**Introduction**

Voluntariness is an important principle that appears regularly in the discourse of criminal law, but its definition remains ambiguous.[[1]](#endnote-2) Voluntariness is essential for determining criminal liability as it provides a means to distinguish between those who should be held responsible for their actions and those who are not (as) blameworthy. For example: The question of whether a defendant has become voluntarily or involuntarily intoxicated is central to the way the defence of intoxication operates. Manslaughter can be categorised as voluntary when the defendant has the *mens rea* for murder but has a special partial defence, or involuntarily when the defendant has killed without malice aforethought. Voluntariness has particular relevance when considering issues of causation, as Hart and Honore state,

‘voluntary human action … has a special place in causal inquiries … because, when the question is how far back a cause shall be traced through a number of intervening causes, such a voluntary action is often regarded both as a limit and also as still the cause...’[[2]](#endnote-3)

The recent case of *R v Field*[[3]](#endnote-4) has once again brought to the fore this fundamental principle of criminal law; causation. In other words, that before a person can be found guilty of a crime it must be proved that they caused the required *actus reus* (with the accompanying *mens rea*) for the crime with which they are charged*.*

This article will explore when the victim’s voluntary actions can be said to have broken the chain of causation in establishing the defendant as the cause of the victim’s injuries. Whilst this should appear easy to determine, this article will show from the case decisions of *R v Wallace*[[4]](#endnote-5)and *R v Field*[[5]](#endnote-6) that the opposite is true. This article will further argue that the confusion caused by the way the issue of voluntariness was addressed in the judgment of *R v Field* could have been avoided. This would have been achieved by applying the established legal principles of omissions to determine whether the defendant had a duty to act, and whether his failure to act breached this duty and caused the victim’s death, instead of considering if the defendant killed the victim with his supply of whisky.

1. **The Doctrine of Causation**

In criminal law the traditional view is that before someone is convicted of a crime, and consequently punished, it must be established that they acted voluntarily in infringing the law.[[6]](#endnote-7) ‘Moralists and lawyers regard the individual’s will as the autonomous prime cause of his behaviour.’[[7]](#endnote-8) Therefore, the way a person chooses to exercise his free-will in reference to established laws, or whether he has been free to make the choices he does, determines whether he has acted voluntarily and should be subject to the criminal law and the associated penalties. As Blackstone states, ‘punishments are only inflicted for the abuse of free-will’[[8]](#endnote-9) and punishment is not appropriate where the defendant acts without freewill.[[9]](#endnote-10) To establish a defendant’s criminal liability in result crimes it must be shown that the defendant’s contribution, through their own free-will, resulted in the prohibited outcome. This is necessary where the offence, such as murder or manslaughter, could occur by natural causes or accident, rather than the wrongful behaviour that is required for a crime such as theft.[[10]](#endnote-11) For example, if a person dishonestly takes an item from a shop, whilst there may be multiple reasons for this, it is not difficult to determine where the legal responsibility for the theft should lie. In comparison, a person may punch another causing the victim to fall and bang his head, but the ambulance sent to treat the victim may be delayed, the doctor may treat the victim negligently, the victim may refuse treatment, or the victim may have an underlying health condition. If the victim dies, the question of who has caused the death becomes more complicated to establish.

Causation is divided into two limbs, the first asking whether the defendant is the factual cause of the outcome and the second questioning whether the defendant is the legal cause. In other words, causation asks who is responsible (factual causation) and who ought to be responsible (legal causation). Whilst factual causation can often be straight forward to determine, by asking the question ‘but for the defendant’s actions would that result have occurred?’[[11]](#endnote-12) legal causation is more complex. This is because it becomes a normative enquiry of where the correct place is to draw the line between what the defendant ought and ought not to be responsible for.[[12]](#endnote-13)

Causation adopts several principles to establish where this line should be drawn for what prohibited consequences can be attributed to the defendant’s voluntary actions. These include: (i) The *de minimis* rule, which requires that the defendant’s actions are more than a minimal cause of the prohibited consequence.[[13]](#endnote-14) (ii) The *Novus actus interveniens* rule *,* which considers if there has been a new intervening act, from the victim or a third party, between the defendant’s voluntary actions and the prohibited consequence.[[14]](#endnote-15) (iii) The thin skull rule, which requires that the defendant takes his victim as he finds them.[[15]](#endnote-16) As will be examined below, the courts have grappled with these legal principles to achieve, what may be considered, the morally palatable result in the cases before them.

