

Purely Emotional Harm

Falzone v. Busch

Policy Reasons for “Impact” Rule

1. Flood of litigation
2. Fake claims
3. Problems of proof

“Zone of Danger”

Requires a reasonable fear of immediate physical injury

Two Lingering Questions

1. How is emotional harm different than damages for pain and suffering?
2. Why is this a duty question?

Portee v. Jaffee

Few notions anywhere in the law are more vague than
the fundamental concept of the law of negligence:
the duty of reasonable care.

Court's framing of question before it:

“one formulation of the issue before us is whether it was foreseeable that the mother would be observing the death of her young child”

“more directly stated, we must determine whether defendants owed a duty to the plaintiff that was violated when her child became trapped in the elevator”

“Bystander liability”

(1) the death or serious physical injury of another caused by defendant’s negligence;

(2) a marital or intimate, familial relationship between plaintiff and the injured person;

(3) observation of the death or injury at the scene of the accident;
and

(4) resulting severe emotional distress

Gammon v. Osteopathic Hospital of Maine

Traditional Requirements for *Allowing Recovery* for an NIED Claim (in Maine)

- physical impact
- objective manifestation
- underlying or accompanying tort
- special circumstances

Midterm

Review session on Tuesday, November 28

Email me your questions by Monday, November 27 at 5:00pm

Office hours at 12:00pm on Tuesday, November 28 is your last chance for questions.

Midterm Format

Mix of short answer and essay questions

Four hours long

Strict character limit for each question

Instructions and appendices will be posted to class website this week.

— Appendix A: List of cases from class

— Appendix B: List of legal rules for reference

Past midterm and midterm memo are already on class website.