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Insanity and Drunkenness as a Criminal Defense

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NOTES

INSANITY AND DRUNKENNESS AS A CRIMINAL DEFENSE

(A) Insanity as a Criminal Defense.

According to the English rule an insane man is one who at the time he commits the offense is suffering from some disease of the mind which renders him incapable of distinguishing right from wrong; or under the influence of any illusion which renders his mind at the moment insensible of the nature of the act he is about to commit.[1] The doctrine of uncontrollable impulse, if the person was aware it was a wrongful act he was about to commit, is not recognized.[2] In *Regina* v. *Pate,* Baron Alderson expressed his opinion of uncontrollable impulse in these words: "A man might say he picked a pocket from some uncontrollable impulse, and in that case the law would have an uncontrollable impulse to punish him for it."[2] Moral insanity consisting of a morbid desire for blood, creating in the mind an uncontrollable impulse to kill, co-existing with full possession of the mental faculties is not a defense.[3] The general test laid down by the English courts is, did the prisoner know the nature of the act he was doing, and did he know that he was doing what was wrong?[4]

The American courts and authorities have in substance agreed with the English regarding insanity as a criminal defense. Clark has defined insanity in its legal sense, as being any defect or disease of the mind which renders a person incapable of entertaining a criminal intent. Since a criminal intent is an essential element of every crime, no person who is so insane that he cannot entertain it is criminally responsible for his acts.[5] The time of insanity must be co-existent with the time the crime was committed in order to constitute a valid

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[1] McNaughten's Case, 10 Cl. & Fin. 200 (1843), *Regina* v. *Townley,* 3 F. & F. 839 (1863), *Regina* v. *Burton,* 3 F. & F. (1863).

[2] *Regina* v. *Pate,* 8 State Tr. (N. S.) 1 (1850).

[3] McNaughten's Case, *Regina* v. *Burton, Regina* v. *Barton,* 3 Cox, C. C. 275 (1848).

[4] McNaughten's Case, *Regina* v. *Townley, Regina* v. *Burton, Regina* v. *Goode* (1837), 7 *Ad. & El.* 536, *Regina* v. *Dixon* (1869), 11 Cox, C. C. 341, *Regina* v. *Southey* (1865), 4 F. & F. 869.

[5] Clark's Criminal Law p. 16.

defense.[6] The general test universally applied by the American courts is the right and wrong test,[7] as expressed in *Commonwealth* v. *Barner*, "insanity, to be a defense to a homicide must be so great as entirely to destroy accused's perception of right and wrong, and amount to a delusion controlling his will, and make the commission of the act a duty of overwhelming necessity."[8] An insane delusion, in a criminal case, is a valid defense, only when the imaginary state of facts would justify or excuse the act if it were real.[9] The doctrine of moral insanity, or irresistible impulse, co-existing with mental sanity has no foundation or support in the American law.[10] A person laboring under partial insanity, if he understands the nature of the act, that it is wrong and criminal, and that if he does the act he will do wrong, such partial insanity is not a defense.[11] Some jurisdictions have adopted statutes specifying that if the person indicted is acquitted on the ground of insanity, and if the jury certifies that he is still insane he will be confined to the state asylum for the insane.[12]

The general rule is, that the burden of proof is on the accused to establish the defense of insanity.[13] In the case of an habitual, permanent or cronic state of insanity being shown to exist, its continued existence will be presumed, and the burden of establishing a subsequent lucid interval at the time of the

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[6] *State* v. *Erb*, 74 Mo. 199, Held, to entitle the defendant to an acquittal on the plea of insanity, his mental faculties must have been so perverted at the time the homicide was commited as to render him incapable of distinguishing between the right and wrong of the particular act. Also see *Green* v. *State*, 64 Ark. 523; *People* v. *Silverman*, 181 N. Y. 235, N. Y. Code, Sec. 21; *People* v. *Kelley*, 7 Cal. App. 554, and *Thomas* v. *State*, 55 Tex. Cr. R. 293.

[7] *State* v. *Schaefer* 116 Mo. 96; *Mizell* v. *State*, 184 Ala. 16; *U. S.* v. *Clark*, Fed. Case, No. 14,811; *Carter* v. *State*, 2 Ga. App. 254, and *State v. Cooper*, 170 N. C. 719.

