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THE SUICIDAL DECEDENT: CULPABLE WRONGDOER, OR WRONGFULLY DECEASED?

INTRODUCTION

On December 2, 1966, Dr. Lewis, a 43-year-old surgeon, was involved in an automobile collision. Two days after the accident, Dr. Lewis experienced the first of many seizures. After a five-day stay in the hospital, his doctor diagnosed his condition as a subdural contusion and cerebral concussion.

As a result of the injuries, Dr. Lewis's condition began to deteriorate, gradually contracting his professional and private activities. On July 9, after experiencing three seizures, Dr. Lewis went to the bathroom of his home, closed the door, and shot himself in the head. He died the following day. Just before the gunshot, his wife heard him say to himself, "I must do it, I must do it."

Two suicide notes, both dated July 9, 1967, were found next to the body. One, addressed to his wife, professed his love. The other, addressed to the family, contained information about a bank account and the location of his will and requested discreet disposition of certain personal property. In the note, Dr. Lewis warned that the note "must never be seen by anyone except the three of you as it would alter the outcome of the 'case'-i.e., it's worth a million dollars to you all." And he went on to say that "I am perfectly sane in mind" and "I know exactly what I am doing." Alluding to the accident, the loss of his office and practice, and his mounting responsibilities, he professed the inability to continue.1


Chief Judge Breitel of the Court of Appeals of New York wrote the opinion reversing the Appellate Division and remanding the case for a new trial. Fuller, 35 N.Y.2d at 434, 322 N.E.2d at 269, 363 N.Y.S.2d at 576. The court held that the evidence supported a finding that an "irresistible impulse" causing the decedent to take his life also could have impelled his acquisition of a gun and the writing of the notes. Id. The court declared that an irresistible impulse did not necessarily mean a sudden impulse. Id.

Significantly, the court of appeals also noted that the act of suicide is not, as a matter of law, a superseding cause in negligence law so as to preclude liability
Where suicide\(^2\) is a conscious response to negligently inflicted injuries ("injury-based suicide"), courts do not hold the tortfeasor liable for damages stemming from the death.\(^3\) Courts deny recovery because they consider the suicide to be an intentional act that breaks the causal chain.\(^4\) An exception to this general rule exists, of a tortfeasor for injuries causing the suicide. \textit{Id.} at 429, 322 N.E.2d at 265, 363 N.Y.S.2d at 572 (indicating insanity could remove responsibility for suicide). The court went on to state that "recovery for negligence leading to the victim's death by suicide should...be had even absent proof of a specific mental disease or even an irresistible impulse provided there is a significant causal connection." \textit{Id.} at 429-30, 322 N.E.2d at 266, 363 N.Y.S.2d at 572.

2. The definition of suicide is essentially what is at issue in this comment. If suicide is culpable, public policy warrants that it break the causal chain. If it is not culpable, but a product of mental illness, courts should allow the claim to be stated. Courts have traditionally defined suicide as self-destruction or as the deliberate termination of one's own existence. See, e.g., Sampson v. Ladies of Maccabees of the World, 89 Neb. 641, 131 N.W. 1022, 1024 (1911) (suicide is intentional and voluntary act); Coverston v. Connecticut Mut. Life Ins. Co., 6 F. 654, 655 (1881) (suicide is intentional self-murder); see also BLACK'S LAW DICTIONARY 1286 (5th ed. 1979).

However, accepted definitions of the word "suicide" in the fields of psychiatry, sociology, and criminal law exclude an individual who takes his own life when he is aware of what he is doing. See BLACKISTON'S NEW GOULD MEDICAL DICTIONARY 1173 (2d ed. 1956)(field of psychiatry); J. DOUGLAS, THE SOCIAL MEANINGS OF SUICIDE 355-56 (1967)(field of sociology); N. ST. JOHN-STEVAS, LIFE, DEATH AND THE LAW 242 (1961)(field of criminal law). Hence, at the center of the issue of whether to allow recovery for suicide, is the dispute over the characterization of the decedent.

3. Generally, the deliberate act of suicide breaks the causal chain to the original tortious act. See generally Scheffer v. Railroad Co., 105 U.S. 249 (1881)(neither insanity nor suicide are natural or probable results of tortfeasor's negligence and, as such, each intervenes between tort and death); Churchill v. United Fruit Co., 294 F. 400 (D.C. Mass. 1923)(suicide due to mind disordered by accident or injury is not so related to physical injury as to furnish ground for recovery of damages for death); Salsedo v. Palmer, 278 F. 92 (2d Cir. 1921)(suicide is not natural or reasonable result of mental or physical torture even if intentionally inflicted); Long v. Omaha & Council Bluffs St. Ry. Co., 108 Neb. 342, 187 N.W. 930 (1922)(conscious and knowing act of suicide is new and independent agency that cuts line of causation between injury and death); Lancaster v. Montesi, 216 Tenn. 50, 390 S.W.2d 217 (1965)(decedent's act of suicide was efficient, intervening, and unforeseeable cause of death). For further discussion of the application of this general rule, see \textit{infra} notes 35-41 and accompanying text.

4. In contrast to Judge Breitel's decision in \textit{Fuller}, see supra note 1, most courts consider the act of suicide in modern law to be an intervening, superceding cause of an injury. This stems from the notion that suicide is an intentional culpable act and, as such, it is not foreseeable to a tortfeasor. For further discussion of proximate cause and reasonable foreseeability, see \textit{infra} notes 9 & 16 and accompanying text. Early decisions have steadfastly denied claims based on injury-based suicide as long as the decedent had even the slightest awareness of what he was doing. See Scheffer, 105 U.S. 249 (1881)(strictly denying recovery when decedent was cognizant of effect of his act); Brown v. American Steel and Wire Co., 43 Ind. App. 560, 88 N.E. 80 (1909)(decedent's ability to conceive purpose of taking his life, as well as knowledge of means which would carry his purpose into effect, breaks the causal chain); Daniels v. New York, New Haven & Hartford Ry. Co., 183 Mass. 393, 67 N.E. 424 (1903)(decedent's knowledge of purpose and physical nature of act demonstrates his death not due to negligence of defendant). The \textit{Scheffer} Court stated that the decedent's insanity "was as
however, where the original tort creates a state of insanity\(^5\) in the victim, causing an irresistible impulse\(^6\) in him to commit suicide.

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5. "Insanity" is defined as a social and legal term rather than a medical one. BLACK'S LAW DICTIONARY 714 (5th ed. 1979). It "indicates a condition which renders the affected person unfit to enjoy liberty of action because of the unreliability of his behavior with concomitant danger to himself and others. [T]he term is used to denote the degree of mental illness which negates the individual's legal responsibility or capacity." BLACK'S LAW DICTIONARY 714 (5th ed. 1979).

In the area of tort law, insanity indicates incapacity to know the consequences of an act.

A man who does not understand, as a man of sound mind would, the consequences to follow from his contemplated suicide to himself, his character, his family, and others, and who was not able to comprehend the wrongfulness of what he was about to do, as a sane man would, is to be regarded as insane.

Ritter v. Mutual Life Ins. Co., 69 F. 505, 507 (1895), aff'd, 70 F. 954 (1895), aff'd, 169 U.S. 139 (1898). However, other courts have stated that the true test is not the capacity merely to distinguish between rightfulness and wrongfulness of the act committed, but also sufficient will power to choose whether he shall do or refrain from doing it. See Delaware v. Reidell, 9 Houst. 470, 14 A. 550, 552 (1888).

6. Usually, courts require the plaintiff to establish a level of incapacity higher than mere insanity under the general rule for liability to run to the tortfeasor. RESTATEMENT (SECOND) OF TORTS § 455(b)(1965). In many jurisdictions, a plaintiff must demonstrate the existence of an irresistible impulse. See, e.g., Brown, 43 Ind. App. 560, 88 N.E. 80 (1909)(recovery allowed for self-inflicted death only where result of uncontrollable impulse, or accomplished in delirium or frenzy caused by defendant's negligent act or omission and without conscious volition of purpose to take life); Wallace v. Bounds, 369 S.W.2d 138 (Mo. 1963)(action allowed only where decedent became insane or bereft of reason, and as result thereof, involuntarily takes own life); Long, 108 Neb. 342, 187 N.W. 930 (1922)(liability for death by suicide of person made insane by defendant's negligence exists only when death results of uncontrollable impulse, or accomplished in delirium or frenzy).

The first case to substantially define irresistible impulse was Cauverien v. De Metz, 20 Misc. 2d 144, 188 N.Y.S.2d 627 (1959)(noted in 9 BUFFALO L. REV. 370 (1960)); 20 LA. L. REV. 791 (1960); 35 N.D.L. REV. 473 (1960); and 13 VAND. L. REV. 594 (1960)). In Cauverien, the court sought to determine whether the decedent was in control of his faculties at the time of suicide. The decedent committed suicide after the defendant converted the decedent's valuable diamond. Id. at 144, 188 N.Y.S.2d at 630. The court noted that the decedent could have acted under an irresistible impulse even though his actions were not sudden and he was consciously aware of his impending suicide. Id. at 145, 188 N.Y.S.2d at 632.

A later case noted that an irresistible impulse is "an impulse to commit an unlawful or criminal act which cannot be resisted or overcome because mental disease has destroyed the freedom of will, the power of self-control, and the choice of actions. Snider v. Smyth, 187 F. Supp. 299, 302 (D.C. Va. 1960), aff'd, Snider v. Cunningham, 292 F.2d 683 (4th Cir. 1961); see also A. GOLDSTEIN, INSANITY AND THE LAW 49-50 (1967). Under the "irresistible impulse" test, a person may avoid criminal responsibility even though he is capable of distinguishing between right and wrong and is fully aware of the nature and quality of his acts, provided that he establishes that he was unable to refrain
Under this scenario, courts trace liability to the original tortfeasor if the plaintiff can demonstrate a three-fold causal link.

