

# AUTOMATISM

## INTRODUCTION

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Automatism applies to the situation where the defendant is not legally insane but because of some external factor he is unable to control what he is doing, or as Lord Denning stated in *Bratty v Attorney-General for N. Ireland* [1963] AC 386, where something was done by the defendant's muscles without the control of his mind, such as a spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing, such as an act done whilst suffering from concussion or whilst sleep-walking.

It can then be argued that there is a lack of *actus reus*, as the act is not voluntary, or that there is a lack of *mens rea* because the defendant is not conscious of what he is doing.

### A) TOTAL LOSS OF VOLUNTARY CONTROL

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The defence is not available where the defendant's mind is functioning, albeit imperfectly. See:

*Broome v Perkins* [1987] Crim LR 271.

This approach was recently followed by the Court of Appeal who insisted that automatism is only available where there is a total loss of voluntary control. See:

*Attorney-General's Reference (No 2 of 1992)* [1993] 3 WLR 982.

### B) EXTERNAL FACTORS

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This inability to control one's acts must result from the operation of some external factor upon the working of the brain, rather than an inherent mental defect. See:

*R v Quick* [1973] QB 910.

According to Smith and Hogan, *Criminal Law*, Eighth edition 1996, p40 external factors include concussion, the administration of an anaesthetic or other drug, or hypnosis.

The external factor could be a traumatic event including severe shock, although it must be something which results in more than general stress and anxiety (see *Burgess* [1991], under Insanity). A good example is Post Traumatic Stress Disorder. See:

*R v T* [1990] Crim LR 256.

*R v Antoniuk* (1995) The Times 28 March

### C) SELF-INDUCED AUTOMATISM

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A defendant may be prevented from raising the defence of automatism, where there is evidence to show that he was in some

way at fault in bringing about the state of automatism. The principal authority on this point is the Court of Appeal decision in:

*R v Bailey* [1983] 1 WLR 760.

If the defendant is charged with a specific intent crime, he will have a defence if *mens rea* was not formed. If it is a basic intent crime, the defendant will have no defence if he was reckless.

#### **D) EVIDENTIAL BURDEN**

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The defendant bears an evidential burden in establishing the defence, which means that he must produce sufficient evidence of automatism for a jury to act upon. Whether or not he has done so is a matter of law for the trial judge, but it is apparent from the decided cases dealing with the defence that the defendant will need to produce some expert medical evidence as to his mental and physical state at the time of the offence.

#### **E) EFFECT**

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Automatism operates as a complete defence in that if the defendant succeeds in establishing it, he will be acquitted, and the court ceases to have any jurisdiction over him. It is this factor which perhaps explains the reluctance of the courts to recognise the defence of automatism in certain situations. For example, Pre-Menstrual Tension; see:

*R v Sandie Smith* [1982] Crim LR 531.

Where a defence of automatism is raised, the courts will have to consider whether the defendant should in fact be classed as criminally insane.