Suicide Cases in Civil Law: Do the Legal Tests Make Sense?

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The legal 'tests' for suicide liability in negligence and workmen's compensation law have developed along parallel, but not identical, lines to the tests for criminal responsibility. Current legal precedent has shifted the focus from cognitive awareness and irresistible impulse theories to the ability of a negligent act or injury to cause an abnormal mental state. The courts, in their variable interpretation of these mental state tests, leave no clear guidelines for the psychiatric expert asked to address suicidal behavior from the standpoint of responsibility.

The development of case law regarding suicide in worker's compensation and negligence actions reflects the attempt of the courts to deal in the legal context with the complex emotional and behavioral manifestations of a suicidal act. The courts have often reformulated the means of deciding whether people are legally responsible for their suicidal behavior. Each succeeding legal theory presents a new synthesis of moral, philosophical, and psychiatric theories. Struggles with the concept of "causation" and tries to correct the ambiguity of older constructs. Unfortunately, each new legal analysis coins phrases and terms that risk being misunderstood by lawyers, psychiatrists, and jurors and, as the evidence shows, often have. Psychiatric experts face a dilemma as they are expected to fit their perception of the suicidal phenomenon into a strange and often arbitrary paradigm. Psychiatrists share the responsibility with the courts for the current state of legal theory, as the courts have based their arguments on expert testimony that has been misleading at times in its presentation. Some of the more recent landmark decisions provide for a worrisome expansion of potential liability for causing suicide, but at the same time may allow testifying psychiatrists to communicate their understanding of suicide in a less simplistic, more psychologically sound framework.

Suicide was considered a criminal act in some jurisdictions as recently as 30 years ago. Before this century, people were rarely considered legally responsible for the suicide of another. In the last 80 years, however, there has been a nearly parallel development of theories for suicide liability in worker's compensation cases and negligence, i.e., tort law. The "no-fault" philosophy inherent in worker's compensation cases hastened the expansion of liability there as compared with negligence cases, but as both are heard by the same appeals courts, they show significant cross-pollination of precedent. Interestingly, the
development of mental state tests for suicide responsibility has generally occurred away from psychiatric malpractice law, because psychiatrists are already considered responsible for foreseeing and treating the potential of suicide under the legal concept of a 'special duty.' The courts have generally applied the mental state tests described below only in cases where the comparative negligence of the suicidal patient has been accepted as a potential defense argument. Insurance cases are beginning to focus on the mental state issue after some recent court challenges to the standard exclusionary clause for suicide, "whether sane or insane" found in most life insurance policies.

All the legal theories of suicide responsibility address two questions:

1. Did the negligent act or work injury initiate a chain of events that led to the suicide?
2. What type of mental state must the suicidal person be shown to have experienced to relieve them of legal responsibility for their own actions?

**Worker’s Compensation**

The initial case addressing compensation for work injury-related suicide was the 1915 case of *in re Sponatski.* Sponatski was injured when molten lead splashed in his eye: he threw himself out of a hospital window to his death while depressed four weeks later. Contrasting this case with an early negligence case (see *Daniels v. New York* below), the Massachusetts Supreme Court stated that in worker's compensation “the inquiry relates solely to the causation between the injury and the death.” Suicide responsibility was to be determined by the following standard:

... where there follows as the direct result of a physical injury an insanity of such violence as to cause the victim to take his own life through an uncontrollable impulse or in a delirium or frenzy “without conscious volition to produce death, having knowledge of the physical consequences of the act.” then there is a direct and unbroken causal connection between the physical injury and the death. But where the resulting insanity is such as to cause suicide through a voluntary willful choice determined by moderately intelligent mental power which knows the purpose and physical effect of the suicidal act even though choice is dominated and ruled by a disordered mind, then there is a new and independent agency which breaks the chain of causation.

The combination of cognitive (“having knowledge of the physical consequences”) and volitional (“uncontrollable impulse ... without conscious volition”) tests is similar to the American Law Institute test of criminal responsibility, which established that a person is not held responsible for criminal acts if “as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.”

The subsequent interpretation of *Sponatski* varied a great deal. Some jurisdictions took a restrictive view of the test, viewing any planning (such as writing a suicide note, buying a weapon, waiting until alone) as evidence of cognitive awareness and seeing any controlled behavior (such as making a “careful” incision when slitting one's own throat) as evidence of willed behavior, precluding an ‘irresistible impulse’ ar-
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gument. Others took a much broader (if not circular) position, as in King v. Blades, where the court considered it "inconceivable" that a man would destroy himself by shooting unless he was possessed by an uncontrollable impulse. King reflected a common legal sentiment of the time that the degree of violence in the suicidal method determined whether it was in response to a volitional deficit.

