Multiple Choice Questions Practice and Lecture Notes (Mens Rea) ;

Click Below ;

http://www.onlinelawtutor.co.uk/#!sample-criminal-law-mct-practise-online/c6v1

www.onlinelawtutor.co.uk

02081331422

info@onlinelawtutor.co.uk

Mens Rea

What is Mens Rea

- Mens rea in criminal law is concerned with the state of mind of the defendant. Most true crimes will require proof of mens rea.

- Where mens rea is not required the offence is one of strict liability.

- There are three main levels of mens rea: intention, recklessness and negligence.

- In criminal law, it is viewed as one of the necessary elements of a crime. The standard common law test of criminal liability is usually expressed in the Latin phrase, actus non facit reum nisi mens sit rea, which means "the act does not make a person guilty unless the mind is also guilty".

- Intention differs from motive or desire (Per Lord Bridge R v Moloney [1985] AC 905. Thus, a person who kills a loved one dying from a terminal illness, in order to relieve pain and suffering, may well act out of good motives. Nevertheless, this does not prevent them having the necessary intention to kill.

Intention

Intention is an ordinary word in everyday usage. It has a commonly understood meaning. However, when used in the context of criminal law, the precise meaning of the word ‘intention’ becomes highly significant and somewhat confusing.

Criminal law recognises two types of intention: direct intent and oblique (or indirect) intent.

Direct Intent

Direct intent is one's aim or purpose. Direct intention may be explained in basic terms: when you or I state that we have an intention to do an act, such as go to the cinema, we mean that it is our aim or purpose to go to the cinema, or that we have a desire to go to the cinema. This is our direct intention. In the vast majority of cases, where the intention of the defendant is in question, the court is concerned with direct intent. In such cases, the everyday meaning of intention is applied. Consequently, the judge does not need to give the jury any specific direction on intention, but asks the jury to apply their common sense to its meaning.

The majority of cases will be quite straight forward and involve direct intent. Direct intent can be said to exist where the defendant embarks on a course of conduct to bring about a result which in fact occurs. Eg D intends to kill his wife. To achieve that result he gets a knife from the kitchen, sharpens it and then stabs her, killing her. The conduct achieves the desired result.

Oblique Intent

Oblique intent can be said to exist where the defendant embarks on a course of conduct to bring about a desired result, knowing that the consequence of his actions will also bring about another result. Eg D intends to kill his wife. He knows she is going to be on a particular aeroplane and places a bomb on that aeroplane. He knows that his actions will result in the death of the other passengers and crew of the aeroplane even though that may not be part of his desire in carrying out the action. In this situation D is no less culpable in killing the passengers and crew than in killing his wife as he knows that the deaths will happen as a result of his actions.

The precise meaning of oblique intention has caused much consternation and confusion in the courts. There are two issues which have proved problematic for the courts over the years:

(1) What degree of foresight is required for oblique intent?

The courts have held that the defendant must foresee the consequences as virtually certain to occur: Woollin (1999).

R v Woollin [1999] AC 82 House of Lords

The appellant threw his 3 month old baby son on to a hard surface. The baby suffered a fractured skull and died. The trial judge directed the jury that if they were satisfied the defendant "must have realised and appreciated when he threw that child that there was a substantial risk that he would cause serious injury to it, then it would be open to you to find that he intended to cause injury to the child and you should convict him of murder." The jury convicted of murder and also rejected the defence of provocation. The defendant appealed on the grounds that in referring to 'substantial risk' the judge had widen the definition of murder and should have referred to virtual certainty in accordance with Nedrick guidance. The Court of Appeal rejected the appeal holding that there was no absolute obligation to refer to virtual certainty.

House of Lords held:

Murder conviction was substituted with manslaughter conviction. There was a material misdirection which expanded the mens rea of murder and therefore the murder conviction was unsafe. The House of Lords substantially agreed with the Nedrick guidelines with a minor modification. The appropriate direction is:

"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.

The decision is one for the jury to be reached upon a consideration of all the evidence."

The House of Lord Quashed the Murder Conviction and substituted with Manslaughter.

Thus, in this case, the jury could infer that the defendant had the necessary intention if they were sure that death or serious bodily harm was virtually certain to occur as a result of the defendant throwing the baby, and that the defendant had appreciated this.