To establish this causal link, the plaintiff must prove that: (1) the defendant inflicted a personal injury; (2) this injury caused insanity in the victim; and (3) this insanity induced the victim to commit suicide. Courts consider the act of suicide, under these circumstances, to be a reasonably foreseeable consequence of the


7. Section 455 of the Restatement provides:

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 of 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 conduct in accordance with reason.


For further discussion of the rule articulated by section 455 of the Restatement (Second) of Torts, see infra notes 10 & 43 and accompanying text.

8. RESTATEMENT (SECOND) OF TORTS § 455 (1965). For further discussion of the rule articulated by section 455 of the Restatement (Second) of Torts, see infra notes 10 & 43 and accompanying text.

9. The notion of reasonable foreseeability derived from principles of proximate causation. The court in Atlantic Coast Line R.R. Co. v. Daniels, 8 Ga. App. 775, 70 S.E. 203 (1911), articulated the idea of proximate cause. The court posed the situation as:

A plaintiff comes into court alleging, as an effect, some injury that has been done to his person or to his property. He shows that antecedent to the injury a wrongful act of another person occurred, and that, if this wrongful act had not occurred, the injury complained of would not (as human possibilities go) have occurred. We then say, in common speech, that the
The Suicidal Decedent and Tortfeasor Liability

original tort. The insanity-based suicide does not break the causal chain because the decedent lacked self-control; he could not have acted intentionally. Hence, on a public policy basis, courts have considered the insane decedent an innocent party who deserves to be compensated. Although most jurisdictions distinguish insanity-based suicide from other types of suicide, modern psychiatry thought does not support this view.

Psychiatric scholars believe that all suicides result from mental illness. Therefore, all suicides are equally foreseeable under the

wrong was a cause of the injury. But to make such a standard (that, if the cause had not existed, the effect would not have occurred) the basis of legal responsibility would soon prove very unsatisfactory; for a reductio ad absurdum may be promptly established by calling to mind that, if the injured person had never been born, the injury would not have happened. So the courts ask another question: Was the wrongful act the proximate cause?

Id. at 777, 70 S.E. at 205 (emphasis added). To determine whether the defendant's act was the cause that was "in jure non remota causa, sed proxima, spectatur" (In law, not the remote cause but the nearest one is looked to), courts have determined whether the area within which liability is imposed is that which is within the circle of reasonable foreseeability. Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co., App. Cas. 388 (Privy Council 1961). The rule of this case has been the underlying premise of many decisions in the United States. See, e.g., Mauney v. Gulf Refining Co., 193 Miss. 421, 9 So. 2d 780 (1942)(rule was actually formulated in United States); see also Lyvere v. Ingles Markets, Inc., 36 N.C. App. 560, 244 S.E.2d 437 (1978)(when defendant allowed rug to remain on floor after wind had blown its edge up, he risked that a customer would trip over it, but not that wind would wrap it around legs of a customer using another door); Oehler v. Davis, 223 Pa. Super. 333, 298 A.2d 895 (1972)(when defendant manufacturer supplied defective metal ring on dog collar, it risked causing owner to lose dog, but not causing dog to bite plaintiff); Metts v. Griglak, 438 Pa. 392, 264 A.2d 684 (1970)(when defendant bus driver drove at unreasonable speed in snowstorm, he risked collision with another vehicle, but not creating snowswirl that would blind another driver who followed in his wake); Crankshaw v. Piedmont Driving Club, 115 Ga. App. 820, 156 S.E.2d 208 (1967)(when defendant served foul smelling shrimp, he risked causing patron to become ill, but not causing someone else to trip on vomit); W. PROSSER, J. WADE & V. SCHWARTZ, TORTS - CASES AND MATERIALS 301, n.1 (8th ed. 1988).

10. Section 442A of the Restatement (Second) of Torts states that where the tortfeasor's negligence creates or increases the foreseeable risk of harm through the intervention of another force, and is a substantial factor in causing the harm, such intervention is not a superseding cause relieving the tortfeasor from liability. RESTATEMENT (SECOND) OF TORTS § 442A (1965).

11. For a list of courts that compensated the insane decedent, see supra note 7.

12. The rule incorporating an exception for the decedent who takes his life while insane is the majority viewpoint. For further discussion of this rule and its application by the courts, see infra notes 42-58 and accompanying text.

13. Modern psychiatry indicates that all suicides occur as a result of mental illness. D. HENDERSON & R. GILLESPIE, TEXTBOOK OF PSYCHIATRY 69 (10th ed. 1969). For further discussion of modern psychiatric thought regarding suicide and the decedent's responsibility therefore, see infra notes 64-81 and accompanying text.

14. For a discussion of psychiatric thought regarding the motivation for suicide, see infra notes 64-81 and accompanying text.
The proximate cause test of reasonably foreseeable consequences focuses on the factual inquiry into the foreseeability of suicide. Thus, the trial courts' primary consideration should be empirical research regarding the incidence of suicide subsequent to traumatic physical injury rather than the issue of whether the decedent was insane. Pursuant to this consideration, courts should allow recovery against the tortfeasor where the original injury is a substantial factor contributing to the suicide.

Although suicide often can be causally traced to a defendant's negligence, the basic result remains; courts do not allow the plaintiff to recover unless the decedent was insane. To demonstrate why this conclusion is erroneous, this comment will first analyze current theories of culpability. Second, this comment will demonstrate how modern psychiatry repudiates the basis for these culpability theories. Third, this comment will demonstrate how the courts' use of the insanity requirement is, therefore, ineffective. Finally, this comment will advocate the implementation of a substantial factor test for determining whether a defendant's negligence was the

15. For further discussion of the foreseeability of suicide based on change in psychiatric thought, see infra notes 75-80 and accompanying text.


That act or omission which immediately causes or fails to prevent the injury; an act or omission occurring or concerning with another, which, had it not happened, the injury would not have been inflicted; . . . the dominant cause, not the one which is incidental to that cause, its mere instrument.

Herron, 116 Cal. App. at 519, 2 P.2d at 1013.

With regard to the determination of whether a negligent act was the cause of a suicide, the court in Milwaukee & St. Paul Ry. Co. v. Kellogg, 94 U.S. 469 (1877) stated:

The question always is [whether there was] an unbroken connection between the wrongful act and the injury. . . . But it is generally held that . . . to warrant a finding that negligence, or an act not amounting to wanton wrong, is the proximate cause of an injury, it must appear that the injury was the natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances.


17. See generally 12 AM. JUR. PROOF OF FACTS 121, Suicide §§ 29-37 (1962)(factors of age, sex, ethnic status, occupational and economic status, crime rate, war, and climate are important). For further discussion of the importance of empirical research into foreseeability, see infra note 119 and accompanying text.

18. Consideration of whether the injury was a substantial factor contributing to the suicide would not entail a determination of whether the decedent was insane at the time of his death. For further discussion of the substantial factor test and its advantages over the present system of determining liability, see infra notes 110-121 and accompanying text.
proximate cause of a decedent's suicide without regard to the de-}

cedent's state of mind.

I. COMPARISON OF THE STATUS QUO'S CULPABILITY THEORIES

with CHANGE IN PSYCHIATRIC THOUGHT

A. Analysis of the Theories of Culpability

1. Historical Basis of the General Rule

Modern tort law regarding civil liability for causing suicide can
be better understood in light of historical religious, social, and legal
beliefs. Historically, religious and social leaders considered sui-
cide to be an immoral and culpable act. Although suicide was not

19. See generally L. Dubin & B. Bunzil, To Be or Not to Be 239 (1933);
N. St. John-Stevas, Life, Death and the Law 233-36, 241-52 (1961); G. Will-
liams, The Sanctity of Life and the Criminal Law 248-86 (1957); Lar-
remore, Suicide and the Law, 17 Harv. L. Rev. 331-41 (1904); Mikell, Is Suicide
Murder?, 3 Colum. L. Rev. 379-94 (1903); Schulman, Suicide and Suicide Pre-

20. The Council of Hereford accepted the notion that suicide was immoral
and culpable into England in 673 from the ecclesiastical courts. N. St. John-
Stevas, supra note 19, at 233. Many authors consider the prohibition against
suicide to stem from the Bible. However, this allegation is without basis. The
Old Testament records four cases of suicide (Samson, Saul, Abimelech, and
Ahitophel), yet demonstrates no disapproval for their suicides. G. Williams,
supra note 19, at 249. The last, Ahitophel, even received a proper burial in the
vault of his father. II Sam. xvi, 23; cf. The New Testament (containing no con-
demnation of suicide). St. Augustine, reacting to the Circumcelliones' martyr-
dom-inspired suicide, condemned suicide in his first book, City of God. G.
Williams, supra note 19, at 255 (St. Augustine states "suicide is a detestable
and damnable wickedness"). This attitude was carried over into English law.
Blackstone stressed the English position as:

no man hath a power to destroy life, but by commission from God, the au-
тор of it: and, as the suicide is guilty of a double offense; one spiritual, in
invading the perogative of the Almighty, and rushing into his immediate
presence uncalled for; the other temporal, against the King, who hath an
interest in the preservation of all his subjects; the law has therefore ranked
this among the highest crimes, making it a peculiar species of felony, a fel-
ony committed on one's self.

