

Fall 2023

One Tort, Four IRACs, and Five Lessons About Rule Support Cases

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Recommended Citation

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Cite as: Alissa Bauer, *One Tort, Four IRACs, and Five Lessons About Rule Support Cases*, 30 PERSPS. 75 (2023).

One Tort, Four IRACs, and Five Lessons About Rule Support Cases

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Introduction

They go by many names—rule support cases, case illustrations, rule explanations, or rule proof. However, no matter what you call them, rule support cases are often pivotal to the success of a student’s legal analysis, especially for a first-year law student who is just learning to use the IRAC or CRAC structure.¹

To be sure, legal analysis does not always require extensive discussion of the facts and reasoning of the rule support case or cases. For instance, sometimes the rule itself clearly answers a legal question,² and a student can use rule-based reasoning to easily address the relevant legal issue. Also, sometimes the facts of a fact pattern do not matter because an issue is purely a legal question. In this situation, once the student has determined what the proper rule is or has advocated for

what the proper rule should be, then the student can easily apply the rule to the relevant facts.

However, the rule itself frequently does not provide the student with enough information to address the relevant legal issue or issues. Many legal rules, whether created by statute or by case law, are intentionally written to be both broad and vague. The legislature passing or the courts creating and refining these rules want to ensure that the language is broad enough to cover future factual scenarios that may arise. In this situation, which is the focus of this Article, the rule support section is a cornerstone of the entire IRAC. Specifically, the rule support section clarifies how courts have applied the relevant rule in a previous case or cases and sets up the application section by providing concrete examples that the writer can compare to the relevant parts of the fact pattern. In other words, the rule support case or cases provide a bridge between the rule and the application. Without the rule support section, a student has trouble getting from the vague, general rule to the appropriate application.

While that sounds straightforward, the rule support section is complicated, in part because there is no one-size-fits-all solution. Sometimes the descriptions of rule support cases need to provide a lot of factual detail to lay the groundwork for a facts-to-facts comparison, but a student will still need to figure out which facts are legally relevant. Other times, an effective rule support discussion zooms in on only one aspect of the case, and the surrounding dispute is irrelevant. Alternatively, the rule support cases may present useful themes rather than just specific facts to compare to the rule’s elements or factors. Developing a feel for how much and what to include in the rule support section is a key aspect of lawyering.

Professors can create opportunities for a student to grapple with these challenges through carefully-constructed problems. This Article outlines a

*I am incredibly thankful to Heidi K. Brown, Irene Ten Cate, Maria Termini, and L. Danielle Tully for their insights and comments, to Caroline Tsai for her exceptional research assistance, and to the Brooklyn Law School Dean’s Summer Research Stipend Program for its summer research support.

¹ In fact, rule support cases do not even get their own initial in the traditional IRAC or CRAC acronym. The IRAC acronym stands for Issue Rule Application Conclusion, which is the basic legal analysis structure. The CRAC structure is similar but starts with the Conclusion, not the Issue. TRAC is an alternative acronym for the same basic structure, but the T stands for the Thesis. To be fair, the IREAC, CREAC, and TREAC acronyms do refer to the rule explanation as its “E.” However, the term “rule explanation” appears to refer to additional information about the general rule, not the specific details of the rule support case or cases that are often foundational to a student’s legal analysis.

² When I refer to the “rule” or “rules,” I am using the term in the way that it is used in the IRAC – the general legal standard that “tell[s] people what they must or can do, that they must not or should not do, or what they are entitled to do under certain circumstances.” Christine Coughlin et al., *A Lawyer Writes: A Practical Guide to Legal Analysis* 61 (3d ed. 2018); see also Heidi K. Brown, *Mindful Legal Writer: Mastering Predictive and Persuasive Writing* 27 (2016) (describing “rules” as the “substantive legal rules about parties’ entitlements and obligations”).

“[T]he rule support section is a cornerstone of the entire IRAC.”

single negligent infliction of emotional distress fact pattern and the five important rule support lessons that the problem teaches. Negligent infliction of emotional distress under Pennsylvania law is a relatively straightforward, multiple-element test.³ Each of the four elements requires its own IRAC, and each IRAC offers a different level of difficulty for the student and provides one or more unique rule support lessons. The problem not only teaches a student how to use the IRAC structure, but it also helps the student think about the underlying legal analysis, focusing on the role and importance of the rule support cases in that analysis.

I. The Fact Pattern

In this factual scenario,⁴ Jessica Rendle is the client and potential plaintiff. She is a twenty-three-year-old college graduate who moved back in with her father, stepmother, and half-brother during COVID. Her half-brother, Josh Rendle, is fourteen years old. Jessica and Josh are really close, and Jessica always helps take care of Josh. Josh attends a fictional Pennsylvania public middle school.

On September 14, 2021, Jessica walked with Josh to the middle school and ran into a friend just outside the school entrance. Jessica talked to her friend near the front door to the school for about 45 minutes.

In the meantime, Josh went to his first period class and left briefly to use the bathroom. During that fall, there had been a TikTok trend called “deviouslicks” where students would destroy part of or steal from school bathrooms and post the videos of their actions on TikTok.⁵ On alert for this type of activity, Josh’s teacher thought that Josh might have been involved in TikTok bathroom destruction when he left the classroom. After Josh returned from the bathroom, his teacher called security.

A few minutes later, a security guard arrived and asked Josh to exit the classroom. The guard then questioned Josh in the hallway about the teacher’s suspicions. Josh was very offended by the accusation. He threatened to go into the bathroom and do “actual” destruction. Fearing that Josh might destroy school property in his anger, the security guard grabbed Josh and forcibly moved him into a supply closet that was two doors down from Josh’s classroom. The security guard locked Josh in the closet while the guard went to investigate the bathroom to see if Josh had vandalized it earlier.

