Elements of Criminal conduct

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The thing that sometimes irks people and family are destitution. In many countries we see that some families drift a part due to the said subject, and less crimes are happened because of sexual and love. Therefore in this topic we want to consider the most important elements that caused into the above subject.
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Elements of crime

Under United States law, an element of a crime (or element of an offense) is one of a set of facts that must all be proven to convict a defendant of a crime. Before a court finds a defendant guilty of a criminal offense, the prosecution must present evidence that, even when opposed by any evidence the defense may choose to present, is credible and sufficient to prove beyond a reasonable doubt that the defendant committed each element of the particular crime charged. The component parts that make up any particular crime vary depending on the crime.

The basic components of an offense are listed below,[1] generally, each element of an offense falls into one or another of these categories. At common law, conduct could not be considered criminal unless a defendant possessed some level of intention — either purpose, knowledge, or recklessness — with regard to both the nature of his alleged conduct and the existence of the factual circumstances under which the law considered that conduct criminal.


However, for some legislatively enacted crimes, the most notable example being statutory rape, a defendant need not have had any degree of belief or willful disregard as to the existence of certain factual circumstances (such as the age of the accuser) that rendered his conduct criminal; such crimes are known as strict liability offenses.

**Mental state (Mens rea)**

*Mens rea* refers to the crime's mental elements of the defendant's intent. This is a necessary element—that is, the criminal act must be voluntary or purposeful. *Mens rea* is the mental intention (mental fault), or the defendant's state of mind at the time of the offense, sometimes called the *guilty mind*. It stems from the ancient maxim of obscure origin, "actus reus non facit reum nisi mens sit reas" that is translated as "the act is not guilty unless the mind is guilty." For example, the *mens rea* of **aggravated battery** is the intention to do serious bodily harm. *Mens rea* is almost always a necessary component in order to prove that a criminal act has been committed.

*Mens rea* varies depending on the offense. For murder, the mental element requires the defendant acted with "malice aforethought". Others may require proof the act was committed with such mental elements such as "knowingly" or "willfulness" or "recklessness". Arson requires an intent to commit a forbidden act, while others such as murder require an intent to produce a forbidden result. **Motive**, the reason the act was committed, is not the same as *mens rea* and the law is not concerned with motive.

Although most legal systems recognize the importance of the guilty mind, or *mens rea*, exactly what is meant by this concept varies. The
American Law Institute's Model Penal Code has reduced the mental states to four. In general, guilt can be attributed to an individual who acts "purposely," "knowingly," "recklessly," or "negligently." Together or in combination, these four attributes seem basically effective in dealing with most of the common mens rea issues.\(^{(2)}\)

**Act**

In order for an *actus reus* to be committed there has to have been an act. Various common law jurisdictions define act differently but generally, an act is a "bodily movement whether voluntary or involuntary."\(^{(2)}\) In *Robinson v. California*, 370 U.S. 660 (1962), the U.S. Supreme Court ruled that a California law making it illegal to be a drug addict was unconstitutional because the mere status of being a drug addict was not an *act* and thus not criminal. Commentator Dennis Baker asserts: "Although lawyers find the expression actus reus convenient, it is misleading in one respect. It means not just the criminal act but all the external elements of an offence. Ordinarily, there is a criminal act, which is what makes the term actus reus generally acceptable. But there are crimes without an act, and therefore without an actus reus in the obvious meaning of that term. The expression “conduct” is more satisfactory, because wider; it covers not only an act but an omission, and (by a stretch) a bodily position. The conduct must sometimes take place in legally relevant circumstances. The relevant circumstances might include consent in the case of rape. The act of sexual intercourse becomes a wrongful act only if it is committed in circumstances where one person does not consent. Other crimes require the act to produce a legally forbidden consequence. Such crimes are called result crimes. ... All that can truly be said, without exception, is that a crime requires

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some external state of affairs that can be categorized as criminal. What goes on inside a person’s head is never enough in itself to constitute a crime, even though it might be proved by a confession that is fully believed to be genuine.”

Omission

Omission involves a failure to engage in a necessary bodily movement resulting in injury. As with commission acts, omission acts can be reasoned causally using the but for approach. But for not having acted, the injury would not have occurred. The Model Penal Code specifically outlines specifications for criminal omissions.

the omission is expressly made sufficient by the law defining the offense; or

a duty to perform the omitted act is otherwise imposed by law (for example one must file a tax return).

So if legislation specifically criminalizes an omission through statute; or a duty that would normally be expected was omitted and caused injury, an actus reus has occurred.

In English law, there is no Good Samaritan rule which therefore means you cannot be criminally liable for an omission unless a duty of care is owed. An omission can be criminal if there is a statute which requires to act. Other situations were you are required to act are if you under a contract (R v Pittwood), have assumed care (Stone and Dobinson), have created a dangerous situation (Miller) or you have an official position within society (Dytham).

Possession
Possession holds a special place in that it has been criminalized but under common law does not constitute an act. Some countries like the United States have avoided the common law conclusion in *Regina v. Dugdale*[^5] by legally defining possession as a voluntary act. As a voluntary act, it fulfills the requirements to establish *actus reus*.[^6][^7]

**Voluntariness**

For conduct to constitute an *actus reus*, it must be engaged in voluntarily. Few sources enumerate the entirety of what constitutes voluntary and involuntary conduct. Oliver Wendell Holmes, in his 1881 book *The Common Law*, disputed whether such a thing as an involuntary act exists: "[a] spasm is not an act. The contraction of the muscles must be willed." A few sources, such as the Model Penal Code, provide a more thorough treatment of involuntary conduct:

a reflex or convulsion; .1

a bodily movement during unconsciousness or sleep; .2

conduct during hypnosis or resulting from hypnotic suggestion; .3

a bodily movement that otherwise is not a product of the effort .4

or the determination of the actor, either conscious or habitual.

