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RECENT DECISIONS

RECOVERY FOR NEGLIGENTLY CAUSED EMOTIONAL TRAUMA RESULTING FROM FEAR FOR THE SAFETY OF ANOTHER

*"Mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act complained of causes that alone."*¹

Recovery for emotional trauma has progressed slowly in the century since Lord Wensleydale uttered the above words. The courts have been reluctant to recognize the interest in emotional tranquility both when the interference has been intentional and when it has been negligent.²

At first, courts denied recovery for negligently caused emotional disturbance on the grounds that it could not be measured monetarily.³ They later retreated from this position and gave relief for emotional injury if physical impact occurred,⁴ but found impact in the slightest of contacts with the person.⁵ Impact was always a necessary require-

¹ *Lynch v. Knight*, 11 Eng. Rep. 854, 863 (H.L. 1861).

² See generally W. PROSSER, *THE LAW OF TORTS* § 11, 55 (3d ed. 1964); Bohlen, *Fifty Years of Torts*, 50 HARV. L. REV. 725, 732-35 (1937); Farage, *Mental Distress as an Independent Basis for Recovery*, 40 DICK. L. REV. 1 (1935); Hallen, *Damages for Physical Injuries Resulting from Fright or Shock*, 19 VA. L. REV. 253 (1933); Magruder, *Mental and Emotional Disturbance in the Law of Torts*, 49 HARV. L. REV. 1033 (1936).

³ See, e.g., *Perry v. Capital Traction Co.*, 32 F.2d 938 (D.C. Cir.), cert. denied, 280 U.S. 570 (1929); But see *Clark v. Associated Retail Credit Men*, 105 F. 2d 62 (D.C. Cir. 1939); *Mitchell v. Rochester R. Co.*, 151 N.Y. 107, 45 N.E. 354 (1896) overruled in *Battala v. State*, 10 N.Y.2d 237, 176 N.E. 2d 729, 219 N.Y.S.2d 34 (1961); *Lynch v. Knight*, 11 Eng. Rep. 854 (H.L. 1861).

⁴ See, e.g., *Chicago, R. I. & P. Ry. v. Caple*, 207 Ark. 52, 179 S.W.2d 151 (1944); *Boston v. Chesapeake & O. Ry.*, 223 Ind. 425, 61 N.E.2d 326 (1945); *Savery v. Gray*, 51 So.2d 922 (Miss. 1951); *Barnett v. Sun Oil Co.*, 113 Ohio App. 449, 172 N.E.2d 734 (1961); *Knaub v. Gotwalt*, 422 Pa. 267, 220 A.2d 646 (1966); *Bosley v. Andrews*, 393 Pa. 161, 142 A.2d 263 (1958); *Bowles v. May*, 159 Va. 419, 166 S.E. 550 (1932); *Chesapeake & O. Ry. v. Tinsley*, 116 Va. 600, 82 S.E. 732 (1914); *Connelly v. Western Union Tel. Co.*, 100 Va. 51, 40 S.E. 618 (1902); *Smith v. Rodene*, 69 Wash.2d 482, 418 P.2d 741 (1966), modified, 423 P.2d 934 (1967).

⁵ See, e.g., *Christy Bros. Circus v. Turnage*, 38 Ga. App. 581, 144 S.E. 680 (1928) (An extreme case in which the defendant's horse "evacuated his bowels" into the plaintiff's lap and this was held to be sufficient impact.); *Bedenk v. St. Louis Pub. Serv. Co.*, 285 S.W.2d 609 (Mo. 1955) (bruise on arm); *Comstock v. Wilson*, 257 N.Y. 231, 177 N.E. 431, 247 N.Y.S. 908 (1931) (plaintiff fainted and fell to sidewalk); *Morton v. Stack*,

ment for recovery because it insured the authenticity of the suffering.⁶ Today the prevailing view⁷ is to allow recovery without impact, but require that the plaintiff be within a "zone of danger" and have fear for his own safety.⁸

On the question of compensable emotional distress caused by fear for the safety of another, most courts in the United States have refused to allow recovery.⁹ A few courts will allow the plaintiff to recover if he is in the "zone of danger" even though his suffering is for the safety of

122 Ohio St. 115, 170 N.E. 869 (1930) (inhalation of smoke); *Hess v. Philadelphia Transp. Co.*, 358 Pa. 144, 56 A.2d 89 (1948) (plaintiff suffered an electric shock, but there was no physical evidence of injury).