1. **The voluntariness of the victim’s actions**

In *R v Field*[[16]](#endnote-17)the defendant’s application to appeal to the Supreme Court against his conviction for murder was rejected. It has long been established that ‘[w]hen dealing with a murder case the Crown must prove (a) death as the result of a voluntary act of the accused and (b) malice of the accused.’[[17]](#endnote-18) It was held that the defendant’s voluntary action of supplying a bottle of ‘deadly whisky’[[18]](#endnote-19) with the intention that the victim would die as a result of drinking it so he could inherit under the deceased’s will, was sufficient for a conviction of murder and that the Court of Appeal had been correct in upholding this conviction.[[19]](#endnote-20) The issue at the heart of the appeal, as considered by the court, was not the defendant’s action in supplying the whisky but the voluntariness of the victim’s action in choosing to drink the whisky.

The Court of Appeal considered whether the victim drinking the whisky was a *novus actus interveniens,* and determined that there had not been a break in the chain of causation between the defendant supplying the whisky and the victim’s subsequent death.[[20]](#endnote-21) In coming to this conclusion the court considered the binding precedent set in *R v Kennedy*.[[21]](#endnote-22) In *R v Kennedy* the House of Lords established that free, deliberate and informed conduct on the part of the victim or a third party, that supervenes over the defendant’s act, will start a new chain of causation.[[22]](#endnote-23) This is because, despite what determinists would argue, ‘[a]dults of sound mind are autonomous beings, who are free to make their own decisions’.[[23]](#endnote-24) Therefore, the defendant should not be held criminally responsible when the victim’s death can be attributed to the victim’s own actions.

This then poses the question of when the victim’s actions can be deemed truly free, deliberate, and informed, or in other words, voluntary. In *R v Kennedy* the House of Lords were not asked to consider this, but proceeded on the assumption that the victim’s actions were such, as in supplying drugs the defendant was only facilitating the victim to voluntarily cause harm to himself.[[24]](#endnote-25) Whilst this simple analysis ‘avoids the jury having to consider the philosophical question of whether there are degrees of volition’[[25]](#endnote-26) it ignores that drug addicts’ actions are not truly free as they are determined by their addiction.[[26]](#endnote-27) As Moore pronounces, ‘there is no reason whatever to think that willings are uncaused… physically realized events are both causes and effects of earlier causes.’[[27]](#endnote-28) Meaning that the choice the drug addict makes is dependent on a life full of experiences and beliefs that shape the decision made. According to the thin skull rule, the defendant must take their victim as they find them. This is not limited to physical attributes.[[28]](#endnote-29) This means that if the victim is an addict whose actions are not truly free, as they cannot resist the temptation of self-administrating the drug, the defendant should not be able to use this as an excuse to avoid liability.

Regardless, as it was accepted that the victim’s actions were free, deliberate and informed in *R v Kennedy,* the defendant’s conviction for manslaughter was quashed. This, therefore, provided some direction on when the defendant’s actions in supplying drugs can be said to be the cause of the victim’s death. It does not, however, provide clarity of when the victim’s actions will be deemed free, deliberate, and informed, and thus, voluntary. This has meant that the law has not been consistently applied. As Rasiah argues:

‘the Court of Appeal is willing to explore the range of the evaluative concept of voluntariness and whether an act is free, deliberate and informed, in order to limit the exculpatory effect of the *novus actus interviens* principle articulated by Lord Bingham in *Kennedy*.’[[29]](#endnote-30)

As such, in *R v Wallace*[[30]](#endnote-31) the Court of Appeal held that the victim choosing to end his life through the means of euthanasia was deemed to be an involuntary action. This was due to the life altering injuries he had sustained through an acid attack at the hands of his former girlfriend.[[31]](#endnote-32) Thus, unlike in *R v Kennedy*, the jury should have beenrequired to enter into the philosophical question of whether there are degrees of volition and assessed the victim’s actions accordingly.[[32]](#endnote-33) The Court of Appeal, in allowing the Crown’s appeal against the judge’s decision to withdraw the charge of murder from the jury, determined that even though the victim’s choice to undertake assisted suicide was informed and voluntary by the requirements needed to authorise the process under Belgium’s law, it should have been left to the jury to decide if the victim’s actions were voluntary in the sense of being able to break the chain of causation.[[33]](#endnote-34) As such, the rule in *R v Kennedy* did not apply, as the court held that the victim’s actions could be considered not to be free as required by the *novus actus interveniens* rule.[[34]](#endnote-35) As Firkins notes in his discussion of the requirement of voluntariness and the contradictory outcomes of *R v Kennedy* and *R v Wallace*, ‘such an ambiguous notion, therefore leads to controversial outcomes’.[[35]](#endnote-36) Thus, resulting in the perplexing conclusion in *R v Wallace* that the victim’s voluntary actions of choosing euthanasia could be deemed involuntary.

