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# CRITICISM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN THE AMBIENT OF TORT LAW

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## Introduction

The "tort of outrage," or the intentional infliction of emotional distress, refers to a circumstance in which a person does an extreme and outrageous act against the victim. This act must produce a great deal of emotional misery and trauma, much beyond what a decent society would tolerate. Even though there is no threat of physical damage, certain types of behaviour can be extremely offensive and mentally hurtful to others under certain circumstances. Due to the subjective nature of the definition of offensive behaviour, the courts have established high criteria for establishing a claim for intentional infliction of emotional damage.<sup>1</sup>

The First Amendment is invariably implicated when the tortfeasor acts solely through speech. When it decided *Snyder v. Phelps* in 2011, the Supreme Court took its most recent stance on the constitutionality of punishing disturbing speech. Despite the fact that the speech was reprehensible, the Court correctly exempted it from tort culpability for mental distress. For public persons and private figures entangled in an issue of public concern, the Court has already suggested that IED acts face a constitutional hurdle. This Note follows up where *Snyder* left off on the IED doctrine, arguing that most IIED activities, even against a private figure, should be barred under the First Amendment since the speech is about a matter of private concern. The difficulty in discriminating between public and private affairs, the danger of silencing unpopular speech, and the positive value that injurious communication can have all contribute to this result. To be successful, the plaintiff must establish that the defendant participated in extreme and outrageous conduct that caused serious emotional distress to another person, either knowingly or recklessly.<sup>2</sup> For an act to be termed as IIED tort it must be proven against these following terms:

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<sup>1</sup> 1 Fuller, D. W. (2010). Intentional torts and other exceptions to the Federal Tort Claims Act. U. St. Thomas LJ, 8, 375.

<sup>2</sup> <https://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-snyder-vphelps>

1. The defendant must've committed an extreme and outrageous act;
2. The defendant must've acted intentionally or recklessly to cause severe emotional harm to another; and
3. The defendant's act should've caused the plaintiff to suffer severe emotional harm.<sup>3</sup>

This civil tort involves legal claims to procure damages in monetary terms, rather the criminal ways involving imprisonment and punishments that might be instilled by the state.

## **AIM**

This paper aims to analyse the role of intentional infliction of emotional distress and its outrageous conduct in the society. Procedural trials to prove IIED and its extreme conduct must first prove that the defendant must've acted with "intent" and had an evil motive do so. Nervous shock that is inflicted upon the person may sometimes also lead to intentional distress. The paper also aims to list down different remedies and possible defences to intentional infliction of emotional distress. The paper provides a detailed study of IIED, its procedure and why has its conduct been labelled as appalling and heinous.

## **RESEARCH OBJECTIVES**

The following are the research objectives which the author aims to achieve through this research-

1. To determine the process of proving IIED
2. To analyse the elements that prove negligent infliction of emotional distress.
3. To evaluate who can sue and who can be sued when the violation of IIED is committed.
4. To evaluate if tort for emotional distress be recoverable.

## **RESEARCH QUESTIONS**

1. What can be the possible defences to infliction of emotional distress?
2. What elements proves negligent infliction of emotional distress?

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<sup>3</sup> Fraker, R. (2008). Reformulating Outrage: A Critical Analysis of the Problematic Tort of IIED. *Vand. L. Rev.*, 61, 983.

3. Who can sue and who can be sued when the violation of IIED is committed?
4. Can a tort for emotional distress be recoverable?

## RESEARCH METHODOLOGY

The researcher has adapted Doctrinal Research methodology. She will be undertaking the following methods in order to provide a comprehensive view on the topic:

1. Collected credible information from research papers by experts on IIED and its conduct in different workplaces and sectors.
2. Understood how it can be dealt with in a proper manner and how can the outrageous conduct be avoided.
3. Reference to international case studies to understand applicability of IIED and its principles.
4. Analysed various elements of IIED and how do those elements help in evaluating the claims.

## FINDINGS

### I. Possible defences to Infliction of Emotional Distress

In a lawsuit for deliberate torts, a number of defences are typically utilised. Consent is the first and most prevalent defence. In circumstances where a person freely consented to a defendant's specific act, consent can be used as a defence. A person who consents to an act that constitutes an intentional tort will not be able to pursue a claim based on that act. The person may offer consent verbally or in writing. It can also be inferred from an individual's actions.

The court will adopt an objective criterion to decide whether or not consent was given. Essentially, the consent analysis will be predicated on whether a "reasonable person" could come to the conclusion that consent was given. Consent, on the other hand, can be revoked (taken back). If it can be shown that it was revoked prior to the defendant's wilful tort, then the case will be dismissed.<sup>4</sup> Another popular defensive mechanism used in a claim for intentional torts is the defence of necessity. This typically applies during an emergency. Necessity allows a defendant to avoid fault based on the fact that there was an emergency that forced the

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<sup>4</sup> 4 Meerkins, A. (2012). Distressing Speech after Snyder-What's Left of Iied. *Nw. UL Rev.*, 107, 999.

defendant to act wrongfully so that greater harm would not occur to either the defendant, the defendant's property, or the community at large.

