Principles of Criminal Liability 3:

Causation & Other issues

By the end of this unit you should be able to (AO1):

- Define what is meant by causation in the criminal law
- Explain what can affect and break the chain of causation
- Describe the doctrine of transferred malice and its limits.
- Understand what is meant by coincidence, and its interpretation by the courts

You should also be able to evaluate [AO2]:

- The interpretation of causation by the courts
- The development of the rules on transferred malice and coincidence

Homework

1. Continue working on your case cards for this unit and revise for a DRAG test on elements of a crime (actus reus and mens rea)

End of Unit Assessment

At the end of this unit, you will complete a timed essay, which will be planned in class, to look at your progress this term. The essay is:

'The rules and principles of causation not only provide fair practical solutions to the problems of criminal liability but also are founded on sound moral principles.'

Discuss this statement using references to decided cases to illustrate your answer. [50]
Element One:

So, why's this so important?

Well, once you have established that D had an actus reus and a mens rea, one of the only things which may relieve him of liability is if we cannot prove that he caused the damage to or death of V. This is known as a chain of causation, which links D’s actions and the outcome. For D to be legally responsible, the chain must remain intact.

If there is no link or if there is a break in the chain (known as a novus actus interveniens) then D may not be liable for the harm!

A classic problem:

Louis pushes Dave off the Empire State Building. Unknown to him, Reginald is firing his gun out of the window of a room on the 43rd floor. As Dave falls past Reginald’s window, one of the bullets hits him, killing him instantly. Dave hits the floor.

Who is legally responsible for his death?
Types of Causation:
NOTE: Both must be proven for D to be liable.

1. Factual

Based on the facts of the case, did D’s act or omission cause the harm? This is known as the ‘but for’ [sine qua non] test. Simply put: but for D’s actions, would V have suffered harm? If the answer is no, then D is not liable.

R v White 1910

**FACTS:**
D wanted his inheritance early, and so put cyanide in his mother’s drink. She drank a little, but actually died from a heart attack.

D was charged with murder.

**LAW:**

2. Legal

As well as factual causation, they must also prove legal causation, which is a little more tricky. This is known as the de minimus rule. It does not have to be the sole or main cause, but must be more than a minimal cause.

The key question is whether D’s conduct made a ‘significant’ contribution or was a ‘substantive and operative cause’ of the outcome.

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<thead>
<tr>
<th>Substantive means...</th>
<th>Operative means...</th>
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R v Smith 1959

**Facts:**

**Law:**
Despite “thoroughly bad” medical treatment, the wound was still a legal cause of death, as it was substantive and operative.
Applying the law: Look at the cases described below. Did D’s actions amount to a “substantive and operative cause” of V’s death?

James has been stabbed forty times. Sam comes along and pricks the end of his finger with a drawing pin. James dies.

Nigel pulls a knife on Bob who runs down the pavement and hits Gladys. Gladys falls into the road and is hit by a car and dies.

Teacher Tip: Always include reference to a relevant case when you are applying the law to a scenario. It is the evidence of your knowledge and the accuracy of what you are saying.
What may affect the chain of causation?

The key phrase is: *novus actus interveniens*  meaning: ____________________________

The courts have established a number of situations which may break the chain of causation, but please be aware that in reality it is very, very hard to break it! Normally D has done something which has led to the harm, and so the courts can be reluctant to decide that he is not responsible for the final result.

**Situation One:**

**Unreasonable actions of V.**

This includes escape attempts. Obviously if you were being attacked you might not wait around for it to get worse, but what if you are injured trying to escape? Is D responsible for the consequences?

**R v Roberts 1971**

**FACTS:**

![Image of two people jumping out of a car.]

**Law:**

D was still liable for the injuries to V as jumping out of the car was a reasonable action to foresee in the circumstances. The court added that only really ‘daft’ behaviour, which was unforeseeable would break the chain of causation.

