

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

Introduction

In order for a person to be found guilty of a crime, the prosecution must prove that, beyond all reasonable doubt¹, the defendant possesses both the actus reus (guilty act) and the mens rea (guilty mind) for the crime of which they are accused. While both are needed for a person to be found guilty, the actus reus is often easier to establish, as judges or statutes lay down these guilty acts for each crime. However, the mens rea is often more difficult to establish as, of course, not everybody thinks in the same way, so personal attributes and other factors can easily influence what was going on in the defendant's mind at the time of a crime.

In relation to the statement 'foresight of consequences is not the same as intent', the courts have stated that a foresight of consequences can only be evidence of intention if the defendant knew that the consequences were certain to happen. Therefore, it is not enough for the prosecution to suggest that the defendant recognised the possibility of the consequences, he had to one hundred per cent know that they would happen. The Oxford Dictionary of Law² states that 'a person is assumed to intend consequences if his acts that are inevitable but cannot be presumed to intend a consequence merely because it is probable or natural'. The discussion of this statement therefore can be centred around the issue of inevitability versus probability. Even a high probability of consequences cannot be enough to convict a person, the inevitability of consequences, however, is.

Specific and basic intent crimes

The prosecution must establish that the defendant possesses 'the relevant degree of blameworthiness required by the offence in question'³. For the most serious crimes, a high degree of blameworthiness is required, ergo the defendant will only be found guilty if it is shown that they intended to commit the crime. This is the case for crimes such as murder, where in **s18 Offences Against the Persons Act 1861** it is stated that the mens rea needed was that the defendant wounded or caused grievous bodily harm 'with intent to do some grievous bodily harm'⁴. This is also seen in the crime of theft, the prosecution must prove that the defendant appropriated property belonging to another 'with the intention of permanently depriving the other of it'. These are examples of specific intent crimes. Other crimes which do not always require such a high degree of blameworthiness, known as basic intent crimes, can be committed either intentionally or recklessly.

Direct and oblique intention

Direct intention occurs in cases where it is easy for the jury to deduce whether the accused holds the necessary intention based on the circumstances. An example of this would be if the accused has screamed "I'm going to kill you" moments before shooting at a person, their intent is

1 As noted in Woolmington v DPP 1935

2 http://www.oxfordreference.com/pages/Subjects_and_Titles__2F_05

3 Diana Roe, Criminal Law

4 <http://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/18>

obvious. In **R v Mohan** (1975)⁵ it was held that direct intention means, "aim or purpose", "a decision to bring about, insofar as it lies within the accused's power, the commission of the offence... no matter whether the accused desired that consequence of his act or not. " Therefore, in having a direct intention, the accused does not have to have desired the consequences of his actions (obviously this involves having a foresight of them) but can still be held to have the intention to commit a crime.

Oblique intention often 'arises where the purpose of the offender in committing the crime is different to the result'⁶. An example of this would occur if someone shot at another person, believing they were out of range, but they were killed. In this case the accused did not intend to kill. It is obvious that a jury in this case would find it hard to decide whether to convict this person of murder when they had not foreseen that murder was an inevitable outcome of their actions. The current state of the law on oblique intention in murder cases was expressed by the House of Lords in **Woollin** (1998)⁷ in which the judges confirmed that it is for the jury to decide whether the defendant intended to ill or cause serious bodily harm, however due to the oblique nature of it, the jury should be further directed (as seen in **Moloney** (1986) to be discussed later) that they cannot say they have found the necessary intention unless they feel that death or serious bodily harm was a virtual certainty and the defendant knew this. So, in relation to the statement, oblique intention is clearly not the same as a foresight of consequences, as the entire principle of oblique intention is that the accused did not foresee the consequences.

Development of 'intention' through case law

As there is no statutory definition of 'intention' it is unsurprising that the development of case law through time shows wide fluctuations in how the notion is interpreted.

