
Volume 33
Issue 3 *Dickinson Law Review - Volume 33,*
Issue 3

3-1-1929

Dickinson Law Review

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Dickinson Law Review, 33 DICK. L. REV. 133 (1929).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol33/iss3/3>

This Front Matter is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

Dickinson Law Review

Published October, January, March, May, by Dickinson Law Students

Vol. XXXIII MARCH, 1929 Number 3

Subscription Price \$1.50 Per Annum 50 Cents Per Number

EDITORIAL BOARD

W. HUDSON R. UNGER, *Editor-in-Chief*

JOHN P. FEELEY, *Business Manager*

JAMES J. CURRAN

J. W. McNULTY

R. T. HARRIGAN

OLIVER S. SHIELDS

HAROLD W. HOUCK

HERVEY SMITH

MORTON S. KLAUS

WILLIAM VALENTINE

EMANUEL LEOPOLD

CHARLES S. WILLIAMS

CONTRIBUTORS TO THIS ISSUE

JOHN W. KEPHART, A. B., Allegheny College; LL. B., Dickinson College; LL. D., Allegheny College and Dickinson College. Judge Pennsylvania Superior Court 1914-1918; Justice Pennsylvania Supreme Court 1919—.

HENRY A. FULLER, A. M., Princeton University; LL. D., Lafayette College. Judge of Courts of Luzerne County, Pennsylvania, 1907-1927.

Rule of the Supreme Court of Pennsylvania Creating The Board of Governance of the Pennsylvania Bar, Adopted October 5, 1928, Effective January 1, 1929.

Rule 17. (a) A member of the bar of this court who has been suspended or disbarred by any other Pennsylvania court of record, will, on certificate of the fact being filed in this court, be suspended or disbarred from practicing here, unless, within the time prescribed therefor, he begins and successfully prosecutes an appeal; pending such appeal, the order of the court below will be operative unless a supersedeas is allowed.

(b) A board of standing masters is hereby created, to be known as "The Board of Governance of the Pennsylvania Bar." It shall consist of eleven members of the bar, appointed by the Supreme Court; one of them to be designated by this Court as Chief Standing Master, and he shall be the executive head of the board. The board may choose a secretary and such additional officers as it may deem necessary.

(c) When the board is first selected, three of its members shall be appointed for the term of three years, four for the term of four years, and four for the term of five years, and thereafter all regular terms shall be five years. In case of a vacancy arising during the term of any member, a new member shall be appointed for the unexpired time. After five years continuous service, no person shall be eligible for more than one reappointment.

(d) All complaints against members of the bar of this court, alleging misconduct, shall be made to the board; if made to the court, they will be forthwith certified to the board, which, if a majority of that body considers the matter of sufficient importance to require further investigation, shall direct the complainant to file a formal petition setting forth, in paragraph form, the charges against the respondent. If the board deems the petition sufficient, it shall require the respondent to file an answer, and may thereafter order a hearing on the relevant issues of fact before a committee of three of its members, or before one such member, designated by the chief master, and two outside members of the bar, appointed by this court as temporary hearing masters, if the board recommends the latter course.

(e) The board may appoint one or more out-
siders of the bar to prosecute a complaint, when it deems such procedure advisable.

(f) Witnesses may be summoned and examined under oath or affirmation; a complete record of their testimony shall be made by the committee and delivered to the board when the former submits its report to the latter.

(g) The masters conducting hearings shall report their recommendations to the board, and a majority of that body shall review each report. If, after this review, disciplinary measures against respondent are considered proper, the board shall make report to this court, recommending such action as a majority of its members may approve. Every final report so made shall be accompanied by the complete record in the case, and the recommendations, if any, of dissenting members of the board shall also be filed with the report.

(h) Upon the filing of a final report in this court, the prothonotary shall forthwith send a copy of it to the respondent and also one to the complainant together with notice to the former that he may, within thirty days, file specific exceptions. If exceptions are filed they shall be considered as though they were assignments of error treating the majority recommendation against respondent as a final decree; and, from this point on, the matter shall be proceeded with under our general rules, in all respects as though the exceptant were prosecuting an appeal in a disbarment case, with the board as the appellee. Where exceptions are filed, the board may designate one or more of its members to represent it in this court, or it may be represented by other counsel. If no exceptions are filed within thirty days, the report will be acted upon without further delay.

(i) When a petition for suspension or disbarment is filed in any court of record of this Commonwealth other than the Supreme Court, or when proceedings of that character are commenced against a member of the bar by any such other court of its own initiative, if the tribunal in question certifies the complaint to the board created by these rules, the latter may act thereon, whether the respondent is or is not a member of the bar of this court; but in such cases procedure similar to that stipulated for petitions filed in this court shall be conducted in the tribunal where the matter originated, with right of appeal to this court. Like procedure shall be followed where a complaint is filed with the board or in this court against a lawyer who is not a member of its bar; but in such cases the report of the board, with its recommendations, shall be made to, and all later proceedings shall be conducted in, the particular court where the respondent misbehaved,

if he be a member of the bar of that tribunal, and, if not, to and in any court of record of a county where the respondent is a member and either resides or has his principal office. When a decree of suspension or disbarment is entered by any court of record of Pennsylvania, the board shall forthwith send a copy thereof to all other such courts in the state.*

(j) The hearing masters, to cover their personal expenses, shall be paid, while engaged in the performance of their duties, out of the funds in the hands of the Board, contributed by the Pennsylvania Bar Association or otherwise received, a per diem compensation not exceeding that paid to common pleas judges when sitting on special assignments in districts other than their own. The secretary's salary, clerical help, and all other expenses, shall also be paid out of such funds.