(2) Does foresight of the consequences equate to intention in law or evidence of intention?

If the defendant does foresee the consequences as virtually certain to occur, is he to be taken to have intended those consequences or is his foresight merely evidence from which the jury may infer intention? The courts have held that foresight of the consequences is a 'rule of evi-dence'. This means that a defendant's foresight of the consequences as virtually certain to occur is evidence from which the jury may infer that he intended those consequences. The jury are not bound by law to find that he did intend those consequences, but they may infer that he did.

The current law on oblique intent is derived from the cases of Nedrick [1986] 1 WLR 1025 and Woollin [1999] 1 AC 82 and is referred to as the 'virtual certainty' test. As most of the authorities on oblique intent are murder cases, it is necessary at this stage to remind ourselves briefly that the mens rea for murder is malice aforethought, commonly expressed today as an intention to kill or cause GBH (Grievously Bodily Harm)

R v Nedrick (Ransford Delroy) (1986) 8 Cr. App. R. (S.) 179

is an English criminal law case dealing with mens rea. The defendant poured paraffin oil through the letterbox of a house, against whose owner he had a grudge. The house was set alight resulting in a child being killed. The case is important as it established the "virtual certainty test" becoming the key test on indirect (oblique) intention. The court said that there may be no case where intention to offend is inferred, unless the actions of the defendant are so dangerous, that death or serious injury is a virtual certainty.

The court set down model guidance for juries in cases where intention was unclear. Lord Lane CJ said:

"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 …The decision is one for the Jury to be reached upon a consideration of all the evidence."[1]

In summary, intent may be inferred if the following conditions are jointly satisfied:

The result was a virtual certain consequence of an actor's conduct, and

The actor knows that it is a virtually certain consequence

Note that in R v Woollin (1998), the House of Lords replaced "infer" with "find", for greater clarity in the model direction.

Remember

Direct intent ;

Defendant's aim or purpose

Consequences desired but not necessarily foreseen as certain

Oblique intent ;

Not defendant's aim or purpose

No desire but consequences are virtually certain and D appreciates this

History and development ;

1. DPP v Smith (1961) Objective irrebuttable presumption of law. A man intends the natural and probable consequences of his acts.

   A policeman tried to stop the defendant from driving off with stolen goods by jumping on to the bonnet of the car. The defendant drove off at speed

and zigzagged in order to get the police office off the car. The defendant argued he did not intend to harm the policeman. The policeman was knocked onto the path of an oncoming car and killed. The defendant was convicted of murder. The trial judge directed the jury as follows:

'If you are satisfied that ... he must as a reasonable man have contemplated that grievous bodily harm was likely to result to that officer ... and that such harm did happen and the officer died in consequence, then the accused is guilty of capital murder. ... On the other hand, if you are not satisfied that he intended to inflict grievous bodily harm upon the officer - in other words, if you think he could not as a reasonable man have contemplated that grievous bodily harm would result to the officer in consequence of his actions - well, then, the verdict would be guilty of manslaughter.'

The jury convicted of murder and the defendant appealed on the grounds that this was a mis-direction and that a subjective test should apply. The Court of Appeal quashed his conviction for murder and substituted a manslaughter conviction applying a subjective test. The prosecution appealed to the House of Lords who re-instated the murder conviction and held that there was no mis-direction thereby holding an objective test was applicable.

2. s.8, Criminal Justice Act, 1967 Subjective rule of evidence restored.

3. Hyam v DPP (1975) Confusing decision. A person intends the consequence of his actions when he foresees that consequence to be a highly probable result of his actions.

The defendant, in order to frighten Mrs Booth, her rival for the affections of Mr X, put burning newspaper through the letterbox of Booth's house and caused the death of two of her children. She claimed that she had not meant to kill but had foreseen death or grievous bodily harm as a highly probable result of her actions. Ackner J directed the jury that the defendant was guilty if she knew that it was highly probable that her act would cause at least serious bodily harm.

Although Lord Hailsham LC stated that he did not think that foresight of a high degree of probability is at all the same thing as intention, and it is not foresight but intention which constitiutes the mental element in murder, the House of Lords (by a 3-2 majority), held that foresight on the part of the defendant that his actions were likely, or highly likely, to cause death or grievous bodily harm was sufficient mens rea for murder.

