

# CAUSATION

## **Introduction: p.116-120**

The issue of **causation** is applicable to **all offences and forms part of the actus reus of an offence**. In order to be found guilty of an offence the prosecution must prove that the offence was caused by the defendant's act or omission. In the majority of cases this will be easy to establish e.g. A shoots B and B is injured. A is the cause of B's injuries.

A defendant can only be held responsible if their acts are both a "factual" and a "legal" cause of the victim's injuries and ultimately it is for the jury to decide.

When deciding liability the courts will look at:

- 1. Did the conduct of the accused cause the resulting harm? What was the factual cause of death?**
- 2. Was the defendant also liable in law? Are they the legal cause of that consequence?**
- 3. There has been no intervening act that breaks the chain of causation.**

## **Proving causation p.116-120 Create a table for all the cases**

**1) Factual Causation - The 'but for' test. But for the actions of the D the victim would not have died in the way that they did**

Explain what the prosecution need to prove.

**R v Pagett (1983) Appellant, 31, separated from his wife and formed a relationship with a 16-year-old. She became pregnant and ended the relationship when she was 6 months pregnant because he was violent towards her. He didn't take the break up well and drove to her parents' house with a shotgun and shot father in the leg and his mother at gunpoint demanding that she took him to her daughter. He drove off with mother and daughter. The police caught up and he kicked mother out the car and drove off with the daughter and kept her hostage in a flat. Armed police followed him. The man used the girl as a shield as he came out of flat. Police could see a figure walking towards them but couldn't see who it was. Appellant fired and police and the police retaliated and shot the girl who died. Appellant convicted of possession of a firearm with intent to endanger life, kidnap and attempted murder on the father + 2 policemen and the manslaughter of the girl. He appealed against the manslaughter conviction on the issue of causation.**

**R v Hughes (2013) The D was driving was faultless and the other driver went onto the wrong side of the road and smashed into D. This driver was found to be under the influence of heroin and suffered fatal injuries. appellant was involved in a traffic accident that resulted in the death of the other driver. It was accepted**

by the prosecution that the appellant was no way at fault for the accident and could not have done anything to prevent it as the victims ability to drive safely was severely impaired through his self-administration of drugs, collided with Hughes, however he was prosecuted under the Roads Traffic Act 1988 (causing death by driving: unlicensed, disqualified or uninsured drivers) as he had no licence nor was he insured. The supreme court quashed the conviction on the grounds that although D was the 'cause' of the other drivers death in the sense that if D wasnt on the road, there wouldve been no collision, this was not enough to be a legal effective cause and that it was simply chance that the other driver hit was the van that D was driving

**R v White (1910)** The defendant put poison in his mother's milk with the intention of killing her. The mother took a few sips and went to sleep and never woke up. Medical reports revealed that she died from a heart attack and not the poison. The defendant was not liable for murder as his act of poisoning was not the cause of death however he was liable for attempted murder.

2) **Legal Causation – de minimis rule (minimal)**. Explain what this means and whether the courts have all agreed on the same threshold requirement in the following cases.

**R v Kimsey 1971** D was involved in a high-speed car chase with a friend. She lost control of her car and the other driver was killed in the crash. The evidence about what happened immediately before D lost control wasn't clear. Trial judge directed the jury that D's driving did not have to be 'the principle, or a substantial cause of the death, as long as you are sure that it was a cause and that there was something more than a slight or trifling link'. The court of Appeal upheld D's conviction for causing death by dangerous driving.

**R v Cato 1976** Appellant purchased heroin and took it home which he shared with Anthony Farmer and 2 others. He invited them all to come use the heroin. Each prepared their own solution and paired up to inject each other. Farmer prepared his own solution and the appellant injected him. Following day Farmer was found dead. Appellant was convicted of manslaughter and administering a noxious thing under S3 OAPA 1861. Contribution the defendant had to be a substantial or significant cause to the death

**R v Hughes 2013** The appellant was involved in a traffic accident that resulted in the death of the other driver. It was accepted by the prosecution that the appellant was no way at fault for the accident and could not have done anything to prevent it as the victims ability to drive safely was severely impaired through his self-administration of drugs, collided with Hughes, however he was prosecuted under the Roads Traffic Act 1988 (causing death by driving: unlicensed, disqualified or uninsured drivers) as he had no licence nor was he insured. Contribution the defendant made had to be substantial or significant cause.

## Intervening acts - Novus Actus Interveniens

In deciding whether legal causation has been proven the jury will need to consider if there has been an intervening act, which the D will allege has broken the chain of causation.

There must be a direct link from D's conduct to the consequence. A new intervening act, which breaks the chain of causation. **This intervening act must be sufficiently independent of the defendant's conduct and sufficiently serious.** These are potential factors that a D may raise to evade liability on the basis that they are not the significant cause of the injuries /death of V. However, **the courts on the whole are reluctant to accept these arguments.** Explain the principles by researching the cases.

