

Cash to check
Carter v State (Ohio),
396 P 2d 351, a case
holding that "unconscionable"
is a defense

"Nature & consequences."
Chuck Chase v. State, 369
Pac 2d 997

+ Esser (Wisc) 15 NW 2d 505

450 RR 1451, Sec 3 X

+ 78 NW 2d (Mich) 508 (arson)

+ 126 NW 737 (Wisc)

X Hotelma (Wisc) 186 US 413 X

* 320 Fed 2d 800
Blocker

Lewis v
State
Fam

78 Ky 183

37/52 (275) 2d 666

announced
Fam. and a full name
in Smith (Ky 1954)

268542d 937 *

Form Instr. "Bluchment
of his mind"

3785 W 2d 615

63 CR 653

268/937

Smith's Community

Sanamb undine

by buying no

defense.

1937 Shepard

32 no 540m

39 LRA 323m

1 R L J (81) 125

1937 | 37-52 | 68

13 K 90-91

BLRA (NS) 540

cites Fair on the
grads. of his fear

Other on scope of
med. testimony.

33 Am J Cr L 791, note 4

"A conflict of opinion
prevails as to whether
one can be compelled
to commit a criminal act
by hypnotizing, without
consent, esp. on his part
Cites 440 SPA 271.

22 CJS page 224, 726,
under X has footnotes 77 & 78
and cites 1 Indiana case (Parks vs State),
64 NE 862, 159 Ind 211, 59 LRA 190)
and one NY (Armitage vs Barker, 96 NYS 814)
and, under 78, People v Worthington, (Cal) 38
Pac 689

"Proof that the accused committed the offense
charged when under the influence of hypnosis ...
in which the subject acts in obedience to the
will of the operator, so that he did not know
what he was doing, or was compelled to commit
the offense, would no doubt be a defense, but
evidence of the effect of hypnosis is not admissible
merely because accused testifies that operator told
him to commit the crime."

Cornell v Sup. Ct of San Diego Co (1959)
52 Cal 2nd 99, 338 Pac 2d 447, 729 ZR 2d 1116

State v Pusch, 77 N D 860,
46 NW 508, holds that, hyp.
cannot test what def. told him
understand as ^{telling truth or} proof of innocence.

(Brushed off offer without
citation or comment)

(Under Criminal Law (Key 388))

Words & Phrases under Hyp. has
2 entries: Lewis vs State, 130 So 904,
24 Ala App 120; Austin vs Barber,
96 W 45 814, 818 (Both define)

Wigmore, Vol. 3

Sec. 934, p 485, note 6.

"So also a suggestion to hypnotism, or other form of suggestion, at the time of observing or of narrating, or in the interval [should be admitted].

(1925)
Cites note 6, citing Abbott v State, 113 Neb 517, 204 NW 74 (sodomy with a child of 6; psychologists' test. to the child's susceptibility to parental suggestion, excluded.); 1905, State v Epum, 138 NC 599, 50 SE 283 (that defendant had occasionally hyp. his wife, never testifying for him, allowed on cross-examination).

Sec. 998, p 643, Par 2, under heading Hypnotic sleep

Anti-admissible text: "H. Sleep has by some scientists been said to be a condition in which the subject will make truthful answers to questions. But this method has not been (1940) adequately tested for judicial purposes. In any event its possibilities are limited to those kinds of persons who are susceptible to hypnotic sleep; moreover, the hypnotizer may use his power to falsify the subject's narration, and therefore the method has dangers of its own.

Crim. Law. ²² C.J.S. ~~§~~ Sec. 64 Somnambulism
Dicta that it might be a defense, Lewis vs State (Ga) 275E
2d 654.

Headnote:

Sec. 72. (b) "Proof, if available, that one acted under hypnotic influence would afford a defense to a criminal charge."

Text: "Proof that the accused committed the offense charged when under the influence of 'hypnotism' ... in which the subject acts in obedience to the operator (77) so that he did not know what he was doing, or was compelled to commit the offense, would no doubt be a defense, but evidence of the effect of hypnotism is not admissible merely because accused testifies that another told him to commit the crime (78)."

(77) Ind. Parks vs State, 64 NE 862, 59 LRA 190 (No license case)
NY Austin v Barber, 96 NY 5814
16 C.J. p 111, note 88.

(78) Cal. People vs Worthington

^{2d} A L R Word Index (1-75) ^{Note} cites under
Hypn. 72 A L R 2d 1120 and 23 A L R 2d 1306.
In 23 A L R 2d 1310 under § 4 cites 2 ^{murder} cases
where evidence of what Def. told Hypn. not admissible.
(State v Pusch (N.D.) 46 NW 2d 508 and P. vs Eberhart
(Cal) 49 Pac 1049, 40 LRA 269.

M. 5

1 Miranda

2 Reason for not objecting to
"confession" - shows hazy
state of mind & also good faith - if he
knew he would have told.

3 Consider Transference of
control by trick during
sleep.

Not sent

attempts at
"memory recall"

induced by a rogue ~~of~~ who used the
"full arsenal" (in your phrase)

and slightly removed after the
crime.

