



Personal Injury

'Doctrine of emergency' often fails to be full defence

By Kirsten McMahon, Associate Editor



While a defendant may claim an emergency situation required an immediate response, there is a significant burden of proof to show they met the lower standard of care and the argument often fails to be a full defence, Windsor personal injury lawyer [Gino Paciocco](#) tells [AdvocateDaily.com](#).

“The doctrine of emergency is a defence used to reduce the standard of care that a negligent party would otherwise be held to in any given scenario,” says Paciocco, a founding partner with [Paciocco & Mellow](#).

To avoid liability for any negligence situation, a person must demonstrate that they exercised the care that would be expected of an ordinary, reasonable, and prudent person in the same circumstances, he notes.

“If an emergent situation is imminent and unforeseen and could not have been reasonably anticipated by the negligent party, then the situation will be deemed an emergency by the court. In an emergency, what it takes for an action to be considered ordinary, reasonable, and prudent is much lower,” Paciocco says.

A scenario in which the doctrine could be used is a sudden mechanical failure of a defendant’s car, such as the vehicle’s breaks failing.

“However, in order to ‘not have been reasonably anticipated by the negligent party,’ the defendant must be able to show that they had otherwise maintained their car in good working order,” he says.

Another situation the doctrine of emergency could apply is where a pedestrian runs out into the road and a driver must react to avoid hitting them.

“The defendant could apply this doctrine both to the pedestrian plaintiff or towards another vehicle they may have struck in an attempt to avoid the collision,” Paciocco says.

Paciocco says the burden of proof is on the defendant and it is a significant one.

“Often defendants will still be found not to have met the standard of care required in an emergency, although it is different in every situation, being entirely dependent on the circumstances.”

A scenario in which the doctrine would not be a complete defence to a negligence claim is inclement weather.



“In the case of black ice or other poor driving conditions, a defendant is expected to recognize the hazardous condition, reduce speed and use greater care,” he says.

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