



# Causality in criminal forensic and in civil disability cases: Legal and psychological comparison<sup>☆</sup>



Gerald Young<sup>\*</sup>

Department of Psychology, Glendon College, York University, York Hall 140, 2275 Bayview Ave., Toronto, ON, Canada

## ARTICLE INFO

Available online 29 August 2015

### Keywords:

Causality  
Forensic psychology  
Criminal law  
Civil law

## ABSTRACT

Causality (or causation) is central to every legal case, yet its underlying philosophical, legal, and psychological definitions and conceptions vary. In the criminal context, it refers to establishing the responsibility of the perpetrator of the criminal act at issue in terms of the person's mental state (*mens rea*), and whether the insanity defense applies. In the forensic disability and related context, it refers to whether the index event is a material or contributing cause in the multifactorial array that led to the psychological condition at issue. In both the criminal and tort contexts, the legal test is a counterfactual one. For the former, it refers to whether the outcome involved would have resulted absent the act (e.g., in cases of simultaneous criminal lethal action, which one is the but-for responsible one). For the latter, it concerns whether the claimed psychological condition would be present only because of the incident at issue. The latter event at issue is distinguished from the criminal one by its negligence compared to the voluntary intent in the criminal case. The psychological state of the perpetrator of criminal conduct can be analyzed from a biopsychosocial perspective as much as the civil one. In this regard, in the civil case, such as in forensic disability and related assessments, pre-existing, precipitating, and perpetuating factors need to be considered causally, with personal and social resilience and protective factors added, as well. In the criminal context, the same biopsychosocial model applies, but with mental competence and voluntariness added as a critical factor. The advent of neurolaw has led to use of neuroscience in court, but it risks reducing the complexity of criminal cases to unifactorial, biological models.

© 2015 Elsevier Ltd. All rights reserved.

## 1. Introduction

The present article compares and contrasts both legal and psychiatric/psychological approaches to causality in forensic criminal and civil disability cases, especially tort cases. The various terms involved in causality and causation in law and mental health are presented in Tables 1 and 2. It begins with presentation of a 2013 Supreme Court of the United States case (*Burrage v. U.S.*, 2013), which addresses causality in both the criminal and civil contexts. Next, it reviews extensively the area of causality in criminal forensics in terms of criminal responsibility and the insanity defense. Then, it considers causality in the tort context, emphasizing multifactorial causation in behavior. It moves to consideration of neurolaw, and the role of neuroscience in court, especially in terms of the probative/prejudicial value of brain scan or neuroimaging data in the individual case. To conclude, the paper notes the relevance of considering causality in every forensic psychiatric/psychological case, whether criminal or civil (tort).

Commonalities to both the latter areas include the relevance of the legal but-for causal test and also the psychiatric/psychological

biopsychosocial model. Differences in the two areas relate to a less stringent legal causality test (material, substantial) that is applicable only in the tort context. Also, the very nature of criminal and tort cases involves the difference between the voluntary nature of the act versus negligence. In both cases, psychiatric/psychological assessors need to conduct comprehensive, scientifically based, and impartial assessments (e.g., of *mens rea*, and psychological injury, respectively).

## 2. The U.S. Supreme Court on causality

In *Burrage v. U.S.* (2013), the American Supreme Court tackled the issue of causation in criminal cases. The particular case adjudicated on appeal involved the drug user *Banka* and the drug dealer *Burrage*. Medically, it was found that the drugs in question appeared to have “contributed” to the death but were not a “but-for” cause in the causality of the death. The drug user's death did not “result from” the drugs, nor did they constitute the “actual cause” (*Hart & Honoré*, 1959; the question of actual cause is distinct from the “legal” or “proximate” cause, which involves liability).

The Supreme Court provided a sport metaphor to explain “but-for” causality and the related term “resulted from.” Specifically, in a 1–0 victory, the winning team should be considered to have won the game because of its seeming offensive production, although there are a host

<sup>☆</sup> The author has no conflict of interest to report with respect to this paper.

<sup>\*</sup> Tel.: +1 416 726 2709.

E-mail address: [gyoung@glendon.yorku.ca](mailto:gyoung@glendon.yorku.ca).

**Table 1**  
Definition of key terms related to causality.

Term	Definition
Causal test	In tort law, the “but-for” test is the primary one. The rule is that causation is evident when the outcome at issue would not have transpired absent or without the occurrence of the event at claim or action of the responsible party. Other tests have been proposed, including on foreseeability, necessity, sufficiency, and material or substantial contribution. They do not apply in all cases dealing with complex scenarios, such as joint causation and acts of omission rather than commission. This affects capacity to arrive at apportionment of responsibility and damages. The material or substantial contribution test allows for attribution of liable causation without the event at issue necessarily being primary.
Causality	The relationship between a cause and its effect. It concerns process more than product. In practice, the term is used interchangeably with that of causation.
Causation	The production of an effect by a cause. The term concerns product more than process. It is used interchangeably with the one of causality.
General causation	In the general population, at the statistical or normative level according to the scientific research, general causation refers to whether the issue at hand or at claim (e.g., toxic exposure, MVA) is considered as an inducing factor in individuals of the outcome that followed (e.g., illness, injury).
Specific causation	In cases where general causation applies, does the event or issue at hand lead to liable results (illness, injury) in the individual case at hand such that damages can be pursued?