The judgment in *R v Wallace* raises two further issues in relation to the victim’s actions. Firstly, whether the actions of the victim of accepting a lethal injection, which was the medical cause of death, can break the chain of causation, and secondly whether the victim’s actions need to be unforeseeable for the chain to be broken.

It has long been accepted that a victim’s refusal to accept medical treatment, will not break the chain of causation. As stated in *R v Blaue*: ‘He who inflicted an injury which resulted in death could not excuse himself by pleading that his victim could have avoided death by taking greater care of himself.’[[36]](#endnote-37) In *R v Wallace,* however, it was the victim’s actions of accepting euthanising treatment, rather than a refusal to accept treatment, which was in question. The more recent case of *R v Dear*, which was applied in *R v Wallace*,[[37]](#endnote-38) confirmed that a victim’s actions will not break the chain of causation if the injuries inflicted by the defendant were an operating and significant cause of the death.[[38]](#endnote-39) In *R v Wallace,* despite the time delay between the defendant’s actions of throwing the acid and the victim’s death, the original injuries were still operating and contributed significantly, if not solely, to the defendant’s decision to request euthanasia. The cause of death, however, was the lethal injection and not the injuries from the acid attack. Notwithstanding this, it could still be said that the acid attack contributed significantly to the death. As seen in *R v Cheshire*,[[39]](#endnote-40) when the victim’s gunshot injuries to the stomach and leg had almost healed the doctors’ actions, which led to a blockage in the victim’s windpipe, did not break the chain of causation. The defendant’s actions were held to have contributed significantly to the victim’s death.[[40]](#endnote-41) Therefore, arguably there does not need to be a direct connection[[41]](#endnote-42) between the injuries caused by the defendant and the resulting medical cause of death, as long as it can be shown that the defendant’s actions significantly contributed to the death.

This still does not resolve the second issue. Actions of the victim that are not considered reasonably foreseeable can break the chain of causation.[[42]](#endnote-43) This principle of foreseeability, however, whilst readily accepted in civil law only seems to apply in criminal law if the original wound is not significant and operative.[[43]](#endnote-44) Cases when the issue of foreseeability has readily been considered, are ones where the substantial injury occurs after the victim has acted in fear in response to the defendant’s actions, which are yet to be significantly physically harmful.[[44]](#endnote-45) This then raises the question of why foreseeability of the victim’s actions in considering whether the chain of causation has been broken was included in the model jury direction at the end of the judgment in *R v Wallace*,[[45]](#endnote-46) when at the time of death the original wound was still operating and significant. Furthermore, it is difficult to know when a jury would ever foresee that a person would go on to be euthanised, when the initial act of throwing acid occurred in a country where euthanasia is illegal. It is perhaps then not surprising that on retrial, the jury acquitted *Wallace* of murder, although she did become the first person sentenced to life for an acid attack.[[46]](#endnote-47)

One explanation of why the Court of Appeal allowed the Crown’s appeal in *R v Wallace* is that criminal law does not always follow strict legal principle, such as the *novus actus interveniens* rule laid out in *R v Kennedy*. The way the law is developed and applied is instead influenced by what is deemed morally acceptable. As Simester states: ‘The unwelcome nature of criminal conviction… naturally creates pressure to accommodate moral considerations within the causation doctrine.’[[47]](#endnote-48) Causation acts as a tool to determine who can justly be held legally accountable (and labelled) for the outcome. As the case of *R v Wallace* was morally charged, this influenced the Court of Appeal’s decision.[[48]](#endnote-49) As Firkins comments:‘The court therefore clearly blamed D for V’s death. As a result, it controversially tightened the notion of voluntariness in order to ascribe liability to D for the death of V.’[[49]](#endnote-50) The result of this is that the judicial reasoning has led to a lack of certainty in the application of the legal principle of voluntariness.

Despite the morally charged context of *Wallace* and the Crown’s appeal being allowed, as stated above, the jury did not convict in *Wallace's* retrial. Perhaps the jury held similar views to that of Wilson who had previously argued that:

‘If a person chooses to kill themselves because of something somebody else does it is their choice not the other’s. If the other has done something wrong then the appropriate response is to censure and punish for that wrong rather than use the victim’s unusual reaction as an occasion to pile on added criticism and punishment.’[[50]](#endnote-51)

Therefore, whilst the decision of the Court of Appeal may have allowed criminal liability to be ascribed to the defendant, the limited phrasing of the jury direction and the robustness of the jury’s decision making, meant that *Wallace* was found not the cause of the victim’s death.

