

Criminal Law Mooting - Moot Proforma:
Skeleton Proforma for Appellant/Respondent

Student Name

University

Professor Name

Course

Date

CRIMINAL LAW MOOTING - MOOT PROFORMA

IN THE SUPREME COURT

BETWEEN

R

Respondent

-And-

Jones

Appellant

SKELETON ARGUMENT
ON BEHALF OF THE SENIOR/JUNIOR COUNSEL FOR THE
APPELLANT/RESPONDENT*

First ground of appeal:

The cause of Smith's death was not the stab wound, which was not life threatening. The immediate cause of Smith's death was the removal of Smith from life support, consequent to Smith being subjected to inadequate emergency medical treatment. Both negligent medical treatment and removal from life support were intervening acts between the injury and Smith's 'conventional' death.

(For the appellant)

The injury inflicted by Jones on Smith was a substantial and operative cause of death. It did not need to be the sole cause. Negligent medical treatment, even as a contributory factor, does not relieve the defendant of liability. As such, Jones is not relieved of criminal liability for Smith's death.

(For the respondent)

Submission(s)* on the first ground of appeal:

1. The prosecution must prove that the defendant's acts were the factual as well as the legal cause of the unlawful result. While the 'but for' test of factual causation is satisfied in this case, the appeal is based on the legal causation aspect. The basic principle is that the defendant's acts need not be the sole or even the main cause of death; they must, however, be a 'substantial and operative' cause at the time of death. The act of intervention (novus actus interveniens) has the potential to interrupt the chain of causation if it is of sufficient force to make the defendant's act inconsequential as the operative cause at the time of death.

The established principle shows that it is not necessary that the action of the defendant be the sole cause of death, nor even the main cause. It must be a 'substantial and

operative' cause at the precise time of death as stipulated in *R v Smith* [1959] 2 QB 35. An intervening act (*novus actus interveniens*) has the potential to break the chain of causation if it is of sufficient force that the original act of the defendant is no longer a substantial and operative cause. Allen and Edwards point out that "where a subsequent act or event is regarded as the sole cause of the result, the act of the defendant will not be regarded as causing it."¹ The appellant argues that both the negligent medical treatment and the subsequent removal from life support are intervening acts.

2. It is submitted that the negligent medical treatment afforded to Smith, particularly the lack of critical supplies in the ambulance, constitutes an intervening act. The court must, therefore, assess the standard of medical treatment. In *R v Jordan* (1956) 40 Cr App R 152, the victim died in the hospital after the original wound had largely healed. The Court of Appeal reversed the murder conviction, as the evidence showed that the death was not caused by the original stab wound. Instead, the intravenous infusion of a drug to which the victim was known to be intolerant, together with the continued administration of the same treatment despite the clear manifestation of intolerance caused death. It should be noted that this treatment was described as 'palpably wrong.' In the present scenario, the ambulance's lack of emergency medical supplies, which directly stemmed from the failure to replenish, is similar to the 'palpably wrong' treatment in the *Jordan* case. It was an external event, not connected to the original wound, which contributed substantially to Smith's deterioration before he was admitted to the hospital. Allen and Edwards note that "if the medical treatment is so grossly negligent as to be an independent cause of death, it may relieve the defendant of liability."²
3. In addition, the subsequent assessment by medical professionals to declare Smith to be 'brain dead' and to remove life support is a further and final intervening act. The causal chain can be severed by a subsequent, independent act that becomes the proximate cause of death. It was specifically found that the initial wound was not life-threatening. The progression to coma, brain death, and the removal of life support is a sequence of events triggered by the cumulative effect of the initial delay and the negligent pre-hospital care, rather than the wound. The decision in *R v Cheshire* [1991] 1 WLR 844 is distinguishable on these facts. In *Cheshire*, the defendant's gunfire was the cause of the medical necessity of the victim. The subsequent medical negligence (a negligently performed tracheotomy, which narrowed the windpipe) was not found to be sufficiently independent or substantial to break the causal chain. The Court of Appeal held that only in cases of gross and independent medical negligence would the causal chain be broken. In the *Cheshire* case, the injuries were life-threatening, which necessitated the very treatment that led to complications. However, in this case, the original injury was not life-threatening. The negligent treatment that followed did not emanate from a life-threatening situation created by the defendant. It emanated from an independent act that, together with the victim's refusal of treatment (see Ground 2), led to a life-threatening situation that had not existed before. The withdrawal of life support, though a medical decision, was the final event that directly precipitated 'conventional death'. It was the culmination of a series of events that are not legally connected to the initial act of the appellant.