[8] *Commonwealth* v. *Barner*, 199 Pa. 138.

[9] *Boswell* v. *State*, 63 Ala. 307; *State* v. *Stark*, 1 Strab (S. C.) 479, *State* v. *Graviotte* 22 La. (Ann.) 587; *Smith* v. *State*, 55 Ark. 259, and *Commonwealth* v. *Winnemore*, 1 Brewst. (Pa.) 356.

[10] *Baswell* v. *State*, 63 Ala. 307; *People* v. *Hoin*, 62 Cal. 120; *Stevens* v. *State*, 31 Ind. 485; *People* v. *Coleman*, 1 N. Y. Cr. R. 1; *People* v. *Willard*, 150 Cal. 543, and *Oborn* v. *State*, 143 Wis. 249.

[11] *State* v. *Hunting*, 21 Mo. 464; *State* v. *Palmer*, 161 Mo. 152; *Wartena* v. *State*, 105 Ind. 445; *Patterson* v. *People*, 46 Barb. N. Y. 625, and *Ryan* v. *People*, 60 Colo. 425.

[12] Miss. Code, Sec. 1468, also see *Coffey* v. *State*, 29 So. 396.

[13] *State* v. *Robbins*, 109 Iowa 650; *Commonwealth* v. *Eddy*, 73 Mass. (7 Gray) 583; *Snider* v. *State*, 56 Neb. 309; *State* v. *Austin*, 71 Ohio St. 317, and *Burt* v. *State*, 38 Tex. Cr. R. 397.

act in question is upon the state.[14] An expert witness may give an opinion as to the sanity or insanity of an individual, based solely on a hypothetical question, without previous knowledge of the individual.[15] Some jurisdictions hold that persons knowing the accused for a number of years, and having had an opportunity to observe certain physical facts, may testify as to these facts and give their opinion as to his sanity, based upon these facts.[16]

(B) INSANITY AS A CRIMINAL DEFENSE IN KENTUCKY.

Graham v. *Commonwealth,* (1855)[17] was an appeal upon the ground that the trial judge erred in his instructions. The court refused instructions offered by the prisoner's counsel, "That if the jury believed from the evidence that there was material doubt growing out of the evidence, as to whether Graham was insane, or *non compos mentis,* at the time he committed the homicide, then they should give the prisoner the benefit of that doubt, and acquit him." The court relying upon Lord Mansfield's statement in the Billingham case,[18] McNaughten's case[19] and *Commonwealth* v. *Rogers,*[20] affirmed the following instructions given by the presiding judge:[21] "3. The court instructs the jury that the law presumes every man to be sane until the contrary is shown by the evidence, and before the prisoner can be excused for killing the deceased on the plea of insanity, the jury must be satisfied from the evidence that the accused was laboring under such a defect of reason as not to know the nature and quality of murder; or if he did know it, that he did not know to commit murder was wrong.

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[14] *State* v. *Lowe,* 93 Mo. 547.

[15] *Parrish* v. *State,* 139 Ala. 16; *State* v. *Wright,* 134 Mo. 404, and *State* v. *Windsor,* 5 Har. (Del.) 512.

[16] *State* v. *Hays,* 22 La. Ann. 299; *State* v. *Jones,* 50 N. H. 369; *Lake* v. *People,* 1 Parker, Cr. R. N. Y. 495; *State* v. *Cooper,* 170 N. C. 719; *Sage* v. *State,* 91 Ind. 141.

[17] *Graham* v. *Commonwealth* (1855), 55 Ky. 468.

[18] Billingham Case, Mansfield's statement, "The law in such cases is extremely clear. If a man is deprived of all power of reasoning, so as not to distinguish whether it was right or wrong to commit the most wicked or the most innocent transaction, he could not certainly commit an act against the law. Such a man, so destitute of all power of reasoning, could have no intention at all. In order, however, to support this defense, it ought to be proved by the most distinct and unquestionable evidence that the criminal was incapable of judging between right and wrong."

[19] McNaughten's Case, 10 Cl. & Fin. 200.

[20] *Commonwealth* v. *Rogers,* 7 Met. (Mass.) 500.

