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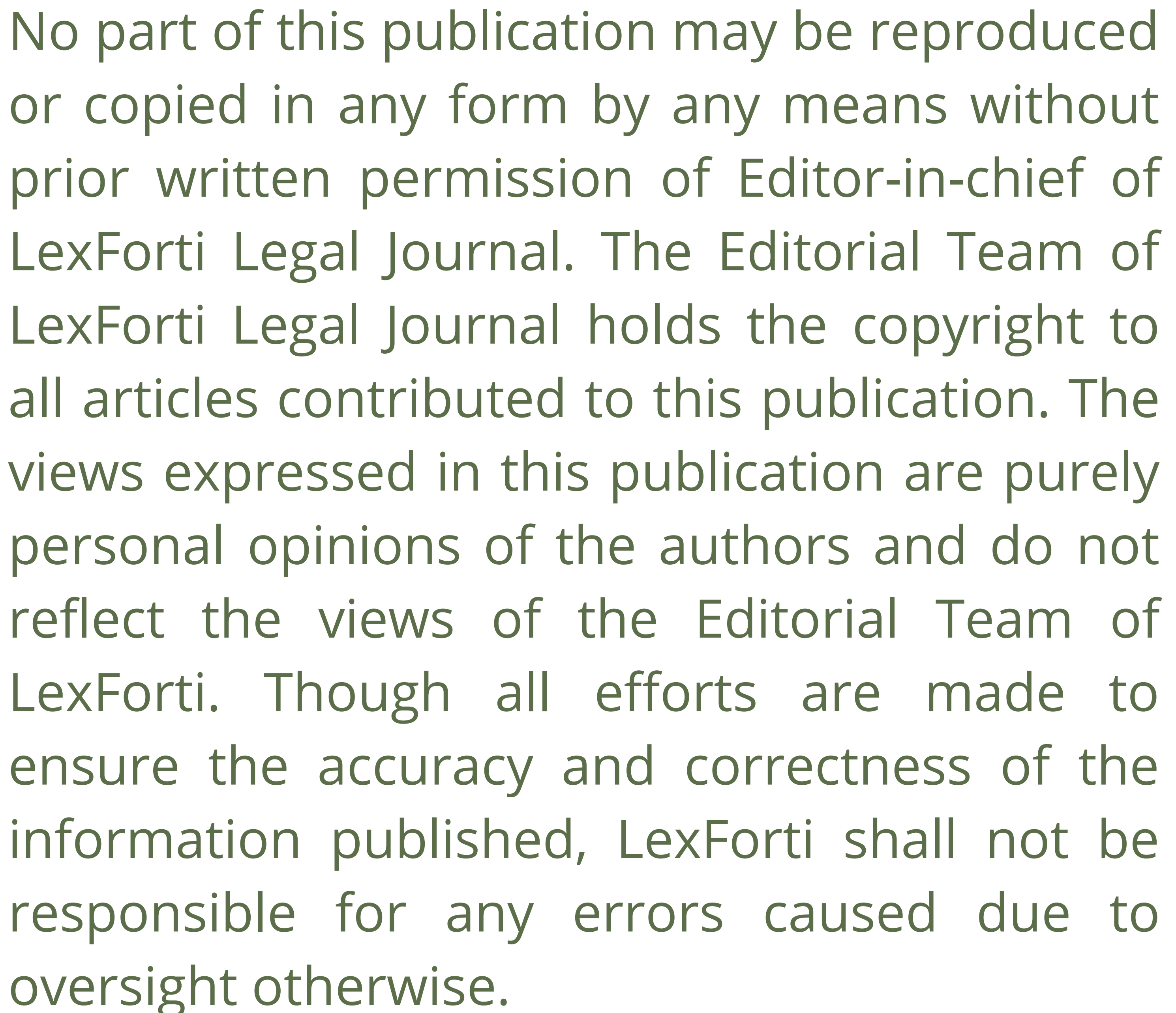