4. Mohan (1976) Knowledge of likely consequences is evidence of intention.

5. Moloney (1985) Foresight of consequence as a natural consequence is evidence of intention.
6. Hancock and Shankland (1986) 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.

7. Nedrick (1986) The jury are not entitled to infer intention, unless death or serious bodily harm was a virtual certainty as a result of the defendant's actions and that the defendant appreciated that such was the case. (see above)

8. Woollin (1999) Confirmed Nedrick direction. Changed ‘infer’ to ‘find’, resulting in confusion over whether Nedrick/Woollin laid down as rule of evidence or one of substantive law. (see above)

   R v Woollin [1999] AC 82

   The current test of oblique intent:

   "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 find 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."

   The decision is one for the jury to be reached upon a consideration of all the evidence.

9. Matthews and Alleyne (2003) Confirmed Nedrick/Woollin direction as a rule of evidence.

Reform

In 2006, the Law Commission published its report, Murder, Manslaughter and Infanticide (Law

Com No. 304, 2006). The Law Commission proposed that the meaning of intention should be put on a statutory footing as follows:

(1) A person should be taken to intend a result if he or she acts in order to bring it about.

(2) In cases where the judge believes that justice may not be done unless an expanded understanding of intention is given, the jury should be directed as follows: an intention to bring about a result may be found if it is shown that the defendant thought that the result was a virtually certain consequence of his or her action.

The first statement refers to direct intent and is uncontroversial. The second relates to oblique intent. The Law Commission evidently took the view that the 'virtual certainty' test should be applied with respect to oblique intent (in accordance with Nedrick and Woollin). It is also clear that the Law Commission propose that this should be a rule of evidence, rather than one of sub-stantive law. The defendant's foresight of a result as a virtually certain consequence is evidence from which the jury may find intention.

Recklessness

Recklessness involves the taking of an unjustified or unreasonable risk. Recklessness is often a less culpable form of mens rea than intention as it involves foresight of possible or probable consequences, instead of desire or foresight of virtually certain consequences. Subjective or advertent recklessness is foreseeing the risk of a consequence occurring as a result of one's actions and going ahead to take that (unjustified or unreasonable) risk.

The current law on recklessness is relatively straightforward: there is one subjective standard of recklessness which applies to most criminal offences requiring recklessness as part of the mens rea.

However, the history of the law on recklessness is less simple. For over twenty years, there existed two tests of recklessness, one subjective (advertent recklessness) and the other containing an additional objective limb (inadvertent recklessness). Each test applied to different offences.

The current law

In R v G and another [2003] UKHL 50, Lord Bingham adopted the definition of recklessness proposed by the Law Commission and set out in clause 18 of the Draft Criminal Code 1989.

His Lordship stated that:

A person acts 'recklessly' within the meaning of section 1 of the Criminal Damage Act 1971 with respect to –

(i) a circumstance when he is aware of a risk that it exists or will exist;

(ii) a result when he is aware of a risk that it will occur;

and it is, in the circumstances known to him, unreasonable to take the risk.

Case Law History

Prior to 2003, the leading authority on recklessness was Cunningham [1957] 2 QB 396, in which a subjective standard was applied to the concept of recklessness.

Cunningham [1957] 2 QB 396

The defendant broke a gas meter and cracked a gas pipe, causing gas to leak into the house next door. A woman living there inhaled the gas and the defendant was convicted of maliciously administering a noxious thing so as to endanger life, contrary to s.23 of the Offences Against the Person Act 1861. He appealed on the basis that the trial judge had misdirected the jury by stating that the word

‘maliciously’ meant ‘wickedly’, doing ‘something which he has no business to do and perfectly well knows it’. The Court of Appeal quashed the defendant’s conviction and held that this was a misdirection and that ‘maliciously’ meant intentionally or recklessly.

The Court applied a subjective standard to recklessness, such that in order to be reckless the defendant must have foreseen that the harm might occur but gone ahead and acted anyway.

Thus, in this case, the defendant would have been reckless if he had realised that there was a risk of gas escaping and endangering someone as a result of his breaking into the gas meter, but gone ahead with the act anyway.