DPP v Smith (1961)⁸ concerns a man who had been ordered to leave his car, which contained stolen goods, but he sped off with a policeman still holding onto the vehicle. Unfortunately the policeman was thrown from the vehicle and into the path of an oncoming vehicle. He died from his injuries, and Smith was charged with murder and convicted. On appeal, the House of Lords upheld the conviction, saying that the defendant did possess the necessary intention for murder if an ordinary man in similar circumstances would have contemplated the end result⁹. This case illustrates the objective test used at the time to determine if someone possessed intention to commit murder. However, this test was widely criticised which caused the Law Commission¹⁰ to intervene. Eventually this led to the enactment of **s8 Criminal Justice Act 1967** which now deals with how intention or foresight must be proved:

*"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 its being a natural and probable consequence of those actions; but (b) shall decide whether he did intend or foresee that result by reference to all the evidence drawing such inferences from the evidence as appear proper in the circumstances."*¹¹

This shows that the jurors must look at the facts in a more subjective manner than in Smith, by

5 http://www.vanuatu.usp.ac.fj/courses/la205_criminal_law_and_procedure_1/cases/R_v_Mohan.html

6 Diana Roe, Criminal Law

7 http://en.wikipedia.org/wiki/R_v_Woollin

8 <http://www.e-lawresources.co.uk/DPP-v-Smith.php>

9 Diana Roe, Criminal Law

10 <http://www.justice.gov.uk/lawcommission/index.htm>

11 <http://www.legislation.gov.uk/ukpga/1967/80/section/8>

deciding if the actual defendant intended to commit the offence, rather than deciding if an 'ordinary' man did, as suggested in *Smith* by the House of Lords

Hyam v DPP (1975)¹² surrounds a woman who was jealous when another woman came into her man friend's life. The jealous woman poured petrol through her rivals letterbox in the early hours, and set fire to it. Two children died in the fire. Hyam argued that her intention was never to murder anyone, just to frighten the woman. When the case reached the House of Lords, the appeal was rejected on grounds that intention was established if the defendant foresaw the result as highly probable. However, Lord Halisham did not agree with this view, and his words were picked up in the following two cases.

Mohan (1976)¹³ and **Belfon** (1976)¹⁴ are two non fatal injury cases in which the judges decided that foresight of death or injury was not the same as having the intent to cause them. In *Mohan*, the defendant was driving and then responded to a police officer's signal to stop. He slowed down, before accelerating toward the police officer. However the officer was able to jump out of the way, and the defendant drove off. The driver was charged with attempt to cause bodily harm by his wanton driving at the police officer. When the case reached the Court of Appeal, the appeal was allowed, as the prosecution had to prove that the accused had the specific intent to bring about the offence in question. It was not sufficient to establish that the accused knew or foresaw that the consequences of his act would, unless interrupted, be likely to be the commission of the complete offence. In *Belfon*, the defendant had slashed the victim with a razor causing severe wounds to his face and chest. The Court of Appeal held that in order to establish the offence under s18 it was essential to prove the specific intent. References to the defendant foreseeing that such harm was likely to result or that he had been reckless as to whether such harm would result, would be insufficient. These two cases illustrate that having a foresight of consequences was merely evidence for the jury to look at when deciding whether intention was present.

The case of **Moloney** (1985)¹⁵ created another new meaning of the word 'intention', largely overruling that given in *Hyam* ten years earlier. The defendant and his stepfather had been drinking and got into a disagreement over who could load a shotgun in the fastest time. The defendant won this, then said his stepfather dared him to pull the trigger of the gun. He did so, and the stepfather was killed. At trial, the judge directed the jury to follow the principles of *Hyam*, meaning that the defendant was convicted of murder. However, on appeal in the House of Lords, this was changed to manslaughter. When delivering the main judgement, Lord Bridge state that when directing the jury on the mental element required in these types of cases, a 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 misunderstanding”

This judgement confirmed what was stated in s8 of the Criminal Justice Act (as mentioned above) regarding a jury's use of evidence to infer intent. He went on to say that cases where the jury should require further explanation would be rare, even when death is even less direct than in *Moloney* and previous cases. This part of the judgement was confirmed in some later cases,

12 http://www.vanuatu.usp.ac.fj/courses/la205_criminal_law_and_procedure_1/cases/Hyam_v_DPP_PtI.html

13 <http://www.mibclaim.co.uk/resources/library/cases/mohan-john-patrick-1976/>

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http://www.google.co.uk/url?url=http://sixthformlaw.info/02_cases/mod3a/cases_11_mens_intention.htm%23Belfon,%2520R%2520v%2520%255B1976%255D%2520CA&rct=j&q=r+v+belfon+1976&usg=AFQjCNGNqv_0QAgxJZbb-gImw91fcZQwhg&sa=X&ei=pihNTvPvH8OHhQfqj5HnBg&ved=0CCAQygQwAA&cad=rja

15 http://www.lawwiki.org/lawwiki/R_v_Moloney_%281985%29

however it can also be noted that problems arose over what course of action should be taken when the jury did need further explanation, and what form this help should come in. This sparked the 'Moloney Guidelines'¹⁶, as explained by Diana Roe in Criminal Law:

“First, was death or really serious injury in a murder case a natural consequence of the defendant's act? Secondly, 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 the consequence.”