Locked in the dark closet, Josh called Jessica, who was still standing outside the school, approximately 35 feet from the closet where Josh was trapped. After explaining where he was and how he got there, Josh told Jessica that he was “freaking out” and “really, really claustrophobic” in the dark because he could not see. He explained that he was unsuccessfully feeling around to find a light switch and begged his sister to come get him out of the closet.

Frustrated, Josh kicked and shook a large bookcase in the dark. A smaller metal bookcase that was sitting on top of the larger bookcase fell on Josh. The corner of the smaller bookcase hit Josh in his head. Josh cried out and told Jessica that he was in “excruciating” pain and could feel blood rushing out of his head “everywhere.” After listening to the entire incident and hearing Josh’s description, Jessica pictured the “absolute worst” after the phone disconnected.

At that point, Jessica had gone the short distance to the middle school entrance, but the door was locked. She pressed the intercom and waited to be let in, pacing back and forth. When Jessica was buzzed into the school, she saw Josh leaning on the security guard while blood was dripping down from Josh’s head and covering his clothing.

After the accident, Jessica experienced anxiety, panic attacks, nightmares, and loss of appetite. Her appetite has improved, but she is still plagued by anxiety, panic attacks, and recurring nightmares.

“The problem not only teaches a student how to use the IRAC structure, but it also helps the student think about the underlying legal analysis, focusing on the role and importance of the rule support cases in that analysis.”

³ The Pennsylvania Supreme Court originally mislabeled this test as a factor test. See *Sinn v. Burd*, 404 A.2d 672, 685 (Pa. 1979).

⁴ I created this assignment by modifying a problem written by Peter Widulski at the Elizabeth Haub School of Law at Pace University.

⁵ See James Doubek, *Students Are Damaging School Bathrooms for Attention on TikTok*, NPR (Sept. 17, 2021, 7:09 PM), <https://www.npr.org/2021/09/17/1038378816/students-are-damaging-school-bathrooms-for-attention-on-tiktok>.

II. IRAC Lessons from a Bystander Liability Claim

Each of the four elements of negligent infliction of emotional distress will require its own IRAC discussion because each element's application to Jessica's case is not obvious based simply on a reading of the general terms from the rule. Specifically, under Pennsylvania law, to recover for negligent infliction of emotional distress under a claim for bystander liability,⁶ a plaintiff must show that (1) the plaintiff was "located near the scene of the accident"; (2) the plaintiff's shock resulted from a "sensory and contemporaneous observance" of the accident; (3) the plaintiff and the victim were "closely related";⁷ and (4) the plaintiff suffered a "physical injury."⁸

Looking at the language of the rule, it is unclear if Jessica was "near" the accident when she was outside the school 35 feet from where Josh was, if she had a "sensory and contemporaneous observance" of the accident when she heard Josh's injury over the phone, if she and Josh as half-siblings were "closely related," and if her symptoms following the accident qualify as a "physical injury." Therefore, the student will need to address each element in its own IRAC, and each IRAC will provide one or more rule support lessons.

A. Lesson 1(a)—Sometimes Rule Support Cases Provide Concrete Numbers for Comparison

The first element of the negligent infliction of emotional distress test requires a plaintiff to be "located near the scene of the accident as contrasted

with one who was a distance away from it."⁹ This element is written in very broad terms. What does "near" the scene of the accident actually mean? If a student attempts to apply this rule to the facts of Jessica's case at this point, the student will have no idea what to focus on because the term "near" is too broad and vague to compare the relevant facts to.

However, if a student uses rule support cases as a bridge between the rule and the application for this element, the application section becomes clearer and more straightforward because the rule support cases provide a concrete number for comparison. In fact, the student can find cases that provide exact distances that courts will accept to satisfy this element.¹⁰

For example, in *Anfuso*, a car struck and killed a girl when she was riding her bicycle in the street near her home.¹¹ The court found that the victim's brother, who was approximately 100 feet in front of the point of impact, satisfied the elements of negligent infliction of emotional distress.¹² Although the court in *Anfuso* did not specifically address the distance element, the negligent infliction of emotional distress test includes mandatory elements,¹³ and therefore the distance element must have been met if the victim's brother was able to satisfy the test.

Based on this rule support case, the student now has a concrete distance to compare to the fact pattern. Specifically, Jessica was thirty-five feet away from the closet where Josh was trapped when the accident happened. This distance is closer than the 100 feet between the victim and his sister in

⁶ A plaintiff may have a valid negligent infliction of emotional distress claim under Pennsylvania law in four situations: (1) when there is a contractual or fiduciary duty between the plaintiff and the defendant; (2) when the plaintiff experienced a physical impact from the incident; (3) when the plaintiff was in the "zone of danger" from the accident; or (4) when the plaintiff was a bystander who "observed a tortious injury to a close relative." *Toney v. Chester Cty. Hosp.*, 961 A.2d 192, 197–98 (Pa. Super. Ct. 2008). There is no contractual or fiduciary duty between Jessica and the middle school; Jessica was not physically injured when the bookshelf fell on Josh; and Jessica was not in the closet with Josh when the accident happened. Therefore, the issue is whether Jessica meets the fourth factual scenario because she observed a tortious injury to a close relative.

⁷ *Mazzagatti v. Everingham*, 516 A.2d 672, 677 (Pa. 1986) (citing *Sinn*, 404 A.2d at 685).

