10-1-1958

Torts: Emotional Distress Resulting in Physical Injury

John F. Corrigan Jr.

CASES NOTED

TORTS: EMOTIONAL DISTRESS RESULTING IN PHYSICAL INJURY

Plaintiff-customer in defendant's store sought damages for mental suffering, emotional distress, and a resulting heart attack caused by the insulting language of defendant's employee. Upon asking the price of an item, plaintiff was told by the clerk, "If you want to know the price, you'll have to find out the best way you can . . . you stink to me." The lower court dismissed the complaint for failure to state a cause of action. *Held*, affirmed, in the absence of allegations "showing that the words were intended to have real meaning or serious effect." *Slocum v. Food Fair Stores*, 100 So.2d 396 (Fla. 1958).

Throughout the development of the law of torts, courts generally have been reluctant to grant compensation for interference with one's mental or emotional tranquility as such.[1] These courts have denied such recovery for two principal reasons: first, they have feared that mental and emotional disturbances are difficult to prove,[2] and consequently, fraudulent litigation would follow if they were to hold otherwise;[3] secondly, they have taken the attitude that one should be impervious to insults, outrage and the like,[4] for if they encourage suits based thereon, the courts would become the arbiters of petty, personal grievances.[5] For these reasons traditional tort doctrine has denied recovery to claims for mental or emotional distress, unless the claim can be built upon an existing, independent tort.[6] Where there has been an

---

1. Bartow v. Smith, 149 Ohio St. 301, 78 N.E.2d 735 (1948); Halliday v. Cienkowski, 333 Pa. 123, 3 A.2d 372 (1939); Wallace v. Shoreham Hotel Corp., 49 A.2d 81 (Mun. App. D.C. 1946); Lynch v. Knight [1861] 9 H.L. Cas. 577; 52 Am. Jur. *Torts* § 45, n. 10 (1944); Annot., 15 A.L.R.2d 108 (1951); Magruder, *Mental and Emotional Disturbance in the Law of Torts*, 49 Harv. L. Rev. 1033 (1936); Prosser, *Intentional Infliction of Mental Suffering : A New Tort*, 37 Mich. L. Rev. 874 (1939).

2. Western Union Tel. Co. v. Wood, 57 Fed. 371 (5th Cir. 1893); Bohlen, Studies in the Law of Torts 255 (1926).

3. Western Union Tel. Co. v. Wood, *supra* note 2; Spade v. Lynn & Boston R.R. Co., 168 Mass. 285, 47 N.E. 88 (1897); Mitchell v. Rochester Ry., 151 N.Y. 107, 45 N.E. 354 (1996); 52 Am. Jur. *Torts* § 51, n, 20 (1944); Prosser, *supra* note 1, 875; *But cf.*, Address by Professor Lambert, in 1955 NACCA Cleveland Convention Proceedings, at 549.

4. Western Union Tel. Co. v. Wood, 57 Fed. 471 (5th Cir. 1893); International Ocean Tel. Co. v. Saunders, 32 Fla. 434, 14 So. 148 (1893); Magruder, *supra* note 1, at 1035; Prosser, *supra* note 1, at 877, 879-80.

5. Western Union Tel. Co. v. Wood, *supra* note 4; Mitchell v. Rochester Ry., 151 N.Y. 107, 45 N.E. 354 (1896); Prosser, *supra* note 1 at 877.

6. 52 Am. Jur., *Torts* §67, n. 14 (1944); Restatement, Torts §47 (1934), Magruder, *supra* note 1 at 1058; Prosser, *supra* note 1 at 879.

assault,[7] battery,[8] false imprisonment,[9] trespass,[10] and the like, damages awarded for mental and emotional disturbance are said to be "parasitic"[11] to recovery for the recognized tort on which the suit is based.[12] In the absence of such tortious conduct for which recovery is granted, the individual factual situation of each case is usually the determining factor.