**Reflex or convulsion**

Generally, if, during an uncontrollable flailing caused by a sudden paroxysmal episode, such as that produced by an epileptic seizure, a person strikes another, that person will not be criminally liable for the injuries sustained by the other person.[^8] However, if prior to the assault on another, the seized individual was engaging in conduct

that he knew to be dangerous given a previous history of seizures, then he is culpable for any injuries resulting from the seizure. For example, in *People v. Decina*, 2 N.Y.2d 133 (1956), the defendant, Emil Decina, appealed a conviction under § 1053-a of the New York Penal Law. On March 14, 1955, Decina suffered a serious seizure while operating a motor vehicle. He swerved wildly through the streets and struck a group of school girls, killing four of them. On direct examination, Decina's physician testified that Decina informed him that prior to the accident "he noticed a jerking of his right hand" and recounted his extensive history of seizures, a consequence of brain damage from an automobile accident at age seven. Decina argued, *inter alia*, that he had not engaged in criminal conduct because he did not voluntarily strike the school girls. The New York Court of Appeals disagreed and held that since the defendant knew he was susceptible to a seizure at any time without warning and decided to operate a motor vehicle on a public highway anyway, he was guilty of the offense. "To hold otherwise," wrote Froessel, J, "would be to say that a man may freely indulge himself in liquor in the same hope that it will not affect his driving, and if it later develops that ensuing intoxication causes dangerous and reckless driving resulting in death, his unconsciousness or involuntariness at that time would relieve him from prosecution[.][12]

**Unconsciousness or sleep**

In *Hill v Baxter*, Kilmuir, LC, articulated the necessity of eliminating automatism, defined as "the existence in any person of behaviour of which he is unaware and over which he has no conscious control," in proving the voluntariness of the *actus reus*:
[N]ormally the presumption of mental capacity is sufficient to prove that he acted consciously and voluntarily and the prosecution need go no further. But, if after considering evidence properly left them by the judge, the jury are left in real doubt whether or not the accused acted in a state of automatism...they should acquit because the necessary mens rea—if indeed the actus reus—has not been proved beyond a reasonable doubt.

Thus, a person suffering from somnambulism, a fugue, a metabolic disorder, epilepsy, or other convulsive or reflexive disorder,\(^1\) who kills another, steals another's property, or engages in other facially criminal conduct, may not have committed an actus reus, for such conduct may have been elicited unconsciously, and, "one who engages in what would otherwise be criminal conduct is not guilty of a crime if he does so in a state of unconsciousness[.]"\(^2\) Depending on jurisdiction, automatism may be a defense distinct from insanity or a species of it.\(^3\)

**Hypnosis**

While the general scientific consensus is that hypnosis cannot induce an individual to engage in conduct they would not otherwise engage in,\(^4\) the Model Penal Code, as well as the criminal codes of Montana, New York, and Kentucky do provide hypnosis and hypnotic suggestion as negating volition, and consequently, actus reus.\(^5\)

Perhaps the earliest case of hypnotism as negating voluntary conduct is *California v. Ebanks*, 49 P 1049 (Cal. 1897). In *Ebanks*, the court categorically rejected Ebanks' argument that the trial court committed reversible err in denying him leave to present expert testimony concerning the effects of hypnotism on the will.\(^6\) The

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lower court bluntly remarked that "'[t]he law of the United States does not recognize hypnotism. It would be an illegal defense, and I cannot admit it.'"[19] Nearly sixty years later, however, the California Court of Appeals ruled that the trial court did not err in allowing expert testimony on hypnosis, though it did not rule on whether hypnotism negates volition.[20] The Supreme Court of Canada ruled confessions made under hypnosis inadmissible because they are involuntarily given; Germany and Denmark provide a hypnotist defense.[21]

**Omission**

Voluntariness includes omission, for implicit in omission is that the actor voluntarily chose to not perform a *bodily movement* and, consequently, caused an injury. The purposeful, reckless, or negligent absence of an action is considered a voluntary action and fulfills the voluntary requirement of *actus reus*. [22][23]

**References**

Coke, chapter 1, folio 10 .1

Model Penal Code § 1.13(2) .2


Model Penal Code § 2.01(3) .4

*Regina v. Dugdale*, 1 El. & Bl. 435, 439 (1853) (ruled that .5 the mere possession of indecent images with the intent to publish them was not a crime as possession did not constitute an act)
N.Y. Penal Law § 15.00(2) .6

Model Penal Code § 2.01(4) .7


Decina, at 135 .9

Decina, at 138 .10

More particularly, he argued that a demurrer should have been sustained because the indictment did not charge a crime. Decina, at 139

Decina, at 141 .12

Blair, Medicolegal Aspects of Automatism, qtd. in McClain v. State, 678 N.E.2d 104, 106 (Ind. 1997)

McClain, at 107 .14

State v. Caddell, 215 S.E.2d 348, 360 (N.C. 1975) .15

McClain, at 108 .16

Bonnema, Mary Christine (1992–1993). "Trance on Trial: An Exegesis of Hypnotism and Criminal Responsibility". Wayne L. Rev. 39 (1299): 1311. Although many believe the misconception that hypnosis is "a mystical ploy that sends someone into another world and puts them at the mercy of another's ideas...," the more


modern view is that a hypnotist cannot make a hypnotized person do anything she does not want to do.

Bonnema, p. 1316 .18

_Ebanks_, at 1053 qtd. in Bonnema, p. 1313 .19


Bonnema, p. 1315 .21


_People v. Steinberg_, 79 N.Y.2d 673 (1992) .23

Sources

Coke, Edward (1797). _Institutes, Part III_.


Concurrence

In _Western jurisprudence_, concurrence (also contemporaneity or simultaneity) is the apparent need to prove the simultaneous occurrence of both _actus reus_ ("guilty action") and _mens rea_ ("guilty mind"), to constitute a _crime_; except in crimes of _strict liability_. In theory, if the _actus reus_ does not


hold concurrence in point of time with the \textit{mens rea} then no
crime has been committed.

Two types of concurrence in criminal law

Temporal concurrence – the \textit{actus reus} and \textit{mens rea} occur at
the same time.

Motivational concurrence – the \textit{mens rea} motivates the \textit{actus
reus}.

The problem

Not all events are limited to a particular moment in time. The
normal physical rules of \textit{cause} and effect may see a series of
interlocking circumstances conspire to cause a particular
injury. If the facts of the example above are slightly changed
so that the accident occurs at night at a sharp bend on a very
quiet country road. When the driver sees the victim lying in
the road he simply leaves the unconscious person where he
fell. Some hours later, when a second car innocently comes
around the corner and kills the victim, the first driver is
happily asleep in his bed. Thus, he argues that, at the time of
the death, he had no \textit{mens rea} and so cannot be guilty of
homicide. This argument fails because of the so-called \textit{Single
Transaction Principle}

Single transaction principle

Not all acts forming the basis of an \textit{actus reus} are single, unconnected
events. If a sequence of events is inevitably linked, it may be viewed as a single transaction. So long as the
requisite \textit{mens rea} is formed before the sequence begins, or

\begin{enumerate}
\item Encarta. Archived from the original on 2009-10-31. Retrieved 2008-01-07
\end{enumerate}
during the sequence (before it ends), the accused will be liable.

