McLACHLAN, J., with whom ZARELLA, J., joins, dissenting. I disagree with the majority's conclusion that the continuing course of conduct doctrine applies generally to all claims for intentional infliction of emotional distress. Because the continuing course of conduct doctrine is an exception to the general rule that the statute of limitations begins to run at the time that a tortfeasor commits a single, wrongful act, to date we have narrowly applied the doctrine to a limited category of negligence actions. What the majority proposes to do today—broadly extending the continuing course of conduct doctrine to claims for intentional infliction of emotional distress without imposing any limitations or restraints—represents a departure from that well established practice, which is both, in my view, significant and unnecessary. Because sweeping changes in the law unnecessarily risk unanticipated and unintended effects, I believe that, when we extend the scope of an existing rule, we must tailor such changes narrowly, to the facts presented. Accordingly, before extending the doctrine to claims for intentional infliction of emotional distress, it is necessary to engage in a thorough consideration of the relevant, competing public policies. Such consideration enables us to examine whether the doctrine should be applied to claims for intentional infliction of emotional distress, and, if so, what rules should guide that application. Moreover, even if it were prudent to extend the continuing course of conduct doctrine to claims for intentional infliction of emotional distress in some instances, the application of the doctrine to the present case would be inappropriate. Therefore, I dissent.

I begin with a preliminary observation. Although our certified question states that the issue on appeal is whether the existence of an original duty is a prerequisite for the application of the continuing course of conduct doctrine to a claim for intentional infliction of emotional distress; *Watts* v. *Chittenden*, 293 Conn. 932, 981 A.2d 1077 (2009); the real question before us is whether we should extend our application of that doctrine to claims for intentional infliction of emotional distress. Because intentional infliction claims *never* require a demonstration of a duty, the question of whether an original duty must exist before a court may apply the continuing course of conduct doctrine to a claim for intentional infliction of emotional distress obscures the actual question presented in this appeal. Therefore, I would frame the question presented as whether we should extend the continuing course of conduct doctrine to claims for intentional infliction of emotional distress.

Although I reframe it, I believe that the certified ques-

tion—whether the doctrine applies to claims for intentional infliction of emotional distress absent the existence of an original, and, I would add, continuing duty—highlights one of the analytical difficulties presented in this appeal and also provides a helpful guide in delineating the appropriate rule. The difficulty is that in determining whether the doctrine applies to negligence actions we have relied on a concept that has little utility in the realm of intentional torts—continuing duty. Although that concept is not helpful in determining whether to apply the doctrine in the intentional tort context, it is nonetheless instructive to review our application of the doctrine in the negligence context, with particular focus on how we have determined whether a continuing duty existed. We have looked to subsequent wrongful acts related to the original wrong, or, in the alternative, examined whether a special relationship existed that gave rise to a continuing duty. See, e.g., *Witt* v. *St. Vincent's Medical Center*, 252 Conn. 363, 371, 746 A.2d 753 (2000); *Fichera* v. *Mine Hill Corp.*, 207 Conn. 204, 210, 541 A.2d 472 (1988). The first of these two inquiries appears to me to focus on the question of when the cause of action accrued, implicitly suggesting that, at least under certain circumstances, accrual does not occur until the repeated wrongful actions cease. The second inquiry focuses on the nature of the relationship between the parties, inferring the existence of a duty therefrom. I propose a similar approach to the application of the doctrine to claims for intentional infliction of emotional distress. Specifically, I would conclude that the continuing course of conduct doctrine applies to claims for intentional infliction of emotional distress in either of the two factual scenarios: (1) the extreme and outrageous nature of the defendant's misconduct, as well as the severity of the plaintiff's distress, does not arise from a single instance of that misconduct, but only from repeated instances, which are continuous and unbroken; or (2) the misconduct arises in the context of a spousal or spouse-like abusive relationship.[1] In either circumstance, I would conclude that the limitations period begins to run upon the completion of the final wrongful action. To explain why I believe this approach is the appropriate one, I begin by examining the public policy principles that underlie the application of the continuing course of conduct doctrine, starting with the public policy principles underlying the statute of limitations.

