Legal Problem Solving Guide

- The five requirements for criminal liability:
  1) The person must have legal capacity to commit a criminal offence
  2) That person must have committed the conduct elements of the offence (AR) (if needed, consider voluntariness, causation or intoxication)
  3) The fault elements must exist in the person (MR)
  4) Both the mens rea and actus reus occurred simultaneously (Thabo Meli v R [1954] 1 All ER 373)
  5) The absence of any defences of excuse or justification which would negative liability.
- Strict liability
  o Only the defence of ‘honest and reasonable mistake’ of facts can acquit a strict liability offence.

Introductory content

- What is a crime?
  o A crime is a breach of the Crimes Act 1900 and any other statutes that have criminal sanctions.
  o A key philosophy used to justify the criminalisation of certain acts is ‘personal autonomy’ which stipulates each individual should be treated as responsible for their own actions.
  - The factual element- it is a fact that most humans do have sufficient free will to make a range of choices. This has been challenged by ‘determinists’ like Barbara Hudson who assert free will is a luxury experienced by the privileged in life, not those who are ‘constricted by material or ideological handicaps’
  o An indictable offence:
    - Involves the person having a preliminary hearing or committal proceedings
    - Is tried by a judge (rules of law) and jury (rules of fact).
    - Guilt must be beyond reasonable doubt.
  o A summary offence:
    - Is less serious
    - Determined finally by local courts
    - Tried before a Magistrate who is also a trier of fact (not jury)
    - Also to be proved beyond reasonable doubt
    - Only created by Parliament and do not exist at common law.

- Structure of criminal law
  o Commonwealth
    - Australia does not have one set of criminal laws. The commonwealth does have some criminal laws, but also each state has their own laws for more specific offences.
    - The Commonwealth can only make laws in relation to those powers it is given under the Constitution. Examples of Commonwealth criminal laws include:
      1) The Crimes Act 1914 (Cth)
      2) Criminal Code Act (deals with terrorism)
    - The External Affairs power also grants federal intervention into state criminal law. For example in Toonen v Australia (1994) the Commonwealth overrode a Tasmanian legislation because it breached an international human rights treaty.
    - Since 1991, a ‘Model Criminal Code’ has been established in which to provide guidance in interpreting statutes dealing with crimes to promote consistency between differing jurisdictions. This code has no legal authority as it is just a model.
  o State
    - The states of Australia are split between having common law and codified law
    - Common law states → NSW, Victoria, South Australia
      They are common law states because:
      1) The common law is a source of their criminal law
      2) They make legislations that correspond with the common law
      3) Many defences are established by the common law
    - Codified law states → Queensland, Western Australia, Tasmania, Northern Territory, ACT
      A code is a legislation that aims to cover exhaustively a complete system of law, such as the Queensland Criminal Code. These codes replace common law so common law offences cannot be used unless they appear within the code.
      Main difference is there is no common law, idea is that no precedence needs to exist because the codes will produce identical results.
      Codes may alter the basic common law principles such as mens rea.
    - For NSW, the Crimes Act 1900 (NSW) collects all serious offences.
    - Appeals are rare in criminal cases. In NSW, the first appeal goes to the Full Court of the Supreme Court, or to the Court of Appeals. It can then go to the High Court if the case is granted ‘special leave’
    - Any retrials where a charge has been acquitted by the jury, e.g. the jury acquits the accused of murder but not manslaughter, means the retrial will not have ‘murder’ as one of the charges.
    - Appellate courts can also substitute convictions, e.g. quashing murder charge and substituting manslaughter.
    - The Crown has no general right of appeal against a jury’s verdict of acquittal.
    - A prisoner can appeal against a sentence after gaining leave from the appellate courts. If a sentence is thought to be too lenient, the Attorney General may also appeal. The appellate courts in NSW can raise the sentence even if the prisoner was the appellant.
  o Consequences of the Mabo Decision
    - Challenges whether criminal cases involving Aborigines should be dealt with by customary laws. If native laws governing property had survived settlement, then native laws about crime should also have survived.
    - Essentially, it challenges criminal jurisdictions in Australia.
    - Deane and Gaudron JJ believe that customary criminal laws should only be applied to issues where the common law is absent.
Edward Chen