Objections to the cognitive test led to its gradual demise beginning in the 1940s, as in Whitehead v. Keene. Whitehead sustained serious injuries after falling from a roof, and committed suicide three months later by drinking potash and lye. In this case the Florida Supreme Court stated that "we are not persuaded that the fact that a workman knew that he was inflicting upon himself a mortal wound will, in all cases, amount to a 'wilful intention' to kill himself." The court held that lack of any cognitive awareness of the significance of one's actions was too strict a standard, and instead required only that the deceased be shown to be (1) devoid of normal judgment and (2) dominated by a disturbance of mind directly caused by the work injury. Predictive of later developments, such as those in Burnight v. Industrial Accident Commission, the Whitehead court intimated that the "but for" causation test might be sufficient regardless of the details of the decedent's mental condition.

The Whitehead decision and others like it began altering the meaning of "will" and "willful" regarding suicidal intention. Whereas these terms began as synonyms for any manifestation of knowing awareness, no matter how superficial that "awareness" of suicidal intent, they gradually came to signify the ability to rationally weigh and decide among alternatives. For example, in Hammons v. City of Highland Park Police the court wrote: "A mind disoriented by physical or mental pain may be so impaired in its reasoning capacity that, although aware of the choices, it is incapable of rational choice." Other jurisdictions began criticizing the cognitive awareness standard for other reasons: some cited it as too harsh and not in keeping with the spirit of the Workmen's Compensation Act; others faulted it for confusing an "intervening act with an intervening cause", arguing that the "act" of suicide did not necessarily constitute an intervening legal "cause" distinct from the initial injury.

Without the cognitive awareness standard, the courts continued to require proof of the existence of an irresistible impulse in order to relieve victims of responsibility for their suicidal behavior. Like the cognitive test, the irresistible impulse concept has been applied to such a variety of circumstances as to render it virtually meaningless in both worker's compensation and negligence cases.

Halko v. New Jersey Transit directly expressed what had been an underlying philosophy in many of earlier decisions: if a strong, common sense causal link appeared to be present between the injury and the suicide, then the specific details of the mental state at the time of the suicidal act were considered irrele-
vant. In the *Halko* case, the plaintiff's expert stated that family problems "undeniably made [Halko] more vulnerable to the severe stresses at work" but he still felt that the stressors (verbal harassment from coworkers and an ankle injury) were the "proximate cause" of the mental disturbance and subsequent suicide. The court stated that in these cases the required standard is to determine if the work injury "played any part, even the slightest" in producing the mental state leading to suicide. The language of the decision suggests an even greater potential for liability than the "but for" analysis first proposed in *Whitehead v. Keene*.

The types of work injury accepted as causative of later suicide have also expanded. In earlier cases, direct physical injury or brain injury was required. *Delinousha v. National Biscuit Co.* compared suicide causation to the medical disease model: "Death benefits are allowed if the injury results naturally and unavoidably in disease, and the disease causes death. This is so if the injury causes insanity from gangrenous poisoning or otherwise, and the insanity directly causes suicide: in other words, if the suicide is not the result of discouragement, of melancholy, or other sane conditions, but of brain derangement." Compare this with *Anderson v. Armour & Co.*, where a delivery truck driver's estate was awarded benefits for his suicide. One week before his death he accidentally struck a pedestrian with his truck, but sustained no physical injuries himself. Friends and family noted him to be anxious, sleeping poorly and worried about the possibility of serious charges being filed against him if the pedestrian died from his injuries, but noted no evidence of psychotic behavior or thinking. Anderson continued to work as usual, and while at work took a knife and stabbed himself in the chest shortly before a planned trip to the town where the injured man was hospitalized. The testifying psychiatric experts disagreed whether the stress from the accident caused a 'neurotic' or 'psychotic' depression, but both doctors and the court agreed that the "injury" (emotional distress from his accident) was causally connected to the suicide.