In the previous example, the victim would not have died if the first driver had not abandoned him at a dangerous point on the road. The law will treat the actus reus as having started with the accidental injury and ended with the death. In *Fagan v Metropolitan Police Commissioner* (1969) 1 QB 439, a police officer ordered the defendant to park his car and he reluctantly complied. In doing so, he accidentally drove the car on to the policeman’s foot and, when the policeman said "Get off my foot", said "Fuck you, you can wait" and turned off the ignition. Because of the steel toe cap in his boot, the policeman's foot was not in actual danger, but the Divisional Court held that this could constitute a common assault. Albeit accidentally, the driver had caused the car to rest on the foot. This actus reus was a continuing state of affairs for so long as the car rested on the officer's foot and the mens rea was formed before the car was removed. Whether realistically or not, the officer apprehended the possibility of injury so the offence of common assault was complete.

A different way of justifying liability in this type of situation would be to consider an omission at the point in time that the mens rea is formed. In the first example, liability arises from the reckless omission to move the man, or willful blindness that he was in danger. In *Fagan*, liability arises from omitting to remove the car.


But not every factual sequence can be so conveniently recast as an omission. Suppose, for example, that A sees his enemy, B, and decides to attack him. A picks up a stick and begins to chase B who runs into a hotel, up the stairs and into a room, locking the door behind him. A hammers at the door, shouting threats. A then sees a fire axe in a glass case nearby. He tells B that he is going for the axe and will break down the door. When A walks away, B is so terrified that he jumps out of the window and breaks his legs. Even though A might not have had an immediate intention to injure B at the critical moment when B jumped, the fear was inspired with an appropriate intention and B would not have been desperate enough to jump had it not been for that fear. [It is fair to exclude liability when B's fear is entirely unreasonable given A's behaviour because B's self-induced injury will break the chain of causation].

This latter example raises a separate issue which is that it is sufficient to base a conviction on the presence of *mens rea* at some time during the occurrence of the events comprising the single transaction. The fact that the accused might mistakenly believe they have succeeded in the crime does not prevent a conviction. For example, suppose that A begins to strangle B and, believing B to be dead, abandons the "body" in nearby woods where B dies of exposure. A will still be convicted of the homicide even though the relevant behaviour of abandoning the body was not accompanied by a *mens rea*.

And for the sake of completeness, if A commits an offence with an *actus reus* and a *mens rea*, it will not affect liability.
that A subsequently repents the crime and effects restitution. Thus, if A steals goods from B but then returns them together with some money to make good the damage caused during the forced entry, this cannot change the fact that there was an *actus reus* accompanied by an appropriate *mens rea*. A crime was committed although the subsequent conscience-based behaviour would be a relevant consideration during the **sentencing** stage of the trial.

**English case law examples**

*Thabo Meli v R (1954) 1 All ER 373 (PC)* Four defendants intended to kill their victim so they induced him to consume alcohol, struck him on the head and threw the "body" over a cliff to make the death appear accidental. Because they thought that the blow had killed him, there was no *mens rea* when they abandoned him and he died from exposure. The first act did not cause death but had the appropriate *mens rea*. The second act caused death but had no *mens rea*. But the **Privy Council** held that it was impossible to divide up what was really one transaction. The *actus reus* was said to be the series of acts and omissions with *mens rea* covering the initial stages.

In *R v Church (1965) 2 AER 72* during an argument, the defendant struck the victim and, mistakenly believing her to be dead, threw her into a nearby river where she drowned. He was convicted of manslaughter.

In *R v LeBrun (1991) 4 All ER 673*, the defendant struck his wife during an argument outside their house leaving her

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unconscious. He then tried to drag her inside but, as he did so, her head struck the pavement, fracturing her skull and killing her. At first sight, this is distinguishable from *R v Church* because death was accidental, whereas Church was intentionally disposing of the "body". But, in attempting to drag his unconscious wife indoors, LeBrun was either trying to conceal his initial assault on her, or forcing her to enter the house against her wishes (this being the original reason for the argument). The trial judge had directed the jury to acquit if they concluded that LeBrun had been trying to help his wife when he moved her, and the Court of Appeal agreed that this would have broken the essential nexus between the two halves of the incident.

In *AG's Reference (No. 4 of 1980)* (1981) 2 All ER 617 the defendant was struggling with his girlfriend and she fell over a landing rail on to the floor below. Believing her dead, he dismembered her in the bath to dispose of her "body". It was impossible to prove whether she had died in the original fall or whether he killed her by his subsequent actions. The Court of Appeal held that a manslaughter conviction was only possible if each of the defendant's acts was accompanied by the requisite *mens rea* for that offence. At the very least, there must be an unlawful act which was the cause of the ultimate death. It was not enough to establish *criminal negligence* only in the subsequent act of disposal. Hence, the prosecution had to disprove D's claim of accident, i.e. that he had merely pushed her away in a "reflex action" when she dug her nails into him in the struggle on the upstairs landing.
Fagan v. Metropolitan Police Commissioner [1968] 3 All ER 442 The defendant accidentally drove his car onto a policeman's foot whilst the policeman was directing traffic, but then subsequently refused to move off during an argument with the policeman. It was held that the actus reus was not the single act of driving onto the foot, but continued as long as the car remained there. Once the defendant subsequently acquired the mens rea to harm the policeman, the crime was complete.

References

Fagan v METROPOLITAN POLICE COMMISSIONER (1969) 1 QB 439 - DC

Further reading


Causation is the "causal relationship between conduct and result". That is to say that causation provides a means of connecting conduct with a resulting effect, typically an injury.


In criminal law, it is defined as the *actus reus* (an action) from which the specific injury or other effect arose and is combined with *mens rea* (a state of mind) to comprise the elements of guilt. Causation is only applicable where a result has been achieved and therefore is immaterial with regard to.

**Background concepts**

Many legal systems are to a greater or lesser extent concerned with the notions of *fairness* and *justice*. If a *state* is going to penalise a person or require that person to pay compensation to another for losses incurred, this imposition of liability will be derived from the idea that those who injure others should take responsibility for their actions. Although some parts of any legal system will have qualities of *strict liability*, in which the *mens rea* is immaterial to the result and subsequent liability of the actor, most look to establish liability by showing that the defendant was the cause of the particular injury or loss.

