Florida Law Review

Volume 25 | Issue 2 Article 7

January 1973

Torts: The Impact Rule--Nuisance or Necessity?

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COMMENTARY

TORTS: THE IMPACT RULE – NUISANCE OR NECESSITY?*

Be not the first by whom the new are tried, nor yet the last to lay the old aside.[1]

The impact doctrine, a nineteenth century creature of English tort law, requires that a plaintiff sustain actual physical impact to recover for the negligent infliction of mental distress.[2] Despite its early widespread support in this country the doctrine has now been abandoned by a large majority of jurisdictions[3] in favor of the more flexible rule permitting recovery to a plaintiff within the zone of danger of the negligent act.[4] However, a few states, Florida among them, continue adherence to the older doctrine.[5] This commentary will examine the evolution of the impact rule, the traditional rationales used to support it, and their viability in light of current public policy considerations. It will also examine certain Florida decisions seemingly suggesting that Florida might soon abandon the doctrine.[6]

ORIGIN AND DEVELOPMENT OF THE IMPACT REQUIREMENT

The common law was slow to recognize mental distress resulting from a negligent act as a violation of a protected interest.[7] The reluctance to remedy emotional distress caused by fright or shock was based solely on the limited medical knowledge of the times, and was not necessarily ill-founded.[8] However, the courts were hardly justified in characterizing mental disturbance

*EDITOR'S NOTE: This commentary received the *University of Florida Law Review Alumni Association Commentary Award* as the outstanding commentary submitted during the summer 1972 quarter.

1. A. Pope, *An Essay on Criticism II*, in 1 THE NORTON ANTHOLOGY OF ENGLISH LITERATURE 1440 (1962).

2. *See* Comment, *Torts – Negligent Infliction of Mental Distress – Recovery Allowed for Negligently Inflicted Mental Distress Without Requirement of Contemporaneous Physical Injury*, 16 VILL. L. REV. 1011, 1013 (1971).

3. *See* Appendix *infra*.

4. Note, *The Right to Mental Security*, 16 U. FLA. L. REV. 540, 542 (1964); Comment, *supra* note 2, at 1012-13 n.7. A discussion of the zone of danger doctrine is outside the scope of this commentary except as it represents the probable direction a jurisdiction will take in rejecting the impact rule. *See* Lindley v. Knowltan, 179 Cal. 298, 176 P. 440 (1918); Battalla v. Stat, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961). Comment, *Criminal Law: Personal Searches Incident to Traffic Arrests – No Nexus Necessary?*, 25 U. FLA. L. REV. 239 (1972).

5. *See* Appendix *infra*.

6. Way v. Tampa Coca-Cola Bottling Co., 260 So. 2d 288 (2d D.C.A. Fla. 1972); Hollie v. Radcliffe, 200 So. 2d 616 (1st D.C.A. Fla. 1967).

7. Lynch v. Knight, 11 Eng. Rep. 854, 863 (H.L. 1861).

8. Note, *Torts – Negligent Infliction of Mental Distress – Maine and Michigan Abolish the "Impact Rule,"* 20 DE PAUL L. REV. 1029, 1033-35 (1971).

resulting in physical symptoms as too remote to be compensable.[9] Recognizing this in an early English case, *Dulieu v. White & Sons*,[10] the court allowed recovery for physical injuries flowing from great fright but acknowledged the requirement that plaintiffs sustain physical impact.[11] The underlying basis of the impact requirement was the belief that to require impact would guarantee the validity of the plaintiff's claim.[12]

Numerous American courts quickly adopted the English position.[13] Even a slight physical touching, termed a "magic formula,"[14] opened the door to full recovery. Regrettably, however, the rule soon became mechanical and absolute – no impact, no recovery,[15] and rather than submit to the rule's harsh dictation many courts fabricated technical impacts to provide recovery to meritorious plaintiffs.[16] A representative example is *Christy Brothers Circus v. Turnage*.[17] While being entertained by a dancing circus horse a woman suffered "mortification and mental pain" when the performing animal was allowed to prance too close to the spectators, and it evacuated its bowels into the lady's lap. Acknowledging the impact as sufficient to satisfy the rule, the court granted recovery for embarrassment although there was no "actual physical hurt or damage."[18]

Although the doctrine was observed by the weight of authority in the United States at the turn of the century it has so rapidly declined in popularity that today more than thirty jurisdictions no longer require any contemporaneous physical impact to recover for negligently inflicted emotional distress.[19] However, ten states, including Florida, still adhere to the impact requirement.[20]

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9. *See* Victorian Ry. Comm'r v. Coultas, 13 App. Cas. 222 (P.C. Canada 1888). This case has been cited as the leading case establishing the impact requirement. Daley v. LaCroix, 384 Mich. 4, 10 n.6, 179 N.W.2d 390, 393 n.6 (1970).