Decisions involving mental and emotional distress may for convenience be grouped into four categories. First, where *negligence* causes the distress unaccompanied by physical injury, courts have experienced the least difficulty in denying recovery.[13] The vast majority of cases has denied recovery in this situation.[14] One of the main obstacles has been the failure of most courts to find a legal duty on the part of the defendant not to interfere with the plaintiff's peace of mind.[15] As an example, the defendant negligently tipped the burial casket of plaintiff's next-of-kin off a truck so that it broke open and disarranged and bruised the corpse in her view. The court denied plaintiff compensation for the emotional distress which resulted.[16] The addition of an accompanying or resulting *physical injury* to the distress distinguishes the second category from the first. The old general rule denied recovery in this event,[17] the courts reasoning that since they granted no relief for fright, shock or distress alone, there could be none for their consequences.[18] During the last fifty years American courts have extended relief for the negligent infliction of physical injuries through shock to the emotions, so that today the majority of American jurisdictions, as well as England, would grant

7. Kline v. Kline, 158 Ind. 602, 64 N.E. 9 (1902); Holdorf v. Holdorf, 185 Iowa 838, 169 N.W. 737 (1918); Trogden v. Terry, 172 N.C. 540, 90 S.E. 583 (1916); Leach v. Leach, 33 S.W. 703 (Tex. Civ. App. 1895).

8. Bethurum v. Krumm, 109 Cal. App. 5, 292 Pac. 287 (1930); Interstate Life & Accident Co. v. Brewer, 56 Ga. App. 599, 193 S.W. 458 (1937); Williams v. Underhill, 63 App. Div. 223, 71 N.Y. Supp. 291 (1901); Draper v. Baker, 61 Wis. 450, 21 N.W. 527 (1884).

9. Gadsden Gen. Hosp. v. Hamilton, 212 Ala. 531, 103 So. 553 (1925); Great Atl. & Pac. Tea Co. v. Smith, 281 Ky. 583, 136 S.W. 2d 759 (1939); Talcott v. National Exhibition Co., 144 App. Div. 337, 128 N.Y. Supp. 1059 (1911).

10. Dawsey v. Newton, 244 Ala. 661, 15 So.2d 271 (1943); Lyons v. Smith, 176 Ark. 728, 3 S.W. 2d 982 (1928); Whitsel v. Watts, 98 Kan. 508, 159 Pac. 401 (1916); Bouillon v. Laclede Gas Light Co., 148 Mo. App. 462, 129 S.W. 401 (1910).

11. Magruder, *supra* note 1 at 1038, 1049; I STREET, THE FOUNDATIONS OF LEGAL LIABILITY 470 (1906).

12. Authorities cited note 6 *supra*.

13. United States v. Hambleton, 185 F.2d 564 (C.A.9th Wash. 1950); Herrick v. Evening Express Pub. Co., 120 Me. 138, 113 Atl. 16 (1921); Spade v. Lynn & Boston R.R., 168 Mass. 285, 47 N.E. 88 (1897); Mitchell v. Rochester Ry., 151 N.Y. 107, 45 N.E. 354 (1896).

14. 52 AM. JUR. *Torts* §48 (1944); Annot's., 23 A.L.R. 361 (1923); 44 A.L.R. 428 (1926); 56 A.L.R. 657 (1928).

15. Wilcox v. Richmond & D. R. Co., 52 Fed. 264 (4th Cir. 1892); Smith v. Gowdy, 196 Ky. 281, 244 S.W. 678 (1922); Comstock v. Wilson, 257 N.Y. 231, 177 N.E. 431 (1931).

16. Nichols v. Central Vermont Ry. Co., 94 Vt. 14, 109 Atl. 905 (1919).

17. Mitchell v. Rochester Ry., 151 N.Y. 107, 45 N.E. 354 (1896); Waube v. Warrington, 216 Wis. 603, 258 N.W. 497 (1935); Ewing v. Pittsburgh, 147 Pa. 40, 23 Atl. 340 (1892); RESTATEMENT, TORTS §46 (1934).