- It is possible to argue that s24 of the *Australian Courts Act* 1828 overrode customary criminal laws because the English criminal laws were applied to all of NSW. Furthermore, states which operate through criminal codes adds even more credibility to the possibility that native criminal laws were extinguished because the codes are meant to be the sole source of law for criminal matters. Legislation in all states of Australia grant prosecutors the power to institute criminal proceedings against anyone who has committed a crime within their jurisdiction, including Aboriginals. Thus, although customary criminal laws may have survived the establishment of British settlement, they would have subsequently been extinguished.
- *Archie Glass* (1993) was the first case that challenged criminal jurisdictions after the *Mabo* decision. An Aboriginal was charged with assault and robbery against non-Aboriginals. The accused submitted that common law did not apply to him consistent with his native rights. However, Sully J rigidly destroyed this statement asserting that the *Mabo* decision was not to be interpreted as granting special classes of citizens to who are exempt from certain laws.
- Stanley Yeo contends that providing Aborigines with a limited form of native criminal jurisdiction would help heal the disencumbers of the rights. However, Sully J rigidly destroyed this statement asserting that the *Mabo* decision was not to be interpreted as granting special classes of citizens to who are exempt from certain laws.

### Legal capacity

- **Pre-birth**
  - *R v Hutty* [1953] VLR 338:
    - A human being is one that is ‘fully born in a living state’ and has a ‘separate and independent existence’ from its mother.
    - Murder/manslaughter is only possible after the baby is born.
    - If the baby was harmed before birth and died after birth, the accused is guilty. However, if the baby was never born then no charges can exist.
  - *Was born?*
    - On the trial of a person for the murder of a child, such child shall be held to have been born alive if it has breathed, and has been wholly born into the world whether it has had an independent circulation or not (s 20 of *Crimes Act*).
  - *Section 41 of the Human Tissue Act 1982 (Vic):*
    - Death is defined as the irreversible cessation of the circulation of blood or the irreversible cessation of all function of the brain.
  - *Abortions*
    - *Non-professional abortion is a crime in NSW, ss 82-3 Crimes Act 1900 under ‘attempts to procure abortion’.*
      - Doing it yourself with intent (s 82)
      - Doing it for woman with intent (s 83)
    - *Defence*
      - A person who performs a prohibited act upon a woman with intent to procure her miscarriage does so lawfully if that person honestly believes on reasonable grounds the act was: (per Menhennitt J in *R v Davidson*)
        - **Necessity**
          - Abortion is necessary to preserve the health of the mother, whether physically or emotionally, from childbirth and course of pregnancy or
        - INCLUDES economic, social or medical grounds which could result in serious danger to the woman’s physical or mental health. (*R v Davidson*)
      - **Proportionality**
        - In the circumstances, not out of proportion to the danger to be averted.
    - However, this means the prosecution has a very heavy burden of proof and usually acquittals occur rather than convictions because they have to prove, BRD, there was no necessity etc.
  - *Infanticide*
    - *Section 22A of the Crimes Act makes infanticide an offence. It is murder with diminished responsibility due to mental disturbance from the effects of giving birth or lactation*
    - *Doli incapax*
      - 0-10
      - In NSW, children up to 10 years old are unable to commit crimes due to infancy.
      - 10-14
      - From 10-14, children are capable of committing crimes but it must be proven that they knew what they did was wrong. However, a flaw is that it only punishes those children who can learn right and wrong. The children who do not learn because of an unsatisfactory family need the most attention.
    - *Children courts*
      - Children courts exist until they reach 17, these courts emphasise the possibility of rehabilitation rather than punishment.
  - *Principles*
    - Meaning
      - *Doli incapax means ‘incapable of wrongdoing’ in Latin*
    - *Burden of proof*
      - Presumption can be displaced “by strong and pregnant evidence to the contrary” (B (1958) 44 Cr App R 1 at 3 per Lord Parker)
  - *Critique*
    - *Evidential difficulties*
      - *Difficulties of evidence eg child may not give evidence. Who would? How do we determine knowledge of right and wrong?*
    - *Ignorance is no excuse*
      - *We do not require knowledge of right and wrong in other offences of criminal law – why do we require it of children?*
      - *Against the general rule that ignorance of the law is no excuse.*
    - *Should be considered in sentencing*
      - The rule is divisive and perverse ‘it tends to attach criminal consequences to the acts of children coming from what used to be called good homes more readily than to the acts of others; perverse, because it tends to absolve from criminal responsibility the very children most likely to commit criminal acts. It must
Edward Chen

surely nowadays be regarded as obvious that, where a morally impoverished upbringing may have led a teenager into crime, the facts of his background should not go to his guilt, but to his mitigation…”

(discretion in sentencing)

• For the child’s sake they be institutionalised
  o Those ‘who may know no better than to commit antisocial and sometimes dangerous crimes, should not be held immune from the criminal justice system, but sensibly managed within it. Otherwise they are left outside the law, free to commit further crime, perhaps of increasing gravity, unchecked by the very courts whose very duty it is to bring them to book.’