10. 2 K.B. 669 (1901).

11. *Id.* at 673.

12. Orlo v. Connecticut Co., 128 Conn. 231, 239, 21 A.2d 402, 405 (1941).

13. *E.g.*, St. Louis I.M. & S.R.R. v. Bragg, 69 Ark. 402, 64 S.W. 226 (1901); Kramer v. Ricksmeier, 159 Iowa 48, 139 N.W. 1091 (1913). Other jurisdictions had adopted an impact requirement even before *Dulieu*, *e.g.*, Spade v. Lynn & Boston R.R., 168 Mass. 285, 47 N.E. 88 (1897); Mitchell v. Rochester R.R., 151 N.Y. 107, 45 N.E. 354 (1896).

14. Goodrich, *Emotional Disturbance as Legal Damage*, 20 MICH. L. REV. 497, 504 (1922).

15. *E.g.*, International Ocean Tel. Co. v. Saunders, 32 Fla. 434, 14 So. 148 (1893).

16. Perhaps the greatest single factor contributing to the decline of the impact rule has been the extreme situations wherein courts have found an "impact" sufficient to satisfy the rule. *E.g.*, Arkansas Motor Coaches v. Whitlock, 199 Ark. 820, 136 S.W.2d 184 (1940) (touching of arm); Kisiel v. Holyoke St. Ry., 240 Mass. 29, 132 N.E. 622 (1921) (slight jar); Bedenk v. St. Louis Pub. Serv. Co., 285 S.W.2d 609 (Mo. 1955) (mere bruise); Porter v. Delaware L. & W.R.R., 73 N.J.L. 405, 63 A. 860 (1906) (dust in the eye); Morton v. Stack, 122 Ohio St. 115, 170 N.E. 869 (1930) (inhalation of smoke).

17. 38 Ga. App. 581, 144 S.E. 680 (1928).

18. *Id.* at 581, 144 S.E. at 681.

19. *See* Appendix *infra*.

20. *See, e.g.*, Crane v. Loftin, 70 So. 2d 574 (Fla. 1954); Kirksey v. Jernigan, 45 So. 2d 188 (Fla. 1950).

THE IMPACT RULE IN FLORIDA

Florida first adopted the impact rule in *International Ocean Telegraph Co. v. Saunders*.[21] In denying recovery for mental suffering the court said: "[M]ental suffering [is] never allowed . . . as an element of damages . . . except . . . in cases of tort where there was some physical injury or bodily suffering."[22] Subsequent Florida cases have cited *International Ocean* as establishing the impact requirement in this state.[23]

In at least one instance, *Clark v. Choctawhatchee Electric Co-op*,[24] a Florida court has surrendered to the same kind of technical fabrication of impact that has caused the demise of the doctrine elsewhere. Plaintiff in that case had obviously suffered emotional trauma but was denied judgment in the trial court because of failure to positively establish a direct physical impact. The Florida supreme court reversed and held that an impact could have been suffered without leaving an outward sign.[25] The court was careful not to recede from the rule but merely disagreed with its application in the *Clark* case.[26] However, dicta in several recent cases indicate that Florida's adherence to the impact rule may be softening. In *Hollie v. Radcliffe*[27] the court, admitting its own minority position amidst a "perceptible trend in this and other jurisdictions toward a relaxing of the said rule,"[28] found it unnecessary to examine the extent of the trend in Florida because the evidence showed a sufficient impact to otherwise satisfy the rule.[29] Furthermore, the 1972 case of *Way v. Tampa Coca-Cola Bottling Co.*[30] effectively abandoned the impact requirement in the area of products liability for adulterated foodstuffs. Plaintiff recovered for his emotional trauma resulting in physical manifestations suffered when he discovered a foreign substance resembling a rodent in a bottle of Coca-Cola he was drinking. The court expressly adopted the language of a recent Maine decision,[31] which had been hailed as a total and unequivocal abandonment of the rule:[32]

> [I]n those cases where it is established by a fair preponderance of the evidence there is a proximate causal relationship between an act of negligence and reasonably foreseeable mental and emotional suffering by a reasonably foreseeable plaintiff, such proved damages are compensable even though there is no discernible trauma from external causes.[33]

