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Criminal Law--Defenses--Insanity--"New Test"

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REV. 117 (1951). If the various statutory provisions which relate to common and contract carriers were to be so construed as not to apply to privately owned passenger automobiles leased for compensation for the private use of the lessee, then no constitutional question would be raised. The only code section pertinent, in a positive manner, to the question would be c. 17A, art. 10, § 1. It in itself is clear and unambiguous and would certainly seem to indicate that the legislature intended that class "A" registration and licenses were not to be issued to owners of passenger vehicles leased or operated for compensation, but that such vehicles were to be placed in class "U". If the legislative intent is clear, the courts should give the unambiguous language of a statute full force and effect, and should not attempt to read into the provision a meaning which is not intended. *Hereford v. Meek*, 132 W. Va. 373, 52 S.E.2d 740 (1949); *Barnhart v. State Compensation Comm'r*, 128 W. Va. 29, 35 S.E.2d 686 (1945); *State v. Patachas*, 96 W. Va. 203, 122 S.E. 545 (1924). To carry out this intent would require that an owner of an automobile so used pay a higher registration and license fee than an owner using his automobile in a purely private manner. This exercise of control is certainly within the power of the legislature. *Reeves v. Wright and Taylor*, 310 Ky. 470, 220 S.W.2d 1007 (1949); *Hodge Drive It Yourself v. City of Cincinnati*, 284 U.S. 335 (1932). It is merely a question of classification, seemingly a mandate by the legislature that the owner of a vehicle used in a commercial manner for his own gain shall pay a higher fee for such privilege than an owner whose use of his automobile is purely personal and private. This is no more than a regulation of the use of the public highways upon a rational and reasonable basis and does not involve the imposition of any unconstitutional conditions precedent to such use. *Driverless Car Co. v. Armstrong*, 81 Colo. 334, 14 P.2d 1098 (1932).

B. F. D.

CRIMINAL LAW—DEFENSES—INSANITY—"NEW TEST".—*D*, with a prior history of mental disorders, was indicted for housebreaking. On plea of insanity, it was shown that *D* was suffering from mental disturbance though the evidence was not conclusive as to how far the mental condition had progressed nor as to his capacity to distinguish right and wrong. Plea of insanity rejected and conviction followed. *Held*, on writ of error, that sufficient evidence had been introduced to meet the requirement of the "some evidence rule", which rebuts the presumption of sanity and makes

proof of sanity part of the prosecution's case. *Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954).

The court establishes a new test for insanity in the District of Columbia: "An accused is not criminally responsible if his unlawful act was the product of mental disease or defect." The term "disease" is defined as "a condition which is considered capable of either improving or deteriorating"; and "defect" as "a condition which is not considered capable of improving or deteriorating and which may be either congenital, or the result of injury, or the residual effect of a physical or mental disease." This test is not unlike the New Hampshire rule. See *State v. Jones*, 50 N.H. 369 (1871). The court leaves the question of insanity to the jury and formulates a model instruction embodying the new test.

The problem of insanity as a relief for criminal responsibility has not been without controversy or attention. Though there is general agreement that a truly insane person should not be held criminally liable for his acts, as he is lacking of a criminal intent, the heart of the controversy is the degree of insanity which will relieve liability.

The *Durham* test attempts to escape from the narrow confines of existing tests which define insanity in terms of a particular symptom, *i.e.*, the right and wrong test as stated in *M'Naghten's Case*, 10 C. & F. 200, 8 Eng. Rep. 718 (1843); and the irresistible impulse test as stated in *Parsons v. State*, 81 Ala. 577, 2 So. 854 (1886). These tests have been criticized as being incompatible with modern medical knowledge, which envisions insanity as affecting various sections of the mind. HALL, GENERAL PRINCIPLES OF CRIMINAL LAW 521-25 (1947). Under the *Durham* test the problem would not seem to be one of discovering insanity, as the definition seems broad enough to encompass any mental disorder, but whether the disorder was of sufficient magnitude to relieve the person of criminal responsibility. The solution proposed is whether there is a causal connection between the mental disorder and the criminal act, which would be a jury question. Whether a jury can or should handle such a question in the absence of more definite standards has been doubted. WEIHOFEN, INSANITY AS A DEFENSE IN CRIMINAL LAW 82-83 (1933).

West Virginia has long followed the right and wrong test. *State v. Harrison*, 36 W. Va. 729, 15 S.E. 982 (1892). See McWhorter, *The Test of Criminality as to Acts of Insane Persons—Is It Law, Barbarism, or Both?*, 27 W. VA. L.Q. 213 (1921). Similarly there has been a firm refusal subsequently to recognize the irresistible

impulse test, on the ground that an impulse to do harm by one who knows the difference between right and wrong can not be irresistible. *State v. Painter*, 135 W. Va. 106, 63 S.E.2d 86 (1950); *State v. Beckner*, 118 W. Va. 430, 190 S.E. 693 (1937); *State v. Fugate*, 103 W. Va. 653, 138 S.E. 318 (1927); *State v. Evans*, 94 W. Va. 47, 117 S.E. 885 (1923); *State v. Barker*, 92 W. Va. 583, 115 S.E. 421 (1922); *State v. Cook*, 69 W. Va. 717, 72 S.E. 1025 (1911); *State v. Maier*, 36 W. Va. 757, 15 S.E. 991 (1892). This position has been criticized as being disharmonious with medical knowledge, and a departure by the court from the judicial function and an assumption of the role of an expert medical witness. Keedy, *Irresistible Impulse as a Defense in Criminal Law*, 100 U. OF PA. L. REV. 956, 988-89 (1952).

It would seem that there will continue to be disparities between those courts which attempt to adjust their standard of criminal liability to meet the realities of human behavior as revealed by the research of medical science which has led to the conclusion, at least in our time, that man may be a pawn to the intricate and hidden forces in his own mind; and those courts which adhere to the historical concept of criminal liability that must be juxtaposed to what has been considered best for a civilized society: that man must meet a certain minimum standard of conduct regardless of his infirmities unless the weakness is so marked as to fall within the strict test for insanity. GUTTMACHER & WEIHOFFEN, *PSYCHIATRY AND THE LAW* (1952); HOLMES, *THE COMMON LAW* 50-51 (1881).

T. B. M.

DEFAMATION—JURISDICTION OF EQUITY TO ENJOIN.—*D* circulated statements, by published letter and word of mouth, that *P* attorney was a shyster, deceiver, betrayer of clients, and other defamatory matter in general. *D* appealed from a temporary injunction granted in favor of *P* by the circuit court. *Held*, that equity has no jurisdiction to enjoin the publication of defamatory statements relating to personality and professional conduct. *Kwass v. Kersey*, 81 S.E.2d 237 (W. Va. 1954).

Thus there was presented squarely before the court a question of law frequently debated by some of our greatest legal scholars, that is, whether a court of equity has jurisdiction to restrain the publication of defamation as such? Though the debate may continue as to what the law should be, there is no doubt as to what the cases hold. The decisions are legion that equity will not