

Rethinking Tort Liability for Suicides

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Alex B. Long, [Abolishing the Suicide Rule](#), 113 **N. W. U. L.Rev.**767 (2019).

Suicide has become an important public-health problem, leading Alex Long to revisit the unduly neglected question of whether tort law should recognize wrongful-death actions for cases in which the defendant's tortious conduct caused the victim to commit suicide. After describing the increasingly worrisome trends—suicide is now the tenth leading cause of death in the country—Long insightfully constructs the historical, religious, and sociological motivations embedded in the tort doctrines, labeled the “suicide rule” by one jurisdiction, that ordinarily bar recovery for suicides. “Tort law’s historical treatment of cases involving suicide represents a combination of society’s traditionally negative views regarding suicide and tort law’s traditional concerns with foreseeability and expanding liability in cases involving emotional injury” (P. 16).

Long identifies “a slight trend among court decisions away from singling out suicide cases for special treatment and toward an analytical framework that more closely follows traditional tort law principles” (P. 6). Long defends this approach, drawing on the principles that courts use to formulate the tort duty in cases of pure emotional distress. “Ordinarily, suicide will be outside the foreseeable scope of the defendant’s negligence” and therefore not subject to liability as per the traditional approach (P. 49). But if the plaintiff can prove “that the negligent conduct is especially likely to result in suicide,” courts should permit recovery for the wrongful death. (*Id.*) Long correctly diagnoses the problem—tort principles do not justify the suicide rule—although these wrongful-death recoveries will be more common than he concludes. The increased liability is fully justified in my view.

Relying on doctrines that originated in English law from the Middle Ages, courts ordinarily dismiss these wrongful-death claims as a matter of law. In nearly every jurisdiction, courts hold that suicide—subject to limited exceptions discussed below—is an unforeseeable consequence of negligence that absolves a defendant of liability for the wrongful death (though not necessarily for the predicate physical or emotional harms that caused the decedent to commit suicide) (P. 17). In addition, “[n]egligence defendants have had some success in asserting that suicide is an immoral or unlawful act and thus bars recovery” (P. 20). Some courts deny recovery for comparative-fault reasons, concluding that suicide “is more than mere contributory negligence and is of a higher culpability level than the defendant’s negligence.”¹

Courts recognize exceptions to the suicide rule if “the defendant’s negligence causes injury that results in insanity or delirium in a form that prevents an individual from understanding the nature of his act or that creates an irresistible suicidal impulse” (P. 22). In addition, some defendants (like schools and psychiatrists) may have the very duty to prevent the decedent from committing suicide, in which case the suicide could be foreseeable (Pp. 26-27). Finally, for liabilities based on an intentional tort (typically the intentional infliction of emotional distress), most courts permit recovery if the plaintiff can prove that the tortious conduct was a substantial factor in causing the suicide (P. 32).

Long’s article surfaces a host of interesting issues that cannot be adequately addressed here. I will instead focus on his primary proposal that courts should reject the suicide rule in favor of an approach that only asks whether the defendant’s tortious conduct was especially likely to cause the decedent to commit suicide.

In defending this approach, Long concludes that liability will still be exceptional because “experts with superior knowledge regarding suicide have been unable to develop a reliable method for determining those at high risk of suicide,” and so “the hypothetical reasonable person will ordinarily not be able to do better” (P. 37). The question, however, is not whether one can reliably identify whether a particular person will commit suicide. A negligent actor is

liable for the foreseeable risks that cause compensable injury, and a foreseeable risk does not require knowledge of whether it will actually materialize in a particular case. A defendant, for example, can incur liability to cancer victims for having negligently exposed them to carcinogens, but at the time of the tortious behavior there ordinarily is no way to reliably determine which exposures will ultimately cause cancer.

The prevalence of suicide today often makes that type of harm foreseeable for reasons fully established by Long. By causing chronically severe pain or emotional distress, the defendant's tortious conduct substantially increases the likelihood of suicide. "The reality is that the most common description of the mental state of those who have committed suicide is that they did not want to die; they just wanted the pain they were experiencing to stop, a seemingly rational decision to a person who otherwise sees no realistic end to the pain he or she is suffering" (Pp. 45-46). To be sure, the decedent's reasoning may have been impaired, but under the majority rule "the plaintiff's contributory negligence must be evaluated by using a subjective standard that takes into account the plaintiff's own mental state, including any mental impairments" (P. 56, n. 368). Insofar as a victim's chronic pain and the associated mental state significantly increase the likelihood of suicide, those factors make the suicide a foreseeable consequence of the defendant's negligence.

To recover, the plaintiff must also prove that the defendant's negligent conduct actually caused the decedent to commit suicide—the same inquiry that courts employ for determining the liability of intentional tortfeasors. "In practice, the substantial factor standard [for establishing causation] has not proven to be a particularly onerous requirement for plaintiffs" (P. 32). The same should be true for negligent tortfeasors.

Consider cases in which the proof already shows that the defendant's negligence caused the decedent to suffer severe bodily injury with the associated pain and emotional distress that then allegedly caused the decedent to commit suicide. At this point, the plaintiff has established liability and an entitlement to compensatory damages for the predicate bodily injury. The causal problem accordingly reduces to the question of whether the negligence caused the full extent of the injuries alleged by the plaintiff—the wrongful-death damages for the suicide allegedly caused by the predicate (compensable) bodily injury. The evidentiary standard for establishing causation in the damages phase of the case is less demanding than in the liability phase. Instead of having to prove causation by a preponderance of the evidence, the plaintiff is only required to prove "the extent of the [tortiously caused] harm with as much certainty as the nature of the tort and the circumstances permit."² After the fact, we will not ordinarily know why someone took his or her life. That inherent uncertainty, however, should not bar recovery when the reasonably available evidence shows that the defendant's negligence substantially increased the risk of suicide. For these reasons, the substantial factor standard has not been particularly onerous for plaintiffs seeking to recover from intentional tortfeasors; those reasons apply with equal force to negligent actors.³

The foregoing analysis does not imply that the decedent necessarily bears no responsibility for taking his or her life. Such a determination is relevant to the apportionment of liability under comparative responsibility; it is not a sufficient reason to deny liability altogether under the suicide rule.

Established tort principles, therefore, support Long's conclusion that courts should abolish the antiquated doctrines that limit liability for suicides. By demonstrating that the persistence of the suicide rule stems from the stigma and immorality that traditional conventions ascribe to these desperate acts, Long has made a valuable contribution to our understanding of tort law.

1. *Gilmore v. Shell Oil Co.*, 613 So.2d 1272, 1275 (Ala. 1993).

2. Restatement (Second) of Torts § 912.

3. A defendant completes an intentional tort by intentionally causing some compensable damage, and so the causal rule in those cases necessarily involves the extent of damages as in the negligence case discussed above.

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