The statute of limitations is grounded in principles of both efficiency and fairness. Its purpose is "to promote finality in the litigation process . . . and give a defendant the peace of mind that comes with knowing that its potential liability has been extinguished." (Citation omitted; internal quotation marks omitted.) *Cweklinsky* v. *Mobil Chemical Co.*, 267 Conn. 210, 224, 837 A.2d 759 (2004). We additionally have explained that, "[t]he enactment of [s]tatutes limiting the time within which

an action may be brought are the result of a legitimate legislative determination which balances the rights and duties of competing groups. . . . A statute of limitation or of repose is designed to (1) prevent the unexpected enforcement of stale and fraudulent claims by allowing persons after the lapse of a reasonable time, to plan their affairs with a reasonable degree of certainty, free from the disruptive burden of protracted and unknown potential liability, and (2) to aid in the search for truth that may be impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents or otherwise." (Internal quotation marks omitted.) *St. Paul Travelers Cos.* v. *Kuehl*, 299 Conn. 800, 809–10, 12 A.3d 852 (2011).

In some instances, strict application of the statute of limitations may yield inequitable, and even inefficient results. For that reason, we have recognized limited exceptions to the ordinary rule that the limitations period begins to run upon the commission of the alleged tort. One of those exceptions, the continuing course of conduct doctrine, aggregates a series of actions by a tortfeasor for purposes of the limitations period, viewing the series of acts as an indivisible whole for that limited purpose. The practical effect is that "[w]hen the wrong sued upon *consists* of a continuing course of conduct, the statute does not begin to run until that course of conduct is completed." (Emphasis added.) *Handler* v. *Remington Arms Co.*, 144 Conn. 316, 321, 130 A.2d 793 (1957); see also *Beckenstein* v. *Potter & Carrier, Inc.*, 191 Conn. 150, 161, 464 A.2d 18 (1983); *Giglio* v. *Connecticut Light & Power Co.*, 180 Conn. 230, 241, 429 A.2d 486 (1980). Put another way, the continuing course of conduct doctrine redefines the point in time at which the cause of action accrues. See K. Graham, "The Continuing Violations Doctrine," 43 Gonz. L. Rev. 271, 279–80 (2007/2008) (comparing continuing course of conduct doctrine with other exceptions to statute of limitations and noting that continuing course of conduct doctrine takes "more drastic step of redefining the very claim or claims as to which the limitations period or periods apply").

Understanding the effect of the doctrine is only part of our task. It is also essential to understand *why* in some instances, it is appropriate to understand a cause of action to accrue only upon the completion of a series of wrongful acts, as compared to other instances, in which those actions are understood as a series of discrete actions, each giving rise to a separate cause of action. We have explained that the application of the continuing course of conduct doctrine reflects the policy that "during an ongoing relationship, lawsuits are premature because specific tortious acts or omissions may be difficult to identify and may yet be remedied." *Blanchette* v. *Barrett*, 229 Conn. 256, 276, 640 A.2d 74 (1994). This statement reveals that the public policy principles supporting the application of the continuing

course of conduct doctrine are, like those supporting the application of the statute of limitations generally, grounded in principles of both efficiency and equity. As the foregoing quotation illustrates, the concerns that have driven the application of the doctrine have been the following: the relative difficulty of identifying the cause of action, the possibility that the wrong may be remedied before the course of conduct is completed, and the general concern of avoiding premature litigation.

Beyond that single, often repeated public policy statement, we have not explored the principles of efficiency and equity that drive the continuing course of conduct doctrine. Because our application of the doctrine has remained fairly restricted, it has been unnecessary to further explore the relevant public policy principles. In determining whether and to what extent to expand the doctrine, however, a more detailed analysis is warranted.

