

Chapter 1

Introduction to criminal liability

You will be familiar with this topic, as it forms a compulsory part of AS Unit 2. Rather than simply restating the rules of *actus reus* and *mens rea*, this chapter considers how best to use these rules in the specific context of A2 problem-solving questions.

Actus reus

For Unit 3 (fatal and non-fatal offences against the person), the key *actus reus* elements are those of voluntary act and causation. Omissions are of particular relevance to the offence of gross negligence manslaughter.

Voluntary act

Criminal responsibility generally requires voluntary conduct on the part of the defendant. If the act is involuntary, the defendant is able to plead the defence of automatism, explained in detail in Chapter 5.

Causation

Students should examine the problem scenario carefully to determine whether or not there are causation issues. In many questions where the defendant has used a weapon to cause grievous bodily harm or to kill the victim, it is unnecessary to explain any causation rules at all; quite often, it is possible to state that there are no causation issues raised in the scenario. Even if there are such issues, it is unlikely

that the factual 'but-for' rule requires explanation. Any causation will deal with legal rules, such as:

- ❖ negligent medical treatment following the initial attack
- ❖ escape cases
- ❖ *novus actus interveniens*
- ❖ the 'thin skull' rule

Medical treatment

What is the legal position where the defendant has inflicted serious injuries on the victim, but the victim later dies in circumstances where it can be proved that the medical treatment received was poor? If the victim had been promptly and correctly treated, would he or she have made a full recovery?

In *R v Smith* (1959), a fight between two soldiers resulted in the victim receiving a bayonet wound requiring medical treatment. While being carried to the medical reception station, the victim was dropped twice. The doctor failed to diagnose a punctured lung and gave treatment later described as 'thoroughly bad'. Smith was convicted of murder and his appeal failed. Lord Parker CJ stated that:

...if at the time of death the original wound is still an operating cause and a substantial cause, then the death can properly be said to be the result of the wound, albeit that some other cause of death is also operating. Only if it can be said that the original wounding is merely the setting in which another cause operates can it be said that the death does not result from the wound. Putting it another way, only if the second cause is so overwhelming as to make the original wound merely part of the history can it be said that the death does not flow from the wound.

This situation occurred in *R v Jordan* (1956), where the victim of a serious injury made a good recovery in hospital but while recuperating received an injection of a drug to which he was allergic. The doctors confirmed that the death was not caused by the original wound, which was mainly healed at the time of death, but by the injection (and the intravenous introduction of large quantities of liquid).

R v McKechnie (1992) also serves to confirm the rule that the courts will hold the defendant responsible for the victim's death even though the injuries inflicted may not be the immediate or medical cause of death. In that case, the defendant, with others, entered the victim's home and caused damage. One man hit the victim over the head with a chair and the defendant then further attacked him, causing severe head injuries. When the victim was admitted to hospital, doctors found they were unable to operate on his duodenal ulcer because the head injuries exacerbated the risk of death from anaesthesia. The victim then died when the ulcer burst. It was held that the doctor's decision not to operate was reasonable and that the head injuries were the significant cause of death. The defendant was rightly convicted of manslaughter.



The best example of an 'escape' case is *R v Roberts* (1971): did the victim act reasonably?

Escape cases

When a victim has suffered injury or has been killed while trying to escape from a serious attack, this is known as an escape case. In such cases, the defendant is liable if the victim's conduct in running away was within the range of foreseeable responses to the defendant's behaviour.

