

**QUESTION 13 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V  
OR IN SOFTEST ANSWER SCREEN 13**

At trial, plaintiff testified that she was paddling a kayak on a calm Saturday morning in Michigan. According to plaintiff, a motor boat driven by defendant approached her location and was traveling at a reasonable speed, when it suddenly veered to the right and slammed into her kayak. Plaintiff suffered serious injuries. Defendant testified that he was driving a motor boat on the lake, and was traveling at what he thought was a reasonable speed, when another motor boat that was cruising toward him (driven by John Smith) suddenly turned towards his boat at a rapidly increasing speed. Defendant testified that he had only seconds to react and quickly turned his boat to avoid a collision. Defendant hit plaintiff on her kayak after just narrowly avoiding a collision with the other boat.

Also testifying at trial was John Smith. Smith testified that he suffered a heart attack while he was driving a motor boat that Saturday morning on the same lake. He did not remember what occurred after, as he was unconscious until reaching the hospital. Smith testified that this was his first heart attack, though a year ago he had surgery for clogged arteries.

According to Michigan statutory law, a boat owner "is liable for any injury occasioned by the negligent operation of the vessel," and must act with due regard for the safety of others using the waters while operating the boat. Plaintiff filed suit and claimed that defendant negligently caused her severe physical injuries. Defendant argued that it was not his fault, as he had no choice but to take action to avoid a collision.

Explain what **elements plaintiff must prove, how defendant's argument impacts that analysis, and whether she can prevail under these facts.**