(k) Whenever a majority of its members deem such course advisable, the board may proceed against a member of the bar upon its own initiative without a complaint having been made or a petition filed. In such case, the board shall set forth, in paragraph form, the charges made by it, cause a copy thereof to be sent to the respondent, and thereafter, conduct all proceedings as in the case of a petition filed.

(l) All petitions and answers must be verified by affidavit, and all later proceedings shall conform, as near as may be, to the principles and practice in equity cases. To accomplish this purpose, the board may adopt such consonant rules as it considers necessary, subject, however, to any action which this court shall deem advisable.

The Supreme Court appointed the following Standing Masters and fixed their respective terms, from January 1, 1929:—

For the term of five years:—

John Hampton Barnes, Philadelphia, Philadelphia County, Chief Standing Master;
J. Roy Dickie, Pittsburgh, Allegheny County;
Thomas C. Hare, Altoona, Blair County;
Bernard J. Myers, Lancaster, Lancaster County.

For the term of four years:—

Francis B. Bracken, Philadelphia, Philadelphia County;

*"Disbarment or suspension * * * by the Supreme Court (will) without more, operate as a disbarment or suspension * * * in every other court of this Commonwealth". Section 2, Act of May 8, 1909, P. L. 475.

Charles F. C. Arensberg, Pittsburgh, Allegheny County;
Aaron S. Swartz, Jr., Norristown, Montgomery County;
Archibald M. Hoagland, Williamsport, Lycoming County.

For the term of three years:—

William S. Rial, Greensburg, Westmoreland County;
W. A. Valentine, Wilkes-Barre, Luzerne County;
Arthur W. Mitchell, Erie, Erie County.

The Board appointed H. G. Gabell, Secretary, 1601 Morris Building, Philadelphia.

Under the authority of and subject to Rule 17, *supra*, the Board adopted the following

RULES

1. Complaints shall be in writing, and shall state the facts specifically.

2. The complainant shall, upon notice, file with the Board a formal petition, verified by affidavit, stating in paragraphs the charges against the respondent.

3. The respondent shall, upon notice accompanied by a copy of the petition, file with the Board within thirty days an answer to the petition, in paragraphs verified by affidavit.

4. Twenty days' notice shall be given to the complainant and to the respondent of the time and place of a hearing by the Masters.

5. If the respondent fails to file an answer within thirty days, a time and place of hearing will be fixed, of which notice shall be given to the complainant and to the respondent, and the Masters will proceed to hearing.

6. In case the Board acts upon its own initiative without a complaint made or a petition filed, it shall state the charges in paragraphs and send a copy thereof to the respondent, and proceed as in the case of a petition filed.

7. At the hearings the parties may be heard in person or by counsel.

8. Notice of action dismissing a petition and notice of filing a final report by the Board shall be given to the complainant and to the respondent.

9. A copy of exceptions filed by the respondent to a final report shall be sent to the Board.

10. Complaints, petitions, answers, and all communications shall be made to the Board and sent to the Secretary.

NECESSITY AS A DEFENCE IN CRIMINAL CASES—The wreck of the *Vestris* has been followed, as such disasters usually are, by conflicting stories as to the behavior of the members of the crew and the passengers under the extreme pressure of the circumstances to which they were subjected. These stories have revived interest and renewed speculation as to the existence and scope of "necessity" as a defence in criminal cases.

It has been stated as a general rule that "an act which would otherwise constitute a crime is justifiable or excusable if done under necessity."¹ *Necessitas non habet legem*. The term "necessity" is used, however, to describe two distinct defences: (1) Physical impossibility or necessity; and (2) the extreme pressure of circumstances.² The treatment of these two defences as if they were the same is one of the oldest "fallacies of the law".³

The theory of the first defence, which has been said to be "true necessity", is that an act cannot be a crime if it is purely involuntary, *i. e.*, if the doing of the act in question in no degree depended upon the wish or desire of the person charged with doing it.⁴ It may be defined as existing whenever the act complained of does not depend in any (even the slightest) degree upon the wish or desire of the person whose conduct is in question.⁵ In such cases "as the party is mentally passive, it cannot be said that he acts."⁶ "The *prima facie* agent is not really the agent at all, but the instrument or means."⁷

¹16 C. J. 91.

²Clark and Marshall on Crimes, 3rd ed. sec. 68; May's Criminal Law, 3rd ed. sec. 66.

³The *Eliza Lines*, (1905) 199 U. S. 119, 130, per Holmes, J.

⁴"There may be cases of true necessity where the volition of the defendant has no share in the result". May's Criminal Law, 3rd ed. sec. 68. "The law does not require the impossible. If a man, seeing his duty, has, to the best of his ability endeavored to perform it, the law will not visit punishment upon his failure from inability." Rood, Criminal Law, p. 59.

⁵Stroud, *Mens Rea*, p. 188. "If under circumstances which allow no possibility of choice, one is compelled to do a prohibited act, he is not punishable for no crime is committed." 13 Harvard Law Review, p. 411.

⁶Austin, Jurisprudence, p. 1060 n.

⁷Clark, Analysis of Criminal Liability, p. 33.