

Mens Rea - Intention

Mens Rea (MR) (p.121-126)

This is the required state of mind of the defendant (D) at the time of committing the offence. It is required for all offences except strict liability offences. Parliament (statutory offence) or judges (common law offence) have set out the MR of all criminal offences that needs to be proven by the prosecution together with the specific actus reus in order to find the D guilty of a criminal offence. The 3 forms of MR are

1. Intention (subjective) Whose viewpoint is this based on? **The defendant (requires high evidence to convince jury D is guilty and to convict D)**
2. Recklessness (subjective) **The defendant (requires medium evidence to convince jury D is guilty and to convict D)**
3. Negligence (objective) Whose viewpoint is this based on? Gross negligence manslaughter. **The ordinary person, the third person (requires some evidence to convince jury D is guilty and to convict D)**

Some offences only require intention to be proven for example theft and murder whereas other offences such as assault or criminal damage can be proven by either intention or recklessness.

In order to prove intention, the prosecution needs to have a high level of evidence in order to convince the jury. Recklessness requires a medium level of evidence and negligence requires less evidence for the jury to be convinced.

Motive and Desire p.122

This is the reason why a person has committed an offence e.g. revenge, to promote a particular cause as in *Chandler v DPP* 1964. Why did D commit the offence? However it is irrelevant in deciding whether the D had the relevant MR.

D had wished to demonstrate their opposition to nuclear weapons. D's planned to break into an RAF station and immobilise it for 6 hours. D's were convicted under s1 OSA 1911 – 'to enter a prohibited place for a purpose prejudicial to the safety or interests of the state' D's appealed – their purpose was for the interest of the state. CA held the conviction – 'the motive behind the immediate action was irrelevant, they still intended the method of achieving it' (the method achieving it – entering a prohibited place for a purpose prejudicial to the safety or interests of the state.

The legal principle in *Chandler* is that the defendant's motive in committing the crime did not have the MR of the offence so a good motive does not signify lack of intent and is irrelevant in proving intent. It is only relevant as mitigation for sentencing.

In R v Mohan 1975. Who did D try to hit and how?

A police officer on duty saw a car being driven by the appellant. Vehicle seemed to be exceeding the permitted speed limit. Officer stood in the path of the vehicle and signalled for the appellant to stop. The vehicle slowed down but when 10 yards away from the officer, the appellant accelerated and drove straight at the officer who moved out of the way in order to avoid being knocked. Appellant charged on 3 accounts, one of which it was alleged that on the day of question, he had attempted wanton driving, to cause bodily harm to the police officer. In relation to that charge the judge directed that the crown had to prove the appellant deliberately driven the vehicle wantonly and that he must have realised at the time that unless he were to stop or there were some other intervening factor such as the driving was likely to cause bodily harm or that he was reckless as to whether bodily harm was caused but it was not necessary to prove an intention to actually cause bodily harm. The appellant was convicted, and he appealed.

Here the courts defined intention as 'a decision to bring about, in so far as it lies within the accused's power, (the prohibited consequence) no matter whether the accused desired that consequence or his act or not'

This makes it clear that D motive or reason for doing act is not relevant. The important point is that the D decided to bring about the prohibited consequence.

Desire/motive is only relevant if D is found guilty and the judge decides the sentence. What is this known as?

Intention

Intention is a purely subjective concept and there is no statutory definition of it. Therefore it has been left to judges to decide its meaning. The majority of cases on intention have been murder cases but the definition of intention would also be applicable to other offences such as theft. Intention can be of two types direct (express) or oblique (indirect). As long as either can be proven then the MR will be satisfied.

Direct / Express Intent – main aim or purpose

Direct intent corresponds with the everyday definition of intention an example of direct intention would be deliberately pointing a gun at someone you want to kill and shooting them. Crimes requiring proof of intention are crimes of specific intent such as murder and theft. The law on intention has developed through the offence of murder but the principles are applicable to all criminal offences where the mens rea is intention.

R v Mohan 1975 the court defined direct intent as 'a decision to bring about in so far as it lies within the accused's power the prohibited consequence ...'

For direct intent offences the judge will not be required to give directions / guidelines as to the meaning of intention to the jury because a Defendant's intent (main aim or purpose) will be self-evident from the circumstances.

Oblique / Indirect Intent- foresight of consequence

Oblique or indirect intention is less straightforward. It applies where the accused did not desire a particular result but in acting as he or she did realise that it might occur. This is known as foresight of consequences.

