

SAMPLE NOTES SCREENSHOT FROM ORIGINAL PDF

Causation:

Causation is concerned with the doctrine of temporal coincidence and involves the legal causation between the mens rea and actus reus of the crime.

In order to establish causation, two elements must be satisfied:

1. The defendant's act(s) or omission(s) must be a 'but-for' cause of V's death.
Generally speaking, for one event to be regarded as a 'but-for' cause of a second event, one must be able to prove that 'but-for' the first event, the second event would not have occurred when and as it did.
2. The defendant's act(s) will not be adjudged to be the legal cause of the death if another event occurred between the time of the defendant's relevant voluntary act or omission and the death of another human being which is also a 'but-for' cause of death, and which the law regards as so sufficient that it, rather than the defendant's voluntary act/omission, should be regarded as the legal cause of death. Events so regarded are often referred to as 'superseding' cases and have the legal effect of breaking the causal connection between the defendant's voluntary act or omission and any consequences which occur after the superseding event has intervened; that is, the accused is not criminally responsible for any consequences that accrue after the event has intervened. The 'but-for' test is designed to limit criminal liability within the parameters that are fair and responsible.

To establish legal causation, the prosecution must therefore prove beyond reasonable doubt that:

- The defendant's voluntary act(s) or omission(s) was a 'but-for' cause of the death of the victim.
- The absence of an event that the law regards as superseding in the relevant sense.

The law will attribute legal responsibility for a result prohibited by the statutory or common law definition of the crime (in criminal homicide, the death of another human being).

First Causal Test: The operating and substantial cause test:

The first test of legal causation that has been applied by the courts requires that the defendant's act or omission must substantially or significantly contribute to the death of the victim.

R v Hallet [1969] SASR 141:

Facts:

- The defendant and the victim's car got stuck in the sand. According to the defendant:
- They began fighting, and ended up fighting nearby a lake or some water.
- After beating the victim up, the Defendant left the victim slumped (but still moving) at the water's edge, lying on his back, a few inches in water. The Defendant went to cool off.
- When the Defendant came back, the victim was floating dead in the water.
- Medical evidence suggests the victim may have been knocked unconscious, was choked to some degree, and died as a result of drowning in shallow water.
- The body was also mutilated after death - the Defendant claiming he became completely unbalanced after seeing the victim dead.

Held:

- If at the time of death the original wound is still an operating and substantial cause then there is a causal connection, even if some other cause is also in operation.
- If a defendant causes a situation, which then puts the victim in danger of being affected by another perilous situation, and the victim ends up dying because of the new situation, the chain of causation remains unbroken (since the first is still a substantial cause).
- If the new situation happened completely of its own accord (e.g. an 'act of god'), then the chain will break.

Take your victim as you find him or her:

If the victim has a physiological or psychological condition, and dies of an injury inflicted by the defendant, but from which a normal person would not have died, the pre-existing condition will not be deemed to have broken the chain of causation. This is referred to as the 'egg-shell-skull' rule of causation where the legal causation is predicted on the notion that the attribution of casual responsibility is inextricably tied to the defendant's moral culpability (or lack thereof) for his or her conduct.

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- The 'egg-shell-skull' rule expresses this by deciding that as between the innocent victim and the accused that unlawfully inflicts injury, the risk of liability for unforeseen consequences should rest with the accused.
- The defendant is liable for unlawful homicide if s/he inflicts a minor blow to the head of a person who, unbeknown to the defendant, is a haemophiliac and dies of a result of the blow.
- Keep in mind that the 'but-for' causal connection but still exist in order for this to be proven.

R v Blaue (1975) 61 Cr App 271:

Facts:

- The defendant entered the home of an 18-year-old woman and asked for sex. When she declined his advances, he stabbed her four times; the wound penetrated her lung, which necessitated both a blood transfusion and surgery in order to save her life.
- After refusing treatment because of her religious beliefs (as a Jehovah's Witness) she died. Medical evidence showed that she would not have died if she had received treatment.

