

TEACHING CAUSATION IN CRIMINAL LAW: LEARNING TO THINK LIKE POLICY ANALYSTS

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ABSTRACT

One of the most persistent ideals in the context of legal education is that of teaching students to “think like lawyers”. One such skill is undoubtedly the ability to extract legal principles from cases and statutes and apply these to the facts of a legal problem. It has become apparent, through teaching the concept of causation in criminal law, that while extracting and applying the law from cases is easy enough when the principles are clear, students often struggle when relying on cases in which Judges employ unexpressed policy-based reasoning.

Law students must learn to extrapolate outcomes from legal principles and given facts. When policy grounds for decision-making are not clearly articulated, students struggle to find the “law” to apply. These difficulties can be exacerbated by a reading of the case law, which illustrates that cases with almost identical factual matrices can result in different outcomes. With particular reference to homicide cases in which medical treatment contributes to the death, this paper proposes that in complex cases, the question of causation cannot be answered simply by application of the legal principles, without reference to a range of policy considerations. To students, these are “invisible factors” in judicial decision-making which account for the variation of outcomes that occur in application of the causation principles. Because they are not explicitly referred to in case law it is almost impossible for students to employ them in problem-solving. The challenge for legal education is in effectively teaching legal reasoning so that students are better able to identify and apply unarticulated policy reasons.