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CRIMINAL RESPONSIBILITY FROM THE MEDICO-LEGAL STANDPOINT

By MAURO CALINGO *

I. INTRODUCTION

A. WHEN IS A PERSON CRIMINALLY RESPONSIBLE?

A distinction has been made between *imputability* and *responsibility* thus: A person is said to be imputable when he is capable of answering before the social power for a given act. Imputability presupposes the existence of a modicum of psychical conditions; imputability may be defined as a capacity to answer before the social power for an act done.

He is liable who being imputable, being capable to answer before the social power, must be responsible to it; hence *responsibility* is the juridical duty of an individual to account to society for an act done by him. So that while imputability means possibility, responsibility means effectiveness. Every person who is neither an insane nor a minor and acts without physical or moral coercion is imputable, but will be responsible only when after executing an act, this act must be charged to his account, when he must account for it before the social authority and abide by the consequences originating therefrom.[1]

It is apparent from this distinction that though imputability and responsibility are different from one another, yet they are so close to each other, so intimately connected that no person is responsible who is not imputable; and that being imputable, he must be responsible for his acts.

To be responsible, however, does not mean to be culpable. To be culpable means to be held at fault with society, and as a consequence of such fault to be deserving a penalty. Culpability is a declaration that a person deserves the imposition of a penalty.[2]

* LL.B. University of the Philippines.

[1] Guevara, Essentials of Criminal Law and Criminology, p. 40.

[2] Id., pp. 40-41.

A person, then, is criminally responsible if, having the capacity to answer before the social power, he does an act which is forbidden by the criminal law. What is this "capacity to answer before the social power?" What is its basis? We shall attempt to discuss this in the following pages, from the medico-legal standpoint.

B. BASIS OF CRIMINAL RESPONSIBILITY GENERALLY

Article 3 of the Revised Penal Code provides:

> Acts and omissions punishable by law are felonies (delitos).
>
> Felonies are committed not only by means of deceit (dolo) but also by means of fault (culpa).
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> There is deceit when the act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

As we are discussing criminal responsibility from the medico-legal standpoint, we are concerned only for the present purposes with that class of felonies mentioned in the above quoted Article 3, which are caused by deceit, because we believe that there is no medico-legal aspect in a felony committed by means of fault or culpa.

Well then, according to Article 3, felonies are acts and omissions punishable by law. The word *voluntary*, which was used in the old Penal Code to qualify the words *acts* and *omissions*, has been omitted in this definition of a felony. But this omission does not mean, however, that the acts and omissions constituting felonies under the Revised Penal Code are not voluntary. It is stated in the last paragraph of Article 3 that there is deceit when the act is performed with deliberate intent. There can be no deliberate intent where there is no freedom of the will, intelligence or intent. Having these three elements, the act or omission must necessarily be voluntary. In the absence of any of these elements, there would be no wilful or voluntary act; and there being no voluntary act, there would be no felony or misdemeanor.[3]

The basis of criminal responsibility in the Philippines is, therefore, volition or wilfulness. Volition is composed of three elements: freedom, intelligence and intent. In the absence of any of these elements, there would be no voluntary act, and

[3] 1 Viada, Codigo Penal, pp. 15-16.

hence no criminal responsibility. Thus, a person acting under threats, violence, or duress, is exempt from criminal liability.[4] The same is true of an insane person or an infant who commits a crime while insane or during infancy,[5] and so also, one should not be held liable for an act which is the result of a mere accident.[6] In each of these examples, there is a want or absence either of freedom, intelligence, or intent.

To constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by criminal intent, or by negligence or indifference to duty or to consequences, as in law, is equivalent to criminal intent. The maxim is, *actus non facit reum, nisi mens rea* —a crime is not committed if the mind of the person performing the act complained of be innocent.[7]

A felonious or criminal act is presumed to have been done voluntarily, unless the contrary appears, because of the moral presumption that freedom and intelligence constitute the normal condition of a person, and this moral presumption is also a legal one.[8]

II. Insane Persons

A. WHAT IS INSANITY

The Administrative Code gives a comprehensive definition of insanity as a manifestation in language or conduct, of disease or defect of brain, or a more or less permanently diseased or disordered condition of the mentality, functional or organic, and characterized by perversion, inhibition, or disordered function of the sensory or of the intellective faculties, or by impaired or disordered volition.[9]

From a medico-legal point of view, the terms "insanity," "lunacy," "unsoundness of mind," "mental derangement," "madness" and "mental alienation or aberration," are synonymous and indistinctly applied to all kinds of mental disorders caused by diseases of the brain and manifested by either total or partial, constant or intermittent departure from the individual's usual way of exercising his mental faculties and by a

[4] Art. 12, par. 5, Rev. Pen. Code; U. S. v. Felipe, 5 Phil. 333.
[5] Art. 12 pars. 1 & 2, Rev. Pen. Code; People v. Bascos, 44 Phil. 204.
[6] Art. 12, par. 4, Rev. Pen. Code; U. S. v. Tayongtong, 21 Phil. 476.
[7] U. S. v. Catolico, 18 Phil. 504.
[8] Guevara, Com. on the Rev. Pen. Code, p. 8.
[9] Sec. 1039, Adm. Code.

lessened capacity for conducting himself in the ordinary affairs of life and in his relations with society.[10]

The unsoundness of mind which will excuse from criminal liability must be the result of mental disease as distinguished from weakness or passion. And mere weakness of mind is not insanity which will excuse crime. Nor will bad education or bad habits excuse it; or the fact that the person is of a low order of intellect. Neither is crime excused because committed under the influence of fear or excitement, or jealousy. And mere frenzy or ungovernable passion, however furious, is not insanity within the meaning of the criminal law. And the rule is the same though it temporarily dethrones reason or for the time being controls the will, where the inability to control it arises from passion and not from insanity. Where the conduct of a person is influenced by anger, malice, love of gain, or a heart bent on mischief, as distinguished from insanity produced by the visitation of God, he is responsible for his acts. Neither is mere mental depravity insanity in a legal sense, nor is eccentricity, oddity or hypochondria. Insanity which will excuse crime must be, not the mere impulse of passion, or idle, frantic humor, but an absolute dispossession of the free natural agencies of the mind, though it need not be furious, or manifested alike on all subjects.[11]

It is not medical, but legal insanity, which is required to relieve from criminal responsibility; though the law of insanity can only be properly dealt with from an harmonious treatment of the two sciences of law and medicine. A slight departure from a well-balanced mind cannot be recognized as insanity in the administration of criminal law though it might be pronounced insanity in medical science.[12]

B. CRIMINAL LIABILITY

The Revised Penal Code declares as exempt from criminal liability an imbecile or an insane person, unless the latter has acted during a lucid interval.[13]

The Supreme Court of Spain held that in order that this exempting circumstance may be taken into account, it is necessary that there be a complete deprivation of intelligence in committing the act, that is, that the accused be deprived of rea-

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[10] De los Angeles, Leg. Med., p. 152; Stewart, Leg. Med. pp. 349-350.
[11] Wharton & Stille's, Med. Jurisprudence, Vol. I, Sec. 163.
[12] Id., Sec. 168.
[13] Art. 12, par. 1.

son; that there be no responsibility for his own acts; that he acts without the least discernment; that there be a complete absence of the power to discern; or that there be a total deprivation of the freedom of the will. For this reason, it was held that the imbecility or insanity at the time of the commission of the act should absolutely deprive a person of intelligence or freedom of will, because mere abnormality of his mental faculties does not exclude imputability.[14]

The law absolutely exempts imbeciles from criminal liability; while an insane person is exempt only when he has not acted during a lucid interval. The question, therefore, for the court to determine whenever the accused enters the plea of insanity, is whether he is really an imbecile or an insane. This in turn calls for a determination of what is an imbecile and what is an insane person. In other words, what degree of insanity should be considered by law as sufficient to exempt a person from criminal liability?