⁸ *Armstrong v. Paoli Mem'l Hosp.*, 633 A.2d 605, 609 (Pa. Super. Ct. 1993); *Wall by Lalli v. Fisher*, 565 A.2d 498, 502 (Pa. Super. Ct. 1989).

⁹ *Mazzagatti*, 516 A.2d at 677 (citing *Sinn*, 404 A.2d at 685).

¹⁰ See *Bliss v. Allentown Pub. Libr.*, 497 F. Supp. 487, 488 (E.D. Pa. 1980) (holding that the victim's mother "met indisputably" the near the scene of the accident requirement when she stood about twenty-five feet from the site of her daughter's accident); *Anfuso v. Smith*, 15 Pa. D. & C.3d 389, 391, 393 (Ct. Com. Pl. 1980) (finding that the victim's brother was able to recover under a theory of negligent infliction of emotional distress when he was 100 feet from where his sister was hit by a car).

¹¹ 15 Pa. D. & C.3d at 391.

¹² *Id.* at 391, 394.

¹³ See *Mazzagatti*, 516 A.2d at 677 (citing *Sinn*, 404 A.2d at 685).

“However, If a student uses rule support cases as a bridge between the rule and the application for this element, the application section becomes clearer and more straightforward”

Anfuso, which was sufficient to meet this element.¹⁴ Therefore, the student can reasonably conclude that Jessica's thirty-five-foot distance from the closet likely fulfills the distance part of this element.

B. Lesson 1(b)—Sometimes the Rule Support Cases Show That the Student Cannot Stop After Just One Step in the Analysis

The physical distance between Jessica and Josh is not, however, the only issue raised by the “near the scene of the accident” element. Josh was locked inside a closet inside his school when he was injured, while Jessica stood outside the school. Therefore, the student next needs to figure out if the physical barrier of the school and closet walls between Jessica and Josh will prevent Jessica from satisfying this element. Again, the student must use rule support cases to answer this question.

There are multiple potential rule support cases with fact patterns in which the victim was separated from the negligent infliction of emotional distress plaintiff, but the plaintiff still satisfied the distance element.¹⁵ For instance, in *Francart v. Smith*, the plaintiff parents were sitting inside the kitchen of their home when a car hit their daughter on the street outside the house.¹⁶ Despite the physical barrier of the house walls separating the parents inside the house from their daughter outside the house, the court held that the near the scene of the accident requirement was “irrefutably present.”¹⁷

Also, in *Rideout v. Hershey Medical Center*, a very similar case to Jessica's fact pattern, the defendant hospital removed the plaintiffs' daughter's ventilator support without the parents' presence or permission.¹⁸ At that moment, the parents were

located in an office within the hospital.¹⁹ At the same time, the hospital's chaplain, who was located in the daughter's room, announced to the parents over the hospital's intercom system that “they turned her off, they turned her off!”²⁰ The parents heard the announcement and immediately rushed to their daughter's room “hysterically crying and screaming that their child had been murdered.”²¹ The court held that the parents established the requisite close proximity element despite being in a separate room of the hospital when the hospital removed their daughter's ventilator.²²

Once a student presents and describes one or more of these rule support cases, it becomes clear that the physical walls between Jessica and Josh should not be an impediment to proving the “near the scene of the accident” element. Again, the rule support section sets up an easy and straightforward application of the rule to the facts of Jessica's potential case once the student sees that this IRAC involves more than one analytical step.

C. Lesson 2—Try to Find Rule Support Cases with Similar Fact Patterns as Well as One Good Contrast Case

The second and most complicated element of a negligent infliction of emotional distress claim requires that the plaintiff's shock “resulted from a direct emotional impact” on the plaintiff from a “sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence.”²³ This general rule provides very little guidance regarding how a plaintiff might satisfy this element. Although Jessica heard Josh's accident over the phone, she did not watch the accident happen. Therefore, it is unclear from this broad rule whether she had a “sensory and contemporaneous observance” of the accident.

“Again, the rule support section sets up an easy and straightforward application of the rule to the facts . . . once the student sees that this IRAC involves more than one analytical step.”

¹⁴ See *Anfuso*, 15 Pa. D. & C.3d at 391, 394.

¹⁵ See *Ahner v. Bauder*, 1 Pa. D. & C.4th 596, 597, 599 (Ct. Com. Pl. 1988) (holding that parents who were located in an adjoining room when a car crashed into their apartment and injured their son were near the scene of the accident); *Anfuso*, 15 Pa. D. & C.3d at 391, 393 (finding that a mother “clearly” met the distance element when she heard the impact of a car striking her daughter outside the house while the mother was located inside of the house).

¹⁶ 2 Pa. D. & C.4th 585, 587, 611 (Ct. Com. Pl. 1989).

¹⁷ *Id.* at 611.

¹⁸ 30 Pa. D. & C.4th 57, 63 (Ct. Com. Pl. 1995).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 66.

²³ *Mazzagatti v. Everingham*, 516 A.2d 672, 677 (Pa. 1986) (citing *Sinn v. Burd*, 404 A.2d 672, 685 (Pa. 1979)).

“There are many options for good rule support cases to set up a robust application section for the ‘sensory and contemporaneous observance’ element.”