[21] 55 Ky. 476.

"4. That the true test of responsibility is whether or not he had sufficient power of control to govern his actions. That if they should believe from the evidence he was a monomaniac, yet if they should believe from the evidence he knew it was wrong to kill, and had sufficient power of control to govern his actions, and refrain from committing the homicide, then the law is against him and they must find him guilty."[22] Thus the Kentucky court adopts the fundamental rule of insanity laid down by the English courts only a few years prior to the rendition of this decision, holding in substance, that the presumption is that the accused is innocent until he is proven guilty, but if insanity be relied on as an excuse for a felony, it is necessary, to authorize an acquittal, that the jury be satisfied that the accused was insane; the law presuming all men to be sane until the contrary is shown.[23]

The rule in this state regarding instructions as laid down by the early cases is, that the jury must believe from the evidence that the accused was insane at the time of the commission of the act, that he did not at the time have sufficient reason to know what he was doing, that is, the nature of the act and that the commission of this act was wrong.[24] It has been held, that instructions to the effect that the presumption of sanity is to remain unless the contrary is shown by the evidence "to the satisfaction of the jury" are misleading and are not within themselves correct, unless clarified by other instructions.[25] It has also been held, that it was error to instruct the jury that insanity was to be established beyond a reasonable doubt.[26] In *Miracle* v. *Commonwealth* the court overruled the defendant's objections, to the effect that the instructions should have been so worded as to direct the jury to find Miracle guilty, unless they believed from a preponderance of the evidence that Miracle was of unsound mind when he committed the homicide, the case holding, that it is not necessary that the jury should be told that they should find him guilty unless they believed him to be

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[22] 55 Ky. 472.

[23] *Graham* v. *Commonwealth*, 55 Ky. 468.

[24] *Brown* v. *Commonwealth*, 77 Ky. 398 (1878); *Graham* v. *Commonwealth*, 55 Ky. 468 (1855); *Portwood* v. *Commonwealth*, 104 Ky. 496 (1898), and *Abbott* v. *Commonwealth*, 107 Ky. 624 (1900).

[25] *Smith* v. *Commonwealth*, 13 Ky. L. R. 612 (1891).

[26] *Portwood* v. *Commonwealth*, 104 Ky. 496 (1898).

insane from a preponderance of the evidence.[27] The instructions in this case were essentially the same as those approved by the court in *Abbott* v. *Commonwealth,* which show the present accepted Kentucky rule regarding the instructions necessary in a criminal case where insanity is offered as a defense.[28]

Insanity as defined by the Kentucky Court of Appeals is a generic term, embracing every case of defect of reason or weakness of mind which leaves the person without mental capacity to distinguish right from wrong, or without the will power, knowing right from wrong, to control a tendency to wrong-doing.[29] This being true when the plea of insanity is entered in a criminal case it is by the way of confession and avoidance, which presents a question of fact to be determined by the evidence presented in the case. The presumption, as shown above, is that the accused is sane; the plea of insanity therefore places the burden of proof upon the defendant to overcome this presumption of sanity by a preponderance of evidence in the prisoner's favor.[30] Such facts which tend to show the condition of the defendant's mind at the time of the commission of the act are admissible as evidence, such as the existence of insanity before and after the commission of the act,[31] information received which would affect his mind,[32] the

[27] *Miracle* v. *Commonwealth,* 148 Ky. 453 (1912).

[28] *Abbott* v. *Commonwealth,* 107 Ky. 624 (1900), held the court should have given these instructions: "(A) Although the jury may believe from the evidence, beyond a reasonable doubt, that the defendant shot and killed the deceased, yet, if they further believe from the evidence that at the time of the killing the defendant was of unsound mind, then they should acquit him.

"(B) The law presumes every man sane until the contrary is shown by the evidence; and before the defendant can be excused on the ground of insanity, the jury must believe from the evidence that the defendant was at the time of the killing without sufficient reason to know what he was doing, or had not sufficient reason to know right from wrong, or that, as the result of mental unsoundness, he had not then sufficient will power to govern his actions, by reason of some insane impulse which he could not resist or control." For instructions further see *Mathley* v. *Commonwealth,* 120 Ky. 389 (1905); *Wilcoxin* v. *Commonwealth,* 138 Ky. 846 (1910); *Belcher* v. *Commonwealth,* 165 Ky. 649 (1915); *Maulding* v. *Commonwealth,* 172 Ky. 370 (1916).