The solution of this problem is surrounded with difficulties, because in the first place, it is hard, if not impossible, to set a dividing line between the sane and insane areas of conduct; and in the second place, because of the indefinite legal rulings that fix the standard of criminal responsibility.[15] If we give the benefit of the exempting circumstance found in paragraph 1 of Article 12, only to those who are hopelessly insane, then many persons who are commonly and even medically considered as insanes would have to go to prison. It is a fact that a great majority of insanes commit offenses because of some partial insane motives, or during moments of attacks or exaltation. Should these persons be punished for offenses committed due to such insane motives or during such moments of attacks or exaltation? They are not comprehended within the exempting circumstance established by paragraph 1 of Article 12. It seems that the only benefit which the law gives to this kind of persons is the mitigating circumstance established by paragraph 9 of Article 13 of the same Code, namely:

> Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of consciousness of his acts.

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[14] Guevara, Com. on the Rev. Pen. Code, p. 37.

[15] De los Angeles, Leg. Med. (in preparation)

1. *Imbecility and Insanity*

Paragraph 1 of Article 12 makes a distinction between imbecility and insanity by providing that an imbecile is exempted from criminal liability in all cases, while an insane person is not so exempted, if he has acted during a lucid interval.[16] The common belief is that in imbecility there is a continuous mental eclipse, while insanity (the old Penal Code used the word lunatic, instead of insane person as it is now) light and shadow alternate.[17] Cuello Calon, however, is of the opinion that such a distinction is unscientific because according to modern psychiatry, the so-called lucid intervals of mental sanity are only apparent, the mental disease continues or persists.[18] As a matter of fact, the latter is the view of modern psychiatrists.

Thus it has been said that in relation to cyclothymic psychoses, the general theory established by alienists, assented to by many courts of justice, is that the so-called "lucid intervals" are but "remissions" following periods of access, and that the patients at this latter condition are not recovered. A slight return of reason, a glimmer of intelligence, even the temporary power of sustained attention,—none of these, or similar evanescent signs of a remission, are sufficient, in a medical sense, to establish a complete restoration of the mind. And if a "lucid interval" does not indicate a complete restoration of the mind, it is a misnomer, and should be abandoned.[19]

C. TEST OF CRIMINAL RESPONSIBILITY IN THE PHILIPPINES

In this jurisdiction, the test of criminal responsibility of insane persons is volition. When an insane person has lost his will-power such that he cannot control his acts, even if he is conscious that they are wrong or reprehensible, then he is not criminally responsible therefor. This doctrine is in accord with the legal concept of a felony as a voluntary act or omission punishable by law. The loss of will-power is presumed from the fact of insanity, so that if insanity is proved, there is no need to show that the insane person has no control over his will-power. But it is necessary that when insanity of the

[16] Art. 12, par. 1, Rev. Penal Code.

[17] 1 Viada, Codigo Penal, p. 92; 1 Groizard, Derecho Penal, p. 197; 1 Silvela, Derecho Penal, p. 195.

[18] 1 Cuello Calon, Derecho Penal, p. 241.

[19] De los Angeles, Leg. Med., p. 168; Wharton & Stille's Med. Jur., Vol. 1, Sec. 185.

defendant is alleged as ground of defense or reason for his exemption from responsibiiity, the evidence on this point must refer to the time preceding the act under prosecution or to the very moment of its execution. In such case it is incumbent upon the defendant's counsel to prove that his client was not in his right mind or that he acted under the influence of a sudden attack of insanity or that he was generally regarded as insane when he committed the act attributed to him.[20]