Adapted from Young (2010).

Note. The terms in this table were defined based on Garner (2004), Mish (2003), and Young and Shore (2007).

of other necessary factors, such as its defensive prowess. For the court, other terms indicative of but-for causation include “because of” and “based on.”

However, the court noted that because but-for causality does not apply in every case in the criminal context, this might lead to consideration of a “less demanding” causal threshold. First in this regard, it noted that in a criminal case, it could be that the but-for test is obscured in cases in which “multiple sufficient” factors “independently but concurrently” cause an outcome; for example, both person A and person B could simultaneously inflict a fatal wound to person X.

That being said, for the court, even in such cases of multiple causality, the but-for test should be used to disambiguate the multiple causal factors and still used to ascertain causality at the legal threshold level, and there is no need to refer to the less demanding or more permissive test of whether the act involved was only “contributory,” “material,” or “substantial.” That is, in the criminal context, these latter less stringent tests should be considered insufficient to ascribe legal guilt or “cause in fact.” Moreover, in criminal cases that involve aggregating or multiple “force,” the danger of any more lenient test is that, no matter how “small,” “every” act of commission or omission can be judged to have contributed incrementally in a positive way to a specific outcome at issue.

In the *Burrage* case, the Supreme Court of the United States decision contended that the prosecuting government in the case could not specify the extent of importance a non but-for factor must have in order to qualify as a substantial cause. Although in this regard the government referred to exclusion of factors that are “not important enough” or “too insubstantial,” for the court, these latter criteria could not be

certified at the relevant standard of “beyond a reasonable doubt.” Therefore, if these less strict standards of causality were used in the criminal context, lower courts would be “left to guess” about whether in any particular case the inferred less stringent causal factors meet the required level of substantiality.

### 3. Causality in criminal forensics

Zapf, Golding, Roesch, and Pirelli (2014) underscored the tension in law between strict, objective liability and subjective liability with respect to criminal responsibility and a sense of “fairness” or “justice.” Briefly, criminal guilt in committing a proscribed behavior (*actus reus*) requires an appropriate degree of and type of mental capacity and intentionality (*mens rea*) before the guilt can be related to “culpable ownership” of the act. The authors noted that, outside of any debate about its scientific validity, the issue is integral to the fabric of criminal law.

Causality in the criminal forensic area revolves around the concept of responsibility. In criminal cases, such as actions leading to death of another, Goldstein, Morse, and Packer (2013) emphasized that causal responsibility needs to be distinguished from moral responsibility. The victim might be aggressed by a perpetrator who cannot be conceived as a morally responsible agent even if his/her actions caused the outcome at issue. Culpability in the legal sense depends on verifying the actor’s mental state at the time of the crime. Mental state evaluations need to consider and retrospectively reconstruct the alleged perpetrator’s cognition, volition, or both at the time of the offense. “Mens rea” refers to the intent, purpose, or knowledge component of

**Table 2**  
Key terms related to causation and causality.

Term = Meaning (simplified)
Key terms related to causality and causation in law: Concurrent = Joint; Contributing = Secondary; Immediate <sup>a</sup> = Most recent; Intervening = Added; Joint = Multiple; Material = Part of joint; Proximate = Dominant (direct); Remote <sup>b</sup> = Initial, too far removed; Superseding = Replacing dominant
Key terms related to causality and causation in medicine: Component = Part of multiple; Exacerbating = Worsening; Exciting = Direct; Immediate <sup>a</sup> = Beginning, initial; Predisposing = Susceptible; Primary = Principle; Remote <sup>b</sup> = Predisposing, secondary; Secondary = Not principle; Ultimate = Remote
Key terms related to causality and causation in psychology Catalytic = Facilitative; Latent = Delayed; Maintaining = Current; Mediating = Intervening; Multiple = Multifactorial; Original = Remote, initial; Remote = Initial; Triggering = Immediate <sup>a</sup>
Key terms related to causality and causation in philosophy: First = Remote <sup>b</sup> ; Immediate <sup>a</sup> = Last; Principle = Primary

Adapted from Young (2008).

Note. The footnoted terms indicate the confusions in their use in law, psychiatry/psychology, and philosophy. The difficulty in translating legal terms to the mental health field, and vice versa is compounded when the terms have different meanings in the various disciplines involved. For example, the footnoted term immediate (a) might mean either most recent or last part of a causal chain, which surely seeds immediate confusion to the unwary. A remote component of a causal chain might be too involved, nevertheless, as a predisposing factor. Another confusion in translation between law and mental health relates to the term reliability, which means validity in law in the psychological sense (it refers to replicability in psychology, of less relevance than validity). In short, addressing the reliability of a causal argument could evoke different associations in attorneys, judges, psychiatrists, and psychologists.

Download English Version:

<https://daneshyari.com/en/article/100718>

Download Persian Version:

<https://daneshyari.com/article/100718>

[Daneshyari.com](https://daneshyari.com)