Following the decision in *R v Wallace*, the Court of Appeal were again called to consider the issue of whether the victim’s actions could break the chain of causation in *R v Field.*[[51]](#endnote-52) The Court of Appeal once more distinguished the facts from *R v Kennedy* and decided, similarly to *R v Wallace*, that the victim’s otherwise seemingly voluntary actions were involuntary. The basis for this decision was that in choosing to drink the whisky the victim had not been fully informed of the circumstances.[[52]](#endnote-53) The court held that the pertinent circumstance was the defendant’s intent that the victim should die as this meant that whilst the victim thought he was in ‘safe hands’, should he fall into difficulties whilst drinking highly alcoholic whisky, the opposite was in fact true.[[53]](#endnote-54)

In examining the judgment in *R v Wallace* Sullivan and Simester comment that although the conviction is morally understandable, that morals cannot be used to avoid clear legal principle as set out in *Kennedy*,[[54]](#endnote-55) which appears to be exactly what happened again in *R v Field*. Whilst the decision in *R v Wallace* can perhaps be rationalised as the defendant had started the chain of causation with the illegal act of covering the victim with acid, in *R v Field*, regardless of any intent he may have had, the actions of the defendant constituted no more than making available a legal substance.

This raises the question of how minimal a defendant’s contribution can be to the result to fulfil the *de minimis* principle. For example, if a person leaves their keys in their car and another takes the car and crashes it and dies, can the car owner be said to have been more than a minimal cause of the death? *Kennedy* establishes that a defendant will not be held responsible for merely providing the opportunity for the victim to cause their own death.[[55]](#endnote-56) ‘The purpose of a criminal conviction is not simply to pinpoint a convenient wrongdoer upon which to pin responsibility, but to declare a moral truth about the undesired event, namely that it was the wrongdoer’s ‘doing’ for which he is accountable.’[[56]](#endnote-57) In *R v Field* the defendant was pinpointed as the wrongdoer of murder, but the issue is what was his ‘doing’ for which he has been held accountable? This seems to suggest that *R v Field* should not have been criminally responsible, as he only supplied the whisky, but, as stated above, the appeal was focused on the voluntariness of the victim’s actions in drinking the whisky. This was even though there was no suggestion that the victim had been forced to drink the whisky and it was accepted at trial that it was his choice.[[57]](#endnote-58) Furthermore, in *R v Field* it cannot be claimed, as in *R v Wallace,* that the original injury was still operating and significant as the defendant had caused no injury to the victim.

One line of reasoning adopted by the Court of Appeal to reach their conclusion that the victim’s actions in drinking the whisky were not voluntary was to draw an analogy to a weak swimmer, who enters the water under the false assurances from the accused that he would help if the swimmer encountered difficulties. In this situation the court accepted that the accused would be criminally liable if the victim drowned.[[58]](#endnote-59) Fulford LJ deemed the defence’s concession to this point to be both correct and important.[[59]](#endnote-60) This acceptance by the defence is perhaps somewhat surprising as it appears to ignore one fundamental difference. Unlike in the example of the swimmer, there was no evidence in *R v Field* to support that positive assurances to help were made, although perhaps this could be implied from the relationship between the defendant and the victim. The court stated it was the defendant’s deceitful intent in wishing the victim to die that changed the nature of the act of supplying the whisky to one of something more dangerous. This was because the victim had drunk the highly alcoholic whisky relying on the presumption that his caring partner would assist him if he encountered difficulties.[[60]](#endnote-61) The court concluded that this in turn meant that the victim’s act in drinking the whisky was no longer voluntary under the criteria set out in *R v Kennedy* as his actions were not informed.[[61]](#endnote-62)

The outcome is, however, that the actions of choosing to drink whisky that appear to be voluntary, are regarded as involuntary. Thus, to achieve a morally satisfactory outcome the clear and established legal principle of causation, that voluntary actions from the victim will break the chain of causation, was avoided. Whilst this approach may be regarded as commendable, if it is accepted that the ends justify the means, it does not consider that an alternative, more principled approach could have been taken, by considering the legal doctrine of omissions.[[62]](#endnote-63)

1. **An alternative analysis of *R v Field***

An alternative way of looking at the case of *R v Field* is through the lens of omissions.[[63]](#endnote-64) In the English legal system, there is no general liability for failure to act, but the existence of a voluntarily undertaken duty of care, which is breached by the defendant’s failure to act, can lead to liability.[[64]](#endnote-65) As has been previously established in case law, a failure to act in a duty situation married with an intention to kill or cause serious bodily harm, can lead to a conviction for murder.[[65]](#endnote-66) The question in the case of *R v Field,* then becomes not whether the defendant’s actions in supplying the whisky caused the victim’s death or whether the victim’s actions are a voluntary break in the chain of causation, but instead whether the defendant had voluntarily undertaken a duty of care towards the victim, which he then breached by failing to provide assistance resulting in the victim’s death.[[66]](#endnote-67)

