
Contents

| | |
|--|-----------|
| 1 The Modern Defense of Insanity | 1 |
| 1.1 The Evolution of Insanity as a General Defense in Criminal Law | 1 |
| 1.1.1 The Medical Evolution: Religion vs. Science | 2 |
| 1.1.2 Legal Evolution: The Interplay Between the M'Naghten Rules and the Irresistible Impulse Test | 5 |
| 1.2 What Is Insanity? Defining Insanity Internally | 18 |
| 1.2.1 The Relativity of Social Normality | 18 |
| 1.2.2 Medical Insanity vs. Functional Insanity and Their Relevance to Legal Insanity | 24 |
| 1.3 The Legal Elements of Insanity | 26 |
| 1.3.1 The Presumption of Insanity | 26 |
| 1.3.2 Humans and Corporations | 29 |
| 1.3.3 Temporary and Permanent Mental Disorders | 33 |
| 1.3.4 Uncontrollable Mental Disorder | 35 |
| 1.3.5 Negation of Cognition or Volition and Partial Insanity | 36 |
| 1.3.6 Factual Causation | 39 |
| 1.4 The Consequences of Insanity in Criminal Law | 40 |
| 1.4.1 The Legal Consequences: Negation of Criminal Liability vs. Negation of Competence to Stand Trial | 40 |
| 1.4.2 Therapeutic Consequences: Alternatives to Criminal Liability and Standing Trial for Insane Offenders | 44 |
| 2 Integrating Insanity with the Principle of Fault in Modern Criminal Law | 49 |
| 2.1 The Principle of Fault in Modern Criminal Law | 49 |
| 2.1.1 The Basic Structure of Criminal Law Theory | 50 |
| 2.1.2 The Role and Development of the Principle of Fault in Modern Criminal Law | 54 |

| | | |
|----------|---|------------|
| 2.2 | Negative Fault Elements | 61 |
| 2.2.1 | The Secondary Principles: Positive Fault Elements | 62 |
| 2.2.2 | The Secondary Principles: Negative Fault Elements | 76 |
| 2.2.3 | The Absolute Legal Presumption Framework of General Defenses | 79 |
| 2.2.4 | Between the Mental Element Requirement and General Defenses | 82 |
| 2.2.5 | General Defenses and Other Defenses in Criminal Law | 83 |
| 2.2.6 | The General Presumption for the Absence of General Defenses | 84 |
| 2.3 | <i>In Personam</i> General Defenses in Modern Criminal Law | 86 |
| 2.3.1 | The Rationale of <i>In Personam</i> General Defenses as Negative Fault Elements | 86 |
| 2.3.2 | <i>In Personam</i> General Defenses vs. Diminished Criminal Liability | 90 |
| 2.3.3 | Inclusion of <i>In Personam</i> General Defenses | 91 |
| 3 | Tangential <i>In Personam</i> General Defenses in Criminal Law and Their Implications for Insanity | 107 |
| 3.1 | Infancy | 107 |
| 3.1.1 | Emergence of the Infancy Defense in Criminal Law | 108 |
| 3.1.2 | The Presumption of Infancy | 112 |
| 3.1.3 | Legal and Therapeutic Consequences | 118 |
| 3.1.4 | The Tangent: Infancy vs. Insanity | 122 |
| 3.2 | Automatism | 125 |
| 3.2.1 | Emergence of the Automatism Defense in Criminal Law | 125 |
| 3.2.2 | The Presumption of Automatism | 128 |
| 3.2.3 | The Tangent: Automatism vs. Insanity | 136 |
| 3.3 | Intoxication | 139 |
| 3.3.1 | Emergence of the Intoxication Defense in Criminal Law | 139 |
| 3.3.2 | The Presumption of Intoxication and Addiction to Intoxicating Substances | 144 |
| 3.3.3 | Legal and Therapeutic Consequences | 156 |
| 3.3.4 | The Tangent: Intoxication vs. Insanity and Automatism | 157 |
| 4 | Legal Transformation of Fault | 161 |
| 4.1 | The Function of Legal Transformation of Fault | 161 |
| 4.1.1 | Basic Structure and Rationale | 161 |
| 4.1.2 | Algebraic Insights | 165 |

| | |
|-------------------------------|------------|
| 4.2 Applicability | 166 |
| 4.2.1 Infancy | 166 |
| 4.2.2 Automatism | 167 |
| 4.2.3 Intoxication | 170 |
| 4.2.4 Insanity | 173 |
| Conclusion | 175 |
| Cases | 177 |
| Bibliography | 193 |
| Index | 203 |