The courts have fleshed out this rule in more detail, explaining that the “sensory and contemporaneous observance” element is not “limited to visual observance” but “properly includes an aural sensory awareness as well.”²⁴ Specifically, the “practical focus” of this element should be on “whether the observance was direct and immediate as opposed to indirect and removed,” not on the “particular sensory vehicle which gave rise to the awareness of the event.”²⁵ However, “unlike visual observance, aural awareness may rarely, standing alone, give rise to a sufficient awareness of the nature and import of the event to cause severe emotional injury.”²⁶ With this additional guidance, the student is able to see that Jessica may be able to meet the “sensory and contemporaneous observance” element despite only hearing, but not seeing, Josh’s accident.

However, it is still unclear exactly what this rule means for Jessica’s fact scenario. Did Jessica in fact have a “direct and immediate” observance when she heard Josh’s injury over the phone? Also, what additional awareness is required to supplement Jessica’s aural observance of the accident? There are many options for good rule support cases to set up a robust application section for the “sensory and contemporaneous observance” element.²⁷

24 *Neff v. Lasso*, 555 A.2d 1304, 1313–14 (Pa. Super. Ct. 1989); see also *Kratzer v. Unger*, 17 Pa. D. & C.3d 771, 773 (Ct. Com. Pl. 1981) (noting that “[t]here is no rational reason to believe that what an eyewitness sees will be any more or less shocking than what an ‘earwitness’ hears”).

25 *Neff*, 555 A.2d at 1313.

26 *Id.*

27 See *Bliss v. Allentown Pub. Libr.*, 497 F. Supp. 487, 488–89 (E.D. Pa. 1980) (holding that a mother who heard the crash of a statue falling on her daughter and looked up “immediately” to see her bloody daughter “identified herself sufficiently as a ‘percipient witness’ to state a cause of action for negligent infliction of emotional harm”); *Rideout v. Hershey Med. Ctr.*, 30 Pa. D. & C.4th 57, 66 (Ct. Com. Pl. 1995) (finding that parents who heard over the hospital’s intercom system that the hospital staff removed their daughter’s ventilator support without the parents’ presence or permission at “approximately the same time” that the ventilator was removed experienced a “sensory and contemporaneous observance”); *Francart v. Smith*, 2 Pa. D. & C.4th 585, 614 (Ct. Com. Pl. 1989) (concluding that the jury should hear a negligent infliction of emotional distress claim when a mother spoke to her daughter on the phone right before an accident, the mother and father heard screeching tires and the sound of their daughter being hit by a car, and the father saw his daughter’s body immediately after the accident); *Kratzer*, 17 Pa. D. & C.3d at 772–73 (holding that a foster mother who heard a “loud thump” outside her house right after her son left the house and then saw her son unconscious in the street after he was hit by a car satisfied the “sensory and contemporaneous observance” requirement); *Anfuso v. Smith*, 15 Pa. D. & C.3d 389, 391, 393 (Ct. Com. Pl. 1980) (finding that a mother who was watching her daughter from inside of their house, heard tires squeal and the sound of a car hitting her daughter on her bike, and then hurried to find her daughter was a “‘percipient witness’ to the impact”).

Each of these potential rule support cases involves a plaintiff or plaintiffs who heard an accident happen rather than saw the accident happen.

For instance, through her kitchen window, the plaintiff in *Neff* saw her husband’s car driving down the street.²⁸ She also saw the defendant’s car following her husband’s car at an “excessive rate of speed.”²⁹ Although she could not see the two cars when they crashed, the wife heard a collision and raced to the accident, where she found her husband unconscious on the front lawn.³⁰

The court held that, although the wife did not visually observe the actual accident, she satisfied the “sensory and contemporaneous observance” element.³¹ The court explained that the wife’s “aural perception” when she heard the crash combined with her “prior and subsequent visual observance” when she saw the defendant’s car speeding behind her husband’s car and then she saw her husband “lying unconscious immediately after the impact” could have created a “full, direct, and immediate awareness.”³² The court continued, “To deny [the wife’s] claim solely because she did not see the precise moment of the impact would ignore the plain reality that the entire incident produced the emotional injury for which the plaintiff seeks redress.”³³

Because the “sensory and contemporaneous observance element” is the most complicated and nuanced element, it is worth using another rule support case with a similar fact pattern to set up the student’s application and show the courts’ consistent approach to plaintiffs who hear, rather than see, the relevant accident. For example, in *Krysmalski v. Tarasovich*, the plaintiff mother’s three children asked for permission to wait for her in the parking lot just outside of a supermarket while she paid for

28 555 A.2d at 1313.

29 *Id.*

30 *Id.*

31 *Id.* at 1313–14.

32 *Id.*

33 *Id.* at 1314.

the groceries.³⁴ While the children were standing outside, the defendant crashed his car through a concrete barrier at the entrance of the store, striking and injuring the children.³⁵ At that time, the mother was likely still inside the grocery store checking out.³⁶ The mother subsequently ran to the scene of the accident and found her children “horribly injured.”³⁷

The court held that even if the mother “was in the grocery store at the exact second of impact,” she satisfied the “sensory and contemporaneous observance” element.³⁸ Specifically, she “most certainly heard the crash” because it was audible from inside the store, and she “knew that her children were at the scene of those events.”³⁹ The fact patterns in both *Neff* and *Krysmalski* are similar to the fact pattern in Jessica’s potential case, allowing a student to do a one-to-one type of comparison in the student’s application section.⁴⁰

However, a case with a different set of facts from our fact pattern, a different legal conclusion on the relevant element, or both can serve as a very useful contrast case to use in the rule support section to set up a more nuanced application section. For the “sensory and contemporaneous observance” element, *Tiburzio-Kelly v. Montgomery* is an instructive and helpful contrast case.⁴¹ In *Tiburzio-Kelly*, the plaintiff’s wife delivered their child by emergency Caesarean section without anesthesia.⁴² During the delivery, the husband was in a birthing room approximately 40 to 50 feet from the delivery room.⁴³ He heard his wife screaming during the delivery.⁴⁴

