

Introduction to Causation

Criminal law

The defendant (D) was driving the cart without holding the horse's reins. A small child ran into the road and was killed. D was held not guilty: the 'culpable' act of not holding the reins was not the cause of death, as even if he held the reins, he would still not have been able to stop the cart.

The defendant (D) poisoned his mother, who subsequently died. The medical report showed she died from the heart attack. D was found not guilty for murder, as the poison was not the cause of death.

UK common law position is found in the **Clause 17 of the Draft Criminal Code Bill 1989**, whereby (1) a person causes a result where they had done an act that is more than a negligible contribution to the occurrence or omits to do the act which would have prevented the occurrence, and (2) a person does not cause a result if, after a person's act or omission, an act or event occurs (2.1) which is the immediate and sufficient cause of the result; (2.2) which the person did not foresee; (2.3) or could not have reasonably foreseen.

Step 1: Factual causation

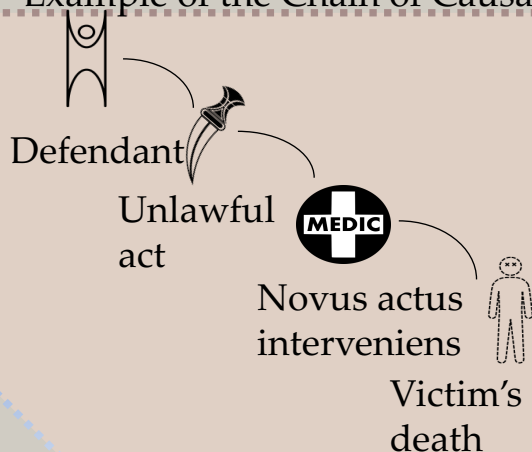
To determine the factual causation, one applies the 'but-for' test established in *R v White* [1910] 2 KB 124. If the consequence would have occurred anyway, that is if the defendant's act or omission did not make a difference, then there is not sufficient causation.

Step 2: Legal causation

Legal causation is understood as an operative and substantial cause (*R v Dear* (1996) CLR 595). If the factual causation is proved, then the legal causation will also be established provided that:

1. The act is wrongful (*R v Dalloway* (1847) 2 Cox 273).
2. The defendant's contribution is substantial (*R v Adams* [1957] Crim LR 365).
3. Subsequently to the defendant's act or omission, no abnormal event, sufficient in itself to cause the harm, occurred. Such event is also known as *novus actus interveniens* and can fall into the following categories:
 - a) The act of a third party, e.g. *R v Pagett* (1983) 76 Cr App R 279.
 - b) The act of the victim, e.g. *R v Roberts* [1971] EWCA Crim 4.
 - c) Medical interventions, e.g. *R v Jordan* (1956) 40 Cr App E 152.

Example of the Chain of Causation



The victim (V) jumped out of the moving car as the defendant (D) was making sexual advances on her. D was convicted with actual bodily harm: V's actions were the natural consequence of D's act.

The defendant (D) stabbed the victim (V). In the hospital, V had an allergic reaction to the antibiotics. V died 8 days later. D was found not guilty: by time of death the original stabbing wounds started to heal.

The defendant was convicted for manslaughter after having used the victim as a human shield who was killed by the police.

The defendant (D) administered a large quantity of drugs resulting in the death of a terminally ill patient. D was not charged with murder, as he acted with an aim to relieve pain and suffering.

An argument for critique

Causation in law is intertwined with the notion of causation in the moral, as well as in the common-sense human perception (Lagnado, Gerstenberg, 2016, p. 595). Yet, it is often argued that causation in the legal system does not account for the plurality of individual agency which is rooted in social and political structures (Norrie, 1991, p. 692). The lack of such consideration is particularly evident when accessing the complex and broad concepts of 'voluntariness', 'normal' and 'abnormal' events (Hart, Honore, 1985 p. 131). The focus on the individual and the abstraction from social fabric leads the decisions on causation rely on 'policy', yet, that 'policy' becomes reductionist and, therefore flawed (Norrie, p. 692). As an example, one is to consider *R v Dhaliwal* [2006] EWCA Crim 1139, where despite the solid evidence of physical and mental abuse, the prosecution was unable to establish a clear causal link between the victim's suicide and the defendant's abuse (Orr, 2016, p. 6).

Reference list

Primary: Draft Criminal Code Bill 1989 - *R v White* [1910] 2 KB 124 - *R v Dear* (1996) CLR 595 - *R v Dalloway* (1847) 2 Cox 273 - *R v Adams* [1957] Crim LR 365 - *R v Pagett* (1983) 76 Cr App R 279 - *R v Roberts* [1971] EWCA Crim 4 - *R v Jordan* (1956) 40 Cr App E 152

Secondary: Waldmann, M., Lagnado, D., & Gerstenberg, T. (2017). Causation in Legal and Moral Reasoning. In *The Oxford Handbook of Causal Reasoning*, Oxford: Oxford University Press. - Norrie, A. (1991). A Critique of Criminal Causation. *The Modern Law Review*, 54(5), pp. 685-701. - Hart, H., & Honore, Tony. (1985). *Causation in the Law* (2nd ed.). Oxford: Oxford University Press. - Orr, R. (2016). Speaking with different voices: The problems with English law and psychiatric injury. *Legal Studies*, 36(4), pp. 547-565.