R v Moloney - (natural consequence) D and his stepfather had drunk a considerable amount of alcohol at a family party. After party, they were heard talking and laughing. Then there was a shot. D phoned the police saying he had just murdered his step farther. D said they had been seeing who was faster at loading and firing a shot gun and he had loaded his gun faster that his step farther. His stepfather then said that D didn't have the guts to pull the trigger. D said, 'I didn't aim the gun, I just pulled the trigger and then he was dead'. D was convicted of murder, but this conviction was quashed on appeal

Lord Bridge in R v Moloney explained that it is quite possible to intend a result, which you do not actually want. He gave the example of a man in an attempt to escape pursuit, boards a plane to Manchester. Even though he does not want to go to Manchester, he may even hate the place, that is clearly where he intends to go.

Who did D kill and how?

For example, a mother wishes to frighten her children and so starts a fire in the house. She does not want to kill her children, but she realises that they may die as a result of the fire.

The courts are now quite clear that oblique intention can be sufficient for murder: people can intend deaths that they do not necessarily want.

In oblique intent cases it is difficult for the jury to determine what is D's state of mind. Therefore judges have created guidelines/directions, which are given to the jury to help them determine whether the D has the required intention or foresight of consequence for the offence.

Foresight of consequences - Guidelines/Directions

Judges have a difficult task in providing guidelines/directions to juries, which are simple and clear. Judges over the years have developed directions, which have provided guidelines to juries on the degree of foresight of consequences required as evidence of D's intention. For murder the D must foresee death or serious harm. However the degree of foresight required has changed over the years.

s.8 Criminal Justice Act 1967 - evidential test

The starting point for looking at foresight of consequence is s.8.

It states the jury are not bound to find intention just because the results were a natural and probable consequence of the defendant's actions. The jury must consider all the evidence before reaching a decision. This is known as an evidential test. Judges over a number of cases have interpreted s.8 as to what they believe is the correct level of foresight as evidence of intention.

Foresight of consequence is evidence of intention

R v Moloney 1985 natural consequence

This involved the HL considering the relationship between foresight of consequence and proof of intention. Lord Bridge's judgment had two important aspects:

1. The golden rule (do not confuse with statutory interpretation), which has been universally accepted that judges do not need to provide a guideline for direct intent cases. It is only for rare indirect intent cases that a guideline would be required to aid the jury.
2. Lord Bridge then went on to give what is now known as the Moloney guidelines based on 'natural consequence', which were later, criticised and rejected.

Lord Bridge insisted on the need for "a moral certainty", a probability, which is "little short of overwhelming", and an act that "will lead to a certain event unless something unexpected supervenes to prevent it". However Lord Bridge made the error of then referring to "natural consequence" rather than natural and probable, which was specified in s.8 CJA 1967.

Set out the 2 questions – p.123

1. Was death or really serious injury a natural consequence of the defendant's acts?
2. Did the defendant foresee that consequence as being a natural result of his or her act?

Lord Bridge gave no clear explanation of what he meant by natural consequence so juries would have difficulty in trying to understand the term and would provide them with little help in trying to understand intention.

R v Hancock and Shankland 1986

How did the victim die?

Ds were miners who were on strike. They tried to prevent another miner from going to work by pushing a concrete block from a bridge onto the road along which he was being driven to work in a taxi. The block struck the windscreen of the taxi and killed the driver. The trial judge used the Moloney guidelines

direct the jury, and D's were convicted of murder. On appeal. The court of appeal quashed their convictions. This was upheld by the house of lords

The problem with Moloney was explained by Lord Scarman who stated that the guidelines in that case were unsafe and misleading

Lord Scarman was critical of the Moloney guidelines for 2 reasons. What were the 2 reasons (p.123):

1. unsafe and misleading. They require a reference to probability. No reference to what natural meant.
2. they also require an explanation that the greater the probability of a consequence the more likely it is that the consequence was foreseen and that if the consequence was foreseen the greater the probability is that that consequence was also intended

R v Nedrick 1986 - virtual certainty

Who was killed in the house fire?

D had a grudge against a woman. He poured paraffin through the letter box of her house and set it alight. A child died in the fire. D was convicted of murder, but the court substituted one of manslaughter.

In the Court of Appeal Lord Lane created a lengthy guideline for juries. He stated there is a minimum degree of foresight required before the jury is entitled to infer the necessary intent that death or serious bodily harm was a virtual certainty as a result of the defendant's actions and that the defendant appreciated this. In reaching this decision the jury must consider all the evidence (s.8 CJA 1967). This removed any reference to probability.

It was necessary for the consequence to be a virtual certainty and for D to have realised that.

R v Woollin 1996 HL/SC

What was the relationship between the D and the V?