• No capital punishment anymore
  o No longer relevant – based on a time when children could be executed for crimes.

• Jurisdiction
  o The jurisdiction of a crime is determined by where the act takes effect upon the victim.

• Burden of proof
  o See Evidence Notes
  o There is a presumption of innocence (Woolmington v DPP)

• Standard of proof
  o Reasonable possibility
    ▪ The evidence must be enough to ‘suggest a reasonable possibility’ (Jayasena (1970); R v Khazzul (2012) 246 CLR 601 at [11])

• Voluntariness
  o Look at automatism

• Mens Rea
  o Intention (subjective)
    ▪ ‘Intent…connotes a decision to bring about a situation so far as it is possible to do’ (per Brennan J in He Kaw Teh)
    ▪ Mens rea only needed for one essential stage of the acts/omissions if they are continuous (R v Taber)
      ▪ ‘When, as part of one transaction, a person commits a series of acts or failures to act, that series should not be split up so as to require mens rea at all stages. It is sufficient if it is present at one essential stage’ (per Barr J)
  o Recklessness (subjective)
  o No reasonable grounds (objective and subjective)
  o Criminally negligent (objective)

• Temporal coincidence
  o For criminal liability to occur, the actus reus and mens rea must occur at the same time (Thabo Meli).
  o Acts can be either ‘complete’ or ‘continuing’
    ▪ Mens rea during any moment of the continuing act will be sufficient (per James J in Fagan v MCP)
  o Mens rea can be superimposed onto actus reus
    ▪ Not the other way around.

• Strict liability offences
  o Presumption
    ▪ Mens rea is presumed can only be displaced by a clear intention from the statute’s wording (per Gibbs CJ in He Kaw Teh)
      ▪ In determining Parliament’s intention, the court considered the seriousness of the offence.
    ▪ Arguing for strict liability
      ▪ Absence of any reference of knowledge or intention
      ▪ Public policy
  o Honest and reasonable mistake
    ▪ An honest and reasonable mistake is a defence to strict liability offence. Provided there is evidence which raises the question, the jury cannot convict unless they are satisfied that the accused did not act under an honest and reasonable mistake (Proudman v Dayman; He Kaw Teh)
      ▪ The ‘honest and reasonable mistake’ defence means the accused ‘reasonably believes in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event’ (per Nathan J in Allen v UCM)
    ▪ Mistakes of fact only
      ▪ For the honest and reasonable mistake defence, it only works with mistakes of fact. Mistakes of law are not accepted (Proudman v Dayman)
  o Absolute liability
    ▪ Absolute liability means that no defence, including the defence of honest and reasonable mistake, would work.
    ▪ Allen v United Carpet Mills Pty Ltd [1989] VR 323 was an example of absolute liability, the company was convicted even though it was a third party (the contractor) who committed the crime.
    ▪ Respondent had provided a man named Davis with latex. Davis washed the latex into a creek, harming the water quality. UCM had broken no conduct rules.
  o Reasons for interpreting as strict/absolute liability (He Kaw The)
    ▪ The absence of any reference to knowledge or intention in the statute- often the omission of significant words might prompt judges to assume it was done deliberately.
    ▪ The needs of public policy - this has the danger of judges convicting individuals who didn’t intend to commit a forbidden act, was not reckless and not negligent.
    ▪ Enforcement of justice- will making this statute strict or absolute be an adequate way or enforcing justice? Or will it only target luckless victims?
    ▪ Severity of the punishment- the less severe the punishment, the more likely it’s absolute
  o Commonwealth crimes
    ▪ Section 6.1(1) of the Criminal Code Act 1995 (Cth) allows for the honest and reasonable mistake defence to be used in strict liability crimes.