**R v Majoram 2000**

**FACTS:**

D shouted abuse, kicked the door and was forcing himself in the door of D’s room (3rd floor) causing her to jump or fall to the ground, seriously injuring herself

**Law:**

**R v Williams & Davis 1992**

**FACTS:**

**Law:**

“There must be some proportionality between the gravity of the threat and the action of the deceased in seeking to escape from it. ... It should of course be borne in mind that a victim may in the agony of the moment do the wrong thing”
Situation Two:

**Unreasonable actions of Third Party**

Again, these will only break the chain if they are *unreasonable*, and not if they are reasonably foreseeable.

**R v Pagett 1983**

**FACTS:**
D was on the run from the police, and used his pregnant girlfriend as a human shield. He shot at the police, & they shot back, killing the girlfriend. D argued that the actions of the police were enough to break the chain of causation.

**Law:**

**R v Rafferty 2007**

**FACTS:**

**Law:**

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**Checking your understanding:**

Dave pushes Clive into the road where he is hit by Sheila's car.  
Dave prepares heroin for Clive, who injects it and dies  

Break/ No break  
Break/ No Break
Situation Three:

‘Palpably Wrong’ Medical Treatment

R v Jordan 1956

**FACTS:**

**Law:**
The actions of the doctors did constitute a ‘novus actus interveniens’, and so D’s conviction was quashed. The court said that had it been a normal dose, D would have been guilty, even if V was allergic.

This case has caused a lot of trouble, as all of the following cases seem to contradict it. Really, the way to look at it is to see it as a case which is decided correctly on its individual facts [Blaue later decided that Jordan is in effect limited to its own facts.]

R v Smith 1959

You have the facts of this case on page 3.

**Law:**
D’s conviction was upheld.

Despite the fact the medical treatment was incorrect & harmful, D’s actions were held to be the “operating & substantive” cause of V’s death.

Negligent medical care will not break the chain unless it is ‘so independent of D’s actions that it renders them insignificant.’

*KEY CASE*

R v Cheshire 1991

6. Did Cheshire succeed in his appeal?

6. Were the gunshot wounds the substantial and operative cause of death?

6. Outline the main facts of the case

5. Why would the courts prefer to blame Cheshire instead of the doctors?

6. Were the doctors to blame?

6. Why is Cheshire ‘significantly different’ than Jordan?
Other things which might affect the chain:

## Switching off a life support machine

### R v Malcherek & Steel 1981

**FACTS:**
This was a joint appeal.
1. Malcherek had stabbed his wife, who developed a brain clot, and brain damage.
2. Steel hit V with a large stone causing severe brain injuries.

**Law:**

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## Thin Skull Rule Cases

What happens if V has a pre-existing condition, weakness or belief which makes the attack on V more severe than it would be on a 'normal' person? Does this break the chain of causation?

### R v Blaue 1975

**FACTS:**

**Law:**

V's actions were not unreasonable. The court stated the principle that D takes the victim as they find them.

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### R v Holland 1841

**FACTS:**

**Ratio:**

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### R v Dear 1996

**FACTS:**

**Ratio:**

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Applying the rules on Causation:

**Do you understand?**

**Student Task**
Complete the following activity, using appropriate cases to support your answer.

<table>
<thead>
<tr>
<th>SITUATION</th>
<th>DID THEY CAUSE THE RESULT?</th>
<th>EXPLANATION</th>
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<tr>
<td>Bob rejects Vicky’s advances, so she stabs him. He is taken to hospital where it is discovered he has a rare blood type and the hospital does not have enough supplies of his blood. He dies.</td>
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<td>Gary decides to rob a bank. He takes his girlfriend with him as a getaway driver. The robbery goes wrong and armed police arrive. He tries to escape and uses his girlfriend as shield. The police start firing and his girlfriend dies.</td>
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<tr>
<td>Dave is fed up of his wife. He decides to kill her and puts an overdose of arsenic in her morning tea. She takes a couple of sips and passes out. Thinking she is dead, Dave drags her out of the house, whacking her head on the pavement. He dumps her in the skip at the bottom of the street. She is found and taken to hospital, where it is discovered that she has extensive brain damage, and the doctors declare her dead, turning off the life support machine.</td>
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Finally: In your own words, explain how the prosecution prove Actus Reus.
Element Two:

