to recover for her emotional stress because of the time she spent worrying about hre husband and tending to his care. She does not have a physical injury herself, but it was foreseeable that she would suffer serious emotional harm because of her spouse's injuries.

Another cateogroy might be punitive awardes, but those are rare and are tyupically granted only in cases invoovling extereme recklessness. I don't think we are arguing that anybody was exteremely reckless here.

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DEFENSES

There are several possible defenses which can be raised by a defendant and the burden of proof rests upon the defendant. Depening on the jurisdiction there could be either contributory negligence or comparative fault. Contributory negligence means that if chico was at fault by failing to prepare himself well, then there would be no recovery whatsoever on his part. Additionally, his wife's claim would also fail because of his own negligence.

In comparative fault, we compare the amount of the plaintiff's fault with that of the defendant and award recovery accordingly. If there is pure comparative fault, the jury would assign percentages and the plaintiff would recover whatever percentage based on the defendant's negligence. Some jurisdictions have regulations limiting or modifying comparative fault to only allow for the plaitniff's recovery when he ws either equally or less at fault when compared to the defendant.

Here, the defense will aruge that at the least Chico was mostly at fault for his own injuires because he didn't read the training manual and because of his food and water intake prior to the trek. They will argue that at the mjinium, Chico was proably 60 percent at fault and actually probably was 100 percent at fault for his own injuires.

More realistically, though, teh defense is going to fall bck onto the waiver of liability Chico signed prior to starting this trek. They are going to say that Chcio assumed the risks of participating by signing this waiver. I think, however, the waiver is not a death knell in Chico's case. Under the assumption of risk, the defense must show that

Chico knew the risks, appreciated the risks and voluntarily assumed these risks in light of his knowledge. The nature and language of Chcio's contract, however gives me hope for chico. First, the contract was lengthy and in incredibly small type. It's unclear to me that based on the contract that Chioc would certainly know the risks involved in a long hike. Alhtough the contract states that Foss will not be respoons ible for serious injury or death, I'm not sure that Chico appreciated the manner in which these injuires might occure. While he may have anticipated some type of injury, I think Chico didn't appreciate these risks because he knew he had experienced guides assisting him along the trek.

There are policy reasonsa for not enforcing such a waiver if the waiver is not clear and is ambigious in its terms. Serious injury or death seems to me to be amibigous in that it doesn't relate the nature of what campers might encounter. I'm assuming there was no possibility of chico purchasing additional insurance based on the wavier that we know of. Because such waivers cannot be overly broad and unclear, thepaper may not hold. Additinally, another policy would be employed to see if camping tresks in the wilderness should be regulated by policy. Here that seems to be the case beause the forest service has recived outside advice on adequate provisions. That means the government is interveneing with at least a recommended regulation on the part of this company, which is a recognition of the inherent dangers involved. Because of that fact alone, I think we can argue this wiave is likely not a valid one.

CONCLUSION

Based on the elements of negligence discussed above, I bleeive there is at least a good question to be presented to a jury on behalf of Chico and Pinky. Depending on the jurisdiction, their claims may be recognized as having more merit than in others. As such, I believe we should take on their case.

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Problem Two

I hate to be the one to decline a suit, but I think our law firm may have to tell Pete Marx (PM) that his chances of recovery against Lydia (LD) may be slim to none. We may still want to take him on as a client, however, because surely there will be ligitation in this case; and it may be that PM needs adequate representation from any suit LD might bring.

As with any negligence case, we must first assess the grounds of negligence. Since PM is asking us to look at his case from his side, the alleged ground of negligence would indicate that PM wants to recover losses from LD for losses to his home, car and apparently his minor physical injuires, as well. PM would be our plaintiff and LD would probably be our pimary Defendant. However, there may be an additional cause of action against the Rudoph Bass for wrecking into the tow truck hjauling PMs car away from the scene of the fire.

