

Criminal Law Notes

Decisions to criminalise

- Principles and ideals informing decisions to criminalise

-> Autonomy: the capacity for free and rational action taking effect in and on the natural and social world designates human beings as autonomous moral agents, that is as bearing responsibility for their actions whether good or bad -> punishment for breach can then be justified because, by offending, the individual is deemed to choose not only to offend but also the punishment 'price-tag' to his conduct

***The harm principle:** the only purpose for which power can be rightfully exercised over any member of a civilised community against his will is to prevent harm to others -> its negative thrust: it gives political priority to individual freedom from coercion rather than individual or collective goods such as morality or welfare -> its positive thrust: where freedom of action must be restricted in order to maintain the autonomy and security of citizens, it is proper to curtail it(reduce) -> people who steal from us seek to be authors of our destiny as well as their own. It is therefore right to restrict their freedom to do so.

1. What is harm?

Feinberg talks of both private and public harm. State coercion is thus justified to prevent theft(private harm) and tax evasion(public harm) -> the harm principle covers both harm and the threat of harm

-> in a politico-logical sense harm refers to a wrongful set-back to some protected interest -> Feinberg describes 'setting-back' as invading an interest in such a way as to leave it in a worse condition that it otherwise would have been had the invasion not taken place at all

-> principle of minimal criminalisation: the state should not criminalise and punish, although it may have reason to, unless it is unavoidable

-> distinguishing between harm, hurt and offence: what is harmful to us is a reason to stop it but what is offensive to us, however, is not in itself a reason to stop it -> so while punching someone(harm) is a criminal offence whether it takes place in public or private, homosexual activity or soliciting for sex(no harm) is an offence only if it takes place in public

-> noise, graffiti, begging, smoking in public, litter are all things capable of reducing our quality of life without individual instances having a sufficient impact to cause a measurable set-back of interests

2. The harm principle's influence on criminal doctrine

-> welfare offences: such legislation is designed to allow the state to secure its own and our welfare interests -> public welfare is here deemed so crucial to society's general purposes that such offences are often constituted in violation of the principle of responsibility

-> core crimes: focal crimes such as rape, assault, criminal damage and so on are constituted only upon proof of the absence of consent, since only then will any private interests be wrongfully set back -> overriding a person's consent is wrong and even if he benefits from it, this still doesn't make it right

3. Alternative notions of autonomy: the harm principle may be too narrow to serve the interests which the criminal law acts to defend -> it ignores the diverse ways in which individual interests in autonomy can be compromised

-> primary harms: violations of interest in retaining or maintaining what one is entitled to have -> so society criminalises theft because it is a violation of what one is entitled to keep but it doesn't criminalise a failure to reward an employee in accordance with her value

- Other principles and ideals informing decisions to criminalise

-> Harm prevention and other welfare values:

- Enforcing morality: law and morality both serve to lay down standards of behaviour -> but if we go beyond traditional crimes such as murder and theft, the actual content of criminal law is only marginally concerned with upholding and enforcing community values -> a large proportion of criminal law is concerned with protecting people's welfare interests rather than society's moral structure -> leaves open the question as to whether serious breaches of morality are sufficient basis upon which to criminalise conduct

How to strike the appropriate balance between individual freedom and state control, where criminalisation may restrict the scope of a person's cultural and self identity?

Emile Durkheim's view: distinguish between the values which some people may hold and the values which all people must hold for the same society to survive -> only the latter were an appropriate object of enforcement -> punishment was the response of an outraged community to an infraction of a value it held dear to its 'collective conscience' -> such an approach offers to say both what aspects of social morality should be enforced through the criminal sanction and also what should not

Lord Devlin's modern version: the enforcement of morals was as much a proper task for government as the suppression of political subversion, since both threatened to destroy or damage the community -> sexual freedom should give way to the broader claims of community which require key social institutions such as the family to be protected from the potentially subversive effect of a counter-sexual culture -> society is only entitled to introduce the criminal sanction if the activity offers a serious threat to the social structure, supposedly reflected in the degree of indignation and outrage the practice excited

- Liberal objections to the enforcement of morality: the state shouldn't intervene simply to enforce morality unless perhaps the individual concerned, by virtue of youth or mental incapacity, was in need of paternalist protection -> Lord Devlin was criticised for basing the test for assessing the propriety of criminalisation upon the degree of social disgust since disgust is unable to differentiate the good from the bad
- Is there a meaningful difference between legislating to enforce morality and legislating to prevent harm?

