

'Foresight of consequences is not the same as intent'

Introduction

Current English law tells us that in order to find a defendant guilty of committing a criminal offence, two main elements must be proven. The first of these elements is the 'Actus Reus'. This is a Latin phrase, which translates as 'guilty act'. Therefore, in order for the actus reus element to be fulfilled, there has to have been an act. Generally, an act is defined as a 'bodily movement whether voluntary or involuntary'. However, in order to find the defendant guilty, the 'mens rea' must also be proven. This is the second element, and translates as 'guilty mind', one aspect of this element is intent.

These two terms are derived from a Latin maxim which is translated as 'the act itself does not constitute guilt unless done with a guilty mind'. The prosecution are responsible for proving the case, and the two elements 'beyond all reasonable doubt, as was determined as a result of the decision in the case of Woolmington V DPP (1935). There is an exception to the rule of having to fulfil both elements, which is that of strict liability offences.

Problems can arise with the Mens Rea element, in that the wrong must be committed with "The relevant Mens Rea i.e. the degree of blame worthiness required by the offence in question".

Throughout this essay I will be considering the statement 'foresight of consequences is not the same as intent', and using relevant cases, discuss the extent to which it is true.

Intention

In general, intention is defined in terms of foresight of a particular consequence/consequences and a desire to act or perhaps fail to act so that these consequences therefore occur.

Currently, there has been no decision as to the exact definition of 'intent' in English Criminal Law, as Parliament is yet to define it. It is, therefore, the role of the jury in a trial to decide whether intent exists. This can prove very difficult, as it can be hard to determine the precise thoughts of the defendant during the period in which the crime was committed. They are given guidance from the judge, who will use specific wording provided by precedent to ensure that the guidance is correct.

An example of how the court may choose to define 'intention' can be seen in this statement, derived from the case of Mohan in 1975 – 'a decision to bring about, in so far as it lies within the accused's power, [the prohibited consequences], no matter whether the accused desired that consequence of his act or not'. I will discuss further attempts to define intent later in my essay.

There are two types of intent, which are direct intent and oblique intent.

Direct intention

Direct intent refers to when the defendant commits a crime in the knowledge that the consequences will occur, and with the desire for them to do so. For example, if the defendant stabbed the victim in the heart, he was aiming to kill him. If the victim dies as a result of the stabbing, it is direct intent, as the defendant intended the

consequences to occur.

Oblique intention

Oblique intent is when the defendant intend to do one thing, but the actual consequence that occurs as a result of his action is something different.

Various people have tried to define 'intent' in general terms, one of these being the Draft Criminal Code. They stated that '...a person acts intentionally with respect to a result when he acts neither in order to bring it about or being aware that it will occur in the ordinary course of events'. This means that someone must act for something to happen if they intend the consequences. They must be aware that what they are doing (the act that they are carrying out) would 'in the ordinary course of events' result in a particular outcome.

This effectively tells us that the jury must find and decide whether the motive was relevant to the intent.

The case of Hyam V DPP in 1975 involved a defendant who became jealous when her male friend became close to another woman. She poured petrol through the letterbox of the woman's house in the early hours of the morning, and then proceeded to set fire to her house. Two children died as a result of the fire. Hyam appealed, and the case reached the House of Lords. She claimed that she merely intended to frighten the woman, and not to cause the death of the two children. Her appeal was dismissed, however the judges were not in complete agreement over this decision. It was thought by some that foresight of consequences established intent, but Lord Hailsham disagreed with this, saying 'I do not consider that the fact that a high state of affairs is correctly foreseen as a highly probable consequence of what is done is the same thing as the fact that the state of affairs is intended'. His opinion was later used by the Court of Appeal in the cases of Mohan and Belfon.

In the case of Mohan in 1975, the relevance of motive in deciding whether the defendant had intention was questioned. For example, if a man steals money in order to buy food for his starving family, his motive was to ensure his family received food. This has no relevance to the decision as to whether he had the mens rea required for theft. The judges in Mohan described intention as "A decision to bring about, in so far as it lies with the accused's power [with the prohibited consequence], no matter whether the accused desired that consequence of his act or not"

The judges in the case of Mohan, and also in the case of Belfon 1976 (in similar opinion to that of Lord Hailsham) came to the conclusion that foresight that something was highly probable to occur was not the same as having intention for that consequence to happen, it was just to be used as evidence to take into account.

Lord Goddard CJ stated that 'in many offences a specific intention is a necessary ingredient and the jury would have to be satisfied that a particular act was done with that specific intent'. This statement was explained in more detail in the case of Cunliffe v Goodman in 1950 where Asquith LJ stated that "an intention to my mind connotes a state of affairs which the party 'intending' does more than contemplate; it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to

bring about, and which in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition”.