DUTY

As discussed above in a previous case, duty is generally imposed in a given case basede on the foreseeability of one being within a certain class of plaintiff's or by having a certain class of injuires. PM's alleged claim of duty against LD is going to be either a misefacance claim of failing to protect him from foreseeable harm by both running to his aid with a ladder and a nonfeasance claim of failing to foresee that a serious fire could start by leaving her kitchen unattended. Interestingly, he may also argue that LD

SHOULD HAVE NOT acted to render any aid to him when his ladder fell away. To be honest, I'm not sure if should have not acted would be a misfeascance of nonfeasance claim. It has interesting aspects of both.

I think we would be remiss if we did not advise PM that by picking apples in his yard with a ladder in plain view of LD's house that it was likely foreseeable that she would come to his aid when the ladder fell to the ground. As such, even though LD did not have a duty to come to PM's aid, because it was foreseeable and reasonable that a neighbor might come to another's rescue. It seems that PM would be arguing that LD's duty was to follow stricktly a duty to not act on his behalf. In this case, I'm not sure that duty truly exists. Had LD not acted, it seems she would have been well within her rights. But because she did, she has actually taken on a new duty of having to come to PM's aid because she took the intitative to act.

Policy would tell us that LD's intentions are supported by reason, as well, because in general we probably want neighbors to come the aid of others. We probably don't want to impose liability on neighbors for helping others in times of need or potential injury. In fact, it seems that PM's alleged grounds of negligence against LD would fly in the face of accepted policy in matters such as these. Nontheless, we continue to anyalize his claims.

BREACH OF DUTY

Did LD breach her duty to PM? In modest terms, LD had a general duty to PM to exercise reasonable care under the circumsntance to protect PM from foreesable risks that might be caused by her conduct – in this case her conduct of trying to come to his rescue.

There is, of course, a limited duty rule that requires one to act or rescue on bhelaf of another if there is a pseical relationship between the two actors or if the defendant caused the harm that imperils the plaintiff, or if the defendant has initiated a resuce attempt already.

Here LD did indeded initate a rescue of PM when she undertook the prupose of saving him from falling when his ladder fell to the ground. Additionally, it may be arguable that because LD and PM know each other as neighbors, that LD enjoy a special relationshiop to PM (this will probably be a stretch, though) that requires her to act on his behalf.

Interestingly, though, PM may actually have breached a duty to LD because as a landowner he may ower her a duty of care under the landowner rules discusses above in the camping case. As a landowner, LD may infact be an invitee who entered PM 's land for the mutal benefit of both because his benefit would be being saved from harm and hers would be the benefit of restoring harmony to an obviously dangerous situation.

The landowner liability duty to LD is also probably a stretch, however, because of the rescuer rule that brought LD to PM's yard in the first place. As such, she is proably not either a licensee, an invitee or even a trespasser because her goal was to save PM from harm.

can someone enter with no status?

But, because LD may owe a duty to have not left her house in a condition that might cause a fire that could easily spread to a niegbhor's house, LD may have breached this duty to PM when she quickly ran out her kitchen to save him without considering the food that was still cooking on a hot stove.

In determining a breach, looking at the Hand's risk calculus mentioned above, it seems the burden of turning off a hot stove before running out the door was probably less than the probability of a burning house and the injury cuased by a spreading fire. For the sake of argument, let's assume LD breached her duty to not leave her house in an unsafe order that might affect PM's house, under the hand's risk calculus.

I'm not sure the role of custom will be very effective for us here because it is likely customary for neighbors to rescue their troubled neighbors when harm is known to them. Using the role of custom in this case seems to break apart the breach of duty argument that PM would like us to make.

CAUSATION

With causation, we are simply tring to draw a connection between LD's supposed negligent conduct and the burned house, ruined car and physical injuries suffered by PM. To determine causation we, again, must apply the but-for or substantial-factor tests.

Causation arguments may tend to favor PM a bit when we look at the facts. But for LD's act of running quckly from her home while her stove was still on, was a fire started that eventually spread to PM's house? Seemingly, the answer here is yes. Looking at the speartae substantial factor test, the anwer again appears to be yes because leaving a hot stove unattended certainly seems to fit the bill as a substantial factor in starting a grease fire that can spread to other areas.

Expaning the causation to our other potentinal defendants, we again seem to see a causal connection between Pm's harm and their actions. Looking at Rudulph Bass under both the but-for and substantial-factor tests, it seems reasonable that but for his running a red light, or substantially because of his running a red light there was significant damage caused to PM's car that was in tow.