Dear Dr. Young,

I plan to write a ^{serious} novel revolving around
a murder and a murder trial in which the defense is
that the defendant was persuaded to commit the
act by another while ~~in~~ he, the defendant, was in ~~an~~
hypnotic trance. I further plan to have my defendant,
after his arrest, in a state of ^{post hypnotic} amnesia induced
during the trance and also, for a period, ^{and by further implantation} not susceptible
to hypnosis by others also due to ^{posthypnotic suggestion} made during the initial trance. In other words, for a time
after the crime it will look like "curtains" for ~~the~~ ^{my poor} defendant,

a state of

implanted

after the crime

a bit of

Preparatory to this I have been doing quite
considerable research both on the legal and "medical"
aspects of hypnosis. There is surprisingly little modern
legal authority on the subject of hypnosis as a ^{possible} defense to
crime, but ^{I find} enough ^{of} ^{contradictory} ^{authority} for me to make out at
least a ^{plausible} case ^{for the defense}. In your field
I have read articles by or about
Kline, the ^{authorities} ^{and observations} of Kline, Wells, Brennan, ^{Oppel} Rowland,
Erickson, Estabrook and others, as well
as your ^{own} ^{immense} ^{and} ^{lucid} stimulating article in Le Cron's Experimental
Hypnosis which, I may add, I find the most penetrating
and enlightening ^{and convincing} of any I have ^{encountered}; hence my
writing you.

in fact this could dictate the course of my story)
meanwhile

I have not yet written a line of text
(I want to get my law and scientific ^{background} ~~defects~~ straight
before I tackle anything), but I am hopeful that I
could interest you in reading my narrative when it
is done so that I can feel that I have written both
a plausible and at least arguably sound yarn.
* That I am writing you at all is perhaps the best
proof that I ~~do~~ do not wish to write a lurid
and sensational story or one that would reflect
hurtfully on the ^{existing} new resurgence of hypnotism. In fact
the more I read the more respect I have for ^{the}
^{long neglected} art and science of hypnotism. But, being a story
teller, I do want to write ^{of John} a suspenseful and exciting yarn.

By way of background I am a professional
writer; a former ^(District Attorney) lawyer and judge; I have written
nine books, including three novels, the best-known
being A Nature of a Murder, all written under my
pen name Robert Traver. Help out,

If you ^{upon reflection} find my project interesting you
and you are willing to go along ^{with me} ~~along~~ ^{perhaps that all could}
^{might} ~~mutually work out~~ please write me and I'll go to work.

Sincerely,

(non-hypnotically)
may I suggest that you look at it this way? --
That in all probability I will go ahead and write this
yarn anyway, and that it might be better ^{all around} especially
for poor ^{misunderstand} ~~hated~~ hypnotism itself, that I do so with the valued advice of
a distinguished modern pioneer in the field.

12/8/57

45 J of Psy 239 (1958) MILTON V. KLINE

Speaks of reluctance of operators to concede because of initial bad reputation. In lit, religion & folklore hypnosis has historically been identified ^{in part} with evil, the devil, and a genuine "Svengali" concept. Speaks of defensive & protective attitude of scientific workers.

"In order to purify it, those who have wished to use it scientifically outlawed the concept that 'a subject will not do anything in hyps. that is against his will' or 'that he would not do in a waking state.'"

Refers to Weitzenhoffer's explanation that (1) subjects believe they are protected (^{as if} "was only an experiment") (2) trust hypnotist (3) believed there were legitimate reasons or (4) subjects had latent needs or criminal tendencies.

Suggestion alone is not invariable as the phenomena also includes the hyps. as subj sees him. Diff. subj. will see diff. hyps. in some individuals.

Experiment

Subj.
Hyps.

28 year old married male college student
4 hyps.

- (1) Told him to do it NO dice
- (2) Hallucinatory ~~test~~ to a socially accepted out ^{till} + 3 - 4 (did it at once) (4th woman was distressed)
- (3) Back to one with added encouragement. (Only 1 subj succeeded over 4 am)
- (4) Successful #3 experimenter "transferred" ^{to} others and all but woman could, who quit

(5) Back to one ^{again} (all failed)

(6) Successful experiment did ~~one~~ ^{#1} with
added visualizing himself doing it with
hyp. present just prior to direct sugg.
He did it and also for remaining 2 hyps.

Further attempts at #1 failed.

Conclusion

Primarily dependent on the hyp. and to the
extent that he could enter into it part. in act
itself

11 Riverside Drive NYC

The Managing Editor

(The Journal of Psychology

2 Commercial Street

Princeton, Mass.

Important Legal Sources

- 1: Hypnotism: 40 LRA (1898) 269, esp. 271

- 2: Criminal responsibility for act committed under influence of insane delusion as to facts as affected by question whether such facts would, if actually existing, excuse the act. 1917 LRA 650.