R v Brown: a group of men were convicted for their involvement in consensual **sadomasochistic** sexual acts over a 10-year period -> whether consensual sado-masochism was lawful by virtue of the participant's consent or unlawful upon the ground that it involved acts of gratuitous violence -> the minority states that there was no basis for criminalisation -> the majority however, said that criminalisation was appropriate because sado-masochism involved inflicting pain and injury plus that society collectively had a stake in preventing a possible emergence of cults of violence -> the potential moral harm to individuals involved in consensual sado-masochism for sexual gratification 'trumped' the individual's presumptive right to sexual autonomy -> the criminalisation of the possession of extreme pornography has also been justified in this way

- Principled approaches to the enforcement of morals: contemporary defenders of enforcing morality emphasise the importance of society exhibiting moral neutrality in the standards it enforces -> the problem with Lord Devlin's approach is that he wishes to enforce morality preferentially -> as long as

everyone was subject to the same proscription society would show no disrespect of rights by supporting one moral value against another -> a radical proposal along these line: the state should respond to serious and direct threats to and violations of fundamental interests through behaviour which expresses a rejection of, hostility or total indifference to, the basic framework values which society acknowledges

-> Practical criteria underpinning decisions to criminalise: thresholds of seriousness

- Grading wrongs: appropriate thresholds, in theory at least, are constituted by the requirement that criminal liability should only attend culpable(deserving blame) wrongdoing -> the more serious the harm, the greater the wrong -> this can cause a controversial legislative outcome-> eg the Crime and Disorder Act 1998 which enacted that crimes of violence, criminal damage and other crimes were made serious when motivated by racial or religious hostility

Feinberg's method for assessing seriousness of harm centres upon the victim's loss of choice or opportunity -> theft justifies criminalisation whereas dishonest borrowing does not -> it is criminalised only in exceptional cases where collective interests are imperilled

An alternative way of settling thresholds of seriousness appropriate for both determining the level at which criminalisation is first appropriate and thereafter, as a means of grading different offences for purposes of setting appropriate punishments -> the mechanism turn our attention from what the victim loses in terms of choice to what he loses in terms of quality of life -> harms are graded according to the effect that they have on a person's standard of living assessed according to the material criteria such as financial resources and shelter and wider aspects of a good quality of life such as health, dignity, physical amenity, privacy and so on

- Remote harms and non-victimising crimes: a harm at one or more stages removed from a risk-creating activity -> the activity does not in itself create the risk but it sets in chain casual processes which may do so -> crimes of possession such as drugs and weapon possession are typically justified upon the basis that criminalising possession reduces their use, which in turn reduces the risk that they will be used to cause harm to public or private interests -> the possession of extreme pornography was made the subject of a criminal offence since it may create a climate in which sexual violence is not taken seriously, with all that that entails

Feinberg's mechanism in determining an appropriate threshold for state intervention in the absence of any direct harm-causing activity is a practical equation weighing the gravity of the harm and the likelihood of its occurrence on the one hand, against the social value of the relevant conduct and the degree of interference with personal liberty on the other -> the greater the risk of harm and the greater the magnitude of the harm which would occur if the risk materialised, the greater must be the value of the conduct and the implications for personal liberty to justify criminalisation

- Practical limiting criteria: Husak: liberal society is suffering a crisis of overcriminalisation. If social problems emerge the instinctive response of legislators is to reach for the criminal law. Consideration governing the propriety of criminalisation:

1. since punishment expresses condemnation, only conduct worthy of condemnation should be criminalised
2. criminal laws should not punish innocent conduct
3. each criminal law must do more good than harm
4. conduct should not be criminalised unless the state has a compelling interest in punishing those who engage in it. Non-criminal means must be used if this would be effective
5. the criminal law should be narrowly tailored to serve the state's compelling interest; criminal laws should be neither over-inclusive nor under-inclusive
6. each criminal must be designed to prevent a non-trivial harm or evil

The criminalisation of drug use reflects all the considerations Husak was concerned to identify as in need of consideration. The best estimates suggest that the majority of government spending on responding to illegal drugs is devoted to enforcing drug laws, not prevention or treatment -> criminalising private possession and consumption can be expected to produce rule-avoidance and black markets

