

EXAMINERS' ANALYSIS OF QUESTION NO. 13

Plaintiff's claim is negligence. To prove negligence, plaintiff must present evidence of: (1) a duty owed from defendant to the plaintiff, (2) breach of that duty, (3) proximate cause, and (4) damages. *Case v Consumers Power Co*, 463 Mich 1, 6 (2000).

The first element plaintiff must establish is the existence of a duty that defendant owed to her. "'Duty' is defined as the legal obligation to conform to a specific standard of conduct in order to protect others from unreasonable risks of injury." *Lelito v Monroe*, 273 Mich App 416, 419 (2006). Here, the facts state that a Michigan statute provides that a boat owner can be liable for negligence, and that every boat owner has to act with due care to others using the waters. Thus, the statute requires that defendant act with "due regard" for the safety of others, while a duty in negligence would require that defendant act as a reasonably prudent person under the circumstances. *Bonin v Gralewicz*, 378 Mich 521, 526 (1966).

But another doctrine was raised by defendant, which is what duty defendant had in light of the impending collision **with** the other boat. Defendant's argument raises the issue of sudden emergency. In *Socony Vacuum Oil Co v Marvin*, 313 Mich **528, 546** (1946), the Court described this common law doctrine as follows:

"One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence."

The sudden-emergency doctrine is not an affirmative defense, but an extension of the reasonably prudent person rule, and "the test to be applied is what that hypothetical, reasonably prudent person would have done under all the circumstances of the accident, whatever they were." *Baker v Alt*, 374 Mich 492, 496 (1965); *White v Taylor Distributing Co*, 275 Mich App 615, 622 (2007) *aff'd* 482 Mich 136 (2008). "To

come within the purview of this rule the circumstances attending the accident must present a situation that is 'unusual or unsuspected.'" *Vander Laan v Miedema*, 385 Mich 226, 232 (1971). To be "unusual," the circumstances must vary "from the everyday traffic routine confronting the motorist." *Id.* An "unsuspected" hazard is one that "connotes a potential peril within the everyday movement of traffic." *Id.* However, "it is essential that the potential peril had not been in clear view for any significant length of time, and was totally unexpected." *Id.* A sudden loss of consciousness can constitute a sudden emergency. *White v Taylor Distributing Co*, 482 Mich 136, 140 n 4 (2008), citing *Soule v Grimshaw*, 266 Mich 117, 119 (1934).

In light of this law, the best argument is that defendant was confronted by a sudden emergency. The facts show that because Smith suffered a heart attack, he immediately lost consciousness and lost control of his boat. Being faced with a boat that quickly turned toward him, and at a high rate of speed, presented defendant with an unsuspected and unexpected peril. It was not of defendant's making. Thus, the sudden emergency doctrine applies in the context of defendant's liability, i.e., breach of duty, toward plaintiff. See *Baker* 374 Mich at 496 ("In actuality, the doctrine of 'sudden emergency' is nothing but a logical extension of the 'reasonably prudent person' rule.").

The next question is whether, under that doctrine, defendant can be liable for negligence under these facts. Defendant acted as a reasonably prudent person would have under the circumstances, as he turned his boat away from what was soon to be a collision between two motor boats. He had no time to reflect on the best course of action. Instead, he had to make a split-second decision as Smith's boat unexpectedly surged right at his boat. Turning away from that boat was a reasonable decision under the circumstances, even if he did not know plaintiff was in close proximity to his boat. Because "a person confronted by a sudden emergency is not guilty of negligence if he or she fails to adopt what subsequently and upon reflection may appear to have been a better method...." *White*, 275 Mich App at 623, the best answer is defendant cannot be held liable.

Although this analysis ends the possibility of defendant's liability, an applicant may still discuss for the sake of thoroughness the remaining two elements. As to proximate cause,

if defendant had arguably breached his duty to plaintiff, his actions were clearly a proximate cause of plaintiff's injuries. Defendant purposefully steered his boat in plaintiff's direction, resulting in his boat hitting her. Causation is clear, but a reasonable argument could be made that Smith having a heart attack while driving the boat could have been foreseeable, and an intervening cause of the accident and relieving defendant of any liability. See *Heitch v Hampton*, 167 Mich App 629, 632 (1988). As to the last element, damages, as the facts state that as a result of the accident, plaintiff suffered severe physical injury.