18. Braun v. Craven, 175 Ill. 401, 51 N.E. 657 (1898); Mitchell v. Rochester, *supra* note 17; Chittick v. Philadelphia Rapid Transit Co., 224 Pa. 13, 73 Atl. 4 (1909); Waube v. Warrington, *supra* note 17.

recovery therefor in a proper case.[19] Cases affording such relief have generally turned upon an undue probability of bodily harm[20] to the plaintiff as a consequence of the defendant's reckless[21] actions. One of the first American cases holding a defendant liable in this second category is *Hill v. Kimball*,[22] wherein the defendant caused the plaintiff's wife to suffer a miscarriage when he attacked two persons on the plaintiff's land, the affray being characterized by much profanity and bloodshed. Where the aggrieved has suffered physical injury in addition to mental or emotional distress, the majority of courts now recognize such claims under certain circumstances,[23] whereas relatively few jurisdictions make a practice of awarding compensation to one who alleges a negligently inflicted mental or emotional disturbance alone.[24]

In the third and fourth categories, the emotional or mental distress is *intentionally* caused by the acts or words of the defendant. Even where, as in the third category, the distress is intentionally caused but *not accompanied by physical injury*, the majority of cases during the last century has denied compensation.[25] Recovery was denied where the plaintiff suffered humiliation and distress as a result of the defendant's foreman's acts in discharging her. The foreman had exclaimed in an insulting and menacing manner, in the presence of other employees, "Get your G-- D-- Time"; and, "Yes, I am talking to old lady Atkinson, G-- D-- You."[26] Case law during the last twenty five years has established a strong, contrary trend.[27] It precipitated the change[28] in the 1948 Restatement of Torts, rejecting any necessity for physical injury:

---

19. Armour v. Kollmeyer, 161 Fed. 78 (8th Cir. 1908); Mitnick v. Whalen Bros., Inc., 115 Conn. 650, 163 Atl. 414 (1932); Bowman v. Williams, 164 Md. 397, 165 Atl. 182 (1933); Hambrook v. Stokes Bros. [C.A. 1925] 1 K.B. 141; Magruder, *supra* note 1, at 1036.

20. Bowman v. Williams, *supra* note 19; Purcell v. St. Paul City R.R. Co., 48 Minn. 134, 50 N.W. 1034 (1892); Hunter v. Southern R.R. Co., 152 N.C. 682, 68 S. W. 237 (1910); Hambrook v. Stokes Bros., *supra* note 19; 2 RESTATEMENT, TORTS §436 (1934).

21. Boyle v. Chandler, 33 Del. 323, 138 Atl. 273 (1927); Price v. Yellow Pine Paper Mill Co.; 240 S.W. 588 (Tex. Civ. App. 1922); 2 RESTATEMENT, TORTS §500 (1934); Prosser, *Insult and Outrage*, 44 CAL.L.REV. 40, 54 (1956).

22. 76 Tex. 210, 13 S.W. 59 (1890).

23. Cases cited note 19 *supra*.

24. Authorities cited note 14 *supra*.

25. Southern Express Co. v. Byers, 240 U.S. 612 (1916); Clark v. Associated Retail Credit Men, 105 F.2d 62 (D.C. Cir. 1939); Kirby v. Jules Chain Stores Corp., 210 N.C. 808, 188 S.E. 625 (1936); Carrigan v. Henderson, 192 Okla. 254, 135 P.2d 330 (1943); Duty v. General Fin. Co., 154 Tex| 16, 273 S.W.2d 64 (1954); 52 AM. JUR. *Torts* §45, n. 12 (1944); Annot's., 23 A.L.R. 361 (1923); 44 A.L.R. 428 (1926); 56 A.L.R. 657 (1928); Magruder, *supra* note 1 at 1035.

26. Atkinson v. Bibb Mfg. Co., 50 Ga. App. 434, 178 S.E. 537 (1935).

27. Savage v. Boies, 77 Ark. 355, 272 P.2d 349 (1954); State Rubbish Collectors Ass'n v. Silznoff, 38 Cal.2d 330, 240 P.2d 282 (1952); Curnutt v. Wolf, 244 Iowa 683, 57 N.W. 2d 916 (1953); Barnett v. Collection Serv. Co., 214 Iowa 1303, 242 N.W. 25 (1932); LaSalle Extension Univ. v. Fogarty, 126 Neb. 457, 253 N.W. 424 (1934).

