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 is meant by a new intervening act, and how this may affect D's liability.
- Understand the other factors which may affect D's liability for his actions.

You should also be able to evaluate [AO2):
- The interpretation of causation by the courts.
- Whether the current rules on causation are in need of reform.

Homework

Produce a set of revision cards covering actus reus and mens rea.

You should cover no more than 10 cases
You must include: facts; issue of the case; decision of the court; reason for the decision; area of law

How will you be assessed?

You will complete a response to the following section C question, part of which we will complete as a class to model success.

Damian and Juan are arguing and Damian pulls out a knife. Juan runs into the road and knocks over a cyclist, Brenda. Juan suffers bruising and a small cut from the collision. Brenda falls under the wheels of Manuel’s car and suffers head injuries. Brenda has an unusually thin skull and dies.

Juan is scared to run into Damian again, and refuses to go to the doctor to get his injuries checked. After a couple of weeks, his cut has become infected and he develops gangrene. Finally, he goes to hospital where Dr Smith advises him to have the finger amputated. Damian agrees, but Dr Smith cuts off the wrong finger, and the gangrene spreads, killing Juan.

Evaluate the accuracy of each of the four statements A, B, C, and D individually, as they apply to the facts in the above scenario.

Statement A: Damian is not liable for the bruising suffered by Juan because he did not hurt Juan in the first place.

Statement B: Damian is not liable for the death of Brenda because she has an unusually thin skull.

Statement C: Damian is not responsible for Juan’s death as it was Dr Smith’s error which caused the death.

Statement D: Damian is not responsible for Juan’s death Juan chose not to get treatment.

Key Terms:

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
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<tbody>
<tr>
<td>Factual causation</td>
<td></td>
<td>Unreasonable actions of third Party</td>
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<tr>
<td>Legal causation</td>
<td></td>
<td>Palpably wrong medical treatment</td>
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<tr>
<td>New intervening act</td>
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<td>Substantive and operative</td>
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<tr>
<td>Unreasonable actions of V</td>
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<td>Thin skull rule</td>
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So, why’s causation so important?

As well as establishing that D has done (or failed to do!) something, and he meant to do it... we also have to prove that the act actually lead to the harm to V. This is called the chain of causation.

Imagine this....

You cause a paper cut to Miss Hart. Twenty minutes later Bob stabs Miss Hart and she dies of blood loss. 
Are you responsible for her death?

You stab Miss Hart once with a knife. Twenty minutes later Bob stabs Miss Hart once as well and she dies of blood loss. 
Are you responsible for her death?

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?
The General Rules.

To find D liable for the death of V, we need to ensure that D passes two tests:

**Factual Causation**

**Test:** 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:**

**Legal Causation**

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

This is known as the de minimus rule. D’s action does not have to be the sole or main cause, but must be more than a minimal cause. This does mean that more than one person may have contributed to the harm caused, and be liable for the same death!

Substantive means... | Operative means...

**Thabo-Meli v R (1954)**

**Facts:**

**Law:**
Applying the law: Look at the cases described below. Has D legally and factually caused the death of D?

<table>
<thead>
<tr>
<th>E Grade</th>
<th>C Grade</th>
<th>A Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make a decision!</td>
<td>Apply each test to the scenario to explain how he meets it.</td>
<td>Use a supporting case, which you explain and link to the scenario</td>
</tr>
</tbody>
</table>

**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 aim to link 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.
So what might save D from liability?

Once D is both factually and legally responsible for the outcome, his last hope is that the chain has been broken by some other method e.g. the actions of a third party. This is known as a novus actus interveniens (or in English as a

Task One: Below are eight cases.
In which do you think the chain of causation is broken, and so D is not liable for the death of V?

Case One: D shouted abuse, kicked the door and was forcing himself in the door of V's room on the third floor of a youth hostel, V jumped out the window to the ground, seriously injuring herself.

Case Two: D was on the run from the police and used his pregnant girlfriend as a human shield. He shot at the police and they shot back, killing the girlfriend.

Case Three: V was stabbed by D and then taken to hospital. He was given an antibiotic that he was allergic to. He was given a second lot and then an overdose of IV liquids, and died 8 days later.

Case Four: D stabbed V during a fight in an army barracks. The paramedics dropped V twice and whilst resuscitating him, managed to reduce his chances of survival by over 70%. V died.

Case Five: D wanted to have sex with V who refused, so he stabbed her. She went to hospital, but refused a blood transfusion as it went against her beliefs. She died.

Case Six: D assaulted V and injured one of his fingers. V was advised to have the finger amputated but refused, and subsequently died of tetanus.

Case Seven: D and X attacked V on a beach, knocking him unconscious. D went to withdraw money from V's account. When he returned, V was 100m away, floating in the water having suffered other serious injuries and died.