¹ MJ Allen and I Edwards, *Criminal Law* (17th edn, OUP 2024) 52.

² *ibid* 54.

Authorities:

1. *R v Jordan* (1956) 40 Cr App R 152.
2. *R v Cheshire* [1991] 1 WLR 844.
3. *R v Smith* [1959] 2 QB 35.

Second ground of appeal:

Smith voluntarily chose to bring about his death when he refused to seek medical treatment. This voluntary act breaks the chain of causation between the injury inflicted by Jones, and Smith's death.

(For the appellant)

The law is concerned with the consequences of the defendant's wrongdoing and not with the victim's response to the injury. As such, Jones is not relieved of criminal liability for Smith's death

(For the respondent)

Submission(s)* on the second ground of appeal:

1. In order for the chain of causation to be unbroken, the actions of the victim must be a reasonable and foreseeable consequence of the defendant's actions. If the reaction of the victim is considered 'daft' or unreasonable, it may not break the chain, as seen in the case of *R v Roberts* (1971) 56 Cr App R 95. However, the critical factor in the present case is that Smith's decision not to accept treatment was not an impulsive or instinctual reaction to a crisis situation. It was a deliberate, voluntary, and informed decision made by a competent adult with the capacity to make a decision and, for his own reasons (fear of police involvement), he deliberately chose not to accept treatment. This view is supported by Allen and Edwards who note that, "if the victim's act is free, deliberate and informed, it may break the chain of causation".³
2. The rule that a victim's choice not to seek medical aid normally will not interrupt the causal chain, as stated in *R v Blaue* [1975] 1 WLR 1411, is based on the 'thin skull' rule. The 'thin skull' rule is related to the victim's natural characteristics. In *Blaue*, the victim's choice not to accept a blood transfusion because of her religious beliefs was not considered an intervening act, as it was a natural part of her character as a Jehovah's Witness. This means that the defendant was obliged to respect her belief. However, the present case conditions could not be more different. Smith's choice not to accept the transfusion was not based on an immutable personal characteristic or belief system. Rather, it was a deliberate, non-religious choice made to avoid the consequences of his own misconduct. This is a voluntary and autonomous act of will, separate from the harm inflicted by the appellant.

³ *ibid* 58.

3. A voluntary, informed, and deliberate act by either a third party or the victim can interrupt the chain of causation. In *R v Kennedy (No 2)* [2007] UKHL 38, the House of Lords held that where a victim administers a drug to himself freely and voluntarily, the person who supplied the drug is not guilty of manslaughter. This is because the voluntary act of the victim interrupts the chain of causation. Similarly, Smith's decision not to accept treatment was a free and voluntary act. This directly led to the fatal delay, which worsened his condition from non-life threatening to critical. This reaction was not a 'daft' or foolish response to the stabbing incident in the sense that it was spontaneous, but rather a deliberate action with disastrous consequences. His voluntary act was the catalyst for the chain of events that followed, which ultimately led to the need for life support. Therefore, this voluntary act is a 'novus actus interveniens' that exempts the appellant from legal liability for the death.

The significance of Smith's refusal is further accentuated by both the timing and duration of the same. At the point in time when the injury was caused, it was not fatal. The evidence suggests that had Smith received immediate medical attention, he would probably have lived. The fatal delay was directly caused by Smith's voluntary act. Notably, this was not a momentary lapse of judgment but a prolonged refusal over a period of several hours, during which Smith's condition progressively deteriorated. Each hour that passed gave Smith another opportunity to change his mind. He did not, and later, his sister called an ambulance. However, by then, the opportunity for any meaningful medical attention had been significantly lost, further exacerbated by the negligent medical attention referred to in Ground 1. This case is in stark contrast to the facts in *R v Holland* (1841) 2 Mood & R 351, where the refusal of the victim to submit to a finger amputation (which led to lockjaw and death) did not break the causal chain. This decision from the 19th century must be seen in its proper context and has little bearing in modern times. Modern rules of causation, as set out in *Kennedy (No 2)*, recognise the value of autonomy and the fact that free choices have implications.

Authorities:

1. *R v Blaue* [1975] 1 WLR 1411.
2. *R v Kennedy (No 2)* [2007] UKHL 38.
3. *R v Holland* (1841) 2 Mood & R 351.

Bibliography

Allen MJ and Edwards I, *Criminal Law* (17th edn, OUP 2024)