These 'Moloney guidelines' were put to the test, and were criticised in the case of **Hancock and Shankland** (1986)¹⁷. The case occurred during a period of miners strikers, when two of the striking miners resented another who had returned to work. They pushed a concrete block from a motorway bridge into the path of the oncoming police car and taxi escorting the miner to work. The taxi driver was killed in the crash. The trial judge recited the Moloney guidelines to the jury, who in turn convicted the miners of murder. However, on appeal, the judges in the Court of Appeal quashed the conviction, criticising the Moloney guidelines. The case then proceeded further, to the House of Lords, who upheld the decision of the Court of Appeal. Lord Scarman agreed with the House of Lords decision, and stated that the Moloney guidelines were 'unsafe and misleading':

“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 that consequence was foreseen the greater the probability is that that consequence was also intended.”¹⁸

He did not put other guidelines in their place, but this case did establish that the Moloney guidelines should no longer be used. He did, however, reiterate that it was the jurors who should decide whether the intention to kill existed, after looking at all the evidence. Both appeal courts also stressed that believing that the defendant knew the consequences of his actions as vitrually certain, it is not the same as saying he had an intention to kill, which is for the members of the jury to decide.

However this was not the end of the debate over the meaning of 'intention'. The matter arose again in **Nedrick** (1986)¹⁹, a similar case to Hyam, as the facts were such that the defendant poured petrol through a letterbox and set it alight, which resulted in the death of a child. Nedrick was convicted of murder. The first instance trial had taken place before the case of Moloney had reached the House of Lords (so was pre-Moloney guidelines) and also occurred before the changes were made in Hancock and Shankland. Unsurprisingly, the judge directed the jury in a way which followed the House of Lords' decision in Hyam. When appealed against, the conviction for murder was quashed because of these later changes in the law. Lord Lane decided that the correct direction to the jury should be:

“if they are satisfied that at the material time the defendant recognised that death

16 http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Moloney,%20R%20v%20%281985%29%20HL

17 http://www.lawwiki.org/lawwiki/R_v_Hancock_and_Shankland_%281986%29

18 http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Hancock%20and%20Shankland,%20R%20v%20%281986%29%20HL

19 http://en.wikipedia.org/wiki/R_v_Nedrick

or serious injury would be virtually certain, (barring some unforeseen intervention) to result from his voluntary act, then that is a fact from which they may find it easy to infer that he intended to kill or do serious bodily harm, even though he may not have any desire to achieve that result"

So, Lord Lane suggests that when determining whether the defendant had the necessary intent, it might be helpful for a jury to ask themselves two questions:

- (1) *How probable was the consequence which resulted from the defendant's voluntary act?*
- (2) *Did he foresee that consequence?*

He also stated that when the charge is murder, and in the rare cases (to which the Moloney guidelines applied) where simple direction wasn't enough, the jury should be told they are not entitled to infer intention unless they are sure that death or serious bodily harm was a virtual certainty as a result of the defendant's actions, and that the defendant had appreciated this fact. Although this statement was the most clear, and one which would eventually be favoured, there continued to be cases which caused confusion.

In **Walker and Hayles** (1990)²⁰, the two defendants threw their victim from a third floor balcony however the victim survived, and the defendants were convicted of attempted murder which was upheld on appeal in the Court of Appeal. However at their trial for attempted murder the trial judge directed the jury that they could infer intention if there was a high degree of probability that the victim would be killed and if the defendants knew 'quite well that in doing that there was a high degree of probability' that the victim would be killed. The defendants appealed on the ground that the trial judge was confusing foresight of death with an intention to kill and should have directed the jury in the Nedrick terms of 'virtual certainty'. On appeal, the Court of Appeal did not accept that the term 'high probability' was a misdirection, however it was stated that in rare cases where further direction is needed, courts should use 'virtual certainty' rather than 'high probability'.

