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TORTS - LIABILITY FOR INTENTIONALLY INFLICTED EMOTIONAL DISTURBANCE

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TORTS—LIABILITY FOR INTENTIONALLY INFLICTED EMOTIONAL DISTURBANCE—Plaintiff alleged that defendant used vile and abusive language toward her on a public street; that defendant knew she was advanced in pregnancy, highly nervous and sensitive; and that by reason of defendant's language she suffered an emotional disturbance resulting in impairment of health. The trial court rendered judgment in favor of the defendant¹ after the opening statement of plaintiff's counsel. The court of appeals reversed the judgment of the trial court and held that plaintiff was entitled to submit her evidence to the jury. On appeal, *held*, reversed. Plaintiff did not allege that she was put in fear or terror or that defendant was guilty of any conduct which amounted to even a slight assault. *Bartow v. Smith*, 149 Ohio St. 301, 78 N.E. (2d) 735 (1948).

Legal redress for intentionally inflicting emotional disturbance and its resulting physical injuries is usually handled by the courts in an *ad hoc* manner.² There is no hesitation in attaching damages for mental suffering when a recognized cause of action such as assault,³ battery,⁴ or false imprisonment⁵ can be made out. If an outrageous invasion of peace of mind takes place on the plaintiff's premises the courts point out the technical trespass either *ab initio*⁶ or by forfeiture of privilege.⁷

¹ The action was treated as one for slander in the trial court. The court of appeals was of the opinion that if the action were treated as one for slander the trial court's disposition was correct. See *Walker v. Tucker*, 220 Ky. 363, 295 S.W. 138 (1927), where the only tort considered was slander.

² Magruder, "Mental and Emotional Disturbances in the Law of Torts," 49 HARV. L. REV. 1033 (1936).

³ *Kline v. Kline*, 158 Ind. 602, 64 N.E. 9 (1902), 58 L.R.A. 397 (1903); *Holdorf v. Holdorf*, 185 Iowa 838, 169 N.W. 737 (1918).

⁴ *Draper v. Baker*, 61 Wis. 450, 21 N.W. 527 (1884); *Interstate Life & Accident Co. v. Brewer*, 56 Ga. App. 599, 193 S.E. 458 (1937).

⁵ *Gasden Gen. Hosp. v. Hamilton*, 212 Ala. 531, 103 S. 553 (1925); *Talcott v. National Exhibition Co.*, 144 App. Div. 337, 128 N.Y.S. 1059 (1911).

⁶ *Mitchell v. Mitchell*, 60 Minn. 12, 61 N.W. 682 (1895); *Watson v. Dilts*, 116 Iowa 249, 89 N.W. 1068 (1902), 57 L.R.A. 559 (1903); *Lyons v. Smith*, 176 Ark. 728, 3 S.W. (2d) 982 (1928).

⁷ *Bouillon v. Laclede Gaslight Co.*, 148 Mo. App. 462, 129 S.W. 401 (1910); *May v. Western Union Telegraph Co.*, 157 N.C. 416, 72 S.E. 1059 (1911), 37 L.R.A. (n.s.) 912 (1912).

Common carriers are liable to passengers for mental anguish and humiliation intentionally inflicted by their employees' abusive language.⁸ Hotelkeepers occupy a similar position with respect to their guests,⁹ and liability has been extended to others who cater to the public.¹⁰ Some courts have recognized the intentional infliction of mental suffering as a tort in itself,¹¹ although the tendency is to find some other foundation for the action, however strained.¹² On the other hand, the *Restatement of Torts* recognizes no interest in freedom from emotional disturbance, but does hold the actor liable on a negligence basis for the foreseeable physical harm resulting from intended emotional distress.¹³ The allegations in the principal case would seem to present a good cause of action under either of these views. The majority of the court, however, would limit liability for insulting and profane words to those cases where they are accompanied by either threats, menacing actions which amount to an assault, or a violation of the privacy and serenity of the home. It is clear that the court does not limit its rule to threats having reference to physical violence or injury, since it distinguishes other cases in which recovery has been allowed on the basis of the presence of a threat to imprison,¹⁴ to sue,¹⁵ to send a child to reform school¹⁶ and to have plaintiff arrested.¹⁷ It is submitted that the view expressed in the minority opinion, which would hold a person liable for physical injuries caused by an intentionally inflicted emotional disturbance without requiring the commission of a concomitant and traditional tort, is more acceptable. The majority would apparently allow a threat to replace the traditional tort, but the addition of one more "peg" on which to hang damages

⁸ *Bleecker v. Colorado & S.R.R.*, 50 Colo. 140, 114 P. 481 (1911); *Humphrey v. Michigan United Railroad*, 166 Mich. 645, 132 N.W. 447 (1911); *St. Louis-San Francisco Ry. Co. v. Clark*, 104 Okla. 24, 229 P. 779 (1924) (where the insult took place before any contract for carriage was entered into); 1 *TORTS RESTATEMENT*, § 48 (1934).

⁹ *De Wolf v. Ford*, 193 N.Y. 397, 86 N.E. 527 (1908), 21 L.R.A. (n.s.) 860 (1909); *Emmke v. De Silva*, (C.C.A. 8th, 1923) 293 F. 17.

¹⁰ *Saenger Theaters Corp. v. Hearndon*, 180 Miss. 791, 178 S. 86 (1938) (theatre); *Boswell v. Barnum & Bailey*, 135 Tenn. 35, 185 S.W. 692 (1916) (circus). Cf. 1 *TORTS RESTATEMENT*, §§ 46-48 (1934). *Contra*, *Wallace v. The Shoreham Hotel Corp.*, (D.C. App. 1946) 49 A. (2d) 81 (cocktail lounge).

¹¹ *La Salle Extension University v. Fogarty*, 126 Neb. 457, 253 N.W. 424 (1934); *Barnett v. Collection Service Co.*, 214 Iowa 1303, 242 N.W. 25 (1932); *Kirby v. Jules Chain Stores Corporation*, 210 N.C. 808, 188 S.E. 625 (1936); *Clark v. Associated Retail Credit Men of Washington, D.C.*, 70 App. D.C. 183, 105 F. (2d) 62 (1939).

¹² Prosser, "Intentional Infliction of Mental Suffering: A New Tort," 37 *MICH. L. REV.* 874 (1939).

¹³ 2 *TORTS RESTATEMENT*, § 312 (1934).

¹⁴ *Grimes v. Gates*, 47 Vt. 594 (1874).

¹⁵ *La Salle Extension University v. Fogarty*, 126 Neb. 457, 253 N.W. 424 (1934).

¹⁶ *Johnson v. Sampson*, 167 Minn. 203, 208 N.W. 814 (1926).

¹⁷ *Kirby v. Jules Chain Stores Corporation*, 210 N.C. 808, 188 S.E. 625 (1936).

for emotional disturbance would seem to be only further muddying of already cloudy waters.¹⁸

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¹⁸ See Goodrich, "Emotional Disturbance as Legal Damage," 20 MICH. L. REV. 497 (1922).