⁶ See, e.g., *Vanoni v. Western Airlines*, 247 Cal. App. 2d 793, 56 Cal. Rptr. 115 (1967); *Strazza v. McKittrick*, 146 Conn. 414, 156 A.2d 149 (1959); *Orlo v. Connecticut Co.*, 128 Conn. 231, 21 A.2d 402 (1941); *Robb v. Pennsylvania R. Co.*, 210 A.2d 709 (Del. 1965); *Slaughter v. Slaughter*, 264 N.C. 732, 142 S.E.2d 683 (1965); *Trent v. Barrows*, 55 Tenn. App. 182, 397 S.W.2d 409 (1965); *Frazee v. Western Dairy Prod.*, 182 Wash. 578, 47 P.2d 1037 (1935); *Monteleone v. Co-operative Transit Co.*, 128 W.Va. 340, 36 S.E.2d 475 (1945); *But see Sutherland v. Kroger Co.*, 144 W.Va. 673, 110 S.E.2d 716 (1959); Cases cited note 4 *supra*.

⁷ See, e.g., *Rogers v. Hexol, Inc.*, 218 F. Supp. 453 (D. Ore. 1962); *Penick v. Miro*, 189 F. Supp. 947 (E.D. Va. 1960); *Strazza v. McKittrick*, 146 Conn. 414, 156 A.2d 149 (1959); *Orlo v. Connecticut Co.*, 128 Conn. 231, 21 A.2d 402 (1941); *Falzone v. Busch*, 45 N.J. 559, 214 A.2d 12 (1965); *Battala v. State*, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961); *H. E. Butt Grocery Co. v. Perez*, 408 S.W.2d 576 (Tex. Civ. App. 1966); *Moore v. Jefferson Hosp., Inc.*, 208 Va. 438, 158 S.E.2d 124 (1967); *Savard v. Cody Chevrolet, Inc.*, 234 A.2d 656 (Vt. 1967); *Colla v. Mandella*, 1 Wis.2d 594, 85 N.W.2d 345 (1957).

⁸ It is recognized that many of the various jurisdictions of the United States are at different stages in this development, but any extensive treatment of this is beyond the scope of this comment. It is also recognized that there is some validity in the requirement that the emotional trauma result in some bodily harm in order to be compensable. This comment is restricted solely to recovery for negligently caused emotional trauma and consequential bodily harm resulting from fear for the safety of another.

⁹ See, e.g., *Maury v. United States*, 139 F. Supp. 532 (N.D. Cal. 1956); *Angst v. Great N. Ry. Co.*, 131 F. Supp. 156 (D. Minn. 1955); *Amaya v. Home Ice, Fuel & Supply Co.*, 59 Cal.2d 295, 379 P.2d 513, 29 Cal. Rptr. 33 (1963) *overruled in* *Dillon v. Legg*, 68 A.C. 766, 441 P.2d 912, 69 Cal. Rptr. 72 (1968); *Strazza v. McKittrick*, 146 Conn. 414, 156 A.2d 149 (1959); *Southern Ry. v. Jackson*, 146 Ga. 243, 91 S.E. 28 (1916); *Warr v. Kemp*, 208 So.2d 570 (La. 1968); *Williamson v. Bennett*, 251 N.C. 498, 112 S.E.2d 48 (1966); *Jelley v. Laflame*, 238 A.2d 728 (N.H. 1968); *Cote v. Litawa*, 96 N.H. 174, 71 A.2d 792 (1950); *Kern v. Kogan*, 93 N.J. Super. 459, 226 A.2d 186 (1967); *Robbins v. Castellani*, 37 Misc.2d 1046, 239 N.Y.S.2d 53 (1962); *Berg v. Baum*, 224 N.Y.S.2d 974 (Misc. 1962); *Knaub v. Gorwalt*, 422 Pa. 267, 220 A.2d 646 (1966); *Klassa v. Milwaukee Gas Light Co.*, 273 Wis. 176, 77 N.W.2d 397 (1956); *Waube v. Warrington*, 216 Wis. 603, 258 N.W. 497 (1935).

a third person and not for himself.¹⁰ But even these courts deny recovery when the plaintiff is outside this mythical zone.¹¹

