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Intentional Infliction of Emotional Distress (IIED) Claim Laws and the Legal Remedies: Examining and Identifying the Theory

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Abstract

The area of tort law known as negligence engages harm caused by failing to act as a form of carelessness probably with extenuating circumstances. Emotional distress is a broad term that can refer to a wide range of symptoms from a variety of mental health disorders. Anyone can experience emotional distress, even if they do not meet the criteria for any psychological disorder. Whether or not a mental health problem is present, emotional distress can be overwhelming effect on daily functioning. The workplace can be a stressful environment, and while some stress may be motivating, too much is often overwhelming. The major causes of emotional distress related to work may include concerns about job security or job performance. Sometimes, circumstances build and combine in unexpected ways to cause distress for relationships with colleagues or managers. A person can experience poor working conditions in any workplace and at all levels of an organization. Among the many possible causes of emotional distress at home are personal or environmental factors, such as: experiencing relationship problems with partners, other family members, or friends. It may include living in a neighborhood that faces inequity and a deprivation of resources.

Keywords: Intentional Infliction of Emotional Distress; Negligent Infliction of Emotional Distress Claims; Westboro Baptist Church

Prelude

Intentional infliction of emotional distress (IIED) comes in where personal injury is involved from physical acts assault or battery. The definition might be "Liability for IIED can arise when one person's extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another." In other words, if a defendant intentionally does something truly awful to a plaintiff, the plaintiff can sue for IIED and recover compensation (damages) simply based on his or her emotional distress. If the severe emotional distress also makes the plaintiff ill or causes some other physical problem, the plaintiff can recover damages for that harm as well. However, if the plaintiff is suing for IIED unconnected to another tort, he or she must usually prove that the defendant engaged in extreme and outrageous conduct. Here are some examples:

As a practical joke, A falsely tells B that her husband has been badly injured in an accident, and is in the hospital with both legs broken. B suffers severe emotional distress. A may be subject to liability to B for her emotional distress. If the incident causes nervous shock and resulting illness, A is almost certainly subject to liability to B for her medical bills and related losses.

Methodology

The methodology of this study is based on case analysis and deductive method through bibliographic-documentary

survey. Researcher took help from different websites for case information. This study is exploratory in nature and is originated from many books, articles which are written by prominent writers and also from information by internet browsing which has been followed is this study are.

Abuse of Power and Rudeness

A lack of etiquette or a complete absence of compassion or empathy in public should never have to happen. This is called rudeness. If a woman is allegedly sitting on the feet of a passenger whose feet dangled over an empty seat on public transit that is to put his feet up on that seat in public is a kind of disrespect and rudeness Manners and respect are connected and we cannot have one without the other. The law and norms should against uncivil look and feel of our society and make responsible. Normally, mere insults do not suffice for the burden of this tort. Racial slurs or consistent verbal assaults may rise to the level of being actionable thus verbal threats, humiliating statements, sexual slurs and other scandalous statements may provide the basis for a claim for intentional infliction of emotional distress. However, courts may also hold a defendant liable if a plaintiff had a terrifying fear of snakes that the defendant was aware of and the defendant hid a fake snake in the plaintiff's desk, the plaintiff may have a cause of action against the defendant. This may take place if the authority such as a teacher, police officer, school official, tax officer, or medical officials abuses their position in some extreme manner, they may be liable to the plaintiff for IIED [1]. It's important to note that insults and other rude (but not extreme) conduct will not create liability. Here are some examples:

- A, the principal of a high school, summons B, a female student, to his office, and abruptly accuses her of immoral conduct with various male students. A bullies B for an hour, and threatens her with public disgrace unless she confesses. B suffers severe emotional distress, and resulting illness. A is probably subject to liability to B for both.
- A, a creditor, seeking to collect a debt, calls on B and demands payment in a rude and insolent manner. When B says that he cannot pay, A calls B a deadbeat, and says that he will never trust B again. A's conduct, although insulting, is not so extreme or outrageous as to make A liable to B under an IIED theory.
- If someone verbally assault to another person using abusive, insulting or offensive words with intentional purpose can causes negative impact that at least would include illness.

Abusive Language

It is important to understand what is considered abusive language. The words uttered matter in these proceedings. When subjected to this type of abuse, verbal threats are tantamount to the potential for assault. The person affected may feel like he or she is in danger of being harmed. Other words that humiliate the subject are determined as offensive. Racial and sexual slurs have been considered as grounds for a claim. Other statements of a scandalous concern have been included as well.

Negligent Infliction of Emotional Distress Claims (NIED)

A claim of negligent infliction of emotional distress claims (NIED) comes where emotional injury was caused by carelessness or by accident.

