CRIMINAL LIABILITY

Introduction

Most crimes consist of two parts: the actus reus describes the criminal’s act (or failure to act) together with any relevant circumstances or consequences, while the mens rea describes his guilty state of mind. The prosecution must normally prove both elements beyond reasonable doubt.

Woolmington v DPP [1935] AC 462, HL

D was charged with murdering his wife; he admitted shooting her but claimed the gun had gone off accidentally. The House of Lords overruled the trial judge’s direction that it was for D to prove his lack of intent: it is for the prosecution to prove beyond reasonable doubt every element of both actus reus and mens rea, subject to a few (almost all statutory) exceptions. Throughout the web of the English criminal law, said Lord Sankey LC, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt.

Actus Reus

Depending on the definition of the crime in question, the actus reus may be a particular act, or a failure to act, or an act producing a particular result, or a particular state of affairs, or some combination of these.

Acts

The simplest case is where the actus reus is an act.

R v McPherson [1973] Crim LR 191, CA

A woman D took two bottles of whisky from a shelf in a self-service shop and put them into her own shopping bag intending to steal them. Dismissing her appeal against her conviction for theft, the Court of Appeal said this was enough to be an appropriation of the bottles: there had been an overt act inconsistent with the rights of the owner, and that was enough.

R v Savage [1991] 4 All ER 698, HL

D became involved in an argument in a pub, and threw a pint of beer over V; the glass slipped from her hand and caused cuts to V’s wrist. The House of Lords affirmed D’s conviction for assault occasioning actual bodily harm: throwing the beer would clearly have been an assault.

An act must normally be a voluntary act: a person who acts involuntarily (because he is pushed, for example, or because he is hypnotised) is not generally guilty of an offence.

R v Mitchell [1983] 2 All ER 427, CA

During a scuffle in a Post Office queue, Mitchell pushed Smith, and Smith fell on top of a woman Crafts; Crafts sustained injuries from which she died. Mitchell was convicted of manslaughter by an unlawful act, viz., the assault on Smith, but Smith was not prosecuted for his “assault” on Crafts.
CRIMINAL LIABILITY


A man A was taken to hospital on a stretcher but was found to be drunk and was told to leave. When he was seen sitting in the corridor the police were called; they took him outside into the street, and then drove him to the police station, where he was charged with being found drunk in a public highway. The Divisional Court upheld his conviction, saying it was sufficient that he was present in a street and was there seen to be drunk; it was unnecessary for the court to enquire how he got there.

Attorney-General’s Reference (No.4 of 2000) [2001] 2 All ER 417, CA

A bus driver knocked down and killed two pedestrians and was charged with dangerous driving. It appeared from the evidence that he had accidentally pressed the accelerator when he had intended to press the brake. The Court of Appeal said this was an accidental but nevertheless a voluntary act; it might affect the appropriate penalty but could not provide a defence. A defendant who does not know what he is doing may be said to be in a state of automatism: this may be a complete defence unless the automatism is his own fault.

R v Antoniuk (1995) unreported

A woman who stabbed her lover in a “robot-like” trance after he had raped her was acquitted of unlawful wounding, apparently on the basis of automatism.

R v Padmore (1999) unreported

A diabetic D stabbed a housemate with a kitchen knife after entering a state of hypoglycaemic automatism. His trial for murder was abandoned after medical evidence had been given, the prosecution offering no further evidence.

R v Lipman [1969] 3 All ER 410, CA

D and his girlfriend V each took a quantity of LSD (a hallucinatory drug). During his “trip”, D imagined he was being attacked by snakes at the centre of the earth and had to defend himself; in doing so, he actually killed V by cramming eight inches of sheet down her throat. He was charged with murder and convicted of manslaughter. Upholding the conviction, the Court of Appeal said there could be no conviction for murder, which requires specific intent, but since no specific intent is required for manslaughter, self-induced intoxication (whether by drink or drugs) affords no defence to that charge.

Omissions

For some crimes the actus reus may be not an act but rather a failure to act in circumstances where there is a duty to do so. Such a duty can be imposed by statute, by a legal contract or a voluntary agreement, by a relationship (such as that of a parent to a child) or by a danger arising from D’s own conduct, but it is not automatic and does not arise spontaneously. If there is no such duty, there can be no liability for an omission.

