

**CRIMINAL LAW 1 – Exam Notes**  
**LAW 1114**

**Semester 1, 2016**  
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## Topic 4: Elements of a crime (Give you a framework of analysis)

In order to charge D guilty, there must be AR+MR

### ELEMENTS OF ACTUS REUS

#### 1. Positive Voluntariness Act: Acts performed must be voluntary and 'freely willed'. 'Ugle'

- Act done whilst conscious, is presumption to be willed and voluntary, unless defendant proves otherwise. 'R v Falconer'
- Automatism is where the accused is unaware of what they are doing or unable to control their actions through internal or external. Automatism is not PVA.
- No voluntariness if act was:
  - i. Automated (e.g intoxicated or drugged)
  - ii. Not Willed 'DDP v Faraquharsonn'
  - iii. By reflex action (e.g. spontaneous reflex)

<b>Ugle v The Queen 2002</b>  - Establish of guilt, act must be Voluntary, Willed.	D carried a knife to V's house in self-defense context. V dies from a knife wound to the chest. D deliberately went to the home of the V with the knife. The victim was attacking the accused with a cricket bat, went to strike him and when moving away, impaled himself on the knife. D argued that he was acting on self-defense and was unaware threat the deceased had been stabbed. D was convicted of murder. Appealed to the HCA.  <i>Issue: Whether V was stabbed by D's voluntary act or impaled by accident? Involuntarily stabbing of the victim?</i>	<b>To establish guilt, an act must be 'willed' or voluntary.</b>  Where evidence was put forward by the accused, the act they omitted (that caused the death) was involuntarily; it is for Prosecutor to prove the act was beyond reasonable doubt.  Nb: There is a <b>presumption of voluntariness</b> , unless D raises evidence to the contrary. Eg. If D is in a state of 'automatism' (where Ds 'will is divorced from his or her body') and the act is not done in consciousness then the Prosecution will not be able to prove that Ds conduct was voluntary. E.g. Spasm (epilepsy/coughing fit), reflex action, sleepwalking, gross intoxication.
<b>R v Falconer 1990</b>	A suffered thirty years of sexual assault at the hands of her husband. One night she kills her husband and has no memory of it until she wakes up the next morning with the gun next to her, and her husband dead on the floor.  <i>Issue: Was the act to kill a voluntary one or case of sane automatism?</i>	At law there is a presumption that an act is voluntary.  Toohey J" we assume that a person is apparently <b>conscious has an ability to control his/ her actions</b> . The <b>assumption</b> that this is done <b>by choice, done at will or voluntarily is an inference at fact</b> . Grounds for refusing to ground inference only exist when the actor is unable to control their actions. Actions of an unsound mind are still a voluntary act. This was the case here. → Concluded that it was a voluntary act.

#### 2.Causation:

**TEST: The conduct must be a 'substantial and operating' subsisting to the time of the victim's death/injury.**  
'R v Hallett'

**\*\*\* Conduct need not be sole cause of death, if A's conduct is a substantial and operating cause BRD that subsisted to death D would be liable, Defense would argue that there were intervening acts.**

- i. Consequences of A's conduct **reasonably foreseeable** to a reasonable person (objective)? 'Royall' this is an objective test: reasonable person.
- ii. D's actions made it a **natural consequence** that V seek to escape 'Royall' OR when V attempts to escape from his/her death and dies in the process. → Only Apply when NAI committed by victim.

**2a. Chain of causation:** Defence: might point out NIA that might have broke the chain of causation and rendering A's conducts making it no longer a substantial and operating cause.

**I. An intervening act by god (natural event):**

- Act by god can break the chain of causation.
- **TEST:** Must be an '**unexpected, extraordinary or supervening factor**'. '*R v Hallett*' e.g. tide vs. tidal wave

**II. An intervening act by victim themselves (fragile victim, seek escape)**

- a. Fragile victim/ refusing medial treatment:
  - **TEST:** Take your victim as you find them. '*R v Blaue*'
- b. Seeking to escape violence
  - **TEST:** V's act must be **reasonable foreseeable consequences** of D's action (objective) '*R v Royall*'
    - Majority: V's act must be proportionate to the fear induced by D. E.g. jumping out of a ten floor building proportionate for escape or 3<sup>rd</sup> floor?
    - Minority: V's actions will necessarily be irrational and unreasonable in the circumstances, and therefore do not need to be reasonable.

**III. An intervening act by 3<sup>rd</sup> party (medical intervention, police):**

- a. Medical Treatment: Bad medical treatment will rarely break the chain of causation, as the original wound is mostly likely still an operating and substantial cause of death.
  - **TEST:** if 2<sup>nd</sup> wound '**so overwhelming as to make the original wound merely part of the history**' and **medical treatment palpable wrong**: '*R v Jordan*'
  - Analogy to '*Smith*', that even dropping victim twice did not amount to palpable wrong.
- b. 3<sup>rd</sup> Party: If 3<sup>rd</sup> kills V, causation may still extend to D
  - **TEST:** 3<sup>rd</sup> party's act must be '**free, deliberate or informed**' → voluntary act, to break chain of causation.
  - Analogy to '*R v Pagett*' self-preservation is free, deliberate or informed an involuntary act

**3. Omission:** Defendant can only be criminally liable for an omission where a duty was owed.

- i. Duty of care to act if there is a duty owed. (e.g. Negligent manslaughter)
- ii. Duty of care may arise if there is: special relationship between the Defendant and Victim e.g. Fiduciary duty, parent/child relationship, and duty to not harm others, assumption of responsibility.
- iii. D may have breached the duty of care owed by failing to act:
  - **s 24 of the Crimes Act 1958** (Vic) makes D liable for Negligently Causing Serious Injury because of his failure to act.
  - Negligent Manslaughter by an omission.