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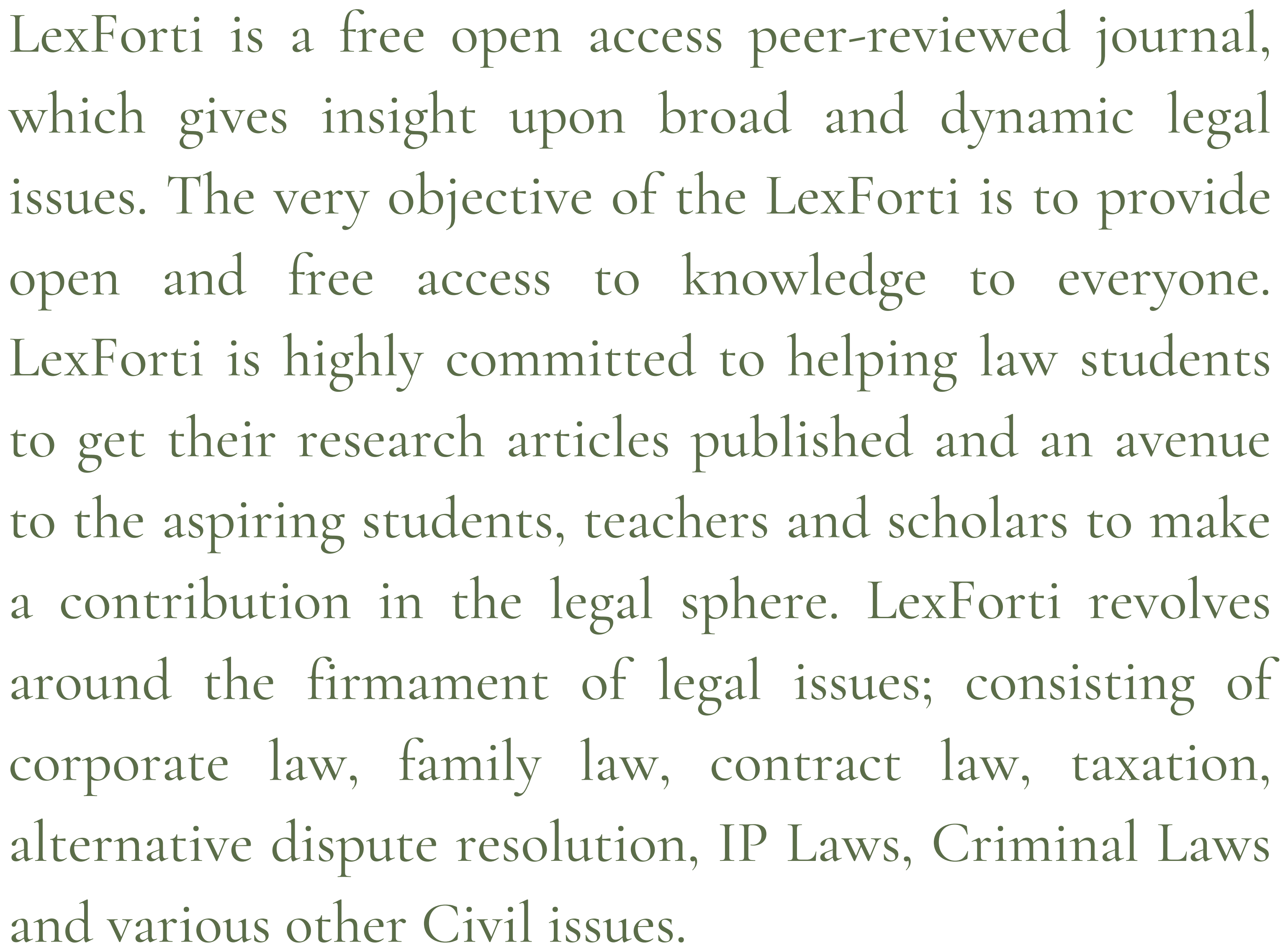

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Causation in the Law of Crimes

Afreen Afshar Alam

ABSTACT

The doctrine of causation is based on the premise that 'a man can only be held liable for the consequence of his own actions'. The doctrine is effectually based on the interpretation of a single word: 'consequence'. The main aim of the this article is to determine the practical criteria for judging someone under what conditions an event would be deemed the result of a person's conduct for the purpose of holding him criminally accountable. Which, in essence, is the problem of causation in criminal law. Causation refers to the examination as to whether the defendant's conduct (or his omission) caused the harm or damage. Causation must be established in all the crimes. The causation in criminal liability is divided into factual causation and legal causation. Factual causation is the starting point of a crime and consists of applying the 'but for' test. In most cases, where there exist no complicating factors, factual causation on its own will suffice to establish causation. However, in some circumstances it will also be essential to consider legal causation. Under legal causation the result must be caused by a culpable act, there is no requirement that the act of the defendant was the only cause, there must be no *novus actus interveniens* and the defendant must take his victim as he finds him (thin skull rule).[1]

Key words- causation, crime, *mens rea, actus reus*, criminal law, liability.