- 3: Right of counsel in consulting the accused to be "Counsel's right, in consulting with the accused as client, to be accompanied by psychiatrist, psychologist, hypnotist, or similar practitioner" 72 A L R 2d 1120
(Lead and only case in Cornell v Superior Court, 52 Cal 2d 99, 338 P 2d 447, 72 A L R 2d 1116.)

at 851

In McDonald v U.S., 14 U.S. App. D.C. 120, 312 F.2d 847 (1962)
it was laid down that a jury should be instructed that for
purpose of criminal responsibility "a mental disease or defect
includes any abnormal condition of mind "regardless of its
medical label," which substantially affects mental or emotional
processes and substantially impairs behavior controls."

This language was followed & approved in Blocker v
U.S., 320 Fed.2d 800 (a murder case)

Unconscionable and Idaho

21 Am Jur 2d § 29, p 115

Both Oklahoma and California provide by statute that unconscionable is a ^{total} defense to crime and both hold that it is separate from and should not be confused with the defense of insanity.

Thus see *Carter v State* (Okla) 376 Pac 2d 351,

People v Martin (Cal) 197 Pac 2d 379

" " *Taylor* (Cal) 88 Pac 2d 942.

The *Carter* case cites 22 CJS Crim Law, sec 55, p 144,

"Unconscionable. A person cannot be held criminally responsible for acts committed while he is unconscionable," and goes on to say that statutes so providing "do not contemplate individuals within their protection either insane or voluntarily intoxicated persons, and are restricted in their construction to persons of sound mind suffering from some other agency rendering them unconscionable of their acts."



Kentucky apparently recognizes the defense by case law (*Smith v Commonwealth* (Ky) 268 SW 2d 937)

Cal. has held that it refers to people of sound mind, such as somnambulists, or persons suffering with delirium from fever or drug. *People v Methner* 132 Cal 326, 64 P 481.

Supp. cites
"traumatic am"
(Colo) Wathin
v People,
408 P2d 425

22 C J S Crim Law § 55, p 194, under
Capacity to Commit and Responsibility for Crime; it says:
"Amnesia alone is not a defense to a criminal charge unless
it is shown that accused did not know the nature
and quality of his act and that it was wrong." (95.5)
(Citing Thomas v State, 301 SW2d 358, 201 Tenn 645)

"Unconsciousness. A person cannot be held criminally
~~liable~~ responsible for acts committed while he was
unconscious." (Citing Cordor v Commonwealth, 278 SW2d 77 and Smith v Commonwealth,
268 SW2d 937 (both Ky)) [Supp. cited (Idaho) State v Gish, 273d 341, 343 Pac 2d 342, 351
and Wathin v Commonwealth, 378 SW2d 614 (Ky).] and State v Schork, 210 OR 2d 199,
"Some" 44 N.J. 453.]

Under statutes broadly exempt from resp. persons who
commit offenses without being conscious thereof (citing 142 Pac 2d
435, CICA 2d 110) ... "and are restricted to in their
contemplation to persons of sound mind suffering from some
other agency rendering them unconscious of their acts, such
as somnambulism."

In Gish case, above, Idaho also has ^{such} a statute, which (Pac p 351)
it apparently construes not as literal unconsciousness but that it
means controlled by the unconscious mind. Also implies somnambulism def.
(affid.)

In Wathin's, above, the def was hit with a black jack
shortly before firing the fatal shots, depending on traumatic
amnesia. Court gave requested instruction on. (Pac 427). but
limited to 1st degree murder, since def. had started fracas.
Holds that 1st degree cannot be committed by one sane
madman (Pac p 429) (Cites Read case, also homicide, 119 Col 506,
205 Pac 2d 233 where amnesia not broken by her own misconduct)

12 Cyc Crim Law (d.) p 168

Somnambulism & Somnolentia: "Som. is the custom or habit ~~of~~ on the part of the person afflicted of ~~losing~~ the power of locomotion while asleep.

Somnolentia is the lapsing over of profound sleep into the domain of apparent wakefulness, whereby a sort of ⁱⁿvoluntary ~~involuntary~~ ⁱⁿvoluntariness is produced which for the time destroys the moral agency (m46, citing Fair). Legally som. & some are included [treated?] under the head of insanity, and if the person afflicted with either is so far unconscious that he does not comprehend the moral character of the act performed, or if comprehending it, he cannot choose bet. right & wrong, or if his condition may be regarded as that of a person under an insane delusion, he cannot be held criminally resp. for his act." (Citing Fair.)

*

*

Miranda annotation 104 LR 3d 1054.

Gill

In the Reed case the defendant mother was charged with murder & convicted of 2nd. degree murder for the fatal shooting of her nine-month-old daughter. At her trial she testified that her husband had beat her up before just before that, striking her ^{and head} mouth, etc, and that she remembered nothing of the alleged fatal shooting or the events surrounding it.