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21. 32 Fla. 434, 14 So. 148 (1893).
22. *Id.* at 439, 14 So. at 151.
23. *E.g.*, Kirksey v. Jernigan, 45 So. 2d 188 (Fla. 1950).
24. 107 So. 2d 609 (Fla. 1958).
25. *Id.* at 611.
26. *Id.*
27. 200 So. 2d 616 (1st D.C.A. Fla. 1967).
28. *Id.* at 618.
29. *Id.*
30. 260 So. 2d 288 (2d D.C.A. Fla. 1972).
31. Wallace v. Coca-Cola Bottling Plants, Inc., Me. , 269 A.2d 117 (1970).
32. Note, *supra* note 8, at 1030.
33. Wallace v. Coca-Cola Bottling Plants, Inc., Me. , 269 A.2d 117, 121 (1970).

A close reading of *Way*, however, reveals that the court limited the rejection of the impact requirement to liability for adulterated foods and beverages.[34] The ultimate effect of these recent Florida decisions is uncertain, but they raise the possibility that in an appropriate case Florida might discard the impact doctrine.

TRADITIONAL JUSTIFICATIONS FOR THE DOCTRINE

The earliest rationale used to justify denial of recovery without impact was simply the lack of precedent. Since more than thirty jurisdictions have subsequently rejected the doctrine, the lack of precedent no longer seems an adequate justification for the rule. Moreover, Florida courts have frequently dictated that once the foundations of a doctrine have been eroded by time and changing policy, the doctrine itself must be discarded.[35] While stare decisis establishes consistency in the law, it should not retard growth and expansion.

The second and most frequently cited justification supporting the impact requirement is the fear that many fraudulent claims may succeed because of the immeasurable qualities of one's mental state and the difficulty of interlacing medical science and law in establishing causation.[36] "Mental pain the law cannot value, and does not pretend to redress,"[37] was the traditional judicial attitude. Legal reluctance continued concerning negligently inflicted trauma[38] even after courts began granting recovery for mental suffering when accompanied by some independent tort.[39] Nevertheless, it is anomalous to reason that advances in medicine have not enabled a doctor to establish causation without an impact, but that even the slightest "technical" impact[40] suddenly bestows the knowledge to accurately diagnose such a connection.[41] It is not only medically well-established that fright can result in physical illness,[42] but also legally well-established that such fright can be proximately

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34. 260 So. 2d 288, 290 (2d D.C.A. Fla. 1972).

35. *E.g.*, Waller v. First Sav. & Trust Co., 103 Fla. 1025, 1038, 138 So. 780, 785 (1931).

36. Kramer v. Ricksmeier, 159 Iowa 48, 139 N.W. 1091 (1913); Comment, *Bystander Recovery for Mental Distress*, 37 FORDHAM L. REV. 429 (1969).

37. Lynch v. Knight, 11 Eng. Rep. 854, 863 (H.L. 1861). The problem was first recognized in Florida in International Ocean Tel. Co. v. Saunders, 32 Fla. 434, 447, 14 So. 148, 152 (1893): "The resultant injury [mental distress] is one that soars so exclusively within the realms of spirit land that it is beyond the reach of the courts to deal with, or to compensate by any of the known standards of value . . . ."

38. *See generally* note 4 *supra*.

39. *E.g.*, Winner v. Sharp, 43 So. 2d 634 (Fla. 1949).

40. *See* note 16 *supra*.

41. Niederman v. Brodsky, 436 Pa. 401, 407, 261 A.2d 84, 87 (1970).

42. "Psychosomatic illness of a serious nature may follow [mental distress]. The emotions may be unstrung, the nerves put on edge and the end effect may be a period in a rest home, a mental hospital, serious physical derangement and sometimes death. Damage for mental pain and suffering is one of the late developments in the law and its potentialities are not restricted as they formerly were because so much has been learned of the evil consequences that flow from mental injury." Winner v. Sharp, 43 So. 2d 634, 637 (Fla.

caused by negligence.[43]

The fear of fraud also reflects the fear of medical uncertainty. Regardless of whether physical impact is a prerequisite to recovery, few claims can be guaranteed to be bona fide.[44] Protections against false claims are contained within the legal system itself,[45] and to deny honest claims because some dishonest ones might prevail is to admit the incompetency of the judicial process.[46] Ultimately the courts must depend on the efficacy of the judiciary to distinguish the meritorious from the fraudulent; but the task there involved, however difficult, does not justify the construction and application of mechanical rules to deny recovery to an aggrieved plaintiff.