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[1] Ryu't K. Paul, *CAUSATION IN CRIMINAL LAW*, University of Pennsylvania Law Review, VOL. 106.

INTRODUCTION

Every criminal act can be divided into *actus reus, mens rea* and causation. *Actus reus* is the conduct element of an offence, that is it, deals with the 'guilty act'.[2] *Mens rea* is the mental element of the crime, that is, it deals with 'guilty mind'.[3] While the causation deals with the consequences of the actus. In other words Causation is the relationship between conduct and result. The lack of causation between the act and the consequence may provide a conviction untenable despite the presence of the requisite *mens rea* and *actus reus*. For example, A intending to murder B, puts a bomb in B's bag. However, before the bomb could go off, B dies in a car accident. Here, A cannot be held liable for murder despite possessing the *mens rea* to commit murder and the presence of an *actus reus*. A's actus was not the cause of B's death and therefore, while A may be liable for an attempt to murder, A cannot be held liable for murder. Therefore, causation is an essential and important part of criminal law.

Causation is concerned with whether the defendant's conduct contributed sufficiently to the prohibited consequence to justify the criminal liability, It is the enquiry as to whether the defendant's conduct (or omission) caused the injury or damage. According to the 5th edition of Black's Law Dictionary,[4] "….cause of an injury is the primary or moving cause, or that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened [*Causa sine qua non*], if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act."[5]

The broad definition of Causation is that the acts of the defendant must have a mutual connection with the result perpetuated. In other words, the causal link between the actions of the defendant and the result of those actions must be established to convict an accused of an offence.[6] Causation in criminal liability can divided into factual causation and legal causation. Factual causation is the starting point and consists of the 'but for' test. In most instances, where there exists no confusing factors, factual causation on its own will suffice to establish causation. However, in many circumstances it will also be essential to consider legal causation. Under legal causation the result must be caused due to a culpable act, there is no

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[2] Dennis J Baker, *Glanville Williams Textbook of Criminal Law*, Sweet & Maxwell: London, 2012.
[3] Elizabeth A. Martin, ed. (2003). *Oxford Dictionary of Law*. Oxford: Oxford University Press.
[4] Black's Law Dictionary - Fifth Edition Hardcover – 1981 by Henry Campbell Black.
[5] https://www.archive.org/stream/B-001-001-747/sec_a_djvu.txt (Last visited on 5th March, 2020).
[6] Eric Colvin, *Causation in Criminal Law*, 1, Bond L.R. 253, 254 (1989).

requirement that the act of the defendant was the only cause, there must be no *novus actus interveniens* and the defendant must take his victim as he finds him (thin skull rule).

IMPORTANT ELEMENTS OF CAUSATION

Causa Sine Qua Non

Rendering to the theory of causal determinism, every future event is caused due to the existence of the requisite conditions in the status quo. Therefore, any consequence is a direct result of several specific causes. However, it is unserviceable to explore each and every cause behind a consequence. Therefore, only the *causa sine qua non* of each result is always considered. According to the 'but for' test, for a cause to qualify as *causa sine qua non*, the final consequence should not be possible but for the cause. However, it also important that the cause be a substantial cause to prevent over inclusiveness. For example, Z dies in a road accident in Delhi. According to the 'but for' test the car hitting Z is a causa sine qua non but so is his employer transferring him from Mumbai to Delhi. The latter is not a substantial cause but the former is. Without the existence of a causa sine qua non, no chain of causation will even come into existence in the first place.