4 W. Blackstone, Commentaries 189 (Oxford 1775). The penalty for suicide
was denial of Christian burial rights canonized by King Edgar in 967. Burnett v.
People, 204 Ill. 208, 213, 68 N.E. 505, 510 (1903); N. St. John-Stevas, supra note
19, at 233. To this ecclesiastical penalty, popular custom added a further punish-
ment of dishonoring the corpse by hanging and eventual burial at a crossroads
with a stake driven through the body and a stone placed over the face of the
decedent. G. Williams, supra note 19, at 259; N. St. John-Stevas, supra note
19, at 233. The stake and stone were intended to prevent the body from rising as
a ghost or vampire. G. Williams, supra note 19, at 259. There later developed
in the law the sanction of forfeiture of property. Id. at 261. This was officially
set forth in the cannon of King Edgar in 967. Id. Even here, however, exception
was made for a person who was driven to the act by madness. Id. It is impor-
tant to note that this penalty was not for the act of suicide, but rather because
the suicide was a confession of some other felony punishable by loss of lands.
Mikell, supra note 19, at 379.

By 1961, all sanctions against a person who committed suicide had been
abolished in England. See Suicide Act of 1961, 9 & 10 Eliz. 2, c. 60. This change
a criminal act in the United States, civil courts viewed the suicidal decedent as a culpable wrongdoer. However, these courts made an exception for those who took their lives while insane. When the victim was insane, courts deemed the suicide accidental. Therefore, insanity-based suicide was not a culpable act, and courts did not hold the insane decedent responsible for his own death.

The view that the victim of an injury-based suicide is a wrongdoer has carried over into American civil law. Influenced by this reflected the belief that criminal law could not deter a person who wanted to commit suicide and that such a person was not really culpable but rather represented a problem that could be best handled by psychiatric medicine. SCHULMAN, supra note 19, at 862; G. WILLIAMS, supra note 19, at 278-79.


24. Id.

25. Id.

26. For a list of the courts that considered the insane decedent innocent of responsibility for his death, see supra note 7 and accompanying text.

27. The wrongdoer image of the suicidal decedent in American law is based on religious and social grounds. See supra note 20 and accompanying text. The topic of suicide creates considerable uneasiness in most people. See C. LEONARD, UNDERSTANDING AND PREVENTING SUICIDE 3 (1967). Victor Schwartz, Associate Professor of Law at The University of Cincinnati, has asserted that this may be the reason why few courts have articulated meaningful standards for deciding whether to impose civil liability for causing suicide. Schwartz,
notion, courts determined that allowing the decedent or his heirs to recover on a wrongful death claim would violate the public policy notion that an individual responsible for his own injury should not recover against a third party. In Tate v. Canonica, the court stated that Blackstone's view as to the criminal and anti-religious nature of suicide was an unspoken major premise underlying cases holding that suicide is an independent intervening cause that relieves the tortfeasor from civil liability for the suicide of a person whom he injured. As a result of this public policy concern that the suicidal decedent was culpable, the courts developed two analytical positions in modern law to cut the legal causal chain to the original tortfeasor; hence denying recovery to the suicidal decedent.

The first position modern law developed to cut the legal causal chain was that, by his suicide, the decedent has committed a wrongful act. This act broke the causal chain because public policy dictated that culpable intent could not be foreseen. Therefore, even where the plaintiff could establish that the original tortfeasor negligently caused the suicide, courts would not allow him to recover against the tortfeasor. The second position in favor of cutting the


Because of the attitudes that people hold toward suicide, courts used public policy to condemn such actions. See supra note 20 and accompanying text for a discussion of how this public policy developed. Gradually, these public policy concerns modified the law so that the suicidal decedent's heirs would not be able to recover for the death. To this end, these concerns were employed in proximate cause analysis. See Tucson Rapid Transit Co., 3 Ariz. App. 330, 414 P.2d 179 (1966)(asserting that proximate cause is guise for forming public policy).

28. A wrongful death action is a "lawsuit brought on behalf of a deceased person's beneficiaries that alleges that death was attributable to the willful or negligent act of another. Such action is an original and distinct claim for damages sustained by statutory beneficiaries and is not derivative of or in continuation of a claim existing in the decedent." Barragan v. Superior Court of Pima County, 12 Ariz. App. 402, 470 P.2d 722, 724 (1970); Black's Law Dictionary 1446 (5th ed. 1979). The action exists statutorily in all states. The statutes provide a cause of action for the benefit of certain beneficiaries (e.g. spouse, parent, or children). Most statutes are compensatory though some statutes retain statutes that measure damages in terms of culpability and some statutes reflect a combination of both. Black's Law Dictionary 1446 (5th ed. 1979); see also Ill. Rev. Stat. ch. 70, para. 1 (1989)(similar to general statute).


30. Id. at 903, 5 Cal. Rptr. at 32.

31. For a discussion of courts' application of the theory of a suicidal decedent's culpability, see supra notes 21-22 and accompanying text.

32. The heirs of the suicidal decedent are not allowed to recover because the focus of courts traditionally has been solely on the decedent's responsibility. Schwartz, supra note 27. The courts look to the state of mind of the decedent at the very second he terminates his life. See, e.g., Salsedo v. Palmer, 278 F. 92 (2d Cir. 1921); Daniels v. New York, New Haven & Hartford R.R. Co., 183 Mass. 393, 67 N.E. 424 (1903). This approach has led the courts away from the tort law question of cause in fact. See W. Prosser, Torts § 41, at 240 (3d ed. 1964); Malone, Ruminations in Cause-in-Fact, 9 Stan. L. Rev. 60 (1956). If the suicide
chain is exemplified by courts which view suicide as an intentional act that intervenes and supersedes as the proximate cause of the injury. These courts state that because the suicide intervenes and supersedes as the proximate cause, liability for the injury cannot be traced beyond that point. Courts are beginning to change these two views to three distinct rules of law.

2. Rules Under the Status Quo

Three rules of law regarding liability for injury-based suicide have emerged to represent modern common law. The United States Supreme Court set the first rule in place in the nineteenth century when the belief that the suicidal decedent was a culpable wrongdoer was at its peak. This minority rule presently denies recovery on the ground that suicide, even if coupled with insanity, is a superseding cause of death. The rule was first formulated in 1881, when the Supreme Court, in Scheffer v. Railroad Co., held is a result of an intentional tort, the mere fact that the decedent is a wrongdoer will not prevent liability. This is because the tortfeasor is also a wrongdoer. Therefore, because the tortfeasor is equally as culpable as the decedent, public policy does not warrant protection for the tortfeasor. Where the injuries are intentionally inflicted, liability will generally run to the tortfeasor. Section 279 of the Restatement of Torts provides that where the tortfeasor's conduct is intended to bring about bodily harm to another which the tortfeasor is not privileged to inflict, the tort is the legal cause of any intended bodily harm of which the tort was a substantial factor in bringing about. RESTATEMENT OF TORTS § 279 (1965). Comment (c) to section 279 provides a conclusion stemming from this causal proposition. It states that the proximate causation rules pertinent to superseding causes are immaterial to a determination of the extent of a willful tortfeasor's liability. RESTATEMENT OF TORTS § 279 comment c (1965); see also Richardson v. Edgeworth, 214 So. 2d 579 (1968)(defendant's intentional conduct is legal cause of harm to plaintiff if act is substantial factor bringing about harm); Tate v. Canonica, 180 Cal. App. 2d 898, 5 Cal. Rptr. 28 (1960)(neither fact that decedent knew what he was doing when he killed himself, nor foreseeability of suicide is factor that would relieve defendant of liability for intentional infliction of mental distress culminating in suicide of victim); 57A AM. JUR. 2D, NEGLIGENCE §§ 194, 218, 219 (1989); 74 AM. JUR. 2D, TORTS § 28 (1974). Contra Salsedo, 278 F. 92 (2d Cir. 1921)(suicide as result of intentional tort is not foreseeable); Lancaster v. Montesi, 216 Tenn. 50, 390 S.W.2d 217 (1965)(decedent's suicide was independent, intervening cause).

33. For a list of cases using the superseding cause analysis, see infra note 36.

34. For a list of cases using this superseding cause analysis, see infra note 36.


36. See generally Scheffer, 105 U.S. 249 (1881); Churchill v. United Fruit Co., 294 F. 400 (1923)(recognizing rule); Salsedo v. Palmer, 278 F. 92 (1921)(same); Long v. Omaha & Council Bluffs St. Ry. Co., 108 Neb. 342, 187 N.W. 930 (1922)(same); Lancaster v. Montesi, 216 Tenn. 50, 390 S.W.2d 217 (1965)(same). The rationale behind this view is that the decedent's insanity was as little the natural or probable result of the negligence of the tortfeasor as was his suicide, and that these were the causal factors or unexpected causes intervening between the injury and his death. Scheffer, 105 U.S. at 252.

that a defendant who negligently inflicted injuries on another was not liable for the subsequent suicide of the injured party.\(^3\) In \textit{Scheffer}, the victim suffered physical and mental trauma as a result of a railway train collision; subsequently, the victim committed suicide.\(^3\) The \textit{Scheffer} Court decided that suicide was not a foreseeable result of even severe physical and mental injuries.\(^4\) Thus, the Court made it impossible for a suicidal decedent to recover on a wrongful death claim.\(^4\)

Psychiatric studies subsequent to \textit{Scheffer}, however, have indicated that mental illness leading to suicide may be a foreseeable consequence of an initial injury.\(^4\) Consequently, a second rule, followed in a majority of jurisdictions and set forth in the Restatement (Second) of Torts,\(^4\) has rejected the \textit{Scheffer} Court's analysis. This second rule provides that suicide coupled with insanity may be a reasonably foreseeable consequence of an initial negligent act.\(^4\) Courts applying this second rule generally have determined civil liability for suicide following the negligent infliction of physical injuries on proximate cause grounds.\(^4\) Acknowledging insanity as a

\(^3\) \textit{Id.} at 252. The \textit{Scheffer} Court, in holding that the tortfeasor is not liable for the subsequent suicide of the victim, stated that: to warrant a finding that negligence or an act not amounting to wanton wrong is the proximate cause of the injury, it must appear that the injury was the natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances. \textit{Id.} at 252 (relying on reasoning of the Court in Milwaukee & St. Paul Ry. Co. v. Kellogg, 94 U.S. 469 (1876) and McDonald v. Snelling, 14 Allen (Mass.) 290 (1867)).