A distinction, however, should be made between insanity and mere passion or obfuscation. The latter is only a mitigating circumstance, and a person acting under it is criminally liable just the same.[21] There is a vast difference between an insane person and one who has worked himself up into such a frenzy of anger that he fails to use reason or good judgment in what he does. Persons who get into a quarrel or fight seldom, if ever, act naturally during the fight. An extremely angry man, often, if not always, acts like a madman. The fact that a person acts crazy is not conclusive that he is insane. The popular meaning of the word "crazy" is not synonymous with the legal terms "insane", "non compos mentis", "unsound mind," "idiot," or "lunatic." [22] Passion and insanity are very different things, and whatever indulgence the law may extend to persons under provocaton, it does not treat them as freed from criminal responsibility. Those who have not lost control of their reason by mental unsoundness are bound to control their tempers and restrain their passions, and are liable to the law if they do not. Where persons allow their anger to lead them so far as to make them reckless, the fact that they have become at last too infuriated to keep them from mischief is merely the result of not applying restraint in season. There would be no safety to society if men could with impunity lash themselves into fury, and then do desperate acts of violence. That condition which springs from undisciplined and unbridled passion is clearly within legal as well as moral censure and punishment.[23]

1. *Presumption*

A person is always presumed to be sane and that all his acts are voluntary, unless the contrary is shown, because these

[20] U. S. vs. Guevara, 27 Phil. 547.

[21] Art. 13, par. 6, Rev. Penal Code.

[22] U. S. vs. Vaquilar, 27 Phil. 88, 91.

[23] Id.; People v. Mortimer, 48 Mich, 37; People v. Finley, 38 Mich. 482; Welch v. Ware, 32 Mich. 77.

are the normal conditions of men. It is also presumed that an unlawful act was done with an unlawful intent. To presume otherwise would be disastrous to society and the administration of justice. But these presumptions are only *juris tantum,* and may be overcome by evidence to the contrary.

The presumption that the act is free is destroyed by evidence that the person acted under the compulsion of an irresistible force, or under the impulse of an uncontrollable fear.[24] The presumption that the act is done intentionally is overcome by proof that it was caused by mere accident, without fault or intention of causing it.[25] And the presumption that an act is done intentionally is overcome by proof of insanity, or excusable mistake.[26]

2. *Burden of Proof*

In reference to the burden of proof of insanity in criminal cases, where the defense of insanity is interposed, a conflict of authorities exists. At least, all the authorities are in harmony with reference to two fundamental propositions: first, that the burden is on the prosecution to prove beyond a reasonable doubt that the defendant committed the crime; and secondly, that the law presumes every man to be sane. The conflict in the decisions arises by reason of the fact that the courts differ in their opinion as to how much evidence is necessary to overthrow this original presumption of sanity, and as to what quantum of evidence is sufficient to enable the court to say that the burden of proving the crime beyond a reasonable doubt has been sufficiently borne.[27]

Our Supreme Court has adopted the rather strict doctrine "that when a defendant in a cirminal case interposes the defense of mental incapacity, the burden of establishing that fact rests upon him." [28] The proof of insanity must refer to the time preceding the act under prosecution or to the very moment of its execution.[29] The existence or non-existence of insanity is a question of fact, which is determined by the trial

[24] U. S. v. Felipe, 5 Phil. 333; Art. 12, pars. 5 & 6, Rev. Pen. Code.

[25] Art. 12, par. 4, Rev. Pen. Code; U. S. v. Tañedo, 15 Phil. 196; U. S. v. Tayongtong, 21 Phil. 476.

[26] Art. 12, pars. 1 & 2, Rev. Pen. Code; People v. Bascos, 44 Phil. 204; U. S. v. Peñalosa, 1 Phil. 109.

[27] People vs. Bascos, supra.

[28] Id.

[29] U. S. vs. Guevara, 27 Phil. 547.

court in the first instance, enlightened if necessary by the testimony of experts. Being a question of fact, the findings of the trial court will generally be accepted as correct by the appellate court, in the absence of abuse of discretion by the trial court. The fact of insanity should be established by a preponderance of the evidence, and a reasonable doubt of the defendant's sanity, raised by all the evidence, does not justify an acquittal.[30]