Novus Actus Interveniens

The Latin term, *Novus Actus Interveniens*, refers to an intervening act, which breaks the chain of causation. The act can either be a natural act, an act of the third party or an act of the victim. But, not every intervening act qualifies as *novus actus interveniens*. The intervening act must be such that it is not foreseeable or intended but in some cases, when the intervening act is a 'free deliberate and informed act'[7] of another agent, the original causation breaks despite the consequence being an intended consequence. For example, B hits C with a steel stick and leaves him unconscious in the forest. Now, if a wild animal kills C, B will be liable as this is a foreseeable consequence. However, if another person, D, comes along and kills C, the chain of causation will break and B will no longer be liable for C's death even if it was foreseeable that D might kill C. *Novus Actus Interveniens* consequently breaks the chain of causation rendering the accused free from liability of the consequence.

[7] Jeremy Horder & Andrew Ashworth, *Principles of Criminal Law* 104 (7th ed. 2013) 7 2014 Indlaw MAD 739.

TYPES OF CAUSATION

Factual causation

Factual causation is established by using the 'but for' test. This test asks, 'but for the actions of the defendant, would the same result have occurred?' If the answer is yes, the result would have occurred in any event, the defendant is not held liable. If the answer is no, the defendant is liable as it can be said that their action was a factual cause of the result that happened.

Factual causation requires a proof that the defendant's conduct was a necessary condition of the consequence, which is established by proving that the consequence would not have occurred but for the defendant's conduct. *R v White,*[8] The defendant put some poison in his mother's milk with the intention of killing her. The mother took a few sips of the milk and went to sleep but she never woke up. Medical reports later discovered that she died from a heart attack and not the poison which the son had used. The defendant was not held liable for the murder as his act of poisoning the milk was not the actual cause of her death. He was liable for attempt to murder. This case established the 'but for' test. i.e. would the result have occurred but for the actions of the defendant? If the answer is yes then the defendant will not be held liable.

The 'but for' test was also illustrated in the case *R v Pagett,*[9] The appellant shot at a police officer who was trying to arrest him, and he used a pregnant teenage girl standing nearby as a human shield to defend himself against retaliation by the officers. They returned fire in self-defence, killing the girl in the process. Here a question was asked that whether the hostage (the girl) would not have died but for the defendant's conduct. The factual causation was established as: If the accused had not fired first, the police officers would not have fired their weapons, and then the hostage would not have died. The 'but for' establishes that if the consequences would not have occurred without the act, the act is cause of the result, "but for" the act, the consequences would not have occurred. The test is necessary as "had the cause not operated the cause the consequences would not have materialized."[10]

[8] [1910] 2 KB 124.
[9] (1983) 76 Cr App R 279.
[10] Finbarr McAuley and J. Paul McCutcheon, *Criminal Liability*, Round Hall Sweet & Maxwell, Dublin 2000.

It is usually very easy to meet factual causation in most cases as we saw in *R v Pagett*.[11] Factual causation alone will not suffice, this was held in *R v Dalloway,*[12] Dalloway was sitting on a horse cart which he was driving along a public road. He was not holding on to the reins as they were resting on the horse's back. During his journey, a small child ran out in to the road in front of the cart and was killed by one of the wheels as it moved along. Dalloway was charged for driving his cart in a negligent way and ultimately causing the death of the child. During the trial, it was demonstrated that even if Dalloway had been holding on to the reins properly, he would not have been able to stop the cart in time before it collided with and killed the child. On this basis, the act he was culpable for (not holding the reins), was not the cause of the death of the child. As a result of this, the jury decided to acquit Dalloway, as he could not have saved the child even if he was careful enough to hold the reins. The decision in this case was that Dalloway was not guilty.

In *R v Hennigan*,[13] Hennigan was driving at eighty miles per hour when hit the side of Lowe's car, who was emerging from a turning in the road. Lowe's two passengers died from the collision. The accident happened at around 11.00pm in a restricted area. Hennigan was found guilty on two counts of causing death by dangerous driving, fined £25 on each count and banned from driving for five and a half years. He appealed the conviction. He court held that he would be held liable as if was not negligent and was driving more carefully at a slower speed, he could have prevented the accident.