  -The Darebin Creek flowed with the colour and consistency of milk because latex had been dumped into the creek. Davis, the owner and operator of a prime mover, attempted to deliver rubber latex between RL and UCM. UCM was a factory occupying a site near the creek and from which it conducted its business as a manufacturer or carpets. Davis incorrectly hooked up the hoses that transferred the latex so that it flowed down the side of the tanker and onto the ground, where Davis hosed it into a stormwater drain which eventually went to the creek. A few days later, the creek
returned to its normal flow and colour. It was RL who retained Davis as the driver. RL did not instruct Davis to hose it into the drain. UCM had no contractual relationship with Davis, but allowed him to use its water to clean up (without any intention of it being used to disperse into the drain). UCM actually had a system to prevent this occurring but it was Davis’ independent action that caused it. Davis pleaded guilty but RL and UCM didn’t.

The Act prohibited a person causing or permitting water to be polluted.

The magistrate found both RL and UCM not liable because Davis’ acts were independent

- Held RL and UCM are both liable.
- There is no defence of ‘reasonable precautions’ in relation to an offence under the Environment Protection Act. It would only be available as a way of expressing honest and reasonable mistake, but this depended on the offence being strict liability.
- RL and UCM are vicariously liable for the actions of Davis
- The ‘honest and reasonable mistake’ defence means the accused ‘reasonably believes in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event’
- Held the offence is created to prohibit not just intention breaches, but unintentional and accidental too.
- The legislature deliberately used the word ‘cause’ not ‘knowingly cause’ or ‘negligently cause’
- Thus, an absolute liability offence.

- The civil law principle of vicarious liability is extended to anyone ‘doing any act in pursuit of that principal’s business enterprise’

- Fagan v Metropolitan Commissioner of Police [1969] 1 QB 439:
  “RUNNING OVER OFFICER’S FOOT”
  - Fagan parked too far from the curb. Officer indicated a precise spot to park. Fagan drove forwards and ran on top of the officer’s foot. The officer yelled in pain but Fagan said, ‘f*ck you, you can wait’ and turned the engine off. The officer kept telling him to reverse and he eventually did.
  - Held there is a difference between acts which are ‘complete’ (though results may continue to flow’) and acts which are ‘continuing’.
  - Once the act is complete it cannot thereafter be said to be a threat to inflict unlawful force upon the victim.
  - If the act is a continuing at 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.
  - ‘It is not necessary that mens rea should be present at the inception of the actus reus; it can be superimposed upon an existing act.
  - Mens rea may be superimposed onto the actus reus later, but not vice versa!
  - It was not a ‘mere omission or inactivity’ because Fagan said words and made actions (turning off ignition) to show an intention to keep the wheel on top of his foot.
  - Thus, there was a continuing act of battery.
  - Battery can be inflicted ‘directly by the body of the offender or through some medium of some weapon or instrument controlled by the action of the offender’
  - No mere omission to act can amount to an assault.
  - By switching off the ignition of the car, maintaining the wheel of the car on the foot, and using words to indicate the intention of keeping the wheel of the car in that position: “we cannot regard such conduct as mere omission or inactivity.”
  - Bridge J in dissent, Fagan did absolutely nothing but sit there. How can that be an ‘act’? It doesn’t matter that he turned the ignition off because if he just sat there with the ignition on, there is still no act of his causing harm. The car was resting on its own weight. Thus, there can be no assault.

- He Kow Teh v R (1985) 157 CLR 523:
  “IMPORTATION OF HEROIN- STRICT LIABILITY”
  - Accused was charged with importing heroin into Australia. The trial judge said the prosecution did not have to prove the accused intentionally brought the heroin into Australia. The trial judge also directed the jury that any defences raised by the accused will lead to the accused bearing the onus of proof in proving the defence on the balance of probabilities.
  - Held the trial judge erred
  - The prosecution actually bears the onus of proving BRD that the accused had the mens rea of knowingly importing narcotic substances.
  - There is a presumption that mens rea is an essential ingredient in every offence, including offences created by statute.
  - That presumption wasn’t needed in this case anyway because the words “in his possession” ‘necessarily import a mental element’
  - The words ‘without reasonable proof’ did not displace the presumption that mens rea was not required.
  - An honest and reasonable mistake is a defence to strict liability offence. Provided there is evidence which raises the question, the jury cannot convict unless they are satisfied that the accused did not act under an honest and reasonable mistake
  - Wilson J dissenting, held the omission of the words “without reasonable excuse” from s 233 b (1)(b) has the effect of removing mens rea as an element of the offence to be positively established by the prosecution in making out a prima facie case
  - Per Brennan J, the mens rea of an offence consists of two essential but distinct components: a general intent, and a specific intent. The general intent is the intent to do the actus reus, being the physical act in the crime charged. The conduct must be voluntary in the sense that it is willed or consciously performed.
  - Specific intent, on the other hand, relates to the results caused by the act done. In statutory offences, a specific intent usually involves proof of foresight on the part of an accused as to either a probable consequence of the conduct, or an intention to produce certain consequences (this explanation is found in R v Morijancevic)