About 20 minutes later, he was told that he had “a beautiful girl.”⁴⁵ About 45 minutes after that, the plaintiff saw his wife in a recovery room.⁴⁶ At that time, his wife was cleaned up with combed hair and a little makeup on.⁴⁷ The husband had “no idea” about how his daughter was delivered.⁴⁸

The court held that the plaintiff did not satisfy the “sensory and contemporaneous observance” requirement because his “sensory observation consisted of hearing alone” and he was “not aware of” the cause of his wife’s screams.⁴⁹ The court also noted that the husband did not see his wife until later when she was in the recovery room.⁵⁰

These three rule support cases set up a focused application of the “sensory and contemporaneous observance” rule to the facts of Jessica’s potential case. The rule support cases offer concrete facts and the corresponding legal analysis to which the student can compare the facts of Jessica’s case. Specifically, the cases analyze the plaintiff’s “sensory and contemporaneous” experience of the accident before, during, and after the relevant incident.

Focusing on what happened “before” the accident, each of the rule support plaintiffs who proved this element had some context to the accident before the plaintiff heard the accident happen. For example, the plaintiff in *Neff* saw a car speeding down her street behind her husband’s car before she heard the crash,⁵¹ and the plaintiff in *Krysmalski* knew that her children were waiting just outside the grocery store when she heard the car crash near the entrance to the store.⁵² Therefore, these plaintiffs had the context to understand what was happening before they heard the relevant accident.

“However, a case with a different set of facts from our fact pattern, a different legal conclusion on the relevant element, or both can serve as a very useful contrast case to use in the rule support section to set up a more nuanced application section.”

³⁴ 622 A.2d 298, 301, 303 (Pa. Super. Ct. 1993).

³⁵ *Id.*

³⁶ *Id.* at 303.

³⁷ *Id.* at 301.

³⁸ *Id.* at 303.

³⁹ *Id.*

⁴⁰ See *Neff v. Lasso*, 555 A.2d 1304, 1313 (Pa. Super. Ct. 1989); *Krysmalski v. Tarasovich*, 622 A.2d 298, 301 (Pa. Super. Ct. 1993).

⁴¹ 681 A.2d 757 (Pa. Super. Ct. 1996).

⁴² *Id.* at 762.

⁴³ *Id.* at 772.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 772–73.

⁴⁷ *Id.* at 773.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Neff v. Lasso*, 555 A.2d 1304, 1313 (Pa. Super. Ct. 1989).

⁵² *Krysmalski v. Tarasovich*, 622 A.2d 298, 303 (Pa. Super. Ct. 1993).

“Based on the student’s analysis of two similar rule support cases and one contrast rule support case, the student will be able to support his or her conclusion that Jessica’s observance of Josh’s accident was likely ‘direct and immediate.’”

This comprehension of the circumstances surrounding an incident is a direct contrast to the facts in *Tiburzio-Kelly*, where the husband did not know his wife was delivering their child by emergency Caesarean section without anesthesia.⁵³ Instead, without sufficient context, he experienced her screaming simply as a regular part of delivery and therefore did not have a “sensory and contemporaneous” experience of the incident.⁵⁴

Based on a comparison to the facts of the rule support cases, the student will see that Jessica had sufficient context to understand what was happening to Josh prior to hearing his accident. Specifically, Jessica dropped off Josh at his school before he called her from the supply closet. While locked in the closet, Josh reached out to tell Jessica what was happening. During this phone call, he went into explicit detail about what he was experiencing. He told her that he was locked in a dark supply closet by a security guard. Josh also explained how scared and claustrophobic he felt, pleaded with her to come help him, and described how he was searching for a light switch in the closet. Based on this information, Jessica was able to mentally picture everything that was happening to Josh before he was injured.

Looking at the “during” the accident part of the analysis, the student will again find that the rule support cases are an invaluable source for potential comparisons. Both the plaintiff in *Neff* and the plaintiff in *Krysmalski* heard the crash that injured their loved ones and understood what that meant based on the context of their auditory experience.⁵⁵ Again, this experience is a direct contrast to the situation in *Tiburzio-Kelly* when the husband heard but did not understand the meaning of his wife’s screams during delivery.⁵⁶

Similar to the plaintiffs in *Neff* and *Krysmalski*, while on the phone with Josh and aware of exactly

what was happening to him, Jessica heard the sound of a bookcase crashing into Josh’s head and his cry of pain. If that was not enough, Josh explained to Jessica that he was in “excruciating” pain and that he could feel blood rushing out of his head “everywhere.” Based on this information, Jessica pictured the “absolute worst.” The relevant facts, holdings, and reasoning from the rule support cases provide the foundation and support for the student’s analysis.

Finally, the rule support cases are also a very useful setup to analyze the “end” of Josh’s accident. For instance, the wife in *Neff* found her unconscious husband on the front lawn immediately after the accident,⁵⁷ and the mother in *Krysmalski* found her children “horribly injured” right after the accident.⁵⁸ Again, *Tiburzio-Kelly* may serve as a useful contrast case. In that case, the husband did not see his wife until after she was cleaned up, had combed her hair, and was wearing some makeup.⁵⁹ Like the plaintiffs in *Neff* and *Krysmalski* and unlike the husband in *Tiburzio-Kelly*, Jessica rushed into the school to find Josh with blood dripping down his head and covering his clothes while he was forced to lean for support on the security guard who had locked him in the closet.