At her trial D. requested instruction upon manslaughter and amnesia on a theory that she was too dazed & confused & semi- or unconscious to form the intent to commit the crime charged or of knowing or understanding the probable result of her act. The court ~~refused~~ refused the instruction & confined the jury to 1st & 2nd.

In reversing the court said: "When there is any evidence, however improbable, unreasonable or slight, which tends to reduce the ~~grade~~ homicide to the grade of manslaughter, the defendant is entitled to an instruction upon the hypothesis, and the court's refusal to instruct thereon is reversible error."

*
→

Apparently no medical testimony ^{on} or contradictions of her amnesia claim

In *State vs Sibora* a pure M'Naughten Rule state,
210 Atl 2d 193, at 202, the court said:
"Criminal responsibility must be judged at the level
of the conscious."

(1956-66)

* Key Digest, Crim. Law, Sec. 46 Capacity & Resp.
In *People v Munn* (Ill) 154 NE 2d 225 the court
plurality for the two-part view of M'Naughten, namely,
the ability to judge and the power to choose between right &
wrong, and if either is lacking, an accused cannot
be convicted.

Same: A person who is unconscious at the time
he commits a criminal act cannot be held responsible.
Watkins vs Comm. (Ky) ¹⁹⁶⁴ 378 SW 2d 614.

See (mental) *State v Jensen* 246 Pac. 2d 618.

Arg: X's cond. similar to man in state of
involuntary intoxication and is a valid defense.
(see Md. case *Saldini*, 143 Atl 2d 70.)

1968 → That amnesia may have reduced the defendant's will to
a reflex and turning to an automaton is no complete defense
to an otherwise criminal act (Ala) *Joyner vs State*, 199 So 2d 694.

Key Dig 1946-56.

Unconscious total defense.

Smith (Ky) 2685W2d 937

Corder (") 2785W2d 77

Same¹⁴ 36-46

* A person is acquitted if at the time of his commission of the act he has no knowledge of his deed. *Pro. vs. Freeman*, 142 Pac2d 435, 61 Cal App 2d 110. (1943)

Although somnambulism might be a defense, not so if from voluntary ^{electronic} sleeping, (Ga) *Lewis v State*, 275 E2d 639, 196 Ga. 755 (1943)

1907-1916 An epileptic under seizure is excused from crim. responsibility when unconscious of the act. *Pro vs. Magness*, 155 NYS 1013, 92 Misc Rep 80, 34 NY Cr. R. (1915)

In the Cal Freeman case (cited page previous) the def. was convicted of negl. homicide and defended on gds. that he was unconscious from epilepsy. In reversing because of faulty instructions the Ct. said (head 10):

"No principle of criminal jurisprudence is more zealously guarded than that a person is guiltless if at the time of the commission of his act he has no knowledge of his deed, Hall's Pleas of the Crown, Vol. 1, p. 473; *Fain vs Comm.*

Goes on to quote from *Duncan vs State* *Comm.*, 78 Ky 183, 187; 39 Am Rep 213 *State*, 26 Tenn 148, 150 that no one can be convicted of an offense of which he is ignorant. In *State vs Lewis*, 136 Mo 84, 37 SW 806, "the defendant having pleaded unconsciousness at the time she shot the deceased, the jury was instructed to acquit her if they believed from any cause she was so unconscious as not to know what she was doing." In *People vs Samaniego*, 118 Cal app 165, 173, 4 Pac 2d 809, 812, 5 Pac 2d 653, it was declared that where the obvious evidence shows that the conscious mind was of the accused ceased to operate and his actions were controlled by the unconscious or subjective mind the jury should be instructed of the legal effect of unconsciousness. "A person who cannot comprehend the nature or quality of his act is not responsible therefor. An act done in the absence of the is not more the behavior of the actor than is an act done contrary to his will." *State v Shreshury*, 60 Wash 106, 110 Pac 1020, 1024, 32 LRA, NS, 1216, Ann Cas 1912 B, 917.

In *Notenka vs United States*

the def, as member of the Choctaw tribe of Indians killed a woman and was charged with murder and defended on the ground of insanity. As part of this defense he claimed that the woman was a witch (insane delusion) and the trial court in effect charged that if his belief in witches was the product of an insane delusion he was irresponsible and should be acquitted ^{but that if it be} ~~but~~ ^{an erroneous delusion, such as} came to this conclusion as a result of reading the Bible, he should be convicted. Upon appeal the charge approved & conviction affirmed (He had killed two other people the same day & been acquitted on grounds of insanity)

In *People vs Finley*, 38 Mich 482, the defendant
was convicted of the murder of his wife and appealed. At his
trial he had pleaded insanity and the trial court charged
that he would be blamable in the law if by reason of
insanity he was incapable of knowing right from wrong
and (H) if he had not the power to resist the act.