It is also feared that an abandonment of the impact requirement will result in a tremendous increase in litigation that will further burden an already overtaxed judicial calendar.[47] Every court that has confronted the challenge to its impact rule has been intimidated with the ominous spectre of an avalanche of unwarranted claims, but the fear simply has not materialized in jurisdictions that have abolished the rule.[48] Moreover, the contention that to permit a plaintiff to maintain his action without showing impact would be too impractical to administer is conspicuously based on administrative expediency rather than on concepts of tort liability.[49] Public policy demands that courts solve their administrative problems rather than develop convenient ways to avoid them.[50] The remedy to an injured plaintiff must not be denied in order to streamline and expedite the legal process.[51]

1949) (Terrell, J.). *See also* 3 LAWYER'S MEDICAL CYCLOPEDIA §19.6 (rev. ed. 1970); Cantor, *Psychosomatic Injury, Traumatic Psychoneurosis, and Law*, 6 CLEV.-MAR. L. REV. 428 (1957).

43. Spade v. Lynn & Boston R.R., 168 Mass. 285, 288, 47 N.E. 88, 89 (1897).

44. Orlo v. Connecticut Co., 128 Conn. 231, 239, 21 A.2d 402, 404 (1941).

45. Robb v. Pennsylvania R.R., 58 Del. 454, 463, 210 A.2d 709, 714 (1965).

46. Chiuchiolo v. New England Wholesale Tailors, 84 N.H. 329, 335, 150 A.540, 543 (1930).

47. Spade v. Lynn & Boston R.R., 168 Mass. 285, 288, 47 N.E. 88, 89 (1897).

48. Niederman v. Brodsky, 436 Pa. 401, 411-12, 261 A.2d 84, 88-89 (1970); Throckmorton, *Damages for Fright*, 34 HARV. L. REV. 260, 274-75 (1921). To the contrary, several observers even speculate that because of the numerous exceptions observed in the impact states to grant recovery where results would otherwise be harsh, their volume of litigation is actually heavier than in non-impact jurisdictions. 1936 *N.Y. Law Revision Comm'n, Act, Recommendation and Study Relating to Liability for Injuries Resulting from Fright or Shock* 375, 421; Lambert, *Tort Liability for Psychic Injuries*, 41 B.U.L. REV. 584, 592 (1961).

49. Note, *supra* note 8, at 1032.

50. Robb v. Pennsylvania R.R., 58 Del. 454, 464, 210 A.2d 709, 714 (1965).

51. Assuming arguendo that substantially more litigation does arise if the rule is overturned, legitimate claims should nevertheless be allowed. Two equitable solutions offer themselves to alleviate possible congestion. First, rather than decrease the availability of justice, the number of courts might be increased if the additional caseload so warranted. *See* Note, *supra* note 4, at 559. Second, more restrictive judicial control could be implemented at the lower court level to temper the size of the damage awards. Because of high litigation expenses, a prudent reliance on the doctrine of remittitur could render only the bona-fide claims worth litigating. DeLoach v. Lanier, 125 F. Supp. 12, 14 (N.D. Fla. 1954).

Another argument offered in support of the impact rule has been the expressed desire to protect the defendant from unlimited liability.[52] Traditional concepts of tort law have always sought to compensate for a reasonable apprehension of impact — the obvious example being an assault, the apprehension of a battery, which is compensable even though no battery occurs.[53] Analogously, since a reasonable fear of impact that is negligently directed is conceptually independent from the impact itself, such a fear of impact is a valid point at which to limit liability.[54] Rather than deny mental injuries negligently inflicted, courts should recognize them as compensable within the foreseeability principle of *Palsgraf v. Long Island R.R.*[55] Admittedly the clash between plaintiff's interest in being free from severe emotional trauma and the defendant's desire to limit the risk he incurs is not easily resolved. However, in the absence of overriding policy considerations, foreseeability of risk must continue to be the primary determinant in establishing the element of duty.[56]

An Alternative to the Impact Doctrine

If Florida abandons the impact rule it will likely follow other states in adopting the more flexible "zone-of-danger" limitation.[57] No impact is required under this doctrine. The plaintiff suffering physical manifestations resulting from mental distress as a result of the defendant's negligence, and who was in close enough proximity to the negligent act as to be within its zone of danger, is allowed to recover.[58] Since the location of the *zone* is a question of fact to be determined by the jury, this doctrine is clearly superior to the impact rule.[59] The zone-of-danger doctrine also adopts the foreseeability-reasonable man criteria to limit the defendant's liability. The danger of fraud is mitigated by requiring that the mental distress manifest itself in some observable physical injury.[60] Although California has rejected the

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52. Comment, *Emotional Distress Negligently Inflicted upon Spectator Plaintiff — A Suggested Model for Identifying Protected Plaintiffs Based on Relational Interests,* 1969 Utah L. Rev. 396, 399.

