

'Foresight of consequences is not the same as intent': Discuss.

Written by Sarina Worley – September 2008

Introduction

To constitute a crime under English law there must be two main elements proved, that of Mens Rea and Actus Reus. The prosecution (also known as the Crown Prosecution Service) must first convince the jury that the defendant(s) has committed the Actus Reus also known as the act committed or omission. If this is proven then the jury have been convinced that the defendant intended to commit an offence under English law. In addition the prosecution must also prove there to be the necessary Mens Rea, in other words there must be the intent of a guilty mind. Without this the defendant does not have any intention, henceforth he is not guilty of a criminal offence (the only exception is that of strict liability offences). The burden of proof was established by Woolmington v DPP (1935) and is that of '*beyond all reasonable doubt*'.

Foresight of consequences can be looked at in various forms of offences such as theft. However this essay will focus primarily on the offence of murder. For which the required mens rea is intent to kill or cause Grievous Bodily Harm. This was established under section 18 Offences Against the Person Act (1961).

Intent can be divided into two categories which are that of direct intent and oblique intent. Direct intent is comparatively simple, while oblique intent is slightly more complex. Both will be discussed further in the essay.

I intend to argue that foresight of consequences is not the same as intent; relevant cases will be used in order to support my argument.

Main discussion

To begin with, what is intent? Intent can be described in many forms however they can be categorised into direct and oblique intent as stated above. Unfortunately there is no statutory definition of the word 'intention' and it is for the jury to decide whether this state of minds exists. However there have been attempts by the Courts to define what intent actually is. In the case of Mohan (1975) the court defined intention as:

'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'.

In other words the defendant's intention or reason for doing the act is not significant. The important point is that the defendant decided to bring about the prohibited consequence.

The Draft criminal code had also attempted to define intention as follows:

'a person acts intentionally with respect to a result when he acts either in order to bring it about or being aware that it will occur in 'the ordinary course of events' result in a particular way'.

In other words the individual acts intentionally when they realise the outcome/consequence of his actions.

Direct intent

As stated earlier direct intent is simpler than oblique intent. The main reason for this is due to the fact that the jury can deduce the intent (mens rea) from the circumstances. Direct intent is said to be the aim, purpose and desire of the defendant, and if the circumstances and act so proves this, then direct intent is the intention of the defendant. The easiest way to understand the concept of direct intent is to use an example, take for instance we look at the case of Byrne (1960) in which the defendant is a psychopath who enjoys torturing, and killing people. He strangles the victim to death and then cuts his body into pieces. It clearly was the intention of the defendant to kill the victim, henceforth he had direct intent. His condition as a psychopath is beside the point; he still intended to kill the victim.

Oblique intent

Oblique intent, also known as foresight intent, is far more complex due to the fact that it is harder to access the mind of the defendant. Once again the easiest way to understand the concept of oblique intent is to use an example. Take for instance an individual started a fire in a building, in order to bring attention to a situation, or bring fear to a person or organisation. He does not intend to harm anyone in the process. However there is a person inside the building who as a result of the fire dies. This is where the complexity of oblique intent lies, since it is uncertain whether the individual should be guilty of murder or not. Some would undoubtedly say yes, yet many would argue no, since it was not the intention of the defendant to kill. A case that highlights this issue is R v Steane (1947) in which the defendant broadcasted favourable propaganda for the Nazi regime. But argued that he had only done this after being beaten, and after threats that he and his family would be sent to a concentration camp if he declined. He was at first convicted, but it was later quashed. This presents the idea that unless it is clearly evident that the defendant

intended to commit a pacific offence, then he should be acquitted. This coincides with the statement made by Lord Goddard CJ who states:

“no doubt, if the prosecution prove an act the natural consequence of which would be a certain result and no evidence or explanation is given, then the jury may, on proper direction, find that the prisoner is guilty of doing the act with the intent alleged, but if on the totality of the evidence there is room for more than one view as to the intent of the prisoner, the jury should be directed that it is for the prosecution to prove the intent to the jury’s satisfaction, and if on a review of the whole evidence, they either think the intent did not exist or they are left in doubt as to the intent, the prisoner is entitled to be acquitted “.

A case with significance to this, and a case that began to develop the law of foresight of consequences was **DPP v Smith (1961)**, in this case the defendant had been ordered to leave his car, by a policeman, which contained stolen goods. Instead, he accelerated sharply and drove off at immense speed with the policeman clinging onto the vehicle. The officer was thrown off and into the path of an oncoming car; he died from the impact of his injuries. Smith was charged with murder, convicted and sentenced to death.