**Negligent Torts**

The initial U.S. case specifically addressing negligent causation of suicide was *Scheffler v. Washington City*. The court awarded no damages, ruling that suicide was an independent, intervening act in the chain of causation because suicide and insanity could not be considered the "natural and probable" (therefore not foreseeable) consequences of a disfiguring physical injury. This court's reasoning left virtually no chance of recovery, regardless of the severity of the mental condition. *Daniels v. New York* and *Brown v. American Steel and Wire* first set out a route by which damages could be awarded; they both instituted the cognitive awareness plus irresistible impulse analysis for negligence cases. As with the *Sponatski* rule, courts using this standard refused to award damages if there was any evidence of awareness of the intent or consequence of one's actions. The courts interpreted the cogni-
tive test loosely, however, if there was strong evidence linking the negligent act to the resultant mental condition. In *Elliott v. Stone Baking*, a man committed suicide after receiving a head injury in a car accident. Because the existence of the head injury appeared to establish a strong causative link between the accident and the suicide, the court ordered the driver of the car to pay damages, stating that the injury caused the victim to become “insane and bereft of reason.” despite clear evidence of suicidal intent.

The Second Restatement of Torts (1965) was an updated version of the *Sponatski* analysis for negligence law. Note that its wording, however, implies more of an available choice between the cognitive awareness and irresistible impulse tests than did the Sponatski decision:

> If the actor's negligent conduct so brings about the delirium or insanity of another as to make the actor liable for it, the actor is also liable for harm done by the other to himself while delirious or insane, if his delirium or insanity (a) prevents him from realizing the nature of his act and the certainty or risk of harm involved therein, or (b) makes it impossible for him to resist an impulse caused by his insanity which deprives him of his capacity to govern his conduct in accordance with reason.

Appellate-level cases in the 1960s, notably *Tate v. Canonica*, argued against the use of the cognitive awareness test that asked “Did the decedent know what he was doing when he committed suicide?” *Tate* was an intentional tort case, but the court decision also defined for subsequent negligence cases the standard of requiring evidence of a mental illness that produced an irresistible impulse. In its argument, the court rejected the old terms of “insanity” and “delirium or frenzy.” and instead suggested differentiating between “mental illness” and “mental condition” to determine responsibility. These new terms were circularly defined as mental states that passed or failed the irresistible impulse standard for responsibility. Some later cases focused on this specific semantic issue when citing the *Tate* precedent. For instance, in *Jamison v. Storer*, the question before the appeals court was whether the testimony regarding irresistible impulse was adequate for the jury to make a determination using that test. The court stated that “with few exceptions, one who commits suicide is suffering some abnormal mental condition. Therefore, the explication of the difference between that condition and a mental illness . . . is indispensable to plaintiff’s case.” The court focused on the psychiatric expert’s testimony that Jamison’s allegedly discriminatory discharge from his job resulted in a “severe narcissistic blow” causing him to suffer “symptoms of depression” under which he committed suicide three years later. Because the judge felt that this constituted a mental condition “common to many persons who have not achieved important goals” and not a mental illness as defined by *Tate*, it ruled the expert testimony to be insufficient for a finding of an irresistible impulse.

Unlike worker’s compensation, negligence decisions have generally avoided moving on to a pure chain-of-causation, or “but for” analysis. In *Jamison v. Storer*, the court stated that “the intercon-
nection between life experiences is virtually infinite: to permit liability to attach merely because one event triggered other experiences that combined to create an unbearable circumstance for Mr. Jamison would be to expand the concept of causation beyond manageable bounds.21

Two recent decisions exemplify the trend toward embracing a proximate cause analysis and decreasing reliance upon testimony about the mental state of the decedent at the moment of suicide. In Fuller v. Preis,22 a surgeon developed intractable posttraumatic seizures after a car accident, and committed suicide with a gun seven months later. He purchased the gun and wrote two suicide notes before killing himself. The court first suggested that “. . . an irresistible impulse does not necessarily mean a ‘sudden’ impulse. The evidence supports a finding that the insane ‘irresistible impulse’ that caused decedent to take his life also impelled the acquisition of the gun and the writing of the suicide notes.” Furthermore, the court discussed causation theories at length and proposed that recovery for suicide “should perhaps, in some circumstances, be held even absent proof of a specific mental disease or even an irresistible impulse provided there is significant causal connection.” A federal court in Szimoniisz v. U.S.23 moved closer than preceding cases to establishing the proximate cause analysis as the preferred standard in wrongful death actions. Plaintiffs sued the Veteran’s Administration for failure to diagnose a menigioma in a patient who was under treatment for depression.

The plaintiff’s expert testified that the tumor aggravated the depression and was causally linked to the suicide. The court found that the facts and testimony supported awarding damages under either the irresistible impulse or proximate cause analysis, but specifically stated that the proximate cause test “is the appropriate analytical tool in these circumstances.”