D threw his three-month-old baby towards his pram which was against a wall some three or four feet away. The baby suffered head injuries and died. The court ruled that the consequences must have been virtual certainty and the defendant must have realised this. Where the jury was satisfied on both these two points, then there was evidence on which the jury could find intention.

In order to foresee the MR of murder you must be virtually certain of intension to kill (malice aforethought) or gbh. The defendant must appreciate that they saw death or gbh as a certain action.

Here Lord Steyn modified the Nedrick direction. What was the change? Has Woollin now settled the question on intention or is there still confusion in this area?

1. Does the use of the word 'find' give juries a clearer understanding?
2. In Lord Steyn's view 'a result foreseen as virtually certain is an intended result' (in obiter). What type of test does this create? Does it give juries more or less discretion? Does that reflect the earlier decision in Moloney?

In Woolin the Law Lords stated that the two questions in Nedrick were not helpful. Held that the word 'find' should be used rather than the word 'infer'

Re A

What did the doctors want to do here?

Mary and Jodie were conjoined twins joined at the pelvis. Jodie was the stronger of the two and capable of living independently. However, Mary was weaker, she was described as having a primitive brain and was completely dependent on Jodie for her survival. According to medical evidence, if the twins were left as they were, Mary would eventually be too much of a strain on Jodie and they would both die. If they operated to separate them, this would inevitably lead to the death of Mary, but Jodie would have a strong chance of living an independent life. The parents refused consent for the operation to separate them. The doctors applied to the court for a declaration that it would be lawful and in the best interests of the children to operate. The High court granted the declaration on the grounds that the operation would be akin to withdrawal of support ie an omission rather than a positive act and the death of Mary, although inevitable, was not the primary purpose of the operation. The parents appealed to the Court of Appeal on the grounds that the learned judge erred in holding that the operation was (i) in Mary's best interest, (ii) that it was in Jodie's best interest, and (iii) that in any event it would be legal.

In the Court of Appeal (civil division) did they agree or disagree with Lord Steyn's view? LS – OD – VC is intention – legal test.

***LS – RD (BP) – Virtual certainty is evidence of intention – jury to look at all the evidence and then reach a decision – evidential test

LS -OD (PP)– Virtual certainty is intention – legal test – judge is directing the jury to conclude, so jury have a limited choice – less discretion.

R v Matthews and Alleyne 2003

How was the V killed?

The D's dropped the victim 25 feet from bridge into the middle of a deep river. Victim told them that he couldn't swim. They watched him 'dog paddle' towards the bank but left before seeing whether he reached safely. The victim drowned. The defendants didn't intend on saving the victim. The court of appeal stated that

the trial judge had been wrong to say that an appreciation of a virtual certainty constituted intention. However they upheld the convictions because if the jury were sure that the defendants appreciated the virtual certainty of death if they did not attempt to save V and that at the time of throwing V off the bridge they had no intention of saving him, then it was impossible to see how the jury could not have found that the defendants intended V to die

The jury needs to do an evidential test. The jury re considering all the evidence, allowing them to consider all the evidence to make a decision. As shown in section 8 with the evidential and subjective test for information. Gives the jury power allowing them to have a discretion.

Judge didn't allow the jury to look through all the intention, if the outcome was going to occur then they're guilty.

It is creating a legal test. CoA told the jury to come to an outcome on this point of law, has to come to a legal test. CoA so no difference between the legal or evidential test.

Trial Judge – gave a legal test to the jury – PP from Woollin

Cof A – Trial judge should have given the BP from Woollin – all the evidence to be considered by the jury – evidential test.

However, the Cof A: we actually think that the legal test was ok to give to the jury and we therefore believe this was not a misdirection by the judge and the conviction is safe.

Has the C of A clarified intention with their decision?

Since these cases trial judges are following the BP from LS in Woollin and giving the jury the evidential test i.e. considers all the evidence before deciding.

Please make notes on the following p.125-126:

a) Evaluating foresight of consequences as intention

Woollin:

LS – RD confirms Nedrick v is evidence of intent – evidential test (s.8) – gives choice to the jury to make the decision ****

LS – OD v is intention – legal test – judge is directing the jury as to what they should do i.e. find intention giving no choice to the jury.

Courts have struggled with the concept of intention where foresight of consequences is involved e.g.

o Natural and probable consequence

o Difficulty for jurors in applying the tests after the cases of Moloney and Hancock and Shankland

o The change in Woollin from inferring intention to finding intention o The fact that there are still two interpretations of the judgement in Woollin

b) Natural and probable consequences -s.8