Of course, not every case that involves repeated instances of misconduct triggers the application of the continuing course of conduct doctrine. Something more than mere repetition is required to swing the balance in favor of delaying the accrual of the cause of action. See, e.g., *Fichera* v. *Mine Hill Corp.*, supra, 207 Conn. 210 (requiring existence of continuing duty). Judge Posner's decision in *Heard* v. *Sheahan*, 253 F.3d 316, 319 (7th Cir. 2001), identifies the primary characteristic that distinguishes a continuing course of conduct from a series of actions that are merely repetitious: "A violation is called 'continuing,' signifying that a plaintiff can reach back to its beginning even if that beginning lies outside the statutory limitations period, when it would be unreasonable to require or even permit him to sue separately over every incident of the defendant's unlawful conduct." The violation is continuing, Judge Posner explains, when the risk of piecemeal litigation, which would "impose an unreasonable burden on the courts to entertain an indefinite number of suits and apportion damages among them"; id., 320; outweighs concerns regarding the "possible loss in accuracy." Id., 319. The rule seeks to maximize both equity and efficiency.

The practical question remains—at what point do principles of efficiency and equity tip the balance in favor of delaying the accrual of the cause of action? In determining what factual circumstances will distinguish discrete wrongful acts that are merely repetitious and do not justify a departure from the traditional application of the statute of limitations from a series of wrongful actions that constitute a continuing course of conduct, we have looked to the nature of the tort at issue. For instance, in the negligence context, we have limited its application to circumstances in which the plaintiff can demonstrate the existence of a "breach of a duty that remained in existence after commission of

the original wrong related thereto. That duty must not have terminated prior to commencement of the period allowed for bringing an action for such a wrong. . . . Where we have upheld a finding that a duty continued to exist after the cessation of the act or omission relied upon, there has been evidence of either a special relationship between the parties giving rise to such a continuing duty or some later wrongful conduct of a defendant related to the prior act." (Internal quotation marks omitted.) *Blanchette* v. *Barrett*, supra, 229 Conn. 275. The elements of the tort of negligence have guided our framing of the appropriate test for the application of the continuing course of conduct doctrine. That is, in determining whether the doctrine applies, our inquiry inevitably has focused on whether there exists a continuing duty. See, e.g., *Bednarz* v. *Eye Physicians of Central Connecticut, P.C.*, 287 Conn. 158, 164, 947 A.2d 291 (2008). Similarly, we should look to the elements of the tort of intentional infliction of emotional distress to determine in which instances, if any, the continuing course of conduct doctrine should apply to those claims.

In order to prevail upon a claim for intentional infliction of emotional distress, a plaintiff must establish: "(1) that the [defendant] intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." (Internal quotation marks omitted.) *Appleton* v. *Board of Education*, 254 Conn. 205, 210, 757 A.2d 1059 (2000). Courts that have applied the continuing course of conduct doctrine to claims for intentional infliction of emotional distress have done so on the ground that it is the repetition of the misconduct that makes it extreme and outrageous. See, e.g., *Feltmeier* v. *Feltmeier*, 207 Ill. 2d 263, 282, 798 N.E.2d 75 (2003) ("[R]epetition of the behavior may be a critical factor in raising offensive acts to actionably outrageous ones. . . . It may be the pattern, course and accumulation of acts that make the conduct sufficiently extreme to be actionable, whereas one instance of such behavior might not be." [Internal quotation marks omitted.]). Other courts have made similar observations regarding the requirement that the emotional distress sustained must be severe. See, e.g., *Curtis* v. *Firth*, 123 Idaho 598, 604, 850 P.2d 749 (1993) ("[b]y its very nature this tort will *often* involve a series of acts over a period of time, rather than one single act causing severe emotional distress" [emphasis added]). In other words, because it is often the repetition of the misconduct and the cumulative effect of repeated instances of the misconduct on the plaintiff that make the behavior tortious, the cause of action against the defendant does not accrue until the misconduct has

recurred a sufficient number of times to render the actions extreme and outrageous and the emotional distress severe.