**Among the other often cited defenses to intentional torts are:**

Self-Defense: To avoid the inflicting of immediate bodily damage, an individual may be able to use reasonable force against a reasonably evident threat. A person may also be able to employ self-defence on behalf of another person's legitimate right to self-defence and defend that person with force;

Property Defense: A defendant is also allowed to employ reasonable force to prevent property harm. The use of lethal force, on the other hand, is usually prohibited when defending property.

Assumption of Risk: When a plaintiff was aware of the risk but chose to take the action anyway, the defendant may raise an assumption of risk defence.<sup>5</sup>

## **II. Elements that prove Negligent Infliction of Emotional Distress**

NIED is a type of personal injury lawsuit in which the victim (plaintiff) suffers severe mental or emotional distress as a result of the defendant's carelessness. A tortious conduct is one that causes the negligent infliction of emotional distress. In most NIED claims, as in all tort law claims, the plaintiff seeks monetary damages from the respondent. These laws are distinct from criminal laws, which aim to convict someone who has committed a crime in order to punish them. As such, to prove NIED, the case must meet some common criteria:

1. The plaintiff must view the accident or come upon the scene before substantial change has occurred.
2. The direct victim must suffer such harm that it is reasonably expected that a person in the plaintiff's position would suffer mental distress.
3. Emotional distress must be severe and debilitating.
4. There must be a causal link between the negligent act and the emotional distress.

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<sup>5</sup> Rapp, G. C. (2010). Defense Against Outrage and the Perils of Parasitic Torts. Ga. L. Rev., 45, 107.

### **III. Who can sue and who can be sued when the violation of IIED is committed?**

This claim is not recognised by all states as a separate cause of action. Some states require that this claim be accompanied by some other actionable wrongdoings, such as:

1. Assault;
2. Battery;
3. False Imprisonment; and
4. Defamation;

Civil liability can be imposed on those who intentionally or recklessly use unpleasant or offensive language that causes mental distress to others. Abusive or offensive verbal damages claims fall under the more general claim of intentional distress of mental distress, but there are special rules for plea denial. Furthermore, each state may have its own statutes addressing legal liability for the use of abusive or offensive language. In most cases, minor emotional injuries are insufficient to hold someone accountable for damages. However, there is no general rule dictating how abusive or offensive the language must be before a lawsuit can be filed. The majority of the time, this matter will be decided based on the facts and circumstances of the case. As a general rule, the court will consider whether the phrase is likely to cause significant emotional distress to a person of average sensibility and reason.<sup>6</sup>

### **IV. Can a tort for emotional distress be recoverable?**

Damages for mental harms were formerly exclusively recoverable as part of torts such as assault, battery, or false imprisonment under the common law. If the plaintiffs also suffered bodily pain or the prospect of physical injury, they may be able to include emotional distress as an additional harm. Eventually, the courts recognized the infliction of psychological injury as its own independent cause of action, even without any accompanying harm to a person or property.<sup>7</sup>

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<sup>6</sup> Rabin, R. L. (2009). Emotional Distress in Tort Law: Themes of Constraint. Wake Forest L. Rev., 44, 1197.

<sup>7</sup> W. Page Keeton et al., Prosser & Keeton on the Law of Torts § 12, at 57 (5th ed. 1984)

Another point of contention stemming from the courts concern about manufactured emotional injury claims is whether emotional discomfort must be accompanied by some kind of acute physical impairment." Of course, such a condition prevents compensation for persons who experience mental pain as a result of a "near miss" or seeing a risk or injury to another person—often a loved one. As a result, most jurisdictions have eliminated the impact criterion, acknowledging that the presence of a physical impact does not decide whether an emotional distress claim is valid.

## CONCLUSION

Although the Court has not yet decided whether emotionally disturbing speech directed at a private person about a topic of private concern is protected under the First Amendment, it should find that it is. The outrageousness test in tort law is an ineffective tool for penalising this type of speech. The Internet and new media have blurred the lines between public and private affairs, making traditional divisions increasingly impractical and outmoded. Furthermore, the outrageousness criterion essentially invites a jury to punish speech solely on the basis of its viewpoint—a conclusion prohibited by the First Amendment. Finally, both the speaker and the distinctively American marketplace of ideas appreciate damaging private speech.<sup>8</sup> Of course, the First Amendment's protection of speech is not absolute, and IIED liability should continue to be supported for utterances that alone constitute real threats. In the end, this standard will be implemented.

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<sup>8</sup> Meerkins, A. (2012). Distressing Speech after Snyder-What's Left of Iied. *Nw. UL Rev.*, 107, 999.