Emotional Distress: Debatable Grounds for Suit

Although most of us believe we know the general meaning of “emotional distress,” few of us outside of plaintiff attorney groups are likely to view it as grounds for legal action. No one will deny that emotional distress can be very real and sometimes devastating. Do you remember what you felt as you were waiting in the corridor 5 minutes before going in to take your oral board examination? Have you ever had a phone call in the middle of the night from the highway patrol about your teenaged kid? Emotional distress is not exclusive to patients. Any of you who has ever seen a major flap gradually turn the color of midnight or who has been handed a thick envelope by a process server probably knows what I mean.

The philosophical question, then, and one to which the law seems to be blind, is the matter of intent. Emotional distress is a basic and almost inevitable reaction to adversity. Most occasions that lead to emotional distress are inevitable. It is only when the proximate cause of the distress is a result of an action committed with harmful intent that the situation becomes legally debatable.

Take the following real-life incident: A successful businessman was experiencing a spectrum of bizarre symptoms. His physician, a highly respected specialist, suggested that he take an AIDS test. It came back positive for HIV. After the understandable shock and in the acute depressive period that followed, the man decided that whatever time he had left would best be spent doing the things and seeing the sights he had missed during his long climb to success. Because he has no family and is independently wealthy, he decided to travel the world. After turning his projects over to someone else, he closed his studio, sold most of his belongings (including his elegant condominium), severed his relationships, and took off, leaving no forwarding address. In the following months most of his symptoms seemed to disappear and he began to feel normal. He knew that was not unusual with this disease.

The man learned that the French are conducting some promising HIV research, so about 8 months later, while in Paris, he decided, however reluctantly, to check on his status. He was still understandably obsessed with his illness. After being retested for the AIDS virus, he was informed, to his amazement, that he was HIV seronegative. He also learned that, on the basis of an exacting scrutiny of his past history and social life, he had never had the disease. After the champagne hangover wore off, the man caught the next plane home and confronted his doctor with the news. The American physician repeated the test, and sure enough it came back negative for the AIDS virus. The only possible explanation was that there had been a mix-up in the original test specimens, but it was impossible to determine whether the physician or the laboratory had made the mistake. Both of them saw a large number of such cases, so it could have been either. The patient filed suit against both the doctor and the laboratory on the basis of negligence and emotional distress.

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It is most interesting that at trial, the jury learned that the man is wealthy and determined that he had not really suffered any serious physical harm. They also determined that the error had, in essence, forced him to take the long vacation he had theretofore postponed, and there was no actual damage. Thus they awarded him a very small sum
for the negligence but a disproportionately large amount in punitive damages for the emotional distress.

How would you have voted if you had been on that jury? How do you measure emotional distress? Is it worth more in New York than in Indiana? How can you tell whether it is the real thing or fraudulent deception? How do you account for differences in reaction between someone who has a phlegmatic personality and someone who is neurotic? Should or shouldn't the circumstances that created the distress be taken into consideration?

If we consider that human beings are, by nature, imperfect, then it is impossible to eliminate the possibility of error. As our technological environment becomes increasingly more complex, the likelihood of error increases. Yet in our society the margin of permissible error has reached virtually zero. Personal responsibility is an increasingly evanescent concept. If something bad happens, it must be someone else's fault; therefore someone—it doesn't matter who—has to pay. Webster's Collegiate Dictionary equates the word inadvertent with the word negligent. Negligence to a plaintiff's attorney is like catnip to a cat. Setting aside for the moment the different issue of someone profiting intentionally from the distress of others, it seems that the point at which emotional distress becomes a compensable event is largely in the eye of the beholder.

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