In affirmed by 5 Ct said: "This was correctly charged..."
The law "holds every one responsible who is compos
mentis, or a free agent, and every one irresponsible who
is non compos mentis, or not having control of his mind

In *People v Dummig* (1903) 134 Mich 625, 96 NW 1061
rule followed at (Mich 636) "did she know it was wrong and
could she have refrained from doing so?"
(Poisoned children)

Stated editorially in 45 A LR 2d 1450 "that the test should
be the accused's ability to emotionally & intellectually realize
and appreciate, as an integrated personality, the nature &
consequences of the moral choice presented..."

2 phrases to test (45 A LR 2d 1451)

Even M'Naghten rule requires: "was labouring under such
a defect of reason" i.e. as not to know the nature & quality of
the act he was doing; or, if he did know it, that he did
not know he was doing wrong.

(Actually the M'Naghten case was specifically directed to insane
delusions)

45 A 1R contd 1453

Irresistible doctrine proceeds on the theory that
insanity may affect the volitional as well as cognitive
faculty. (when because of mental disturbance or defect)

X
People vs Freeman (Cal 1943) 142 P2d 435.
D. was charged with ^{wilful} negligent homicide. The ^{People's} proofs showed
that he drove into a busy ^{street} intersection at more than 60 miles
an ~~hour~~ ^{hour} and collided with another car, instantly killing a
passenger in it and severely injuring its driver. His defense
was that he was unconscious due to an attack of epilepsy
suffered at the home of a friend. Convicted by a jury he
appealed the ^{claimed} faulty instructions to the jury. In reversing the
conviction without remanding the court said: "Epilepsy is only
one of a number of causes of unconsciousness." The case also
flatly holds that to employ the defense of unconsciousness it is
not necessary to plead insanity. Our general court said:

(Head to)

No principle of criminal jurisprudence was ever more zealously
guarded than that a person is guilty if at the time of his
commission of an act defined as criminal he had no knowledge
of his deed. Hale's Pleas of the Crown, Vol. 1, p. 473; Fair v
Comm, 78 Ky 183, 188, 39 Am. Rep. 213. "It is a sacred principle
of criminal jurisprudence that the intention to commit the crime is of
the essence of the crime, and to hold that a man shall be held
responsible for an offense, of the commission of which he was ignorant
at the time, would be intolerable tyranny." Duncan v State, 26
Tenn 148, 150. In State v Lewis, 136 Mo 84, 37 S.W. 806, the
defendant having pleaded unconsciousness at the time she shot the
deceased, the jury was instructed to acquit her if they believed ~~that~~
from any cause she was so unconscious as not to know what
she was doing.

Cont'd

Freeman (contd)

In *People v Samaniego* 118 Cal App 165, 4 P 2d 809, 5 P 2d 653, it was declared that where the evidence shows the conscious mind of the accused ceased to operate and his actions were "controlled by the subconscious or subjective mind" the jury should be instructed as to the legal effect of such unconsciousness. A person who cannot comprehend the nature and quality of his act is not responsible therefor. An act done in the absence of the will is not any more the behavior of the actor than is an act done contrary to his will. *State v Strasburg*, 60 Wash. 106, 110 P 1020, 1024, 32 L RANS 1216, Ann Cas 1412 B, 917.

21 Am Jur 2d Crim Law, Sec 29, p. 115

UNCONSCIOUSNESS; SOMNAMBULISM; EPILEPSY:

"If a person is unconscious at the time he commits a criminal act, he cannot be held responsible. (1) This defense is separately provided for by statute in some jurisdictions. (2) Unconscious is a complete, not a partial, defense to a criminal charge. (3)

Somnambulism has received some recognition as a defense, (4) [Gain] although it has been held that it is not a defense if induced by voluntary intoxication. (5) Somnambulism has been regarded ^{as} not a distinct and separate defense, but as merely an instance of the insanity defense. (6) But the opposite conclusion has been reached as to the defense of unconsciousness where the latter is expressly explicitly and separately provided for in a statute which also makes separate provision for the defense of insanity. (7) And it has been said that the defense of insanity and the defense of unconsciousness are not the same, either by statutory definition or by interpretation of the courts. (8) "

(1) *Smith v Comm* (Ky) 268 5W2d 937; *Carter v State* (Okla) 376 Pac 2d 351.

(6) *Jibbs v Comm* 138 Ky 558, 128 SW 871

(8) *Carter v State* (Okla) 376 P 2d 351

In *Carter v State* (Okla Crim. 1962) 376 P2d 351, the defendant was convicted of first degree manslaughter in driving his car on the wrong side of the road and colliding with a tractor-trailer & killing his mother. (Sentenced to 4 yrs.)

Sought to defend on blackouts & dizzy spells from a head injury sustained in a previous railroad-car collision. Offer of evidence rejected. Defense offered under Okla statute:

"All persons are capable of committing crimes, except those belonging to the following classes:

"6. Persons who committed the act charged without being conscious thereof."

Notes 22 C.J.S. Crim Law, § 55 § 194.

(Which see) "Restricts to their contemplation to persons of sound mind suffering from some other agency. Says: 'It should be noted that it has been clearly pointed out that a defense of insanity and a defense of unconsciousness are not the same, either by statutory definition or by interpretation of the courts.'"