The reasonable inquiry that emerges as a means to discern whether the continuing course of conduct doctrine applies to a claim for intentional infliction of emotional distress is whether both the extreme and outrageous nature of the conduct as well as the severity of the emotional distress derive not from a single wrongful act, but from the cumulative effect of repeated instances of the misconduct over time. I emphasize that in evaluating whether the cause of action has accrued following a single instance of misconduct, the question is not whether a plaintiff would prevail, but whether a plaintiff would have a colorable claim that the behavior was extreme and outrageous and that the emotional distress was severe. The overarching goal in engaging in that inquiry should be to determine whether principles of efficiency and equity are best served by treating each action separately for purposes of the statute of limitations or by aggregating those actions pursuant to the continuing course of conduct doctrine. To that end, we should examine the facts of the particular case to determine whether the plaintiff's cause of action reasonably accrued at the time that the defendant committed each discrete wrongful act, or only when she had completed the last wrongful act. This approach is consistent with the fact that "the application of the continuing course of conduct doctrine [is] conspicuously factbound." (Internal quotation marks omitted.) *Sherwood* v. *Danbury Hospital*, 252 Conn. 193, 210, 746 A.2d 730 (2000).

This approach also is consistent with the public policy principles underlying the statute of limitations. The limitation of the application of the doctrine to those instances in which the outrageous nature of the misconduct and the severity of the plaintiff's emotional distress do not arise from a single, initial instance of misconduct, but rather derive from the repetition of the misconduct, avoids subjecting defendants to unending potential liability. The majority's broad application of the doctrine runs afoul of that basic policy principle and does not protect defendants against "the unexpected enforcement of stale and fraudulent claims by allowing persons after the lapse of a reasonable time, to plan their affairs with a reasonable degree of certainty, free from the disruptive burden of protracted and unknown potential liability . . . ." (Internal quotation marks omitted.) *St. Paul Travelers Cos.* v. *Kuehl*, supra, 299 Conn. 810.

I begin with the facts as found by the trial court and set forth by the Appellate Court, up to and including the first incident at issue in the present appeal. "The plaintiff [John D. Watts] and the defendant [Heather Chittenden] are former husband and wife. They were married in July, 1993; however, the defendant filed a

dissolution of marriage action in the Superior Court in March, 1999. During the course of the marriage, the parties had two daughters, born in 1995 and 1996. Following the dissolution, the defendant was granted joint custody and visitation rights. Several days before the dissolution action was filed, the defendant transferred her children to a new pediatrician. Specifically, the children saw Janet Murphy, a nurse practitioner, whom the defendant, also a nurse practitioner, had met while a student in a class taught by Murphy on the subject of sexual molestation of children." *Watts* v. *Chittenden*, 115 Conn. App. 404, 406, 972 A.2d 770 (2009). Although not expressly found by the trial court, it was also undisputed at trial that in May, 1999, the defendant made an initial allegation of sexual abuse to Murphy, who was a mandated reporter, a fact that was known to the defendant. It was unclear from the record whether the defendant alleged to Murphy that the plaintiff had abused only one or both of the children. It was later revealed that the defendant had lied.

It is clear that this single incident satisfied the stringent standard we have set in order to find that conduct is extreme and outrageous. That is, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, Outrageous!" (Internal quotation marks omitted.) *Morrissey* v. *Yale University*, 268 Conn. 426, 428, 844 A.2d 853 (2004). A mere summary statement of that conduct is sufficient to elicit the required exclamation from the average reader: the defendant falsely accused her soon to be former husband of sexually abusing one or both of their young daughters, for whatever motive.

Although the trial court found that the distress that the plaintiff suffered as a result of all of the defendant's actions was severe, it did not make any specific finding regarding the degree of the plaintiff's emotional distress immediately following the May, 1999 incident. The plaintiff had testified, however, that following the May incident, he felt "terrible" and was frightened that he would lose his job or go to jail, and worried that others would believe the defendant's false allegations. He also was worried that his children would be unable to tell the truth. On the advice of his child's attorney, he had a third person present with him at all times when he was with his children—his sister slept in the home and his mother accompanied him when he drove the children to day care. He began seeing a therapist after that first incident. A reasonable inference can be drawn that the plaintiff already suffered severe emotional distress at that time. I would be compelled to conclude, therefore, that the plaintiff's cause of action accrued in May,

1999, when the defendant made her first false allegation against him, and that the statute of limitations began to run at that time.