Sensory and Contemporaneous Observance

In *Dillon v. Legg* case the court only determine [2] ''whether the accident and harm was reasonable foreseeable." They applied this case as a bystander emotional shock foreseeable in a familial relationship. While driving his car, defendant struck and killed Dillon, a child as she was crossing a public street. Plaintiffs sued for negligent infliction of emotional distress and the courts observation was Plaintiff can recover for negligent infliction of emotional distress even if he is not within the "zone of danger" [3]. The fact of the case was in bellow:

While driving his car, Defendant stuck and killed Dillon, a child as she was crossing a public street. Dillon's mother and sister, Cheryl (Plaintiffs) sued Defendant for wrongful death. Plaintiffs also sued for negligent infliction of emotional distress. The trial court found that the mother was in close proximity to Dillon at the time of collision, but that Defendant's car never threatened her safety because she was outside the zone-of-danger. Accordingly, the trial court dismissed the mother's claim for emotional distress. Cheryl's action for emotional distress was not dismissed because she was in the zone-of-danger and feared for her own safety. The mother appealed.

In *Freeman v. City of Pasadena* [4] case the court find out the emotional impact has any sensory and contemporaneous observance from the occurrence of accident. The Court considers whether Freeman was present at the time of accident. He was at home and someone came to Freeman house and told him about the accident, he drove about two miles to the place of occurrence. John Freeman and others sued the City of Pasadena for damages arising out of an automobile accident in which two of Freeman's stepsons were injured (one later died in the hospital). Freeman was home at the time of the accident. After some unidentified person rang Freeman's doorbell and told him about the accident, Freeman dressed and hurried to the scene where

he saw the demolished automobile surrounded by lights, ambulances, and wreckers, helicopters, and police cars. When Freeman approached an open ambulance, he saw one of his stepsons lying on a gurney, his face covered with blood and one arm broken. Freeman's other stepson had already been transported by helicopter to Houston's Hermann Hospital, where he later died. The theory was developed with three aspects bellow:

The courts will take into account such factors as:

- Whether plaintiff was located near the scene of the accident as contrasted with one who was a distance away from it.
- Whether the shock resulted from a direct emotional impact upon plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence.
- Whether plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship.

The issue is whether Lehmann has sensory and contemporaneous observance in the case of *Lehmann v. Carlton Lehmann* [5] who did not observe his sons accident but he heard the sound of shot. The district court comes into decision that Richard was not at the scene of accident and he did not perceive contemporaneous observance. Carlton had shot his deer but accidentally Darrin was injured. Richard Lehmann was not near the scene of the accident. Darrin testified when Carlton driving his truck with injury Darrin he pulled up beside Richard Lehmann and he said "I shot Darrin." That's why; there had no sensory and contemporaneous observance. So, he had no sensory and contemporaneous perception. The fact was in bellow:

The accident occurred on November 3, 1991, on a 250 acre farm owned by the Lehmann family in Austin County. The appellant, Richard Lehmann and his son, Darrin, age 22 years, had gone to the farm to hunt deer. Carlton Wieghat, appellee, was there also to hunt deer. Carlton and Darrin went out in Carlton's pick-up truck to hunt at about 3:30 p.m. Richard stayed at the camphouse on the farm. Darrin and Carlton split up and Darrin walked one way and Carlton drove his truck another. Darrin heard a shot, and thinking Carlton had shot his deer, walked towards an intersection to be picked up by Carlton. While standing there, waiting, Darrin was shot in his side by Carlton. Carlton testified that he thought it was a deer that he shot. Carlton found Darrin on the ground, bleeding but conscious, and put him in the bed of his truck. Carlton drove rapidly back to camp, honking his horn all the way [6].

Moreover, in City of *Austin v. Davis* case [7] Davis did not heard of incident from other person but he found his son's dead body at bottom of air shaft. He searches around the hospital, ground and recreational areas. In the circumstances, Davis took search intensely and unwittingly he found dead body of his son. Moreover, Davis has suffered emotional distress inflicted by these circumstances. So, his experience is sufficient and integral part of sensory and contemporaneous observance. The fact was in bellow:

Kenny Davis (Kenny) suffered severe neurological damage resulting from head injuries, and was confined in a mental hospital. His father, Kenneth Richard Davis (Davis) visited his son every day during his six-week hospitalization. Kenny was confused and disoriented, and was in danger of injuring himself and others. For this reason, he was always either medicated or physically restrained. On the day of the incident, the hospital staff failed to do either. When Davis arrived at the hospital for his daily visit, Kenny was not in his room and the ward staff was unable to locate him, although they were then searching the hospital and surrounding grounds. Davis joined the search, and found his son's dead body at the base of a 10-story shaft. Consequently, Davis has suffered physical injuries caused by emotional distress inflicted by these circumstances. Plaintiff Davis sued Brackenridge Hospital, an operation of Defendant City of Austin, Texas, for both for the wrongful death of his son and separately for himself in a bystander action. The trial court awarded Davis damages in his separate bystander action. Defendant City challenged the award of damages to Davis, arguing that Davis did not have a separate cause of action for bystander injuries, and if Davis did, he was not a separate "person injured," within the meaning of the Tort Claims Act.

