



Association for Scientific Advancement  
in Psychological Injury and Law



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# CEW Terms & Definitions

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Adopted from Young and Shore (2007)

## LEGAL TERMS



# *BASIC PIL TERMS*

## **Admissible Evidence**

*Definition.* Refers to evidence relevant to the case at hand, such that it is not prejudicial in an unfair manner, nor based on hearsay, nor considered privileged in nature

(Garner, 2004, p. 595)



# *BASIC PIL TERMS*

## **Bystander Proximity Rule**

The courts used to consider only physical injury as tortious, but this gradually expanded to emotional injury and, as this rule demonstrates, the injury need not be directly experienced.

# BASIC PIL TERMS

## **Bystander Proximity Rule** *con't*

*Definition.* “Recovery for emotional injury allowed even if plaintiff not in zone of danger, was close to the zone, observed the accident, and was closely related to the victim” (Walker & Shapiro, 2003, p. 165).



# *BASIC PIL TERMS*



## **Crumbling-Skull Rule**

Canadian case law recognizes preexisting vulnerabilities on which effects of events in question may act and which may reduce liability, depending on their severity.

# BASIC PIL TERMS

## **Crumbling-Skull Rule** *con't*

“Crumbling skull” cases refer to greater preexisting vulnerabilities than “thin” skull cases, and, at their extreme, crumbling skull cases have preexisting vulnerabilities that leave no room for additional effects of any sort due to an event in question.



# *BASIC PIL TERMS*

## **Expert Witness**

A specialized or professional degree does not in and of itself confer expert status.

*Comment/Note.* “The forensic expert should not be the litigant’s advocate, but may argue for his or her (i.e., the expert’s) opinions” (Reid, 1999, p. 167).





# *BASIC PIL TERMS*

## **Fit**

*Definition.* Whether “the expert testimony effectively links the scientific evidence to the facts in the case in such a way that it aids the jury in its decision making” (Krauss & Sales, 2003, p. 549).



# BASIC PIL TERMS

## Gatekeeping Controls

Trial judges have been instructed by *Daubert* and *Mohan* to keep out unqualified experts who may promote “junk” science. Noteworthy also are the corresponding *psychological gatekeeping controls* articulated in psychology’s ethical principles ... and forensic guidelines” (Weissman & DeBow, 2003, p. 47).



# *BASIC PIL TERMS*

## **Malingering**

*Definition.* "The essential feature of Malingering is the intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs."



# *BASIC PIL TERMS*

## **Malingering** *con't*

"Under some circumstances, Malingering may represent adaptive behavior – for example, feigning illness while a captive of the enemy during wartime."



# *BASIC PIL TERMS*

## **Malingering**

“Malingering should be strongly suspected if any combination of the following is noted:”

“1. Medicolegal context of presentation (e.g., the person is referred by an attorney to the clinician for examination)”



# *BASIC PIL TERMS*

## **Malingering**

“2. Marked discrepancy between the person’s claimed stress or disability and the objective findings”

“3. Lack of cooperation during the diagnostic evaluation and in complying with the prescribed treatment regimen”



# *BASIC PIL TERMS*

## **Malingering**

“4. The presence of Antisocial Personality Disorder”

“Malingering differs from Factitious Disorder in that the motivation for the symptom production in Malingering is an external incentive, whereas in Factitious Disorder external incentives are absent.



# *BASIC PIL TERMS*

## **Malingering**

“Evidence of an intrapsychic need to maintain the sick role suggests Factitious Disorder. Malingering is differentiated from Conversion Disorder and other Somatoform Disorders by the intentional production of symptoms and by the obvious, external incentives associated with it.”





# *BASIC PIL TERMS*

## **Malingering** *con't*

“In Malingering (in contrast to Conversion Disorder), symptom relief is not often obtained by suggestion or hypnosis.”

Adopted from the DSM-IV-TR (2000)



# *BASIC PIL TERMS*

## **Material Cause**

Material cause can refer to the sole legal cause or a factor that is part of it (a contribution).

*Comment/Note.* “Sometimes the but-for test is not appropriate. Courts have then employed a *material contribution* test.



# *BASIC PIL TERMS*

## **Material Cause** *con't*

If the MVA can be viewed as a material contribution to the development of PTSD [Posttraumatic Stress Disorder], despite the presence of other causal factors, then causation may be found” (Douglas et al., 1999, p. 276).



# *BASIC PIL TERMS*

## **Mitigation-of-damages**

*Definition.* The plaintiff who has experienced an injury or a breach of contract must take reasonable steps to alleviate the effects that ensue (Garner, 2004, p. 1024), or to avoid aggravating the injury and thereby increasing damages (Reid, 1999, p. 179).



# *BASIC PIL TERMS*

## **Mitigation-of-damages** *con't*

*Comment/Note.* Where plaintiffs fail to reasonably attempt to mitigate losses, damages may be reduced (Garner, 2004, p. 1024), or denied.



# *BASIC PIL TERMS*

## **Preponderance of the evidence**

*Definition.* The standard that the proffered evidence “more likely than not” is convincing, credible, reasonable, and probable, outweighing the evidence against it.



# *BASIC PIL TERMS*

## **Probative**

*Definition.* A helpful judgment with factual justification, and without preconceived elements (Garner, 2004, p. 1240).

*Comment/Note.* “Courts can exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice” (Garner, 2004, p. 1240).



# *BASIC PIL TERMS*

## **Relevance**

Relevance concerns whether evidence is applicable to a particular case.

