

presumably the equal of the plaintiff in knowledge of the law and bargaining power. Thus, the court refuses to alleviate the harsh results of a bargain between parties who have negotiated on equal terms.

Torts—Civil Liability of Suicide's Estate for Shock Occasioned by Discovery of Body—[Iowa].—The plaintiff discovered the gory body of a friend who had cut his throat in her kitchen. She instituted a suit for damages against the administrator of the estate of the suicide for the shock which she suffered as a consequence of the discovery. The trial court granted a directed verdict for the defendant.² Upon appeal to the Supreme Court of Iowa, *held*, that the question as to whether the deceased's action was "wilful" should have been sent to the jury; and if the conduct were "wilful," a cause of action existed. Judgement reversed. *Blakeley v. Shortal's Estate*.²

There is almost no authority in the common law on the unique question whether suicide may be treated as tortious conduct. The suit in the present case appears to be the first of its kind to be recorded in the American reports.³ Two Scottish cases have been reported involving actions by rooming-house keepers against the administrators of the estates of tenants who had committed suicide in their rooms. In the first of these cases, where the manner of suicide was similar to that in the instant case, recovery was allowed,⁴ while in the second, where the suicide was by hanging, the action failed.⁵ In each case the basis of the action was that there had been a breach of an implied contract to use the premises only for dwelling purposes, a tenuous theory which would not support the action in the principal case.

the unequal knowledge of the parties is expressly recognized and restitution is granted. *Bull, Exec'r v. United States*, 295 U.S. 247 (1935); *Carpenter v. Southworth*, 165 Fed. 428 (C.C.A. 2d, 1908); *Rest., Restitution* § 46(b) (1937); *Mistake of Law: A Suggested Rationale*, 45 *Harv. L. Rev.* 336, 342 n. 19 (3) (1931). Compare the result of the distinction between latent and patent mistake in bids, in giving relief more readily against skilled specialists than against unskilled homeowners. *Lubell, Unilateral Palpable and Impalpable Mistake in Construction Contracts*, 16 *Minn. L. Rev.* 137 (1932).

² The basis of the directed verdict was that the injury arose at the time of the discovery of the body, which was after the deceased's death. Consequently there was no cause of action in existence at the time of the death of the deceased which might be brought by virtue of the Iowa survival statute against the administrator. The Iowa survival statute is very broad: "All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same." Iowa Code (1939) § 10957. The Supreme Court held that the cause of action was the wrongful conduct, which took place prior to death.

³ 20 N.W. 2d 28 (Iowa, 1945).

⁴ In 1924 an action was initiated by a boardinghouse keeper in St. Louis against the administrator of the estate of a boarder who had committed suicide. There is no record of the case in the official reports. 28 *Law Notes* 23 (1924).

⁵ *A and Another v. B's Trustees*, 13 *Scots L.T.* 330 (1906).

⁶ *Anderson v. M'Crae*, 47 *Scot. L. Rev. (Sheriff Court Reports)* 287 (1931).

The attitude of the early common law that suicide was a most reprehensible crime⁶ still appears in the opinions of many American courts.⁷ But since the successful suicide is beyond temporal punishment,⁸ the criminality of the act is involved only in the determination of collateral questions, such as the consequence of aiding and abetting, or of attempting, suicide. Both acts have been held to be criminal conduct.⁹ Where suicide is regarded as criminal, the criminality ought to make the conduct sufficiently wrongful to constitute the basis of tort liability.¹⁰ In *State v. Campbell*,¹¹ however, the Iowa court held that since

