

MLL214 – CRIMINAL LAW

Complete Notes

TRI 2 2016

Causation

For an accused's conduct to have "caused" a result, it must have "contributed significantly" to that result, or been a "substantial and operating cause" of it (*Royall v R* (1991) 172 CLR 378; *R v Rudebeck* [1999] VSCA 155; *R v Stein* [2007] VSCA 300; *R v Withers* [2009] VSCA 306; *R v Aidid* (2010) 25 VR 593).

Tests:

- 'But for' who is to blame
- Operating and substantial test (1st)— *R v Hallet*
- The *novus actus intervenies* test (2nd) -
- Self-preservation (3rd & 4th)— *Royall v The Queen*
 - That D induced in V in a well-founded apprehension of physical harm
 - That it was reasonable for V to wish to escape
 - That V selected a reasonable mode of escape

Supervening event: breaks the chain of causation. The other way to break that chain is if the second cause is so overwhelming that it overrides the first cause (eg. tsunami)

Four categories of duty of care:

1. where one is under a contractual duty to act (security guard)
2. where one is under a statutory duty to act (police officers)
3. where one is deemed to have voluntarily assumed a duty to act by undertaking to rescue someone at peril
4. where the victim and defendant have a special relationship (teachers and students, bus driver and passengers etc.)

Cases:

R v Evans & Gardiner – two prisoners stabbed one who died later because of surgery. Found guilty of manslaughter

R v Hallet – tide came in which drowned unconscious victim. Found guilty, wasn't superseding. If it was a tsunami, then it would be a superseding.

R v Jordan – hospital administering wrong medicine, after being told not to. It was palpably wrong and broke the chain of causation.

Royall v The Queen – jumped out of window, the three components (above) were created from this. Jumping out the window was acceptable

Mens Rea

Mens Rea – Guilty Mind. Needs to be proven for crimes where the sentence is large. Eg. in *He Kaw Teh*, he did not know he was importing drugs and therefore did not know have the requisite mens rea

Proving a mens rea – look for words such as intentionally, deliberately etc. if these words aren't included it is more than likely a strict liability. If these words aren't included, look at what parliament wanted and the sentence and so on to check if a mens rea is included.

Eg. “knowingly import” means a mens rea must be present
Import drugs means a mens rea may not have to be present

In cases of **strict liability**, no mens rea need be proven, eg. Speeding fine. The defences to strict liability are;

1. Proudman – honest and reasonable mistake
2. External intervention – which requires the accused to show that
 - a. His or her conduct occurred as a result of a stranger or non-human act
 - b. s/he had no control over that conduct
 - c. s/he could not have been reasonably expected to guard against such external intervention

Recklessness and intention are the two most common mens rea elements (these are the two used in murder). In *Victoria*, an accused is said to have been reckless if they acted in the knowledge that a particular harmful consequence would probably result from their conduct, but they decided to continue their actions regardless of that consequence (*R v Crabbe* (1985) 156 CLR 464).

Manslaughter

There are 2 types of manslaughter

1. involuntary manslaughter through criminal negligence (aka negligent manslaughter)
2. involuntary manslaughter by unlawful and dangerous act