

### The Concept of “Causation” in Criminal Law

To make the defendant liable for an offence, the Prosecution has to prove that the defendant's actions caused the harm. In other words, it has to be established that the accused conduct was the “causation factor” in resulting harm. In Conduct based crime, causation is not a relevant factor. However, in Result based crimes, causation is relevant to be proved. Broadly, causation can be divided into two categories that are "factual causation" and "legal causation."

## Factual Causation

It involves a layman inquiry to be made to find out the cause of death. It is often known as '**but for**' causation (Causa sine qua non). The question one needs to ask is whether “but for” the accused act, the harm would have occurred. For instance, in *R v White*, [1] the accused mixed potassium cyanide in his mother's drink. The mother died and the accused was charged with murder. But later on, it was found that the deceased only drank a small amount and her death was of natural causes and was only coincidental to the defendant's act. The accused was only found guilty of attempted murder. However, a lot of times, it is not easy to find factual causation or any direct cause of death as the factual causation is extremely broad and sometimes the defendant can be found guilty even if the harm is far remote from his actions. This leads to Legal Causation which can limit the potentiality of broad liability.

## Legal Causation

It is a more narrow and subjective concept as compared to factual causation. Not every cause in fact can be said to be the cause in law. It is more of an inquiry made by a lawman rather than a layman. The isolation of a legal cause from amongst a possible multitude of factual causes is a process involving subjective common sense rather than objectively measurable criteria.

However, while attempting to assign criminal liability in this manner, one must seek some form of abnormality or culpable behavior.

There are essential conditions to be satisfied before applying this test. First, the cause must be substantial to the extent that it is more than slight. For example in *R v Hennigan*, [2] the defendant argued that he was not guilty of causing death by dangerous driving as the other driver

was more at blame than him. The court rejected his plea and held that as long as his contribution is substantial in causing death, he would be held liable. Second, the defendant must be blameworthy to some extent. For instance, in ***R v McKechnie***, [3] the defendant inflicted serious head injuries on Victim. These were not in themselves fatal, but they prevented doctors from operating on Victim's duodenal ulcer, as a result, the victim died. The Court held the defendant liable for the victim's death. Lastly, the defendant's act must be operating at the time when the liability arose. For example the ***R v Pagett***, [4] case.

## “Novus actus interveniens”

The defendant may avoid liability even if found factually caused the harm in two circumstances known as Novus actus interveniens. First, some third party intervened between the defendant's act and the result i.e. voluntary intervention by 3rd party. And second, some events occurred between the defendant's conduct and end result i.e. abnormal intervention or unforeseeable natural events.

## Voluntary intervention by Third Party

The break of the chain of causation by a third party is only when the defendant's actions are non-operable. So if the defendant's act was operating and substantial on the cause of the victim's harm, the chain of causation is not broken. In ***R v. Pagett***, the defendant used his girlfriend as a human shield against police while shooting at the police. In return fire, the girlfriend was shot dead by the police. The argument of the defendant that the actions of the police caused the death and not his actions were rejected by the court. The police shots did not break the chain of causation. The court held that the defendant's act was foreseeable and therefore did not break the chain of causation.

## Victim's intervention

These are the circumstances where the victim itself intervened somehow in the process of causation. For example, in ***R v. Royale (1991)***, the conduct of the defendant caused apprehension

in the mind of the victim for her safety. So the victim's jump from the third floor and cause of injury was held not to break the chain of causation as her intervention was not voluntary and comes under natural consequence or forcibility of situation. On the other hand, in *R v. Kennedy*, [5] the court held that the person who provided the syringe containing heroin could not be held liable as the victim himself was injected with no force. In other words, the injection was carried out freely and hence broke the chain of causation from the act of providing drugs.

## Eggshell Skull Rule

This rule suggests that the defendant must take his victim as they find them. In *R v Blaue*, [6] the defendant stabbed the woman who was Jehovah's Witness. As a result of her religious belief, she refused a blood transfusion which would have saved her life. The court held the defendant liable as the religious beliefs of the victim were considered to be a non-voluntary part and so didn't break the chain of causation.

## Medical Intervention

In *R v. Jordan*, [7] the victim who had stab wounds died after eight days of stabbing. By this time his wounds were largely healed. The court held that it was the medical treatment that went wrong after healing that caused the death. So the wounds were not substantial and operating cause of death rather the antibiotics administered to the victim i.e. the medical treatment which was "palpably wrong" was held to be the cause of death. On the other hand, in *R v. Smith* [8] the defendant stabbed his fellow soldier with a bayonet during a fight. Some other soldiers took him to the medical Centre by dropping him twice on the way. The army doctor failed to notice the victim's left lung which was pierced. The Court held that the poor medical treatment did not break the chain of causation as the wounds were still operating and substantial cause of death.

So, it can be said that if the second cause overcomes the original cause, then the harm does not flow from the act of accused. In Contrast, the wounds in Jordan's case were largely healed and so the medical treatment was the sole cause of the victim's death. Jordan can carve out an exception

to **explanation 2 of section 299** of IPC if the medical treatment is so palpably wrong which broke the chain, then explanation 2 of section 299 will not apply.

In later years, the court narrowed it further and held that the chain of causation will break where the medical treatment is so poor and independent of the defendant's act, that the court regards the act of the defendant as insignificant as compared to poor treatment. For example, in *R v.*

*Cheshire [9]* the defendant shot the victim who later on died due to medical complications arising from a tracheotomy that he underwent as part of his treatment. The gunshot was healed at the time of death but the court convicted the defendant because complications were still a natural consequence of the defendant's actions as medical complications can arise at a later stage of surgery which the court considered as normal or common occurrence.

However, the crucial distinction between abnormal and normal conditions is that an individual is only the moral/legal cause of those events in the world that are accompanied by the normal range of attendant conditions. Where an abnormal condition ensues, it becomes the cause in place of the human intervention, which in turn becomes an antecedent condition to the abnormal element. The problem is that the difference between 'normal' and 'abnormal,' 'cause' and 'condition', is based on one's judgment. According to Hart and Honore, the distinction between cause and condition may be drawn in different ways in the same case according to the context. It can change, amongst other things, when our perceptions of what is acceptable and not acceptable, permissible and not permissible, in society's provision for dealing with particular problems change. Therefore, individual responsibility ultimately relies upon a variable evaluation of what is 'normal' in social life and no definitive proposition can be laid down.[10]

## Endnotes

[1] (1910) 2 KB 124

[2] (1971) 3 ALL ER 133

[3] (1992) 94 Cr App R 51

[4] (1983) 76 Cr App R 279

[5] (2007) UKHL 38

[\[6\]](#) (1975) Cr App R 271

[\[7\]](#) (1956) 40 Cr App R 152

[\[8\]](#) (1959) 2 QB 35

[\[9\]](#) (1991) 1 WLR 844

[\[10\]](#) H.L.A. Hart and A.M. Honore, Causation in the Law, *Law Quarterly Review*, 72(1): 58–90, 72(2): 260–281, 72(3): 398–417.

## note

From: Kritika

Subject: iPleaders - Online Blog Writing Competition by LawSikho

Sender Email: [kritisin66@gmail.com](mailto:kritisin66@gmail.com)