**Transferred malice**

**Meaning:** The mens rea of a crime can be transferred from the intended victim to the actual victim.

**Example:** Fred decides to kill Wilma by pushing her out of the window. She falls into Pebbles, causing her to fall out of the window and die as a result of her injuries.

Under the doctrine of transferred malice, he would still be liable for her death as Fred’s intent to kill Wilma is transferred to Pebbles.

**Problem:** This is a slightly controversial area of the law, and some argue that it should be abolished.

**Why?**

**R v Latimer 1886**

**FACT:**
D was a soldier in a pub and aimed his belt at X intending to hit him, because he had insulted him. Instead he hit a woman, V, in the face.

**LAW:**

A more recent example...

**R v Mitchell 1983**

**FACT:**
D pushed into a queue at the Post Office. X (age 76) reprimanded him, and D hit him. X fell into V (aged 94) who fell and eventually died as a result of her injuries.

D was charged with unlawful act manslaughter

**Bonus Question:** What’s the unlawful act?
Are there any limitations on this?

Can you spot any issues with this, if there were no restrictions?

**Limitation One: Must be the same offence!**

**R v Pemblition 1874**

**FACT:**
Outside a pub, D was involved in a riot. He threw a rock, intending to hit X, but smashed a window in the pub.

**LAW:**

**Limitation Two: How many times can it transfer?**

**Attorney-General's Reference No. 3 of 1994 (1997)**

**FACT:**

**LAW:**
So we’ve looked at the issues affecting actus reus and mens rea, now we need to look at the theories which explain why they need to meet... and what happens if they don’t (the courts have developed a couple of really sneaky clever solutions!).

Element Three: Coincidence

This is also known as contemporaneity

This may sound obvious, but generally speaking, to be liable for the offence, the mens rea must be present at some time whilst the actus reus is taking place.

R v Miller 1983

Facts: You know these!

Lord Diplock confirmed the existence of the theory

1. When did D develop the MR of arson under s. 1(1) and (3) of Criminal Damage Act 1971?

2. Why do you think the courts developed this rule?

Problem: The courts seem to look for contemporaneity when it seems that none really exists based on the facts!

R v Church 1965

A different way to explain the same thing? ‘Series of Acts’

Thabo Meli v R 1954

The courts confirm that MR may be present at any time until the act is complete, and under the series of acts doctrine, D was liable as he had committed one of a series of acts leading to D’s death, and had the MR when he committed that act.
Element Four: Continuing Act

What if you develop the mens rea after the actus reus has begun?

**Meaning:** In continuing act, if D develops MR at any point before the AR is complete, then D will be liable.

**R v Kaitamaki 1985**

**Facts:**
D had sex with V, during which he realised that she did not consent.

He continued, and when charged with rape, argued that he did not have the MR at penetration – the key AR element of rape.

**Law:**

**Fagan v MPC 1969**

*KEY CASE*

1. What are the facts of the case?

2. Was Fagan convicted or did he lose his appeal?

3. What offence was he charged with?

4. What was the ‘crucial question’ in this case?

5. Did D commit an act or an omission?

6. Do you agree with the outcome of the case? Why/why not?
Fagan v Metropolitan Police Commissioner [1968] 3 All ER 442, Queen’s Bench Division

(Lord Parker CJ, Bridge and James JJ)

The defendant was directed by a constable to park his car close to the kerb. He drove his car on to the constable’s foot. The constable said, ‘Get off, you are on my foot.’ The defendant replied, ‘F**k you, you can wait,’ and turned off the ignition. He was convicted by the magistrates of assaulting the constable in the execution of his duty and his appeal was dismissed by Quarter Sessions who were in doubt whether the driving on to the foot was intentional or accidental but were satisfied that he ‘knowingly, unnecessarily and provocatively’ allowed the car to remain on the foot.

