

Element 2: Causation

Act of God

Case: *R v Hallet (1969)*



Facts: Hallet and the victim had been drinking together when the victim had made homosexual advances to Hallet. Hallet hit the victim unconscious, leaving him in that condition on a beach. A pathologist subsequently found that the victim had drowned in shallow water after being found in the sand. Hallet argued that he did not drown the victim – the tide had – and he had taken precautionary measures to place the victim in a position of safety when leaving him on the beach. Hallet was convicted of murder and appealed.

Issues:

- *Was the victim's death caused by Hallet or the tide?*
- *Could the tide be said to have broken the chain of causation?*

Ruling:

(Supreme Court of South Australia):

A distinction must be made between an *act of god* and a *natural consequence*. If a man beats another man unconscious on the floor of a building, and before the victim rises from unconsciousness, he dies from the building falling on top of him in an earthquake, the first named man cannot be convicted of murder. The victim was not immediately in a position of danger when the act happened; it was an act of god that caused the victim's death, breaking the chain in causation between the first man's actions and the second man's death.

However, if a victim is left on the shore and upon the tide coming in, the victim drowns, that will be considered murder. The victim's death – in the circumstances – is a **natural consequence** of the accused's actions i.e. the tide comes in every day.

*"The question to be asked is whether act or series of acts **consciously performed** by the accused is or are so connected with the event that it or they must be regarded as having a **sufficiently substantial causal effect** which subsisted up to the happening of the event, **without being spent** or without being in the eyes of the law **sufficiently interrupted by some other act or event**."*

*If at the time of death the original violence was still an **operating and substantial cause**, death could be said to be the result of this event even if some other cause – such as the action of the water – was still operating. Only if it could be said that the original violence was **merely the setting in which the action of the sea operated**, could it be said that death did not result from that violence".*

The tide cannot be regarded on the same scale as an act of god, and thus cannot be considered a supervening circumstance. Having had a **substantial causal effect** which was uninterrupted by a **natural consequences** leading to the victim's death, the accused must be held liable – *Prosecution successful*.

Act of a Third Party

Case: R v Pagett (1983)



Facts: The accused was holding a girl in front of him as a human shield whilst firing his gun at police. Police were firing back at the accused. The girl was caught in the crossfire and killed. The accused was convicted of manslaughter, but appealed, contending that the intervention of a 3rd party – the police – was the sole cause of the girl's death.

Issues:

- *Did the police's actions in the circumstances constitute a novus actus interveniens?*

Ruling:

(Court of Appeal):

The intervention of a 3rd party **not acting in concert** with the accused may break the chain of causation if the intervention was *free, informed and deliberate*. However, if the act of the accused necessitates a 3rd party's intervention for the purposes of self-preservation, the 3rd party's actions will not constitute a break in the chain of causation.

In this instance, the police officer's actions were not free, informed or deliberate. He was shooting at the accused in an act of **self-preservation** and **legal duty** caused by the accused's own act of firing at the police. Whilst it was the policeman's gunshot and not the accused's firing which eventually killed the girl, it is not necessary that an act be the sole cause of the wrong, only that it is substantial. The accused's actions were substantially responsible for the girl's death, and he must be held liable – *Prosecution successful*.

MEDICAL TREATMENT

Case: R v Evans & Gardiner (1976)



Facts: The defendants and victim were in prison. One of the defendants stabbed the victim in the stomach, whilst the other defendant was present and stood by. As a consequence of the stabbing, the victim had to undergo a bowel operation. This operation was initially successful, but 11 months later, the victim started having abdominal pain and experience bouts of vomiting. This went on for a week,

after which the victim died. An autopsy showed the victim's death was caused by the formation of a fibrous ring, which formed as a result of the operation.

At trial, it was shown that the fibrous ring in the circumstances was not uncommon. Additionally, prior to his death, the victim had been examined by a number of doctors, and all claimed that the medical complication was not of issue. The defendants were held guilty of manslaughter. They appealed.

Issue:

- *Did the doctor's actions break the chain in causation?*

Ruling:

(Supreme Court):

If it is alleged that there is an intervening act between the criminal act and the death of the victim, the chain of causation will only be broken if the novus actus interveniens **accelerated the death**. The actions of the doctors in the circumstances did not accelerate the victim's death, and the chain of causation between the criminal act and resultant death was not broken – *Prosecution successful*.

Case: *R v Malcharek & Steel (1981)*



Facts: The accused stabbed his wife in the abdomen, causing a deep wound which required medical attention. Whilst the wife was recovering, she suddenly collapsed and her heart stopped beating. She underwent surgery to remove a blood clot from her pulmonary artery, and after 30 minutes, her heart started beating again. However, she was comatose, and was placed on a life support machine; she had suffered permanent brain damage. Shortly after, a decision was made to turn off the life support machine, and the accused's wife was declared dead. The accused was charged with murder.