28. RESTATEMENT, TORTS §46 (1934).

> One who, without a privilege to do so, intentionally causes emotional distress to another is liable
>
> (a) for such emotional distress, and
> (b) for bodily harm resulting from it.[29]

The primary factors considered by these recent cases in granting recovery for emotional distress (or mental suffering) alone are: (1) the severity of the distress and the reasonableness thereof,[30] and (2) the outrageousness of the defendant's conduct.[31] If both are found to be present to a high degree, the claimant probably has an excellent chance of recovery in the majority of American jurisdictions today.

In the fourth category, where a *physical injury* results from an intentionally caused shock to the emotions, the vast majority of courts *that have expressed themselves* on this point have granted relief, particularly where the defendant's actions are reckless or outrageous.[32] Exceptions to the old rule denying recovery for emotional distress and its consequences became evident as an increasingly large number of cases allowed recovery without requiring the aggrieved to fit his claim into a recognized tort action.[33] Even from the earliest times practical jokers have been held responsible for the "intentional subjection of another to nervous pressures calculated to cause physical injury."[34] The same result has followed where creditors have used excessive means to collect a debt[35] and where threats have caused one to fear for his personal safety.[36]

Those engaged in operating a public utility or other business devoted to public interests, such as common carriers[37] and inn-keepers[38] have consistently been held responsible to patrons utilizing their facilities for gross insults which reasonably offend them. The foundation case in this field

---

29. RESTATEMENT, TORTS §46 (Supp. 1948).
30. RESTATEMENT, TORTS §46 (Supp. 1948); Prosser, *Insult and Outrage*, 44 CAL. L. REV. 40, 52 (1956).
31. Prosser, *Insult and Outrage*, 44 CAL. L. REV. 40, 53 (1956).
32. Engle v. Simmons, 148 Ala. 92, 41 So. 1023 (1906); Emden v. Vitz, 88 Cal. App.2d 313, 198 P.2d 696 (1948); Brownback v. Frailey, 78 Ill. App. 262 (1898); Prosser, *supra* note 31, at 41.
33. Cases cited note 27 *supra*; Prosser, *supra* note 31, at 41.
34. Nickerson v. Hodges, 146 La. 735, 84 So. 37 (1920); Great Atl. & Pac. Tea Co. v. Roch, 160 Md. 189, 153 Atl. 22 (1931); Wilkinson v. Downtown, [1897] 2 QB. 57.
35. Clark v. Associated Retail Credit Men, 105 F.2d 62 (D.C. Cir. 1939); Barnett v. Collection Serv. Co., 214 Iowa 1303, 242 N.W. 25 (1932); Cyran v. Finlay Straus, Inc., 302 N.Y. 486, 99 N.E.2d 298 (1951).
36. Orlo v. Connecticut Co., 128 Conn. 231, 21 A.2d 402 (1941); Hunter v. Southern Ry. Co., 152 N.C. 682, 68 S.E. 237 (1910); Dulieu v. White & Sons [1901] 2 K.B. 669; Janvier v. Sweeny, [19191 2 K.B. 316.
37. Humphrey v. Michigan United Ry., 166 Mich. 645, 132 N.W. 447 (1911); Gillespie v. Brooklyn Heights R.R., 178 N.Y. 347, 70 N.E. 857 (1904); Braswell v. Stokes, 191 S.C. 482, 5 S.E.2d 173 (1939); Knoxville Traction Co. v. Lane, 103 Tenn. 376, 53 S.W. 557 (1899).
38. Emmke v. DeSilva, 293 Fed. 17 (8th Cir. 1923); Milner Hotels, Inc. v. Dougherty, 195 Miss. 718, 15 So.2d 358 (1943); DeWolf v. Ford, 193 N.Y. 397, 86 N.E. 527 (1908); *But cf.*, Wallace v. Shoreham Hotel Corp., 49 A.2d 81 (D.C. App. 1946).