⁶ 4 Bl. Comm. *189. An earlier writer explained the criminality of suicide as follows: "Whatever the Reasons are, in relation to Civil Society, for which the Murther of another is forbidden; the same hold and perhaps with greater force, as to the Murthering of ones self; those Reasons are chiefly the *having no Authority*, the *depriving the Publick of a Subject*, the *impossibility of making any Equivalent Satisfaction*. The two first of these are of the same force as to the Murthering of ones self, the third seems to be of much greater; for he that Murthers another may make some satisfaction as to publick Justice, by the forfeiture of his own Life, and he that forfeits his Life publicly upon this Account makes some amends to the State, under which he lives, by deterring others from committing the same Crime by the Example of his Punishment; whereas on the contrary, he that Murthers himself, not only evades all satisfactions to the Publick as to the paying Personal and Sensible Punishment; but in so doing gives encouragement to others to commit the same: Wherefore Self-Murther may be a greater Crime in regard to the Publick, especially if it be a publick Person, than the Murthering of another Man; and if so is undoubtedly forbidden by that Law of Nature, *Thou shalt not kill*: otherwise that Law would be very imperfect, and reach only to the lesser Crime, and permit the greater." Adams, An Essay Concerning Self-Murther, Wherein is endeavour'd to prove, that it is Unlawful according to Natural Principles 26-27 (London: 1700).

⁷ See *Hughes v. New England Newspaper Pub. Co.*, 312 Mass. 178, 179, 43 N.E. 2d 657, 658 (1942); *Southern Life and Health Ins. Co. v. Wynn*, 29 Ala. App. 207, 210, 194 So. 421, 423 (1940); *State v. La Fayette*, 15 N.J. Misc. 115, 188 Atl. 918, 919 (1937); *Commonwealth v. Hicks*, 118 Ky. 637, 642, 82 S.W. 265, 266 (1904); *Commonwealth v. Mink*, 123 Mass. 422 (1877).

⁸ At one time suicides were "punished" by an ignominious burial in the highway with a stake driven through the body, and a forfeiture of all the suicide's goods and chattels to the king. 4 Bl. Comm. *190.

⁹ Attempted suicide: *State v. Carney*, 11 Vroom (N.J. Law) 478, 55 Atl. 44 (1903); see *Commonwealth v. Smith*, 312 Mass. 557, 559, 45 N.E. 2d 742, 743 (1942); aiding and abetting suicide: *Commonwealth v. Hicks*, 118 Ky. 637, 82 S.W. 265 (1904); *Burnett v. People*, 204 Ill. 208, 68 N.E. 505 (1903).

It has been argued that inasmuch as suicide cannot be punished, it is not criminal, and that consequently aiding and abetting and attempting suicide are not illegal, because the act aided or the act attempted is not illegal. *Sanders v. State*, 54 Tex. Crim. 101, 112 S.W. 68 (1908); *Withers*, Status of Suicide as a Crime, 19 Va. L. Reg. 641 (1914). Under this line of reasoning France, Germany, and Austria do not treat attempted suicide or aiding and abetting suicide as criminal. Spain, Hungary, the Low Countries, and Brazil consider aiding and abetting suicide to be criminal conduct. *Garraud*, 4 *Traité théorique et pratique du droit pénal français* § 1671 (2d ed., Paris: 1900).

¹⁰ However, a plaintiff, who suffered shock upon discovery of her sister's brutally murdered body, was denied recovery from the estate of the deceased murderer, on the ground that the misconduct was not directed toward the plaintiff. *Koontz v. Keller*, 52 Ohio App. 265, 3 N.E. 2d 694 (1936).

At common law if self-destruction is committed while the actor is insane, it is not suicide

only statutory crimes were recognized in that state, attempted suicide was not criminal. In view of the *Campbell* decision it must be assumed that the Iowa court in the present case regarded the suicide as wrongful upon grounds other than that it was criminal. The disapprobation of suicide which appears in law, religion, and society in general²² should be sufficient cause for placing self-destruction below the standard of conduct which is required of the average reasonable and prudent man. Hence, it is arguable that a suicide has behaved negligently, if his manner and place of self-destruction demonstrates that results such as those encountered in the instant case would foreseeably arise.²³

The treatment of suicide as tortious conduct is further complicated by the fact that almost invariably the damages claimed would be solely of a mental nature. Though progress has been made since Lord Wensleydale's famous dictum that no redress could be made for mental suffering,²⁴ many restrictions are

and is no crime. 4 Bl. Comm. *189. Thus where the act of suicide is alleged to be tortious, the question of sanity is important if the wrongfulness of the act is based upon its criminality. If, however, the wrongfulness is predicated upon other than the criminal nature of the act, sanity is not in issue, since an insane person is liable for his torts. *McGuire v. Almy*, 297 Mass. 323, 8 N.E. 2d 760 (1937); *In re Guardianship of Meyer*, 218 Wis. 381, 261 N.W. 211 (1935); *William v. Hays*, 143 N.Y. 442, 38 N.E. 449 (1894); *Prosser, Torts* 1089-92 (1941).