Legal Causation

Legal causation requires proof that the defendant's conduct was sufficiently connected to its occurrence.[14] Under legal causation the result must always be caused by a culpable act, there is no requirement that the act of the defendant was the only solo cause, there must be *no novus actus interveniens* and the defendant must take his victim as he finds him (thin skull rule).

The legal causation requires that a harm must be caused by a culpable act. As we discussed in *R v Dalloway,*[15] The defendant was driving a horse and cart down a road without holding on to the reins. A child ran in front of the cart and was killed in the process. The defendant was held not liable as he would not have been able to stop the cart in time even if he had been holding

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[11] (1983) 76 Cr App R 279.
[12] (1847) 2 Cox CC 273.
[13] [1971] 3 All ER 133.
[14] Roberson Cliff, Globokar Julie L., and C. Winters Robert, *An Introduction to Crime and Crime Causation*, Routledge; 1 edition (June 26, 2014).
[15] (1847) 2 Cox CC 273.

the reins. In this case legal causation would result if it were caused by a culpable act. In this case the culpable act was not holding the reins, which was not the cause of death. However this defence would not apply if the act is one of strict liability.

In *R v Williams,*[16] The appellant was driving on a dual carriageway when a man stepped into the road right in front of him. He was unable to stop and the man was killed in the process. The appellant was not speeding and had not in been driving recklessly or without care. Two witnesses gave the evidence that it would not have been possible to avoid hitting the man given the closeness to the car when he stepped out. However, at the time of incident, the appellant had no driving licence or insurance. He was convicted of causing death by driving without a licence under S.3ZB Road Traffic Act 1988. He appealed against the judgement on two grounds:

1. That the offence could not be committed without proof of fault in causing the death. His failure to have a licence and insurance was at fault but it wasn't this that caused the ultimate death.

2. Alternatively his driving, although a cause of death, was minimal in relation to the victim's own action in causing death.

His appeal was dismissed and conviction was upheld. The offence was one of strict liability and therefore fault in causing death was not required. It was sufficient that his driving was a cause of death, it need not be a substantial cause.[17]

The defendant's action need not be the sole cause of the resulting harm, but it must be more than minimal. In the case of *R v Benge,*[18] Defendant (Benge) was a prisoner serving as foreman of a gang of workers who were taking up railroad tracks and repairing them. Misreading the train timetable, Benge assumed that the train would not be arrive at the area till 5:20 pm his gang could work there until that time. When it fact a train was due to arrive at 3:15pm. A worker was sent ahead to signal any approaching train to stop, but instead of going 1000 yards ahead he only went 540 yards, leaving less time for the train to stop. On seeing the train approach, the worker raised his warning sign, but the engine-driver was not paying careful attention and did not immediately see the signal. By the time the engine-driver applied the brakes, it was too late to stop the train before it reached the area where the tracks had been

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[16] [2011] 1 WLR 588.
[17] R v Williams.
[18] (1865) 4 F. & F 504.

taken up. As a result, the train crashed and many people were killed. At his trial for negligently causing the accident, Benge argued that, although he was negligent, the accident could not have occurred without the negligence of the flagman in not going far enough up the tracks and the failure of the engine-driver to pay careful attention and stop the train on time. The defendant's conviction was upheld. The defendant's action need not be the only cause. Liability can arise provided the defendant's act was more than a minimal cause.

There must be no *novus actus interveniens*. A *novus actus interveniens* is a new intervening act which breaks the chain of causation. Different tests apply to decide if the chain has been broken depending on the intervening party.

A) Act of a third party

The act of a third party will generally break the chain of causation unless the action was foreseeable, as it was seen in the case of *R v Pagett.*[19]

In this case, The appellant was a 31 year old man, who had separated from his wife and formed a relationship with a 16 year old minor girl. She got pregnant during this relationship. She ended the relationship when she was six months pregnant because he was violent towards her. He was very upset about the breakup and drove to her parent's house armed with a shotgun. He shot her father in the leg and took the mother at gunpoint and demanded she take him to her daughter. When there, after various threatening and violent behaviour, he took the girl and her mother with him and drove off with them. The police caught up with him and he kicked the mother out of the car and drove off with the daughter. He took her to a flat and kept her hostage. The armed police followed him. He used the girl as a shield as he came out of the flat and walked along the balcony. The police saw a figure walking towards them but could not properly see who it was. The appellant fired shots at the police and the police returned fire. The police shot the girl who died.