The best example of such an 'escape case' is *R v Roberts* (1971), the facts of which are described concisely in an article by Giles Bayliss in *A-Level Law Review*, Vol. 2, No. 3:

The defendant, Roberts, met a girl at a party and persuaded her to travel with him in his car to what he said was another party later that night. During the course of the journey, Roberts made unwanted sexual advances towards the girl and told her to undress. He said that he had previously beaten up other girls and then he physically attempted to remove some of her clothing. The alarmed victim opened the car door and jumped out, while the vehicle was still travelling at an estimated 20 to 40 miles per hour. She suffered concussion and grazing and was kept in hospital for 3 days. Roberts was charged with, and convicted of, assault occasioning actual bodily harm under s.47 of the Offences against the Person Act 1861. He appealed [on the basis that he did not intend such injuries to occur, and that the victim had caused these injuries by her own actions]. The appeal focused on whether the victim had broken the chain of causation in behaving the way she did, or whether Roberts was responsible for her injuries. The Court of Appeal ruled that the correct test to apply was to ask whether the reaction of the victim was reasonably foreseeable, rather than to ask whether the victim acted reasonably. Stevenson LJ explained the test in this way:

Was it the natural result of what the alleged assailant said and did, in the sense that it was something that could reasonably have been foreseen as the consequences of what he was saying or doing? As it was put in one of the old cases, it had got to be shown to be his act, and if of course the victim does something so daft...or so unexpected...that no reasonable man could be expected to foresee it, then it is only in a very remote and unreal sense a consequence of the assault, it is really occasioned by a voluntary act on the part of the victim.

He continued by saying that if this were the case, the defendant would not be liable. The injury would be caused:



...by a voluntary act on the part of the victim which could not reasonably be foreseen and which breaks the chain of causation between the assault and the harm or injury.

Compare the decision in *Roberts* with that in *R v Williams and Davis* (1992), where the victim was a hitchhiker who was given a lift in a car by Williams, and Davis was a passenger. The victim jumped from the car when it was moving at about 30 miles per hour and sustained fatal head injuries. Although the defendants were convicted of manslaughter on the basis that they had planned to rob the victim, their conviction was quashed by the Court of Appeal. The court ruled that the jury should have been asked whether the victim's reaction in jumping from a moving vehicle in response to a threat, not actual violence, was 'within the range of responses' that might be expected from a victim placed in such a situation.

Novus actus interveniens

Another causation rule addresses the question of what constitutes a new intervening act (*novus actus interveniens*). This requires something that cannot be foreseen, and it must be so overwhelming as to invalidate the original *actus reus*. For example, A shoots at B and causes B serious internal injuries that could be treated successfully if immediate and specialised medical treatment were provided, but the ambulance takes 10 minutes to arrive and as a result B dies. This is a foreseeable result and A is guilty of murder. However, if C knocks D down and leaves him unconscious in a building that collapses in a sudden earthquake, and D dies as a result, then C would not be liable for D's death. Generally, it seems to be accepted that an 'act of God' (such as an earthquake or a tidal wave), which by definition could not reasonably be foreseen, will break the causal chain.

In *R v Rafferty* (2007), the defendant and two co-defendants attacked the victim on a beach, knocking him unconscious. The defendant's role had been to pin the victim down so that the other defendants could punch and kick him. They then robbed him. The defendant took the victim's credit card to a cash machine; when he returned to the beach, the co-defendants had disappeared. In his absence, they had inflicted further serious injuries on the victim, dragged him 100 metres across the beach and then taken him some distance out to sea, where he drowned. At the defendant's appeal against conviction for the victim's manslaughter, the Court of Appeal accepted the argument that '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'. In quashing the defendant's conviction, the court ruled that no jury could properly conclude that the drowning of the victim by the co-defendants was other than a new and intervening act in the chain of events.

The 'thin skull' rule

The 'thin skull' rule, also known as 'take your victim as you find him', refers to the situation where the intervening cause is a pre-existing weakness of the victim, for instance an abnormally thin skull. If, because of this, a blow inflicted on the victim causes serious injury or even death, when in a 'normal' person it would usually only cause a bruise, the attacker is liable for the more serious injury or the death.

This rule covers not only physical but also mental conditions, and even the victim's beliefs or values, as in *R v Blaue* (1975). Here, the victim of a stabbing was a Jehovah's Witness, who refused on religious grounds to accept a blood transfusion that would have saved her life. The defendant was convicted of her manslaughter and the Court of Appeal rejected his appeal, holding that the victim's refusal to accept the transfusion did not break the causal chain.