Even the youngest children quickly learn that, with varying degrees of probability, consequences flow from physical acts and omissions. The more predictable the outcome, the greater the likelihood that the actor caused the injury or loss intentionally. There are many ways in which the law might capture this simple rule of practical experience: that there is a natural flow to events, that a reasonable man in the same situation would have foreseen this consequence as likely to occur, that the loss flowed naturally from the breach of contractual or tortious duty, etc. However it is phrased, the
The essence of the degree of fault attributed will lie in the fact that reasonable people try to avoid injuring others, so if harm was foreseeable, there should be liability to the extent that the extent of the harm actually resulting was foreseeable.

The relationship between causation and liability:

1. Causation of an event by itself is not sufficient to create legal liability.
2. Sometimes causation is one part of a multi-stage test for legal liability. For example for the defendant to be held liable for the tort of negligence, the defendant must have (1) owed the plaintiff a duty of care; (2) breached that duty; (3) by so doing caused damage to the plaintiff; and (4) that damage must not have been too remote. Causation is but one component of the tort.

On other occasions, causation is the only requirement for legal liability (other than the fact that the outcome is proscribed). For example in the law of product liability, the courts have come to apply to principle of strict liability: the fact that the defendant's product caused the plaintiff harm is the only thing that matters. The defendant need not also have been negligent.

On still other occasions, causation is irrelevant to legal liability altogether. For example, under a contract of indemnity insurance, the insurer agrees to indemnify the victim for harm not caused by the insurer, but by other parties.

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Because of the difficulty in establishing causation, it is one area of the law where the case law overlaps significantly with general doctrines of analytic philosophy to do with causation. The two subjects have long been somewhat intermingled.

Establishing causation

Where establishing causation is required to establish legal liability, it is usually said that it involves a two-stage inquiry.

The first stage involves establishing ‘factual’ causation. Did the defendant act in the plaintiff’s loss? This must be established before inquiring into legal causation.

The second stage involves establishing ‘legal’ causation. This is often a question of public policy: is this the sort of situation in which, despite the outcome of the factual enquiry, we might nevertheless release the defendant from liability, or impose liability?

Establishing factual causation

The usual method of establishing factual causation is the but-for test. The but for test inquires ‘But for the defendant’s act, would the harm have occurred?’ A shoots and wounds B. We ask ‘But for A's act, would B have been wounded?’ The answer is ‘No.’ So we conclude that A caused the harm to B. The but for test is a test of necessity. It asks was it ‘necessary’ for the defendant’s act to have occurred for the harm to have occurred.

One weakness in the but-for test arises in situations where each of several acts alone are sufficient to cause the harm. For
example, if both A and B fire what would alone be fatal shots at C at approximately the same time, and C dies, it becomes impossible to say that but-for A's shot, or but-for B's shot alone, C would have died. Taking the but-for test literally in such a case would seem to make neither A nor B responsible for C's death.

The courts have generally accepted the but for test notwithstanding these weaknesses, qualifying it by saying that causation is to be understood “as the man in the street” would: *Yorkshire Dale Steamship Co v Minister of War Transport* [1942] AC 691 (HL), or by supplementing it with “common sense”: *(March v Stramare* (1991) 171 CLR 506 *(High Court of Australia).*

This dilemma was handled in the United States in *State v. Tally*, 15 So 722, 738 (Ala. 1894), where the court ruled that: “The assistance given ... need not contribute to criminal result in the sense that but for it the result would not have ensued. It is quite sufficient if it facilitated a result that would have transpired without it.” Using this logic, A and B are liable in that no matter who was responsible for the fatal shot, the other "facilitated" the criminal act even though his shot was not necessary to deliver the fatal blow.

However, legal scholars have attempted to make further inroads into what explains these difficult cases. Some scholars have proposed a test of sufficiency instead of a test of necessity. *H. L. A. Hart* and *Tony Honoré*, and later *Richard Wright*, have said that something is a cause if it is a ‘necessary
element of a set of conditions jointly sufficient for the result’. This is known as the NESS test. In the case of the two hunters, the set of conditions required to bring about the result of the victim's injury would include a gunshot to the eye, the victim being in the right place at the right time, gravity, etc. In such a set, either of the hunters' shots would be a member, and hence a cause. This arguably gives us a more theoretically satisfying reason to conclude that something was a cause of something else than by appealing to notions of intuition or common sense.

Hart and Honore, in their famous work Causation in the Law, also tackle the problem of 'too many causes'. For them, there are degrees of causal contribution. A member of the NESS set is a "causally relevant condition". This is elevated into a "cause" where it is a deliberate human intervention, or an abnormal act in the context. So, returning to our hunter example, hunter A's grandmother's birth is a causally relevant condition, but not a "cause". On the other hand, hunter A's gunshot, being a deliberate human intervention in the ordinary state of affairs, is elevated to the status of "cause". An intermediate position can be occupied by those who "occasion" harm, such as accomplices. Imagine an accomplice to a murder who drives the principal to the scene of the crime. Clearly the principal's act in committing the murder is a "cause" (on the but for or NESS test). So is the accomplice's act in driving the principal to the scene of the crime. However the causal contribution is not of the same level (and, incidentally, this provides some basis for treating principals

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and accomplices differently under criminal law). Leon Green and Jane Stapleton are two scholars who take the opposite view. They consider that once something is a "but for" (Green) or NESS (Stapleton) condition, that ends the factual inquiry altogether, and anything further is a question of policy.

Establishing legal causation

Notwithstanding the fact that causation may be established in the above situations, the law often intervenes and says that it will nevertheless not hold the defendant liable because in the circumstances the defendant is not to be understood, in a legal sense, as having caused the loss. In the United States, this is known as the doctrine of proximate cause. The most important doctrine is that of novus actus interveniens, which means a ‘new intervening act’ which may ‘cut the chain of causation’.

Proximate cause

Main article: Proximate cause

The but-for test is factual causation and often gives us the right answer to causal problems, but sometimes not. Two difficulties are immediately obvious. The first is that under the but-for test, almost anything is a cause. But for a tortfeasor's grandmother's birth, the relevant tortious conduct would not have occurred. But for the victim of a crime missing the bus, he or she would not have been at the site of the crime and hence the crime would not have occurred. Yet in these two cases, the grandmother's birth or the victim's missing the bus are not intuitively causes of the resulting harm. This often


does not matter in the case where cause is only one element of liability, as the remote actor will most likely not have committed the other elements of the test. The legally liable cause is the one closest to or most proximate to the injury. This is known as the Proximate Cause rule. However, this situation can arise in strict liability situations.