Even if I were to conclude that the plaintiff's cause of action had not accrued upon the defendant's first accusation, I would conclude that it had accrued by the time that the defendant pleaded guilty in the related criminal case. The following additional facts are relevant. "At approximately 10:30 p.m. on June 3, 1999, the defendant called the department of children and families (department) to report that her eldest daughter had been abused sexually by the plaintiff. These allegations were then relayed by the department to the state police. The same report was also made by the defendant to Dawn Torres, a pediatrician. Thereafter, on June 10, 1999, the defendant met with Detective Anthony Buglione and Detective James McGlynn of the state police and reiterated her report that her daughter had been abused sexually by the plaintiff. She gave a five page written statement to the police providing details of her claims. Following this report, the state police contacted the plaintiff and requested pubic hair samples to be used in connection with the criminal investigation. On July 1, 1999, the investigation concluded in the absence of any evidence to suggest that the plaintiff was abusing his daughter.

"On July 21, 1999, McGlynn received another report from the department, which was based on new allegations made by the defendant regarding the plaintiff's abuse of their eldest daughter. On August 19, 1999, the defendant told McGlynn that the plaintiff continued to abuse their daughter, and, as a result, the investigation was reopened. During the course of the investigation, the daughter was evaluated by the Yale Child Sexual Abuse Clinic at Yale-New Haven Hospital (clinic). The clinic reported that the daughter indicated repeatedly during interviews that the plaintiff had not abused her. She did relate, however, that the defendant had been touching her vaginal area and saying, 'this is what daddy does.' The investigation stemming from this complaint was closed on January 11, 2000.

"Shortly thereafter, on January 19, 2000, the department received a report from Livia Orsis-Abdo, a physician in Southport, who stated that she had been told by the parties' youngest daughter that the plaintiff had abused her sexually. As a result, the investigation against the plaintiff was reopened once again. The police eventually concluded that there was no evidence to support the allegations against the plaintiff but that there was substantial evidence that the defendant had sexually abused her two daughters while telling them that it 'was what daddy [did].' " *Watts* v. *Chittenden*, supra, 115 Conn. App. 406–407.

On April 11, 2002, the defendant pleaded guilty to falsely reporting an incident and attempt to commit

malicious prosecution. Id., 407. At that time, she admitted that her prior allegations about the plaintiff were false and that she had made the false reports in an attempt to have the plaintiff arrested. Id., 407–408. At that point in time, it cannot be reasonably debated that the defendant's actions were extreme and outrageous—she not only falsely had accused the father of her children of sexually abusing them, but also had sexually abused the children herself in furtherance of her plan. Such conduct is far outside the bounds of decency. In addition, with respect to the severity of the plaintiff's distress, there was evidence that the plaintiff's employer, a law firm, had expressed its dissatisfaction with the plaintiff's involvement in the affair and its concern that the firm's name would come to be associated with the story. As a result, the plaintiff left his employment with the firm. Additionally, the plaintiff testified that he was distressed when his daughter returned home following a court-ordered sexual assault test and the child had black and blue marks on her arms. His distress was amplified because of his duty to protect his children and his awareness that the children were being traumatized as part of the defendant's campaign to place him in jail. The plaintiff further testified that as a result of the false allegations, he lost sleep, waking up in the middle of the night thinking about the "nightmare," and ground his teeth at night. By that point in time, the plaintiff had endured false accusations for three years, lost his job, learned that the defendant had sexually abused the children and witnessed the further traumatization of the children by the ensuing investigations. By April 11, 2002, the plaintiff had a very colorable claim that his emotional distress was severe.

The defendant's guilty plea acknowledged all of the facts necessary to enable the plaintiff to bring an action for intentional infliction of emotional distress. The plaintiff's cause of action at that point unarguably had accrued. Following that plea, however, the plaintiff took no action. Two years passed, and in 2004, during family therapy, in the presence of the therapist, the defendant reiterated her belief that the plaintiff had abused the children. Two more years passed, and in 2006, the defendant again made a similar statement while they were in family therapy with a different therapist. When the plaintiff brought the present action in August 29, 2005, all of the defendant's preconviction actions were beyond the scope of the statute of limitations. Application of the continuing course of conduct doctrine to the present case requires that we view the *entire* series of events as a continuous course of conduct. I do not believe that the series of events may be understood in that manner. I conclude that the gap in time between the guilty plea and the defendant's statements during therapy in 2004 is sufficiently long to support the conclusion that, even if I were to view the defendant's actions from 1999 up to her guilty plea in 2002 to com-

prise a single course of conduct—which I do not—that course of conduct would end with the defendant's guilty plea. The defendant's statements in 2004 gave rise to a separate cause of action.