*Definition.* “[T]hat the testimony offered be relevant to the legal issues at hand and assist the trier of fact in resolving the legal question” (Brodsky, Caputo, & Domino, 2002, p. 18).





# *BASIC PIL TERMS*

## **Reliability**

The equivalent concept of legal “reliability” in psychology is “validity,” and not “reliability,” which has a different meaning in psychology than validity. These different meanings for the same term across the two fields can be rather confusing to the uninformed.



# *BASIC PIL TERMS*

## **Theory of the case**

*Definition.* A theory proposed as the cause of the plaintiff's injuries; usually, it simplifies the typical multiple causes involved to the event in question and its consequences, or to an absence of any relevant effect and liable cause.



# *BASIC PIL TERMS*

## **Thin-skull Rule**

A “crumbling skull” case usually reduces liability, a “thin skull” case does not. An injured individual having a putative “thin skull” before the injury had taken place already had a latent, preexisting condition or vulnerability on which the injury acted, or which complicated it.

# BASIC PIL TERMS

## **Thin-skull Rule** *con't*

A thin skull case conceivably can increase overall cost relative to a “normal skull” case, because in such cases preexisting vulnerability exacerbates event-induced symptom severity, the need for treatment, the degree of disability, and so on, and the defendant must take the complainant as she or he had been before the causal event.

# BASIC PIL TERMS

## Tort

*Definition.* “Civil wrong in which a person has breached a duty to another, which requires proof of the following: that a legal duty was owed to the plaintiff by the defendant; that the defendant breached the duty; and that the plaintiff was injured as a [result of a] proximate cause of action, such as negligence” (Koocher, 1998, p. 513).



# *BASIC PIL TERMS*

## **Trier of Fact**

*Definition.* “One or more persons—such as jurors in a trial or administrative-law judges in a hearing—who hear testimony and review evidence to rule on a factual issue.” Also termed *Fact-finder* (Garner, 2004, p. 629).



# *BASIC PIL TERMS*

## **Ultimate Issue**

Experts should provide opinion on such matters only when allowed by the law, and only after weighing all the evidence from a comprehensive assessment. “[T]he law allows for such ‘ultimate issue’ testimony by psychologists in all cases but insanity” (Krauss & Sales, 2003, p. 546). “[T]hey should avoid doing so unless they can be confident in their conclusion” (Krauss & Sales, 2003, p. 556).



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# CEW Terms & Definitions

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## PSYCHOLOGICAL TERMS





# *BASIC PIL TERMS*

## **Disability**

*Definition.* “[A]n alteration of an individual’s capacity to meet personal, social, or occupational demands or statutory or regulatory requirements because of an impairment” (Cocchiarella & Andersson, 2001, p. 8).



# *BASIC PIL TERMS*

## **Disability** *con't*

An enduring physical or mental impairment that noticeably interferes with function in core areas of life, such as self-care, mobility, communication, social interaction, sexual activity, studying, parenting, or employment (Corsini, 2002, p. 282; VandenBos, 2007, p. 285).



# *BASIC PIL TERMS*

## **Handicap**

*Definition.* A physical or emotional hindrance, obstacle, or impairment that stops, interferes with, or otherwise alters normal daily-living activities in the physical, social, or functional realms, for example, occupationally (Corsini, 2002, p. 434; VandenBos, 2007, p. 428). Often, a handicap is understood in terms of social and cultural perceptions and expectations.



# *BASIC PIL TERMS*

## **Impairment**

*Definition.* “Loss, loss of use, derangement of body part, organ system, or organ function” (Cocchiarella & Andersson, 2001, p. 8).



# *BASIC PIL TERMS*

## **Biopsychosocial Model**

*Definition.* “The biopsychosocial model maintains that health and illness are caused by multiple factors, and the operation of biological, psychological, and social processes must be considered simultaneously in terms of etiology and treatment” (Thompson & Van Loon, 2002, p. 144).



# *BASIC PIL TERMS*

## **Idiographic**

*Definition.* Pertaining to the description or understanding of an individual person or of an individual case. Indicates assessment procedures and data gathered in them that are not necessarily generalizable to the population level or toward the formulation of more general laws applicable to the average person or case (Corsini, 2002, p. 470; VandenBos, 2007, p. 465).



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# *BASIC PIL TERMS*

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## **Nomothetic**

*Definition.* Relating to the formulation of general laws applicable to populations as the goal of the scientific process, in contrast to the study of the individual person or case; investigation aimed at discovering general or universally valid laws or principles of behavior that characterize the average person or case (Corsini, 2002, p. 646; VandenBos, 2007, p. 627).



# *BASIC PIL TERMS*

## **Reliability**

*Definition.* “The reliability of a test refers to its degree of stability, consistency, predictability, and accuracy. It addresses the extent to which scores obtained by a person are the same if the person is reexamined by the same test on different occasions” (Groth-Marnat, 2003, pp. 12–13).





# *BASIC PIL TERMS*

## **Sensitivity**

*Definition.* “[R]efers to the percentage of true positives that the instrument has identified” (Groth-Marnat, 2003, p. 22).



# *BASIC PIL TERMS*

## **Specificity**

*Definition.* Refers to “the relative percentage of true negatives” that the instrument has identified (Groth-Marnat, 2003, p. 22).



# *BASIC PIL TERMS*

## **Validity**

*Definition.* “The most crucial issue in test construction is validity. Whereas reliability addresses issues of consistency, validity assesses what the test is to be accurate about. ...a valid test is one that accurately measures the variable it is intended to measure” (Groth-Marnat, 2003, p. 17).