affected with public interest is *Chamberlain v. Chandler*,[39] wherein the captain of a ship insulted and mistreated his passengers. While this and other early cases in this field were decided partly upon a contractual basis, modern decisions are based upon, and emphasize, an especially high duty of decent treatment on the part of those who hold themselves out to the public on a monopolistic basis.[40] Not only was this 'public utility' rule a departure from old tort doctrine, but it also remains a liberalization of the present rule in that a *less severe* emotional disturbance produced by *less outrageous* conduct generally is sufficient for recovery.[41] Since the turn of the century this rule has been extended in some cases to the owners and operators of theaters,[42] amusement parks[43] and, most recently, telegraph offices.[44]

Some cases have granted recovery for insult alone,[45] whereas others have denied recovery if the insulting language or conduct falls short of extreme outrage.[46] In a case involving an insult similar to that of the instant case, the defendant street car company was held liable where its conductor referred to the plaintiff as she was getting off the car as "a big, fat woman."[47] The court stated:

> The language used by the defendant's employee was humiliating and mortifying to a sensible woman, and defendant did not give to plaintiff that care and respectful consideration and attention which it, as a common carrier, owed her while she was using its car, and is responsible in damages for the annoyance and injured feelings caused to plaintiff through the fault of its employee. . . .[48]

In the absence of an application of this 'public utility' doctrine, most cases demand in order to grant recovery that the insult be *intolerable, outrageous* or *beyond all bounds of human decency*.[49] For this reason, cases involving

---

39. 5 Fed. Cas. 413, No. 2,575 (C.C. Mass. 1823).

40. Payne v. McDonald, 150 Ark. 12, 233 S.W. 813 (1921); Cole v. Atlanta & West Point R.R. Co., 102 Ga. 474, 31 S.E. 107 (1897); DeWolf v. Ford, 193 N.Y. 397, 86 N.E. 527 (1908); Prosser, *supra* note 31, at 59.

41. *Compare* Nance v. Mayflower Tavern, 106 Utah 517, 150 P.2d 773 (1944) *with* Kirstein v. Hotel Taft Corp., 183 Misc. 713, 51 N.Y. Supp. 2d 162 (Sup. Ct. 1944).

42. Interstate Amusement Co. v. Martin, 8 Ala. App. 481, 62 So. 404 (1913); Saenger Theatres Corp. v. Herndon, 180 Miss. 791, 178 So. 86 (1938).

43. Malczewski v. New Orleans Ry. & Light Co., 156 La. 830, 101 So. 213 (1924); Davis v. Tacoma R.R. & Power Co., 35 Wash. 203, 77 Pac. 209 (1904).

44. Dunn v. Western Union Tel. Co., 2 Ga. App. 845, 59 S.E. 189 (1907); Buchanan v. Western Union Tel. Co., 115 S.C. 433, 106 S.E. 159 (1920); compare Western Union Tel. Co. v. Redding, 100 Fla. 495, 129 So. 743 (1930).

45. Dunn v. Western Union Tel. Co., 2 Ga. App. 845, 59 S.E. 189 (1907); Malczewski v. New Orleans Ry. & Light Co., 156 La. 830, 101 So. 213 (1924); Voss v. Bolzenius, 147 Mo. App. 375, 128 S.W. 1 (1910); Davis v. Tacoma R.R. & Power Co., 35 Wash. 203, 77 Pac. 209 (1904).

46. Davis v. Richardson, 76 Ark. 348, 89 S.W. 318 (1905); Shepard v. Lamphier, 84 Misc. 498, 146 N.Y. Supp. 745 (S. Ct. 1914); Flowers v. Price, 190 S.C. 392, 3 S.E. 2d 38 (1939); Wallace v. Shoreham Hotel Corp., 49 A.2d 81 (Mun. App. D.C. 1946).

47. Haile v. New Orleans R.R. & Light Co., 135 La. 229, 65 So. 225 (1914).

48. *Id.* at 231, 65 So. at 226.