A recent departure from the majority rule is the case of *Dillon v. Legg*.¹² The *Dillon* case, in what is hoped to be the beginning of a new trend, expressly overruled *Amaya v. Home Ice, Fuel & Supply Co.*¹³ and abandoned the artificial "zone of danger" test. In *Dillon*, the mother of a child killed by a negligently driven vehicle, suffered emotional trauma and physical injury as a result of witnessing the death of her child. The lower court denied recovery because the mother was not in the "zone of danger," while the child's sister, who was in the zone, recovered for emotional injury. Pointing out the anomaly of the artificial rule, the upper court reversed the decision as to the mother. Mr. Justice Tobriner, speaking for the court, said:

We see no good reason why the general rules of tort law, including the concepts of negligence, proximate cause, and foreseeability, long applied to all other types of injuries should not govern the case now before us.¹⁴

Further, referring to the "zone of danger" test, Mr. Justice Tobriner said:

To deny recovery would be to chain this state to an outmoded rule of the 19th century which can claim no current credence. No good reason compels our captivity to an indefensible orthodoxy.¹⁵

The progress of the English courts in abandoning the "zone of danger" test has been more rapid than that of the courts of the United States. The English originally adopted a view similar to that followed by the majority of the American courts,¹⁶ but extended it over forty

¹⁰ *Bowman v. Williams*, 164 Md. 397, 165 A. 182 (1933); *Tobin v. Grossman*, 55 Misc.2d 304, 284 N.Y.S.2d 997 (1967); *Frazee v. Western Dairy Prods. Co.*, 182 Wash. 578, 47 P.2d 1037 (1935).

¹¹ *Rasavage v. Davies*, 199 Md. 479, 86 A.2d 879 (1952) noted in 10 WASH. & LEE L. REV. 267; *Berg v. Baum*, 224 N.Y.S.2d 974 (Misc. 1962).

¹² 68 A.C. 766, 441 P.2d 912, 69 Cal. Rptr. 72 (1968).

¹³ 59 Cal.2d 295, 379 P.2d 513, 29 Cal. Rptr. 33 (1963). In a note on the *Amaya* case it was suggested by the writer that the artificial "zone of danger" test would not withstand prolonged attacks. It appears he was an excellent prognosticator. 36 S. CAL. L. REV. 299, 304 (1963).

¹⁴ *Dillon v. Legg*, 68 A.C. 766, 441 P.2d 912, 924, 69 Cal. Rptr. 72, 84 (1968).

¹⁵ *Id.* at 441 P.2d 925, 69 Cal. Rptr. 85.

¹⁶ *Dulieu v. White*, [1901] 2 K.B. 669 (The court stated that recovery for emotional disturbance was limited to cases in which the disturbance arose from a fear for the plaintiff's own safety). (dictum).

years ago in the case of *Hambrook v. Stokes Bros.*¹⁷ In the *Hambrook* case a mother's fear for the safety of her children, which resulted in severe shock and ultimately her death, entitled her estate to recover. The court held that it was immaterial whether the mother suffered from fear for her own safety or fear for the safety of her children. The court maintained that the defendant should have foreseen that his negligence could have placed a child in danger of bodily harm, and that a near-by mother might suffer fear for this child. Therefore, the defendant owed the mother a duty to use reasonable care to avoid causing her such fright.¹⁸

Although the English waived slightly from the rule laid down in *Hambrook*,¹⁹ recovery for emotional distress now appears to be firmly established in England.²⁰ Recently, *Hambrook* has been extended to allow recovery for a parent's emotional suffering when the parent did not see the negligent act or the injury to his child, but suffered due to the child's screams.²¹

From these cases it is clear that the English courts have abandoned the arbitrary "zone of danger" test and now base recovery for emotional disturbance resulting from fear for the safety of another on the foreseeability of the suffering. Unfortunately, American courts have not followed this lead.

The prevailing view of the American courts has been to deny recovery for emotional distress where the plaintiff bases his recovery solely on his fear for the safety of another.²² The few cases which

¹⁷ [1925] 1 K.B. 141. *Hambrook* is the most frequently cited case for the proposition of recovery for emotional trauma resulting from fear for the safety of another when the plaintiff was not within the "zone of danger." But does it stand for this? Is the court treating the defendant's admission of negligence (*Id.* at 152) also as an admission that the plaintiff was in the "zone of danger?" The court talked a great deal about duty, but accepting the doctrine of *Palsgraf v. Long Island R. R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928), an admission of negligence toward the plaintiff would presuppose duty and any discussion of duty would have been *dictum*. See cases cited note 19 *infra*.

