

A pedestrian was crossing a street in a crosswalk when a woman walking just ahead of him was hit by a truck. The pedestrian, who had jumped out of the way of the truck, administered CPR to the woman, who was a stranger. The woman bled profusely, and the pedestrian was covered in blood. The woman died in the ambulance on the way to the hospital. The pedestrian became very depressed immediately after the incident and developed physical symptoms as a result of his emotional distress.

The pedestrian has brought an action against the driver of the truck for negligent infliction of emotional distress. In her defense, the driver asserts that she should not be held liable, because the pedestrian's emotional distress and resulting physical symptoms are not compensable.

What is the strongest argument that the pedestrian can make in response to the driver's defense?

- A. The pedestrian saw the driver hit the woman.
- B. The pedestrian was acting as a Good Samaritan.
- C. The pedestrian was covered in the woman's blood and developed physical symptoms as a result of his emotional distress.
- D. The pedestrian was in the zone of danger.

### Explanation:

A plaintiff can establish **negligent infliction of emotional distress** (NIED) under the **zone-of-danger theory** when:

the defendant's negligent conduct placed the plaintiff in **danger of immediate bodily harm** and

that danger caused the plaintiff **serious emotional distress**.

Here, the truck driver's negligence forced the pedestrian to jump out of the truck's way to avoid being run over in the crosswalk (danger of immediate bodily harm). And since this danger likely caused the pedestrian's depression and resulting physical symptoms (serious emotional harm), the pedestrian's strongest argument for recovery is that he was in the zone of danger.

**(Choice A)** Under the **bystander theory** for NIED, the plaintiff must suffer serious emotional distress upon witnessing the defendant negligently causing serious physical harm to the plaintiff's close relative. Here, although the pedestrian saw the driver hit the woman, she was a stranger—not a close relative. Therefore, the pedestrian cannot recover under this theory.

**(Choice B)** "Good Samaritan" refers to the rescue doctrine, which holds a defendant liable for any *physical* harm the plaintiff sustains during an attempt to aid a person that the defendant placed in harm's way. Here, the pedestrian's rescue attempt caused him *emotional* harm that later resulted in physical symptoms—not direct physical harm. Therefore, he cannot recover under this doctrine.

**(Choice C)** The fact that the pedestrian was covered in the woman's blood shows that he came to the woman's aid—not that he had been placed in the zone of danger.

### Educational objective:

Negligent infliction of emotional distress (NIED) liability arises under the zone-of-danger theory when (1) the defendant negligently placed the plaintiff at risk of immediate bodily injury and (2) that risk caused the plaintiff serious emotional harm.

### References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 47 (Am. Law Inst. 2012) (negligent infliction of emotional distress).

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## Zone of danger theory