Richie v. *Commonwealth,* 6 Ky. L. R. 515 (1885).

[30] *Kriel* v. *Commonwealth,* 68 Ky. 363 (1869), and *Phelps* v. *Commonwealth,* 17 Ky. L. R. 706 (1895).

[31] *Montgomery* v. *Commonwealth,* 88 Ky. 509 (1889), held, evidence of insanity before and after the commission of the act admissible, but no legal presumption arises from the proof of previous or after insanity that the person was insane at the time he committed the crime.

[32] *Abbott* v. *Commonwealth,* 107 Ky. 624 (1900), and *Davis* v. *Commonwealth,* 6 Ky. L. R. 658 (1885).

commission of a crime previous to this which would have a tendency to affect the prisoner's mind,[33] or any general conduct of the prisoner showing the condition of his mental faculties.[34] An expert having heard all the evidence in the case may give his professional opinion as to the defendant's sanity, or there may be submitted to him a hypothetical case, or an agreed statement of the facts upon which he may base his opinion.[35] The opinion evidence of intimate friends and acquaintances, as to the soundness or unsoundness of the mind of the defendant, is competent, although they are not experts. The evidence of non-experts is permissible upon the theory that by long association and observance they have had an opportunity to form an opinion as to the sanity or insanity of the accused and this opinion they may give, as well as the facts upon which it is based.[36] A dying statement of the deceased that the accused was insane is not admissible upon the theory that it is only an opinion.[37] There should be some tangible evidence to support the plea of insanity before the court should give instructions allowing it as a defense.[38]

To establish moral insanity as a justification in any particular case it is necessary to show, by clear proof, its contemporaneous existence, evinced by present circumstances, or the existence of an habitual tendency, developed in previous cases, becoming in itslf a second nature.[39] In *Scott* v. *Commonwealth,* Chief Justice Duvall held: That before moral insanity can be admitted to excuse the commission of crime, it must be shown to exist in such violence as to render it impossible for the party to do otherwise than yield to its promptings. This is the fundamental fact to be established to the satisfaction of the jury. And whether this impossibility of resistance arises from a subjugation of the intellect by the morbid impulse or propensity, or from an overwhelming and destruction of the

[33] *Miracle* v. *Commonwealth,* 148 Ky. 453 (1912).
[34] *Choate* v. *Commonwealth,* 176 Ky. 427 (1917).
[35] *Brown* v. *Commonwealth,* 77 Ky. 398 (1887); *Abbott* v. *Commonwealth.*
[36] *Phelps* v. *Commonwealth,* 17 Ky. L. R. 706 (1895), and *Maulding* v. *Commonwealth,* 172 Ky. 370 (1916); *Banks* v. *Commonwealth,* 145 Ky. 800 (1911).
[37] *Smith* v. *Commonwealth,* 13 Ky. L. R. 612 (1891).
[38] *Maulding* v. *Commonwealth,* 172 Ky. 370 (1916).
[39] Whorton and Sille, Med. Jur., Secs. 54-55.

faculties of the mind to the extent of rendering the party incapable of governing his action, is a point, it would seem, of not much particular importance.[40] *Smith* v. *Commonwealth* holds, that moral insanity is now as well understood and established as intellectual insanity. The test of responsibility laid down in this case is, whether the accused had sufficient reason to know right from wrong, and whether or not he had sufficient power of control to govern his actions.[41] The case of *Kriel* v. *Commonwealth* also recognizes moral insanity.[41] These cases within themselves seem to establish the principle that moral insanity may be offered as a valid defense for the commission of a crime, but the case of *Banks* v. *Commonwealth* states in unmistakable language that these cases are not representative of the general rule in this state today. This case holds that, moral insanity is not recognized as an excuse for crime, that the insanity that will excuse violations of the law must be the result of mental disease.[43] This case brings Kentucky in the well established rule as laid down by the English and American cases.