3. *Criticism of the Test*

In the case of Flanagan v. People,[31] the doctrine of criminal responsibility based on volition or will-power was rejected by the court, saying: "We are asked to introduce a new element into the rule of criminal responsibility in cases of alleged insanity, and to hold that the power of choosing right from wrong is as essential to legal responsibility as the capacity of distinguishing it, and that the absence of the former is consistent with the presence of the latter. The argument is on the theory that there is a form of insanity in which the faculties are so disordered and deranged that a man, though he perceives the moral quality of his acts, is unable to control them, and is urged by some mysterious pressure to the commission of the act, the consequences of which he anticipates, but cannot avoid. Whatever medical or scientific authority there may be for this view, it has not been accepted by courts of law. The vagueness and uncertainty of the inquiry which would be opened, and the manifest danger of introducing the limitation claimed into the rule of responsibility, in cases of crime, may well cause courts to pause before assenting to it. Indulgence in evil passions weakens the restraining power of the will and conscience, and the rule suggested would be the cover for the commission of crime and its justification. The doctrine that a criminal act may be excused upon the notion of an irresistible impulse to commit it, where the offender has the ability to discover his legal and moral duty in respect to it, has no place in the law."

D. ANGLO-AMERICAN TEST OF CRIMINAL RESPONSIBILITY

The prevailing rule in the United States regarding the criminal responsibility of insanes is quite different from that followed here. The courts there have generally stated the ques-

[30] Parsons vs. State, 81 Ala. 577; 60 Am. Rep. 193.
[31] 52 N. Y. 467.

tion of responsibility to be whether, at the time the prisoner committed the act, he had mental capacity to know right from wrong, and comprehend his relations to others, and to understand the nature and consequence of the particular act, and that the act was morally wrong, or what is the same, whether he was conscious of doing wrong. This is the "right and wrong test," as commonly called.[32]

1. *Origin of Right and Wrong Test*

This right and wrong theory of criminal responsibility of insane persons has its origin from the famous McNaghten's case. In the year 1843, in England, one McNaghten was tried for the crime of murder. The evidence showed that he was suffering from monomania or "morbid delusions" at the time of the killing, and he was acquitted. There was much public criticism of the verdict; and in response thereto the House of Lords requested the judges to answer several questions with respect to the law of insanity. The authority of the House of of Lords to demand answer to these questions has been seriously doubted. Both the questions and answers are shrouded in uncertainty and are of cumbrous phraseology. The answers were given extra curiam by fourteen judges at a time when the court was not sitting in banc to try a cause. They expressed a new formula and not the common law rule, and therefore, it would seem that these answers could not be considered as binding on American courts. Nevertheless, these rules have been the basis of both the English and American rulings in insanity cases for almost a hundred years.

The chief rules laid down by this case are as follows:

"In order to establish a defense on the ground of insanity it must be clearly proved that at the time of committing the act the party accused was laboring under such a defect of reason from diseases of the mind as not to know the nature and quality of the act he was doing or if he did know it, that he did not know he was doing what was wrong."

"If the accused labors under 'partial delusion' only, and is in all other respects sane, he should be considered in the same situation as to responsibility as if the facts in respect to which the delusion exists were real." [33]

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[32] State vs. Harrison, 36 W. Va. 729; 15 S. E. 982, 986.

[33] Herzog, Medical Jurisprudence, Sec. 648.

2. *Criticism of the Rule*

In the learned treatise of Drs. Bucknill and Tuke on "Psychological Medicine," p. 269 (4th ed., London, 1879) the legal tests of responsibility are discussed, and the adherence of the courts to the right and wrong test is deplored as unfortunate, the true principle being stated to be "Whether, in consequence of congenital defect or acquired disease, the power of self-control is absent altogether, or is so far wanting as to render the individual irresponsible." It is observed by the authors: "As has again and again been shown, the unconsciousness of right and wrong is one thing, and the powerlessness through cerebral defect or disease to do right is another. To confound them in an asylum would have the effect of transferring a considerable number of the inmates thence to the treadmill or the gallows." [34]

Alfred W. Herzog, author and editor-in-chief of the medico-legal journal of New York, has criticized this theory and has voiced the prevailing scientific criterion on the legal test for criminal responsibility, as follows:

"The right and wrong test as a criterion whether a man is so insane that he should not be held responsible for his criminal acts is not just and not sound and not based on scientific and medical knowledge and should be abandoned without further delay.