Based on the student’s analysis of two similar rule support cases and one contrast rule support case, the student will be able to support his or her conclusion that Jessica’s observance of Josh’s accident was likely “direct and immediate.” Looking at the specific facts from these rule support cases as well as the courts’ reasoning, the student will be able to present a robust analysis of why Jessica probably had a “sensory and contemporaneous observance” of Josh’s accident.

D. Lesson 3—Rule Support Cases Are Particularly Helpful When the Law Is Inconsistent and Still Expanding

The third element mandates that the plaintiff and the victim be “closely related as contrasted with an absence of any relationship or the presence of only a distant relationship.”⁶⁰ Again, the general rule

⁵³ 681 A.2d 757, 773 (Pa. Super. Ct. 1996).

⁵⁴ *Id.*

⁵⁵ *Neff*, 555 A.2d at 1313–14; *Krysmalski*, 622 A.2d at 303.

⁵⁶ 681 A.2d at 773.

⁵⁷ 555 A.2d at 1313.

⁵⁸ 622 A.2d at 301.

⁵⁹ 681 A.2d at 773.

⁶⁰ *Mazzagatti v. Everingham*, 516 A.2d 672, 677 (Pa. 1986) (citing *Sinn v. Burd*, 404 A.2d at 685).

is very vague. Although this element may seem simpler to a student because the student may already have formed his or her own opinions regarding what “closely related” means, the element’s general description fails to answer basic and important questions. For instance, is a familial relationship the only way to meet this element or would a friendship qualify? If a familial relationship is required, how close must that relationship be? Is that closeness measured in terms of genealogy or depth of feeling?

The Pennsylvania courts have fleshed out this rule in some additional detail, providing helpful and still expanding but sometimes inconsistent rules. First, the courts have historically held that the plaintiff must be a “member[] of the injured person’s immediate family,” which includes only a “spouse, parent or child” of the victim.⁶¹ However, some Pennsylvania intermediate appellate courts and trial courts have moved away from such a narrow definition of immediate family.⁶² For instance, the courts have found that a stepson,⁶³ a fiancé,⁶⁴ and a foster parent⁶⁵ met the “closely related” element, but a boyfriend did not.⁶⁶

This expanding and evolving rule requires that the student look to rule support cases for additional guidance. The student needs to determine (1) whether a sibling relationship is sufficient to meet

this element and (2) whether a half-sibling relationship makes a difference to the analysis.

Luckily, the student will be able to find multiple rule support cases where a court held that a sibling relationship satisfied the close relationship element. For instance, in *Turner*, the plaintiff accompanied her sister to the hospital and helped her deliver her fetus without any help from the medical personnel.⁶⁷ The court found that the relationship between the plaintiff and her sister satisfied the “closely related” element because the plaintiff was “both a blood relative and close family member” of her sister.⁶⁸ Similarly, in *Anfuso*, the court held that a brother was closely related to the victim, his sister, because “young siblings are ‘closely related’ biologically and emotionally.”⁶⁹

To determine whether a half-sibling will meet the close relationship element, the student will find a variety of cases that address relationships besides just the sibling relationship or the historically-covered “spouse, parent or child” relationship. For instance, in *Zentz*, a stepson witnessed a motor vehicle accident in which his stepfather was severely injured.⁷⁰ The plaintiff’s biological father and his mother separated 12 years before the accident.⁷¹ The plaintiff was one year old when his biological father left and had “almost no contact” with his biological father after that.⁷² The plaintiff lived with his mother and stepfather for the nine years before the accident, and the plaintiff and his stepfather “developed a relationship akin to that of a father and son.”⁷³

The court adopted the definition of a “parent” as “one that begets or brings forth offspring,” “a lawful parent,” or “a *person standing in loco*

“This expanding and evolving rule requires that the student look to rule support cases for additional guidance.”

61 *Blanyar v. Pagnotti Enters., Inc.*, 679 A.2d 790, 791 (Pa. Super. Ct. 1996), *aff’d*, 710 A.2d 608 (Pa. 1998) (citing *Sinn*, 404 A.2d at 677 n.6) (discussing how the Supreme Court of Pennsylvania in *Sinn* suggested that only members of the victim’s “immediate family,” which was limited to a “spouse, parent, or child,” would satisfy the “closely related” element).

62 *Turner v. Med. Ctr., Beaver, PA, Inc.*, 686 A.2d 830, 833–34 (Pa. Super. Ct. 1996) (holding that “closely related” should not be “limited to a spouse, parent or child”).

63 *Zentz v. Harne*, 2 Pa. D. & C.5th 398, 409 (Ct. Com. Pl. 2007).

64 *Black v. Wehrer*, 23 Pa. D. & C.4th 313, 315 (Ct. Com. Pl. 1995). *But see* *Jimenez v. All Am. Rathskeller, Inc.*, No. 4:04-CV-1897, 2005 WL 8167979, at *10 (M.D. Pa. Apr. 1, 2005) (stating that “Pennsylvania law, as it stands today, does not allow for the recovery of damages by a fiancé for negligent infliction of emotional distress”). Also, in *Blanyar v. Pagnotti Enterprises, Inc.*, the court attempted to explain away the decision in *Black* that a fiancé satisfied the “closely related” element, noting that the relationship was “closely akin” to the “already sanctioned” relationship of “husband and wife.” 679 A.2d 790, 792 (Pa. Super. Ct. 1996).

65 *Kratzer v. Unger*, 17 Pa. D. & C.3d 771, 773 (Ct. Com. Pl. 1981).

