

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

CATEGORY

Intentional infliction of emotional distress is an intentional tort. Some courts have expanded it to include recovery for reckless infliction of emotional distress.

INTEREST PROTECTED BY THIS TORT

The right to be free from emotional distress that is intentionally (or recklessly) caused by someone else.

ELEMENTS

1. An act of extreme or outrageous conduct
2. Intent to cause severe emotional distress
3. Severe emotional distress is suffered
4. Defendant is the cause of this distress

DEFINITIONS OF MAJOR WORDS/PHRASES IN THE ELEMENTS

Act: Voluntary movement of the defendant's body.

Extreme or Outrageous Conduct: Atrocious and totally intolerable behavior – shocking conduct.

Intent: The desire to inflict severe emotional distress on the plaintiff or the knowledge with substantial certainty that such distress will result from what the defendant does. (In some states, recklessness, or wanton and willful conduct, will be sufficient.)

Severe Emotional Distress: Substantial mental anguish.

Cause: “But for” what the defendant did, the plaintiff would not have suffered severe emotional distress, or the defendant was a substantial factor in producing such distress.

MAJOR DEFENSE AND COUNTERARGUMENT POSSIBILITIES

1. The defendant did not act voluntarily.
2. The defendant's conduct may have been unpleasant and wrongful, but it was not extreme or outrageous.
3. The defendant did not desire the plaintiff to suffer severe emotional distress nor know with substantial certainty that such distress would result from what the defendant did (no

intent. In a state where recklessness can be a substitute for intent, the defendant did not recklessly cause such distress.

4. The plaintiff may have been embarrassed or upset, but did not suffer severe emotional distress.
5. The plaintiff may have suffered severe emotional distress, but a reasonable person would not have reacted in this way.
6. The plaintiff suffered severe emotional distress because he or she is unusually sensitive and the defendant had no reason to know of this sensitivity.
7. “But for” what the defendant did, the plaintiff would still have suffered severe emotional distress; the defendant was not a substantial factor in producing plaintiff’s emotional distress (no causation).
8. The plaintiff consented to the defendant’s conduct that led to the severe emotional distress (defense of consent).
9. The plaintiff’s severe emotional distress occurred while the defendant was defending someone else from the plaintiff (defense of others).
10. The plaintiff’s severe emotional distress occurred while the defendant was defending himself or herself from the plaintiff (privilege of self-defense).
11. The plaintiff’s severe emotional distress occurred while the defendant was defending property or recapturing chattels from the plaintiff.
12. The plaintiff’s severe emotional distress occurred while the defendant was disciplining the plaintiff.
13. The plaintiff’s severe emotional distress occurred while the defendant was arresting the plaintiff.
14. The plaintiff’s suit against the government for intentional infliction of emotional distress committed by a government employee may be barred by sovereign immunity.
15. The plaintiff’s suit against the government employee for intentional infliction of emotional distress may be barred by public official immunity.
16. The plaintiff’s suit against the charitable organization for intentional infliction of emotional distress committed by someone working for the organization may be barred by charitable immunity.
17. The plaintiff’s suit against a family member for intentional infliction of emotional distress may be barred by intrafamily immunity.

18. The plaintiff failed to take reasonable steps to mitigate the harm caused when the defendant committed intentional infliction of emotional distress; therefore, damages should not cover the aggravation of the harm caused by the plaintiff (doctrine of avoidable consequences).

DAMAGES

The plaintiff can recover compensatory damages for the mental distress suffered as well as for any physical harm or illness that may have resulted from the defendant's conduct. Punitive damages are also likely if the defendant acted out of hatred or malice.

RELATIONSHIP TO CRIMINAL LAW

The defendant's conduct may also constitute the crime of extortion, criminal assault, breach of the peace, criminal battery, etc..

RELATIONSHIP TO OTHER TORTS

Abuse of Process: While using the criminal process for an improper purpose, the defendant may have intended to cause the plaintiff severe emotional distress.

Assault: While intending to cause severe emotional distress in the plaintiff, the defendant may have intentionally placed the plaintiff in apprehension of an imminent harmful or offensive contact.

Battery: While intending to cause severe emotional distress in the plaintiff, the defendant may have intentionally made harmful or offensive contact with the plaintiff.

Conversion: Defendant may have intended to have the plaintiff suffer severe emotional distress by destroying plaintiff's personal property.

Defamation: While intentionally causing the plaintiff to suffer severe emotional distress, the defendant may have published derogatory statements that injured the reputation of the plaintiff.

False Imprisonment: By intentionally locking the plaintiff up or otherwise restricting his or her movement, the defendant may have had the intent to cause the plaintiff severe emotional distress.

False Light (Invasion of Privacy): By giving unreasonable publicity to false private facts, the defendant may have had the intent to cause the plaintiff severe emotional distress.

Intrusion (Invasion of Privacy): By unreasonably intruding on the plaintiff's privacy, the defendant may have had the intent to cause the plaintiff severe emotional distress.

Malicious Prosecution: The defendant may have initiated legal proceedings against the plaintiff with the intent to cause the plaintiff severe emotional distress.

Negligence: If the defendant negligently caused physical harm to the plaintiff, the latter can also recover for resulting emotional distress that was not intended. Some states also allow recovery for negligent infliction of emotional distress.

Trespass to Land: While trespassing on the plaintiff's land, the defendant may have had the intent to subject the plaintiff to severe emotional distress.

Wrongful Death: If the plaintiff died as a result of intentional infliction of emotional distress, designated survivors may be able to bring a wrongful death action.

FEDERAL LAW

- a. Under the Federal Tort Claims Act, there is no explicit exclusion that says the United States Government will not be liable for intentional infliction of emotional distress committed by one of its federal employees within the scope of employment (respondeat superior).
- b. There may be liability under the Civil Rights Act if the intentional infliction of emotional distress was committed while the defendant was depriving the plaintiff of federal rights under color of law.

EMPLOYER-EMPLOYEE (AGENCY) LAW

An employee who commits intentional infliction of emotional distress is personally liable for this tort. His or her employer will *also* be liable for the tort if the conduct of the employee was within the scope of employment (respondeat superior). The employee must be furthering a business objective of the employer at the time. Intentional torts such as intentional infliction of emotional distress, however, are often outside the scope of employment. If so, only the employee is liable for the tort.