There is much debate about whether an omission can fulfil the voluntary action requirements of a crime,[[67]](#endnote-68) when a duty should be imposed as a vehicle for determining liability for an omission,[[68]](#endnote-69) and what the proper role of judges is in retrospectively determining that a duty situation exists.[[69]](#endnote-70) Nonetheless, the courts have established that a duty to act can be established in several ways, these include: voluntarily assuming a responsibility for another,[[70]](#endnote-71) through certain kinds of relationship,[[71]](#endnote-72) and by the defendant creating a dangerous situation.[[72]](#endnote-73) As will be discussed below, in *R v Field* the defendant could fit any of these already recognised duty situations without stretching the already established principles of omissions.

The Court of Appeal reasoned that the victim’s belief that the defendant would help if he got into difficulties changed the nature of the act. On the contrary, it can be argued that the act of supplying whisky remained the same as there was no deceit about the contents of the bottle or the effects it would have. As such, more logically, this article argues that the victim’s belief that the defendant would care for him shows that there had been a voluntary undertaking of a duty towards the victim. As stated in *R v Evans* a duty can arise when ‘a voluntary assumption of risk by the defendant had led the victim, or others, to become dependent on him to act.’[[73]](#endnote-74) Failure to assist the victim when he got into difficulties, as it seems accepted by the jury during the trial that the defendant was actually present,[[74]](#endnote-75) could amount to a breach of this duty of care. This, coupled with the defendant’s desire that the victim should die, would be sufficient for a conviction of murder.[[75]](#endnote-76) Thus, if the jury considered that the defendant had voluntarily undertaken a duty to act by supplying the whisky that led to the victim to depend on him to help (which if provided would have meant the victim lived)[[76]](#endnote-77) the outcome of the case could remain the same. This would be achieved without the need to manipulate the facts so that the chain of causation was not broken by concluding that the voluntary drinking of the whisky was involuntary.

Alternatively, it could be argued that in *R v Field* the defendant had a duty to act from the duty of care owed to the victim through their relationship. As Fletcher notes, the relationship does not need to be a formal legal one, the important issue is whether the relationship is one of interdependence.[[77]](#endnote-78) In this case they were in what the court described as a ‘caring and protective’ relationship.[[78]](#endnote-79) They had lived together for two years and were committed to each other through a betrothal ceremony. It has previously been established that a duty to act can exist from a husband’s duty of care to his wife,[[79]](#endnote-80) and from a man’s duty of care to his female partner.[[80]](#endnote-81) This same principle could be applied to the same-sex partnership in *R v Field*.

A further alternative, but perhaps less convincing on the facts of *R v Field*, is that a duty can be established as a result of creating a dangerous situation. In *R v Miller*, Lord Diplock observed that he could see:

‘no rational ground for excluding from conduct capable of giving rise to criminal liability, conduct which consists of failing to take measures that lie within one’s power to counteract a danger that one has oneself created, if at the time of such conduct one’s state of mind is such as constitutes a necessary ingredient of the offence.’ [[81]](#endnote-82)

Whilst in *R v Miller* the danger arose from the act of starting a fire, there is no requirement that the initial dangerous act must be criminal in nature.[[82]](#endnote-83) Therefore, in *R v Field* it could be argued that by supplying the whisky, by the defendant’s own admission to test the victim, this could amount to the creation of a dangerous situation. As such, the defendant would have a duty to mitigate the danger he had created, and by failing to at least call for assistance he had breached this duty. Arguably, however, the danger was not created by the supply of the whisky but the victim choosing to drink it.[[83]](#endnote-84) Thus, difficulty may arise in establishing that the defendant had created the dangerous situation that led to the victim’s death.

Regardless of how a duty situation could be said to be established, what is clear is that the difficulties that arose in *R v Field* could have been avoided. The court did not need to conclude that the defendant legally providing a bottle of whisky, which was willingly drunk by the victim, amounted to the defendant causing the death. The court should not have focused on whether the defendant’s voluntary actions in supplying the whisky were more than a minimal cause of the death, nor whether the victim’s actions in drinking the whisky were voluntary. At this point, no crime had been committed, as despite the defendant’s hidden intentions, a person cannot be convicted of murder with *mens rea* alone.[[84]](#endnote-85) The crime occurred when the defendant voluntarily omitted to assist the victim, when he had a duty to do so. This omission failed to break the chain of causation between the defendant’s supply of whisky, the victim drinking it and the whisky causing the victim’s death. Thus, it was *Field’s* omission, not his actions, that were ‘causally significant because it *did not break the causal chain that brought about the result*’[[85]](#endnote-86) of the victim’s death.