\(^4\) \textit{Scheffer}, 105 U.S. at 250.

\(^4\) \textit{Id.} at 252.


\(^4\) See Palmer, \textit{Mental Reactions Following Injuries in Which There is no Evidence of Damage to Nervous Tissues}, 1 J. FOR. MED. 222, 225 (1954); 30 N.A.C.C.A. L. J. 162, 169 (1964). For further discussion of the change in psychiatric thought regarding the causes of suicide, see \textit{infra} notes 64-81 and accompanying text.

\(^4\) Section 442A of the Restatement (Second) of Torts provides that where the tortfeasor's negligence creates or increases the foreseeable risk of harm through the intervention of another force, and is a substantial factor in causing the harm, such intervention is not a superseding cause relieving the tortfeasor of liability. \textit{Restatement (Second) of Torts} § 442A (1965). Section 445 indicates that if a tortfeasor's negligent conduct brings about the delirium or insanity of another person so as to make the tortfeasor liable for it, the tortfeasor is also liable for the harm done by the other party to himself while delirious or insane if such delirium or insanity either prevents the party from realizing the nature of his act and the certainty of or risk of harm involved therein, or 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. \textit{Restatement (Second) of Torts} § 445 (1965).

\(^4\) For cases applying the rule that suicide predicated on insanity may be a reasonably foreseeable consequence of the tortious act, see \textit{supra} note 7.

reasonably foreseeable consequence of the physical injury, these courts hold the tortfeasor liable for the death of the insane suicide victim.\textsuperscript{46}

Despite this second rule, there are substantial variations concerning the extent to which the decedent must be insane in order to recover. The narrowest approach to this second rule, exemplified by \textit{Daniels v. New York, New Haven \\& Hartford R.R. Co.},\textsuperscript{47} involves a strict cognitive awareness test.\textsuperscript{48} In \textit{Daniels}, a train operator negligently struck the decedent, which resulted in constant delirium preceding his death.\textsuperscript{49} Using the cognitive awareness test, the court stated that the tortfeasor would be liable if the decedent did not understand the nature of his suicidal act.\textsuperscript{50} The court limited the possibility of recovery, however, by holding that suicide, resulting from even a moderately intelligent power of choice, should be deemed a new and independent cause of the death even though the choice is made by a disordered mind.\textsuperscript{51}

A somewhat broader approach to the second rule is predicated upon the court's finding that the decedent acted under an "irresistible impulse."\textsuperscript{52} Under the irresistible impulse test, courts have allowed recovery when the decedent knew his act would cause his death but, as a result of emotional distress caused by the defendant's negligent act, was unable to control himself.\textsuperscript{53} For example, in \textit{Long v. Omaha \\& Council Bluffs St. Ry. Co.},\textsuperscript{54} defendant's streetcar negligently struck the decedent.\textsuperscript{55} After considerable physical and mental unrest, the decedent purchased a single shell for his gun and took his own life.\textsuperscript{56} The court stated that an irresistible impulse would exist where the death was accomplished in a delirium or frenzy without conscious volition to produce death.\textsuperscript{57} However,

\begin{itemize}
\item \textsuperscript{46} For a discussion of the test incorporating the insanity exception, see infra notes 42-43 and 45-59 and accompanying text.
\item \textsuperscript{47} Daniels v. New York, New Haven \\& Hartford R.R. Co., 183 Mass. 393, 67 N.E. 424 (1903).
\item \textsuperscript{48} Under the cognitive awareness test, courts deny recovery to the plaintiff where the defendant can demonstrate that the decedent knew the nature of his act. Hence, under this theory, the plaintiff can recover only where the decedent committed suicide while acting in a delusional manner. See \textit{id.} at 394, 67 N.E. at 425.
\item \textsuperscript{49} \textit{id.} at 394, 67 N.E. at 424-25.
\item \textsuperscript{50} \textit{id.} at 397, 67 N.E. at 426.
\item \textsuperscript{51} \textit{id.} at 400, 67 N.E. at 426.
\item \textsuperscript{52} For the definition of "irresistible impulse" and a discussion of its use by the courts, see supra note 6 and accompanying text.
\item \textsuperscript{53} For a list of cases applying the irresistible impulse test, see supra note 6 and accompanying text.
\item \textsuperscript{55} \textit{id.} at 342-43, 187 N.W. at 930-31.
\item \textsuperscript{56} \textit{id.} at 343, 187 N.W. at 931.
\item \textsuperscript{57} \textit{id.} at 344, 187 N.W. at 932-33.
\end{itemize}
where the decedent knows the effect of his act, as the purchase of the single shell indicated in *Long*, the suicide will break the causal chain.\(^{58}\) Therefore, as applied by the *Long* court, the irresistible impulse test is only marginally broader than the cognitive awareness test.\(^{59}\)

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58. *Id.* at 344, 187 N.W. at 933-34. Most courts employing the irresistible impulse test would similarly allow liability only when the decedent acted in a sudden frenzy. The decedent was found to possess sufficient control over his conduct to bar recovery when: he left a note, *Jones v. Traders & Gen. Ins. Co.*, 140 Tex. 599, 605-06, 169 S.W.2d 160, 163-64 (1943)(workers' compensation case); used a gun, *Arsnow v. Red Top Cab Co.*, 159 Wash. 137, 292 P. 436 (1930); or was efficient in the manner in which he cut his throat, *Brown v. American Steel & Wire Co.*, 43 Ind. App. 560, 88 N.E. 80 (1909).

59. The irresistible impulse test is only marginally broader than the cognitive awareness test. Illinois cases exemplify this proposition by relying on both schools of thought as equal precedent. Illinois' treatment of the rule is similar to the approach adopted by the *Daniels* court. To recover in Illinois, it must be shown that the "person injured be[came] insane and bereft of reason, and while in [that] condition and as a result thereof he takes his own life." *Stasiof v. Chicago Hoist and Body Co.*, 50 Ill. App. 2d 119, 112, 200 N.E.2d 88, 92 (1964), aff'd sub nom., *Little v. Chicago Hoist and Body Co.*, 32 Ill. 2d 156, 157, 203 N.E.2d 902 (1965)(even though decedent was severely depressed, because he knew the consequences of his act the court did not allow recovery); see also *Moss by Moss v. Meyer*, 117 Ill. App. 3d 862, 454 N.E.2d 48 (1983)(plaintiff not allowed to recover because of decedent's conscious awareness of nature and consequences of suicidal act); *Repinski v. Jubilee Oil Co.*, 85 Ill. App. 3d 15, 25, 405 N.E.2d 1383, 1390 (1980)(following mixed approach of *Stasiof*).

In *Stasiof*, the victim sustained injuries in an auto accident caused by the defendant's negligence. *Stasiof*, 50 Ill. App. 2d at 117, 200 N.E.2d at 89. The victim experienced recurring headaches, nervousness and insomnia following the accident. *Little v. Chicago Hoist & Body Co.*, 32 Ill. 2d 156, 157, 203 N.E.2d 902, 903 (1965)(lower court did not articulate facts). Five years after the collision, the victim intentionally ingested poison in an attempt to kill himself. *Id.* at 158, 203 N.E.2d at 903. Applying the *Daniels* rule, the court stated:

"[t]his is not a case where one, who is injured, becomes insane, loses his control over his mind and body and takes his life. This is a situation where a sane man, depressed it is true, but sane nevertheless, superimposes upon the defendants' negligence, acts of his own will to destroy himself."

*Stasiof*, 50 Ill. App. 2d at 122-23, 200 N.E.2d at 92 (quoting *McMahon v. City of New York*, 16 Misc. 2d 143, 141 N.Y.S.2d 190, 192 (1955)).

On appeal, the Illinois Supreme Court affirmed the decision of the appellate court. *Little*, 32 Ill.2d 156, 203 N.E.2d 902 (1965). The Supreme Court noted that there was a great lapse of time between the accident and the attempted suicide, and that the victim offered no evidence that the mental condition of the victim was such that the attempted suicide was not a deliberate choice of the victim. *Id.* at 159, 203 N.E.2d at 904.

This view has been maintained in recent decisions by Illinois courts. See *Moss by Moss v. Meyer*, 117 Ill. App. 3d 862, 454 N.E.2d 48 (1983); *Repinski v. Jubilee Oil Co.*, 85 Ill. App. 3d 15, 25, 405 N.E.2d 1383, 1390 (1980). *But see Bak v. Burlington Northern, Inc.*, 93 Ill. App. 3d 269, 417 N.E.2d 148 (1981)(issue of whether alleged negligence on defendant's part relating to fall down stairs by decedent was proximate cause of victim's suicide was question of fact, and not precluded by law). In *Moss*, the victim attempted suicide by drug overdose. *Moss*, 117 Ill. App. 3d at 863, 454 N.E.2d at 49. The court, stating the rule enunciated in *Stasiof*, reasoned that because the victim knew the drugs could be fatal, decided to kill herself before she ordered the drugs, wrote a suicide note, and hid the prescription under her bed so that no one could frustrate her efforts
Finally, a second minority of jurisdictions has accepted a third rule permitting recovery if the suicidal behavior is a reasonably foreseeable consequence of the antecedent negligence causing the initial injury, irrespective of whether the tort victim was insane at the time of his suicide.\(^6\) In \textit{Fuller v. Preis},\(^6\) the decedent was injured in an automobile collision.\(^6\) Seven months later, he premeditated his suicide by purchasing a gun and writing suicide notes to his family explicitly stating that he knew what he was doing.\(^6\)

Even though liability would not exist under the \textit{Daniels} cognitive awareness test or the \textit{Long} irresistible impulse test, the \textit{Fuller} court stated that "recovery for negligence leading to the victim's death by suicide should . . . be had even absent proof of a specific mental disease or even an irresistible impulse provided there is significant causal connection [between the injury and the suicide]."\(^6\)


62. \textit{Id.}

63. \textit{Id.} at 428, 322 N.E.2d at 265, 363 N.Y.S.2d at 571.