Other jurisdictions have recognized that a course of conduct ceases when followed by a significant gap before the misconduct resumes. In *Feltmeier* v. *Feltmeier*, supra, 207 Ill. 2d 265, a decision relied on by the majority, the Supreme Court of Illinois applied the continuing course of conduct doctrine to a former wife's claim for intentional infliction of emotional distress against her abusive former husband, for his abusive conduct during the marriage. The court utilized an accrual theory in applying the continuing course of conduct doctrine to the facts of the case, stating that "a continuing tort does not involve tolling the statute of limitations because of delayed or continuing injuries, but instead involves viewing the defendant's conduct as a continuous whole for prescriptive purposes." Id., 285. The court noted, however, that "embracing the concept of a continuing tort in the area of intentional infliction of emotional distress does not throw open the doors to permit filing these actions at any time." (Internal quotation marks omitted.) Id., 284. The court emphasized repeatedly that, in order to constitute a continuing course of conduct, the tortious acts must constitute a "single, continuous, *unbroken*, violation or wrong . . . ." (Emphasis added; internal quotation marks omitted.) Id., 281. *Feltmeier* relied in part on *Curtis* v. *Firth*, supra, 123 Idaho 598, another decision on which the majority opinion relies. In *Curtis*, a woman sued her former domestic partner[2] for intentional infliction of emotional distress in connection with his abuse of her while they had been living together. Id., 600–601. The court stated that when the continuing course of conduct doctrine is applied, "the statute of limitations is only held in abeyance until the tortious acts cease. . . . At that point the statute begins to run. If at some point after the statute has run the tortious acts begin again, a new cause of action may arise, but only as to those damages which have accrued since the new tortious conduct began." (Citations omitted.) Id., 604.

Ordinarily, when a course of conduct ceases and is followed by a gap, the statute of limitations is tolled if the tortfeasor engages in the misconduct before the limitations period has run. In other words, the usual rule is that a gap in activities must be longer than the limitations period in order for subsequent incidents to give rise to a new cause of action. This appeal, however, presents a rather unique circumstance. Unlike *Feltmeier* and *Curtis*, the present case involves conduct that is broken, not only by a lapse in time, but also, and even more importantly, by the defendant's guilty plea. At that point, the defendant's tortious acts ceased, and the statute of limitations began to run. In other

words, once the defendant pleaded guilty and acknowledged not only that she committed the tortious acts, but did so with malicious intent, the plaintiff's cause of action had accrued. This is not a case, like *Feltmeier*, where the statute of limitations is being employed to preclude a claim before it is "ripe for adjudication . . . ." (Citations omitted.) *Feltmeier* v. *Feltmeier*, supra, 207 Ill. 2d 283. All of the elements of the plaintiff's cause of action were present and known to him upon the first occurrence in May, 1999, and had accrued beyond argument when the defendant pleaded guilty on April 11, 2002. There was no difficulty at either point in time in identifying the cause of action. Any application of the continuing course of conduct doctrine that relies on an accrual theory cannot, therefore, apply to these facts.[3]

I emphasize that, notwithstanding my conclusion that the plaintiff's cause of action had accrued as of the first incident, I would conclude that the continuing course of conduct doctrine applied to his claim for intentional infliction of emotional distress if he had been the victim in an abusive, spousal or spouse-like relationship and had delayed bringing an action for intentional infliction of emotional distress until the abuse ceased or the relationship ended. The present case, however, is distinguishable from both *Feltmeier* and *Curtis*, which both involved an abusive relationship between the plaintiff and the defendant, the nature of which appears to have influenced those courts to apply the continuing course of conduct doctrine.