**Conclusion**

The problem exists that there is no clear definition of when the voluntary actions of the defendant will legally cease to be the cause of the outcome due to the voluntary actions of the victim. A wide approach has been adopted whereby a moral judgment of the acceptableness of the defendant’s actions is made. This moralist influence has led the courts to inconsistently approach the question of whether a victim’s voluntary action will amount to a *novus actus interveniens.* Despite the precedent that free, deliberate, and informed conduct will break the chain of causation,[[86]](#endnote-87) legal manoeuvring to assess the degree of volition in the victim’s actions has resulted in the biding precedent from *R v Kennedy* being avoided. The outcome is that one person who has voluntarily chosen euthanasia,[[87]](#endnote-88) and another who has voluntarily poured and drunk whisky,[[88]](#endnote-89) are deemed to have acted involuntarily and thus not broken the chain of causation. Their actions whilst appearing from the facts to be voluntary are found to be legally involuntary. Whilst the former case is perhaps justifiable as the defendant started the chain of causation by causing the victim life-changing injuries, the latter is unsound as all the defendant’s actions amounted to were legally supplying a bottle of whisky.

The judgment in *R v Field* justifies this outcome by explaining that the defendant’s hidden intentions changed the nature of the act.[[89]](#endnote-90) The act, however, did not change. The whisky was still the same whisky it always was, and no secret or deception was made as to the contents of the glass that the victim voluntarily drank from. As such, the legal reasoning in *R v Field* has complicated the issue of causation; an already complex area of law.[[90]](#endnote-91) This problem will continue to exist until the precedent in *R v Kennedy* is more strictly adhered to, or the rule is reformulated to allow greater flexibility without linguistic gymnastics to make voluntary actions involuntary. Whilst it may not be a solution for all cases, in *R v Field*, the law could have been constructed more clearly by considering liability for the defendant’s omission to help the defendant after establishing a duty of care was owed to him. As it was this omission that led to the victim’s death, not the defendant’s actions.

