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Irresistable Impulse to Commit Crime

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(1) under seal.

(2) based upon a consideration.

(3) drawn in conformity with the Uniform Written Obligations Act.[6]

(4) *contained in a writing which acknowledges the receipt of a consideration therefor.*

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IRRESISTABLE IMPULSE TO COMMIT CRIME

The existence of inclinational insanity described as "an irresistable inclination to kill or to commit some other particular offense"[1] was recognized by the earlier Pennsylvania cases,[2] but whether such insanity must be accompanied by some mental error, illusions, delusions, or hallucination in order that it might constitute a defence was not consistently determined.[3]

The question was discussed principally in homicide cases. Killing under an impulse to kill presupposes that the death of the victim is contemplated and intended. It presupposes also a knowledge of the physical qualities of the act done and of its physical consequences. Suppose there exists also a knowledge of its moral nature and also a knowledge of its legal nature and consequences. Does it, under such circumstances, constitute a defense in criminal cases?

In 1908, Dr. Trickett, after a careful examination of the cases said: "Probably the answer must be in the affirmative. If there can be an irresistable impulse to kill, despite the horror which such an act excites in the normal man, it is not impossible, despite the realization by the mind that suffers it, of the reprobation that killing excites

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[6]Act of May 13, 1927, P. L. 985.

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[1]Coyle v. C., 100 Pa. 573.

[2]C. v. Mosler, 4 Pa. 264; Taylor v. C., 109 Pa. 262; C. v. Hillman, 189 Pa. 548.

[3]Compare C. v. Mosler, 4 Pa. 264 and C. v. Hillman, 189 Pa. 548.

in other minds, and in the Divine mind, and of the penal consequences which will ensue."[4]

Later cases seem to confirm this opinion,[5] but to assert the qualification that it must be shown to be an habitual tendency.[6] In *C. v. Cavalier*[7] the court said: "Defendant's counsel submitted to the court a point couched in the following language: 'If the jury believe that the defendant was actuated by an irresistable inclination to kill the defendant is entitled to an acquittal, even though he were able to distinguish right from wrong'. Complaint is made because the court did not affirm this point. To have done so would have been to have overturned the law on the subject of the responsibility for crime as it has existed in this Commonwealth at least from *C. v. Mosler, (1864) 4 Pa. 264* down to the present day. For the court to have affirmed the point as presented would have been a recognition of the "irresistable impulse" theory without limitations or conditions of any sort. If there has been any departure from this wise rule which makes the test of the accused's responsibility, his ability to distinguish between right and wrong, it has been surrounded at all times with the restrictions imposed by Chief Justice Gibson in *C. v. Mosler*[8] where he said: 'The doctrine which acknowledges this mania (an irresistable impulse to kill) is dangerous in its relations and can be recognized only in the clearest cases. It ought to have been habitual, or at least to have evinced itself in more than a single instance. To establish it as a justification in any particular case, it is necessary to show, by clear proof its contemporaneous existence evinced by present circumstances, or the existence of an habitual tendency developed in previous cases, becoming in itself a second nature.' "

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[4]Criminal Law, p. 1104.

[5]C. v. De Marzo, 223 Pa. 573. "The power to distinguish right and wrong is not always the only test of responsibility, since this power may exist without the power of self control."

[6]C. v. Calhoun, 238 Pa. 474.

[7]284 Pa. 311, 131 Atl. 229.

[8]4 Pa. 267.

In the most recent case, *C. v. Schroeder*,[9] the court apparently holds that "irresistable impulse" even if shown to be habitual is not a defense. The court said: "This recital of facts we have deemed necessary because of the main defense interposed in the appellant's behalf, which was that she was the victim of an uncontrollable impulse to rob, steal and flee. * * * * Every habitual criminal might excuse his wrongdoing on the ground that his impulses moved him to break the law. It may be that unrestrained impulses operate in many crimes, but society for its own protection cannot recognize such a state of mind as excusing the wrongdoer. The court should have told the jury that the defense of irresistable impulse is one which our law does not recognize." The court cited *C. v. Mosler, supra.*

A decision that denies an exemptive effect to mental diseases which affect the conative emotional life of an actor, or his power of inhibiting acts that he apparently knows to be wrong and illegal, is sure to be provocative of criticism. In view of the recent progress of medical and psychological learning it is to be regretted that the court was content to base its decision upon a Gibsonian hypothesis propounded in 1846.

W. H. Hitchler.

RECENT CHANGES IN THE INHERITANCE TAX LAWS

The Act of May 16, 1929, P. L. 1795 amending the Inheritance Tax Act of June 20, 1919, P. L. 521 and its supplements has made several distinct changes in the classes of property on the transfer of which a tax is to be levied.

Under the Act of 1919 a tax was to be levied under Section 1 (d), "when any person or corporation comes into the possession or enjoyment * * * * of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act".

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[9]302 Pa. 1, 152 Atl. 835 (Nov. 24, 1930).