SCOPE OF LIABILITY

It is under the scope analysis that I think PMs case seems to be most at risk if he wants to recover damages from LD. The pupose of anlayizing the scope is to set he outer bound of liability in a reasonable manner. We do this by examing whether the careless conduct of a defendant is suffieicinty related to a plaintiff's inhjuries. Scope is based almost entirely on foreseability and policy. In our analayiss, we must ask whether PM was a foreseeable plaintiff based on LD's actions, wehether his injuires (house, car and physical) were foreseeable in light of LD's actions and whether there were any intervening causes that would block LD's liability to PM.

At the same time, we must ask these same questions with regard to Ruldophy Bass who caused additional harm to PM when he ran the red light.

Becaues scope is largely an issue of framing questions properly, we must see if there is a reasonable way to connect PM's injuires to LD running out her kitchen. On first glance, does it seem foreseeable that a neighbor who witnesses her fellow neighbor dangling from a tree might run carelessly away from her home and leave a stove burning

in an attempt to rescue? It does seem reasonable that this mjight occur. Framing in a different way, does it seem reasonable that a neighbor would attempt a rescue when she is much smaller and when her neighbor was only hanging from a height of about five feet (not a terribly dangerous height)? This seems a bit more in favor of PM's argument because it doesn't seem out of the ordinary that he might have just jumped down and saved himself. In fact, it might seem more out of the ordinary that a neighbor might consider a height of five feet to be so dangerous as to justify a mad dash from a potentiall dangerous kitchen where food and oil were cooking in a hot pan.

Under the scope analaysis, it seems there may be an argument in favor of PM, but in all likelihood, it seems that PM's loss of his home and car are unforeseeable consequences based on a nieghobor's attempted rescue. Because we tend to consider policy in these situations, it seems contrary to good intentions to impose liability on a neighbor for trying to assit another, as well.

Applying the scope question to Bass, however, was it foreseeable that by running a red light that Bass might seriously wreck into another vehicle, one that might be towing another vehicle to a shop? This does seem to be foreseeable in regard to Bass' conduct of running a red light. The type of plaintiff, PM, who might suffer losses because of Bass' negligence are also seemingly among the kinds of victims we would want to protect by extending liability to someone such as Bass.

DAMAGES

If Pm could recover against LD, recoverable damages might include compensatory damages for the $100K in damages to his garage and partial damges to his car. He might want us to consider reovering for medical costs related to the gash in his arm, as well. It does not apper that he will required any future medical or wage loss recoveries, however, as his inuries so far have not kept him out of work. He is not claiming any emotional damages, so far as we, ut if he were, the fact htat he suffered a gash might give rise to any emotional damge claims PM may try to raise. Because LD's conduct was not grossly reckless, it would be very unlikely that Pm would be able to recover punitive damages against her.

Moving on to Bass, damages against him would probably be limited to compensatory damages for the loss of his car.

Bass may argue that because PM's car was already damaged in the fire at his house, the car was already a total loss and therefore PM should recover nothing.

It may also be that because Pm's car was damaged by LD, that PM will try to apportion damages among LD and Bass according to what was caused by each. It does not appear, however, that the concepts of joint and several liability would operate here beause LD and Bass were not doing a cmmon activity. However, because it may be unreasonable to sort damages to PM's car according to the fire and according to the wreck, it may be that Bass would become respnsi ble for all the damages because those damages would have occurred regardless of whatever the fire's damages might have been to the car. If however Pm has photos and descriptions of the damage to his car, it may be that damages caused by Bass and LD could be apportioned and sorted accordingly.

DEFENSES

There are several possible defenses that can and mostly likely will be raised by LD, and perhaps even by Bass.

LD is most likely going to want to argue that the scope of liability is exceed in this case because of the rescuer rule set forth in Sears v. Morrison where a man working on his AC appeared to be at risk of injury when it fell on him and then his friend was injured in trying to help him. If anything, that case is nearly very identical to the present case. The rescuer rule established in that case basically states that an actor is usually liable for injuires sustatined by a rescuer attempting to help another person placed in danger by the actor's negligent conduct. The case gave us the additional rule that liability could be extended even if the injuires sustanited by the person attempting the resuce are recived while trying to rescue the actual actor himself – even if it was foreseeable that the rescuer might be injured.