1. For example, see HLA Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2nd edn, Oxford University Press 2008), 90 who states that he ‘cannot find in any legal writings any clear or credible account of what it is for conduct to be voluntary’; and AP Simester, ‘On the So-called Requirements for Voluntary Action’ [1998] Buffalo Criminal Law Review 403 at 405 who states that ‘the voluntary act requirement is in need of elucidation’. [↑](#endnote-ref-2)
2. HLA Hart and A Honoré, Causation in the Law (2nd edn (Oxford University Press 1985), 2. [↑](#endnote-ref-3)
3. *R v Field* [2021] EWCA Crim 380. [↑](#endnote-ref-4)
4. *R v Wallace* [2018] EWCA Crim 690. [↑](#endnote-ref-5)
5. See *Field* [2021], above n. 3. [↑](#endnote-ref-6)
6. See Hart, above n. 1 at 90; Jeremy Horder, *Ashworth’s Principles of Criminal Law* (10th edn, Oxford University Press 2022), 76; See Simester, above n. 1 at 404-407; JA Stephen, History of the Criminal Law of England (Vol II Macmillan 1883), 97; JW Turner, *Kenny’s Outlines of Criminal Law* (17th Edn, Cambridge University Press 1953), 26-27; N Walker, *Why Punish?* (Oxford University Press 1991), 1-3. [↑](#endnote-ref-7)
7. Glanville Williams, ‘Finis for Novus actus?’ (1989) 48(3) CL0J 391 at 392. [↑](#endnote-ref-8)
8. W Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765 -1769,* (Vol IV The University of Chicago Press 1979), 27. [↑](#endnote-ref-9)
9. See Walker, above n. 6 at 1-3; and see Stephen,above n. 6. [↑](#endnote-ref-10)
10. George P. Fletcher, Basic Concepts of Criminal Law (Oxford University Press 1998), 62. [↑](#endnote-ref-11)
11. *R v White* [1910] 2 KB 124. [↑](#endnote-ref-12)
12. See Grant Firkins, ‘Rethinking Causation in English Criminal Law’ [2023] J Crim L 18, 20 who, in arguing for an INUS approach to causation, states that the current principles of causation ‘are often grounded only in moral-responsibility ascription which gives rise to incoherence and uncertainty’. [↑](#endnote-ref-13)
13. *R v Pagett* [1983] 2 WLUK 28*.* [↑](#endnote-ref-14)
14. *R v Jordan* [1956] 1 WLUK 11. [↑](#endnote-ref-15)
15. *R v Blaue* [1975] 1 WLR 1411. [↑](#endnote-ref-16)
16. *R v Field* [2022] EWCA Crim 316. [↑](#endnote-ref-17)
17. *Woolmington v DPP* [1935] AC 462 at 482. [↑](#endnote-ref-18)
18. GR Sullivan and AP Simester, ‘Deadly Whisky’ [2022] LQR 11. [↑](#endnote-ref-19)
19. See *Field* [2022], above n. 16 at [74]. [↑](#endnote-ref-20)
20. See *Field* [2021], above n. 3 [63]. [↑](#endnote-ref-21)
21. *R v Kennedy* [2007] UKHL 38. [↑](#endnote-ref-22)
22. Ibid. at [14]. [↑](#endnote-ref-23)
23. Ibid. [↑](#endnote-ref-24)
24. Ibid at [19]. [↑](#endnote-ref-25)
25. Karl Laird, ‘Causation: R v Wallace (Berlinah) Court of Appeal (Criminal Division): Sharp LJ: Spencer and Carr JJ: 28 March 2018; [2018] EWCA Crim 690 [2018] Crim LR 918 at 922. [↑](#endnote-ref-26)
26. See *R v Rebelo* [2021] EWCA Crim 306 when the jury convicted the defendant on retrial for gross negligence manslaughter after he provided weight loss drugs to someone who was addicted to the drugs. The trial judge at [21]-[22] directed the jury to consider whether the victim’s actions were “*fully* free, voluntary and informed (emphasis added).” [↑](#endnote-ref-27)
27. Michael S Moore, *Causation and Responsibility: An Essay in Law, Morals, and Metaphysics* (Oxford University Press 2009), 273. [↑](#endnote-ref-28)
28. See *Blaue*, above n. 15 at 1415. [↑](#endnote-ref-29)
29. Nathan Rasiah, ‘Homicide: novus actus interveniens’ (2021) 8(2) CLJ 213 at 215. [↑](#endnote-ref-30)
30. See *Wallace*, above n. 4. [↑](#endnote-ref-31)
31. See *Wallace*, above n. 4 at [76]. [↑](#endnote-ref-32)
32. See Laird, above n. 25 at 922. [↑](#endnote-ref-33)
33. See *Wallace*, above n. 4 at [86]. [↑](#endnote-ref-34)
34. Ibid.at [75]-[76]. [↑](#endnote-ref-35)
35. See Firkins, above n. 12 at 34. [↑](#endnote-ref-36)
36. See *Blaue*, above n. 15 at 1414. [↑](#endnote-ref-37)
37. See *Wallace*, above n. 4 at [68]-[70]. [↑](#endnote-ref-38)
38. *R v Dear* [1996] 3 WLUK 208. [↑](#endnote-ref-39)
39. [1991] 1 WLR 844. [↑](#endnote-ref-40)
40. Ibid. at 852. [↑](#endnote-ref-41)
41. See A.P. Semester, ‘Causation in (Criminal) Law’ [2017] LQR 416 for a discussion of indirect causal responsibility. [↑](#endnote-ref-42)
42. *R v Williams* [1992] 1 WLR 380. [↑](#endnote-ref-43)
43. See *Dear* above n. 38. [↑](#endnote-ref-44)
44. *R v Roberts* [1971] 10 WLUK 60; *R v Williams* [1992] 1 WLR 380; *R v Marjoram* [1999] 11 WLUK 937 [↑](#endnote-ref-45)
45. See *Wallace*, above n. 4at [86]. [↑](#endnote-ref-46)
46. https://www.bbc.co.uk/news/uk-england-bristol-44222057 [↑](#endnote-ref-47)
