

e.g.

- Unlawful application of force (Lord Steyn in R v Ireland [1997]) - Conduct Crime
- Assault causing actual bodily harm (s47 OAPA) - Result Crime

CONDUCT OR RESULT CRIME?

Murder: unlawful killing of a human being in the Queen's peace, with intention to kill or intention to cause grievous bodily harm (Edward Coke)

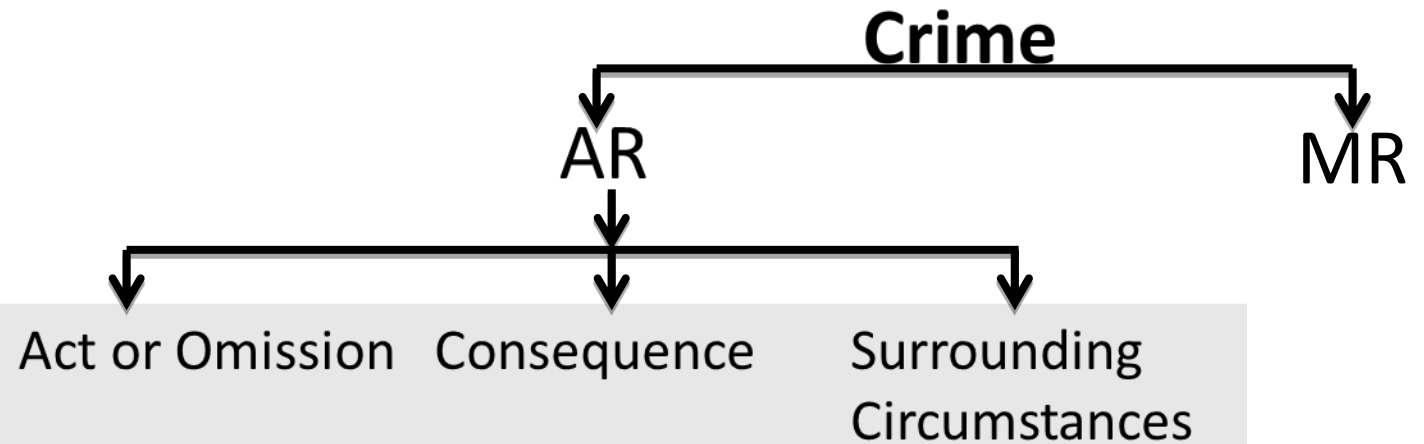
Act or Result Crime? How Sure Are You? It is Result Crime

Theft: dishonest appropriation of property belonging to another with intention to permanently deprive the other of it (S1(1) TA 1968)

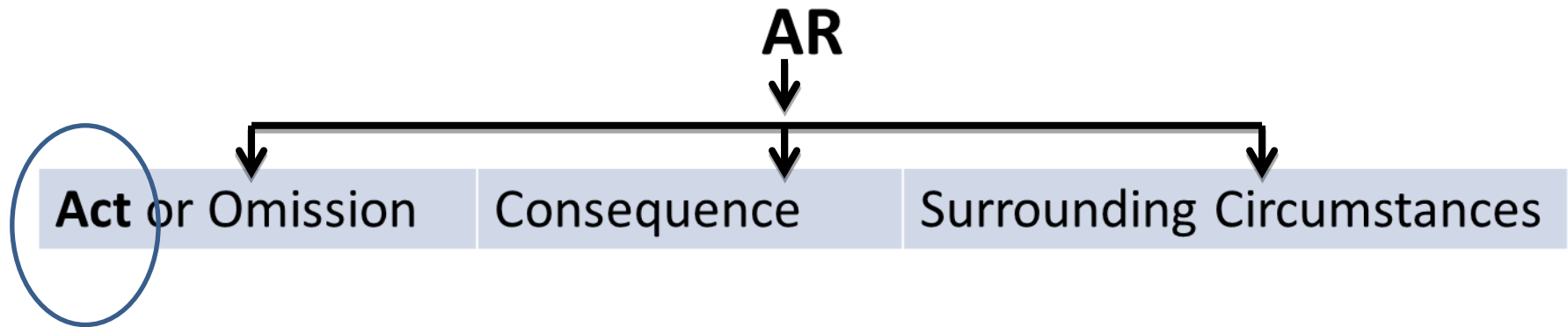
Act or Result Crime? Theft is Conduct Crime

Criminal Damage: intentionally or reckless destroys or damage property belonging to another without lawful excuse (s1(1) CDA 1971)

Act or Result Crime? Criminal Damage is Result Crime



	Act or Omission	Consequence	Surrounding Circumstances
Conduct Crime	✓	X	✓
Result Crime	✓	✓	✓
	Causation →		
Status Crime	X	X	✓
Not examinable			



