4.13 Duty of One In Imminent Peril and Responsibility of The Person Causing the Perilous Situation

The Committee recommends that no instruction either on the duty of one in imminent peril or the responsibility of the person causing the perilous situation be given.

Comment

An instruction which states that the law does not require a person to act with deliberation and care in the face of an unexpected danger not caused by his own negligence should not be given for three reasons. First, it is argumentative. Second, it states a simple and obvious fact about human behavior. Third, except in the most obvious case when no juror would need to be reminded of the proposition, it will probably lead to reversible error. For example, the court has held in *Moore v. Daydif*, 7 Ill.App.2d 534, 536-37, 130 N.E.2d 119, 121 (2d Dist.1955), that a sudden emergency instruction was erroneous when the lead car swerved off to the right to avoid a pedestrian whom defendant, in a following car, then saw and hit with his right fender. *See also*: *Reese v. Buhle*, 16 Ill.App.2d 13, 20; 147 N.E.2d 431, 435 (1st Dist.1957) (error to give a sudden emergency instruction when plaintiff emerged from between two stopped trucks at crosswalk and was hit by defendant); *Minnis v. Friend*, 360 Ill. 328, 337; 196 N.E. 191, 195 (1935) (sudden appearance of a fire engine at an intersection must be anticipated; therefore, the court properly refused to give an unexpected danger instruction); *Andes v. Lauer*, 80 Ill.App.3d 411, 414; 399 N.E.2d 990, 992; 35 Ill.Dec. 701, 703 (3d Dist.1980).

A companion instruction that the person who negligently causes a sudden emergency is responsible for injury caused by reasonable attempts on the part of the imperiled person to extricate himself which caused injury should not be given. The subject is adequately covered by an ordinary instruction on proximate cause, and this type of instruction is argumentative, painfully obvious, and likely to be reversed.

See Comment to IPI 4.14 on the non-recommended "unavoidable accident" instruction.