Case Eight: DD picked up V, a hitchhiker. DD joked about robbing V. V jumped out of the car and fell of a cliff, dying.

Cases where you think the chain is broken and why....
So what are the exceptions then?
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! After all, D has normally done something bad, even if someone else made the harm worse.

Break One:

Unreasonable actions of V.

This is where V does something which makes the harm worse and is sometimes known as the ‘escape’ exception.

R v Roberts 1971

**FACTS:**

D was still liable for the injuries to V, as jumping out of the car was a reasonable action to foresee in the circumstances.

**Law:**

Charge: s.47 ABH

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:**

Charge: GBH

R v Williams & Davis 1992

**Facts:**

**Law:**

Charge: Manslaughter

“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 so unreasonably unreasonable as to be daft, and not if the reasonable man could have foreseen that harm occurring.

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:**

“the free deliberate and informed intervention of a second person who intends to exploit the situation created by the first, but is not acting on concert with him, is normally held to relieve the first actor of criminal responsibility”.

Checking your understanding:

Dave pushes Clive into the road where he is hit by Sheila's car.  
Break/ No break

Dave prepares heroin for Clive, who injects it and dies  
Break/ No Break
Situation Three: 'Palpably Wrong' Medical Treatment

This is where, as a result of D's actions, V needs medical treatment. Only the treatment makes the whole thing worse and actually contributes to the death. Do the actions of the doctors relieve D of his liability?

*KEY CASE*

R v Cheshire 1991

Read the Law report and answer the following questions in as much detail as you can!

1. Did Cheshire succeed in his appeal?

2. Outline the main facts of the case, in no more than two bullet points!

3. Why was D appealing his conviction?

4. Were the gunshot wounds considered the substantial and operative cause of death by the court?

5. Why do you think that the courts prefer to blame Cheshire instead of the doctors?

6. When might the actions of the Doctors break the chain of causation?

7. Who do you think caused the death of the victim? Why? Reason your answer using the tests!

Challenge: The Times chose the headline "no such thing as murder by halves". How true is that as a statement of the law?
When the victim of a criminal attack dies after medical treatment during which the doctors fail to diagnose a rare complication the jury in the murder trial of the attacked must assess whether the attacker’s acts contributed significantly to the victim’s death. It is not necessary to assess whether they were the sole or even main cause.

The facts
On December 10, 1987 the defendant, David William Cheshire, shot Trevor Jeffery with a handgun after an argument. Bullets entered Mr Jeffery’s thigh bone and stomach. He was rushed to hospital and underwent surgery. While Mr Jeffery was in intensive care he developed respiratory problems and had to have a tracheotomy tube inserted into his windpipe to help him to breathe. His condition deteriorated and he had to have further abdominal surgery on December 25th.

Thereafter from time to time he suffered chest infections and breathing difficulties. Whilst in intensive care he had on several occasions shown signs of distress. On February 8th 1983 he complained of breathing difficulty. The doctors’ tentative diagnosis was that his intermittent breathing problems were due to anxiety attacks. Mr Jeffery was seen by several doctors of differing experience during the next week but he got worse and died on February 14th. At post mortem it was found that Mr Jeffery’s windpipe had become obstructed due to narrowing at the tracheotomy scar. Such a condition is a rare but not unknown complication of intubation of the windpipe. Mr Jeffery’s windpipe had so narrowed that even a small amount of mucous could cause asphyxiation.

The defendant was convicted of murdering Mr Jeffery and sentenced to life imprisonment. He appealed on the grounds that the judge had misdirected the jury as to whether the bullets fired by the defendant caused Mr Jeffery’s death [despite the actions of the doctors treating Mr Jeffery]...

The Decision
Lord Justice Beldam said that when the victim of a criminal attack was treated by doctors or other medical staff attempting to repair the harm done, it would only be in the most extraordinary and unusual case that such treatment could be said to be so independent of the acts of accused that it could be regarded in law as the cause of the victim’s death to the exclusion of the defendant’s act.

... In assessing whether injuries inflicted by the accused were the cause of death it is sufficient to tell the jury that they must be satisfied that the Crown has proved that the accused’s acts caused the death, adding that those acts need not be the sole or even the main cause of death, it being sufficient that his acts contributed to significantly to that result. Even though negligence in the treatment of the victim was the immediate cause of his death, the jury should not regard it as excluding the responsibility of the accused unless the negligent treatment was so independent of his acts and in itself so potent in causing death that they regard the contribution made by his acts insignificant.

It is not the jury’s function to evaluate competing causes or to chose which is dominant, provided they are satisfied that the accused’s acts can fairly be said to have made a significant contribution to the victim’s death. The word “significant” conveys the necessary substance of a contribution made to the death which is more than negligible.

