

Criminal Law

Why do we criminalise certain conducts?

Devlin principle – criminal law should enforce morality vs Harm principle – behaviour don't have to be immoral before it is criminalised.

Legal elements of an offence:

- ✓ Actus Reus = physical element of an offence, e.g. killing, stealing, raping...
- ✓ Mens Rea = state of mind e.g. intention, recklessness...

AR + MR + ABSENCE OF A DEFENCE = CRIMINAL LIABILITY

(not all offences require MR =strict liability offences)

- **Burden of proof:** on the prosecution
- ✓ **Standard of proof:** beyond reasonable doubt.

ACTUS REAUS

The framework for criminal liability:



AR: is the conduct element of an offence, it must always be present and voluntary (includes failing to act: OMISSIONS). There are conduct crimes and result crimes.

- ✓ **A conduct crime** is where the conduct used is the offence, and there is no required result element, e.g. theft: the conduct of taking someone else's possession is the theft, there is no required result such as the person realising etc.
- ✓ **A result crime** is a crime which has a result element and is where a required result must happen for the offence to be committed. An example is murder, if you attempt to murder but the person does not die then you cannot be liable for murder, of course you would be liable for other offences but since the other person did not die (the required result) there is no murder.
Result crimes need causation = CONDUCT + CONSEQUENCE

Omissions: there is no general duty to act for the benefit of someone else in England and Wales, **R v Miller [1983]** 1 All ER 978, however there are situations which may give rise to a duty to act under the common law

1. **Special relationship** (doctor patient, parent child) **R v Evans [2009]** 1 WLR 1999 per Lord Judge "in some cases, such as those arising from a doctor/patient relationship where the existence of the duty is not in dispute, the judge may well direct the jury that a duty of care exists". E.g. in **R v Downes (1875)** the parent didn't call the doctor letting the child die. No duty when a child reaches 18 **Sheppard (1862)**, the age at that time was 21.

2. **Assumption of responsibility** **R v Stone (1977)** assumed responsibility for girl suffering from anorexia when they took her into their home
3. **Responsibility under contract: R v Pittwood (1902)** a man may incur criminal liability from a duty arising out of a contract
4. **Responsibility under statute:** a duty might arise under statute where Parliament has included an omission to act within the definition of an offence e.g. failure to stop a RTA, Health and Safety violations, wilfully neglecting child or spouse
5. **Where the defendant creates a dangerous situation: R v Miller [1983]** he creates a dangerous situation and then he goes to sleep; **R v Evans [2009]** drug supply created a dangerous situation and a duty to take reasonable steps to ensure safety.
6. **If someone owns a piece of property and another person in his or her presence commits a crime using that property, the owner is under the duty to seek to prevent the crime so far as it is reasonable. See Rubie v Faulkner [1940] where the driving instructor was convicted as an accessory after failing to prevent his pupil driving dangerously.**

CAUSATION

Where the definition of the AR requires that certain consequences happen, the prosecution must prove that it was the D's conduct (by act or omission) that caused those things to happen.

Actus Reus = conduct + consequences

Some examples of offences where causation is required:

murder, manslaughter, "causing" or "inflicting" GBH, assault "occasioning" ABH (i.e. these are consequences of the conduct). The prosecution must prove factual and legal causation.

- ✓ **Factual causation** defendant action must be the "but for" cause of result **R v White [1910]** the act failed so no "but for" test. The defendant put poison in the victim's drink, but she died unrelatedly by heart attack, medical evidence suggested that she would have died at the same way and time without drinking the poison
- ✓ **Legal causation** It is a principle established by judges that requires the defendant act to be "operative and substantial" (in **R v Smith [1959]** the wound inflicted to the victim was operating and substantial to the death of the victim) or "contribute significantly" to the result in **R v Pagett (1983)** the deceased was held hostage in front of the defendant; the act of the policeman in firing back resulting in the victim's death was held reasonably foreseeable considering the circumstances, involuntary self defence did not break the chain of causation.

Breaking the chain of causation: consider causation as a chain: is there any intervening act (novus actus interveniens: act or event that takes over as the new "operative" cause) that breaks the chain so as to remove D from responsibility? Potential ways to break a chain of causation:

R v Cheshire (1991) 3 All ER 670:

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 as insignificant ... We think the word 'significant' conveys the necessary substance of a contribution made to the death which is more than negligible."

"[T]reatment which falls short of the standard expected of the competent medical practitioner is unfortunately only too frequent in human experience for it to be considered abnormal in the sense of extraordinary. Acts or omissions of a doctor treating the victim for injuries he has received at the hands of an accused may conceivably be so extraordinary as to be capable of being regarded as acts independent of the conduct of the accused but it is most unlikely that they will be." per Beldam LJ

1. **Voluntary interventions of third parties, R v Rafferty [2007]** the defendant and his friends hit the victim and then he run away while the others drawn the victim. It was held that his action was not an operating and substantial cause to the death of the victim.
 - a. Does negligent medical treatment break the chain of causation? In **R v Smith [1959]** is was held no as “but for the wound” the victim wouldn’t have needed medical care. Consider **R v Cheshire (1991)**. **R v Jordan (1956)** the original wound had been healed and the doctor had administered an antibiotic to which the victim was allergic.

2. **Acts of the victim themselves** in **R v Kennedy (n.2) [2007]** it was held that the act of the victim of administering the drug voluntary was considered to break the chain of causation.
 - i. **“thin skull rule”** = in **R v Blue (1976)** it was held that those who use violence on other people must take their victims as they find them. The whole man not just the physical man: with disease religion and whatsoever. in **R v Hayward (1908)** the defendant shouted and assaulted her wife, which had a disease causing her to die, the court held the defendant guilty even if an ordinary person wouldn’t have died under those circumstances.
 - ii. In **R v Roberts (1972)** it was established that it should be considered if the actions of the victim were a natural result of what the alleged assailant said or did, or if it was something that could be reasonable foreseen as the consequence of what he said or did.

3. **Natural events** in **R v Gowans [2003]** the defendant attacked a delivery man who end up in coma, during the coma the victim suffered a serious infection which lead to his death, it was held that even though the infection was not caused by the victim attack, there was evidence showing that patient in coma were more likely to suffer the infection therefor “but for” the coma the victim would have not suffer the infection so his conviction for murder was sustained.

MENS REA

Mens Rea = state of mind e.g. intention, recklessness negligence.

In criminal law a conduct alone should not be enough to criminalise a person, the blameworthiness of the person should also be considered (not valid for strict liability offences).

To be able to criminalise a conduct the AR and MR must coincide, but the general principle has become more flexible **Fagan v MPC (1968)**. Once the defendant is aware of the danger but fails to mitigate it the AR and MR coincide. Consider **Miller [1983]**.

Transferred fault = if a person has a malicious intent towards one person, and in carrying that intent he injures another man, the MR can be transferred **R v Latimer (1886)**.

LEVELS OF CULPABILITY

- ✓ **INTENTION** = sometimes intent is the essence of an offence and is a question for the jury to answer applying the subjective test. Criminal Justice Act 1967 s.8
 - **Direct Intention** = the consequence was the aim of the Defendant if he acts with the purpose of producing that consequence.
 - **Oblique Intention** = a virtually certain consequence of which the defendant was aware it was virtually certain to occur. **R v Hyam [1975]**. In deciding whether the D had an oblique intention 2 questions must be answered by the jury **R v Moloney [1985]**:

1. Was the consequence a natural consequence of the defendant voluntary act?