Road Traffic Act 1988 s.170

(2) The driver of [a vehicle involved in an accident] must stop and, if required to do so by any
person having reasonable grounds for so requiring, give his name and address ...

R v Pittwood (1902) 19 TLR 37, Wright J

D was a level crossing keeper who negligently left open the crossing gate. This led to the death of a carter whose cart was struck by a train, and D was convicted of manslaughter. He had a duty (arising from his contract of employment) to shut the gate, and although this duty was owed to his employers rather than to the public at large, it was enough that his negligent failure to act could lead to conviction.

R v Gibbins & Proctor (1918) 13 Cr App R 134, CCA

D1 and his mistress D2 were convicted of the murder of D1’s seven-year-old daughter Nelly; they had starved the child to death and the jury found this to have been their intention (though P, who hated Nelly, was clearly the moving force). The Court of Criminal Appeal upheld the conviction: where there is the duty to act, failure to do so can lead to liability even for murder if the necessary mens rea is present.

R v Stone & Dobinson [1977] 2 All ER 341, CA

D1 and D2 had D1’s elderly sister living with them; when she became incapable of looking after herself they neglected to care for her and she died. DD were convicted of manslaughter; on the evidence, the jury were entitled to find as a matter of fact that S and D had voluntarily taken on themselves the duty of caring for F, and that they had failed in that duty.

R v Miller [1983] 1 All ER 978, HL

A tramp took shelter in an empty house, and went to sleep with a cigarette in his hand. He awoke a little later to find that he had set the mattress alight, so he got up, went into another room, and went to sleep there. The fire took hold and the house burned down. D’s conviction for arson was upheld by the House of Lords, who said once he had created a danger of harmful consequences by his inadvertent action he had a duty to try to avert those consequences; his failure to do so could in those circumstances be a crime.

Greener v DPP (1996) 160 JP 265, DC

A bull terrier belonging to D broke the chain holding it, escaped from its enclosure in D’s garden, and entered a neighbouring garden where it bit a young child. The justices convicted D of allowing his dog to enter a place where it was not permitted to be, causing injury, contrary to s.3(3) of the Dangerous Dogs Act 1991, and Saville LJ (on appeal) said this offence could be committed by D’s failure to take adequate precautions.

R v Naughton (2001) unreported

An off-duty police officer from Birmingham, who did not intervene when one of his friends attacked a restaurant owner, was convicted of misconduct in a public office. He resigned from the police force without a pension, and was ordered to do 200 hours’ community punishment.
Causation

Some crimes include a particular result as part of the actus reus. If the result does not occur the crime is not committed - shooting a victim is not murder unless the victim dies - and even where the result does occur there is still no crime unless it is caused by the defendant’s act or omission.

R v White [1910] 2 KB 124, CCA

Meaning to kill his mother, White put a few drops of cyanide into her lemonade. Soon afterwards, before drinking the lemonade, his mother died of a heart attack. He was acquitted of murder on the grounds that he had not actually caused his mother’s death: her death would have happened anyway. [He was convicted of attempted murder.]

R v Pagett (1983) 76 Cr App R 279, CA

Pagett took his girlfriend Gail from her home by force and held her prisoner in a flat. When the police surrounded the flat, Pagett came out holding Gail in front of him as a shield. He fired a shotgun at the police and they shot back; Gail was hit by three police bullets and died. Pagett’s conviction for manslaughter was upheld by the Court of Appeal; his act (shooting at the police) was the cause of Gail’s death, because if he had not shot first they would not have shot back.

R v Ireland [1997] 4 All ER 225, HL

A man D, on legal advice, pled guilty to assault causing actual bodily harm and was imprisoned for three years after making a large number of unwanted telephone calls to three women; when they answered the telephone there was nothing but silence. There was psychiatric evidence that as a result of the calls the victims had suffered palpitations, difficulty in breathing, cold sweats, anxiety, inability to sleep, dizziness and stress. D was convicted of assault occasioning actual bodily harm.