... Even if more experienced doctors would have recognised the rare complication in time to prevent Mr Jeffery’s death, that complication was a direct consequence of the defendant’s acts which remained a significant cause of the death. It was inconceivable that on the evidence given any jury would have found otherwise.

The appeal was dismissed.
R v Smith 1959

**Facts:**

**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

**AO2 Thinking:** Do you think that the outcome of this case was just and fair to D?

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So what might be sufficient for a “most extraordinary and unusual case” and break the chain?

Well, technically the following case illustrates it... although it has been widely criticised and basically ignored by the courts since it came out. Indeed, the later case of *Blaue* decided that it was basically confined to its facts and so very limited in its scope (when it applies)

R v Jordan 1956

**Facts:**

**Law:**

The actions of the doctors did constitute a 'novus actus interveniens', as the treatment was so independent of the original wound, that it basically started a new chain of causation 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.
Other things which might affect the chain:

Below are a couple of other issues which defendants have argued should break the chain of causation. As usual, the court is very reluctant to allow them to successfully argue a break!

1. 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.

DD argued that they had not caused the death of V, it was the switching off of the machine which did, and so they are not responsible.

**Law:**

D’s conviction for manslaughter was upheld, as the court said that V’s actions in refusing the blood were not unreasonable. A defendant takes his victim as he finds them, underlying weaknesses, beliefs and all. It does not even matter if he doesn’t know about them.

2. D’s beliefs, state of mind, or inherent weakness

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?

The short answer is no, and the courts have developed the concept of the **thin skull rule** to explain this.

R v Blaue 1975

**Facts:**

**Law:**

D’s conviction for manslaughter was upheld, as the court said that V’s actions in refusing the blood were not unreasonable. A defendant takes his victim as he finds them, underlying weaknesses, beliefs and all. It does not even matter if he doesn’t know about them.
R v Holland 1841

**Facts:**
D fought with V, and caused a deep cut on his finger. Despite encouragement, V failed to get help with the wound or take care of it. Eventually it became infected and gangrene set in. V was advised to have his arm amputated he refused. And died!

**Ratio:**

R v Dear 1996

**Facts:**

**Ratio:**
### Applying the rules on Causation:

**Demonstrating your Understanding!**

**Student Task:** Complete the following activity, using the appropriate tests and cases to support your answer!

<table>
<thead>
<tr>
<th>Situation</th>
<th>Causation</th>
<th>Potential break?</th>
<th>Explanation</th>
<th>Liable?</th>
</tr>
</thead>
<tbody>
<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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<tr>
<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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End of Unit assessment:

Objective Style Questions (Section C):
These are worth 20 marks and all of those are only available for AO2.

This means no case facts, just clear definitions, application and a conclusion on the accuracy or otherwise of the statement. Your definitions are key here, and you should be using bullet points in your answer.

Key information: Apply each point, aim for five points for each, and conclude clearly on accuracy.

Damian and Juan are arguing and Damian pulls out a knife. Juan runs into the road and knocks over a cyclist, Brenda. Juan suffers bruising and a small cut from the collision. Brenda falls under the wheels of Manuel’s car and suffers head injuries. Brenda has an unusually thin skill and dies.

Juan is scared to run into Damian again, and refuses to go to the doctor to get his injuries checked. After a couple of weeks, his cut has become infected and he develops gangrene. Finally, he goes to hospital where Dr Smith advises him to have the finger amputated. Damian agrees, but Dr Smith cuts off the wrong finger, and the gangrene spreads, killing Juan.

Evaluate the accuracy of each of the four statements A, B, C, and D individually, as they apply to the facts in the above scenario.

Statement A: Damian is not liable for the bruising suffered by Juan because he did not hurt Juan in the first place.

Statement B: Damian is not liable for the death of Brenda because she has an unusually thin skill.

Statement C: Damian is not responsible for Juan’s death as it was Dr Smith’s error which caused the death.

Statement D: Damian is not responsible for Juan’s death Juan chose not to get treatment.

Example answer:

Statement A: Damian is not liable for the bruising suffered by Juan because he did not hurt Juan in the first place.

• In order to be liable, Damian must have legally and factually caused the harm to Juan, without any unforeseeable interventions occurring.
• Damian’s harm does not have to be the only cause, but it must be a more than minimal cause, which it is as it caused Juan to run away and be hit, and thus need to go to hospital.
• If he hadn’t have taken out the knife, then Juan would not have needed to go to hospital, and so he also passes the legal test as his acts are a more than minimal cause of the harm.
• As Damian is both legally and factually responsible, the only thing that could relieve him of liability would be Juan’s acts in running away. However these aren’t so daft as to be unforeseeable as it is reasonable for someone to run from a knife, so the chain is not broken.
• Therefore the statement is not accurate as Damian is both legally and factually liable for the bruising.