This conviction was appealed and ultimately reached the House of Lords; the strongest team of judges were assembled to hear this criminal appeal. The panel included Lord Kilmuir, Lord Parker of Waddington (the then lord chancellor), the lord Chief Justice, and Lord Denning. The panel unanimously upheld the conviction. The Lord Chancellor when commenting on the defendant stated:

“If in doing what he did, he must as a reasonable man have contemplated that serious harm was likely to occur, then he was guilty of murder”.

This conviction was highly criticised by academics, however Lord Denning defended this judgement by stating:

“No doubt Smith had no desire to kill him: and it was not his purpose to kill him. But must he not be aware that there was a very high probability that the policeman would suffer grievous bodily harm? And if so, was he not guilty of murder? The judge so directed the jury: and the jury so found. And the House of Lords have said the direction was right”.

As we can see an objective approach was taken, and consequently this case was authority for the view that a person foresaw and intended the natural and probable consequences of his acts. This presents to us the view that foresight of consequences is the same as intent, thus the statement made in this questions is wrong. However since there was immense condemnation placed upon this conviction by academics, this was reversed, and the newly formed law commission intervened. On advice from this body **s8 of the Criminal Justice Act 1967** was enacted. This section states:

'The jury is not bound in law to infer that the defendant intended foresaw a result of his actions just because it was a natural and probable consequence of them. It should, instead make the decision about whether he did have such an intention or foresight by looking at all the evidence and drawing the proper conclusions from that'.

In other words the jury should not find a defendant guilty because the outcome of their actions was the natural and probable consequence. Although they may infer that they are guilty from looking at all the evidence. From this we can see that instead of an objective approach, a subjective approach has been implemented henceforth the statement made within this question 'Foresight of consequences is not the same as intent', is right.

In the case of Hyam v DPP (1975) the defendant began to grow envious when another woman, in her view, was taking her place in the affections of a man friend. Due to this in the early hours of the morning the defendant poured petrol through the "other women's" letterbox, resulting in a fire. This consequently led to the death of two children. The defendant argued that she had no intention to kill; instead she merely intended to scare the woman. However she was convicted of murder. This case eventually reached the House of Lords in which the question before them was whether or not the mens rea required for murder was established, when the defendant knew that it was highly probable that her act would result in death or serious bodily harm. We should also remember that they were not asked whether foresight of consequences is the same as intent. The House of Lords upheld the conviction; however it is evident that the judges varied in their reasons for dismissing the appeal Lord Diplock stated:

"No distinction is to be drawn between the state of mind of one who does an act because he desires a consequence, and the state of mind of one who does the act knowing full well that it is likely to produce that consequence"

Whilst Lord Hailsham stated:

"I do not consider that the fact that a state of affairs is correctly foreseen as a highly probable consequence of what is done is the same thing as the fact that a state of affairs is intended"

Although the Lords seemed to disagree in areas it was held that the state of law on intention was that, if the foreseeable consequence of an act were considered to be "highly probable" then this was enough to establish that the mediator of the act intended the consequences.

So strong was Lord Hailsham's view that it was used by the Court of Appeal in the cases of Mohan (1975) and Belfon (1976). Both these cases were non-fatal. The judges within these cases decided that mere foresight that death or personal injury was highly probable was not the same as having the intention to cause the act in

question. Instead, it was merely evidence for the jury to look at, when deciding whether an intention was present. This presents to us the view that foresight of consequences is not the same as intent but instead merely evidence; henceforth the statement made within this question is right.

Moloney guidelines

The case of Moloney (1985) was one of the first cases to deal with intent since s8 of the Criminal Justice Act 1967 was created. In this case the defendant and his step-father were at a family function, and had become considerably intoxicated (drunk). They had seemed to be conversing with each other friendly. However they had, had a disagreement as to who could load, and shoot a gun quicker. The defendant had been the one to load the gun the quickest. As this happened the defendant's step-father had said: 'I didn't think you had the guts, but if you have pull the trigger'. And so the defendant did which resulted in the death of the step-father. The defendant immediately afterwards called the police, and admitted to killing his step-father. He claimed that he had never intended to kill his step father, he stated: 'I didn't aim the gun. I just pulled the trigger and he was dead'.