“No act is punishable if it is done involuntarily”
Bratty v AG Northern Ireland (1996)

Excuses for Involuntariness

1. circumstances led to loss of total control of his action: Defence of *Sane Automatism* will be available (Broome v Perkins (1987))
2. Mental malfunction destroyed the D’s capacity to control his actions: Is the malfunction caused by *Disease of Mind*? If Yes, Sane Automatism is **not** available but Insanity is (Devlin J in Kemp, R v (1957))

Our Focus Today: Sane Automatism

Issues	Sane Automatism	Insanity
Burden of Proof (BoP)	D: evidential burden P: BoP <u>Hill v Baxter [1958] QBD</u>	Presumption of sanity, D: BoP [<u>M’Naghten (1843)</u>]
Verdict	Complete acquittal <u>Quick (1973)</u>	Not guilty by reason of insanity: - Sentence fixed by law e.g. murder: mandatory ‘hospital order’ - Sentence not fixed by law: ‘hospital order’, ‘supervision and treatment order’ or ‘absolute discharge’ <u>S24 DVCVA 2004</u>
Others		- Restriction Order <u>S41 MHA1983</u> - Stigma

Devlin J in Kemp, R v (1957)

D suffered from arteriosclerosis. It caused unconsciousness during which time, he attacked his wife with a hammer. He relied on science to argue that his condition did not amount to a Disease of Mind.

Held:

1. physical state of the brain may be of importance medically, but it is of no importance to the law, which merely has to consider the state of the mind in which the accused is, not how he got there (**scientific definition is irrelevant in law. It has a legal meaning.**)
2. It is also irrelevant whether the condition is transient or permanent or whether it is curable or incurable.

Legal definition of Disease of Mind?

Automatism or Insanity – Disease of Mind 7/10

Martin J.A. in Rabey v. The Queen (Ontario Court of Appeal)

Distinction Drawn: a malfunctioning of the mind arising from some cause that is primarily internal to the accused, having its source in his psychological or emotional make-up, or in some organic pathology, as apposed to a malfunctioning of the mind produced by some external factor.

Legal definition of Disease of Mind - Kemp, R v (1957)



Malfunctioning of mind arising from a cause that is internal to the D

Mental faculties of reason and understanding are impaired or absent

Internal / External Distinction

If Internal: Sane Automatism not available. What are they attempting to do?

Lord Denning in Bratty v AG Northern Ireland:

"Any mental disorder which has manifested itself in violence and is prone to recur is a disease of the mind (p. 412)."

1. **Epilepsy:** Sullivan (1983) HL; Bratty v AG Northern Ireland (1996);
2. **Arteriosclerosis:** Kemp (1957);
3. **Sleepwalking:** Burgess, R v (1991); Jules Lowe (2005);
4. **Diabetes:** Bingham (1991) CA; Hennessy (1989) CA; Bailey (1983) CA; Quick (1973) CA; Broome v Perkins (1987) QBD
5. **Stress:** Lord Lane CJ Hennessy (1989) CA; R v. T (1990); Rabey (1997) Ontario Appeal Court
6. **Concussion, spasm, a reflex action:** Sullivan (1983) HL; Bratty v AG Northern Ireland (1996);
7. **Few other cases:** Finegan v Heywood (2000) HCJ; Smith (Sandie) [1982] CA; Watmore v Jenkins [1962] QBD; Hill v Baxter [1958] QBD; Attorney General's Reference No 2 1992 (1993);

Availability:

1. evidential burden
2. Involuntariness of his action must be caused by external factor (not internal)

Success:

P disproves total destruction of voluntary control / P proves there was no loss of total control of his action

Self-induced Automatism:

Automatism, if self-induced, will not be available if the D is charged with a basic intent crime

Approach:

1. Identify the prohibited conduct - AR & MR
2. Involuntariness of the conduct (Act / Omission)
3. External / Internal - Availability
4. Success
5. Self-induced

Epilepsy – Sane Automatism is not available

Bratty v AG Northern Ireland (1996) HOL

D strangled a girl with her stocking killing her. He was charged with Murder. He was suffering from epilepsy.

Held:

1. “black out”: A judge was only under a duty to leave the issue of automatism to the jury where the defence had laid a proper foundation for so doing by adducing positive evidence in respect of it, which was a question of law for the judge to decide (Avoid: first refuges of a guilty conscience and a **popular excuse**).
2. “involuntary act ... means an act which is done by the muscles without any control by the mind”. Epilepsy is a disease of mind.
3. Defendant failed to prove insanity: there could be no room for the alternative defence of automatism.