The case of DPP V Smith in 1961 involved a defendant who was in possession of stolen goods. He, in his car, attempted to escape from the police when he was signalled to stop. A police officer jumped onto the bonnet of the car, and the defendant drove off with him clinging on. He then drove at high speed, swerving from side to side until the officer was thrown off the car into the path of another, and killed. Smith was convicted of murder, but appealed, claiming he did not intend to kill the officer. The case reached the House of Lords, who upheld the conviction with the decision that the defendant had the intention for murder if ‘an ordinary responsible man in similar circumstances would have contemplated the end result’.

This case was criticised due to the objective approach to intention. Parliament passed the Criminal Justice Act of 1967 as a result. Section 8 of this Act stated that ‘A court or jury, in determining whether a person has committed an offence:
(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of it being a natural and probable consequence of those actions; but
(b) Shall decide whether he did intend or foresee that result by referring to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances’

The 'Moloney guidelines'

The debate in regards to the definition of intent again arose in the case of Moloney in 1985. The facts of this case were that the defendant was playing a game whilst drinking with his stepfather at a family party. The game involved the two men racing to see which of them could load their shotgun quickest. The defendant loaded his gun quicker, and after doing so, was dared by his stepfather to pull the trigger. He then proceeded to do so, and killed his stepfather as a result. He claimed that he ‘didn’t aim the gun, I just pulled the trigger and he was dead’. Moloney was convicted of murder, but this was then changed to manslaughter after he appealed.

The ‘Moloney guidelines’ were created as a result of this case. Lord Bridge stated that ‘The golden rule should be that, when directing a jury on the mental element necessary in a crime of specific intent, the judge should avoid any elaboration or paraphrase of what it meant by intent, and leave it to the jury’s good sense to decide whether the accused acted with the necessary intent, unless the judge is convinced that some further explanation or elaboration is strictly necessary to avoid a misunderstanding’. As well as this, he decided that juries should take two matters into account when asked to determine a defendant’s fate. These were:

- Was death or serious injury in a murder case a natural consequence of the defendant’s act?
- Did the defendant foresee that consequence as being a natural consequence of his act?

If the jury answered yes to these questions, then it would be drawn that the defendant had intent.

Lord Bridge also said that there was no rule to show that the foresight of consequences was equivalent to necessary intent. When someone had been killed or seriously injured on purpose, like in this situation, it is not necessary to bring up the concept of foresight of consequences.

After being doubted, and deemed effectively useless, in the case of Hancock and Shankland in 1986, the 'Moloney Guidelines' are no longer in English Law. This case, in conclusion, suggested that foresight of consequences is not intention, but is evidence of intention.

Hancock and Shankland 1986

Two miners, who were on strike at the time, dropped a concrete block onto a taxi from a bridge over the road it was driving along. The taxi was transporting a miner to work, and the defendants claimed they had merely intended to frighten the miner and block the road, rather than killing the taxi driver which was the actual consequence. Initially, they were convicted of murder. The judge's direction to the jury was based on Lord Bridge's speech in the Moloney case. During appeal, the Court of Appeal quashed the convictions, replacing them with manslaughter, as the Moloney guidelines were misleading. After hearing an Appeal from the prosecution, Lord Scarman of the House of Lords confirmed the decision of the Court of Appeal, and stated: 'I agree with the Court of Appeal that the probability of a consequence is a factor of sufficient importance to be drawn specifically to the attention of the jury and to be explained. In a murder case where it is necessary to direct a jury on the issue of intent by reference to foresight of consequences the probability of death or serious injury resulting from the act done may be critically important... In my judgement, therefore, the Moloney guidelines as they stand are unsafe and misleading. They require a reference to probability. 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 the consequence was also intended'

Nedrick, 1986

The case of Nedrick occurred in 1986, and gave the House of Lords the chance to clarify the confusion in relation to foresight of consequences and its link with intent. This case involved a defendant pouring petrol through the letterbox, and then over the front door of the house of a woman he held a grudge against. He then proceeded to set fire to the house, killing the woman's son who was inside. The defendant claimed he merely intended to scare the woman, not to kill anyone. As this case was initially heard before Moloney and Shankland, he was convicted of murder. The directions given to the jury by the judge in this case equated foresight of consequences with intent. Lord Lane C.J stated that the correct direction given to the jury should have been: 'Where the charge is murder and in the rare cases where the simple direction is not enough, the jury should be directed that they are not entitled to infer the necessary intention, unless they feel sure that death or serious bodily harm was a virtual certainty (barring some unforeseen intervention) as a result of the defendant's actions and that the defendant appreciated that such was the case'.