Intervening cause

Imagine the following. A critically injures B. As B is wheeled to an ambulance, she is struck by lightning. She would not have been struck if she had not been injured in the first place. Clearly then, A caused B's whole injury on the ‘but for’ or NESS test. However, at law, the intervention of a supervening event renders the defendant not liable for the injury caused by the lightning.

The effect of the principle may be stated simply:

If the new event, whether through human agency or natural causes, does not break the chain, the original actor is liable for all the consequences flowing naturally from the initial circumstances. But if the new act breaks the chain, the liability of the initial actor stops at that point, and the new actor, if human, will be liable for all that flows from his or her contribution.

Note, however, that this does not apply if the Eggshell skull rule is used. For details, see the article on the Eggshell Skull doctrine.

Independent sufficient causes


When two or more negligent parties, where the consequence of their negligence joins together to cause damages, in a circumstance where either one of them alone would have caused it anyway, each is deemed to be an "Independent Sufficient Cause," because each could be deemed a "substantial factor," and both are held legally responsible for the damages. For example, where negligent firestarter A's fire joins with negligent firestarter B's fire to burn down House C, both A and B are held responsible. (e.g., Anderson v. Minneapolis, St: P. & S. St. R.R. Co., 146 Minn. 430, 179 N.W. 45 (1920).) This is an element of Legal Cause.

**Summers v. Tice** Rule

The other problem is that of overdetermination. Imagine two hunters, A and B, who each negligently fire a shot that takes out C's eye. Each shot on its own would have been sufficient to cause the damage. But for A's shot, would C's eye have been taken out? Yes. The same answer follows in relation to B's shot. But on the but-for test, this leads us to the counterintuitive position that neither shot caused the injury. However, courts have held that in order for each of the defendants to avoid liability for lack of actual cause, it is necessary to hold both of them responsible, See **Summers v. Tice**, 33 Cal.2d 80, 199 P.2d 1 (1948). This is known, simply, as the **Summers v. Tice** Rule.

**Concurrent actual causes**

Suppose that two actors' negligent acts combine to produce one set of damages, where but for either of their negligent
acts, no damage would have occurred at all. This is two negligences contributing to a single cause, as distinguished from two separate negligences contributing to two successive or separate causes. These are "concurrent actual causes". In such cases, courts have held both defendants liable for their negligent acts. Example: A leaves truck parked in the middle of the road at night with its lights off. B fails to notice it in time and plows into it, where it could have been avoided, except for want of negligence, causing damage to both vehicles. Both parties were negligent. (*Hill v. Edmonds*, 26 A.D.2d 554, 270 N.Y.S.2d 1020 (1966).)

**Foreseeability**

Legal Causation is usually expressed as a question of 'foreseeability'. An actor is liable for the foreseeable, but not the unforeseeable, consequences of his or her act. For example it is foreseeable that if I shoot someone on a beach and they are immobilized, they may drown in a rising tide rather than from the trauma of the gunshot wound or from loss of blood. However it is not (generally speaking) foreseeable that they will be struck by lightning and killed by that event.

This type of causal foreseeability is to be distinguished from foreseeability of extent or kind of injury, which is a question of remoteness of damage, not causation. For example, if I conduct welding work on a dock that lights an oil slick that destroys a ship a long way down the river, it would be hard to construe my negligence as anything other than causal of the

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ship's damage. There is no *novus actus interveniens*. However, I may not be held liable if that damage is not of a type foreseeable as arising from my negligence: The Wagon Mound (No 1) [1961] AC 388 (Privy Council). That is a question of public policy, and not one of causation.  

Example  

An example of how foreseeability does not apply to the extent of an injury is the *eggshell skull rule*. If Neal punched Matt in the jaw, it is foreseeable that Matt will suffer a bodily injury that he will need to go to the hospital for. However, if his jaw is very weak, and his jaw comes completely off from my punch, then the doctor bills, which would have been about $5,000 for wiring his jaw shut had now become $100,000 for a full-blown jaw re-attachment. Neal would still be liable for the entire $100,000, even though $95,000 of those damages were not reasonably foreseeable.

Other relevant considerations  

Because causation in the law is a complex amalgam of fact and policy, other doctrines are also important, such as foreseeability and risk. Particularly in the United States, where the doctrine of 'proximate cause' effectively amalgamates the two-stage factual then legal causation inquiry favoured in the English system, one must always be alert to these considerations in assessing the postulated relationship between two events.

Foreseeability tests  

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Some aspects of the physical world are so inevitable that it is always reasonable to impute knowledge of their incidence. So if A abandons B on a beach, A must be taken to foresee that the tide comes in and goes out. But the mere fact that B subsequently drowns is not enough. A court would have to consider where the body was left and what level of injury A believed that B had suffered. If B was left in a position that any reasonable person would consider safe but a storm surge caused extensive flooding throughout the area, this might be a novus actus. That B was further injured by an event within a foreseen class does not of itself require a court to hold that every incident falling within that class is a natural link in the chain. Only those causes that are reasonably foreseeable fit naturally into the chain. So if A had heard a weather forecast predicting a storm, the drowning will be a natural outcome. But if this was an event like a flash flood, an entirely unpredictable event, it will be a novus actus.

The question of A's beliefs is no different. If A honestly believes that B is only slightly injured and so could move himself out of danger without difficulty, how fair is it to say that he ought to have foreseen? The test is what the reasonable person would have known and foreseen, given what A had done. It is the function of any court to evaluate behaviour. A defendant cannot evade responsibility through a form of wilful blindness. Fault lies not only in what a person actually believes, but also in failing to understand what the vast majority of other people would have understood. Hence, the test is hybrid, looking both at what the defendant actually


knew and foresaw (i.e. subjective), and at what the reasonable person would have known (i.e. objective) and then combining the conclusions into a general evaluation of the degree of fault or blameworthiness.

Similarly, in the quantification of damages generally and/or the partitioning of damages between two or more defendants, the extent of the liability to compensate the plaintiff(s) will be determined by what was reasonably foreseeable. So if, for example, the plaintiff unexpectedly contributed to the extent of the loss suffered, that additional element would not be included in the damages award even though the plaintiff would not have had the opportunity to make this mistake had it not been for the defendant's breach. In cases involving the partitioning of damages between multiple defendants, each will be liable to the extent that their contribution foreseeably produced the loss.