A young man D threw an “air bomb” firework during the rush hour in an enclosed bus station. Other passengers panicked and rushed for the exits; an elderly lady was knocked over in the rush, struck her head, and died later in hospital. D was convicted of manslaughter and sentenced to 12 months’ detention.

Even where there is factual causation, there may not be causation in law. If John invites Janet to a party, and on the way to the party Janet is knocked down by a bus, John’s invitation is a factual cause of Janet’s injuries: but for the invitation she would not have been on that road at that time). But John’s action is not the legal cause of Janet’s injuries: the road accident was not a consequence for which John should be held responsible.

Bush v Kentucky (1880) 78 Ky 268, CA (Kentucky)

A man D shot and injured a woman V; V was taken to hospital, where she caught scarlet fever from a doctor and subsequently died of the fever. D’s conviction for murder was reversed on appeal: although his act had been a factual cause of V’s death (because V would not have been in hospital but for the injury) it was not the legal cause.
Airedale Health Authority v Bland [1993] 1 All ER 821, HL

A young man was in a persistent vegetative state after being seriously injured at the Hillsborough football ground, and doctors sought leave from the court to discontinue artificial feeding so that he could “die with dignity”. Lord Goff said that where a doctor gives lawful treatment (e.g. by administering drugs to relieve pain) the patient’s subsequent death (as a side-effect, even if it was a very likely one) will be regarded in law as exclusively caused by the injury or disease.

Where there are several causes operating together, the question is whether the defendant’s act was a “substantial cause” (in which case he may be found guilty) or “merely part of the history”. The chain of causation can in principle be broken by a new act (whether an act of nature, or of a third party, or of the victim himself) but only if this new act was so unlikely that it could not reasonably have been foreseen.

The Harlot’s Case (1560) 1 Hale PC 432

A prostitute D left her newly-born baby in an orchard and covered it over with leaves. A kite struck the child with its talons and it died. D was convicted of murder, since she had intended the child’s death, and was executed.

R v Halliday (1889) 61 LT 701, CCR

D frightened his wife V to such an extent that she jumped from a bedroom window to escape his threats and injured herself quite seriously: the Court for Crown Cases Reserved upheld D’s conviction for inflicting grievous bodily harm. V’s action was a foreseeable result of D’s unlawful act, and he could therefore be regarded as having caused her injuries.

R v Roberts (1971) 56 Cr App R 95, CA

A driver D was giving a young woman V a ride to a party, but started to make improper advances to her and pulled at her clothes. V jumped from the moving car to escape any further sexual assault, and suffered minor injuries and concussion. D’s conviction for assault causing actual bodily harm was upheld: the Court of Appeal said that in such a case, only if the victim of her own accord does something so daft that no reasonable man could be expected to foresee it is the chain of causation broken.

DPP v K (a minor) [1990] 1 All ER 331, DC

A 15-year-old schoolboy D left a chemistry lesson to go to the toilet, and secretly took with him a small amount of concentrated sulphuric acid to see what it would do. After a few minutes he heard someone coming, so he emptied the acid into the upturned nozzle of a hand-drier (meaning to come back at break to clear it away), put the empty tube in his pocket, and returned to the lesson. Before break, another boy came to the toilet, used the hand-drier, and suffered severe facial burns. D was acquitted of an assault causing actual bodily harm, but the High Court remitted the case with a direction to convict even though no assault in the ordinary sense had taken place. A defendant who pours a dangerous substance into a machine, said Parker LJ, just as truly assaults the next user of the machine as if he had himself switched the machine on.

The same principle applies where the victim is given poor medical treatment: unless this is so overwhelming as to make the original injury irrelevant, the chain of causation is not broken.
Bush v Kentucky (1880) 78 Ky 268, CA (Kentucky)

A man B shot and injured a woman V; V was taken to hospital, where she recovered from the shooting but caught scarlet fever from the doctor. B’s conviction for murder was quashed on appeal: his act had been a factual cause of V’s death (because V would not have met the doctor but for the injury) but it was not the legal cause.