"once one departs from absolute certainty, there is bound to be a question of degree. We do not regard the difference of degree, if there is one, between a very high degree of probability on the one hand and virtual certainty on the other as being sufficient to render what the recorder said as a misdirection".

This area of law was eventually better clarified by the House of Lords in **Woollin** (1998)²¹. The facts were summarised by Lord Steyn:

"the appellant lost his temper and threw his three-month-old son on to a hard surface. His son sustained a fractured skull and died. The appellant was charged with murder. The Crown did not contend that the appellant desired to kill his son or to cause him serious injury. The issue was whether the appellant nevertheless had the intention to cause serious harm. The appellant denied that he had any such intention."

When directing the jury, the trial judge had also added that they might infer intention 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'. The defence claimed that this had confused the jury as to

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http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Walker%20and%20Hayles,%20R%20v%20%281990%29%20CA

21 <http://www.publications.parliament.uk/pa/ld199798/ldjudgmt/jd980722/wool.htm>

the degree of foresight required. However on appeal, the Court of Appeal decided there had been no misdirection. When the case reached the House of Lords, they disagreed with the Court of Appeal's decision. The House of Lords had to consider whether, in cases where there is no direct evidence that the defendant's purpose was to kill or inflict serious injury, and answer these questions:

“is it necessary to direct the jury that they may only infer an intent to do some serious injury if they are satisfied

a) that serious bodily harm was a virtually certain consequence of the defendant's voluntary act and

b) that the defendant appreciated that fact”²²

Their Lordships answered these questions in the affirmative, but Lord Steyn said the word 'find' should be used in the place of 'infer'. The main point to take from *Woollin* is that the jurors will still decide the issue, but where the charge is murder, they can only find intention when they are satisfied that death or serious bodily harm was virtually certain, barring some unforeseen intervention, and the defendant appreciated this fact. Therefore, the charge of murder for *Woollin* was changed to one of manslaughter, due to the fact that the trial judge had confused the jury by his comments concerning a 'substantial risk', so his direction to them was far too wide.

Unfortunately, there is still some debate as to whether having a foresight of consequences as being virtually certain amounts to intention, so the jury has no discretion on the matter, or whether a foresight of the consequences is just evidence from which a jury can draw their final decision. However the amended version of previous opinions on the matter states that the jurors are not allowed to find intention unless they are sure that the defendant foresaw that death or serious injury was virtually certain. However, once they have decided on that issue they do have some discretion about their final decision.

This, however, was not the end of debate on the issue. It came to the fore again in **Matthews and Alleyne** (2003)²³. In this case, two men threw another from a bridge into a river, despite him telling them he could not swim. The trial judge had stated that the prosecution would only prove intent either:

“(i) by making you sure that this specific intention was actually in the minds of the defendants, or

(ii) (a) by making you sure that the deceased's death was a virtual certainty (barring some attempts to save him), and

(b) the defendant whose case you are considering appreciated at the time the deceased was thrown off the bridge that this was the case and he then had no intention of saving him, and knew or realised that the others did not intend to save him”

The defendants appealed, saying that the judge had stated point (ii) as a point of law, instead of stating it as a rule of evidence for the jury. The appeal was dismissed as the Court of Appeal took the view that if the jury was sure that the appellants appreciated that the virtual certainty of death, and had no intention of saving him, it was impossible for the jury not to find that the defendants intended for the victim to die.

22 Diana Roe, Criminal Law

23 <http://www.oup.com/uk/orc/bin/9780199234127/resources/01casematerial/bychapter/ch03/#b>

Conclusion

As can be seen through the cases mentioned above, the issue of foresight of consequences being the same as intention does not have a simple answer. 'Intent' has been looked out in many different ways throughout recent years, and finally in Woollin was described simply; a foresight of virtually certain consequences is not the same as intention, it is only evidence on which the jury may find it. Despite this, the case of Matthews and Alleyne brought the issue to the fore again, so the ruling in Woollin was not the end of the problems around this issue. There is a view within academic circles that pressure should be put on Parliament to create a statutory definition of 'intention', so that problems do not arise in future. On top of this, if the problems mainly come from giving more guidance to the jury, it might be preferable to leave the matter entirely to them, after having made them aware of the contents of s8 of the Criminal Justice Act 1967. Overall, the original statement, a 'foresight of consequences is not the same as intent' is correct.

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