At trial, the judge did not allow the jury to decide if the accused had caused his wife's death, finding the original injury to be the *substantial and operating cause* of death. The accused was convicted of murder, and appealed.

Issues:

- *Did the doctor's decision to turn off life support break the chain in causation?*

Ruling:

(Court):

Where the victim has received competent medical treatment for the injury caused by the accused, and the victim is later placed on life support, a bona fide decision by doctors to terminate treatment **will not break the chain of causation**. In the circumstances, the injury caused by the accused will be considered the *continuing and operating cause* of death.

In this case, there was no evidence which indicated that the original injury had ceased to be the continuing and operating cause of death. Thus, the accused is liable for the victim's death – *Prosecution successful*.

Case: *R v Smith* (1959)



Facts: The victim – a soldier – received 2 bayonet wounds in a fight with the accused. Unknown to anyone, one of the wounds had pierced the victim's lung, causing a haemorrhage. Whilst he was being carried to the medical station, the victim was dropped twice by accident.

At the medical station, an unsuccessful attempt was made to give the victim a saline transfusion. He was also administered oxygen and artificial respiration. Despite all the treatment, the victim died 2 hours after the wounds were inflicted.

At trial, evidence was given that the treatment the victim received was tremendously bad, and that had he received a blood transfusion, he would have had a 75% chance of survival. The accused was convicted of murder, but appealed on the basis that the *abnormal medical treatment broke the chain of causation*.

Issues:

- *Did the tremendously bad medical treatment break the chain of causation in the victim's death?*

Ruling:

(Queen's Bench):

At the time of death, if the original wound was still an *operating and substantial cause*, then death could be said to have resulted from the wound – even if some other causes of death were operating. Only if the second cause was so overwhelming that it made the original wound **merely part of history** (i.e. the 'mere setting') could it then be considered that the death *did not flow from the original wound*. The primary wound was still an operating and substantial cause here, so the accused must be liable – *Prosecutor successful*.

Case: *R v Jordan* (1956)



Facts: The accused, a US airman, stabbed the victim in the abdomen during a brawl. The victim was admitted to hospital for treatment. Whilst he was being treated, the victim was given an anti-biotic. He was found to be allergic, so the hospital ceased administering it after 1 day. However, the next day they began administering it again. The victim died, and the accused was convicted of murder, and appealed.

Issues:

- *By continuing to administer the anti-biotic, did the doctors break the chain of causation between the original wound and the victim's death?*

Ruling:

(Court of Appeal):

The wound inflicted by Jordan had almost entirely healed by the time the victim died. 2 doctors are both of the view that the victim's death **could not be described as caused by the wound at all**. Hence, death was *not consequent on the wound inflicted*, but rather due to the victim's allergic reaction to the medication and the hospital's continued administering of the drug. The medical treatment could only be described as **palpably wrong**, and the conviction must be overturned – *Prosecution successful*.

NOTE: The courts are generally reluctant to find that medical treatment breaks the chain of causation because to do so would place an unfair burden on the medical profession and allow assailants and perpetrators of crimes to avoid conviction. However, if the medical treatment received is **so abnormal to the point where it causes further injury or death**, the courts will find that the chain of causation has been broken.

This case differs from other medical cases. The court noted that it should be cited as an anomaly, and not as authority for breaking the common law chain of causation. Each case should be decided on its own facts.

Act of the Victim

Case: *R v Blaue* (1975)



Facts: The accused attacked the victim with a knife, stabbing her and piercing her lung. The victim was taken to hospital having lost large amounts of blood, and was told that a blood transfusion would be necessary. The victim – a Jehovah's Witness – refused a blood transfusion on the basis that it was contrary to her beliefs. She was told that if she did not have a blood transfusion, she would die. She still refused, and died the following day. The accused was convicted of murder, but appealed on the grounds that the victim's refusal to have a blood transfusion was *unreasonable*, making her decision an **intervening act which broke the chain of causation between the stabbing and her resultant death**.

Issues:

- *Did the victim's refusal of a blood transfusion break the chain of causation between the initial wounding and her resultant death?*

Ruling:

(English Court of Appeal):

Egg-Shell Skull Rule: A person must be held liable for all consequences resulting from their actions leading to the injury of another person, even if the victim receives an unusually high level of damage. This principle implies that if a person has a skull as *delicate as the shell of an egg*, and a defendant who is unaware of the condition injures the person's head and causes the victim's skull to unexpectedly break, the defendant should be held liable for all damages resulting from the wrongful contact, even if they did not intend to cause such a severe injury.

In this case, the *Egg Shell Skull Rule* dictates that a person who inflicts violence on another should take the victim as they find them. It is not open to the accused to argue that the victim's religious beliefs were unreasonable or that he did not intend to cause the damage that resulted. The victim's refusal of a blood transfusion was not an independent cause of death, and did not break the chain of causation – *Prosecution successful*.