Reversed & remanded.

Do not include insane persons on those in top.

Murdering them unconscious of their acts."

(1904)

21 Cyclopaedia of Law and Procedure,
Criminal Law, p. 164 says simply:

22 Cyc 95
p 193 to
same
effect.

"Of course no one can be held responsible for a crime, or
even ^{is} guilty of a crime, unless he has sufficient capacity,
mentally and otherwise, to commit it. Want of capacity,
therefore is a complete defense and not a mitigating
circumstance," (21) Citing Sage v State, 91 Ind. 141.

Treats Somnambulism and Somnolentia under Insanity
and cite Fair for everything

"Legally sane. & some. are included under the head
of insanity, and if the person affected does not comprehend
the moral character of the act performed; or if, comprehending
it, he cannot choose between right and wrong, or if his
condition may be regarded as that of a person under an
insane delusion, he cannot be held ~~legally~~ criminally
responsible for his act." (47) Citing Fair. (39 Am Rep. 213)

22 CJS, Criminal Law, Sec. 55, p. 194 has heading under
Involuntariness: "A person cannot be held criminally responsible
for acts committed while he is unconscious. (95.10) Some
statutes broadly exempt from responsibility persons who
commit offenses without being conscious thereof.

Under *Sumner v. State*, 70 Cal. 2d 346, 43 Cal. Rptr. 2d 100, 200 P.2d 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

45 a 2R 2d 1430 / mental

Gortas

that an insanity test upon the paper it is written on should focus on the competence to regulate his conduct, not on the happenstance of whether or whether the defendant recognized that his conduct was wrong.

Gant

Choice of a test involves not only sound but questions of basic policy.

Deurbano

See

OT Cites Jatum case, ⁽¹⁹⁵⁷⁾ 190 Fed 2d 612, where "Jatum" claimed lack of memory concerning the critical events and 3 lay witnesses testified that he was in "more or less of a trance"

a 2R 1440

X

As far back as 1853, Isaac Ray, one of the founders of the American Psychiatric Association called the right and wrong test "fallacious", pointing out the many deranged minds nevertheless possess the "power of moral discernment"

1442

X

Justice Arnold

Quotes Halloway v US (1945) 148 Fed 665, "The modern science of psychology does not conceive that there is a separate little man in the top of one's head called reason whose function it is to guide another wobbly little man called instinct, emotion or impulse in the way he should."

X

Quotes recent Mex case, State v White, 58 NM 324, 290 P 2d 727, 730, holding the lack of knowledge of right or wrong is not essential "if, by reason of disease of the mind, defendant has been deprived of or lost his will."

X

Big gripe is that r-w is only one symptom of mental aberration

1443 X Ability to disting bet. r & w no use of the accused
lacks the power to choose between them.

X Acts to isolate and glorify one possible symptom
to the exclusion of all others

Annotation 1447

1448
note 6

X Modern psychology is concerned with diagnosis &
therapeutics and not with moral judgment

1448

Criminal law is based upon and ^{probably} permissively committed
to the theory that individuals are free to exercise a choice
between possible courses of conduct and hence morally responsible

1451

"or, if he did know it; that he did not know
he was doing what was wrong
"was labouring under such a defect of reason, by disease of
the mind

Include but not be limited to R & W

Always judge to instruct jury as a matter of law
what should be a factual question

X 1464

Usually only favorable experts selected by defence

X

Criticize "mental disease" Durham as applying ^{even}
to mild neuritis.

Words and Phrases

Main Vol.
Amnesia

Ind.

1967. "Amnesia" is inability to remember. *Lester v State*, 370 SW2d 405, 409, 212 Tenn 338;

"Amnesia" is the loss of memory due to brain injury, shock, fluid repression, etc. and is also a gap in one's memory. *Whitaker v State*, 268 SW2d 172, 176, 160 Tex. Cr. R. 271.

Unconscious

See 21 Pac 2d 58

Somnambulism

None

Hypnosis & Hypnotism

"Hypnotism" is defined as the name applied to a condition, artificially produced, in which the person hypnotized, apparently asleep, acts in obedience to the will of operator. *Keris v State*, 130 So 904, 905, 24 Ala. App. 120.

1
" Criminal responsibility for acts committed
under influence of insane delusion as
to facts as
affected by question whether such facts
would, if actually existing, excuse the act.

LRA 1917F650 (Lanyn's Reports Unannotated)

July '68.

Am. Jm. Pocket

Modern Insanity

17 UZR 3rd 146

Amesia does not absolve or
exculpate def. from any or
all of his crim. acts but
may be cons. in punishment

Comm. & Price, 421 Pa
396, 218 Att 758, cert. denied
385 US 869.

"The whole of human
history could be
summed up as the
struggle between those
who desire change and
those who do not."
[who oppose ^{with} change]

Reverin, TLS, p 1276,
Nov 14, '68.