Sample exam question

Petra's best friend, Kerry, has secretly been carrying on a relationship with Petra's boyfriend, Ricky. Petra discovers this a few minutes before she and Kerry are due to meet, and she immediately sends a text message to Kerry's mobile phone which reads: 'Leave Ricky alone or I'll knock your teeth out.' Kerry becomes very agitated when she reads the message and avoids Petra for the next few weeks. However, Petra and Kerry happen to be in the same bar one night when Petra has drunk a large amount of alcohol. Petra has just clumsily broken a glass when Kerry walks by. Petra sticks out her foot and pushes Kerry's face into the floor. The broken glass is underneath Kerry and she suffers extensive and deep cuts to her face. Two days later, Kerry's brother, Simon, goes to Petra's house in the middle of the night and sets fire to it in revenge for Petra's attack on Kerry. He then telephones a warning to the fire service, which, in turn, phones the house. Only Petra's friend, Tracey, is in the house and, despite advice from the fire service about what to do until firefighters arrive, she panics and becomes trapped by the fire in a bedroom upstairs. She then slips and falls to her death while trying to climb onto the roof.

Adapted from AQA Unit 4 paper, January 2007

Considering Tracey's reaction to the advice from the fire service, discuss whether Simon's action in setting fire to Petra's house was the legal cause of her death.

Omissions

Most jurisdictions, including that of England and Wales, have not adopted a general principle of liability for failing to act. However, the law has defined certain factual situations in which persons are under a duty to act, and failure to do so results in

criminal liability. The two most common examples of omissions in A2 exam questions are:

- ❖ where a relative or other responsible adult assumes responsibility for the care of a child or vulnerable adult
- ❖ where the defendant has created a dangerous situation by his or her own acts and has thus put himself or herself under a duty of care to do something about it (*R v Miller*, 1983)

These examples are particularly important within the context of gross negligence manslaughter, where they can be used to argue that the defendant owes a duty of care to the victim.

Mens rea

A2 students must be able to explain accurately and then apply the correct *mens rea* element for every offence.

Intention

The meaning of intention is not found in any statute, but in judicial decisions. It is clear that a person intends a result when it is his or her aim, objective or purpose to bring it about. In *R v Mohan* (1976), James LJ stated:

...an 'intention' ... connotes a state of affairs which ... [the party] decides so far as in him lies to bring about and which, in point of possibility, he has a reasonable prospect of being able to bring about by his own act.

This might be termed 'dictionary intention'.

In exam questions, especially those involving Unit 3 offences against the person, consider whether there is clear evidence of this direct intent; has a weapon been used, or is there any evidence of the attack having been pre-meditated? If so, there is no point speculating about oblique intent.

However, the concept of intention is open to ambiguity. In *R v Hancock and Shankland* (1986), at the heart of the case was how the law should deal with the defendant who has created an unlawful result where it is clear that the outcome was probable, and the defendant may well have foreseen this outcome. The defendants in this case were Welsh coal miners on strike. When one of their fellow miners wanted to return to work, they tried to stop him. The 'strike-breaker' was being driven in a taxi to another coal mine, and the route was via a motorway. The defendants knew that the taxi would pass under a particular bridge, and when the taxi drove under it they pushed concrete blocks onto the road below. One of the blocks smashed through the windscreen of the taxi and

killed the driver. The defendants claimed that their only intention was to block the road and prevent the strike-breaker from reaching the coal mine, not to kill the taxi driver. Although they were convicted of murder at their trial, the Court of Appeal and the House of Lords both quashed that conviction and substituted a manslaughter conviction, holding that the issue of intention had not been established. Lord Scarman indicated that, in cases like these, juries needed to be told by the judge that 'the greater the probability of a consequence occurring, the more likely it was so foreseen and, if so, the more likely it was intended'. This emphasised the point that foresight of the degree of probability was the only evidence from which intention could be inferred.