49. RESTATEMENT, TORTS §46, comment *g* (Supp. 1948); Magruder, *supra* note 1, at 1058; Prosser, *supra* note 31, at 44; *But cf.*, Wallace v. Shoreham Hotel Corp., 49 A.2d 81, 83 (Mun. App. D.C. 1946).

the alleged liability of restaurants, shops and other mercantile establishments have generally required a higher degree of insult or offensive conduct.[50] Two important trends must be kept in mind: first, the over-all extension of liability for the intentional infliction of emotional distress; and second, the specific extension of the 'public utility' rule to other businesses dealing with the public.

In the instant case, the court correctly recognized the "central problem" as one concerning the recognition of a new tort in this jurisdiction, the intentional infliction of emotional distress.[51] While acknowledging that the case is one of first impression in Florida, the court admits, after reviewing the authorities, that there is a "strong current of opinion in support of such recognition."[52] The court first pointed out that under the decision in *Kirksey v. Jernigan*,[53] recovery has been allowed in this state for emotional distress even in the absence of physical injury. In the *Kirksey* case, the defendant refused to turn over to the plaintiff the body of her child which he allegedly embalmed without authorization and kept until the plaintiff paid a large fee. In its opinion the court stated:

> There can be no recovery for mental pain and anguish unconnected with physical injury in an action arising out of the negligent breach of a contract whereby simple negligence is involved. *Dunahoo v. Bess*, 146 Fla. 182, 200 So. 541 . . . .
>
> But we do not feel constrained to extend this rule to cases founded purely in tort, where the wrongful act is such as to reasonably imply malice, or where from the entire want of care of attention to duty, or great indifference to the persons, property, or rights of others, such malice will be imputed as would justify the assessment of exemplary or punative damages.[54]

The court then discounted as a bar to recovery under the facts of the instant case, the court's language in *Mann v. Roosevelt Shop*,[55] wherein the plaintiff sued in an action in slander the defendant whose employee, while refusing to serve her, exclaimed: "You are not as good as a Negro . . . ." In denying recovery for slander, the court stated: "The case at bar presents a case of gross insult; however, the law affords no redress for insult alone."[56] In distinguishing that case from the instant case, the court said: "But that language (above quoted) was obviously confined to those cases where an attempt is made to state an action in defamation for injury to reputation as opposed to peace of mind. . . ."[57] The court felt that, even if it assumed the new

---

50. Prosser, *supra* note 31, at 59-64.
51. Slocum v. Food Fair Stores, 100 So.2d 396, 397 (Fla. 1958).
52. *Ibid.*
53. 45 So.2d 188 (Fla. 1950).
54. *Id.* at 189.
55. 41 So.2d 894 (Fla. 1949).
56. *Ibid.*
57. Slocum v. Food Fair Stores, 100 So.2d 396, 397 (Fla. 1958).

tort as established in Florida, the facts of the instant case would not justify recovery thereunder. The court studied the Comments and Illustrations pertinent to section 46 of the 1948 *Restatement of Torts*, and concluded that the case does not qualify under those standards. It noted with obvious satisfaction that most writers tend to believe that exremely outrageous conduct is necessary for recovery, and more important, that all writers agree that there has to be a line drawn somewhere below which liability will not fall. In other words, the new tort doctrine should not protect parties against all types of vulgarities, insults and bad manners. The court denied plaintiff recovery for three reasons: (1) the degree of the insult was not sufficient to make it actionable; (2) the plaintiff could not be brought under the 'public utility' rule, nor would the court extend this ever-expanding rule to the case at bar; and (3) the plaintiff failed to allege and prove that the "words were intended to have real meaning or serious effect." The court seemed to rely primarily upon the second and third reasons listed above in affirming the lower court's decision to dismiss the complaint.