The scope-rescuer rule, as well as Fredonia's own Rescue statute that releases a rescuer from liability in casing injuries – even if negligently – during a rescue, seem to support reliving LD from liability against PM's house fire and his car damages.

Futher, LD may wish to invoke defenses under either a congtributory negligence or compariative fault rule that would limite PM's recovery because of his own contributions to the situation that unfoled at their houses.

Under congtribuytory negligenc, PM would definitely be prevented from recovery beause of the fact that he contributed to his own negligence by permitting his ladder to be

situatied in such a way that it fell. Under Contribuytory negligence, a plaintiff is prevented from recovering at all if he iun any way caused part of his own harm. Under Comparative fault, damages would be apportioned according to Pm's own share of createing his harm. In such a case, LD's liability would have to be ranked next to PM's and the two would offset whatever recovery PM might be due. Under Pure comparative fault, PM would only recover that portion of harm that LD caused. Under a modified comparative fault statue, he might be totally prevented from recovering because of the fact that his own negligence might be greater than LD. Under modified CF a plaintiff's contribution to his own harm cannot exceed that of the defendant. And that may be the case here.

Bass may not have so many defenses, though. Because he ran a red light, it may be that he could face responsibility to PM because of the negligence per se doctrine wheihc is similar to strict liability. Becaue Bass ran a red light, Freedonia may want to hold him responsible regardless of his intentions for harm caused to PM, such would be the case of strict liability. At the least, his vilotaton of running a red light would seve as storng evidence of Bass's breach of a duty owed to PM and every other motorisit in Freedonia.

POTENTIAL CLAIMS AGAINST PM

If anyting, PM may be facing further ligitation from LD. He has asked us to look into possible claims she may have and it appears that her case for recovering for the fire at her home, and certainly for her broken arm may, may in fact be quite strong.

As general rule, PM had at minimum a general duty not to cause foreseeable harm to LD through negligent conduct of his own.

Pm's conduct probably fell below that standard when he was picking apples in his yard and then slipped from the ladder, causing LD to want to attempt to assist him because of the emergency situations rule that changes the reasonable standard of care owed to another. Under teh emergeny rule, however, LD would have to show that her concern was immiedate and her fear of harm to PM was of imminent harm. However, if she can show that she acted as a rescuer, a court may still wish to send this case to a jury.

LD will be able to show that but for PM's careless yardwork that she would not have sufferded a broken arm or burned house. She likely will be able to argue that his carlessness toward himself was a substantial factor in cuasing her injuires.

LD will also be able to argue that her broken arm was a direct conddquence of PM's negligent conduct in picking apples. This is so because it was foreseeable that she might seem him dangling from a tree and that it was foreseeable that his weight would cause her serious injury if she tried to ease or stop his fall. LD, in fact, is exactly the kind of plaintiff and her broken arm is exactly the kind of harm that might be foreseeable in light of PM's conduct.

LD's claims for her burned house, however, may be outside the scope of liability against PM because it could, according to some courts, seem rather extraordinary that

while attempting a rescue of her neighbor that LD's door would become locked trapping her dog in the kitchen with a hot cooking pan that would eventually heat enough to cause a fire.

The damaged window at LD's house would proablby be a wash, as well for LD, because PM brok the window while trying to effect a rescue of her property. The same rules that would defend LD from claims against Pm for attemptin a rescue of him would equally apply to PM for trying to rescue her home, which was in immenti danger of burning because of the active fire.

If I had more time, I would try to analyzie whether PM would have adequate defenses against claims by LD for the fire to her home through the rules of contributory negligence and comparative fault. Because LD left a burning pan in her kitchen, either defense may seem adequate. I dont' think we could employ assumption of risk as a defense because its likely LD didn't appreciate the risks to her home when she left to attempt a rescue of PM.

Also, I believe we should consider whether Bass worked for a company or owned his own truck. As such, vicarious liabilyt might exist in a recovery attempt for damages on behalf of PM because of Bass's employment status.