Although the nature of the parties relationship does not support the application of the continuing course of conduct doctrine in the present case, I believe it is worthwhile briefly to set forth the equitable principles that support the application of the doctrine in the context of domestic violence cases. It would be inequitable to allow an abuser to benefit legally from the control he exercised over the victim by being able to prevent her—by virtue of the nature of the ongoing abuse in the relationship—from seeking a legal remedy, then claiming that her delay bars a subsequent action.[4] See, e.g., *Giovine* v. *Giovine*, 284 N.J. Super. 3, 13, 663 A.2d 109 (App. Div. 1995) (on application of continuing course of conduct doctrine to former wife's claim for intentional infliction of emotional distress against abusive former husband: "a wife diagnosed with battered woman's syndrome should be permitted to sue her spouse in tort for the physical and emotional injuries sustained by continuous acts of battering during the course of the marriage, *provided* there is medical, psychiatric, or psychological expert testimony establishing that the wife was caused to have an inability to take any action to improve or alter the situation unilaterally . . . [and] [i]n the absence of expert proof, the wife cannot be deemed to be suffering from battered woman's syndrome, and each act of abuse during the mar-

riage would constitute a separate and distinct cause of action in tort, subject to the statute of limitations" [citation omitted; emphasis in original; internal quotation marks omitted]). The application of the doctrine also allows the parties the opportunity to resolve the problem absent litigation and preserve the possibility of repairing the relationship.

Nothing in the record of the present case suggests that the relationship between the plaintiff and the defendant is of the type that triggers the application of the continuing course of conduct doctrine to a claim for intentional infliction of emotional distress. The plaintiff does not argue that the nature of his relationship with the defendant in any way prevented him from being able to bring this action within the limitations period, nor is there any evidence in the record that indicates that the nature of the relationship between the parties was abusive. Moreover, by the time the wrongful conduct began, a dissolution action was pending, the parties had separated and there was no spousal or spouse-like relationship to preserve. Therefore, I do not believe that the nature of the relationship between the plaintiff and the defendant supports the application of the doctrine to the present case.

For the foregoing reasons, I would affirm the judgment of the Appellate Court.[5]

[1] Although I expressly would extend the application of the doctrine to the context of spousal or spouse-like relationships, I recognize that other special relationships may exist that would support the application of the doctrine. Thus, it is possible that this second factual circumstance could be broadened, where the special nature of some other type of relationship would discourage litigation while the relationship continues. See footnote 4 of this dissenting opinion.

[2] The precise legal status of their relationship had been in dispute. *Curtis* v. *Firth*, supra, 123 Idaho 600–601.

[3] Although it may seem that the rule I have set forth in this dissent would foreclose a fact finder from considering the defendant's preconviction conduct, that is not the case. The nature of the tort of intentional infliction of emotional distress, consistent with the general rule that a tortfeasor takes a plaintiff as he finds him, requires the fact finder to consider the mental and emotional state of the victim. Thus, even though the misconduct that was beyond the limitations period would not be compensable, the prior misconduct may be admissible.

[4] As I previously have indicated; see footnote 1 of this dissenting opinion; I leave open the possibility that a different type of relationship could implicate the same equitable principles that support the application of the doctrine to spousal or spouse-like abusive relationships. It is particularly the nexus between the coercive and abusive nature of the relationship and the plaintiff's delay in bringing the action that supports the application of the doctrine in the spousal or spouse-like context. The current, express application of the doctrine to spousal or spouse-like abusive relationships is the result of the simple, practical consideration that I am unwilling, in a factual vacuum, to anticipate when the continuing course of conduct doctrine should be applied. Thus far, spousal or spouse-like abusive relationships are the types of relationships in which courts have applied the doctrine on the basis of these equitable principles. See, e.g., *Curtis* v. *Firth*, supra, 123 Idaho 598; *Feltmeier* v. *Feltmeier*, supra, 207 Ill. 2d 263.

[5] The defendant did not challenge on appeal the trial court's conclusion that the statute of limitations was tolled by the defendant's bankruptcy petition, filed on April 8, 2005. *Watts* v. *Chittenden*, supra, 115 Conn. App. 410. Because I conclude that the three year limitations period began to run in May, 1999, the trial court's unchallenged conclusion regarding the effect of the bankruptcy petition has no effect on my analysis.