- Proudman v Doymar (1941) 67 CLR 536:
  “THOUGHT GUY HAD DRIVER’S LICENCE”
  - A lady let someone without a licence drive a motor vehicle because she thought he had a licence.
  - Held an honest and reasonable belief in an incorrect state of facts will be an excuse as a defence for a guilty act.

- R v Taber (2002) 56 NSWLR 443:
  “ROBBED GRANNY, LEFT HER GAGGED IN A CLOSET”
  - Men robbed a woman and bound her up, effectively gagging her and immobilising her. They called for the police to come release her but the police didn’t follow up on it. The woman died of dehydration. The issue was whether the omission of removing the deceased from danger can constitute an actus reus, or did it require a positive act?
  - Held any person who deliberately puts another in danger comes under a legal duty to take steps to remove that danger, and any failure to take those steps may constitute an omission causing death.
  - Mens rea only needed for one essential stage of the acts/omissions if they are continuous.
  - If at any time during a period of an omission which causes death, a person had the intention to kill or cause grievous bodily harm or acted with reckless indifference to human life, whatever it may have been at the commencement of the period of omission, the person commits murder. In the absence of the relevant intent or recklessness the person commits manslaughter by criminal negligence if the Crown proves the objective seriousness of the breach
  - This is not a case about causation or novus actus interveniens. If the emergency services did respond to the call, then there may be an issue of causation. However, nothing happened, therefore there is no question about who caused the death as the accused acts directly relate to her death.
Causation

- Thabo Meli v R decided that a “PUT UNCONSCIOUS MAN IN EDGE OF CLIFF”
- Some men knocked out a man, thinking he died. They put him at the foot of a cliff, where he then actually died. Two separate acts, mens rea had ended after first act. ‘Series of acts’ require MR to be present at only one essential stage.

- Plain turkeys were protected under s 54 of the Fauna Conservation Act, ‘A person shall not take, or keep or attempt to take or keep fauna of any kind unless he is the holder of a licence, permit, certificate or other authority granted or issued under this Act.’ The appellant, in accordance with Aboriginal law and tradition and without authority under the Act, killed a plain turkey for food and took a live chick as a pet for his son. The appellant did not know that his actions were prohibited by the Act and acted honestly and without intention to defraud. There’s a defence under s 22 of the Criminal Code of Qld, which allows exercise of an honest claim of right and without intention to defraud (same as common law).
- Held whilst the appellant had an honest claim of right, this defence did not apply to breaching s 54 of the Fauna Conservation Act.
- This is because s 54 does not create an offence relating to property. A wild animal in its state of natural liberty is not “property” while it remains in that state. The gist of the offences created by s 54 is the physical destruction or control of fauna, irrespective of any rights over or in respect of fauna which might be vested in any person.
- Therefore, the acts prohibited by s 54 are not defined as having the consequence of infringing another’s rights. It may be that, by reason of s 7, any act which is done in contravention of s 54 will infringe the rights of the Crown, but infringement is not an element of any offence created by s 54.
- In other words, it doesn’t matter whether the plain turkeys belonged to the Crown or anyone else. There is no issue of rights in this.
- The purpose of s 54 isn’t to protect anyone’s rights in the fauna, but to prevent the fauna’s destruction.

- Ugle was holding a knife. Ugle argued deceased attacked and struck him with a cricket bat, and that as the deceased went to hit him again he put his hand up to push the deceased off, and that the appellant then ran away. The deceased subsequently died from a wound to the chest caused by the knife held by Ugle. Ugle stated that during the altercation he did not realise he stabbed the deceased and he did not use the knife to stab the deceased. Ugle also argued self defence. The trial judge didn’t give a direction relating to unwill acts. Issue was whether the jury should have decided if Ugle acts were willed.
- Held what was in issue was whether the insertion of the knife in the body of the deceased was a voluntary act — an act “willed” by the appellant. One view of the evidence that the jury might have taken was that the prosecution had not proved that it was. And that was a question for the jury, not a question to be decided by the judge. It followed that the jury should have been directed to consider this issue;
- Thus, the questions whether a reflex or automatic motor action is an involuntary or unwill act is a question for the jury.