"If it be admitted that a person may be so insane that he should not be held responsible for his acts, the criterion should not be, whether he could distinguish right from wrong, but whether, knowing that a certain act was forbidden by law, he was suffering from insanity in such a form that he could not refrain from committing the act. There is such a thing as an uncontrollable impulse.

"There are insane persons who cannot control their actions, although they know that there is no reason why they should act as they do. Some for example feel that they must scream, and although they try very hard to refrain, they must. Some insane persons may kill, not because they do not know that killing is wrong, that killing is forbidden, that killing a person with premeditation, by lying in wait, is murder in the first degree and supposed to be punished by electrocution; they know

[34] Parsons v. State, 81 Ala. 577; 60 Am. Rep. 193.

all this, but there is only one thought in their mind which is governing them, and that is that they must kill—kill—kill." [35]

3. *Modern Tendency in the United States*

It is flattering for us to know that the modern tendency in the United States is to adopt the rule which is followed here, that is, the rule based on *volition,* as distinguished from *cognition,* which is the basis of the right-and-wrong theory. Accordng to Dr. Angeles, foremost Filipino authority on legal medicine, "this decisive reaction appears to be considerably due to modern scientific enlightenment on this subject, and in this sense it might mean a true recognition of the greater stability of the Spanish-Filipino ruling cases which lay down the test of responsibility for crime as dependent upon volition and on the distinction between acts which a person cannot control by reason of mental impairment or insanity and acts which he does not control because of his criminal intent or motive."[36]

The following States of the Union still adhere to the right-and-wrong theory of criminal responsibility: California, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, Oklahoma, Oregon, South California, South Dakota, Tennessee, Texas, and West Virginia.

On the other hand, the following States have rejected the right-and-wrong theory, and have adopted the rule that insane, irresistible impulse, notwithstanding, capacity to distinguish between right or wrong, is a defense to a criminal prosecution: Alabama, Arkansas, Delaware, Georgia, Indiana, Iowa, Kentucky, New Hampshire, Ohio, Virginia, and Wisconsin. In Vermont and Montana, the theory has been intimated, but not actually so held.[37]

In Germany and Austria, the "free-will" test of criminal responsibility has complete acceptance in the codes; "Deutsches Strafgesetzbuch," paragraph 51 (translated): "It is not a punishable act, when the doer at the time of the commission of the act was in a condition of unconsciousness or diseased derangement of mind, through which the free exercise of his will was precluded." [38]

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[35] De Los Angeles, Leg. Med. (in preparation); The Medico-Legal Journal, Sept.-Oct., 1925, Vol. 42, No. 5, pp. 132-133.

[36] De Los Angeles, Leg. Med. (in preparation)

[37] id.

[38] id.

III. Other Persons

A. MINORS

In our jurisdiction, a person under nine years of age is absolutely exempt from criminal liability. A person over nine and under fifteen years of age is also exempt from criminal liability, unless he has acted with discernment.[39] What is discernment?

Criminalists do not seem to be in accord with respect to the real conception of what discernment is. Carrara (par. 221, note 1) defined it as the capacity to distinguish the good from the bad; according to Berner, it consists in knowledge of the sense of duty and knowledge of the punishability of one's acts. Other authorities more properly distinguish juridical discernment from moral discernment. Juridical discernment, says Prins (Rev. Penit., 1892, p. 421) is that which consists in knowing that robbery is punished, that there are gendarmes, jails, and police officers, and it is possessed by a boy at any age; the lower he has descended the social strata the sooner the boy acquires juridical discernment, because it is in these classes where the boy learns that there are jails and police officers. But on the contrary, as regards social discernment, which consits in knowing that there is one path of rightcusness and another which is not, it is never acquired by a boy of certain lower social conditions, because in order to distinguish between the good and the bad, it is necessary to be able to choose, and there are many who have nothing before their eyes but the example of evil, and therefore cannot choose.[40]

Dr. De los Angeles is of the opinion that inasmuch as the fundamental criterion on criminal responsiblity rests upon the free exercise of volition, the word discernment must be interpreted as synonymous to free will; and that in ascertaining responsibility, regard must be had directly to the condition of the mind and only indirectly to the chronological age, for the use of discernment is not necessarily correlated with the age of development of individuals.[41] This is also the opinion of Herzog.[42] But the legal view is that this refers to physical and not to mental age.[43]

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[39] Art. 12, pars. 1 & 2, Rev. Penal Code.