Discussion

From a legal standpoint civil liability theories have moved from viewing suicide as a criminal act to considering it a potentially compensable, foreseeable, end result of a variety of physical and emotional stressors. On paper, the most recent theories appear to be shifting the legal focus from the emotional and behavioral details of the suicidal act to the ability of the negligent act or injury to cause an abnormal mental state. In practice, however, the courts have long preferred to rely on the latter issue, interpreting the mental-state-at-the-time-of-suicide tests loosely or literally depending upon which approach best supports their conclusions.

In reviewing the significant suicide responsibility causes, it is apparent that the courts have determined that the concepts of ‘cognitive awareness,’ ‘irresistible impulse,’ ‘voluntary’ and ‘willful’ apply to a bewildering variety of situations. In some cases these terms have even been interchangeable. Psychiatric experts have been ambiguous at times when stating opinions about these concepts, and their testimony has been rendered even less psychologically illustra-
tive when the court has extracted single statements as the pivotal ‘proof’ that one of the mental state tests has been satisfied. If legal and psychiatric professionals are not consistent when giving expert consideration to these ‘psychological’ concepts, what can a lay jury be expected to understand about them?

Suicide presents a challenge to civil law as criminal acts due to mental disorder challenge criminal law: neither lends itself to neat subdivisions of sane-insane, willful-automatic, reasoned-irrational, or irresistibly impulsive-volitional. Law reviewers have proposed the concepts of “voluntary” or “reasonably irresistible impulse” as improved alternatives to the current mental state tests for suicide, but these carry the same limitations as the terms they are intended to replace. Legal theorists will eventually discover that no simplistic, yes-no dichotomy can handle the complexity of suicide responsibility.

If cognitive awareness, irresistible impulse, and willfulness have a poor track record in assisting in the legal understanding of suicidal phenomena, what concepts can current psychiatric knowledge offer?

Psychiatric research has not studied suicide to answer the same questions the courts ask about it. Predictive risk factors for suicide—recent losses, male sex, unmarried status, alcoholism—can place people in high risk categories as a group but offer little help in the foreseeability of individual cases. Again, the known relative lethality of the various psychiatric disorders is of less predictive value than the generally unknown specific and idiosyncratic significance individuals place on the stresses in their life. The law determines that employers or negligent actors take a person as they find him, i.e., they are not relieved of responsibility for the effects of their negligence or injury just because the person was more fragile or vulnerable to begin with. Psychiatric understanding, on the other hand, often focuses on the more long standing, cumulative factors that lead to the vulnerability or predisposition to having a suicidal response. The lawyer looks to establish an “objective” cause-in-fact; the psychiatrist assessing a suicidal person is more interested in the person’s subjective perception of the relative importance of precipitating factors. Studies of serious suicide attempters and suicide notes have noted that suicidal thinking is often characterized by rigidity, constricted awareness of available problem-solving options, and “if and only if,” all or none patterns. These elements of poor judgment transcend ‘sane’ or ‘insane’ psychiatric diagnoses in these people.

The emerging adoption of the proximate cause analysis for suicide resulting from negligence or injury may relieve psychiatrists of the near-impossible responsibility of estimating mental state at the moment of suicide or trying to ascertain the presence of an “irresistible impulse” or “willfulness” in suicidal behavior. Instead, they must assess the relative contribution of the injury or negligence to the subsequent mental distress, taking into account other precipitating stressors and predisposing personality traits. The potential pitfalls
of extending this legal approach into a "but for" analysis of psychological information have already been demonstrated in the personal-injury field and have been detailed in a prior review of suicide responsibility theories. Attempts to apply a "but for" analysis are very perilous, because one could theoretically state that every single precipitant, though minor, was necessary in producing the environment in which a suicide took place. A psychologically absurd but legally plausible example under the "but for" analysis is where a debilitated, depressed, widowed alcoholic begs for a quarter and is refused. "But for" being denied the quarter, he might have telephoned a crisis hot line and his subsequent suicide could have been avoided. Hopefully, without having to couch their testimony within the confines of a restrictive willfulness or irresistible impulse paradigm, psychiatric experts can use the more general approach of the causation analysis to share their understanding of the complexities of precipitants and predispositions for suicidal behavior.

References
1. Tate v. Canonica, 5 Cal. Rptr. 28 (1960)
4. In re Sponatski, 108 N.E. 466, 468 (Mass. 1915)
19. Restatement (Second) of Torts, § 455 (1965)