

Rules Time  
Right Of Way<sup>1</sup> - No Way!  
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Have you ever had a fisherman trolling lines cut you off in a narrow channel? Ever ridden a PWC and not had the urge to jump the wake that big sportfisher just left? Ever seen a sailor kill the engine in the center of a busy channel to hoist sail? All of these watercraft operators probably share a common misconception about right of way. And what does it mean when someone says they have the right of way?

My understanding of the words “right of way” is probably much like yours - if you have the right of way and there’s an accident, then it’s not your fault and you can’t be held liable. Unfortunately, the Nautical Rules of the Road (the COLREGS or the Rules) don’t recognize the concept of right of way. Placing one’s vessel into situations where a risk of collision exists because of obedience to any one particular rule over another invokes the possibility of substantial personal liability as well as that of injury or even death. The exact observance of all of the rules will avoid collisions in 99% of all encounters. And every boat operator is responsible for following all of the applicable rules all of the time. But what about the 1% of times when a departure from the rules is justified?

Rule 1 of the COLREGS states that the rules must be followed, that is, the rules apply to all vessels in navigable waters. Fair enough. Rule 2, appropriately entitled “Responsibility,” requires that every vessel must use all appropriate means to avoid immediate danger, even if it means violating the rules. Simply put, this means that no vessel has the right of way over any other vessel if there is imminent danger of collision. Rule 2 also states that nothing in the rules shall exonerate any vessel, owner, master or crew from the consequences of failure to comply with the rules or with the ordinary practice of seaman. Clearly then, there is no such thing as “right of way” in the sense that a vessel can be relieved of responsibility for a collision even if the vessel complied with some or even most of the rules. In practice, it is almost impossible to be involved in a collision without violating one or more of the rules and that is what Rule 2 tells us. But this presents a dilemma. Which rules do we follow and which do we ignore? And when is a departure from the rules justified?

Fortunately, the rules and the courts give us the answer to those questions. A departure from the rules is justified only to avoid immediate danger. In other words, a special circumstance exists. Breaking a rule is never allowed for reasons of convenience or expediency. To justify an departure from the rules, at least one of four special circumstances must apply: adherence to the rules causes an immediate danger<sup>1</sup>, other conditions make adherence to the rules impracticable<sup>2</sup>, ordinary rules must be modified because of the presence of a third vessel<sup>3</sup>, or one of the vessels proposes a departure from the rules and the other assents<sup>4</sup>.

The United States Supreme Court has limited the application of the special circumstance rule. They have held that a departure from the rules must meet all of three conditions: i.e. that the departure was: to avoid immediate danger, only to the extent necessary, and was imperatively required by the special circumstance<sup>5</sup>. The courts have ruled repeatedly that boaters can be held liable for errors in judgement which a careful and prudent navigator would not have made.

So what are the responsibilities of the careful and prudent navigator? He must know the character of his vessel and its maneuvering abilities. He must know the conditions to be encountered. His vessel must be properly manned and operated. He must not sail with defective equipment. He must know and comply with any local rules and above all, he must know the rules and how the courts have interpreted the rules.

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<sup>1</sup> *The Mauch Chunk*, 154 F. 182 (2d Cir. 1907)

<sup>2</sup> *Cottesbrook v. Beishu Maru*, 1979 AMC 1205.

<sup>3</sup> *The C.R. Hoyt*, 136 F.671 (D N.J. 1905); *The B.S. Ford*, 1937 AMC 603 (ED Va. 1937)

<sup>4</sup> *The Interstate* (N.Y. 1922) 280 F.466.

<sup>5</sup> *Belden v. Chase*, 150 U.S. 674, 699 (1893)

So, power boaters, the next time you see a horde of PWCs ahead, back off the throttle and give them wide berth. PWC operators, stay off the wakes and away from docks and other boats. Sailors, steer out of the way of other vessels before hoisting sail and avoid crossing normal vessel traffic. A little courtesy on the water can go a long way to reducing accidents and injuries. And remember, there is simply no such thing as “right of way” on the water.

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<sup>i</sup> The term “right of way” does not appear anywhere in the International COLREGS. It appears in two places in the Inland Rules. The first is in Rule 9 (a)(ii) “Narrow Channels” and applies to a downbound power-driven vessel with a following current on the Great Lakes and Western Rivers. The second appearance is in Rule 14 (d) “Head-On Situation” and is essentially the same as Rule 9 (a)(ii).