[40] Guevara, Com. on the Rev. Penal Code, pp. 39-40.

[41] De Los Angeles, Leg. Med. (in preparation)

[42] Herzog Med. Jurisprudence, Sec. 585.

[43] Comm. v. Trippi, (Mass.) 167 N. E. 375.

In the United States, most jurisdiction hold in accordance with the common law rule that children under the age of seven years are conclusively presumed to be incapable of committing crime.

Above the age in which children are absolutely free from criminal responsibility comes the age which might be called the doubtful age, in which a child is prima facie presumed to be incapable of forming a criminal intent, and which presumption is so strong that it can only be overcome by the clearest proof to the contrary. The rule in some States of the United States is in accordance with the common law rule, that an infant between the ages of seven and fourteen years is prima facie incapable of forming a criminal intent. It has been held that this presumption may be rebutted by proof that the child had sufficient capacity to understand the act and to know that it was wrong; and that while a criminal charge can be established against an infant between such ages, there must be the clearest proof that it had capacity to possess a criminal intent. But above the age of fourteen years there has been held to be a rebuttable presumption of capacity.[44]

The same rule applies here in the Philippines, except that the age up to which a minor is absolutely exempt from criminal liability here is nine years, and the doubtful age is from nine to fifteen years. If the offender is above fifteen but less than eighteen years of age, such fact constitute a mitigating circumstance only in his favor in this jurisdiction.[45]

B. PERSONS ACTING UNDER THE COMPULSION OF AN IRRESISTIBLE FORCE

Any person who acts under the compulsion of an irresistible force is exempt from criminal liability.[46] The reason for this provision of the law is that an involuntary act is one's act, and he should not therefrom be held liable for it. But what is meant by irresistible force? Judge Guevara, in his commentaries on this article in the Revised Penal Code, maintains that the force is limited to physical force, and cites various decisions of the Supreme Court of Spain in support thereof. Thus he says: "In order that this circumstance may be invoked it is necessary that the force used be of such a nature that notwithstanding the natural opposition which we may exert,

[44] Herzog, Med. Jour., Sec, 705.
[45] Art. 13, par. 2, Penal Code.
[46] Art. 12, par. 5, Rev. Penal Code.

we are impelled to do something or to suffer it to be done. The irresistible impulse can never consist of an impulse or passion or obfuscation. It must consist on extraneous force coming from a third person.

"Furthermore, the force treated of in this paragraph must be understood to be a physical force exerted by a third person, which annuls the freedom of a person and forces him to commit the crime. Momentary anger can never be considered as an exempting circumstance." [47]

Our Supreme Court is also of the opinion that this force can never consist in anything which springs primarily from the man himself; it must be a force which acts upon him from the outside and by means of a third person.[48]

However, Dr. Angeles is of the opinion that this force should include moral as well as physical force. He says that "having in view that the legal criterion on criminal responsibility rests upon the principle of free will, which is in itself directly influenced by moral force, it is but logical for the Spanish legislators to have taken into account the latter as another legitimate ground for exempting from criminal liability aside from the physical force. Otherwse the law should have used the term 'force' with specification of its nature."[49]

C. PERSONS ACTING UNDER THE IMPULSE OF AN UNCONTROLLABLE FEAR.

Paragraph 6 of the Revised Penal Code provides that any person who acts under the impulse of an uncontrollable fear of an equal or greater injury is exempt from criminal liability. The reason for this provision is the same as that underlying paragraph 5 of the same article; i. e., that an involuntary act is not one's act and he should not be held liable for it.

