

5.10G SUDDEN EMERGENCY (Approved pre-1983)

NOTE TO JUDGE (Approved 2/95)

This doctrine is in disfavor. “(W)e entertain grave doubt whether a sudden emergency charge should ever be given in an ordinary automobile case. There is a modern view that it is argumentative and confusing, and should be eliminated.” *Finley v. Wiley*, 103 N.J. Super. 95, 101 (App. Div. 1968). “We again caution that this instruction should be given in only the most unusual circumstances.” *Leighton v. Sim*, 248 N.J. Super. 577, 580 (App. Div. 1991). No reported case can be found where use of the charge has been upheld since the advent of comparative negligence. Query: isn’t this “reasonable care under the circumstances?”

A. Sudden Emergency, Effect on Negligence

In connection with the question of (contributory) negligence, it has been asserted that the defendant (plaintiff) was confronted with a sudden emergency. Where a person, without any fault on his/her part, is confronted with a sudden emergency, that is, is placed in a sudden position of imminent peril not reasonably to be anticipated, the law will not charge him/her with negligence if he/she does not select the very wisest course in choosing between alternative courses of action. An honest mistake of judgment in such a sudden emergency will not, of itself, constitute negligence, although another course might have been better and safer. All that is required of such a person is that he/she exercises the care of a reasonably prudent person under like circumstances.

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It is for you the jury to determine from the evidence whether such an emergency existed, whether it arose without the fault of that person and whether that person acted with due care under the circumstances.

[The following two additional paragraphs may be utilized where necessary:]

The law recognizes that one acting in a sudden emergency may have no time for thought and so cannot weigh alternative courses of action but must make a speedy decision which will be based on impulse or instinct. What is required of a person in such an emergency is that he/she act reasonably and with ordinary care under such circumstances.

However, if the emergency arose in whole or in part by reason of the fault, that is, a lack of due care, of that person in the events preceding the emergency, then this rule of sudden emergency does not apply to excuse him/her even though his/her conduct during the emergency does meet the standard of reasonable care referred to.

Cases:

Harpell v. Public Service Coord. Transport, 20 N.J. 309 (1956); *Dobrow v. Hertz*, 125 N.J.L. 347 (E. & A. 1940); *Dickinson v. Erie R.R.*, 81 N.J.L. 464 (E. & A. 1911); *Massotto v. Public Service Coord. Transport*, 71 N.J. Super. 30 (App. Div. 1961); *Ferry v. Settle*, 6 N.J. Super. 107 (App. Div. 1950); *Spalt v. Eaton*, 118 N.J.L. 327 (Sup. Ct. 1937).

NOTE TO JUDGE

There may be cases in which the burden of proof shifts. *See Roberts v. Hooper*, 181 N.J. Super. 474 (App. Div. 1981).

B. Defendant's Liability for Effects of Emergency

When one without negligence on his/her part is put by the negligence of another under a reasonable apprehension of emergent serious personal physical injury, and in a reasonable and bona fide and well-meant effort to escape, the former sustains physical injury, a right of action arises against the person creating such emergency to recover for the damages proximately resulting therefrom.

Cases:

Tuttle v. Atlantic City R.R., 66 N.J.L. 327 (E. & A. 1901); *Marshall v. Suburban Dairy*, 96 N.J.L. 81 (Sup. Ct. 1921); *Buchanan v. West Jersey R.R.*, 52 N.J.L. 265 (Sup. Ct. 1890).