R v Smith [1959] 2 All ER 193, CMAC

Two soldiers D and V were involved in a fight in barracks, in which D stabbed V with his bayonet. V’s friend took him to the first aid post, but on the way he tripped over and dropped V twice. When they got there, the medical officer was busy and took some time to get to V. V died about two hours after the stabbing, but had he been given proper treatment he would probably have recovered. Smith was charged with murder, and his conviction was upheld. The treatment he was given was thoroughly bad and might well have affected his chances of recovery, said Lord Parker CJ, but medical treatment correct or not does not break the chain of causation. If at the time of death the original wound is still an operating cause and a substantial cause, then death can be said to be a result of the wound albeit that some other cause is also operating. Only when the second cause of death is so overwhelming as to make the original wound merely part of the history can it be said that death does not flow from the wound.

R v Cheshire [1991] 3 All ER 670, CA

D shot V in an argument, and V was taken to hospital where a tracheotomy was performed. Six weeks later, V suffered breathing problems as a result of the tracheotomy scar and died. The hospital had been negligent - perhaps even reckless - in not recognising the likely cause of V’s problems and responding to them, but the Court of Appeal said this did not break the chain of causation from the shooting. D’s actions need not be the sole or even the main cause of death as long as they contributed significantly to that result; medical negligence did not exclude D’s liability unless it was so independent of his acts and so potent as to make his own contribution insignificant. When the victim of a criminal attack is treated by doctors or other medical staff attempting to repair the harm done, it will only be in the most extraordinary and unusual case that such treatment can be said to be so independent of the acts of the accused as to make it in law the cause of the victim’s death to the exclusion of the accused’s acts.

The victim’s own peculiarities do not normally break the chain of causation. According to the so-called “eggshell skull” rule, those who use violence on their victims must take them as they find them. If because of some individual peculiarity the consequences are unexpectedly serious, the defendant will generally be liable for these unforeseen results.

R v Woods (1921) 85 JP 272, Avory J

A young man D, now aged 21, had been left in charge of his younger brothers and sisters while their father was away at war, but the father had recently returned. One day D struck his younger brother B for being cheeky; B got up and walked out of the room, but soon afterwards collapsed and died because of a very rare and unsuspected thymus condition making him highly susceptible to any sudden shock. D was charged with manslaughter, and the judge directed the jury that he would be guilty if D had struck an unlawful blow, even though it would have caused no serious harm to any healthy person. (The jury acquitted D nevertheless.)
CRIMINAL LIABILITY

Actus Reus

R v Blaue [1975] 3 All ER 446, CA

D stabbed an 18-year-old woman V and punctured her lung. At the hospital, V was told she would need a blood transfusion to save her life, but refused this as contrary to her religious beliefs. She died next day, and D was charged with murder, subsequently reduced to manslaughter by reason of diminished responsibility. His appeal against conviction was dismissed. It has long been the policy of the law, said Lawton LJ, that those who use violence on other people must take their victims as they find them. This principle clearly applies to the mental as well as the physical characteristics of the victim, and the courts will rarely make a judgment as to whether the victim's response was reasonable.

Circumstances

Some crimes depend on particular circumstances or a state of affairs, either alone or in conjunction with an act or omission. Possession offences are a good example: section 19 of the Firearms Act 1968 makes it an offence to be in possession of a loaded shotgun or air rifle in a public place without reasonable excuse. The defendant need not perform any action or cause any result: the mere fact that the gun is in his possession is enough.

R v Martindale [1986] 3 All ER 25, CA

A man D was searched by police officers, and a small quantity of cannabis resin was found in his wallet. D said he had been given the drug two years earlier in Canada and had forgotten he had it, but was still convicted of possessing a controlled drug.

R v Gadd (1999) unreported

The defendant (otherwise known as Gary Glitter) pled guilty at Bristol Crown Court to 54 charges of possessing child pornography.

In other cases the actus reus involves both act and circumstances. The crime of rape, for example, involves sexual intercourse in the circumstances that the victim does not consent.

R v Williams [1922] All ER 433, CCA

D was a singing teacher whose 16-year-old pupil V allowed him to have sex with her after he told her it was just a way of improving the quality of her voice. D’s conviction for rape was upheld on appeal; V had not consented to sexual intercourse because she did not know that was what D intended.

Road Traffic Act 1988 s.4(1)

A person who, when driving or attempting to drive a mechanically propelled vehicle on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence.