



Law

# What constitutes causation in Criminal Law? By Aftab Chhina

## Why is causation important?

Many offences are defined by referencing **the result that the accused must produce**. This then requires the court to establish whether or not the accused did indeed cause that result.

e.g. Offences Against the Person Act 1861 - 'Whosoever shall unlawfully and maliciously by any means whatsoever wound **or cause** any grievous bodily harm to any person... with intent... shall be guilty of felony and being convicted thereof shall be liable.'



The Lady Justice Hale, President of the Supreme Court

## The 'Sine Qua Non' Test

Also known as the **'but for' test**. The accused must be a 'but for' cause of the prohibited outcome.

E.g. Anna hates Bob. She gets a gun, and shoots him and the bullet pierces his heart, killing him. Anna is a 'but for' cause of Bob's death. Bob would have lived 'but for' the actions of Anna, and she is therefore liable.

E.g. Anna points a gun at Bob, hoping to scare him. Bob collapses with a heart attack but it is revealed that Bob was blind and deaf and did not see or hear Anna, and his heart attack would have happened anyway. Even without Anna's intervention, Bob would have died anyway. She is not a 'but for' cause of his death.

There can be multiple 'but for' causes of a death e.g. Anna and Dan both shoot Bob and both bullets pierce his heart at the same time.

As established by **R v Cato [1976]**, the cause must be 'significant' or 'more than **de minimis**'.

## Intervening Acts – Natural Events

- R v White [1910]** sets the precedence for an unforeseeable natural event breaking the chain of causation, relieving the accused of liability. In the case, a man tried to poison his mother, who drank a few sips of it but then died in her sleep. However, she died of a heart attack. White was not charged with murder, however, he was charged with attempted murder as the chain of causation was broken.

## Intervention of Humans

- As established in the case of **R v Michaels [1840]**, there can be 'innocent agents' who are not blamed, and the defendant is still liable for the death.
- The case was about a mother who attempted to get someone else to poison their baby claiming it would help with sickness, and a child ended up giving the baby the poison. The child was regarded as an innocent agent, and drops out of the picture, therefore Michaels is still liable for the death of her baby.
- The precedence set by **R v Kennedy No 2 [2007]** means that a free, deliberate and informed act whether by the victim or a third party will break the chain of causation.
- In the case, an adult asked the defendant for drugs, and when the man took it, he choked in his sleep on his vomit. The House of Lords overturned his conviction of involuntary manslaughter, arguing that the criminal law must respect the autonomy of adults, and the victim made a free choice in this situation.

## Medical Intervention

- Jordan [1956]** - The defendant stabbed the victim, who was then taken to a hospital and given anti-biotics after showing an allergic reaction to them and as given an excessive amount of intravenous liquid. His wound were beginning to heal. The victim died of pneumonia 8 days later – the victim died of the medical treatments and not stab wounds, so the defendant was not liable for his death.
- Where the initial wound is no longer the substantial and operating cause, and there is palpably wrong medical treatment, it can break the chain of causation.

## Medical Intervention

- Smith [1959]** - The defendant was a soldier who stabbed a comrade. The victim was dropped twice, and a lung puncture was not diagnosed. The defendant appealed arguing it was the negligent medical treatment, however, the court held that the stab wound as an operating cause of the victims death, it didn't matter if it wasn't the sole cause.
- The Lord Parker CJ in his judgement held that 'if at the time of death the original wound is still an operating and a substantial cause, then the death can properly be said to be the result of the wound, albeit some other cause of death is also operating'
- New Zealand case – **KiriKiri [1982]** - If the victim has a fatal reaction to medical treatment necessitated by the defendant's actions, the defendant remains liable.

## Pre-existing Conditions

Cases such as **Master [2007]** set the precedence for the 'egg-shell skull rule' - the idea that unexpected frailty is not a defence to the seriousness of any injury caused to them, regardless of any pre existing conditions. e.g. Anna hits Bob and gives him a minor injury. Bob has a condition that means he is physically susceptible to any injury. The injury kills him. Anna is liable for Bob's death as she must take Bob as she found him, even though the minor injury would not have killed a normal person.

In **R v Blaue [1975]**, the defendant stabbed the victim who was taken to hospital. Being a Jehova's Witness, she refused to a life-saving blood transfusion and died later on. The defendant was held liable for her death because according to the egg-shell skull rule, she was



The Supreme Court Judges of the UK