Held:

- Those "who use violence on others must take their victims as they find them"
- In his final speech to the jury, counsel for the Crown accepted that the girl's refusal to have a blood transfusion was a cause of her death.

Medical Treatment:

The defendant may inflict injuries on the victim, following which the victim receives negligent medical treatment that is another 'but-for' cause of death. The question arises as to whether such treatment constitutes a superseding cause that severs the causal chain and absolves the defendant of any criminal liability for consequences that occur subsequent to the treatment.

R v Smith [1956] 2 QB 35:

Facts:

- 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 there the treatment given was described as palpably wrong.
- They failed to diagnose that his lung had been punctured. The soldier died.

Held:

- The defendant was convicted of murder and appealed contending that if the victim had received the correct medical treatment he would not have died.
- The stab wound was an operating cause of death and therefore the conviction was upheld.

R v Jordan (1956) 40 Cr App R 152:

Facts:

- Victim was stabbed and suffered an illness - doctors then gave a broad-based antibiotic which the doctor should have known he would have had an adverse reaction.
- He then died as a result.

Held:

- In this case the medical negligence broke the chain of causation - should have known the reaction and should have seen the wound having healed.
- Where the original wound or injury caused by the defendant is still an 'operating cause' of death, negligent medical treatment will not constitute a novus actus interveniens

Second Causal Test: The novus actus interveniens test:

The Australian courts have not warmly received the 'novus actus interveniens' test as a test of legal causation in the criminal law context. It essentially means 'a new intervening test' with the word 'new' being used in the context that it was not the accused's act - so the original perpetrator may not be responsible. A break in the chain of causation arises when there is a new intervening act.

Third and Fourth Causal Tests: The natural consequence and reasonable foresight tests:

Fright and self-preservation:

Where the victim is killed in an attempt to flee or avoid being violently attacked by the defendant, an issue arises as to whether the victim's reaction in attempting to avoid the threatened harm will sever the causal connection between the violence or threats of violence and death. For example the victim might die being hit by a train but they only ran onto the tracks as the defendant was chasing the victim with a knife.

Assault:

An assault is generically defined as the unlawful application of force or threat of force against another person without his or her consent. We have both common law assault in Victoria and statutory assault provisions under the Crimes Act.

Common Law Assault:

Where there is contact discuss both types unless being attacked from behind – then mention no apprehension – they are two separate offences but often both apply.

Apprehension Type:

- Apprehension of imminent unlawful application of force or contact to the body of the victim without victim's consent.
- Injury not required.

Contact Type:

- Actual unlawful application of force or contact to the body of the victim without the victim's consent.

S23 of the Summary Offences Act:

- Deals with the summary offence of assault – a similar element of actus reus and mens rea to common law assault – but applies to cases of less serious assault. E.g. spitting on someone or misuse of laser pointer.
- Same elements as common law assault
- Penalty – 15 penalty units or 3 months imprisonment

Apprehension Type:

More serious types of common law assaults – s320 Crimes Act – maximum penalty 5 years.

Actus reus:

- Victim must apprehend imminent unlawful contact (i.e. application of force) by defendant without victim's consent.
 - Cannot be asleep/unconscious
 - Thus actus reus looks into the mind of the victim
- Apprehension
 - Victim must have an awareness of the imminent application of unlawful contact (R v McNamara)
- Fear- Objective/Subjective Test – issue in regards to whether to use a combination or just subjective.
 - Objective limb – reasonable person would apprehend imminent unlawful contact (Barton v Armstrong)
 - Subjective limb – whether or not victim actually feared (Ryan v Kuhl)
 - Academic argument – taking your victim as you find them (therefore only subjective)
- Imminence
 - Victim must apprehend imminent or immediate contact (i.e. application of force) → but threats of future violence can be imminent in certain circumstances.