53. W. Prosser, Torts §10, at 37 (3d ed. 1964).

54. Comment, *A New Boundary for Zone of Peril,* 1969 U. Ill. L.F. 125, 128. *See also* Smith, *Relationship of Emotions to Injury and Disease: Legal Liability for Psychic Stimuli,* 30 Va. L. Rev. 193 (1944).

55. 248 N.Y. 339, 162 N.E. 99 (1928). More commonly, however, courts faced with unquestionable fault, causation, and physical injury flowing from mental distress, but restricted by the impact rule, have "found" impact in the most unusual, even absurd situations. *See generally* note 16 *supra.*

56. *See* Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968).

57. *See* Note, *supra* note 8; Note, *The Right to Mental Security,* 16 U. Fla. L. Rev. 540 (1964); Comment, *supra* note 2.

58. *E.g.,* Waube v. Warrington, 216 Wis. 603, 258 N.W. 497 (1935).

59. *See* Comment *supra* note 54.

60. Comment, *One Step Beyond the Zone of Danger Limitation upon Recovery for the Negligent Infliction of Mental Distress,* 43 Temp. L.Q. 59, 63 (1969-1970).

zone-of-danger rule as being arbitrary,[61] it is doubtful that other jurisdictions are ready or willing to follow that precedent.[62]

CONCLUSION

Courts have historically resorted to various arguments to justify the failure to compensate negligently inflicted emotional trauma. Perhaps at one time many of the policy considerations were valid, but the maintenance of the impact rule long after its justification has disappeared is illogical. Mere difficulty of proof or possibility of fraud should not bar an aggrieved plaintiff from the opportunity to prove his injury. Fallibility is inherent in the judicial process, and the inability to prejudge every future case is not a sufficient justification to bar all claims. The death knell of the impact rule has tolled.[63] None of the feared dangers nor policy considerations excuses the frustration of natural justice in denying a plaintiff an opportunity to prove that his injuries are just as real, just as painful, and just as disabling as if he had suffered an actual or technical impact.[64]

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61. Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968). California is the only state to have allowed recovery to a bystander plaintiff suffering negligently inflicted emotional trauma when plaintiff neither suffered actual impact nor was in the zone-of-danger. The California rule might be termed "fear-for-another."

62. *See* Comment, *supra* note 54, at 133.