Regarding the first reason, it is true that the defendant's employee's conduct, *i.e.*, his insulting language, was not sufficiently outrageous to warrant recovery in light of most other cases dealing with ordinary mercantile establishments.[58] The court concedes, however, that "the manner in which the language is used . . . may determine its actionable character."[59] While the language alone may not constitute a sufficiently outrageous insult, it remains a question of fact whether the manner in which the insult was delivered was sufficiently outrageous to constitute the requisite intention or recklessness. Plaintiff received the insult in public when she was least expecting it. Under the *Restatement* rule,[60] it is not *necessary* that the bodily harm be forseeable in any way. That the emotional shock was severe is evidenced by the resulting heart attack. There is no question but that the employee's unprivileged conduct produced this severe emotional distress and the physical injury. In the second place, why should the defendant, a large supermarket, not be liable as such when it could have been held liable if it had been a hotel or a telegraph office? It does not appear reasonable to base recovery for injuries resulting from such conduct *solely* upon the rationale of the public utility rule. This rule originally was an exception to section 46 of the 1934 *Restatement of Torts*. It is now only a refinement of the *Restatement* rule as amended in 1948. Certainly the defendant's contacts with the public are as numerous and just as important. Twenty years ago, Prosser stated: "There is no apparent reason for limiting such liability to public utilities, and the same

---

58. Republic Iron & Steel Co. v. Self, 192 Ala. 403, 68 So. 328 (1915); Larson v. R. B. Wrigley Co., 183 Minn. 28, 235 N.W. 393 (1931); Flowers v. Price, 190 S.C. 392, 3 S.E.2d 38 (1939); Nance v. Mayflower Tavern, 106 Utah 517, 150 P.2d 773 (1944).

59. Slocum v. Food Fair Stores, 100 So.2d 396, 398 (Fla. 1958).

60. RESTATEMENT, TORTS §46 (Supp. 1948).

result might be reached, in a proper case, as to any storekeeper."[61] Finally, the court's criterion that the plaintiff must allege that "the words were intended to have real meaning or serious effect"[62] is both vague and misleading. How is one to show that another intended any meaning? What on the other hand shows a "serious effect" better than severe emotional illness accompanied by physical injury? Surely the plaintiff's allegations that the defendant's conduct was either malicious or grossly reckless or done "with intent to inflict great mental and emotional disutrbance . . . ."[63] should be sufficient under recent decisions holding responsible those who exercise extreme disregard for others and cause such injuries through reckless or outrageous conduct. The court's prescription for recovery is unrealistic in that the claims stem from such multifarious situations. The more enlightened of the recent cases have turned upon the following factors: (a) The conduct in general should at least approach outrageousness or recklessness; (b) the emotional illness should be severe and reasonable under all the circumstances; and (c) if there is also physical injury, then recovery is all the more indicated. The court failed to consider these factors sufficiently, particularly the last one, in its first opportunity to recognize a right of recovery for intentionally caused emotional distress.

JOHN P. CORRIGAN, JR.

WILLS: SATISFACTION OF DEBT BY A LEGACY TO CREDITORS

The testator, petitioners' father, collected income belonging to the petitioners, which over a period of time, he allegedly commingled with his own assets. No accounting was ever made by the father of the affairs which he handled on behalf of his sons. He bequeathed stocks and securities and devised real estate of unascertained value to the petitioners. The circuit court presumed the legacy was given in satisfaction of the indebtedness, and ordered an election between the legacy and the satisfaction of the debt by an action of accounting.[1] *Held*, on certiorari, no presumption arises that a legacy to a creditor satisfies the creditor's claim. *Lopez v. Lopez*, 96 So.2d 463 Fla. 1957).

The general rule of construction, or the doctrine of satisfaction,[2] as it is sometimes called, states that where a legacy is given to a creditor in an

61. Prosser, *Intentional Infliction of Mental Suffering: A New Tort*, 37 Mich. L. Rev. 874, 883 (1939).
62. Slocum v. Food Fair Stores, 100 So.2d 396, 398 (Fla. 1958).
63. *Id.*, at 397.

1. The choice is compulsory between two inconsistent rights or claims where there is a clear intention by the testator that the beneficiary shall not enjoy both. 2 STORY, EQUITY JURISPRUDENCE § 1451 (14th ed. 1918).

2. A distinction must be made between the doctrine of satisfaction which is employed with reference to legacies to creditors and the doctrine of satisfaction used in other phases of will construction. ATKINSON, WILLS § 133 (2nd ed. 1953).