Punishment

- Punishment in the liberal state: core features: 1) the principled infliction by a state-constituted institution 2) of what are generally regarded as unpleasant consequences 3) on individuals or groups publicly adjudicated to have breached the law 4) as a response to that breach of the law, or with the motive of enforcing the law, and not intended solely as a means of compensation

-> since it involves harming another simply because their behaviour is unacceptable, the practice is then profoundly problematic

-> by agreeing to a system of enforceable norms, citizens are treated as consenting to punishment

-> most theories of punishment offer to advance moral reasons – they seek to claim that punishment is the ‘right response’ to wrongdoing -> but a punishment ‘must not be so severe as to be degrading to human dignity’

- Theories of punishment: they have fallen into one of two categories:

-> the first one holds that whether an action (eg punishment) is good or not can be decided by reference to its intrinsic worth -> a moral reasoning within this tradition will hold that people should keep their promises because keeping promises is intrinsically a good thing -> non-consequentialist theory of punishment -> retributivism

-> the second one holds that whether an action is good or not is not something which can be decided in isolation from the consequences -> keeping a promise is good if the consequences which will flow from keeping it are better than those which will result from breaking it -> consequentialist theory of punishment -> utilitarianism

- Retributive theories:

-> Immanuel Kant: judicial punishment must in all cases be imposed on him only on the ground that he has committed a crime

-> hold that punishment is either wrong or right -> it cannot be made right by some good consequence which flows from the imposition of punishment or wrong by some bad consequence -> punishing people for their crimes shows society’s respect for the choices a person had made

-> a general problem with this theory: accepting the assumption that all cases of rule-breaking are automatically cases of wrongdoing sufficient to justify censure -> this underpins a version of desert theory which holds that while desert is necessary for punishment, it does not necessitate it -> punishment without blame cannot be possibly deserved

-> forms of retributive theory: two basic precepts: that punishment may justly be imposed upon a person who deserves to be punished and that the level of punishment may also reflect his desert -> it is not possible to say what the deserved level of punishment is for a given crime, but we can at least try to ensure that the general minimum and maximum levels of appropriate punishment are fixed and punishment for one type of offence is not disproportionate to that given for another

-> punishment as an expression of censure: punishment affords a socially necessary mechanism for the channelling of public outrage -> this may serve an educative and therefore reductive function -> the most persuasive basis upon which to justify punishment is that it serves to express our moral condemnation of his behaviour

- problem with this account: it is less easy to see how state punishment is necessary to convey this response -> what justifies the state taking on this censoring role? -> why should punishment be linked to the denunciatory purpose? -> the need to rely on consequentialist reasons to justify such practices -> this is not a competing aim of punishment but a complementary one
- while punishment is acknowledged as having both an expressive and a preventative purpose, the account remains retributivist in character since both the occasion and the amount of punishment must always be fixed by reference to desert rather than prevention

- Utilitarianism

-> hold that human action is justified to the extent that it promises to maximise human happiness or welfare -> punishment is justified to the extent that it promises to produce better consequences than a failure to punish -> it can only be justified if some benefit accrues from punishing which will outweigh the misery inflicted -> contrary to retributivism which holds that punishment for wrongdoing is a moral necessity

-> society's well-being is used to justify: the existence of rules; the following of rules; and punishing the infraction of the rules

-> forms of utilitarian penal theory: the broad thrust of utilitarian penal philosophy is concerned with crime reduction -> punishment under utilitarianism offers to reduce crime in a number of ways:

1. it may deter the individual offender (individual deterrence)
2. it may deter others who might be minded to commit a similar offence (general deterrence)
3. it may fulfil an educative function by reminding the public of the norms by which their society is organised
4. it may reform or rehabilitate the individual offender, where punishment takes the form of educating him to understand the positive reasons for good behaviour rather than the negative reasons against bad behaviour
5. by removing the offender from society and thus his capacity to commit crime, it may fulfil a protective role for society

-> criticisms:

- objections of principle: a consequences-led penal policy may lead to injustice -> if good consequences were all that mattered we might expect punishment to be far more draconian than utilitarians are prepared to advocate -> if desert doesn't matter there is no obvious reason why society needs to find the real offender at all -> the above purposes could equally be well served by punishing nobody while the impression is created by skilful use of the media and rumour

The response to these objections is that the social consequences of unjust victimisation can be immense and lasting -> if moral values were ignored in judging the correct response to crime enforcement, both the legitimacy of the system would be imperilled and the feeling of well-being which crime control exerts itself to promote would be dissipated through the indignation and anxiety of the rule-breakers and law-abiding alike => only actual offenders must be punished and that criminal justice demands recognition of the relevance of desert both in terms of the question who and how much to punish