The appellant was convicted of possession of a firearm with intent to endanger life, kidnap of the mother and daughter, attempted murder on the father and two police officers and the manslaughter of the girl. He appealed against the manslaughter conviction on the issue of causation. His conviction was upheld. The firing at the police officers caused them to fire back. In firing back the police officers were acting in self-defence. His using the girl as a shield caused her death.

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[19] (1983) 76 Cr App R 279.

B) The act of the victim

Where the act is of the victim, the chain of causation will not be broken unless the victim's actions are disproportionate or unreasonable in the circumstances.[20]

In the case of *R v Roberts,*[21] A young woman aged 21 accepted a lift from the defendant at a party to take her to another party. She had not met him before and it was 3.00 am. The defendant drove in a different direction than the party he claimed he was taking her and then stopped in a remote place and started making sexual advances towards her. She refused his advances and he drove off at speed. He then started making further advances whilst driving and she jumped out of the moving car to escape him. She suffered from concussion and cuts and bruises. The defendant was convicted of actual bodily harm under S.47 of the Offences Against the Person Act 1861. He appealed contending that he did not intend or foresee a risk of her suffering actual bodily harm from his actions and that he did not foresee the possibility of her jumping out of the car and therefore her actions amounted to a *novus actus interveniens*.

The court held that, there is no need to establish an intention or recklessness as to the level of force under S.47. It is sufficient to establish that the defendant had intention or was reckless as to the assault or battery. Where the victim's actions were a natural result of the defendant's actions it matters not whether the defendant could foresee the result. Only where the victim's actions were so daft or unexpected that no reasonable man could have expected it would there be a break in the chain of causation.

Another important case is *R v Williams and Davis.*[22] In this case, the defendants picked up a hitchhiker on the way to Glastonbury festival. The hitchhiker jumped out of the car when it was travelling at 30 mph, hit his head and died. The prosecution alleged that the defendants were in the course of robbing him when he jumped out and thus their actions amounted to constructive manslaughter. He was held liable by the jury and further appealed. Finally his conviction was quashed as there was an almost total lack of evidence as to the nature of the threat. The prosecution invited the jury to infer the gravity of the threat from the action of the deceased.

On the issue of *novus actus interveniens* Stuart Smith LJ stated:

[20]R.A. Nelson's *Indian Penal Code*, Butterworths Wadhwa: Nagpur, 2008.
[21] [1971] EWCA Crim 4 Court of Appeal.
[22] [1992] Crim LR 198 Court of Appeal.

"The nature of the threat is of importance in considering both the foreseeability of harm to the victim from the threat and the question whether the deceased's conduct was proportionate to the threat, that is to say that it was within the scope of reasonableness and not so daft as to make it his own voluntary act which amounted to a novus actus interveniens and consequently broke the chain of causation. It should of course be borne in mind that a victim may in the agony of the moment do the wrong thing."[23]

C) Medical Intervention

Where medical intervention contributes to death of the person, the courts have been rather inconsistent in their approach. They have taken one stance or the other, depending on the facts of the case.

In the case of *R v Jordan,*[24] the defendant stabbed the victim. The victim was taken to hospital where he was given anti-biotics even after showing an allergic reaction to them. He was also given excessive amounts of intravenous liquids. He died of pneumonia eight days after admission to hospital. At the time of death his wounds were starting to heal. The court held that the victim died of the medical treatment and not the stab wound. The defendant was not held liable for his death.

In the case of *R v Smith,*[25] the defendant, a soldier, got into a fight at an army barracks and stabbed another soldier. The injured soldier was taken to the medics soon but was dropped twice on route. Once there the treatment that was given was described as palpably wrong. They failed to diagnose that his lung had been punctured. The soldier died soon after. The defendant was convicted of murder and appealed contending that if the victim had received the correct medical treatment at the right time he would not have died. But in this case, the court held that the stab wound was an operating cause of death and therefore the conviction was upheld.