²² 217 Iowa 848, 251 N.W. 717 (1933).

²³ Society's disapproval of self-destruction pre-dates the Christian era. In Thebes suicides were deprived of burial rights; in Athens the hand that caused the act was severed and buried separately; and in Miletus the bodies of all virgins who committed suicide were exposed in the market place. There was no moral or religious stigma attached to suicides by the Jews until after the commencement of the Christian era. The Stoics approved of suicide, but Blackstone regarded them as cowards. In Rome the estate of a man who committed suicide to avoid trial was forfeited. Ecclesiastical dicta against suicide appeared very early and later were endorsed by the Protestant churches. Today, with the notable exception of Japan, the laws, religions, and customs of most nations reflect a disapprobation of self-destruction. *Dublin and Bunzel, To Be or Not To Be* 239 (1933); *Strahan, Suicide and Insanity* 195 (1893); *Accarias, 2 Précis de droit romain* 178, n. 3 (Paris, 1879).

²⁴ To describe a suicide as "negligent" conduct appears surprising only because the courts have had little opportunity to consider cases where the act of self-destruction has inflicted injury upon another person. When an act is said to be "negligent" the act is characterized as being below a standard set by the customs and mores of the society. Where the injurious consequences of the substandard conduct should be foreseeable, the resulting loss is imposed upon the actor. Since suicide is conduct below the level set by society, there would appear to be no reason why it should not be described as negligent when, as in the principal case, the actor should foresee the harmful consequences of his act. A similar problem of characterization arises when the suicide is described as "wilful." See note 21, *infra*. The use of either term should be unobjectionable, provided it is understood that both words are used only as shorthand descriptions of substandard conduct which causes mental or physical damage.

²⁵ "Mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act complained of causes that alone." *Lynch v. Knight*, 9 H.L. Cas. 577, 598 (1861).

The extension of the scope of liability for mental injuries has been contemporaneous with advancements in the field of psychiatry. Thus, as more credence is given to psychiatric testimony, it is not improbable that mental injuries will be treated on an equal footing with injuries of a physical nature. *Goodrich, Emotional Disturbance as Legal Damage*, 20 Mich. L. Rev. 497 (1922).

still placed upon this type of action. Recovery is generally allowed where wilful misconduct is directed specifically toward the plaintiff, as in assault¹⁵ and practical-joke¹⁶ cases. Claims are often defeated, however, on the ground of "remoteness" or failure to show a "breach of duty," where the wilful misconduct was not directed toward the plaintiff,¹⁷ or where the conduct was negligent.¹⁸ These limitations are but verbal manifestations of a general reluctance to grant recoveries because of the fear that claims of mental injuries may be easily simulated and fraudulent recoveries obtained.¹⁹ In *Watson v. Dilts*,²⁰ however, the Iowa court held a person who indulged in wrongful conduct to be liable for the mental injury suffered as a consequence of the conduct, even though the wrongful act was not directed toward the plaintiff. In view of this decision it appears, by the use of the term "wilful" to describe the basis of liability in the principal case, that the court did not require the plaintiff to have shown that the wrongful act was directed at her.²¹ Were such an allegation necessary, it would be almost impossible to recover for mental injuries suffered as a result of discovering the body of a suicide.²²

Unusual as the instant case may be, the outcome is not surprising in view of

¹⁵ *Allen v. Hannaford*, 138 Wash. 423, 244 Pac. 700 (1926); *Holdorf v. Holdorf*, 185 Iowa 838, 169 N.W. 737 (1918).

¹⁶ *Wilkinson v. Downton*, [1897] 2 Q.B. 57; *Great Atlantic and Pacific Tea Co. v. Roch*, 160 Md. 189, 153 Atl. 22 (1931).

