

In a civil action, a plaintiff sued a decedent's estate to recover damages for injuries she suffered in a collision between her car and one driven by the decedent. At trial, the plaintiff introduced undisputed evidence that the decedent's car had swerved across the centerline of the highway into oncoming traffic, where it had collided with the plaintiff's car. The decedent's estate introduced undisputed evidence that, before he swerved across the centerline, the decedent had suffered a fatal heart attack which he had no reason to foresee and that, just prior to the heart attack, the decedent had been driving at a reasonable speed and in a reasonable manner.

A statute makes it a traffic offense to cross the centerline of a highway.

In this case, which party is likely to prevail?

- A. The decedent's estate, because its rebuttal evidence is undisputed.
- B. The decedent's estate, because the plaintiff has not established a prima facie case of liability.
- C. The plaintiff, because the accident was of a type that does not ordinarily happen in the absence of negligence on the actor's part.
- D. The plaintiff, because the decedent crossed the centerline in violation of the statute.

Explanation:

Defenses to negligence per se

Violation of law excused by:

use of reasonable care

incapacity

need to avoid greater risk of harm

impossibility of complying

vagueness of law

reasonable ignorance (rare)

To recover damages for accidental injuries, a plaintiff must establish a prima facie negligence case by proving the following **elements**: duty, breach, causation, and damages. Under the doctrine of **negligence per se**, the elements of **duty and breach are presumed** if:

the defendant **violated a statute**

the statute was **intended to prevent** the type of harm suffered by the plaintiff *and*

the plaintiff is within a **class of persons** that the statute was intended to protect.

However, the defendant's **violation** of an applicable statute or ordinance will be **excused** if the defendant presents rebuttal evidence that he/she was using **reasonable care** or was **incapacitated** while attempting to comply with the statute or ordinance. If the plaintiff fails to dispute this excuse with counterevidence, then the defendant will prevail.

Here, the plaintiff showed that she was injured when the decedent's car swerved across the centerline of the highway in violation of a statute designed to protect drivers like her from head-on collisions. Therefore, the plaintiff established a prima facie negligence case **(Choice B)**. But the decedent's estate presented rebuttal evidence that the decedent was driving with reasonable care when he was incapacitated by an unforeseeable heart attack. Since that evidence is *undisputed*, the decedent's estate will likely prevail **(Choice D)**.

(Choice C) When an accident was of a type that does not ordinarily happen in the absence of negligence on the actor's part, the actor's negligence can be presumed under the doctrine of *res ipsa loquitur*. But this presumption can be rebutted by evidence that the defendant was using reasonable care (as seen here).

Educational objective:

A defendant's violation of an applicable statute or ordinance will be excused, and negligence per se will not apply, if the defendant presents evidence that he/she was using reasonable care or was incapacitated while attempting to comply with the statute or ordinance.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 15 (Am. Law Inst. 2010)
(discussing excused violations of a statute).

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