This set that the probability of a foreseeable consequence occurring had to be 'virtually certain'. It meant that the defendant must have realised this before the jury

could consider foresight of consequences as evidence that he had intent. This meant that in this particular case the jury were unable to convict the defendant of murder unless the defendant recognised that it was a virtual certainty that his actions would result in serious injury or death.

Woolin, 1998

The case of Woolin saw a defendant who threw his three month old son towards his pram which was situated four or five feet away from him, after vigorously shaking him. This resulted in the death of the baby. Woolin claimed, although the baby hit the floor hard, that he did 'not think it would kill him'.

The judge directed the jury using the directions previously used in the case of Nedrick - 'Where the charge is murder and in the rare cases where the simple direction is not enough, the jury should be directed that they are not entitled to infer the necessary intention, unless they feel sure that death or serious bodily harm was a virtual certainty (barring some unforeseen intervention) as a result of the defendant's actions and that the defendant appreciated that such was the case' - but, later on in the case, he went on to direct the jury that they should convict him "If they were satisfied that when the defendant threw the child he appreciated that there was a substantial risk that he would cause serious harm to it." This was said with the aim to allow the jury to find intention, as there was such sufficient evidence. The defendant appealed, claiming the judge's direction to the jury was misleading 'as to the degree of foresight required'. He lost his appeal, as the Court of Appeal said the judge's use of the directions given in Nedrick were confused with the later use of the phrase 'substantial risk'. His initial conviction for murder was quashed and replaced with manslaughter.

The case outcomes were incredibly important, and Law Lords were forced near to amending the law on mens rea in murder in relation to intent. The two model questions established in the Nedrick case were abolished, and it was decided that the model direction from that case should be used. This case also stated that the direction in Nedrick should not use the word 'infer', instead they should tell the jury that they are entitled to 'find' intention.

The law relating to foresight of consequences and intent now stands as the following: 'If the jury are convinced that the defendant foresaw death or serious injury as a virtual certain consequence of his actions, they are entitled to find the intent that fulfils the mens rea requirement of a crime.' This statement provides a little more flexibility for the jury in making their decision, as the word 'entitled' is used.

Matthews and Alleyne, 2003

This case saw two defendants who had dropped someone 25 feet from a bridge into the middle of a deep river. The victim told them that he was unable to swim. The watched him 'dog paddle' over to the bank of the river, but left the bridge before ensuring he reached safety. The victim drowned before doing so.

The defendants claimed that they did not aim to kill the victim, but the judge disagreed and directed the jury that if drowning was a virtual certainty and that the defendants realised this then they must have had intention.

In relation to this case, it was taken that the decision made in the case of Woolin meant that foresight of consequences is not the same as intent. It is merely a rule of evidence.

Conclusion

Over the past 20 years or so, the law regarding the definition of 'intention' and what constitutes 'intent' has changed.

DPP v Smith initially found a link between foresight of consequences and intent, using a subjective test. The Criminal Justice Act of 1967 was passed by Parliament in order to weaken the link between the two. Hyam v DPP in 1975 again saw the law become unclear, as it was decided that foresight of consequences and intent could in fact be the same if the chances of a consequence were 'highly probable'. This phrase is no longer used as it allows too much room for interpretation by the jury. R v Moloney in 1985 broke the link between foresight of consequences and intent, and suggested that foresight of consequences should instead be used as evidence of intention. However, the guidelines set in this case were deemed useless in the case of R v Hancock and Shankland in 1986. R v Nedrick is the case that established the current law regarding foresight of consequences. The guidelines provided in this case, however, were refined in the later case of R v Woolin in 1998. Therefore, the current law is that there is no direct link between foresight of consequences and intent. Instead foresight of consequences can be used by the jury to find intent.

In 1993, there was discussion within the Law Commission, in its report 'Offences Against the Person and General Principles', which proposed that 'intentionally' should be defined as:

'A person acts intentionally with respect to a result when:

- i) it is his purpose to cause it; or
- ii) although it is not his purpose to cause it, he knows that it would occur in the ordinary course of events if he were to succeed in his purpose of causing some other result'.

This was only said regarding non-fatal offences against the person, but there has been no reason given as to why the definition cannot be broadened to include all offences, as suggested by the Draft Criminal Code.

I think that the law regarding intent, and the definitions provided will continue change as times change and new cases are introduced. I also think that the way in which the jury are directed may, again, change.