

After her husband died in a hospital, a widow directed the hospital to send her husband's body to a funeral home for burial. The hospital negligently misidentified the husband's body and sent it to be cremated. When she was informed of the hospital's mistake, the widow suffered serious emotional distress. She has sued the hospital.

Is the hospital likely to be held liable to the widow?

- A. No, because the widow did not witness the cremation.
- B. No, because the widow was never in any danger of bodily harm.
- C. Yes, because hospitals are strictly liable if they do not properly dispose of corpses.
- D. Yes, because the negligent handling of the husband's body was especially likely to cause his widow serious emotional distress.

Explanation:

Negligent infliction of emotional distress

Theories of recovery	Required elements
Zone of danger	Defendant's negligence put plaintiff in danger of immediate bodily harm Danger caused plaintiff serious emotional distress
Bystander	Defendant negligently injured plaintiff's close relative Plaintiff contemporaneously perceived that event Event caused plaintiff serious emotional distress
Special situations	Defendant negligently: delivered erroneous announcement of death or illness mishandled corpse or bodily remains contaminated food with repulsive foreign object Caused plaintiff serious emotional distress

A plaintiff can recover for **negligent infliction of emotional distress** (NIED) under one of three theories: (1) zone of danger, (2) bystander, or (3) special situations. The **special-situations theory** applies to three scenarios where the defendant's negligence is especially likely to cause the plaintiff serious emotional harm. Liability arises under this theory when the plaintiff suffers **serious emotional distress** because the defendant **negligently**:

delivered an erroneous announcement of death or illness

mishandled a corpse or bodily remains *or*

contaminated food with a repulsive foreign object (eg, a used condom in a soda bottle).

Here, the hospital negligently mishandled the husband's corpse by mistakenly cremating it. And since the widow suffered serious emotional distress upon learning of that mistake, the hospital will likely be liable to the widow for NIED.

(Choice A) A plaintiff must contemporaneously perceive an event to recover under the *bystander theory* for NIED. Since the widow did not witness the cremation, she cannot recover under that theory. However, she can still prevail under the special-situations theory, which does not require contemporaneous perception.

(Choice B) A plaintiff must be placed in danger of immediate bodily harm to recover under the *zone-of-danger theory* for NIED. The widow cannot recover under this theory since she was never in danger of bodily harm. However, she can still prevail under the special-situations theory, which does not require imminent physical danger.

(Choice C) A defendant may be *strictly liable* (ie, liable without a finding of fault) for physical harm caused by his/her participation in an abnormally dangerous activity (eg, storing explosives in a thickly populated area). Although the mishandling of corpses will likely cause serious emotional distress, it is not considered an abnormally dangerous activity. Therefore, the hospital is not strictly liable for improperly disposing of the husband's corpse.

Educational objective:

Negligent infliction of emotional distress occurs under the *special-situations theory* when the plaintiff suffers serious emotional distress because the defendant negligently (1) delivered an erroneous announcement of death or illness, (2) mishandled a corpse or bodily remains, or (3) contaminated food with a repulsive foreign object.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 47(b), cmt. f (Am. Law Inst. 2012) (special-situations theory of negligent infliction of emotional distress).

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