

Purely Emotional Harm

Review Exercise

Falzone v. Busch

Reasons for “Impact” Rule

1. Physical harm not the natural or probable consequence of the negligent act
2. Consensus of the bar
3. Policy reasons

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

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