In the cases of *R v Nedrick* (1986) and *R v Woollin* (1998) (see below), a tighter rule was laid down for such cases of oblique intent. This now requires juries to return a verdict of murder only where they find that 'the defendant foresaw death or serious injury as a virtually certain consequence of his or her voluntary actions'. It is worth pointing out that in both these cases, the original murder conviction was changed on appeal to a manslaughter conviction.

R v Woollin (1998)

This case resulted from the death of a 3-month-old baby. Although initially the defendant gave a number of different explanations, he finally admitted that he had 'lost his cool' when his baby started to choke. He had shaken the baby and then, in a fit of rage or frustration, had thrown him in the direction of his pram, which was standing against the wall some 3 or 4 feet away. He knew that the baby's head had hit something hard but denied intending to throw him against the wall or wanting him to die or to suffer serious injury. The trial judge directed the members of jury that they might infer intention if they were satisfied that, when he threw the baby, the defendant appreciated there was a 'substantial risk' of causing serious harm. In the Court of Appeal, the defendant argued that the judge should have used the words 'virtual certainty', as 'substantial risk' was merely a test of recklessness. The Court of Appeal, although critical of the trial judge, dismissed the appeal, and certified questions for the House of Lords. The House of Lords quashed the defendant's conviction for murder and substituted a conviction for manslaughter.

Lord Steyn gave the main speech, saying that 'a result foreseen as virtually certain is an intended result'. Thus the phrase 'substantial risk' used by the trial judge blurred the distinction between intention and recklessness, and was too serious a misdirection for the conviction to stand. In *R v Matthews and Alleyne* (2003), the vexed issue of whether foresight of virtual consequences did in fact equal intent or was merely evidence of intention was resolved in favour of it being evidential. This means, at least in theory, that a jury could decide that the defendant in a murder case had foreseen death or serious injury as virtually certain but still return a verdict of 'not guilty' to murder.



Recklessness

A standard dictionary definition of recklessness is 'unjustified risk-taking'. Following the case of *R v G and Others* (2003), English law now recognises only subjective (Cunningham) recklessness. Here, the prosecution must prove that the defendant appreciated that his or her action created an unjustified risk and then went ahead with the action anyway. In *R v Cunningham* (1957), the defendant ripped a gas meter from a wall to steal the money it contained, causing gas to escape. The gas seeped into a neighbouring building, where it overcame a woman. Cunningham was convicted of a s.23 offence — administering a noxious substance — but appealed successfully on the ground that the prosecution had failed to prove that he recognised the risk of the gas escape. The question was quite simply whether the defendant *had* foreseen that his act might injure someone, not whether he *ought* to have foreseen this risk.

Gross negligence

This covers situations where the defendant did not foresee causing any harm, but should have realised the risks involved, for example *R v Adomako* (1995). This topic is covered in detail in Chapter 4.

Coincidence of *actus reus* and *mens rea*

Mens rea must coincide in point of time with the *actus reus* for an offence to occur. This is important to consider in problem-solving questions, and should not be difficult to identify. If relevant, deal with this topic by using either *Thabo Meli v R* (1954) or *R v Le Brun* (1992). In both these cases, the same rule was affirmed that where there is a series of actions that can be regarded as a linked transaction or continuing act, provided that at some point during the transaction the required *mens rea* is present, the coincidence rule is satisfied.

Transferred malice

Under the rule of transferred malice, if A fires a gun at B, intending to kill B, but misses and in fact kills C, A is guilty of murdering C. The intention (malice) is transferred from B to C. The leading case is *R v Latimer* (1886).

However, this rule is limited to situations where the *actus reus* and the *mens rea* of the same crime coincide. In *R v Pembliton* (1874), the defendant threw a stone at the victim, intending to harm him, but missed and broke a window. The defendant was not guilty of malicious damage, as he lacked the *mens rea* for that offence.