An irresistible impulse existing at the time of the commission of the crime is not sufficient to excuse a criminal act.[44] The fact that the perpetrator of a crime is passionate, ignorant, or even of weak mind, unless the weakness of mind amounts to a mental disease rendering him incapable of knowing the nature and quality of his act, is not a defense for the commission of a crime.[45] *Belcher* v. *Commonwealth,* holds, that the fact that one is a deaf mute does not render him incapable of committing a crime. It is simply a circumstance to be considered in connection with the other evidence on the question of insanity.[46] The test of responsibility as laid down by the Kentucky rule is *the right and wrong test,* that is whether the accused had sufficient reason to know right from wrong at the time of the commission of the act, and whether or not he had sufficient power to control

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[40] *Scott* v. *Commonwealth,* 61 Ky. 227 (1863).
[41] *Smith* v. *Commonwealth,* 62 Ky. 224 (1864).
[42] *Kriel* v. *Commonwealth,* 68 Ky. 362 (1869).
[43] *Banks* v. *Commonwealth,* 145 Ky. 800 (1911).
[44] *McCarty* v. *Commonwealth,* 24 Ky. L. R. 1427 (1903).
[45] *Fitzpatrick* v. *Commonwealth,* 81 Ky. 357 (1883); *Farris* v. *Commonwealth,* 8 Ky. L. R. 417 (1886), and *Maulding* v. *Commonwealth,* 172 Ky. 370 (1916).
[46] *Belcher* v. *Commonwealth,* 165 Ky. 649 (1915).

or govern his actions.[47] This agrees with the universal test applied by the common law courts.[48]

(C) DRUNKENNESS AS A CRIMINAL DEFENSE.

The English and American courts universally hold that drunkenness within itself is not an excuse for a crime.[49] A person suffering from delirium tremens which so affects his mind that he was not conscious of an act which he committed, who committed a crime not knowing that it was wrong, was entitled to the same verdict as if he had been suffering from insanity.[50]

The presumption of intent may be rebutted in the case of a man who is drunk, by showing his mind to have been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, *i. e.*, likely to infect serious injury. If this be proved, the presumption that he intended to do grevious bodily harm is rebutted.[51] In *King* v. *Meade* the following instructions were affirmed: "In the first place, every one is presumed to know the consequences of his acts. If he is insane the knowledge is not presumed. Insanity is not pleaded here, but where it is part of the essence of a crime that a motive, a particular motive, shall exist in the mind of the man who does the act, the law declares this, that if the mind at that time is so obscured by drink, if the reason is dethroned and the man is incapable therefore of forming that intent, it justifies the reduction of the charge from murder to manslaughter."[52]

[47] *Montgomery* v. *Commonwealth*, 88 Ky. 509 (1889); *Mathley* v. *Commonwealth*, 120 Ky. 389 (1905), and *Hall* v. *Commonwealth*, 155 Ky. 541 (1913).

[48] See *supra*.

[49] *Regina v. Davis*, 14 Cox C. C. 563 (1881); *Commonwealth* v. *Malone*, 114 Mass. 295 (1873); *State* v. *Pitts*, 58 Mo. 556 (1875); *State* v. *Truitt*, 5 Penne. (Del.) 466 (1905). For Ky. cases see *Shannahan* v. *Commonwealth*, 71 Ky. 463 (1871); *Smith* v. *Commonwealth*, 62 Ky. 224 (1864); *Kriel* v. *Commonwealth*, 68 Ky. 362 (1869), and *Mathley* v. *Commonwealth*, 120 Ky. 389 (1905).

[50] English Trial of Lunatics Act, 1883 (46 & 47 Vict., c. 38), *Regina* v. *Davis*, 14 Cox C. C. 563 (1881); *State* v. *Hand*, 41 A. (Del.) 192 (1894); *Perkins* v. *U. S.*, 228 Fed. 408 (1915); *People* v. *Bremer*, 24 Cal. App. 315 (1914). For the Ky. rule see *Tyra* v. *Commonwealth*, 59 Ky. 1 (1859); *Finley* v. *Commonwealth*, 6 Ky. L. R. 443 (1884), and *Wright* v. *Commonwealth*, 24 Ky. L. R. 1838 (1903).