**Highlight the cases where D was successful in breaking the chain.**

1. Thin skull rule (victim has something unusual about his physical or mental state). Does this only apply to V's physical state? Is **R v Blaue** a fair decision to the D? **The defendant stabbed an 18-year-old girl 4 times when she refused to have sexual intercourse with him. She was a practicing Jehovah's Witness and refused to have a blood transfusion which would have saved her life. The defendant was convicted of manslaughter on the grounds of diminished responsibility and appealed arguing that the girl's refusal to accept the blood transfusion was a novus actus interveniens breaking the chain of causation.**
2. The D did not directly cause the injuries/death. Who killed V in **R v Pagett**? **Appellant, 31, separated from his wife and formed a relationship with a 16-year-old. She became pregnant and ended the relationship when she was 6 months pregnant because he was violent towards her. He didn't take the break up well and drove to her parents' house with a shotgun and shot father in the leg and his mother at gunpoint demanding that she took him to her daughter. He drove off with mother and daughter. The police caught up and he kicked mother out the car and drove off with the daughter and kept her hostage in a flat. Armed police followed him. The man used the girl as a shield as he came out of flat. Police could see a figure walking towards them but couldn't see who it was. Appellant fired and police and the police retaliated and shot the girl who died. Appellant convicted of possession of a firearm with intent to endanger life, kidnap and attempted murder on the father + 2 policemen and the manslaughter of the girl. He appealed against the manslaughter conviction on the issue of causation.**

3. Medical Negligence. Is a D likely to succeed by blaming the doctor?

**R v Jordan** The defendant stabbed the victim. Victim was taken to hospital where he was given antibiotics after showing an allergic reaction to them. Given antibiotics twice. He was also given excessive amounts of intravenous liquids. He died of pneumonia 8 days after admission to hospital. At the time of death his wounds were starting to heal. The victim died of the medical treatment and not the stab wound. The defendant was not liable for his death.

**R v Smith** The defendant, a soldier, got in a fight at an army barracks and stabbed another soldier. The injured soldier was taken to the medics but was dropped twice on route. Once they arrived the treatment given was described as palpably wrong. They failed to diagnose that his lung had been punctured. The soldier died. The D was convicted of murder and he appealed that if the victim had received the correct medical treatment he wouldn't have died. The stab wound was an operating cause of death and therefore the conviction was upheld.

**R v Cheshire** The defendant shot a man in the stomach and thigh. Man was taken to hospital where he was operated on and developed breathing difficulties. The hospital gave him a tracheotomy. Several weeks later his wounds were healing and were no longer life threatening however he continued to have breathing difficulties and died from complications arising from the tracheotomy. The defendant was convicted of murder and appealed. Conviction was upheld since the defendant shot the victim and this couldn't be regarded as insignificant.

4. Life support machines / blaming others

**R v Malcherek and Steel (1981)** Two separate appeals were heard together. In Malcherek the defendant had stabbed his wife. In Steel the defendant was accused of sexually assaulting and beating a woman over the head with a stone. In both cases the victims had been taken to hospital and were put on life support. The doctors in the respective cases later switched off the life support as both victims were not showing activity in their brain stem. The defendants sought to argue that the doctors' actions constituted a novus actus interveniens which broke the chain of causation. D was convicted and charged with murder.

5. The victim's own act and unreasonable reactions.

**R v Roberts** A young woman aged 21 accepted a lift from the defendant at a party to take her to another party. She hadn't met the defendant before and it was 3:00am. The defendant drove in a different direction to where he

told her he was taking her and then stopped in a remote place and started making sexual advances towards her. She refused his advances and he drove off at speed. He continued making further advances whilst driving and she jumped out of the moving car to escape him. She suffered a concussion and cuts + bruises. The D was convicted of actual bodily harm under S47 of the Offences Against the Person Act 1861. He appealed contending that he didn't intend or foresee a risk of her suffering actual bodily harm from his actions and that he didn't foresee the possibility of her jumping out of the car and therefore her actions mounted to a novus actus interveniens.

**R v Marjoram** Several people, including the defendant, shouted abuse and kicked the door of the victim's hostel room. The victim fell (possibly jumped) from the window of the room and suffered serious injuries. The defendant's conviction for inflicting grievous bodily harm was upheld by the Court of Appeal. In this situation it was reasonably foreseeable that the victim would fear that the group was going to use violence against him and that the only escape route for him was the window.

**R v Bristow, Dunn and Delay 2012** The victim's action was foreseeable where the owner of a motor repair business in remote farm buildings tried to stop robbers and was run over and killed by them. The victim's own act breaks the chain of causation. Defendants were guilty of manslaughter.

In **R v Williams 1992** what must be V's reaction in order for D to be liable? A hitchhiker jumped from Williams' car and died from head injuries caused by his head hitting the road. The car was travelling at about 30mph. The prosecution alleged that there had been an attempt to steal the victim's wallet and that the only reason for him jumping off the car. The court of appeal said that the victim's act had to be foreseeable and had also been in proportion to the threat.

Why was D not responsible for V's death in **R v Kennedy 2007**? Was D guilty of any offence? The defendant had supplied a class A drug to a friend who then died taking it. The victim had a choice, knowing the facts, whether to inject himself or not. The heroin was self-administered, not jointly. The defendant supplied but didn't administer the drug. He didn't cause the drug to be administered to or taken by the victim therefore he hadn't caused the death of the victim. He was convicted of supplying Class A drugs. Where the victim is a vulnerable person and takes drugs (as in **R v Evans**) the chain of causation continues, and D will be liable for the death.