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## Criminal Law—New Test for Insanity in Federal Courts

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## Recent Decisions

### CRIMINAL LAW — NEW TEST FOR INSANITY IN FEDERAL COURTS

In spite of a long history of mental disorder and a psychiatrist's testimony to the effect that he was of unsound mind at the time of the act, defendant was convicted of housebreaking by the District Court for the District of Columbia. The Court of Appeals reversed the trial court's finding, that the inference of sanity had not been rebutted, and held instead that the burden should have been shifted to the prosecution to show soundness of mind beyond a reasonable doubt.<sup>1</sup>

Making *Durham v. United States*<sup>2</sup> its vehicle for the adoption of a new test for criminal responsibility, the court held that the new test should be used on retrial and in all future cases in the District of Columbia. The rule adopted, similar to that followed by the courts of New Hampshire since 1870,<sup>3</sup> is simply that the accused will not be held criminally responsible if the unlawful act is the product of a mental disease or defect.<sup>4</sup>

This rule provides that whenever some evidence is introduced to show that the accused suffered from a mental disease or defect when committing the unlawful act in question, the jury will determine his criminal responsibility.<sup>5</sup> If the jury finds no causal relationship between the disease and the act, the accused will be held responsible. The jury, in following this rule, should have no more difficulty in making this determination than it does in civil cases in which it is asked to determine — using medical testimony as a basis — the effects of bodily injury upon total disability of a plaintiff.

Prior to the instant case, the courts of the District of Columbia had followed the majority rule in the United States and England<sup>6</sup> in using the

<sup>1</sup> In *Tatum v. United States*, 190 F.2d 612 (App. D.C. 1950) the verdict of the trial court was reversed when less evidence was introduced than in the case at bar. The only evidence introduced there tending to show unsoundness of mind was that of the accused and three lay witnesses, which contradicted the testimony of two psychiatrists, but the trial court erred in ruling that the burden was not shifted to the prosecution.

<sup>2</sup> *Durham v. United States*, 214 F.2d 862 (App. D.C. 1954).

<sup>3</sup> *State v. Jones*, 50 N.H. 369 (1871); *State v. Pike*, 49 N.H. 399 (1870).

<sup>4</sup> The court uses "disease" in the sense of a condition which is considered capable of either improving or deteriorating, and "defect" in the sense of a condition which is not considered capable of either improving or deteriorating. *Durham v. United States*, 214 F.2d 862, 875 (App. D.C. 1954).

<sup>5</sup> The court attempts to set out what it feels an instruction to the jury should convey. Among the elements are the belief by the jury beyond a reasonable doubt that the accused suffered from such a mental condition as to be the efficient causal factor in the crime. Of course it would not be binding in all cases. *Durham v. United States*, 214 F.2d 862, 875 (App. D.C. 1954).

<sup>6</sup> WEIHOFEN, MENTAL DISORDER AS A CRIMINAL DEFENSE 51 (1954).

right-and-wrong test first enunciated in England in *M'Naghten's Case*.<sup>7</sup> Because of the great interest in the case, the House of Lords, in 1843, asked the opinion of fifteen judges of England on the law governing such cases. The rules laid down by the judges required that the accused be aware of the nature and quality of the act, and that he be capable of distinguishing between right and wrong.<sup>8</sup> These standards comprise the sole test of criminal responsibility used in England<sup>9</sup> and in twenty-nine American states.<sup>10</sup>

A second test, irresistible impulse,<sup>11</sup> is used to modify the right-and-wrong test in at least fourteen states and in the federal courts.<sup>12</sup> Under this modification, the accused is held not responsible if he does not know the wrongfulness of the act, or if he does know that it is wrong, that he cannot control the impulse to commit it. Ohio courts use the right-and-wrong test<sup>13</sup> as modified by the irresistible impulse test.<sup>14</sup>

However poor these rules are for testing criminal responsibility, courts have continued their use, with all the stubborn tenacity that precedent can imply, even though psychiatry has progressed far beyond the point it had reached by 1843. From a limited study of the critics of the tests, it can be said that the greatest objection to them is that they fail to take into consideration the total mental picture of the accused, and in so doing greatly limit the psychiatric expert in his testimony.<sup>15</sup> Under the new rule the expert witness will no longer be limited in the scope of his testimony, by

<sup>7</sup> *M'Naghten's Case*, 10 Clark & Fin. 200 (1843).

<sup>8</sup> For a critical study of *M'Naghten's Case* and the answers of the judges arising therefrom see GLUECK, *MENTAL DISORDER AND THE CRIMINAL LAW* 161-186 (1925).

<sup>9</sup> *Rex v. True*, 16 Crim. App. 164 (1922); *Rex v. Quarmby*, 15 Crim. App. 163 (1921).

<sup>10</sup> Ariz., Cal., Fla., Ga., Idaho, Iowa, Kan., La., Me., Md., Minn., Miss., Mo., Neb., Nev., N.J., N.Y., N.C., N.D., Okla., Ore., Pa., S.C., S.D., Tenn., Tex., Wash., W. Va., and Wis. In six of these states the right and wrong test is established by statute. La., LA. REV. STAT. tit. 14, § 14 (1950); Minn., MINN. STAT. ANN. §§ 610.08, 610.10 (1947); N.Y., N.Y. PENAL LAW § 1120 (1944); N.D., N.D. REV. CODE § 12-0502 (1943); Okla., OKLA. STAT. ANN. tit. 21 §§ 152(4), 154; tit. 22 § 1161 (1937); and S.D., S.D. CODE §§ 13.0505, 34.2001 (1939).

<sup>11</sup> For historical development of this test in the United States see Weihofen, *supra* note 7, at 85.

<sup>12</sup> Ala., Ark., Colo., Conn., Del., D.C., Ill., Ind., Ky., Mass., Mich., Utah., Vt., Va., and Wyo.

<sup>13</sup> *State v. Frohner*, 150 Ohio St. 53, 80 N.E.2d 868 (1948); *Loeffner v. State*, 10 Ohio St. 598 (1857); *Yankulav v. Bushong*, 80 Ohio App. 497, 77 N.E.2d 88 (1945).

<sup>14</sup> *State v. Ross*, 92 Ohio App. 29, 108 N.E.2d 77 (1952); *Clark v. State*, 23 Ohio App. 474, 156 N.E. 219 (1926).

<sup>15</sup> GUTTMACHER AND WEIHOFFEN, *PSYCHIATRY AND THE LAW* 402, 407, 408, 421 (1952); HALL, *PRINCIPLES OF CRIMINAL LAW* 481 (1947); 12 *THE SHINGLE* 79 (1949).