

Outline: Principle of correspondence: AR and MR must coincide: aspects of this:

1) in time ('principle of concurrence' – AR-conduct and MR); exceptions:

- AR before MR:
 - Fresh (second) causative act
 - Continuing act (Fagan) – criticized by S&S, Ashworth
 - Omission (Miller): duty to act because of special responsibility – here *no breach* of principle of concurrence, arguably
- MR before AR:
 - 'Single complex transaction' (Thabo Meli doctrine):
 - Thabo Meli: preplanning and intent (4 conspired to kill V; thinking V dead, they throw him off a cliff, which kills him)
 - Church: no preplanning or intent (knows V unconscious during fight; thinking V dead, throws into river, where V drowns)
 - Le Brun: AR is accidental, though tainted by D's unlawful purpose (knows V unconscious during fight; in order to dispose of her body, carries it and then accidentally knocks her – which kills her)
 - ⇒Court: if purpose of carrying had been well-intentioned (take to hospital), no liability for death
 - ⇒Arguably Thabo Meli and Church could have been decided on causation grounds, simply considering the initial act (with its simultaneous MR) as one significant cause of the later death – doesn't work when second act is overwhelming cause of death
 - Prior fault:
 - automatism through intoxication aimed at producing automatic state so that certain offence is committed = always guilty
 - falling asleep while driving, when causing death: can't convict for death, since at that time no MR (automatic = asleep), but can convict (only!) of earlier offence, ie careless driving (when D decides to continue to drive despite beginning to feel drowsy)
 - Majewski!!
 - AG Ref 3 of 1994: curious move: doesn't apply transferred MR but caters for the diachronic element (first MR when stabbing of gf; later AR, when baby dies) by stretching elements in constructive ms: risk of harm to *somebody* (= living person), *must not be 'aimed at' the V*; the problem then becomes one of causation only

2) in scope (MR matching each AR element); exceptions:

- strict liability: for regulatory offences, mostly created by statute (see the rules of MR presumption in interpreting statutes) – supposed distinction 'truly criminal' and 'regulatory', supported by eg Sweet v Parsley or Alphacell, has been criticised (in view eg of RvG 2008 (SL re age in rape) since it's imprisonment so should be called truly criminal)
 - note: drug possession (Warner) seems to be SL but the Court claims 'possession' is a kind of MR (S&S: artificial!)
 - situational liability (Larsonneur) – arguably also rather SL
- negligence: arguably better than SL – doesn't punish accidents or otherwise reasonable behaviour

- constructive liability (some MR, but not for all AR elements):
 - constructive manslaughter (AR-consequence is SL element)
 - murder! Most non-fatal OAP!
 - causing death by dangerous driving (dangerous driving includes MR, but MR doesn't extend to consequence of death)
 - ulterior intent offences: inchoate liability (!), theft, fraud, aggravated criminal damage
- 3) in subject and object; exception:
- transferred MR (eg Latimer re wounding): S&S just call it 'immaterial variation', like immaterial mistake (eg stealing cheap painting thinking it's Constable): whenever divergence AR/MR is immaterial to the definition of the offence (as when different V is killed, or different property is damaged). Horder adds remoteness requirement: if harm is caused in an unexpected way (eg bullet in factory), but S&S criticize unjustified distinction between Vs (if it were original V who died in an unexpected way, it would be murder – so why not with V2? Plus, uncertainty
 - compare immaterial v relevant mistake (subject to the rules on mistake!)
 - AG Ref 3 of 1994: doesn't decide according to transferred MR, since foetus isn't legally a person; also not 'double transfer' -> gets around it by saying that in constructive ms enough that there is a risk of harm caused to *somebody* (= living person) – must not be 'aimed at' the V – problem then becomes one of causation