64. \textit{Id.} at 429-30, 322 N.E.2d at 266, 363 N.Y.S.2d at 572 (emphasis added); \textit{see also} Orcutt \textit{v. Spokane}, 58 Wash. 2d 846, 364 P.2d 1102 (1961)(victim purchased and ingested drugs in suicide attempt). In \textit{Orcutt}, the trial court held for the
This minority theory is most in tune with modern causation analysis and contemporary psychiatric thought. Thus, all jurisdictions should follow the lead of this minority and eliminate insanity as the only basis for tort recovery of a suicide. Rather, courts should allow liability to run to the original tortfeasor where the tortious act was a substantial factor contributing to the suicide.

B. Modern Psychiatry Repudiates the Notion of Culpability

Recent changes in psychiatric thought support the minority view of tort recovery that does not consider the sanity of the decedent. The psychiatric community's attitude toward the causes of suicide has changed greatly since scholars first probed into the motivation for the behavior. Today, the psychiatric community no longer views the decedent as a wrongdoer. Rather, it views him as having a serious mental illness. Under modern thought, all persons who commit suicide do so because they cannot appreciate the defendant upon a finding that the decedent knew the nature of her act because she used reasoning in carrying out her suicide attempt. The Supreme Court of Washington reversed the decision of the trial court, holding that the use of reason in carrying out an act of suicide should not be determinative if there is competent medical testimony "that the injury sustained by the decedent caused a mental condition which resulted in an uncontrollable impulse to commit suicide." Id. at 853, 364 P.2d at 1105.

65. For a discussion of the change in psychiatric thought, see supra notes 66-81 and accompanying text.

66. Isaac Ray stated in 1900 that doctors who had studied mental illness were then unable to understand whether a suicide is ever or always the result of insanity. I. RAY, MEDICAL JURISPRUDENCE OF INSANITY 267 (1962). Today, there are much firmer conclusions. Psychiatrists now believe that all suicide occurs as a result to unconscious pressure or changes in lifestyle or occupation. See infra notes 67-69 and accompanying text.

67. D. HENDERSON & R. GILLESPIE, supra note 13, at 69. Medical and psychiatric experts, for many years, have advanced the notion that all suicides are the result of some form of mental illness or unconscious pressures. See infra notes 68 and 69 and accompanying text. Many modern studies support these assertions. In one such study by the Faculty of Medicine at Kuwait University, it is reported that patients with psychiatric disorders were much more likely to commit suicide than those without. al-Ansari, el-Hile, and Hasson, Patterns of Psychiatric Consultations in Kuwait General Hospitals, 12 GEN. HOSP. PSYCHIATRY 257-63 (1990). In particular, of the patients referred to the authors (not all attempting suicide), acute situational disturbance resulting in suicide was the most common psychiatric diagnosis (26%), followed by depressive illness (19.5%) and organic psychotic disorders (8.2%). See id.

Doctors Arora and Meltzer of the Department of Psychiatry at Case-Western University School of Medicine in Cleveland, Ohio also report that there was a significantly higher number of binding sites (Bmax) and affinity (Kd) in subjects who had committed suicide. This suggests that those who committed suicide were suffering from mental chemical imbalance. Arora and Meltzer, Serotonergic Measures in the Brains of Suicide Victims: 5-HT2 Binding Sites in the Frontal Cortex of Suicide Victims and Control Subjects, 146 AM. J. PSYCHIATRY 730-36 (1989).

Doctor Allebeck, of the Department of Medicine at Karolinska Institute, Huddinge University Hospital in Sweden, reports that the highest excess mor-
nature of their act. Scholars believe that all suicidal decedents act under pressure of unconscious forces. Therefore, a person who commits suicide because of such an illness cannot be responsible for

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A study by doctors at the University of Minnesota Medical School reports that young adults who committed suicide were most likely to be older males with a current psychiatric disorder. Hoberman and Garfinkel, Completed Suicide in Youth, 33 CAN. J. PSYCHIATRY, 434-504 (1988); see also Beratis, Suicide in Southwestern Greece 1979-1984, 74 ACTA. PSYCHIATRY SCAND. 433-39 (1986) (consistent results found in Greece); Winokur and Black, Psychiatric and Medical Diagnosis as Risk Factors for Mortality in Psychiatric Patients: a Case-Control Study, 144 AM. J. PSYCHIATRY 208-11 (1987) (older patients also so affected).

Additional evidence was presented by doctors at Duke University Medical Center. Doctors, there, report that there was a 23% reduction in the number of CRF binding sites in the frontal cortex of the suicide victims compared with that of the controls tested. This data is consistent with the theory that CRF is hypersecreted in depression causing mental chemical imbalance. Nemeroff, Owens, Bissette, Andorn, and Stanley, Reducing Corticotropin Releasing Factor Binding Sites in the Frontal Cortex of Suicide Victims, 45 ARCH. GEN. PSYCHIATRY 577-79 (1988).

Another study completed by the Fairbanks Community Mental Health Center reports that mental imbalance in youth caused by family dysfunction, intrapersonal psychopathology and distress, problems with interpersonal relationships, and drug and alcohol abuse most frequently caused them to commit suicide. Nelson, Farberow, and Litman, Youth Suicide in California: a Comparative Study of Perceived Causes and Interventions, 24 COMMUNITY MENTAL HEALTH J. 31-42 (1988).

It has also been noted in another study that suicide mortality was ten times higher among male schizophrenics and eighteen times higher among female schizophrenics than in the general population. Allenbeck and Wistedt, Mortality in Schizophrenia. A Ten Year Follow-Up Based on the Stockholm Country Inpatient Register, 43 ARCH. GEN. PSYCHIATRY 650-53 (1986).

For further discussion of the psychiatric theories for the causes of suicide, see generally A. BRILL, FUNDAMENTAL CONCEPTIONS OF PSYCHOANALYSIS 262 (1921); E. DURKHEIM, SUICIDE 241, 276 (1950); Bergler, Suicide: Psychoanalytic and Medicolegal Aspects, 8 LA. L. REV. 504 (1948); Havens, Recognition of Suicidal Risks Through the Psychological Examination, 276 N. ENG. J. MED. 210 (1967); Ohara, A Study on the Factors Contributing to Suicide from the Standpoint of Psychiatry, 120 AM. J. PSYCH. 798 (1965); Palmer, The Psycho-Dynamics of Suicide, 5 J. FOR. SCI. 39, 40 (1960).

68. See A. BRILL, supra note 67, at 262; Bergler, supra note 67, at 333.
69. Bergler, supra note 67, at 533. Dr. Bergler points out that "no person of 'sound mind,' to use the popular misnomer, commits suicide. Suicide starts long before the actual act of self-destruction. All suicides act under pressure of unconscious forces and are, psychiatrically speaking, no more or less responsible for their act than is a person for having cancer...." Id. Cf. MODEL PENAL CODE § 4.01 comment, at 173 (1985). The Code provides that:

(1) A person is not responsible for criminal conduct if at the time of such conduct 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 law.

(2) As used in this Article, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminality or otherwise anti-social conduct.

MODEL PENAL CODE § 4.01 comment, at 173 (1985). Contra RESTATEMENT (SECOND) OF TORTS § 455 comment d (1965)(expressly excluding such consideration). Comment d to § 455 states:
his act. Hence, denying recovery to the plaintiff based on the position that the decedent was a wrongdoer is ill-founded.

Because the public policy position of compensating an innocent victim prompts recovery where the suicide occurs from no fault of the decedent, the original tortfeasor should be liable when he proximately causes the suicidal death. This change in psychiatric thought alone is a sufficient basis for abandoning the insanity requirement. It is not uncommon for legal theories to evolve because of change in psychiatric thought. In fact, a similar change in psychiatric thought predominated the modification of the rule barring recovery to include the irresistible impulse exception.

The modern conception of the motivation for suicide now outdates the old public policy views from which the insanity standard stemmed and demonstrates how the distinction based on foreseeability is no longer valid. The current position of the law is that it is not foreseeable that a sane decedent would commit suicide. However, psychiatry now supports the proposition that all suicides, including those consciously committed, are foreseeable. Empirical studies now indicate that suicide is a foreseeable result of traumatic injuries or consequential changes in lifestyle or occupation. Consequently, due to their foreseeability, suicides should not intervene as a superseding cause between the defendant's negligence and the act of suicide.

On the other hand, the fact that the actor's negligence causes harm to another which subjects him to recurrent attacks of extreme melancholia does not make the actor liable for the death or other harm which the other deliberately inflicts upon himself during a lucid interval in an effort to terminate his life because of his dread of the increasingly frequent recurrence of these attacks.

RESTATEMENT (SECOND) OF TORTS § 455 comment d (1965).

70. For a discussion of the historical basis of public policy surrounding the causation issue, see supra note 20 and accompanying text.