Risk

Sometimes the reverse situation to a novus actus occurs, i.e. factual causation cannot be proved but the court nevertheless does want to hold the defendant liable. In Sindell v. Abbott Laboratories, 607 P.2d 924 (Cal. 1980) the plaintiff's mother consumed diethylstilbestrol as a miscarriage preventative. The medicine, later re-called from the market, caused the defendant to develop a malignant bladder tumor due to its negligent manufacture. However, there were many manufacturers of that drug in the market. The manufacturer of the particular medication that caused the injury could not
be ascertained for certain. The court held that the defendant was liable in proportion to its market share. They departed from traditional notions of pure cause and adopted a ‘risk based’ approach to liability. The defendant was held liable because of the amount of risk it contributed to the occasioning of the harm. Note that a risk theory is not strictly a theory built on notions of cause at all, as, by definition, the person who caused the injury could not be ascertained for certain. However, it does show that legal notions of causation are a complex mixture of factual causes and ideas of public policy relating to the availability of legal remedies. In *R v Miller* [1982] UKHL 6, the House of Lords said that a person who puts a person in a dangerous position, in that case a fire, will be criminally liable if he does not adequately rectify the situation.

Evidence proving causation

To be acceptable, any rule of law must be capable of being applied consistently so a definition of the criteria for this qualitative analysis must be supplied. Let us assume a purely factual analysis as a starting point. A injures B and leaves him lying in the road. C is a driver who fails to see B on the road and by running over him, contributes to the cause of his death. It would be possible to ask for a detailed medical evaluation at a post mortem to determine the initial degree of injury and the extent to which B's life was threatened, followed by a second set of injuries from the collision and their contribution. If the first incident merely damaged B's leg so that he could not move, it is tempting to assert that C's...
driving must have been the more substantial cause and so represents a *novus actus* breaking the chain. Equally, if B was bleeding to death and the only contribution that the driving made was to break B's arm, the driving is not a *novus actus* and does not break the chain. But this approach ignores the issue of A's foresight.

Roads are, by their nature, used by vehicles and it is clearly foreseeable that a person left lying on the road is at risk of being further injured by an inattentive driver. Hence, if A leaves B on the road with knowledge of that risk and the foreseen event occurs, A remains the more proximate cause. This leaves whether the test of foresight should be subjective, objective or hybrid (i.e. both subjective and objective).

Obviously, there is no difficulty in holding A liable if A had actual knowledge of the likelihood that B would be further injured by a driver. The fault which caused the initial injury is compounded by the omission to move B to a safer place or call for assistance. But let us assume that A never adverts to the possibility of further injury. The issue is now the extent to which knowledge may be *imputed* objectively.

The future? •

A difficult issue that has arisen recently is the case where the defendant neither factually causes the harm, nor increases the risk of its occurrence. In *Chester v Afshar* [2004] 4 All ER 587 (HL), a doctor negligently failed to warn a patient of risks inherent in an operation, specifically *cauda equina syndrome*. [51] The patient had the operation and a risk

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materialized causing injury.\cite{5} It was found that even if the patient had been warned, the patient would still have undergone the operation, simply at a different time.\cite{6} The risk of the injury would be the same at both times. Accordingly, the doctor neither caused the injury (because but for the failure to warn, the patient would still have gone ahead with the operation), nor increased the risk of its occurrence (because the risk was the same either way). Yet the House of Lords, embracing a more normative approach to causation, still held the doctor liable. Lawyers and philosophers continue to debate whether and how this changes the state of the law.

English criminal case law examples

- **Novus actus interveniens**

  Victim's contribution *R v Dear* (1996) CLR 595. Believing that the victim had sexually interfered with his 12-year-old daughter, the defendant attacked the victim with a Stanley knife. The defendant argued that the chain of causation had been broken because, two days later, the victim had committed suicide either by reopening his wounds or because he had failed to take steps to staunch the blood flow after the wounds had reopened spontaneously (i.e. the potential suicide constituted a *novus actus interveniens*). It was held that the real question was whether the injuries inflicted by the defendant were an operating and significant cause of or contribution to the death. Distinctions between the victim's mere self-neglect (no break in the chain) and the victim's gross self-neglect (break in the chain) were not helpful. The

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\cite{2}Encarta. Archived from the original on 2009-10-31. Retrieved 2008-01-07
victim's death resulted from bleeding from the artery severed by the defendant. Whether the resumption or continuation of that bleeding was deliberately caused by the victim, the defendant's conduct remained the operative and significant cause of the victim's death.

Third party's inadvertent contribution \textit{R v Smith} (1959) 2 QB 35 the defendant stabbed his victim twice in a barrack room brawl. Another soldier carried him to the medical centre but dropped him twice. The medical captain was very busy and failed to recognise the extent of the injuries. If the soldier had received proper treatment, he would have had a good chance of a complete recovery. Smith was convicted of \textit{manslaughter} because the wound was the "operating and substantial cause of death". In \textit{R v Cheshire} (1991) 3 AER 670, the victim was shot in the leg and stomach. In hospital, he suffered pneumonia and respiratory problems in intensive care so had a tracheotomy. After two months, he died. There was some medical negligence because the tracheotomy had caused a thickening of tissue ultimately causing suffocation. In upholding the conviction for \textit{murder}, Beldam LJ. laid down the following test:

Even though negligence in the treatment of the victim was the immediate cause of his death, the jury should not regard it as excluding the responsibility of the accused unless the negligent treatment was so independent of his acts, and in itself so potent in causing death, that they regard the contribution made by his acts as insignificant.


Third party's deliberate intervention *R v Malcherek* (1981) 73 Cr. App. R. 173. The victim was placed on a life support machine and, after determining that she was brain dead, the doctors turned off the machine. The defendant appealed the conviction of murder arguing that the doctors had broken the chain of causation by deliberately switching off the life support machine. It was held that the original wounds were the operating and substantial cause of death, and that a life support machine does no more than hold the effect of the injuries in suspension and when the machine is switched off, the original wounds continue to cause the death no matter how long the victim survives after the machine's disconnection. In *R v Pagett* (1983) 76 Cr. App. R. 279, to resist lawful arrest, the defendant held a girl in front of him as a shield and shot at armed policemen. The police instinctively fired back and killed the girl. The Court of Appeal held that the defendant's act caused the death and that the reasonable actions of a third party acting in self-defence could not be regarded as a *novus actus interveniens* because self-defence is a foreseeable consequence of his action and had not broken the chain of causation.

Foreseeability

Victim's conscious actions *R v. Blaue* (1975) 61 Cr. App. R. 271 is a criminal law application of the "thin skull rule" in criminal law. The defendant visited the home of a Jehovah's Witness and demanded sex. When she refused, he stabbed her four times. At hospital, she refused a blood transfusion which would have saved her life. There was no suggestion that the

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doctors had acted improperly. Blaue was convicted of manslaughter by an unlawful act, namely *wounding with intent*. "But for" his actions, she would not have been faced with the choice about treatment and those who use violence on others must take their victims as they find them (albeit that he had known her religion and so her refusal was foreseeable).