¹⁷ *Koontz v. Keller*, 52 Ohio App. 265, 3 N.E. 2d 694, (1936); *Phillips v. Dickerson*, 85 Ill. 11 (1877). *Contra*: *Hill v. Kimball*, 76 Tex. 210, 13 S.W. 59 (1890); *Roger v. Williard*, 144 Ark. 587, 223 S.W. 15 (1920).

¹⁸ *Waube v. Warrington*, 216 Wis. 603, 258 N.W. 497 (1935); *Sanderson v. Northern Pacific R. Co.*, 88 Minn. 162, 92 N.W. 542 (1902). *Contra*: *Bowman v. Williams*, 164 Md. 397, 165 Atl. 182 (1933); *Hambrook v. Stokes Brothers*, [1925] 1 K.B. 141; see *Hallen*, *Damages for Physical Injuries Resulting from Fright or Shock*, 19 Va. L. Rev. 253 (1933). Even in those states where a strict rule applies, damages for mental injuries may be recovered, if the magic touchstone of impact occurs so that there is at least a modicum of physical injury. *Prosser*, *Torts* 214 (1941); *Harper*, *A Treatise on the Law of Torts* 155 (1933). It has been said that since there is a physical injury, the damages, in part at least, are genuine. *Hohmans v. Boston Elevated R. Co.*, 180 Mass. 456, 458, 62 N.E. 737 (1902).

¹⁹ See *Harper*, *op. cit. supra*, note 18, at 155; *Prosser*, *Torts* 56 (1941); *Hallen*, *op. cit. supra*, note 18, at 254.

²⁰ 116 Iowa 249, 89 N.W. 1068 (1902).

²¹ The court's decision that the jury must determine whether the act was "wilful" is misleading. The decision could be construed as requiring the jury to decide no more than that death was by self-destruction. The defendant did not concede that the deceased had killed himself. Appellee's Brief and Argument p. 14. The word "wilful" might also imply that the jury must find that the deceased was sane when he killed himself. However, the court probably intended to indicate that the jury had to decide whether suicide under the circumstances in the present case was the kind of conduct for which liability should be imposed, if it resulted in injury to another person. Because of the varied connotations of the word when used in connection with suicide, "wilful" seems less satisfactory than "negligent" as a method of describing tortious self-destruction. Note 13, *supra*.

²² It would be difficult to prove that a person committed suicide in order to cause mental suffering to the individual who discovered the body.

the horror of the act. Odd as it may seem that liability could depend upon the manner of the suicide, such a result is not improbable.²³ The law cannot give protection against the harshness of everyday life;²⁴ and unpleasant as it may be, the discovery of bodies is not an infrequent occurrence. The degree of shock produced would ordinarily approximate the horror of the sight. Though suicide by poison may expose the discoverer merely to an unpleasant and gruesome experience, the turning of a woman's kitchen into a slaughterhouse can foreseeably expose her to a severe nervous shock. Thus, it can be argued that the particular conduct in the principal case (whether it be described as "negligent" or "wilful") is of such a character that liability should be imposed for the damages for shock which are the normal consequence of the discovery of the body.

²³ The only factual difference between the two Scottish cases (notes 4 and 5, *supra*) was the manner of self-destruction. Recovery was allowed where the suicide cut her throat. Where the suicide was by hanging the court denied recovery and stated, in reference to the earlier case, "from the report in that case it would appear that the material damages arose directly from the nature of the suicide which turned the bathroom into a 'slaughter-house.'" *Anderson v. M'Crae*, 47 Scot. L. Rev. (Sheriff Court Reports) 287, 292 (1931).

²⁴ Thus propositions of illicit intercourse in themselves are not actionable, regardless of how indignant and shocked the plaintiff may be, *Reed v. Maley*, 115 Ky. 816, 74 S.W. 1079 (1903); and the shock of a telephone operator due to a customer's swearing at her is not actionable, *Brooker v. Silverthorne*, 111 S.C. 553, 99 S.E. 350 (1918); but the mishandling of dead bodies goes beyond harshness and is actionable, *Koerber v. Patek*, 123 Wis. 453, 102 N.W. 40 (1903); see *Magruder, Mental and Emotional Disturbance in the Law of Torts*, 49 *Harv. L. Rev.* 1033 (1936).