71. Other medical developments have been the basis for a change in the law. See Ortelere v. Teachers' Retirement Bd., 25 N.Y.2d 196, 203-05, 250 N.E.2d 460, 464, 303 N.Y.S.2d 362, 367 (1969)(in the context of contract law, the court noted that outdated cognitive awareness tests of mental soundness do not accord with modern knowledge or experience); see also infra note 72 and accompanying text. Therefore, credence should be given to the weight of authority that removes responsibility from the suicidal decedent.

72. See Palmer, supra note 42.

73. For a discussion of the rule barring recovery, see supra notes 35-41 and accompanying text.

74. For a discussion of the rule allowing recovery when the decedent takes his life as a result of an irresistible impulse, see supra notes 42-59 and accompanying text.

75. For further discussion of the current position of the law that suicide is not foreseeable, see supra notes 35-41 and accompanying text.

76. See Greenberg, Involuntary Psychiatric Commitments to Prevent Suicide, 49 N.Y.U. L. REV. 227, 235 (1974). Greenberg noted that there was fairly strong evidence that suicide did not occur in response to impulsive delusional thoughts or hallucinations, but rather self-destruction occurred in a planned and organized attempt at extrication from intolerably stressful life situations.
victim's suicide. The court in *Fuller v. Preis* followed this view when it acknowledged that the decedent knew the consequences of

*Id.* (quoting Gittleson, *The Relationship Between Obsessions and Suicidal Attempts In Depressive Psychosis*, 112 BRIT. J. PSYCHIATRY 889 (1966)).

Many modern medical studies have begun to establish empirical evidence regarding the incidence of suicide among certain groups of people. In 1987, the number of suicides in the United States was 30,373 - that is 12.7 suicides per 100,000 people. Stein, *Public Starts to see Suicide as a Choice: Religious Leaders Bemoan Trend*, Chi. Trib., June 17, 1990, § C, at 1.

Even though this national rate has remained fairly stable recently, see *id.*, the rate has increased dramatically among certain groups such as teenagers and the elderly. *Id.* The rate of teenage suicides has increased to 10.3 per 100,000 in 1987 from 8.6 in 1981. *Id.* Other studies indicate that the rate of teenage suicide has tripled since 1950. Fields, *Trying to Save Teens from Themselves*, The Washington Times, Jan. 3, 1991, at G1. In fact, suicide is the second leading cause of death for ages 15-19. *Study Shows Television's Potrayal of Suicide to be Dangerous Influence on Teens*, PR Newswire, Oct. 26, 1990, Domestic News Section. The Gannett News Service reported that mental disorders is the biggest risk factor for suicide in 14 - to 24-year-olds. Elias, *Mental Illness Risk Higher for Children, Teenagers*, Gannett News Serv., Oct. 8, 1990.

The elderly, too, are more likely to commit suicide due to increased pressures in growing old. See *The Boston Globe*, Oct. 28, 1990. "While people over 65 represent 12% of the nation's population . . . elders account for 20% of all suicides." *Id.* (fearing increase in suicides if economic assistance to the elderly is cut).

Examination of the likelihood of suicide further demonstrates that the traditional concept of insanity is misplaced. Rather, it is shown that unconscious pressures can directly lead people to suicide, removing their reasoned will from them. *Supra* note 69 and accompanying text. *See also A Mother's Plea for Children: Provide Treatment for Those Who Are Mentaly Ill*, The Toronto Star, Aug. 4, 1990, at D3. The following empirical evidence also supports this assertion:

3. Economic Depression causes higher suicide rate in rural areas. Gugliotta, *Down on the Farm: The Other Depression in Rural America*, The Washington Post, Nov. 18, 1990, § 1, at A18;
6. Bad weather causes suicide rate among Australian farmers to increase 76%. Cockburn, *City may be salvaged by specere of dead sheep*, The Times, Jan. 3, 1991, Overseas News Section;
his act.77 Basing their determination on "modern knowledge,"78 however, the court stated that the decedent could have been incapable of resisting the impulse to destroy himself.79 The court, therefore, deemed the decedent's fully premeditated action to be foreseeable.80 There is no distinction between the Fuller court's analysis and a causation analysis which does not rely on the requirement of insanity.81 Under both views, suicide is a foreseeable result of negligently inflicted injuries.

The subjectivity of the inquiry as to whether a suicide was intentional or based on unconscious pressures has made it impossible for courts to determine this. Because premeditated actions result from unconscious forces,82 there is no way to determine objectively whether the decedent took his life of his own volition. Therefore, the only just way to determine if the tortfeasor should be liable for the suicide is to apply a proximate cause analysis without looking to the decedent's state of mind.

There is no longer a valid method for determining whether a decedent, by his own action, broke the causal chain. Further, a decedent's injury-based suicide or suicidal reaction to an irresistible impulse are equally foreseeable. For these reasons, and because the public policy concerns supporting the insanity requirement are no longer valid, considering a decedent's mental state is an improper

78. Id. The court did not state explicitly the modern knowledge upon which it relied. However, the result of the case is consistent with the change in psychiatric thought that has been mentioned in this comment.
79. Id. at 433, 322 N.E.2d at 268, 363 N.Y.S.2d at 575. A minority of post-
Fuller courts addressing the issue have sought to eliminate the insanity criterion from their consideration. These courts, consistent with Fuller, have declared that the standard should be that "[a] negligent tortfeasor may be held liable for the suicide of a person who, as the result of the tortfeasor's negligence, suffers mental disturbance destroying the will to survive." Sullivan v. Welsh, 123 A.D.2d 945, 518 N.Y.S.2d 274, 275-76 (1987)(Dillon, P.J. and Green, J., dissenting); see also Wells v. Saint Luke's Memorial Hosp. Center, 129 A.D.2d 952, 515 N.Y.S.2d 335, 338 (1987)(Weiss, J., dissenting).
80. Fuller, 35 N.Y.2d at 432, 322 N.E.2d at 268, 363 N.Y.S.2d at 575; see also District of Columbia v. Peters, 527 A.2d 1269, 1276 (1987)(tortfeasor should not be excused from liability for damages resulting from suicide simply because there is evidence that injured party knowingly planned his death).
82. For further discussion of the psychiatric view that premeditated actions can stem from unconscious pressure, see supra notes 68-69 and accompanying text.
inquiry. Instead, traditional principles of proximate cause should be employed to determine whether to hold a tortfeasor liable for the injured party's suicide.\(^8\)

II. ANALYSIS OF THE INSANITY CRITERION AND ITS PROPOSED ELIMINATION

A. Unworkability of the Rules of Culpability

All courts should abandon the distinction between insanity-based suicide and all other forms of suicide because it is an ineffective means of assessing liability. Three reasons support this assertion. First, the public policy concerns of the suicidal decedent's culpability, from which the insanity criterion stemmed, are no longer viable.\(^8\) Second, the courts' focus on the insanity criterion confuses the true determination of the cause in fact of the death.\(^8\) Third, experts' determination of the existence of insanity or mental illness is inconsistent and unreliable.\(^8\) These three reasons show that abandoning the insanity factor would make the determination of liability more objective and consistent with modern psychiatric thought\(^8\) and public policy concerns.\(^8\)

Some courts contend that public policy notions are important concerns in assessing a tortfeasor's liability.\(^8\) The court in Tucson Rapid Transit Co. v. Tocci\(^9\) asserted that proximate cause is only a guise for the forming of public policy.\(^9\) Even accepting this as true, in the suicide context, the question of whether the decedent was insane should not be the most important consideration.\(^9\) Modern


84. For a discussion of the inadequacy of the public policy support for the culpable theories, see supra notes 75-80 and accompanying text.

85. For a discussion of how the courts have disregarded the true cause in fact analysis of the death, see supra notes 97-103 and accompanying text.

86. For a discussion of how the use of experts is inadequate for the determination of insanity, see infra notes 104-109 and accompanying text.

87. For a discussion of how disregarding the insanity requirement would be more consistent with contemporary thought, see infra notes 89-96 and accompanying text.

88. For a discussion of modern public policy concerns, see infra notes 94-96 and accompanying text.


90. Id.

91. See id. (asserting that proximate cause is only guise for forming of public policy).

92. Psychiatric scholars have repudiated the historical basis for the notion that the suicidal decedent is a wrongdoer. Therefore, this should not be a consideration in the forming of public policy. For further discussion of the psychi-
psychiatry has repudiated the notion that the suicidal decedent is a wrongdoer.93 Therefore, the public policy stemming from historical religious and social beliefs, that courts should not allow the decedent to recover, is outdated. Rather, the important factors to consider should include mitigation of damages,94 the degree of spurious claims,95 and other pragmatic concerns96 because they are more relevant to the modern public policy objectives of judicial economy and allocation of responsibility.

Second, courts should abandon the insanity criterion because it confuses the determination of the true cause in fact of the injury. To determine the true cause in fact of the injury, courts must examine the tortfeasor's actions; not just the decedent's.97 Too much emphasis, however, is placed upon the insanity criterion and the decedent's mental state. Hence, the courts do not objectively weigh all factors necessary to their determination. This perspective has

93. For a discussion of the change in psychiatric thought, see infra notes 66-81 and accompanying text.


96. Cf. Tate v. Canonica, 180 Cal. App. 2d 898, 5 Cal. Rptr. 28 (1960). In Tate, the court stated that Blackstone's view as to the criminal and anti-religious nature of suicide was an unspoken major premise underlying the cases holding that suicide is an independent intervening cause relieving the tortfeasor from civil liability for the suicide of a person whom he negligently or willfully injured. Id.; see also Annotation, Liability - Injuries Causing Suicide, 77 A.L.R.3d 311, 320.

led courts away from the crucial tort law question of cause in fact. This is problematic because without general causation guidelines to follow, concerns stemming from outdated public policy objectives cloud the court's logical legal analysis. Moreover, courts should determine responsibility for injuries stemming from a tortious act by looking to the actions of both the tortfeasor and the victim to balance liability with responsibility. However, because courts are not following this reasoning in suicide cases, the results are inconsistent with normal causation principles.