James J [with whom Lord Parker CJ concurred] ... In our judgment, the question arising, which has been argued on general principles, fails to be decided on the facts of the particular case. An assault is any act which intentionally—or possibly recklessly—causes another person to apprehend immediate and unlawful personal violence. Although ‘assault’ is an independent crime and is to be treated as such, for practical purposes today ‘assault’ is generally synonymous with the term ‘battery’, and is a term used to mean the actual intended use of unlawful force to another person without his consent. On the facts of the present case, the ‘assault’ alleged involved a ‘battery’. Where an assault involved a battery, it matters not, in our judgment, whether the battery is inflicted directly by the body of the offender or through the medium of some weapon or instrument controlled by the action of the offender. An assault may be committed by the laying of a hand on another, and the action does not cease to be an assault if it is a stick held in the hand and not the hand itself which is laid on the person of the victim. So, for our part, we see no difference in principle between the action of stepping on to a person’s toe and maintaining that position and the action of driving a car on to a person’s foot and sitting in the car while his position on the foot is maintained.

To constitute this offence, some intentional act must have been performed; a mere omission to act cannot amount to an assault. Without going into the question whether words alone can constitute an assault, it is clear what the words spoken by the appellant could not alone amount to an assault; they can only shed a light on the appellant’s action. For our part, we think that the crucial question is whether, in this case, the act of the appellant can be said to be complete and spent at the moment of time when the car wheel came to rest on the foot, or whether his act is to be regarded as a continuing act operating until the wheel was removed. In our judgment, a distinction is to be drawn between acts which are complete—though results may continue to flow—and those acts which are continuing. Once the act is complete, it cannot thereafter be said to be a threat to inflict unlawful force on the victim. If the act, as distinct from the results thereof, is a continuing act, there is a continuing threat to inflict unlawful force. If the assault involves a battery and that battery continues, there is a continuing act of assault. For an assault to be committed, both the elements of actus reus and mens rea must be present at the same time. The ‘actus reus’ is the action causing the effect on the victim’s mind: see the observations of Parke B, in R v St George [(1840) 9 C & P 483 at 490, 493]. The ‘mens rea’ is the intention to cause that effect. It is not necessary that mens rea should be present at the inception of the actus reus; it can be superimposed on an existing act. On the other hand, the subsequent inception of mens rea cannot convert an act which has been completed without mens rea into an assault.

In our judgment, the justices at Willesden and quarter sessions were right in law. On the facts found, the action of the appellant may have been initially unintentional, but the time came when, knowing that the wheel was on the officer’s foot, the appellant (i) remained seated in the car so that his body through the medium of the car was in contact with the officer, (ii) switched off the ignition of the car, (iii) maintained the wheel of the car on the foot, and (iv) used words indicating the intention of keeping the wheel in that position. For our part, we cannot regard such conduct as mere omission or inactivity. There was an act constituting a battery which at its inception was not criminal because there was no element of intention, but which became criminal from the moment the intention was formed to produce the apprehension which was flowing from the continuing act. The fallacy of the appellant’s argument is that it seeks to equate the facts of this case with such a case as where a motorist has accidentally run over a person and, that action having been completed, fails to assist the victim with the intent that the victim should suffer.

We would dismiss this appeal.
Causation & Other Doctrines
'The rules and principles of causation not only provide fair practical solutions to the problems of criminal liability but also are founded on sound moral principles.'

Discuss this statement using references to decided cases to illustrate your answer. [50]

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<th>Cases/ Statutes &amp; Points of law</th>
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