<p><b><i>R v Hallett [1969] SASR</i></b></p> <p>'Causation'- Intervening event- Natural event.</p> <p><u>Test:</u> D's voluntary act needs to be the "substantial and operating</p>	<p>V drowned when left unconscious on beach with tide coming in. V made homosexual advances towards Hallett, who beat him and left him in shallow water on the beach, he later drowned. Hallett argued that he did not drown V and left him in a place of safety on the beach.</p>	<p><i>'The question to be asked is whether an act or series of acts... <b>consciously performed</b> by the accused is or are <b>so connected</b> with the event that it or they must be regarded as having <u>a sufficiently substantial causal effect</u> which <u>subsisted up to the happening of the event, without being in the eye of the</u></i></p>
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<p>cause" that subsisted to V's death/harm.</p>	<p>Issue: Did D cause death or the tide? The question to be asked is whether an act or series of acts... performed by D are connected to the death of V so that there is a <b>sufficiently substantial causal</b> effect which <b>subsisted</b> up to the happening of the event, <b>without being</b> spent <b>sufficiently interrupted by some other act or event</b>.</p>	<p><b><u>law sufficiently interrupted by some other act or event.</u></b></p> <ol style="list-style-type: none"> <li>1) Is it a cause? Cause is a cause and death can be multi caused</li> <li>2) Is the connection sufficiently strong? Substantial reason and connected to the victim dying?</li> <li>3) Did the cause that involved the accused conduct subset, without being sufficiently interpreted by another cause</li> </ol> <p>There must be an unexpected and extraordinary in nature to break the chain of causation.</p>
<p><b>R v Blaue [1975] 1 WLR 1411</b></p> <p>'Causation' Intervening events – Medical Treatment.</p> <p><u>Test: Egg Shell Skull</u> <u>Principle- Take your victim as you find them.</u></p> <p><u>*Fragile Victim/ Act by victim</u></p>	<p>V, a Jehovah witness, was stabbed in the lung and died because she refused a blood transfusion due to religious ground, even though doctors may have saved her. Due to refusal V died the next day. D argued that he was not liable for V's death as her refusal of a blood transfusion was unreasonable.</p> <p>Issue: Was V's refusal of medical treatment the cause of her death, r was D liable for her death.</p>	<p>The refusal of treatment did not break the chain of causation. D was liable for her death. The is due to the <b>Egg-Shell Skull Rule -you take your victim as you find them.</b></p> <p>The stab wound itself is what caused the death. <b>The fact that the victim refused to stop this end coming about did not break the causal connection</b> between the act and death.</p> <p>This amounts to murder. A does not have to know that V s in this circumstance. Also do not have to compare with what the reasonable person would have thought. "objective test"</p>
<p><b>R v Royall (1991)</b></p> <p><u>Test: Natural consequence test-</u></p> <p><u>*Act of Victim: Seek escape</u></p>	<p>Healy died when she fell from bathroom window of 6h floor flat where she had lived with accused for 6 months. She was naked, hair wet, suggesting she had just had a shower. Evidence of struggle, forced entry and gauge marks indicating that someone may have swung an object into the room. Prosecution alleged that accused murdered Healy and either; pushed her out the window, that she fell out after a fight and that immediately before she fell, H had well founded and reasonable fear that A would inflict life threatening injuries and in order to escape, she jumped out window.</p> <p>Issue: Was the act of V in jumping out the window break the chain of causation?</p>	<p>'Reasonable foreseeability test <u>McHugh:</u> Held that an accused shall not be liable unless his <b>conduct caused the victim to take action</b> and that <b>harm was intended</b> by the accused or could have <b>reasonably been foreseen as a consequence</b> of the actions. He held that due to violence in the living room and the bathroom, her death was a reasonable outcome of avoiding the accused's violence. The accused's violence was a substantive and operating cause of the death.</p> <p><u>Mason:</u> Where a person is threatened with violence from another with the threat of death, this does not break the causation of death. The accused conduct causes the reasonable fear of violence,</p>

		which leads to the conduct, which causes death. <b>No requirement that the steps the victim takes must be reasonable.</b>
<p><b><i>R v Evans &amp; Gardiner (No2) [1976]</i></b></p> <p>'Causation' 3<sup>rd</sup> Party Intervening events – Medical Treatment.</p> <p><u>Test:</u> <i>The 2<sup>nd</sup> wound must be overwhelmingly or palpably bad that the original wound is merely part of the history.</i> -</p> <p><u>*Act of 3<sup>rd</sup> Party: Medical Treatment.</u></p>	<p>A &amp; V were both prisoners. A stabbed V in the stomach and he required surgery for a bowel resection. 11 months later V died due to complications from his surgery of the original wound. V had been to the doctor a week before his death and his condition could not be determined. However, it was determined that the issue that V had was a common complication from a bowel resection. Charged with Manslaughter. A did not intent to kill V, took place in the prison, table tennis room.</p> <p>Issue: Did A's action caused the death of V, and did V's poor medical treatment break the chain of causation?</p>	<p>No.</p> <p>Medical treatment will not break the chain of causation unless it is so <b>overwhelmingly or palpably bad that the original wound is merely part of the history.</b></p> <p>The chain will be broken if an <b>intervening act has accelerated the death.</b> This was not found to be the case here. The sequences of was connected to the physical consequences of the original wound.</p>