66 *Caserta v. GEICO Gen. Ins. Co.*, 507 F. App’x 104, 107 (3d Cir. 2012).

67 686 A.2d at 831–32.

68 *Id.* at 833.

69 *Anfuso v. Smith*, 15 Pa. D. & C.3d 389, 394 (Ct. Com. Pl. 1980).

70 *Zentz v. Harne*, 2 Pa. D. & C.5th 398, 399 (Ct. Com. Pl. 2007).

71 *Id.* at 400.

72 *Id.* at 400, 409.

73 *Id.* at 400.

“Having set up the application with a few of these helpful rule support cases, the student will have a significant amount of material to use.”

*parentis although not a natural parent.*⁷⁴ The court noted that the “definition takes into consideration that there are a growing number of nontraditional families within society today in which children are parented by someone other than a biological or adoptive parent.”⁷⁵ It also explained that “there is more to being a parent than the biological or legal relationship one shares with a child; there is also the care and affection one provides that child.”⁷⁶ Therefore, the court held that a “stepparent/stepchild relationship can serve as the basis for a negligent infliction of emotional distress cause of action when it is established that the stepparent stands in loco parentis to the stepchild,”⁷⁷ and this particular relationship between the plaintiff and his stepfather was “sufficiently close” to satisfy the close relationship element.⁷⁸

In the similar case of *Kratzer*, the defendant’s car struck the plaintiff’s foster son.⁷⁹ The plaintiff had been her son’s foster mother for eight years, and “[d]uring that time, love and affection developed as between a natural child and mother.”⁸⁰

The court held that the specific relationship between the foster mother and her son satisfied the “closely related” requirement.⁸¹ Specifically, the court did “not perceive of a foster parent relationship as being significantly different from that of a natural parent and child for purposes of evaluating the degree of emotional trauma likely to be suffered by the observer of a serious accident.”⁸² The court explained that in “many” instances, the “foster parent and child may quickly develop an enduring love for one another equal to

the deepest familial ties.”⁸³ The court emphasized that the “technical nomenclature ascribed to the relationship is not as important as the closeness of feelings between the participants.”⁸⁴

However, in *Blanyar*, a minor plaintiff watched his cousin, who was around the same age and a “very close friend[],” drown on the defendant’s property.⁸⁵ The court held that because the plaintiff was “not a member of the victim’s immediate family” or, alternatively, because the plaintiff and victim did not live “together as a family unit,” the plaintiff could not satisfy the close relationship element.⁸⁶

Having set up the application with a few of these helpful rule support cases, the student will have a significant amount of material to use. As a basic starting place, the student can easily note that Jessica and Josh are half-siblings, and the sibling relationship satisfied the close relationship element in *Turner* and *Anfuso*.⁸⁷ However, because Jessica and Josh are half-siblings, the student’s analysis cannot stop there, like the student could not stop his or her analysis after only the distance part of the “near the scene of the accident” element.⁸⁸

The student will be able to point out that, unlike the cousins in *Blanyar*, Jessica and Josh live “together as a family unit.”⁸⁹ Also, some courts focus on the “closeness of feelings between the participants” rather than the “technical nomenclature ascribed

⁸³ *Id.*

⁸⁴ *Id.* However, in *Blanyar v. Pagnotti Enterprises, Inc.*, the court attempted to minimize the *Kratzer* decision that the foster parent fulfilled the “closely related” element by stating that the relationship was “closely akin to the type already sanctioned by our appellate courts, that is, natural parent and child.” 679 A.2d 790, 792 (Pa. Super. Ct. 1996).

⁸⁵ *Id.* at 794.

⁸⁶ *Id.*

⁸⁷ See *Turner v. Med. Ctr., Beaver, PA, Inc.*, 686 A.2d 830, 833 (Pa. Super. Ct. 1996) (finding that the relationship between the plaintiff and her sister was “that of a ‘close relative’” because the plaintiff was “both a blood relative and close family member”); *Anfuso v. Smith*, 15 Pa. D. & C.3d 389, 394 (Ct. Com. Pl. 1980) (holding that a brother was closely related to the victim, his sister, because “young siblings are ‘closely related’ biologically and emotionally”).

⁸⁸ See *supra* sec. II(B).

⁸⁹ See 679 A.2d at 794.

⁷⁴ *Id.* at 407 (citation omitted) (emphasis in the original).

⁷⁵ *Id.* at 408.

⁷⁶ *Id.*

⁷⁷ *Id.* at 399.

⁷⁸ *Id.* at 409.

⁷⁹ *Kratzer v. Unger*, 17 Pa. D. & C.3d 771, 772 (Ct. Com. Pl. 1981).

⁸⁰ *Id.*

⁸¹ *Id.* at 774.

⁸² *Id.* at 773.

to the relationship.”⁹⁰ Therefore, like the stepson’s relationship with his stepfather in *Zentz* and the foster mother’s relationship with her son in *Kratzer*, Jessica and Josh have a “really close” half-sibling relationship, and Jessica always helps take care of Josh.⁹¹ Therefore, Jessica’s relationship with Josh likely satisfies the close relationship standard. When explained clearly, these rule support cases set up a fairly easy and straightforward application section despite the inconsistent and evolving nature of the rules governing the close relationship element.