-> practical objections: the efficacy of punishment

- it is a normative rather than descriptive theory -> it says 'do not punish unless punishment functions to reduce crime'
- although there is evidence to suggest that the threat of imprisonment has a general deterrent effect, there is little evidence to suggest it discourages individual offenders from re-offending
- the rehabilitative ideal has been shown to be an empty one since prison has proved to be an effective training ground for villainy -> what better way of creating a villain than removing him from the society of the law-abiding, placing him in the company of experts in villainy
- the only reductive function that seems immune from these objections is that of incapacitation -> if an offender is incarcerated it means that he, at least, no longer constitutes a danger to society

- Mixed theories:

-> Hart's solution: attempt to combine the best of both theories -> the institutions of punishment can only be justified on utilitarian grounds -> who should be punished though? -> the moral principles involved here are the right not to be punished unless one has done wrong and the right not to be punished excessively (retributivist answer)

-> criticisms of Hart: he supplies cogent reasons why it is wrong for the state to punish people lacking fault but does not even attempt to explain why it is right to punish if fault is present

- Rationality and politics in sentencing: by centring the justification on the notion of justice retributivism is charged with failing to deliver a satisfactory justification for punishment in actual societies

-> imprisonment, along with the detention of the insane, not only fulfils a symbolic function of constructing battlelines between normality and abnormality, it also rids society of the disruptive implications of those who 'play by different rules' by putting them in enforced quarantine -> those who are being punished and those who are deterred are primarily from two different but adjoining socio-economic groups

General principles of criminal liability

- Elements of liability: the actus reus of any crime constitutes the package of behaviour which forms the substance of a criminal prohibition -> consists of all those elements left over when the mental element (mens rea) is subtracted from the definition as a whole -> actus reus includes a statement of the conduct, circumstance and result elements of the offence -> this is termed as the act requirement

- Interrelationship of actus reus, mens rea and defences -> the actus reus and mens rea elements of criminal offences are doing different jobs -> the external (actus reus) elements of the offence approximately reproduce the substance of a society's 'rules of conduct'

-> meanwhile, the mental element operates to filter those deserving punishment for their wrong from those who do not, and to grade liability according to their degree of fault -> it's a burglar's state of mind which makes him a burglar

-> a requirement of voluntariness of action as a conduct element in criminal liability -> a person who crashes his car as a result of suffering an unexpected heart attack or brake failure is treated as absolved from liability for dangerous driving, on the basis that there was no voluntary act of his and thus, no actus reus

-> the third element is the (absence of) defence -> those defences described as justifications challenge the very wrongfulness of the act in question -> self-defence for example -> there are also the so-called true defenses such as duress -> eg: Adam has violent intercourse with Eve believing her not to be consenting. In fact she is an entirely willing participant -> there is no actus reus since the actus reus of rape as represented in definition is having intercourse with a person who doesn't consent -> his guilty mind cannot make the lawful unlawful

- In *Dadson* case D was a constable who wounded P, an escaping poacher, with a shotgun. Unknown to D, P was an escaping felon and the law permitted the shooting of escaping felons. Despite this the court held that he was guilty of unlawful wounding -> the proper approach in such cases on this view would be to punish both Dadson and Adam for the crime whose definitional elements these thoughts, together with the action taken, satisfy. In the case of Eve this would be attempted murder. In the case of Dadson, less satisfactorily, this would be unlawful wounding
- There is a difference between claiming one has done nothing which the law prohibits and claiming one was justified in doing what the law prohibits

- The act requirement: the term actus reus refers to the external elements of the offence -> the requirement that the defendant should perform some act for criminal liability to be incurred is a mark of a free society's distaste at the idea of punishing people to their anti-social thoughts, desires, intentions rather than for the execution of such intentions

- Exceptions of the act requirement: criminal liability may be incurred in the absence of a positive and voluntary act

-> Situational liability: the actus reus of certain (statutory) offences requires proof of the defendant being 'in a situation which the law forbids':

Larsonneur case: The defendant, a French woman, was deported against her will, from Ireland to England, by the Irish authorities. Upon her arrival she was immediately charged with the offence of 'being' an illegal alien. Her conviction was upheld despite the fact that she had not voluntarily come to England.