63. Note, *supra* note 8, at 1030.

64. Neiderman v. Brodsky, 436 Pa. 401, 403, 261 A.2d 84, 85 (1970).

APPENDIX

The following jurisdictions do not require an "impact" as a prerequisite to recovery for the negligent infliction of mental distress: FEDERAL: Sahuc v. United States Fidelity & Guar. Co., 320 F.2d 18 (5th Cir. 1963); Kaufman v. Western Union Tel. Co., 224 F.2d 723 (5th Cir. 1955), *cert. denied*, 350 U.S. 947 (1956); ALABAMA: Alabama Fuel & Iron Co. v. Baladoni, 15 Ala. App. 316, 73 So. 205 (1916); CALIFORNIA: Sloane v. Southern California Ry., 111 Cal. 668, 44 P. 320 (1896); COLORADO: Hopper v. United States, 244 F. Supp. 314 (D. Colo. 1965); CONNECTICUT: Orlo v. Connecticut Co., 128 Conn. 231, 21 A.2d 402 (1941); DELAWARE: Robb v. Pennsylvania R.R., 58 Del. 454, 210 A.2d 709 (1965); GEORGIA: Usry v. Small, 103 Ga. App. 144, 118 S.E.2d 719 (1961); KANSAS: Whitsel v. Watts, 98 Kan. 508, 159 P. 401 (1916) (dicta); Clemm v. Atchison, T. & S.F. Ry., 126 Kan. 181, 268 P. 103 (1928); LOUISIANA: Laird v. Natchitoches Oil Mill, 10 La. App. 191, 120 So. 692 (1929); MAINE: Wallace v. Coca-Cola Bottling Plants, Inc., Me. , 269 A.2d 117 (1970); MARYLAND: Green v. T. A. Shoemaker & Co., 111 Md. 69, 73 A. 688 (1909); MICHIGAN: Daley v. La Croix, 384 Mich. 4, 179 N.W.2d 390 (1970); MINNESOTA: Purcell v. St. Paul City R.R., 48 Minn. 134, 50 N.W. 1034 (1892); MONTANA: Cashin v. Northern Pac. R.R., 96 Mont. 92, 28 P.2d 862 (1939); NEBRASKA: Hanford v. Omaha & C.B. St. R.R., 113 Neb. 423, 203 N.W. 643 (1925); NEW HAMPSHIRE: Chiuchiolo v. New England Wholesale Tailors, 84 N.H. 329, 150 A. 540 (1930); NEW JERSEY: Falzone v. Busch, 45 N.J. 559, 214 A.2d 12 (1965); NEW YORK: Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961); NORTH CAROLINA: Kimberly v. Howland, 143 N.C. 398, 55 S.E. 778 (1906); OHIO: *See* Held v. Red Melcuit, Inc., 41 Ohio Op. 2d 210, 230 N.E.2d 674 (C.P. 1967); OKLAHOMA: Belt v. St. Louis San Francisco Ry., 195 F.2d 241 (10th Cir. 1952); OREGON: Salmi v. Columbia & North River R.R., 75 Ore. 200, 146 P. 819 (1915); PENNSYLVANIA: Niederman v. Brodsky, 436 Pa. 401, 261 A.2d 84 (1970); RHODE ISLAND: Simone v. Rhode Island Co., 28 R.I. 186, 66 A. 202 (1907); SOUTH CAROLINA: Mack v. South Bound R.R., 52 S.C. 323, 29 S.E. 905 (1898); SOUTH DAKOTA: Sternhagen v. Kozel, 40 S.D. 396, 167 N.W. 398 (1918); TENNESSEE: Memphis Street R.R. v. Bernstein, 137 Tenn. 637, 194 S.W. 902 (1917); TEXAS: Hill v. Kimball, 76 Tex. 210, 13 S.W. 59 (1890); VERMONT: Savard v. Cody Chevrolet, Inc., 126 Vt. 405, 234 A.2d 656 (1967); VIRGINIA: *See* Penick v. Mirro, 189 F. Supp. 947 (E.D. Va. 1960); WASHINGTON: Frazee v. Western Dairy Prods., 182 Wash. 578, 47 P.2d 1037 (1935); WEST VIRGINIA: Lambert v. Brewster, 97 W. Va. 124, 125 S.E. 244 (1924); WISCONSIN: Colla v. Mandella, 1 Wis. 2d 594, 85 N.W.2d 345 (1957). List *compiled from* Note, *Torts-Negligent Infliction of Mental Distress—Maine and Michigan Abolish the "Impact Rule,"* 20 DEPAUL L. REV. 1029, 1048 (1971).

The following jurisdictions do require "impact" as a prerequisite to recovery for the negligent infliction of mental distress: ARKANSAS: St. Louis, I.M. & S. R.R. v. Bragg, 69 Ark. 402, 64 S.W. 226 (1901); FLORIDA: International Ocean Tel. Co. v. Saunders, 32 Fla. 434, 14 So. 148 (1893); ILLINOIS: West Chicago St. R.R. v. Lisbig, 79 Ill. App. 567 (1899); INDIANA: Boston v. Chesapeake & O.R.R., 223 Ind. 425, 61 N.E.2d 326 (1945); IOWA: Kramer v. Ricksmeier, 159 Iowa 48, 139 N.W. 1091 (1913); KENTUCKY: Kentucky Traction & Terminal Co. v. Roman's Guardian, 232 Ky. 285, 23 S.W.2d 272 (1929); MASSACHUSETTS: Spade v. Lynn & Boston R.R., 168 Mass. 285, 47 N.E. 88 (1897); MISSOURI: McCardle v. George B. Peck Dry Goods Co., 191 Mo. App. 263, 177 S.W. 1095 (1915); UTAH: Samms v. Eccles, 11 Utah 2d 289, 358 P.2d 344 (1961); VIRGINIA: *See* Herman v. Eastern Airlines, 149 F. Supp. 417 (E.D.N.Y. 1957). *But see* Penick v. Mirro, 189 F. Supp. 947 (E.D. Va. 1960); DISTRICT OF COLUMBIA: Perry v. Capital Traction Co., 32 F.2d 938 (D.C. Cir. 1929), *cert. denied*, 280 U.S. 577 (1929).