¹⁸ It is interesting to note that *Hambrook*, a case decided three years before *Palsgraf v. Long Island R. R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928), used language which is surprisingly similar to that used in *Palsgraf*: "It follows that what a man ought to have anticipated is material when considering the extent of his duty." (*Hambrook v. Stokes Bros.*, [1925] 1 K.B. 141, 151.).

¹⁹ *King v. Phillips*, [1953] 1 Q.B. 429; *Hay or Bourhill v. Young*, [1943] A.C. 92. (In both cases the court distinguished the *Hambrook* case, but refused to overrule it.)

²⁰ See, e.g., *Chadwick v. British Ry. Board*, [1967] 1 W.L.R. 912 noted in 46 CAN. B. REV. 299 (1968).

²¹ *Boardman v. Sanderson*, [1964] 1 W.L.R. 1317.

²² See cases cited note 9 *supra*; RESTATEMENT (SECOND) OF TORTS § 313 (1965); Annot. 18 A.L.R.2d 220 (1951). But see *Spearman v. McCrary*, 4 Ala. App. 473, 58 So. 927,

have allowed recovery can be distinguished because of special factual situations such as a passenger-carrier relationship,²³ plaintiff within the "zone of danger,"²⁴ physical invasion of plaintiff's personal security,²⁵ violation of the plaintiff's right of occupancy,²⁶ products liability,²⁷ or landlord-tenant relationship.²⁸ Although distinguishable, these cases show a trend in the direction of allowing recovery.

The American courts, in denying recovery, generally advance two arguments to support their holdings.²⁹ First, the courts reason that the defendant owes no duty to the plaintiff who has suffered emotional distress from fear for the safety of another because the defendant could not have reasonably anticipated the plaintiff's suffering. *Palsgraf v. Long Island R.R. Co.*³⁰ is often cited as authority for this proposition, but this argument gives the liberal holding in the *Palsgraf* case too narrow a construction.³¹ Negligence is relative and the duty owed to any particular plaintiff is limited by the range of foreseeable harm from the defendant's conduct.³² It is suggested that the scope of the defendant's

cert. denied, 177 Ala. 672, 58 So. 1038 (1912) (The court allowed a mother to recover for her fear for the safety of her children, who had been negligently endangered by the defendant, but said very little about the problem of duty and approached the case from the standpoint of causation.); *Commercial Union Ins. Co. v. Gonzalez Rivera*, 358 F.2d 480 (1st Cir. 1966) (Children were allowed to recover for their suffering as a result of injuries negligently inflicted upon their father. This result was reached through the interpretation of a local statute. 31 L.P.R.A. § 5141.).

²³ *Gulf, C. & S. F. Ry. Co. v. Coopwood*, 96 S.W. 102 (Tex. Civ. App. 1906).

²⁴ *Bowman v. Williams*, 164 Md. 397, 165 A. 182 (1933).

²⁵ *Frazer v. Western Dairy Prods. Co.*, 182 Wash. 578, 47 P.2d 1037 (1935).

²⁶ *Alabama Fuel & Iron Co. v. Baladoni*, 15 Ala. App. 316, 73 So. 205 (1916).

²⁷ *Rogers v. Hexol, Inc.*, 218 F. Supp. 453 (D. Ore. 1962).

²⁸ *Cohn v. Ansonia Realty Co.*, 162 App. Div. 791, 148 N.Y.S. 39 (1914).

²⁹ See, e.g., *Waube v. Warrington*, 216 Wis. 603, 258 N.W. 497 (1935) noted in 35 COLUM. L. REV. 463 (1935); 23 GEO. L.J. 515 (1935); 33 MICH. L. REV. 809 (1935); 19 MINN. L. REV. 806 (1935) (The leading American case in which the court denied recovery for a mother's emotional distress at witnessing her daughter negligently struck by the defendant's vehicle). The court expressly rejected the doctrine of *Hambrook v. Stokes Bros.*, [1925] 1 K.B. 141 and relied on *Palsgraf v. Long Island R.R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928). It is interesting to note that here the court denied recovery on the authority of *Palsgraf* while the *Hambrook* case allowed recovery using language substantially similar to *Palsgraf*. See note 18 *supra*. See also cases cited note 9 *supra*.

³⁰ 248 N.Y. 339, 162 N.E. 99 (1928).