47. AP Simester, *Fundamentals of Criminal Law: Responsibility, Culpability and Wrongdoing* (Oxford University Press 2021), 95. [↑](#endnote-ref-48)
48. AP Simester and GR Sullivan, ‘Causing Euthanasia’ [2019] LQR 21 at 25. [↑](#endnote-ref-49)
49. See Firkins, above n. 12 at 23. [↑](#endnote-ref-50)
50. William Wilson, *Central Issues in Criminal Theory* (Hart Publishing 2002), 177. [↑](#endnote-ref-51)
51. See *Field* [2021], above n. 3. [↑](#endnote-ref-52)
52. See *Field* [2021] above n. 3 at [60]. [↑](#endnote-ref-53)
53. Ibid. at [61]. [↑](#endnote-ref-54)
54. See Simester and Sullivan, above n. 48 at 26. [↑](#endnote-ref-55)
55. See *Kennedy,* above n. 21 at [19]. [↑](#endnote-ref-56)
56. See Wilson, above n. 50 at 177. [↑](#endnote-ref-57)
57. See *Field* [2021], above n. 3 [57]. [↑](#endnote-ref-58)
58. Ibid, at [49]. [↑](#endnote-ref-59)
59. Ibid. at [59]. [↑](#endnote-ref-60)
60. Ibid. at [62]. [↑](#endnote-ref-61)
61. Ibid. at [63]. [↑](#endnote-ref-62)
62. For an alternative evaluation of the case, see Umar Azmeh, ’Murder: R v Field (Benjamin Luke) Court of Appeal (Criminal Division): Fulford LJ VPCACD, Whipple and Fordham JJ: 18 March 2021; [2021] EWCA Crim 380’ Crim LR [2021] 980 at 984 argues that the reasoning of the case is correct as ‘it is important that the law is workable when grounded in practicalities, rather than being an abstruse and rigid set of legal niceties.’ [↑](#endnote-ref-63)
63. See Sullivan and Semester, above n. 48 at 14-15. [↑](#endnote-ref-64)
64. See Wilson, above n. 50 at 78 and Simester, above n. 1 at 427. [↑](#endnote-ref-65)
65. *R v Gibbins* [1918] 4 WLUK 25; *R v Matthews* [2003] EQCA Crim 192. [↑](#endnote-ref-66)
66. For further discussion of whether a duty equates to legal causation see Helen Beynon, ‘Causation, omissions and complicity’ [1987] Crim LR 539. [↑](#endnote-ref-67)
67. Michael Moore, *Act and Crime: The Philosophy of Action and its Implications in Criminal Law* (London: Clarendon Press 1993), 350. [↑](#endnote-ref-68)
68. For example, see Glanville Williams, ‘Criminal Omissions – The Conventional View’ [1991] LQR 86 who argues for the conventional view based on clearly defined duty situations, compared to Andrew Ashworth, ‘The Scope of Criminal Liability for Omissions’ [1989] LQR 424 who promotes a social responsibility view which places citizens under a general duty to render assistance. [↑](#endnote-ref-69)
69. George P. Fletcher, *Rethinking Criminal Law* (Oxford: Oxford University Press 2000), 628-629. See also, Jonathan Herring and Elaine Palser, ‘The Duty of Care in Gross Negligence Manslaughter’ [2007] Crim LR 24. [↑](#endnote-ref-70)
70. *R v Stone* [1977] QB 354. [↑](#endnote-ref-71)
71. *R v Hood* [2003] EWCA Crim 2772. [↑](#endnote-ref-72)
72. *R v Miller* [1983] 2 AC 161; *R v Ruffell* [2003] EWCA Crim 122. [↑](#endnote-ref-73)
73. *R v Evans* [2009] 1 WLR 1999 at [36]. [↑](#endnote-ref-74)
74. Case Comment, ‘Murder – causation – novus actus interveniens’ (2021) 4 Arch Rev 1. [↑](#endnote-ref-75)
75. *Airedale NHS Trust v Bland* [1993] AC 789 at 893. [↑](#endnote-ref-76)
76. *R v Broughton* [2020] EWCA Crim 1093. [↑](#endnote-ref-77)
77. See Fletcher, above n. 69 at 613. [↑](#endnote-ref-78)
78. See *Field* [2021], above n. 3 at [63]. [↑](#endnote-ref-79)
79. *R v Hood* [2003] EWCA Crim 2772. [↑](#endnote-ref-80)
80. *R v Broadhurst* [2019] EWCA Crim 2026 at [10]. [↑](#endnote-ref-81)
81. See *Miller*, above n. 72 at 176. [↑](#endnote-ref-82)
82. For example, in *R v* Ruffell, above n. 72 the defendant created a dangerous situation by leaving the victim outside in the cold, which is not criminal per se. The actions only amounted to gross negligence manslaughter due to the defendant’s failure to adequately care for the victim once a duty had been undertaken. [↑](#endnote-ref-83)
83. A similar reasoning was used by the curt in *R v Dalby* [1982] 1 WLR 425 at 429 when it was concluded that ‘the supply of drugs would have caused no harm unless the deceased had subsequently used the drugs in a form and quantity which was dangerous’. [↑](#endnote-ref-84)
84. See Moore, above n. 67 at 47. [↑](#endnote-ref-85)
85. See Semester, above, n. 41 at 438. [↑](#endnote-ref-86)
86. See *Kennedy*, above n. 21 at [14]. [↑](#endnote-ref-87)
87. See *Wallace*, above n. 4. [↑](#endnote-ref-88)
88. See *Field* [2021], above n. 3. [↑](#endnote-ref-89)
89. Ibid. at [63]. [↑](#endnote-ref-90)
90. This complexity is illustrated, for example, by Hart and Honoré, above n. 2, who wrote over 500 pages explaining the theory and application of causation. [↑](#endnote-ref-91)