Winzar v Chief Constable of Kent: D is intoxicated and is brought to hospital by an ambulance, he is released from hospital a few hours later but stays in the hospital causing a nuisance. Police were called to remove him, they dragged him outside and arrested him for being intoxicated on a public highway. He is found guilty under the Licensing Act 1872 and appeal quashed.

=> as long as an offence sets a standard of behaviour to which subjects are capable of conforming by appropriate avoiding action, there is no ethical reason to limit the substance of such offences to acts -> at the end of the day the question is whether the person had any discretion that he could have done as to avoid being in the situation in which he commits an offence

Martin case: similar to *Winzar* except that police officers took the drunken defendant from his own home and subsequently arrested him for appearing in a public place, manifesting a drunken condition -> deciding that the defendant wasn't guilty, Simpson J held that the statute implicitly presupposed a voluntary appearance, which was excluded where the defendant had been forcibly carried there against his will

-> Possession offences: it is enough simply that the accused is in possession of the prescribed thing -> whether or not possessing is acting, liability is properly incurred by voluntarily remaining in possession

Warner v MPC: the defendant had been given two boxes -> one of the boxes contained scent and the other contained controlled drugs. The defendant said that he thought both boxes contained scent. The question was whether the fact of being in possession of the box meant the defendant was also in possession of the contents -> it was decided that the strong presumption was that a person who was in possession of a container was also in possession of its contents even if they were quite different from what they were believed to be

- Possession is a state of affairs not a way of behaving -> society is entitled to expect citizens to be responsible about what they allow into their possession -> if a friend asks me to take a bag through customs for her, society is entitled to expect that I will reassure myself as to the contents of the suitcase

-> Omissions: minimum requirements must be satisfied: 1. The conduct element of the crime in question must be capable of commission by omission (instead of having a positive act, we have an omission and this creates a harm and therefore we have a criminal offence) -> 2. The circumstances must be such as to create a legal duty to act -> 3. The defendant's failure to act must be voluntary. It would be involuntary if he lacked the physical capacity or if given his characteristics, it would be unreasonable to expect him to have acted otherwise

- The words of statute will expressly create a duty to act in a particular way -> eg failing to submit a tax return, failing to provide a specimen or failing to report a road traffic accident -> this is a crime in which the external elements of the offence take the form of the defendant not doing something which he is placed under a legal duty to perform -> defendant is accused in some form of inappropriate conduct rather than some harmful result
- Criminal liability may also attach for crimes of commission in respect of an omission

Is it appropriate to criminalise omissions?

Two separate affirmative duties to be distinguished -> 1. The routine social responsibilities which arise out of the structural claims of people living together in a modern community -> the enforcement of such duties is necessary for society itself to run smoothly and therefore for society's members to flourish as individuals -> 2. Some affirmative duties fall due unpredictably and consequently may deprive the duty bearer of one of the fundamentals of the autonomous life, namely the right to choose what to do at any given time

Legal duty to care:

Gibbins v Proctor: not a married couple who is living together -> there was a child from a previous marriage -> the child was wilfully neglected and starved to death -> the court recognised the legal duty to care -> de facto the woman had assumed a role of protecting the child even though she is not the mother -> she was convicted of manslaughter

Contractual: *Pittwood case*: a person responsible to make sure that whenever a train is passing by, the road would be closed

Voluntary assumption of care: by a way of your conduct you show that you're assuming responsibility -> *Instan case*: the niece and aunt were living together -> the aunt was completely dependent on her niece and both were living on the aunt's money which meant that there was a voluntary assumption of responsibility

Doctor-patient relationship: *Airedale NHST v Bland* (discussed below)

When a person contributes to creating a life-threatening situation: Miller case: M was sleeping in an occupied house and fell asleep with a cigarette in his mouth (the moment the actus reus occurred) -> the mattress caught fire but M didn't do anything, he just left the room and soon the house caught fire -> M was sued -> the Court of Appeal said that this was a continuing act (from the moment he woke up, the mens rea kicked in because he walked away instead of trying to put it out) -> is accidentally starting a fire the same as an arson if he failed to put it out -> the actus reus can include the act of starting the fire and the failure to put it out -> Court of Appeal (LJ May) -> HL: Lord Diplock

R v Evans: two sisters one of which was supplying the other with heroin, and she suffered from an overdose, but an ambulance wasn't called -> nothing was done to save her -> the Court used this approach because the sister that supplied ought to have known what the consequences would be ->

-> Omission and crimes of commission -> the major difficulty arises in connection with criminalising omissions in the case of result crimes such as murder, assault, criminal damage and theft -> A turns a corner to see B, her neighbour's baby, head down and drowning in a puddle of water. To save the child would take no time and involve no trouble or risk. A doesn't do so because the baby keeps her awake at night and she wants the baby dead. B drowns.

- Criminal liability for homicide, requires proof of a killing accompanied by an intention to kill -> can one kill someone by doing nothing? -> omissions causing death are rarely charged as murder but rather as manslaughter
- Acts and omissions: what's the difference?

A cuts B's throat. C comes upon the scene later to find B bleeding to death. He does nothing to help. -> A is the killer not C

Eve, a strong swimmer, while swimming at the local baths, notices that Adam is struggling in the water. She swims over to rescue him but upon realising that he is her deadly enemy releases her grip and leaves him to drown -> the question is whether her conduct in relation to Adam is an act (releasing her grip) or an omission (failing to complete the rescue) which causes Adam's death -> Eve's actions have made no difference to the outcome -> Adam has been left in no worse position than if Eve had done nothing

Airedale NHST v Bland: Tony Bland was caught in the Hillsborough crush which reduced him to a persistent vegetative state. He had been in this state for three years and was being kept alive on life support machines. His brain stem was still functioning, which controlled his heartbeat, breathing and digestion, so technically he was still alive. However, he was not conscious and had no hope of recovery. The hospital with the consent of his parents applied for a declaration that it might lawfully discontinue all life-sustaining treatment and medical support measures designed to keep him alive in that state, including the termination of ventilation, nutrition and hydration by artificial means. -> the HL held that this was an omission -> however, an alternative view is that the disconnection is an act causing death -> the disconnection act is an act insofar as it closes off opportunities which would otherwise be present -> it wasn't a criminal offence -> if a stranger would turn the machine off, this would be considered an act, therefore there would be criminal liability -> if it were the doctor doing it, it would be an omission because the doctor knows that this is a hopeless situation -> the question was whether prolonging the patient's life artificially would be in his best interest

Usually actions are more blameworthy than omissions but equally sometimes an omission may be more blameworthy

- Omissions: the common law approach

Causation

- Introduction: two groups of crimes -> conduct (those whose actus reus consists simply of the violation of some norm of conduct -> don't require outcome-> negligent driving eg) and result(those where it consists of bringing about some harmful consequence which society wishes to avoid) -> for result crimes criminal liability turns upon proof of an act or omission performed

-> the bare minimum which the prosecution must show is a link between a particular (wrongful) act of the accused and a criminal harm such that it is appropriate for the individual accused, rather than some other person, to be held accountable

- Causation and blameworthiness: causal responsibility may be assigned in the absence of a blameworthy actor and those whom we might wish to blame for an event are not necessarily causally responsible

- The purpose of establishing causal responsibility: with crime, given the various justifications for and purposes of punishment, it is arguably less sensible to focus on the causing of an event, rather than the culpability or dangerousness of the defendant's conduct -> abandoning the causing of harm as a focus for criminal responsibility would, however, ignore a major retributive concern -> having a causal requirement allows us to put on record precisely how the victim has been wronged and reflect the extent of the harm done in punishment

- Causation: the legal position: Draft Criminal Code Bill clause 17

1. A person causes a result when

(a) he does an act which makes a more than merely negligible contribution to its occurrence or (factual Causation)

(b) he omits to do an act which might have prevented its occurrence and which he is under a duty to do according to the law relating to the offence.

2. A person does not cause a result where, after he does such an act or makes such an omission, an act or event occurs

(a) which is the immediate and sufficient cause of the result;

(b) which he did not foresee, and

(c) which could not in the circumstances reasonably have been foreseen.

=> to be accountable for a result crime the defendant's acts or omissions must be shown to have contributed to the coming about of the relevant harmful result and in addition, nothing abnormal should have happened subsequently to that act or omission so as to render it appropriate to ignore that contribution -> the defendant must be the factual and the legal cause of the harm in question

- Factual case: if it cannot be shown that but for the defendant's action the consequence would not have occurred as and when it did, causal responsibility cannot be established -> if the consequence would have occurred anyway, or the defendant's conduct made no difference, he will not be a cause

R v White: the authority for this principle -> a mother and a bad son involved -> he wanted his inheritance early so he poisoned his mother's drink but before the poison had the chance to work, his mother died of heart failure