The supreme Court of Spain has already construed that the fear referred to in this article must come from real causes, that is, that the efficient cause of the fear must be a real and known evil. Therefore, it should not be taken into account when the facts upon which it is based are not proven. It is likewise required that the fear be imminent and that it be the outcome of an immediate cause.[50]

[47] Guevara, Com. on the Rev. Penal Code, pp. 41-42.
[48] U. S. v. Elicanal, 35 Phil. 209, 212.
[49] De los Angeles, Leg. Med. (in preparation).
[50] Guevara, Com. on the Rev. Penal Code, pp. 42-43.

Our Supreme Court has held that in order that one may take advantage of this exempting circumstance, it must appear that the threat which caused the uncontrollable fear related to a crime of such gravity and so imminent that it might safely be said that the ordinary run of men would have been governed by it. And the evil threatened must be greater than, or at least equal to, that which he is compelled to cause. The legislature by this enactment did not intend to say that *any* fear would exempt one from performing his legal duty. It was intended simply to exempt from criminal responsibility when the threat promised an evil as grave, at the very least, as that which the one threatened was asked to produce.[51]

D. INEBRIATES

In this jurisdiction, the intoxication of the offender is an alternative circumstance which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. The intoxcation of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional it shall be considered as an aggravating circumstance.[52]

Drunkenness, although a kind of insanity, avails a criminal nothing as a defense to crime except to relieve him from the implication of premeditated malice or complex fraud or to reduce crime of murder from first to second degree. And yet delirium tremens, although the result or consequence of continued drunkenness, is insanity.

If a person, being in possession of his mental faculties, voluntarily gets into a fit of drunkenness, and during such drunkenness commits a homicide under a diseased mental condition occasioned by the same, he cannot set up said diseased mental condition as an excuse for his act.[53]

There are a few courts which holds that drunkenness will excuse criminal acts if it destroys the power to distinguish between right and wrong. The fact that a person committed a criminal act while intoxicated is held by many courts to be

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[51] U. S. v. Elicanal, 35 Phil. 209, 212-213.

[52] Art. 15, Rev. Pen. Code; U. S. v. Abijan, 1 Phil. 83.

[53] Stewart, Leg. Med., ec. 155.

properly pleaded in mitigation of certain crimes, for drunkenness is held to bear upon the question of malice, intent, wilfulness, premeditation, or deliberation which is an essence of some crimes. Therefore, in cases involving the condition of the mind of the accused when the act was done, the matter of intoxication becomes important, although the mere fact of drunkenness is not conclusive in the matter of criminal intent.[54] Under a murder charge, the defendant may interpose the defense of drunkenness so as to show a lack of the requisite premeditation, wilfulness and malice and thereby reduce the offense from murder to homicide. Since drunkenness itself is no excuse for murder, very clear proof of lack of intent is requisite, the question of the presence of such intent being one of fact for the judge.[55]

IV. Conclusions

After a careful study of the subject, the writer has arrived at the following conclusions:

1. The basis of criminal responsibility in the Philippines is volition or wilfulness. Volition is composed of three elements: freedom, intelligence and intent. In the absence of any of these elements, there would be no voluntary act, and hence no criminal responsibility.

2. Our test of criminal responsibility differs from the Anglo-American tests. The latter is based on cognition, that is, whether the accused, at the time of committing the act, had the capacity to know right from wrong.

3. Our test of criminal responsibility is more in harmony with the modern ideas of psychiatry than the Anglo-American theory. There is, however, a growing tendency in the United States to abandon the right-and-wrong test and adopt the test based on volition, due to a recognition of the soundness of the latter, which is borne out by the modern scientific enlightenment on the subject.

4. The so-called "lucid interval" of an insane person has no scientific foundation, and it is therefore recommended that paragraph 1 of Article 12 of the Revised Penal Code be amended by striking out the clause "unless he acted during a lucid interval," thereby making no distinction between an imbecile and an insane person in the matter of criminal liability.

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[54] Herzog, Med. Jour., Sec. 73.

[55] Id., Sec. 732.