Causation: law and science compared

Science and law have different functions but share striking similarities. Both purport to provide rational, reasoned, independent, unbiased processes concerned with the objective assessment of evidence. There are also striking differences. Scientific assertions compared with determinations of legal causation have the following characteristics:

- they are population-based, not individual; general not particular;

- they are probabilistic, not deterministic;

- they are generally expressed as the refutation of the hypothesis and not a finding of fact or proof of an allegation;

- the evidence is not exhaustive, whereas an adjudication is determined according to the evidence available.

- science is not as concerned with finality as is law. There is no *res judicata* or *collateral estoppel* in science. Continuing scrutiny is always available and the jury can be brought back in at any time when new data becomes available.


The major distinction between legal determinations and scientific assertions lies in the concept of certainty. The legal concept of causation is deterministic: it is an expression of the fiction of certainty, an absolute concept. The scientific concept of causation is probabilistic: it is an expression of the uncertainty of truth, an asymptotic concept.

United States v. Thomas Case Brief

Summary of United States v. Thomas, Court of Military Appeals, 1962

Facts: Defendants were out partying hopping bars and met a girl and at a bar and started dancing. The girl was drunk and collapsed in defendant’s arms. The defendants took the unconscious girl to the car and sexual intercourse with her. When girl didn’t gain consciousness, defendants became concerned and called the police. It was found that the girl had died right at the moment when she collapsed at the bar and defendant’s had sex with the girl after she had died.

Procedure: Ds were found guilty of conspiracy to commit rape, attempted rape and lascivious conduct. The board of review set aside the conviction of attempted rape and conspiracy to commit rape.

Defendant’s Argument: It was legally impossible for defendants to attempt to rape because the woman was dead.

Issue: Were the defendants guilty of attempted circumstances under the given facts?

Holding: Yes

Rationale: The courts in the past have distinguished between factual impossibilities and legal impossibilities as defense to attempted crimes. Legal impossibilities have been accepted as defense and factual impossibilities have not. But the difference between these two
defenses is so unclear that it has led to a lot of confusion. Under the better and modern MPC rule, not factual and legal impossibility defenses are used and the ct. ruled: “we are forced to the conclusion that the law of attempts in military jurisprudence has tended toward the advanced and modern position, which position will be achieved for civilian jurisprudence if The American Law Institute is completely successful in its advocacy of this portion of the Model Penal Code.” But, the ct. also stated: “It is not an attempt when every act intended by the accused could be completed without committing an offense, even though the accused may at the time believe he is committing an offense.”

Oklahoma Uniform Jury Instructions


To copy any individual Jury Instruction into a WORD/WORDPERFECT document navigate to the desired instruction, highlight the content of that instruction, right mouse click and select COPY. Navigate to a WORD/WORDPERFECT document, right mouse click and select PASTE. This will insert the content of the selected Jury Instruction into your WORD/WORDPERFECT document.

OUJI-CR 2-15

ATTEMPT - IMPOSSIBILITY UNAVAILABLE AS A DEFENSE


The fact that it would be impossible for the defendant(s) to accomplish the intended crime is not a defense to the attempt to commit the crime of [Underlying Felony.

Committee Comments

The degree of confusion engendered by the defense of impossibility in criminal attempt law is virtually unmatched in substantive criminal law. The traditional viewpoint held that a "legal" impossibility constituted a valid defense to a criminal attempt prosecution, whereas a "factual" impossibility did not. W. LaFave & A. Scott, Criminal Law § 60, at 438-53 (1972). Technically, the distinction between a "legal" and a "factual" impossibility is articulated with facility. A "factual" impossibility exists where facts present at the time of the attempt, but unknown to the actor, render the consummation of the intended substantive crime impossible. Booth v. State, 398 P.2d 863 (Okl. Cr. 1964). Common examples of this variety of impossibility include: attempting to perform an abortion on a woman who is not pregnant, People v. Huff, 339 Ill. 328, 171 N.E. 261 (1930); bludgeoning an empty bed with the intent to murder its customary occupant, State v. Mitchell, 170 Mo. 633, 71 S.W. 175 (1902); or dipping into an empty pocket with an intent to pilfer, People v. Moran, 123 N.Y. 254, 25 N.E. 412 (1890). "Factual" impossibility has never been accepted as a valid defense.


An attempt is deemed to be a "legal" impossibility when the attemptor has completed all of his intended acts, but the sum of his acts fails to fulfill all the elements of a substantive crime. Booth v. State, 398 P.2d 863 (Okl. Cr. 1964).

"Attempting to do what is not a crime," opines Professor Perkins, "is not attempting to commit a crime." R. Perkins, Criminal Law 570 (2d ed. 1969). Commonplace examples of a "legal" impossibility include: "bribing" a person assumed to be a juror who is not, State v. Taylor, 345 Mo. 325, 133 S.W.2d 336 (1939); receiving "stolen" goods which are, in fact, not "stolen," People v. Jaffe, 185 N.Y. 497, 78 N.E. 169 (1906); cf. People v. Rojas, 55 Cal. 2d 252, 358 P.2d 921 (1961).

This dichotomy in the concept of impossibility reflects the struggle of the judiciary to reconcile apparently conflicting considerations: the concern for affording protection to societal interests from obvious manifestations of dangerousness, and the principle of legality which decrees that an individual can be convicted only for criminal acts specifically proscribed by law. However, this factual/legal dichotomy engendered numerous difficulties for the courts. The rules, simple enough in articulation, proved extraordinarily difficult in application. W. LaFave & A. Scott, (Criminal Law § 60, at 438 (1972).

Dissatisfaction with the factual/legal distinction led the drafters of the Model Penal Code to a position of total


abandonment of the defense of impossibility. Section 5.01(1) of the Code (Tent. Draft No. 10, 1960) provides

Definition of attempt. A person is guilty of an attempt to (1) commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he

a) purposely engages in conduct which would constitute the ) crime if the attendant circumstances were as he believes them to be; or

b) when causing a particular result is an element of the ) crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result, without further conduct on his part; or (c) purposely does or omits to do anything which, under the circumstances as he believes them to be, is a substantial step in a course of conduct planned to culminate in his commission of the crime.