The House of Lords’ opinions in the cases of Metropolitan Police Commissioner v Caldwell [1982] 1 AC 341 and Lawrence [1982] 1 AC 510 were handed down on the same day and drastically changed the law on recklessness. Caldwell involved a defendant who started a fire in a hotel. He was tried for arson, contrary to ss.1(2) and 1(3) of the Criminal Damage Act 1971 and claimed that he was so drunk that it never occurred to him that he might be endan-gering the lives of people in the hotel. The Court of Appeal allowed the defendant’s appeal against conviction on the basis that the trial judge had misdirected the jury. The Crown then appealed to the House of Lords. The issue in this case was really one of intoxication: the House confirmed that intoxication was no defence to a crime of basic intent, such as arson.

The House of Lords also took the opportunity to review the law on recklessness. The majority of the House held that when used in a statute, the word ‘reckless’ is ‘an ordinary English word’.

Lord Diplock gave the leading opinion and stated that:

a person charged with an offence under section 1(1) of the Criminal Damage Act 1971 is ‘reckless as to whether any such property would be destroyed or damaged’ if (1) he does an act which in fact creates an obvious risk that property will be destroyed or damaged and (2) when he does the act he either has not given any thought to the possibility of there being any such risk or has recognised that there was some risk involved and has nonetheless gone on to do it.

Thus, under Caldwell, there are really two different tests (or limbs) of recklessness. Under the first test (or limb), a defendant would be reckless if:

(1) he does an act which creates an obvious risk of damage; and (2) he does not give any thought to the possibility of there being any such risk. Under the second test (or limb), a defendant would be reckless if he recognises that there is some risk involved and, nonetheless, goes on to do it.

R v G and another [2003] UKHL 50

The two young defendants, aged 11 and 12, were 'camping' in a yard behind a shop. They set fire to some newspapers which they threw under a wheelie bin. The fire spread to the shop and caused £1 million worth of damage. The defendants were charged with causing damage to property by fire, being reckless as to whether such property would be damaged, ontrary to ss.1(1) and 1(3) of the Criminal Damage Act 1971.

It was accepted that the defendants had not appreciated the risk that the fire might spread to the buildings. The defendants claimed that they thought the newspapers would extinguish themselves on the concrete floor. The trial judge, bound by Caldwell, directed the jury that the boys would be reckless if there was a risk of damage to property which would have been obvious to the reasonable bystander and the boys did not give any thought to the possibility of such a risk. He stated that 'no allowance is made by the law for the youth of these boys or their lack of maturity'. The defendants appealed against their convictions and the Court of Appeal certified a point of law of public importance for the House of Lords.

The House of Lords quashed the defendants' convictions and overruled Caldwell, restoring the law to its position as understood prior to Caldwell. In respect of criminal damage, the House adopted the test of recklessness proposed by the Law Commission in the Draft Criminal Code 1989 (set out in 3.4.1 above). The leading opinion was given by Lord Bingham, who gave four reasons for overruling Caldwell:

(1) Liability for a serious criminal offence should be dependent upon proof of a culpable state of mind. Lord Bingham took the view that the mens rea of a serious offence should be sub-jective. A defendant should only be held criminally liable if he intended the consequence or he knowingly disregarded an appreciated and unacceptable risk of the consequence occurring. A defendant must perceive the risk himself. If he does not, he 'may fairly be accused of stupidity or lack of imagination, but neither of those failings should expose him to conviction of serious crime or the risk of punishment' (per Lord Bingham).

(2) Caldwell led to ‘obvious unfairness’ and it was clear from notes that the jury sent to the trial judge that the direction in Caldwell ‘offended the jury’s sense of fairness’. Lord Bingham further stated that, ‘It is neither moral nor just to convict a defendant (least of all a child) on the strength of what someone else would have apprehended if the defendant himself had no such apprehension.’

(3) Lord Bingham stated that the reasoned and outspoken criticisms of Caldwell expressed by leading academics, judges, and practitioners should not be ignored.

(4) The majority in Caldwell had misinterpreted the meaning of ‘recklessness’ in s.1 of the Criminal Damage Act 1971. The majority had been wrong to decide that the Act had redefined ‘recklessness’ such that it should not be given the same subjective meaning that it had been given in Cunningham. Lord Bingham took the view that this misinterpretation was ‘offensive to principle’ and ‘apt to cause injustice’.

