MODULE 4: CAUSATION
Causation

1. Legality
2. Conduct
3. Causation
4. Unlawfulness
5. Criminal accountability
6. Fault

- Causation is closely connected to conduct
- Causation is only required in crimes where the consequences of the crime is punishable
- The question to ask is: did the accused person’s conduct cause the prohibited consequence?

Eg. X and Y are having an argument and X then stabs Y in the heart. Y dies within minutes after the stabbing

vs

X and Y are having an argument and X then stabs Y in the shoulder. Y is taken to hospital by an ambulance but on the way there, the ambulance is in an accident and Y dies in the accident

Can X be charged with murder in both examples?
For X to be charged with murder, there must exist a causal link between the conduct (stabbing) and the cause (death).

The conduct must be the **FACTUAL** as well as **LEGAL** cause of the end result.

Causal connection = Factual causation + Legal causation

- Act is *condictio sine qua non* for the unlawful result
- Policy considerations of what is fair and just

- Individualising theories
- Absence of novus actus interveniens

- Generalising theory
FACTUAL CAUSATION

- Factual causation is determined by using the CONDUCTIO SINE QUO NON theory
- Condiction sine qua non = condition without which it could not be

**Def.** “an act is a conductio sine qua non for a situation if the act cannot be thought away without the situation if the act cannot be thought away without the situation disappearing at the same time

- The court asks whether the result would still have happened if the act had not happened:
  - Would Y still have died at the relevant time and manner if the accused had not acted in the manner he had?
  - This theory is criticised for being too wide and thus it has little value in determining liability. Not everyone who causes can be held liable.
Since the condictio sine qua non test is too wide, the second criterion must limit the range of possible causes of Y’s death. This second criterion is the test to determine legal causation. This test determines whether it is fair and just to hold X responsible for the death of Y. The most important factor in determining legal causality is policy considerations of what is fair and just.
# Theories of Legal Causation

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<thead>
<tr>
<th>Individualising theories</th>
<th>Generalising theory</th>
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<tbody>
<tr>
<td>This theory tries to point out one condition, amongst all the conditions, which can be considered as the cause of the end result</td>
<td>This theory states that a condition is the only cause when, according to general experience, it has the probable tendency to cause the unlawful end result</td>
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<td>“the direct consequence test” or “the most proximate cause test”</td>
<td>Adequate theory</td>
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## Criticism

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<td>There is no reason for a specific condition to be singled out as the only cause of the result</td>
<td>Using general experience relies on the reasonable man test which is used for determining negligence and it is thus unnecessary</td>
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</table>
An act is a novus actus interveniens if it constitutes an unexpected, abnormal or unusual occurrence
This occurrence deviates from the normal course of events and cannot be regarded as a probable result of the act
An act is never a novus actus if it was foreseen
CASE LAW

S v Mokgethi and Another 1990 (I) SA 32 A
R v Loubser 1953 (2) PHH 190 A
S v Williams 1986 (4) SA 1188 A
S v Daniels 1983 (3) SA 275 A
S v Tembani 1999 (I) SASV 192 (W)