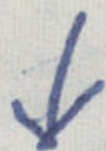
Amnesia
p. 116, note 10

Amnesia does not
absolve or excuse
a defendant from any
or all of his criminal
acts, but is a circumstance
that may be considered
in determining the penalty.

Comm v Pruit, 421
Pa 396, 218 A2d 758,
cert den 385 U.S. 869.

Dissent by Justice
Cohen (p. 764 all)

cites "Amnesia: A
Case Study in the
Limits of Particular
Justice", 71 Yale L
J 109 (1960).



218 utt 2d 758 *

Also NY *mercurii*
case (22 7NE 2d 18).

Also on epilepsy.

(see) 216 NE 2d 170



Dissent

Cites "Amnesia"

71 Yale L Jour 109
(1961)

Kallio

63 Col Law Rev 64-5

In other words the word unconsciousness itself is unfortunate, implying as it does the lack of any awareness or ability of the body to function. Actually, in the passive or active automatism might be more fortunate and as a matter of fact in the actual decided cases there are more instances of active automatism than passive.

647 I speak of bodily conditions resulting in symptoms of delirium, blackout, disorientation, irrational behavior, illusion, hallucinations

651 Define unconsciousness
non-psychotic behavior

662 Eng. Charlson case. =

664 Eng. treats epilepsy as a mental disease (unlike America)

664 Non-brain located disease.

665 English Tests

Somnambulism

Not a defense if induced by voluntary intoxication (Louisiana State, 196 Ga 735, 275E 2d 659.

Expects an insane person to

be responsible if the delusions he believed would not be a defense to his conduct if they were true.

Requires an insane person to react with ^{the} discretion & judgment of a sane person.

Law

(Derry) In *Cunningham v Meagle*, ⁽¹⁸⁸⁹⁾ 135 U.S. 1, it was held that a deputy U.S. Marshall had a right to kill ~~the~~ a man who had threatened ^{and assaulted} Justice Field of the U.S. Ct while dining in a railroad restaurant in Calif.

LAW (Defenses - Provest)

14 a par Sec 33 (old set)

"Perceptual insanity," to which the test of responsibility frequently applied, but not in all cases, is whether the illusion or hallucination entertained by the subject would have justified his actions had such i. or h. been real."

(Cite 10 LRA (NS) 1033)

.33 Loss of memory is not always a sign of insanity, although in extreme cases it may amount to insanity." (Thus epilepsy & hysteria, citing 40 LRA 271)

Fair v Commonwealth

"Somnambulism may operate as a defense in the commission of crime, when it negates conscious intent."

Kimbels *

(Citing Ky case reported in 128 SW 871, 28 LRS (NS) 665.)

Sec 34

Insane delusion. Conflict. (Citing LRA 1917 F 650) * Excellent

Some say should treat as if the facts were true (37 LRA 266, 10 LRA (NS) 1033 & LRA 1917 F 650)

(Very good)

*

21 Am Jan 2d

*

See Sec. 106 on cases where Refs. mental conditions allowed an issue of willfulness, deliberation, and premeditation.

Sec 109 Similar to involuntary intoxication or necrosis.

See also Sec. 30 on Amnesia (not good) p. 116.

* Sec. 29 Unconscious & somnambulism *

Arg

But amnesia accompanied by ^{depression or} hallucinations ---

Misch (Intent)

Most courts agree that, where a specific intent is required, intoxication, even involuntary, may be shown as a defense.

8 A.L.R. 3rd 1236 at 1246, citing *People vs Counts*, Mich 318/45 & *Guillett* 342/1 (p. 1249), (27 NW 2d 338 (assault); 69 NW 2d 140 (assault to rape, rev. & rem.))

in reversionary larceny convictions:

* *Guillett* is good & also gives *Roberts v Pope*, 19 Mich 401, 418, 420 and *People v Walker*, 38/156 where Justice Early said, "While it is true that drunkenness cannot excuse crime, it is equally true that when a certain intent is a necessary element in the crime, the crime cannot have been committed when the intent did not exist. In larceny the crime does not consist in the wrongful taking of property, for that might be a mere trespass; but it consists in the wrongful taking with a felonious intent; and if the defendant, for any reason whatever, indulged no such intent the crime cannot have been committed."

* (But same case, p. 6, says rule does not apply to murder, which is not a specific intent crime)
But in *People vs Incalore*, 217 NW 758, 242/16 says (17) that murder

Misch intent

22 C J S § 64, p. 213

"Dormantism and "somnolentia" may afford defenses
citing leading case *Fair vs Commonwealth*, 78 Ky 183,
39 Am. R. 213 (similar to insane delusion)

22 C J S § 72, p. 224

22 C J S § 60, p. 207

"... when a person is under an insane
delusion or hallucination"

→ "Although one may possess suff. capacity
to disting. between right and wrong good & evil
generally, yet, if he is under the influence of
partial insanity or an insane delusion, and the
effect of that delusion is to make him do an
act which is criminal, he is not responsible, if
his act would be innocent in case the facts
with respect to which the illusion exists was real."