While this section does not explicitly mention impossibility, the commentary accompanying Tentative Draft No. 10 of the Code states in unequivocal terms that "the approach of the Code is to eliminate the defense of impossibility in all situations." And again, in referring specifically to subsection 1(a) of section 5.01, the drafters comment that "]t]he purpose


of this paragraph is to reverse the results in cases where attempt convictions have been set aside on the ground that it was legally impossible for the actor to have committed the "crime contemplated"

Most jurisdictions have now abolished the defense of legal impossibility to a charge of attempt either by statute or case law. See State v. Curtis, 603 A.2d 356, 358-59 (Vt. 1991), and authorities cited therein.

The history of impossibility as a defense in Oklahoma involves a tale of two cases. Oklahoma's main case in support of the defense is Nemecek v. State, 72 Okl. Cr. 195, 114 P.2d 492 (1941), overruled on other grounds, Broadway v. State, 818 P.2d 1253, 1255 (Okl.Cr. 1991). In that case, the defendant was convicted of attempting to obtain under false pretenses reimbursement from his insurer for fire loss. The defendant's policy was valued at $600.00, and he had claimed that his total loss amounted to $1,591.47. In doing so, he intentionally claimed items had been destroyed, when, in fact, these items were not damaged by the blaze. Even without falsely listing items, however, the defendant's genuine loss still exceeded $600.00. The Court of Criminal Appeals reversed the conviction, holding that, despite the fact that the defendant had done all he intended to do, no substantive crime was committed.


In 1964, the Court of Criminal Appeals decided the case of Booth v. State, 398 P.2d 863 (Okl. Cr. 1964), a decision generally looked upon as a pivotal point in Oklahoma attempt law. The defendant had made arrangements with a thief to buy a stolen coat. Prior to delivery the thief was apprehended by police and the coat was recovered. The thief agreed to cooperate with the police by making the transfer as scheduled. The exchange was made under police surveillance, and Booth was subsequently arrested for receiving stolen goods. The trial court instructed the jury that, because the coat in question had been recovered, and thus was no longer "stolen" property, it could only consider Booth's guilt as to the lesser included crime of attempt to receive stolen goods. The jury convicted, and the Court of Criminal Appeals reversed, on the ground that "a legal impossibility precluded defendant from being prosecuted for the crime of knowingly receiving stolen property." Id. at 871. (This was in reality only a factual impossibility. See R. Perkins, Criminal Law 570-71 (2d ed. 1969.

The court, bound by the statutory law and precedent of Oklahoma, reversed the conviction, yet articulated substantial misgivings. The court permitted itself to "earnestly suggest" that the Oklahoma legislature revise the State's attempt law in accordance with the Model Penal Code's definition of attempt, section 5.01. It then quoted that section in its totality. 398 P.2d, at 872. In 1965, less than a year after the decision, the legislature substantially responded to the court's


The wording of section 44 is almost identical to that of the Code, the only variance occurring after the word "does" in subsection (b). The Code language adds "or omits to do" here. Subsection (c) of the Code, which deals with substantial steps toward commission of a crime, was omitted in its totality. This may have been done because the wording of the old general attempt statute, 21 O.S. 1961, § 42, appears to cover the same area.

Courts of other jurisdictions have cited Booth and section 44 as standing for the proposition that Oklahoma has abolished the defense of impossibility in criminal attempt prosecutions. See, e.g., Darr v. People, 193 Colo. 445, 568 P.2d 32, 34 (1977). However, the Court of Criminal Appeals has not ruled squarely on the issue of legal impossibility since the enactment of the new attempt law. Cf. Reeves v. State, 535 P.2d 706 (Okl. Cr. 1975), cert. denied, 434 U.S. 1046 (1978) (section 44 contains appropriate language for jury instructions).

The court has intimated in one subsequent case that the legal-impossibility defense has survived in Oklahoma. In Weimer v. State, 556 P.2d 1020 (Okl. Cr. 1976), the defendant raised the impossibility issue on appeal, as a defense to the charge of...
attempt to manufacture a controlled dangerous substance. In addressing the defendant's assertion, the court declared, "It is no defense that the attendant circumstances are not as the defendant believes them to be and they thereby render commission of the crime factually impossible." Id. at 1025

Despite the absence of decisive judicial pronouncement, the Commission has concluded that the language of section 44(a) is facially clear in its derogation of the impossibility defense to an attempt prosecution. This conclusion is buttressed by reference to the Model Penal Code and commentary. Nevertheless, the Commission recognizes that counterarguments exist supporting the view that section 44(a) does not constitute a legislative rejection of the defense of legal impossibility. First, the statutory language does not specifically mention any form of impossibility. It simply states that a defendant is guilty of an attempt if he has performed sufficient acts "which would constitute the crime if the attendant circumstances were as he believes them to be." Second, this language, if literally construed, would convict a defendant no matter how absurd the situation or unlikely the success of the attempt. For example, the legally sane but mentally defective individual who truly believes he can effect the death of an enemy by utilizing voodoo magic, so long as the belief in the adequacy of these means is demonstrated, could be convicted of attempted murder, regardless of whether the voodoo rites were practiced hundreds of miles from the location of the intended victim. Note, The Status of


Decision: June 25, 2008

The U.S. Supreme Court struck down as unconstitutional the Louisiana statute that allowed the death penalty for the rape of a child where the victim did not die. In Kennedy v. Louisiana, the Court held that all such laws, where the crime was against an individual and no murder was committed, were contrary to the national consensus restricting the death penalty to the worst offenses. As a result, the only two people sentenced to death for this crime in the modern capital punishment era no longer face execution. Both were sentenced under the Louisiana statute that was found unconstitutional. No one is now on death row for any offense except murder.

The Court noted that the defendant, Patrick Kennedy, had been sentenced to death under a law that was embraced by only 6 out of the 50 states. Justice Anthony Kennedy, writing for the 5-4 majority, stated, "Based both on consensus and our own independent judgment, our holding is that a death sentence for one who raped but did not kill a child, and who did not intend to assist another in killing the child, is unconstitutional under the Eighth and Fourteenth Amendments." The Court pointed to the danger in
laws such as Louisiana's, which allowed the death penalty where no murder was committed: "When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint.

Victims' groups and child advocates had concluded that the death penalty for child rape could actually harm children, rather than protect them. Some of the reasons they cited included a possible decrease in reporting, re-victimization through the lengthy appeals or re-trials, and that equating rape to murder sends the wrong message to child victims.

'Approved by Abass Ahmadi, Naser Ghafari, and Mahdi Gozali.