E. Lesson 4—Sometimes the Rule Support Cases Lead the Student to a Different Conclusion Than the Rule Itself Indicated

The fourth and final element requires that the plaintiff suffer a “physical harm or injury”⁹² from the “shock of apprehending an injury to a loved one.”⁹³ The Pennsylvania courts have adopted the Restatement (Second) Torts, Section 436A.⁹⁴ The Restatement provides that “emotional disturbance alone, without bodily harm or other compensable damage,” does not satisfy this element.⁹⁵ Emotional disturbance includes “temporary fright, nervous shock, nausea, grief, rage, and humiliation.”⁹⁶ However, “long continued nausea or headaches may amount to physical illness.”⁹⁷

Based on a reading of this general rule, a student might reasonably conclude that Jessica is out of luck and cannot prove the physical injury element of negligent infliction of emotional distress. Although

Jessica suffered from anxiety, panic attacks, nightmares, and loss of appetite immediately following Josh’s accident and continues to experience anxiety, panic attacks, nightmares, these symptoms do not appear to be “physical symptoms” or “bodily harm.” Rather, they seem more akin to “emotional disturbances.” However, if the student looks at a few rule support cases, the student will come to a very different conclusion.

For example, in *Love v. Cramer*, the plaintiff alleged “symptoms of severe depression,” including “nightmares, stress and anxiety.”⁹⁸ She also alleged that “her injuries were of a continuing nature and have required her to obtain psychological treatment.”⁹⁹ The court held that the plaintiff had alleged “physical manifestations of emotional suffering” and concluded that the “alleged injuries are of a greater magnitude than the ‘transitory, nonrecurring physical phenomena’ contemplated by the Restatement (Second) of Torts § 436A, and, therefore, sufficient to sustain a cause of action for negligent infliction of emotional distress.”¹⁰⁰

Similarly, the plaintiff in *Brown v. Philadelphia College of Osteopathic Medicine* continued “to suffer from weight gain, sexual difficulties, anxiety, nightmares and loss of self-confidence” over a year after the relevant incident.¹⁰¹ The trial court held that this testimony met or exceeded the physical injury requirement in part because the symptoms were “not merely transitory,” and the appellate court affirmed.¹⁰² Also, in *Armstrong*, the court held that the plaintiff’s “allegation of loss of continence when she learned [that] the accident victim [was not her husband] coupled with her

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⁹⁰ *Kratzer v. Unger*, 17 Pa. D. & C.3d 771, 773 (Ct. Com. Pl. 1981).

⁹¹ See *Zentz v. Harne*, 2 Pa. D. & C.5th 398, 408 (Ct. Com. Pl. 2007); *Kratzer*, 17 Pa. D. & C.3d at 773–74.

⁹² Wall by Lalli v. Fisher, 565 A.2d 498, 502 (Pa. Super. Ct. 1989) (stating that the “element of physical harm or injury is a necessary element” of the right to recover for negligent infliction of emotional distress); see also *Armstrong v. Paoli Mem’l Hosp.*, 633 A.2d 605, 609 (Pa. Super. Ct. 1993) (explaining that a negligent infliction of emotional distress plaintiff must show that “she suffered a physical injury as a result of the defendant’s negligence”).

⁹³ *Armstrong*, 633 A.2d at 611.

⁹⁴ *Crivellaro v. Pa. Power & Light Co.*, 491 A.2d 207, 209 (Pa. Super. Ct. 1985).

⁹⁵ *Banyas v. Lower Bucks Hosp.*, 437 A.2d 1236, 1239 (Pa. Super. Ct. 1981).

⁹⁶ *Crivellaro*, 491 A.2d at 210.

⁹⁷ *Id.*

⁹⁸ 606 A.2d 1175, 1179 (Pa. Super. Ct. 1992).

⁹⁹ *Id.*

¹⁰⁰ *Id.*; see also *Crivellaro*, 491 A.2d at 210–11 (finding that the plaintiff’s “intense headaches, uncontrollable shaking, involuntary hyperventilation and shortness of breath, frequent nightmares, inability to control bowels, upset stomach, and an intense tightening of the muscles in the neck, back and chest which produced severe pain lasting several days following each incident” were sufficient to satisfy the physical injury element).

¹⁰¹ 674 A.2d 1130, 1137 (Pa. Super. Ct. 1996).

¹⁰² *Id.*

“Professors can create the space and opportunity to explore the complexities of rule support cases through problems that present different rule support lessons in different IRACs.”

claim of depression, nightmares and insomnia” satisfied the “physical injury” element.¹⁰³

After analyzing these rule support cases, the student will see that the symptoms that the plaintiffs experienced in *Love*, *Brown*, and *Armstrong* are almost identical to Jessica’s continuing anxiety, panic attacks, and nightmares.¹⁰⁴ If the student stopped at the general “physical injury” rule and did not delve into these rule support cases, the student would likely reach the wrong conclusion about this element and therefore the entire negligent infliction of emotional distress claim. However, based on these very helpful rule support cases, the student may conclude that Jessica likely satisfies the “physical injury” element and probably has a valid negligent infliction of emotional distress claim against Josh’s middle school.

Conclusion

Rule support cases are often pivotal to the success of a student’s legal analysis. They work as a bridge between the rule and the application, setting up the application section by providing concrete examples that a student can compare the relevant parts of the fact pattern to. Professors can create the space and opportunity to explore the complexities of rule support cases through problems that present different rule support lessons in different IRACs. These lessons develop core lawyering skills that a student will use during law school and throughout the student’s legal career.

¹⁰³ *Armstrong v. Paoli Mem’l Hosp.*, 633 A.2d 605, 609 (Pa. Super. Ct. 1993).

¹⁰⁴ See *Love*, 606 A.2d at 1179; *Brown*, 674 A.2d at 1137; *Armstrong*, 633 A.2d at 609.