Courts that attempt to be consistent with this responsibility analysis are restrained by having to consider the insanity criterion. Therefore, the courts are forced to mask their analysis in language concerning the insanity criterion. These courts have gone so far to state that the act can be insanity-based even though shown to be premeditated so that the tortfeasor is held liable. Therefore, to regain consistency with logical causation analysis and avoid the confusion of courts couching their opinions in insanity criterion terminology, the sole exception of insanity-based suicide should be abandoned.

Third, experts' determinations of the existence of insanity is often inconsistent and unreliable. It is difficult to determine whether insanity or an irresistible impulse exists. Often a diagnosis of mental illness is little more than a personal value judgment on

99. See Tucson Rapid Transit Co. v. Tocci, 3 Ariz. App. 330, 414 P.2d 179 (1966) (asserting that criminal and anti-religious nature of suicide is unspoken major premise underlying cases holding that suicide is an independent intervening cause relieving tortfeasor from civil liability for suicide of person whom he negligently or willfully injured).
103. Fuller, 35 N.Y.2d at 429, 322 N.E.2d at 267, 363 N.Y.S.2d at 572. The non-sudden conduct that Fuller allowed is in contrast to stricter application of the irresistible impulse test. Even though the court in Cauverien v. De Metz, 20 Misc. 2d 144, 188 N.Y.S.2d 627 (1959), originally stated that the act of suicide need not be sudden to be the result of an irresistible impulse, many courts have held to the contrary. Compare Cauverien with supra note 7 (describing cases that strictly interpret the meaning of irresistible impulse).

The Fuller court's application of the irresistible impulse test was broad. The court seemed to rest its decision on strict proximate cause analysis rather than whether the decedent was actually insane. See Fuller, 35 N.Y.2d at 429-30, 322 N.E.2d at 266, 363 N.Y.S.2d at 572.

For further discussion of the Fuller court's treatment of the irresistible impulse test and its significance to the law, see supra note 1 and accompanying text. Fuller, 35 N.Y.2d at 433, 322 N.E.2d at 268, 363 N.Y.S.2d at 575.
104. Schwartz, supra note 27, at 232.
the psychiatrist's part.\textsuperscript{105} These personal judgments are often contaminated with the individual doctor's personal prejudices.\textsuperscript{106} Therefore, courts are unable to determine whether the testimony is objectively or subjectively based and, as such, it is of little assistance in promoting judicial resolution of legal disputes. Therefore, using psychiatric opinion testimony in making a determination as to insanity and, especially, as to the existence of an irresistible impulse is unreliable and inconsistent.

Further, determining insanity through expert testimony is expensive and nearly always contradictory.\textsuperscript{107} When experts only give opposing views, they do not guide to the court in determining whether insanity or an irresistible impulse exists.\textsuperscript{108} Hence, the judge or jury ultimately determines whether insanity exists based on the perceived credibility of the testifying experts.\textsuperscript{109} Therefore, psychological assessments are not very reliable or valid and courts sometimes rely on inaccurate or unreliable data and thereby reach incorrect decisions. Smith, infra note 107, at 162; see also Faust & Ziskin, The Expert Witness in Psychology and Psychiatry, 241 Sci: 31 (1988); Giannelli, The Admissibility of Novel Scientific Evidence: Frye v. United States, a Half Century Later, 80 COLUM. L. REV. 1197 (1980); Needell, infra note 106, at 427 (conflicting testimony confuses the trier of fact because they have no reliable measure by which to judge the veracity of the witnesses); Comment, The Psychologist as Expert Witness: Science in the Courtroom?, 38 MD. L. REV. 539 (1979).

Juries cannot always distinguish between plausible and implausible scientific reasoning. Hence, they do not always give credence to the most accurate and objective expert, but rather to the expert with the most self-confidence and the best courtroom demeanor. Needell, infra note 106, at 430; see also Basten, The Court Expert in Civil Trials - Comparative Appraisal, 40 MOD. L. REV. 174 (1977). In fact, "parties do not necessarily choose experts based on their expertise, but rather based on whether they are the "best witness" for their case." Id.; see also McCORMICK, EVIDENCE 517 (2d ed. 1972).

Just as parties foster this problem of credibility, Professor Smith relates how the United States Supreme Court, in Barefoot v. Estelle, 463 U.S. 880 (1983), indicated that the courts, themselves, look to mental health experts "for
the personalities of the expert witnesses eclipse the decision of the insanity issue.

The reasons once supporting the insanity criterion are no longer valid in light of recent changes in psychiatric thought. Thus, courts must abandon the public policy position of disallowing recovery to the decedent that stemmed from historical religious and social concerns. Furthermore, because the determination of insanity is inconsistent and inefficient, it is ineffective as a tool in determining whether the initial injury was the cause in fact of the suicide. This difficulty in defining insanity results in inconsistent application of the insanity exception and needless expense by parties and courts. For these reasons, all jurisdictions must abandon the insanity criterion.

B. The Substantial Factor Test

In lieu of the insanity criterion, courts should follow the lead of the psychiatric community and accept the notion that suicidal dece- dents are not culpable and that all suicides are equally foreseeable. Based on these notions, courts should assess liability according to whether the negligently inflicted injury was a substantial factor contributing to the suicide. Under this substantial factor test, courts can allow recovery where the plaintiff demonstrates that the decedent became devoid of normal judgment and dominated by a disturbance of mind as a direct result of the injuries.
This test is in tune with modern psychiatry characterizing suicide as the result of unconscious pressures or changes in lifestyle that arose from an injury.\textsuperscript{114} Courts changing from an insanity criterion to the substantial factor test can find precedent in the Worker's Compensation area.\textsuperscript{115} Worker's compensation courts following the substantial factor test\textsuperscript{116} have rejected the insanity criterion because they find most courts have construed insanity too strictly to reflect the realities of mental illness.\textsuperscript{117} Moreover, those courts have

an uncontrollable impulse to commit suicide or was in a delirium or frenzy, did not intend to kill himself, and did not realize the consequences of his act of self-destruction. In re Sponatski, 220 Mass. 526, 108 N.E. 466 (1915); see also Jamison v. Storer Broadcasting Co., 511 F.Supp. 1286 (1981)(recognizing Sponatski rule); Kahle v. Plochman, Inc., 85 N.J. 539, 428 A.2d 913 (1981)(same); Mercer v. Department of Labor & Indus., 74 Wash. 2d 296, 442 P.2d 1000 (1968)(approving Sponatski rule). This rule has been criticized because it ignores the role which pain and despair can play in breaking down rational mental processes. See Harper v. Industrial Comm'n, 24 Ill. 2d 103, 180 N.E.2d 480 (1962).

Consequently, a second rule, the "chain of causation" rule, developed which provides that a suicide is compensable if the injury and its consequences directly cause the employee to become devoid of normal judgment and dominated by a disturbance of mind which leads to the suicide. The compulsion to commit suicide need not be abrupt or spontaneous, but must be the result of an inability to exercise sound discretion. See, e.g., Rose v. Industrial Comm'n, 8 Ariz. App. 182, 444 P.2d 739 (1968); Wells v. Harrell, 714 S.W.2d 498 (Ky. App. 1986); Ahn v. Frito-Lay, Inc., 91 Or. App. 443, 756 P.2d 40, review denied, 306 Or. 661, 763 P.2d 152 (1988).

The chain of causation rule has been altered by two companion theories. The first is the New York rule, formulated in Delinousha v. National Biscuit Co., 248 N.Y. 93, 161 N.E. 431 (1928). Under this rule, death benefits are allowed where a compensable injury results in brain derangement other than discouragement, melancholy, or other "sane" condition, which, in turn, causes death by suicide. Delinousha, 248 N.Y. 93, 161 N.E. 431 (1928). This rule differs from the general chain-of-cause test in only two respects: it requires that the injury precipitating the mental derangement be a physical one, and it requires evidence of a psychosis or some physical damage to the brain itself, rather than simply any derangement sufficient to disable the victim from exercising sound discretion so as to control his compulsion. Wallace v. Saranac Lake, 87 A.D.2d 938, 450 N.Y.S.2d 72 (3d Dept. 1982)(same); Hyde v. New York State Dept. of Mental Hygiene, 48 A.D.2d 948, 369 N.Y.S.2d 29 (1975), aff'd, 39 N.Y.2d 854, 352 N.E.2d 131, 386 N.Y.S.2d 214 (1976)(same); Reinstein v. Mendola, 39 A.D.2d 369, 334 N.Y.S.2d 488 (1972)(following New York rule).

The second variation of the chain-of-cause test, the English rule, differs from the general test only in that the insanity must be the direct result of the injury itself or the shock produced by it, and not an indirect result caused by brooding over the injury and its consequences. Grime v. Fletcher, 1 K.B. 734 (Eng. 1915); Parry v. English Steel Corp., 32 B.W.C.C. 272 (Eng. 1939); Bradshaw v. Bickerstaffe Colleries, 24 B.W.C.C. 451 (Eng. 1931). For a discussion of the modern worker's compensation rules, see infra notes 115-18 and accompanying text.

114. For a discussion of modern psychiatric thought, see supra notes 64-81 and accompanying text.

115. For a discussion of the Worker's Compensation treatment of the problem, see infra notes 115-18 and accompanying text.