³¹ Seitz, *Duty and Foreseeability Factors in Fright Cases*, 23 MARQ. L. REV. 103, 106-11 (1939); 35 COLUM. L. REV. 463 (1935).

³² See generally *Palsgraf v. Long Island R.R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928); 2 F. HARPER & F. JAMES, *THE LAW OF TORTS* § 18.2 (1956); W. PROSSER, *THE LAW OF TORTS* § 53 (3d ed. 1964); Seavey, *Principles of Torts*, 56 HARV. L. REV. 72 (1942); Seavey, *Mr. Justice Cardozo and the Law of Torts*, 52 HARV. L. REV. 372 (1939).

foreseeability (range of foreseeable harm) is not limited just to foreseeable bodily injury, but also includes foreseeable emotional disturbance which results in physical injury. This foreseeability is normally a question for a jury to decide, subject only to judicial control, and cannot be determined by the application of mechanical rules.³³ Surely, it is foreseeable that if an infant is negligently injured, the mother might be nearby and suffer emotional distress.³⁴

The second argument on which the courts rely is that social interests do not warrant the extension of recovery to damages for emotional suffering resulting from fear for the safety of another. Behind this argument is judicial apprehension that to allow recovery would open the courts to a flood of litigation and encourage fraudulent claims. This reasoning cannot stand, however, when viewed in the light of the damages allowed in other areas of the law for emotional trauma.³⁵ The courts should not deny recovery to a deserving plaintiff on the contingency that it might encourage fraudulent claims.³⁶ This problem of fraudulent claims would be best solved by the exercise of sound judicial discretion.³⁷

In contrast to the majority rule, the *Dillon*³⁸ court set forth the following three criteria for determining the defendant's scope of foreseeability and, hence, his duty: (1) Distance of the plaintiff from the scene of the accident; (2) Whether the shock resulted from observing the accident or from learning of it later; (3) Relationship of the plain-

³³ Brody, *Negligently Inflicted Psychic Injuries: A Return to Reason*, 7 VILL. L. REV. 232, 244 (1962).

³⁴ 2 F. HARPER & F. JAMES, *THE LAW OF TORTS* 1039 (1956); W. PROSSER, *THE LAW OF TORTS* 353 (3d ed. 1964); Hallen, *Damages for Physical Injuries from Fright or Shock*, 19 VA. L. REV. 253, 270 (1933); Seitz, *Duty and Foreseeability in Fright Cases*, 23 MARQ. L. REV. 103, 106 (1939).

³⁵ See generally W. PROSSER, *THE LAW OF TORTS* § 11 (3d ed. 1964); Hallen, *Damages for Physical Injuries Resulting from Fright or Shock*, 19 VA. L. REV. 253 (1933); Magruder, *Mental and Emotional Disturbance in the Law of Torts*, 49 HARV. L. REV. 1033 (1936).

³⁶ "[If] a person's rights have been unlawfully invaded, it would ill become a court of justice to withhold its remedy on the ground of expediency. It may be that physical injuries springing out of fright are easily simulated, and relief granted in such instances would appear to open the door to fraud and imposture; but this is a matter involving the proof of a case and is addressed rather to the group sense in honesty of purpose of our juries than to the courts." *Alabama Fuel & Iron Co. v. Baladoni*, 15 Ala. App. 316, 318, 73 So. 205, 207-08 (1916).

³⁷ See Brody, *Negligently Inflicted Psychic Injuries: A Return to Reason*, 7 VILL. L. REV. 232 (1962); 35 COLUM. L. REV. 463 (1935).

³⁸ *Dillon v. Legg*, 68 A.C. 766, P.2d 912, 69 Cal. Rptr. 72 (1968).

tiff to the victim. The court applied these factors and determined that it was foreseeable in this case that the plaintiff might suffer emotional distress when her child was negligently endangered.

One problem left unanswered by the *Dillon* court is whether the negligence of the child would bar recovery by the mother. The majority opinion suggested that the child's negligence would be a bar,³⁹ but the minority opinion criticized this as being contra to the principle that negligence cannot be imputed between parent and child.⁴⁰ Since the mother, not the child, is the plaintiff, the mother is not contributorily negligent unless she fails to use reasonable care in controlling the child.⁴¹ In the final analysis, both the child and the defendant are causes of the mother's suffering. Absent any failure to control on the part of the mother, there is no reason why the child's negligence should prevent the defendant from being liable to the mother, unless the defendant's conduct was not a substantial factor⁴² in bringing about her suffering.