So now we can say the rule may be, "If a person did not perceived or unknowingly come upon in the accident place or find himself with his own motion about the accident, he will be considered as sensory and contemporaneous observance." In *Snyder v Phelps* [8], the Supreme Court signaled a move away from imposing IIED liability. The Court set aside the trial court's jury verdict that found IIED liability: "[Applying the IIED tort] would pose too great a danger that the jury would punish [the defendant] for its views on matters of public concern." It was a landmark decision of the US Supreme Court ruling that speech on a matter of public concern, on a public street, cannot be the basis of liability for a tort of emotional distress. It involved a claim of intentional infliction of emotional distress, claimed by Albert Snyder, a man whose son Matthew Snyder, a U.S. Marine, was killed during the Iraq War. The claim was made in response to the actions of the Phelps family as well as the Westboro Baptist Church (WBC) who were also present at the picketing of the funeral. The Court ruled in favor of Phelps in an 8–1 decision, determining that their speech related to a public issue was completely protected, and could not be prevented as it was on public property [9].

Intentionally Causing Nervous Shock

The Rule was established in *Wilkinson v Downton* case [10]. This is known as the rule in *Wilkinson v Downton* and is a distinct tort in its own right. Although it is an intentional tort, it is not, unlike trespass to the person, actionable per se. Actual damage must be proved to have been caused by the commission of the tort.

In this case, the defendant told the plaintiff (claimant) that her husband was lying in a pub with both legs broken. He was, in fact, uninjured. Mrs. Wilkinson suffered nervous shock and was ill for some weeks. According to Wright J the defendant had:

"...wilfully done an act calculated to cause harm to the claimant – that is to infringe her legal right to personal safety, and in fact thereby caused physical harm to her. That proposition without more appears to me to state a good cause of action...".

Note that this case was decided before there was any general recognition in law for recovery where a claimant suffered nervous shock.

Wilkinson was confirmed by the Court of Appeal in the latter case of *Janvier v Sweeney* [11]. Here, the defendant who was a private detective falsely claimed to be a police officer and told the plaintiff (claimant) that unless she provided them with letters belonging to her employer they would inform the police that her fiancé (who was German) was a traitor. She suffered psychiatric injury as a result and recovered damages under the rule in *Wilkinson v Downton. In Janvier,* the Court held that false words and threats calculated to cause, uttered with the knowledge that they are likely to cause, and actually causing physical injury to the person to whom they are uttered are actionable.

Despite attempts to extend Wilkinson notably in the cases of *Khorasandjian v Bush* [12] and *Wainwright v Home Office* (2003), it is a tort which is little relied upon.

In *Khorasandjian v Bush* (1993), Claimant, an 18 year-old woman, whose relationship with the defendant had broken down. Claimant claimed relief against the defendant, his threats and unwanted telephone calls, claiming his conduct was putting her under great distress. The judge made an interlocutory order restraining the defendant from "using violence, or harassing, pestering or communicating with" the claimant. The defendant appealed. It was held, dismissing the appeal, that:

- Harassment by unwanted telephone calls was actionable as a private nuisance notwithstanding that the recipient had no proprietary right or interest in the property;
- Oral harassment not amounting to a threat was actionable if it caused physical or psychiatric illness, or where there was a risk that the cumulative effect might cause such illness. (Note, however, that this case was overruled later in *Hunter v Canary Wharf*).

In *Wainwright v Home Office* [13], where a mother and son were strip-searched in breach of prison rules the, House of Lords ruled that the infliction of humiliation and distress by conduct calculated to humiliate and distress was not, in itself, tortious at common law. Therefore, the claimant's alternative case based upon an extension of the rule in *Wilkinson v Downton* had not been established.

In order to establish this tort, the House of Lords ruled, it would need to be proved that the defendant had actually acted in a way which he knew to be unjustifiable and intended to cause harm or at least acted without caring whether he caused harm or not. Therefore, the elements are:

- An unjustifiable act;
- Intended to cause harm or at least acted without caring whether it caused harm or not;
- And caused psychiatric injury.

Conclusion

The tort caused the damage that is not the end of the story. A breach of duty may considerably change the course of subsequent events, but the defendant will not be liable for everything that can be traced back to the original wrongdoing. The *remoteness* issue limits the extent of the defendant's liability. Like causation, the remoteness issue is relevant to all torts in which proof of damage is essential, or in which the claimant is seeking compensation for specific losses. The test of what consequences are too remote, however, is not formulated in the same way in all torts.

The U.S. Supreme Court case *Hustler v. Falwell* [14] involved an IIED claim brought by the evangelist Jerry Falwell against the publisher of Hustler Magazine for a parody ad that described Falwell as having lost his virginity to his mother in an outhouse. The Court ruled that the First Amendment protected such parodies of public figures from civil liability. In every distress involving damage, you will have to learn what the test of remoteness of damage is. Some Missouri courts have extrapolated the standard for the negligent infliction of emotional distress to intentional infliction of emotional distress cases and required under *Bass v. Nooney Co*., [15] that the emotional distress be medically diagnosable and medically significant. If the Bass test is applicable to intentional infliction of emotional distress cases, plaintiff satisfied that test by pleading in her petition that the emotional distress she suffered was medically diagnosable and significant and required her to seek medical treatment. A lack of productivity or a mental disorder, documented

by a mental health professional, is typically required here, although acquaintances' testimony about a change in behavior could be persuasive. Extreme sadness, anxiety, or anger in conjunction with a personal injury (though not necessarily) may also qualify for compensation.

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