The defendant was convicted of murder. He then appealed to the Court of Appeal, but this was soon quashed. He then went to the House of Lords in which Lord Hailsham LC, Lord Fraser, Lord Edmund-Davies, Lord Keith, and Lord Bridge were on the panel. The panel were given the direction from Stephen Brown J who directed the jury that the prosecution had to prove that M intended to kill to S or intended to cause him some really serious injury he also went on to state the following with concern to intent:

"When the law requires that something must be proved to have been done with a particular intent, it means this: a man intends the consequence of his voluntary act a) when he desires it to happen whether or not he foresees that it probably will happen and b) when he foresees that it will probably happen, when he desires it or not"

Lord Bridge made a speech which all other judges agreed on he stated:

"having held that the direction given by Stephen Brown J was unsatisfactory and potentially misleading, 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 is 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"

Lord Bridge also went onto state two questions that should be used by the jury they are as follows:

1. Was death or really serious injury in a murder case (or whatever relevant consequence must be proved to have intended in any other case) a natural consequence of the defendant's voluntary act?
2. Did the defendant foresee that consequence as being a natural consequence of his act?

The jury should then be told that if they answer yes to both questions it is a proper inference for them to draw that he intended that consequence.

This direction effectively became known as the 'Moloney Guidelines'; however it should be noted that they are not now part of our English law, mainly due to the next case which will be discussed. What we can deduce from this however is that intent and foresight of consequences are certainly two different things, thus the question 'foresight of consequences is not the same as intent', is right.

Hancock and Shankland (1986)

In the case of **Hancock and Shankland (1986)** the defendants 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 defendants were convicted of murder.

When the trial judge was considering the verdict of this case he used the Moloney Guidelines since they were set by the House of Lords thus making it precedent which must be followed. The defendants appealed this verdict, the conviction was quashed, and this was also supported by the House of Lords.

Lord Scarman found the guidelines to be misleading, when reviewing them he 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 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. Its importance will depend on the degree of probability: if the likelihood that death or serious injury will result is high, the probability of that result may, as Lord Bridge of Harwich noted and the Lord Chief Justice emphasised, be seen as overwhelming evidence of the existence of the intent to kill or injure. Failure to explain the relevance of probability may, therefore mislead a jury into thinking that it is of little or no importance and into concentrating exclusively on the casual link between that act and its consequence"

Lord Scarman also went on to state:

"I am not surprised that when in this case the judge faithfully followed this guidance the jury 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 that consequence was foreseen the greater the probability is that, that consequence was also intended”.

Since the Guidelines were found to be misleading this case overruled the case of **Moloney (1985)**. This therefore meant that the Court of Appeal had to set new guidelines which they did in the next case which will be discussed.

R v Nedrick (1986)

In this case the defendant had a grudge towards a woman. He poured paraffin through the letter box and set the house alight. A child died within the fire. The defendant was convicted of murder. The appeal court quashed the conviction and submitted one of manslaughter.

It was within this case that the new guidelines were created Lord Lane CJ in concern with the guidelines stated:

“Where the charge of murder and in the rare where the simple direction is not enough, they 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 as a result of the defendant’s actions and that the defendant appreciate this was the case”.

This stayed law until 1998. Overall from the case of Nedrick we can see that foresight of consequences is not the same as intent.

R v Woollin (1998)

In this case the defendant had become frustrated with his 3 months old baby, and threw the baby at a pram, causing the death of the baby. During interviews the defendant admitted to realising the risk of injury, but did not realise or intend to kill.

The judge in this case gave the jury the Nedrick direction he also stated:

“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”

The jury ultimately found the defendant guilty; he was convicted of murder, and denied the defence of provocation.

The defendant then appealed this conviction using the defence that the judge’s direction to the jury was substantially misleading “as to the degree of foresight required”. The conviction on appeal was then reduced to one of manslaughter.

The Law Lords thought that the two questions in Nedrick caused misdirection. They held that the model direction to be given to a jury considering foresight of consequences should now be:

'The jury should be directed that they are not entitled to find the necessary intention unless they feel sure that death or serious bodily harm was a virtual certainty'.

This can cause some problems since the word infer is used in s 8 of the Criminal Justice Act 1967 and this is presumably why it is used in Nedrick. Lord Steyn in his judgement also went on to say that the effect of the direction is that 'a result foreseen as virtually certain is an intended result.

Matthews and Alleyne (2003)

One further case that highlights the issue of whether foresight of consequences is not the same as intent is the case of Matthews and Alleyne (2003) in this case the defendants dropped the victim into a river where he drowned. In this case the Court of Appeal held that the judgement in Woollin meant that foresight of consequences is not intention: it is a rule of evidence.