**Causation**

- **Definition**
  - Causation is the link between the acts or omissions of the accused and the prohibited death.

- **Operating and Substantial Cause Test**
  - The accused caused the harm if the accused was the ‘operating and substantial cause’ (per per Brennan J, Deane and Dawson JJ, Toohey and Gaudron JJ in Royall v R; R v Hallett)
  - Operating
    - The accused’s acts or omission has the sustained effect of putting the victim in the place of harm
    - The word ‘operating’ has been consistently criticised as an empty additional phrase that ‘adds nothing’ to determining causation (per McHugh J in Royall; Arulthiakan v The Queen)
  - Substantial
    - Something more than de minimis (per Lord Parker CJ in R v Hennigan)

- **Final fatal step**
  - When the accused’s conduct results in the victim producing a well-founded apprehension of physical harm that makes it a reasonable consequence to seek an escape despite the escape involving potential physical harm, then the harm induced during the escape is caused by the accused. (per Mason CJ in Royall v R)
    - ‘It is enough that the victim’s apprehension of danger is well-founded and reasonable; there is no requirement that the steps taken to escape should be reasonable’
    - ‘An act done by a person in the interests of self-preservation, in the face of violence or threats of violence on the part of another, which results in the death of the first person, does not negative causal connection between the violence or threats of violence and the death’ (Royall)

- **Objective test**
  - It’s an objective test without consideration of the accused’s mental state (Hallett)

- **Multiple causes**
  - It does not need to be the sole cause, but it needs to have accelerated death by a substantial amount (Moffatt; R v Evans and Gardiner (No 2))

- **Never use reasonable foreseeability/natural consequence**
  - Never use the ‘reasonable foreseeability test’ or ‘natural consequence’ test for causation, it is a minority test! (Royall- only McHugh endorsed it, and Kirby’s subsequent judgment in Arulthiakan v Queen)
    - ‘Natural Consequence Test’ refers to the test that a consequence is likely to occur or expected. It should be used to determine whether an event is an intervening act, if it is a natural event then it is not intervening (Hallett)

- **Medical malpractice**
  - Generally, medical malpractice does not break chain of causation (Smith; R v Evans and Gardiner)
  - However, if the medical treatment is ‘palpably wrong’, then causation is broken (R v Jordan)
    - In that case, the knife wound was almost completely healed and the real cause of the death was the intolerance to the antibiotic

- **Pre-existing condition**
  - A victim’s pre-existing condition which increases his/her chances of death does not preclude causal responsibility (Bloue)

- Simply providing drugs
Edward Chen

- Precedence shows overdosing is an intervening act that negates one’s liability for manslaughter if he/she simply provided the drugs (Dalby; Regina v Kennedy (No 2))

- R v Cuong Quoc Lam (2005) 15 VR 574:
  “CHASED INTO A RIVER, BUT THE GUYS STOPPED CHASING YOU”
  -The defendants chased the two deceaseds. The deceased jumped into the Yarra River and drowned. It was contentious when the defendants stopped chasing them. If the defendant’s evidence is accepted, that they chased them some hundreds of meters from the river but stopped chasing, the issue is whether the defendants still caused their deaths pursuant to the final fatal step doctrine.
  -Held no causation if that’s the case
  -The final fatal step doctrine only applies where the space is confined and the victims took immediate life-threatening action to avoid the immediate violence.
  -Here, the defendants weren’t even in the immediate vicinity of the deceaseds so the threat wasn’t imminent.

- Stephenson v State [1979] 2 All ER 422:
  “BITES MARKS OVER BREASTS, TRIED TO POISON HERSELF”
  -Defendant brutally raped the defendant causing her extreme bite marks all over her body. The deceased managed to procure some mercury bichloride tablets and took a large dose to try kill herself. The defendant refused to procure medical aid for her and instead kept her in a hotel room for some hours before dumping her on the doorstep of her own home. She died a month later, partly from bichloride poisoning and partly from a breast abscess from the bites.
  -Held causation was established.
  -The victim was ‘distracted with the pain and shame’ inflicted on her when she was taking the poison.