[51] *King* v. *Meade*, 1 K. B. 892 (1909); *Aszman* v. *State*, 156 Ind. 347; *State v. Roan*, 122 Iowa 136 (1904); *Brune* v. *Commonwealth*, 206 Ill. 417 (1903). For Ky. cases, *Blimm* v. *Commonwealth*, 70 Ky. 320 (1870). *Shannahan* v. *Commonwealth*, 71 Ky. 463 (1871); *Bishop* v. *Commonwealth*, 22 Ky. L. R. 1161 (1901), and *Pash* v. *Commonwealth*, 146 Ky. 390 (1912).

[52] *King* v. *Meade*, 1 K. B. 443.

The American courts adhere to the doctrine laid down in this case.[53] Some jurisdictions have enacted statutes providing that in case drunkenness produces temporary insanity, this fact may be considered as an element to mitigate the punishment.[54]

(D) RECENT CASES ON INSANITY AS A CRIMINAL DEFENSE IN KENTUCKY.

Free v. *Commonwealth,* reported in 236 S. W. 246, decided by the Kentucky Court of Appeals, January 10th, 1922, held: A person is presumed to be of sound mind until the contrary is shown. That one who enters a plea of insanity must show by a preponderance of evidence that his mind was so far gone, so diseased and unsound, that he did not know the consequence of his act nor realize that he was doing wrong at the time the act was done. That the test as to whether a defendant was insane is whether at the time he committed the crime he knew or realized the consequences of his act. That non-expert witnesses having associated with and having had opportunities of observing the defendant may give their opinion as to his insanity, but a foundation must be laid showing their familiarity with the defendant's life.

Thomas v. *Commonwealth,* 196 Ky. 539, decided November 21, 1922, held: That voluntary drunkenness or temporory insanity caused by voluntary drunkenness does not excuse crime nor mitigate it. That to excuse crime upon the ground of insanity, it must appear that the accused, at the time the deed was committed, was of unsound mind; that he was unable to discriminate between right and wrong; or if he could do so, that from mental unsoundness he had not will power sufficient to control his actions, and was not able to resist the insane impulse to commit crime; and finally that it was competent for a non-expert witness to give his opinion as to the defendant's sanity, based upon facts of which he has had an opportunity to personally observe.

It is to be noted that the questions decided in these cases were decided according to the well established Kentucky rule and do not materially differ from the established principle of the English and American common law.

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[53] See cases cited under *supra* (51).

[54] *Kelly* v. *State,* 67 Tex. Cr. 72, and *Tyler* v. *State,* 64 Tex. Cr. 621.

(E) COMMENT.

A detailed study of the question of insanity convinces one that it may become a valid defense for the commission of a crime. The common law courts have recognized the plea of insanity from the earliest cases to the present date. Insanity as a plea for a criminal defense is an established fundamental principle of law.

An insane person, because of his condition may commit the most heinous crime, and it is beyond dispute that this person is a dangerous element to society. The state realizing the existence of this dangerous element has established asylums for the insane and laws have been enacted providing a method by which a person may be adjudged insane. Yet a person may commit murder, and upon trial, if mental insanity is established, he will leave our courts a free man, once more to mingle with society. It is only reasonable and proper to contend that the same jury acquitting a defendant upon the plea of insanity should have the power to adjudge him insane and commit him to an asylum for the insane, where he would no longer be a menace to society. Procedural laws should be enacted giving the Kentucky jury that power, that is, in a criminal case where insanity is established as a defense, if the jury finds that the prisoner is still insane he should be committed to the insane asylum without further proceedings.

G. W. MEUTH.

TAXATION—EXEMPTION UNDER INHERITANCE TAX.—At the time of testatrix's death she had the absolute title to a large estate, which is referred to as the Bingham estate. She also had the beneficial interest in the vast estate of her first husband, which is referred to as the Flagler trust. At the time of testatrix's death and ever since this latter estate has been administered by a trustee, in accordance with the will creating the trust. This case came before the court on two independent appeals, one by the defendant and the other by the plaintiff. The following six questions of law were raised:

(1) Is testatrix's interest in the Flagler trust, which passed under her will, subject to the inheritance tax of this state?

(2) Is the amount paid to the Federal government, as an "estate tax" to be deducted in determining the amount upon which the Kentucky tax is to be computed?