Overall from this case we can see that foresight of consequence is not seen as the same as intent but evidence of intention. Thus the argument presented supports my intention to prove that foresight of consequences is not the same as intent.

Reform

In 1993 there was a form of reform implemented by the law commission, in its report offences against the person and general principles, proposed that 'intentionally' should be defined as follows:

"A person acts intentionally with respect to a result when: it is his purpose to cause it; or 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 succeeded in his purpose of causing some other result".

This is only in relation to non-fatal offences. But there is no reason why it can't be for all offences as suggested in the Draft Criminal Code. I am also of the opinion that this should be extended to fatal offences in order to create justice and consistency.

Conclusion

In conclusion it has been seen that foresight of consequences is indeed not the same as intent. It is merely evidence of intention. Precedent has been created that clearly states this. As we have seen this issue has been debated upon for many years, and it seems likely that it will be debated upon for many more years to come, however it is

of my opinion that the courts should stick to the Nedrick direction as they seem the most clearest, and give the best probability of consistency and justice which is the main focus of our legal system. I feel it important that there should not be any cohesion with foresight of consequences and intent. They are two separate entities that should be kept separate in order to avoid confusion, and also to create regularity and justice within the English legal system.

Sarina Worley

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Plan for the question 'Foresight of consequences is not the same as intent'.

Introduction

Mens rea-guilty mind

Actus reas-guilty act

Woolmington v DPP established the burden of proof 'beyond all reasonable doubt'

Main discussion

What is intent?

Direct intent---simpler, aim, purpose and desire

Oblique intent--- more complex---harder to deduce the actually intention of the defendant

Mohan 1975---attempted to define intention

'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'.

DPP v smith

The defendant had been ordered to leave his car, by a policeman, which contained stolen goods. Instead, he accelerated sharply and drove off at immense speed with the policeman clinging onto the vehicle. The officer was thrown off and into the path of an oncoming car; he died from the impact of his injuries. Smith was charged with murder, convicted and sentenced to death.

Held intention was not the same as intention.

Hyam v DPP (1975)

The defendant began to grow envious when another woman, in her view, was taking her place in the affections of a man friend. Due to this in the early hours of the morning the defendant poured petrol through the "other women's" letterbox, resulting in a fire. This consequently led to the death of two children. The defendant

argued that she had no intention to kill; instead she merely intended to scare the woman. However she was convicted of murder.

It was held that the state of law on intention was that, if the foreseeable consequence of an act were considered to be “highly probable” then this was enough to establish that the mediator of the act intended the consequences.

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Both these cases were non-fatal. The judges within these cases decided that mere foresight that death or personal injury was highly probable was not the same as having the intention to cause the act in question

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Two questions were created in order to direct the jury:

1. *Was death or really serious injury in a murder case (or whatever relevant consequence must be proved to have intended in any other case) a natural consequence of the defendant's voluntary act?*
2. *Did the defendant foresee that consequence as being a natural consequence of his act?*

Guidelines are no longer in English law.

Hancock and Shankland (1986)

In the case of Hancock and Shankland (1986) the defendants 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 defendants were convicted of murder.

The Moloney guidelines were used in this case however they were found to be misleading. They were overruled.

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In this case the defendant had a grudge towards a woman. He poured paraffin through the letter box and set the house alight. A child died within the fire. The defendant was convicted of murder. The appeal court quashed the conviction and submitted one of manslaughter.

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This stayed law until 1998. Overall from the case of Nedrick we can see that foresight of consequences is not the same as intent.

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In this case the defendant had become frustrated with his 3 months old baby, and threw the baby at a pram, causing the death of the baby. During interviews the defendant admitted to realising the risk of injury, but did not realise or intend to kill.

The law lords thought that the two questions in Nedrick were not helpful. They held that the model direction to be given to a jury considering foresight of consequences should now be:

‘The jury should be directed that they are not entitled to find the necessary intention unless they feel sure that death or serious bodily harm was a virtual certainty’.

This creates a problem with **s8 of the criminal justice act 1967.**

Matthews and Alleyne (2003)

In this case the defendants dropped the victim into a river where he drowned. In this case the Court of Appeal held that the judgement in Woollin meant that foresight of consequences is not intention: it is a rule of evidence.

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Offences against person and general principles, proposed that 'intentionally' should be defined as follows:

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This only applies to non-fatal but I see no reason why it cannot be extended to all offences.

Conclusion

Foresight of consequences is not the same as intent it is merely evidence of intention.