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Insanity - Irresistible Impulse

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Insanity—Irresistible Impulse.—The defendant, James Simecek was indicted and convicted of first degree murder of Verna Petan and her three children. He had shot, stabbed and beaten them and then set fire to the farmhouse. Evidence that his motive was to have intimate relations with Mrs. Petan was weak and was disregarded by the trial and appellate courts.

A plea of insanity was entered, based on an irresistible impulse, the result of an epileptic condition. Evidence showed that there were several cases of mental weakness and epilepsy on both sides of the defendant's family. An alienist, Dr. Kamman, a specialist in nervous and mental diseases, gave as his opinion that "at the time he (defendant) killed these people he was having . . . an epileptic seizure resulting in a sudden discharge of nervous energy which comes on abruptly. In such a seizure the uncontrollable desire to kill which is unmotivated so far as any conscious motivation is concerned is almost an automatic act during part of which he is not aware of what he is doing." The facts and circumstances related "evince an unbalanced, abnormal, or diseased mind." It was Dr. Kamman's opinion that the defendant was not responsible for his acts at the time he committed the homicide. The Supreme Court, on appeal, ruled that the trial judge was justified in finding that the defendant was sane when he committed his homicidal acts, saying: "This would be true even if all the expert witnesses produced in rebuttal agreed with Dr. Kamman . . . It is to be borne in mind that under the settled law of this state, insanity from a medical viewpoint does not necessarily constitute legal insanity in that it constitutes a defense in prosecution for crime. One may be medically insane and yet be responsible for his acts." *Simecek* v. *State,* 10 N.W. (2d) 161 (Wis. 1943).

The court adopted the rule as laid down in *Oborn* v. *State*[1]: "The term 'insanity' in the law means such an abnormal condition of the mind, from any cause as to render the afflicted one incapable of distinguishing between right and wrong in the given instance and so rendering him unconscious of the punishable nature of his act."

In *Butler* v. *State,*[2] the court was requested on the part of the accused, to instruct the jury that even though the accused at the time of the homicide knew the wrong of his act, yet he was legally insane, if by impaired will power, resulting from an abnormal condition of the mind, he was unable to resist the impulse to do the deed. That was refused. However, the court stated: "There are things in some of the cases liable to lead to the belief that legal insanity may exist if, though the person be fully conscious of the wrong and its punishable charac-

[1] Oborn v. State, 143 Wis. 249, 126 N.W. 737, 738 (1910).
[2] Butler v. State, 102 Wis. 264, 266, 78 N.W. 590 (1899); Accord: Jessner v. State, 202 Wis. 184, 196, 231 N.W. 634 (1930).

ter, he, because of a perverted mind, is moved by an uncontrollable impulse."

Thus the Wisconsin Court has ruled out the plea of an irrestible impulse as relieving an individual from responsibility for his acts, but has recognized the fact that some mental disease may cause a person to act wrongfully, regardless of the fact that he can distinguish right from wrong concerning the act committed.

Many courts, including the United States Supreme Court,[3] have adopted the irresistible impulse theory in addition to the right and wrong tests. These jurisdictions limit freedom from responsibility to acts where, though "capable of distinguishing between right and wrong, the defendant was impelled to do the act by an irresistible impulse, which means, before it will justify a verdict of acquittal, that his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of the will power to resist the insane impulse to perpetrate the deed, knowing it to be wrong."

Courts recognizing the irresistible impulse theory hold that there can be no legal responsibility without capacity of intellectual discrimination plus freedom of the will.[4] Thus, the legal basis of irresistible impulse is that "freedom of the will" is essential to criminal responsibility. The question is one for the psychiatric expert of many years experience. It involves a thorough mental examination and a study of the defendant's career. For, only by getting his past reactions to situations similar to those presented by the crime and its setting can it be said with any probability that the criminal act being considered could have been resisted or not. It would seem that an impulse, shown to have been irresistible should be just as destructive of the intention and volition necessary to constitute the mental element of a criminal act, as unconsciousness of the act, or mistake of fact.[5]

Courts which have been reluctant to accept the irresistible theory seem to base the exclusion on a belief that no such disorder can exist, or, that if it does exist, that it is too difficult to prove to be allowed as a defense to crime, and, if accepted, would be dangerous to society. On the other hand medical authorities have condemned the right and wrong test as the sole test of insanity, asserting that there are persons who, while capable of appreciating the difference between right and wrong, are, as a matter of fact, under the influence of mental disease and that its effects on the mind and conduct of the patient are facts

[3] Smith v. U.S., 59 app. D.C. 144, 36F (2d) 548, 70 A.L.R. 654 (1929); Accord: Parsons v. State, 81 Ala. 577, 2 So. 854, 60 Am. Rep. 193 (1887); Cline v. Comm., 248 Ky. 609, 59 S.W. (2d) 19 (1933); State v. Moore, 42 N.M. 135, 76P (2d) 19 (1938); Eatman v. State, 169 Miss. 295, 153 So. 381 (1934).

[4] State v. Green, 6P (2d) 177, 78 Utah 580 (1931).

[5] Insanity as a Defense in Criminal Law, Henry Wiehofen, 44, 46 (1933).

to be proved, just as much as were the existence and effect of certain other diseases before they became the subjects of common knowledge.[6]

The questions[7] to be determined in states which have adopted the irresistible impulse test in addition to the right and wrong test are these:

> 1.) Was the defendant at the time of the commission of the alleged crime, as a matter of fact, afflicted with a disease of the mind so as to be either idiotic or otherwise insane?
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> 2.) If such be the case, did he know right from wrong as applied to the particular act in question? If he did not have such knowledge, he is not legally responsible.
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> 3.) If he did have such knowledge, he may nevertheless not be legally responsible if the two following conditions concur:
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> a.) If, by reason of the duress of such mental disease, he had so far lost the power to choose between the right and wrong, and to avoid doing the act in question, as that his agency was at the time destroyed.
>
> b.) And if, at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it solely.

Condition (b) is not essential in some of the states which have adopted the irresistible impulse test.

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[6] Ann. Cas. 1912A36.
[7] Parsons v. State, supra.