In *R v Cheshire,*[26] the defendant shot a man in the stomach and thigh. The man was taken to hospital where he was operated on and developed breathing difficulties. The hospital gave him a tracheotomy (a tube inserted into the windpipe connected to a ventilator). Several weeks later his wounds were healing and were no longer life threatening, however, he continued to have

[23] R v Williams and Davis.
[24] (1956) 40 Cr App E 152.
[25] [1959] 2 QB 35.
[26] [1991] 1 WLR 844.

breathing difficulties and died from complications arising from the tracheotomy. The defendant was convicted of murder and appealed. His conviction was upheld despite the fact that the wounds were not the operative cause of death. Intervening medical treatment could only be regarded as excluding the responsibility of the defendant if it was so independent of the defendant's act and so potent in causing the death, that the jury regard the defendant's acts as insignificant. But since the defendant had shot the victim this could not be regarded as insignificant.

D) Thin skull rule (egg shell skull rule)

Under the thin skull rule, the defendant must take his victim as he finds him. This means if he has a particularly vulnerable victim, he is fully liable for the consequences to them even if an ordinary person would not have suffered such severe consequences for the said act. A chain of causation is sometimes referred to when the defendant triggers a series of events involving others who may also contribute to the harm or injury of the victim. The main question then arises whether the original perpetrator should be responsible for the eventual outcome. A break in the chain of causation means that when this occurs the courts interpret this to mean that the accused's conduct was not the cause of the harm or injury. This is unusual but when it does occur it will result in the accused being acquitted. A break in the chain of causation arises where there is a new intervening act or *'novus actus interveniens'*.

In these circumstances it may not be appropriate to find the defendant responsible for the eventual outcome as others have played an important part in bringing this about. For example if A commits a minor assault on X who has a heart condition and X suffers a heart attack and dies. A is liable for the death of X even though such an attack would result in no physical harm to someone without a heart condition. This rule applies irrespective of whether the defendant was aware of the condition or not.

In the landmark case of *R v Hayward,*[27] the defendant chased his wife out of the house while shouting threats at her. She rushed out of the house, collapsed and died. He did not physically touch her. She was at this time, suffering from a rare thyroid condition which could lead to death where physical exertion was accompanied by fright and panic. Both the defendant and his wife were unaware that she had this condition. The court held that, the defendant was liable for constructive manslaughter as his unlawful act (assault) caused death. The egg shell (thin)

[27] (1908) 21 Cox 692.

skull rule applied. He was therefore fully liable despite the fact an ordinary person of reasonable fortitude would not have died in such circumstances.

The thin skull rule also applies where the victim has refused medical treatment which would have otherwise saved them, as in the case of *R v Blaue,*[28] the defendant stabbed an 18 year old girl four times when she refused to have sexual intercourse with him. She was a devoted practising Jehovah's witness. Members of Jehovah's Witness do not believe it is right to have a blood transfusion on religious grounds. She refused to have a blood transfusion which would have saved her life. The defendant was convicted of manslaughter on the grounds of diminished responsibility and appealed arguing that the girl's refusal to accept the blood transfusion was a novus actus interveniens breaking the chain of causation, the defence argued that Holland was no longer good law. The court upheld the defendant's conviction. The wound was still an operative cause of death (following *R v Smith*[29] and *R v Jordan*[30]) so there is no *novus actus interveniens* and Holland is still a good law.

CONCLUSION

In the legal systems across the world, the main aim to to uphold the notions of fairness and justice. Hence liability is imposed according to the idea that those who injure others should take responsibility for their actions. This paper highlights the broad scope of criminal causation and it's overlap with *mens rea* and *actus reus*, the important elements of causation and the various types of causation. In the doctrine of causation, every consequence-based crime is represented as linked from the *mens rea* to the *actus reus*. Causation mainly proves that there is a direct and unbroken link between the defendant's act and the consequences of that act. As long as this link remains unbroken, the act of the accused is presumed to have caused the consequence. Further, the act must be a substantial cause and also a *causa sine qua non* for the consequence to qualify. This presumption subsists till the link is broken by natural acts or the acts of the victim or the acts of the third party. It is important to note that causation only applies wherein a result has been achieved and therefore is immaterial with regard to inchoate offenses.

[28] [1975] 1 WLR 1411 Court of Appeal.
[29] [1959] 2 QB 35.
[30] (1956) 40 Cr App E 152.