

A well-known politician and former military service member had developed posttraumatic stress disorder (PTSD) after surviving a deadly explosion. A young woman, who had heard that the politician suffered from PTSD, decided to play a joke on him by setting off small fireworks several yards from him as he spoke at a college campus. The sudden loud noise startled the politician, causing him to lose his balance and fall down. For several months after the incident, the politician experienced flashbacks, nightmares, and severe anxiety.

The politician filed a tort action against the young woman seeking damages for his emotional distress resulting from her reckless behavior.

Will the politician be likely to prevail?

- A. No, because the politician was not in the zone of danger as the fireworks were set off several yards away.
- B. No, because the young woman lacked the malicious intent necessary to support the politician's claim.
- C. Yes, because the young woman exploited the politician's known vulnerability.
- D. Yes, because the young woman's intent to assault the politician transfers to his claim for emotional distress.

## Explanation:

### Extreme and outrageous conduct

Flagrant indecency

Exploiting known & special vulnerability

Abusing authority

Repeated harassment

Mnemonic: **FEAR**

To recover for **intentional infliction of emotional distress** (IIED), the plaintiff must prove that the defendant:

engaged in **extreme and outrageous conduct**

intended to cause the plaintiff severe emotional distress OR recklessly disregarded the risk of causing such distress *and*

caused the plaintiff severe emotional distress.

Conduct is more likely to be extreme and outrageous if, among other things, the **defendant knew of the plaintiff's special vulnerability** and **deliberately exploited it**.

Here, the young woman knew of and deliberately exploited the politician's PTSD (special vulnerability) when she set off fireworks within a few yards of him to play a joke on him (extreme and outrageous conduct). In doing so, she knew (intent) or was indifferent to the obvious risk (recklessness) that her conduct would cause the politician severe emotional distress. And because this conduct caused the politician to experience flashbacks, nightmares, and severe anxiety (severe emotional distress), he will likely prevail.

**(Choice A)** Zone of danger is a theory of recovery for *negligent* infliction of emotional distress. It requires proof that the plaintiff was in danger of bodily injury and that the danger caused the plaintiff serious emotional distress. But here, the politician can recover for the emotional distress *intentionally* inflicted on him by the young woman's extreme and outrageous conduct—deliberately exploiting the politician's known vulnerability.

**(Choice B)** A public figure (eg, politician) may recover for IIED by reason of *publication* only if the publication contained a false statement of fact that was made with actual malice. But since there was no publication here, actual malice is not needed for an IIED claim.

**(Choice D)** Transferred intent exists when a person intends to commit an intentional tort (eg, assault) against a person but instead commits a different intentional tort (eg, battery) against that person. However, transferred intent generally does not apply to intentional infliction of emotional distress.

**Educational objective:**

Intentional infliction of emotional distress requires proof of extreme and outrageous conduct. Conduct is more likely to be extreme and outrageous if the defendant deliberately exploited a known vulnerability of the plaintiff.

**References**

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 46 (Am. Law Inst. 2012) (intentional or reckless infliction of emotional distress).

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