The *Dillon* case reaches a correct result using a proper approach and is a long awaited step in the development of tort law. Both the "zone of danger" test and the requirement that the plaintiff have fear for his own safety have been clearly abandoned by the Supreme Court of California. The tests are artificial rules coined by courts in the late nineteenth century when emotional disturbance cases first came before them to protect against a wide range of imagined fears.⁴³ The requirement that the plaintiff have fear for his own safety puts a price on cowardice. It compensates a mother who fears for herself, while it leaves without a remedy the mother who disregards her own personal safety and whose only concern is for her endangered child.⁴⁴ The "zone of danger"

³⁹ *Id.* at 441 P.2d 916, 69 Cal. Rptr. 76.

⁴⁰ *Id.* at 441 P.2d 928, 69 Cal. Rptr. 88.

⁴¹ See *Gayhart v. Schwabe*, 80 Idaho 354, 330 P.2d 327 (1958); *Cherame v. Great Am. Ins. Co.*, 198 So.2d 726 (La. App.) writ refused, 251 La. 25, 202 So.2d 649 (1967); *Mergentime v. New England Tel. & Tel. Co.*, 255 App. Div. 628, 8 N.Y.S.2d 637 (1938); *International-Great Northern R. Co. v. Lucas*, 128 Tex. 480, 99 S.W.2d 297 (1936).

⁴² See, e.g., *Anderson v. Minneapolis, St. P. & S. S. M. R. Co.*, 146 Minn. 430, 179 N.W. 45 (1920); *Dunham v. Village of Canisteo*, 303 N.Y. 498, 104 N.E.2d 872 (1952); *Lancaster v. Montesi*, 216 Tenn. 50, 390 S.W.2d 217 (1965); *Carney v. Goodman*, 38 Tenn. App. 55, 270 S.W.2d 572 (1954); *Bentzler v. Braun* 34 Wis.2d 362, 149 N.W.2d 626 (1967); RESTATEMENT (SECOND) OF TORTS § 431, 433, 439 (1965).

⁴³ *Dillon v. Legg*, 68 A.C. 766, 441 P.2d 912, 916-17, 69 Cal. Rptr. 72, 76, 77 (1968); *Brody, Negligently Inflicted Psychic Injuries: A Return to Reason*, 7 VILL. L. REV. 232, 259-60 (1962). See also *Bohlen, Fifty Years of Torts*, 50 HARV. L. REV. 725, 735 (1937).

⁴⁴ See *Dillon v. Legg*, 68 A.C. 766, 441 P.2d 912, 918-19 n.4, 69 Cal. Rptr. 72, 78-79 n.4 (1968).

test would deny recovery to a mother who had suffered emotional distress at seeing her child killed in an automobile accident; yet she would be allowed to recover if this emotional distress resulted from seeing the corpse negligently handled while it was being removed from the wreck.⁴⁵

How far should recovery be extended beyond the parents of victims? Some writers have suggested that a certain degree of relationship between the plaintiff and the person endangered be required in order to allow recovery.⁴⁶ But this is simply substituting one mechanical rule for another. It is suggested that the plaintiff be required to show an intimate relationship with the person endangered in order to recover. Intimacy should be a question of fact to be considered by the jury in determining whether it was foreseeable that the defendant's conduct, in negligently endangering the third party, would cause emotional injury to the plaintiff. The closer the intimacy, the more foreseeable the suffering.

Conduct required by a society from its members varies with the times. A rule of law, such as the "zone of danger" test, is static and cannot change, but foreseeability is a standard based upon the concept of reasonableness and, as such, has flexibility built into it. Artificial, arbitrary rules to limit the duty one member of society owes to another member will become obsolete as society demands a higher standard of conduct from its members.

W. J. S.

⁴⁵ See *Blanchard v. Brawley*, 75 So.2d 891 (La. App. 1954); Brody, *Negligently Inflicted Psychic Injuries: A Return to Reason*, 7 VILL. L. REV. 232, 242 (1962).

⁴⁶ W. PROSSER, *THE LAW OF TORTS* 353-54 (3d ed. 1964); Brody, *Negligently Inflicted Psychic Injuries: A Return to Reason*, 7 VILL. L. REV. 232, 245 (1962).