

A driver negligently ran over a pedestrian. A bystander witnessed the accident from across the street. The bystander ran to the pedestrian, whom the bystander did not know, and administered first aid, but the pedestrian died in the bystander's arms. The bystander suffered serious emotional distress as a result of his failure to save the pedestrian's life, but he experienced no resulting physical manifestations. The bystander has brought a negligence action against the driver.

Is the bystander likely to prevail?

- A. No, because the bystander assumed the risk.
- B. No, because the bystander had no familial or other preexisting relationship with the pedestrian.
- C. Yes, because danger invites rescue.
- D. Yes, because the bystander was in the zone of danger.

Explanation:

Negligent infliction of emotional distress (NIED) has three theories of recovery: (1) zone of danger, (2) bystander, and (3) special situation. Liability under the **bystander theory** arises when:

the defendant **negligently** causes serious **bodily injury** to a **close relative** of the plaintiff–bystander

the plaintiff **contemporaneously perceives** (ie, sees or hears) that event *and*
the plaintiff consequently suffers **serious emotional distress**.

Here, the driver negligently caused the pedestrian serious bodily injury when the driver ran over the pedestrian. And though the bystander witnessed that accident, he will not prevail in an NIED claim because the pedestrian was a stranger—not the bystander's close relative.

(Choice A) *Assumption of risk* is an affirmative defense to liability for negligence or recklessness when the plaintiff voluntarily exposed himself to a known or obvious risk of harm. Here, the bystander may have assumed the risk of emotional harm by voluntarily administering first aid to the pedestrian. But since the bystander cannot prove all the elements of an NIED claim, the merits of this defense are irrelevant.

(Choice C) "Danger invites rescue" refers to the *rescue doctrine*, which applies when a defendant endangers a person and a rescuer attempts to aid that person. The defendant is liable for the rescuer's resulting physical harm. Although the bystander attempted to aid the pedestrian and suffered *emotional* distress, the bystander cannot recover under the rescue doctrine because he suffered no *physical* harm.

(Choice D) Liability under the *zone-of-danger* theory of NIED arises when (1) the defendant's negligent conduct places the plaintiff in danger of immediate bodily harm and (2) that danger causes the plaintiff serious emotional distress. Here, the bystander cannot recover under this theory since he witnessed the accident from across the street and therefore was not in danger of immediate bodily harm.

Educational objective:

A defendant is liable for negligent infliction of emotional distress under the *bystander theory* when (1) the defendant negligently causes serious bodily injury to the plaintiff's close relative, (2) the plaintiff contemporaneously witnesses that event, and (3) the plaintiff consequently suffers serious emotional distress.

References

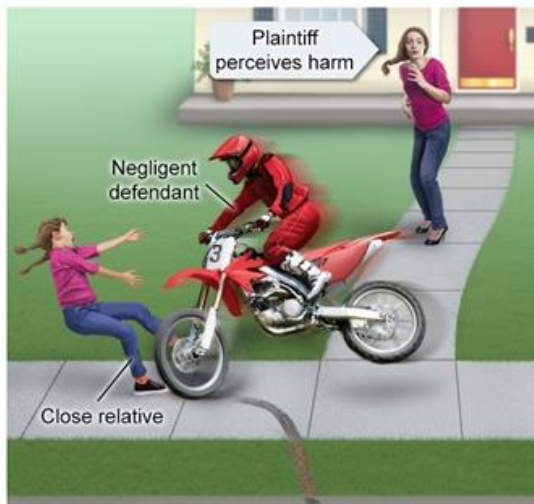
Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 48 (Am. Law Inst. 2012) (bystander theory of recovery for negligent infliction of emotional distress).

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Bystander recovery for negligent infliction of emotional distress (NIED)

NIED



No NIED