117. See generally infra note 118.
tended to find insanity only in circumstances marked by some violent or eccentric method of self-destruction. They fail to "recognize the role pain or despair may play in breaking down the mental process." 118

In determining whether an original tortfeasor's negligent act was a substantial factor causing suicide, courts should consider two relevant factors. First, courts should look to empirical evidence regarding the incidence of suicide subsequent to traumatic physical injuries. 119 Such empirical evidence would give the court a factual basis for determining whether the suicide was a foreseeable consequence of the tortious act. This factual basis would be much more reliable than the outdated public policy notions of culpability surrounding the insanity requirement. A second factor that the courts should consider in determining the causal connection between the two events is the length of time that passes between the injury and

118. Graver Tank & Mfg. Co., 97 Ariz. at 260, 399 P.2d at 667-68. The Graver court stated:

Armed with this [Sponatski] formula, courts have plunged into the murky depths of every conceivable kind of broken and anguished mind, and have come up with the cases neatly classified as compensable or not, according to whether the employee killed himself through a voluntary (though insane) choice or through a delirious impulse. The compensable cases are frequently marked by some violent or eccentric method of self-destruction, while the noncompensable cases usually present a story of quiet but ultimately unbearable agony leading to a solitary and undramatic suicide. Id. at 667 (quoting 1 LARSEN'S WORKER'S COMPENSATION LAW 36.20 (1952)); cf. LAFAVE & SCOTT, CRIMINAL LAW 321 (2d ed. 1986)(irresistible impulse test is too restrictive because it covers only impulsive acts). The irresistible impulse test is described as applicable only to those crimes which "have been suddenly and impulsively committed after a sharp internal conflict. ROYAL COMMISSION ON CAPITAL PUNISHMENT, 1949-53 Report 110 (1953). It also gives no recognition to mental illness characterized by brooding and reflection. Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954).

Some workers' compensation cases have moved even farther from consideration of the decedent's control over himself at the time of his act; they would allow recovery if the suicide would not have occurred "but for" the decedent's injuries. Burnight v. Industrial Accident Comm'n, 181 Cal. App. 2d 816, 826, 5 Cal. Rptr. 786, 793 (1960)(if it be shown by competent expert testimony that without the injury, there would have been no suicide, the injury is the proximate cause of the death); Whitehead v. Keene Roofing Co., 43 So. 2d 464 (1949)(where injury caused workman to lose his normal judgement and incontrovertible evidence shows that, without the injury, there would have been no suicide); Harper v. Industrial Comm'n, 24 Ill. 2d 103, 109, 180 N.E.2d 480, 481 (1962)(evidence shows clear connection between injury and ultimate suicide).

119. Several factors pertinent to the incidence of suicide are discussed in 12 AM. JUR. PROOF OF FACTS 121, Suicide §§ 29-37 (1962)(factors of age, sex, race, marital status, social relationships, economic status, crime rate, war, and climate are important); see also Gettleson, The relationship between obsessions and suicidal attempts in depressive psychosis, 112 BRIT. J. PSYCHIATRY 889 (1966); Greenberg, Involuntary psychiatric commitments to prevent suicide, 49 N.Y.U. L. REV. 227 (1974)(studies indicate suicide does not occur in response to impulsive delusional thoughts or hallucinations, but occurs in planned and organized attempt at extrication from intolerably stressful situations).
This factor is more closely tied to proximate cause than the insanity criterion; the more time that has elapsed between

120. The length of time that has passed between the injury and the suicide has seldom been an important factor to the courts. Courts rarely reach this factor in the determination of proximate cause because they have traditionally focused on the element of insanity. The court in Appling v. Jones, 115 Ga. App. 301, 154 S.E.2d 406 (1967), where one day or less passed between the injury and the suicide, the court held that the evidence was insufficient to establish liability. *Appling*, 115 Ga. App. 301, 154 S.E.2d 406 (1967). In *Appling*, as a result of a collision with the defendant's automobile, the decedent was violently thrown and tossed against the inside of his automobile with such force and violence that he received severe bruises and contusions. *Id.* at 302, 154 S.E.2d at 408. He also suffered a blow on his head which dazed, stunned, and shocked him to such degree that he became extremely irrational and violent. *Id.* This violence eventually resulted in him shooting himself through the chest with a rifle, causing death. *Id.* at 303, 154 S.E.2d at 408. Even though the court determined that the evidence was insufficient to warrant recovery against the defendant, the court stated that allegations of proximity in time were sufficient to state a cause of action. *Id.* at 304, 154 S.E.2d at 409.

The suicide occurred within one month, but greater than one day from the injury in Long v. Omaha Council Bluffs St. Ry. Co., 108 Neb. 342, 187 N.W. 930 (1922). In *Long*, 17 days after a collision with one of the defendant's streetcars, the decedent went to a hardware store, procuring a shotgun shell and stating that he wished to try it in his gun, returned home, loaded a shotgun, and shot and killed himself. *Id.* at 343, 187 N.W. at 931. The court refused to allow recovery. Apparently implying that the time between the injury and the suicide was insignificant, the court stated that the evidence pointed to an understanding on the part of the decedent of the physical nature and effect of his act, and to an intelligent and willful purpose to accomplish it. *Id.* at 345, 187 N.W. at 934. The court concluded that this understanding brought the case squarely within the rule announced in *Scheffer*, 105 U.S. 249 (1881). *Long*, 108 Neb. at 345, 187 N.W. at 934.

The Court in Fuller v. Preis, 35 N.Y.2d 425, 322 N.E.2d 263, 363 N.Y.S.2d 568 (1974), allowed recovery for a suicide that occurred seven months after the injury. *Fuller*, 35 N.Y.2d 425, 322 N.E.2d 263, 363 N.Y.S.2d 568 (1974). The court of appeals ruled that the evidence supported a finding that the irresistible impulse which had caused the decedent to take his life had also impelled the acquisition of the gun with which he had shot himself, and the writing of the suicide notes. *Id.* at 433, 322 N.E.2d at 260, 363 N.Y.S.2d at 575.

However, many cases in which the suicide occurred within one year of the injury have held to the contrary of *Fuller*. See *Scheffer* v. Railroad Co., 105 U.S. 249 (1882)(insanity of railway accident victim was as little the natural or probable result of the negligence of the railway officials as was the victim's suicide, and both the victim's insanity and his suicide were the causal factors or unexpected causes which intervened between the act that injured him and his death); Brown v. American Wheel & Wire Co., 43 Ind. App. 560, 88 N.E. 80 (1909)(plaintiff failed to produce such degree or quantum of evidence to establish that decedent acted without volition); Daniels v. New York, New Haven & Hartford Ry. Co., 183 Mass. 393, 67 N.E. 424 (1903)(absence of evidence that insane decedent was acting without volition, was under an uncontrollable impulse, or lacked understanding of physical nature of suicidal act precluded court from allowing recovery to decedent's executrix in wrongful death action); Wallace v. Bounds, 369 S.W.2d 138 (Mo. 1963)(judgment denying recovery was affirmed where it could not be shown that the proximate cause of the injury was the insanity of the decedent); Koch v. Fox, 71 A.D. 288, 75 N.Y.S. 913 (1902)(administratrix's evidence indicated only that decedent was in state of high mental excitement and did not satisfactorily establish previous insanity on his part to degree sufficient to warrant finding that he had become and continued to be irresponsible); Baxter v. Safeway Stores, Inc., 13 Wash. App. 229, 534
the injury and the suicide, the less likely that the initial injury was the cause in fact of the suicide.

Abandonment of the insanity requirement would also alleviate the problems now plaguing the application of this criterion. Eliminating these problems would reduce the need for psychiatric evaluations because the tort victim's mental state would be a less important factor than the empirical foreseeability of his suicidal act. Elimination of psychiatric testimony would also save time and money for both parties to the dispute. Moreover, it would clarify the issue of causation by removing the clutter of what is invariably contradictory testimony.121

The substantial factor test must be carried over into the wrongful death area of the civil law. Because the test accounts for recent changes in psychiatric thought and alleviates the difficulty of defining insanity, all jurisdictions must follow the analysis of the substantial factor test.

CONCLUSION

Suicide is an increasing cause of death in the United States.122 Therefore, increasingly more families and spouses are bringing tort claims attempting to place responsibility on someone other than their beloved decedent.123 If courts opt to maintain the status quo, many persons deprived of the society of their loved ones will not be compensated for a loss that is causally traceable to the original tortfeasor.

Hence, all jurisdictions must abandon the current requirement of proving insanity before a wrongful death action can be brought against a tortfeasor who proximately caused a suicide. The requirement is ineffective as a tool to allocate responsibility in our current law because it is based on public policy concerns that are no longer viable. Removal of the insanity requirement would be more consistent with factual legal analysis and foreseeability. Such removal would also be more consistent with modern thought regarding the

P.2d 585 (1975) (decedent's expert testimony did not establish that suicide was result of irresistible impulse).

121. While testimony is nearly always contradictory, the problem is aggravated in the expert testimony arena because it is unnecessary. Where the efficiency of the legal system can be improved, action must be taken to achieve it.

122. Suicide has become a significant cause of death in the United States. In 1987, the most recent year for which statistics are available, there were 30,373 suicides. Stein, Public Starts to See Suicide as a Choice. Religious Leaders Bemoan Trend, Chi. Trib., June 17, 1990, § C, at 1. The 1987 suicide rate was 12.7 suicides per 100,000 people. Id. In Chicago, the suicide rate is over twice the national average - 24 suicides per 100,000 people. Ferrara, Chicago: How we Compare, Chi. Mag., 53, 55 (Jan. 1991). For further discussion of the rate of suicide among specific groups of people, see supra note 76.

123. See generally Schwartz, supra note 27.
culpability and responsibility of the decedent. Accordingly, all courts are urged to follow the lead of a minority of jurisdictions, to abandon the insanity-based suicide requirement, and to implement the substantial factor test in its place as a means for assessing liability in a cause of action for wrongful (suicidal) death.

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