21 Cyc p. 668 under "Unconsciousness and Somnambulism"
"If defendant was temporarily unconscious so as not to know what he was doing when he committed the homicide, he is not criminally liable. Somnambulism has been classed with insanity as a defense." (note 59, citing *Gain vs Comm*, 78 Ky 183, 34 Am. Rep. 213, where it was held that if by temporary derangement of his perceptual faculties, he believed that he was being assailed, and shot in self defense, or he did not know what he was doing, he was entitled to an acquittal.)

Defense of Others

21 Cyc p 794 ^{Foot} (Note) Justifiable homicide is that in defense of one's own person or that of some member of his household, as wife, children or servant. (*State vs Walker*, 9 Horst. (Del) 464, 33 Atl. 227)

21 Cyc 826 Defense of another: Limited to defense of a parent, husband or wife child or brother or sister "or even to prevent the commission of a felony by violence or surprise upon a stranger" (see U.S. Rep. 135 U.S.1.)
Cites *Peo vs Cook*, 34 Mich 236, *Patten v People* 18 Mich 314)

"Homicide." * *

40 CJS § 108, pp 967 et seq. Defense of others

"Person is justified in killing to prevent the commission of a human felony by violence or surprise on any person in his presence or company, including even a stranger, or guest or accused's paramour. (35) Citing (La) *State vs Johnson*, 114 So 82, 164 La 420)



Crucial Legal Sources

* Cornell vs Sup. Ct of San Diego County, 52 Cal 2d 49,
338 P2d 447, 72 A2R2d 1116, anno at 120.

✓ Insane delusion: Compelling rules stated LRA 1917F 650

People v Ebanba case plus hypnosis, 117 Cal 652, 40 LRA 269

21 Am Jur Sec. on amnesia, etc. (Sec. 29) et seq.

(1843) M'Naghten's Case, ⁽¹⁸⁴³⁾ 10 Clark * 8200, 8 Eng Reprint 718,
8 Scott MR 595, 1 Carr & K 130

* Unconscionable is a complete, not ^a partial, defense to
a criminal charge (People v Baker, 42 Cal 2d 550,
268 P2d 705, cited at 21 Am Jur S at Sec 29, (note 3))

EVID of Somnam. admittit

Foot
note 4

chair in a

Megro?

In Jain v Commonwealth (cited in 21 Am Jur Sec #29, ^{note 4} p 115) the defendant, who had gone to sleep in a hotel lobby, and had shot and killed a porter who was trying to wake him, was convicted of manslaughter, and the court, reversing on the ground that evidence tending to show subconsciousness was improperly excluded, said that the def. was not guilty when he fired the shot, or if being partially conscious, he imagined he was being attacked and was in danger of death or great bodily harm.

Dictum

MJP

Somnam. is treated same as if pleaded insanity (Jules v Commonwealth, 138 Ky 558, 128 SW 871, cited at note 6, 21 Am Jur Sec p 115)

See

WAY TO GET IN HYP.

21 Am Jur 5, ¹¹⁶

Sec. 30 "Amnesia, in and of itself, is no defense to a criminal charge unless it is shown that the accused, at the time of the act, did not know the nature of the act and that it is wrong. The fact that he is subsequently unable to remember is in itself no proof of his mental condition when the crime was performed."

(Citing Thomas vs State, 201 Tenn 645, 301 SW 2d 358)

*

(Comment: Plaintiff ^{statement} gets the foot in the door ^{arg.} first, to allow hyp. recall Cornell shot # 2, to allow the evid. of his state after recall.)

Cases to Check (1917F)

X Quilley's case (1882) 10 Fed 161

Witches

Notoma vs U.S. (1902) 186 US 413, 46 L ed 1225, 22
Sup Ct Rep 895 (Witches)

Mich

A dangerous felony may be forcibly prevented.

See in Curtis, 52 Mich 616, 18NW385

Defense of Another = 39/236, 8/150

* a ^{premed} Dr Curtis the defendant intervened in an affray at involving his brother, shooting to death one Levi Wilson. Upon his conviction he appealed the trial courts refusal to instruct that he might intervene to prevent a forcible felony, ^{namely, death or great bodily harm to his brother} In reversing & rem. for new trial the court said (Mich p 623) that "this was contrary to the well-settled principle that a dangerous felony may be prevented by one who is not himself in the wrong, directly or by complicity."

Point is that the case held that preventing a felony was the key, not that the intended victim happened to be a brother.

21 Am. Jur. 2d 124, Sec. 34.

" 'Mental disease or defect' includes any abnormal condition of the mind, regardless of its medical label, which substantially affects mental or emotional processes and substantially impairs behavior controls."

note 10 (Citing *Blocker v. U.S.*, 320 Fed. 2d 800)

* (Arg: Since Michigan has no statute or cases embracing Hypnotism, it is free to embrace sound cases from other jurisdictions on such open questions.)