His Lordship acknowledged the problem that the House of Lords attempted to deal with in the case of Caldwell. Lord Diplock in Caldwell was concerned that a purely subjective.

Negligence

Negligence is regarded by some as not really a type of mens rea because it does not require consideration of the state of mind of the defendant, which it is said that mens rea does. Negligence imposes an objective standard on a defendant and can be satisfied by inadvertence to an obvious risk. The defendant’s conduct is judged against the conduct of the hypothetical reasonable person. This means that the characteristics of the defendant are not to be taken into account when assessing his fault. It is irrelevant that a defendant was unable to understand or didn’t know of the risk. Negligence is a much wider fault element than intention or recklessness.

A person is negligent when:

(1) he fails to foresee a risk that a reasonable person would have foreseen; or

(2) he does foresee the risk, but either does not take steps to avoid the risk or takes inadequate steps, thereby falling below the standard to be expected of the reasonable person.

There are various degrees of negligence, and thus, culpability. In (1) above, negligence is satisfied by inadvertence to a risk that would have been obvious to a reasonable person. The defendant is more culpable in (2), where the defendant is aware of the risk but fails to take adequate steps to prevent it, falling below the objective standard. The more obvious the risk would have been to the reasonable person, the higher the degree of negligence (or culpability) of the defendant who failed to recognise that risk.

At common law, negligence is rarely sufficient for criminal liability. The offence of gross negligence manslaughter, which requires a much higher degree of fault than ordinary tortious negligence, The concept of negligence is used much more readily in statutory offences, although most of these are regulatory in nature.

Some examples of statutory offences involving negligence include offences under the Road Traffic Act 1988. Section 3 of the Act provides for the offence of driving without due care and attention. This offence requires the defendant to drive in a way which falls below the standard of driving to be expected of the reasonable person. Section 1 of the Act provides for the offence of causing death by dangerous driving and s.2 provides for dangerous driving.

'Dangerous driving' is defined in s.2A as falling far below what would be expected of a competent and careful driver, when it would be obvious to a competent and careful driver that driving in such a way would be dangerous.

Another notable example is the offence of causing or allowing the death of a child or vulnerable adult under s.5 of the Domestic Violence, Crime and Victims Act 2004.

Strict liability

Strict liability can be described as criminal or civil liability notwithstanding the lack mens rea or intent by the defendant. Not all crimes require specific intent, and the threshold of culpability required may be reduced. For example, it might be sufficient to show that a defendant acted negligently, rather than intentionally or recklessly. In offenses of absolute liability, other than the prohibited act, it may not be necessary to show the act was intentional.

Generally, crimes must include an intentional act, and "intent" is an element that must be proved in order to find a crime occurred. The idea of a "strict liability crime" is an oxymoron. The few exceptions are not truly crimes at all – but are

administrative regulations and civil penalties created by statute, such as crimes against the traffic or highway code.

Key Points To Remember

Mens rea means "the act does not make a person guilty unless the mind is also guilty". The Intention

Criminal law recognises two types of intention: direct intent and oblique (or indirect) intent.

Direct Intention simple : A clear Intention

In Oblique Intention (indirect) ;The courts have held that the defendant must foresee the consequences as virtually certain to occur: Woollin (1999). The test ; see above.

Recklessness involves the taking of an unjustified or unreasonable risk.

The current law. In R v G and another [2003] UKHL 50, Lord Bingham adopted the definition of recklessness proposed by the Law Commission and set out in clause 18 of the Draft Criminal Code 1989.

A person is negligent when: (1) he fails to foresee a risk that a reasonable person would have foreseen; or (2) he does foresee the risk, but either does not take steps to avoid the risk or takes inadequate steps, thereby falling below the standard to be expected of the reasonable person.

By this stage you must Understand ;

Mens rea, Intention, Recklessness, Negligence, strict liability

Multiple Choice Questions Practice ;

Click Below ;

http://www.onlinelawtutor.co.uk/#!sample-criminal-law-mct-practise-online/c6v1

www.onlinelawtutor.co.uk

02081331422

info@onlinelawtutor.co.uk