- R v Malcher; R v Steel [1981] 2 All ER 422:
  “LIFE SUPPORT CASES”
  -In Malcher’s case, he stabbed his wife and she was taken to hospital. After treatment, the wife seemed to be getting better but she collapsed in hospital and her heart stopped beating. Surgery was performed to remove a blood clot and, after 30 minutes of not beating, her heart beat again.
  -The wife was put on life-support and suffered irretrievable brain damage. It was then decided they switch off life-support.
  -In Steel’s case, Steel attacked a girl causing her grave injuries. She was taken to hospital and put on life support. Two days later, the doctors had decided she was brain-dead and the machine be disconnected.
  -The trial judge withdrew from the jury the right to decide on causation because, at the time of the injuries inflicted, the accused had the relevant mens rea therefore it was not open to the jury to decide otherwise.
  -Held where the defendant’s actions puts the victim on life support, the subsequent decision to switch off life support is not a novus actus
  -Thus, causation established in both cases.

- R v Michael (1840) 169 ER 48:
  “POISONING BABY, PUTS ON THE SHELF, FIVE YEAR OLD GRABS IT”
  -Michael wanted to kill her baby by poisoning him with laudanum. She gave the poison to her nurse whom she told was medicine. The nurse decided that the baby did not need any medicine, and put the bottle on the shelf. During the nurse’s absence, the defendant’s 5 year old son took the bottle from the shelf and gave a large dose to the baby, killing him.
  -Held the 5 year old was an unconscious agent, and the defendant’s original intention was still continuing at the time.
  -Thus, causation established.

- R v Evans and Gardiner (No 2) [1976] VR 523:
  “PRISONERS HOLDING DOWN GUY AND STABBING HIM”
  -The two defendants and the deceased were prisoners. D1 stabbed V in the stomach, whilst D2 was present aiding and abetting the commission of the crime. A bowel resection operation was performed successfully and V resumed an apparently healthy life. Eleven months after the stabbing, V began to suffer from abdominal pains and vomiting. His condition worsened during the course of the following week, at the expiration of which he died. This was because a not uncommon complication happened with the resection but the doctors had incorrectly diagnosed his condition the weeks after his surgery.
  -Held

- R v Smith [1959] 2 QB 36:
  “DROPPED HIM OFF THE STRETCHER”
  -The defendant stabbed the deceased twice with a bayonet in a barracks brawl. The second puncture pierced his lung and caused a haemorrhage (but it wasn’t known to anyone yet). The deceased was dropped twice by accident while he was being carried to a dressing station, and at the station an unsuccessful attempt was made to give him a saline transfusion. If the deceased had been given a blood transfusion, he would have had a 75% chance of recovery. He was given oxygen when his breathing seemed impaired. The deceased died two and a half hours later after the stabbing. Expert evidence show the medical treatment he received was ‘thoroughly bad’
  -Held causation was not broken.

- R v Jordan [1956] 40 Cr App R 152:
  “AIRFORCE MAN STABS VICTIM, DOCTORS GIVE HIM ALLERGIC ANTIBIOTICS”
  -Defendant stabbed the deceased in the abdomen in a cafe brawl. The deceased was admitted to hospital where he was treated. The doctors gave him so antibiotics but found out he was allergic to on of them (terramycin) so they discontinued it. However, the doctors negligently put him back on the same antibiotics again later and he died. By the time the deceased died, the knife wound has almost completely healed.
  -Held no causation, the treatment was ‘palpably wrong’

- R v Hallett [1969] SASR 141:
  “NEAR DEATH ON BEACH”
  -Whiting made homosexual advances on Hallett whilst drinking. Hallett beats Whiting unconscious, and left him in that condition on the beach, his ankles in a few inches of water. He then drowned in shallow water. Whiting’s body was discovered buried in the sand, and his penis and testicles removed and his small intestine pulled out from a wound in his abdomen. These injuries were inflicted after death so it might not have been Hallett. Hallett argued he did not drown Whiting and, therefore, did not cause his death.
  -Held Hallett had the foresight of the possibility or probability of death or GBH from his act
  -Held there was also causation
  -In this case, if the deceased was drowned and violent acts consciously performed by the accused had a causal effect which continued up to the moment of drowning, it does not matter, so far as causation is concerned, whether he lay unconscious on the beach until the tide covered him or whether unconscious he rolled down the slope into the water or even whether in a state of insufficient consciousness he staggered further into the water.