

The meaning of intention in criminal law.

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As the courts have experienced great difficulty in deciding when a defendant intends a consequence it is not surprising that students also have great difficulty in understanding the law. However in *Woollin* House of Lords has taken a step towards clarifying the law of intention.

There is one meaning of intention that is agreed upon and that is where the a defendant wants something to happen as a result of his conduct. For example, the defendant wants to kill the victim and to do so he puts a gun to the victim's head and pulls the trigger. This is known as direct intent as it is the defendant's purpose to kill the victim. In such cases, the prosecution must prove beyond reasonable doubt that the defendant wanted, when he pulled the trigger, to kill the victim i.e. he had an intention to kill the victim. The prosecution will do this by calling evidence, for example, a witness testifies that he saw the defendant put the gun to the victim's head and pull the trigger. This is direct evidence that the defendant killed the victim and circumstantial evidence that the defendant intended to kill. The defendant is guilty of murder.

In addition to this meaning of intention based on purpose or desire, the courts have put forward a second meaning to intention where the defendant's purpose is not to cause a result, but he realises that by his act that result is very likely. This is because a single act can have two quite separate outcomes, for example, the defendant insures the cargo on an aeroplane and places a bomb on it timed to go off when the plane is in flight. The defendant's purpose is to claim the insurance money but he foresees it as very likely that the aircrew will be killed. In this example, a distinction can be made between the defendant's direct intent to claim the insurance money, and his indirect (or oblique) intent (based on foresight) to kill the aircrew. The question the courts have struggled with is whether such a defendant is guilty of murder.

One possible starting point to examine the courts' attempts to deal with this question is House of Lords decision in *Hyam* [1974] 2 All ER 41 where Lord Diplock stated (at 63) that "no distinction is to be drawn in English Law between the state of mind of one who does an act because he desires it to produce a particular evil consequence, and the state of mind of one who does the act knowing full well that it is likely to produce that consequence although it may not be the object he was seeking to achieve by doing the act." In *Lemon* [1979] AC 617 Lord Diplock further stated (at 638) that both states of mind constituted intention and the defendant in the example above had an intention to kill because he foresaw it as very likely the aircrew would be killed. In other words a defendant who foresees of a highly probable consequence intends that consequence.

In the nineteen eighties the House of Lords in *Moloney* [1985] 1 All ER 1025 and *Hancock and Shankland* [1986] 1 All ER 641 was again faced with murder and the problem of defining intention. In *Moloney* Lord Bridge stated (at 1038) "I am firmly of the opinion that foresight of consequences, as element bearing on the issue of intention in murder, or indeed any other crime of specific intent, belongs not to the substantive law but to the law of evidence." This reasoning (which was supported in *Hancock and Shankland*) does not accept the second meaning of intention, given in *Hyam*, but rather foresight is merely evidence from which

intention can be *inferred* by a jury. The problem is what does intention mean when a jury *infers* it from foresight? The most obvious answer would be that intention means purpose or desire i.e. purpose or desire is present when a defendant wants a consequence to occur (direct intent) *and* when a defendant foresees a consequence (indirect intent) as in the example given above. However, Lord Bridge ruled this out when he stated (at 1037), with reference to indirect intent, that “intention is something quite distinct from purpose or desire”. This meant that when a jury inferred that a defendant intended a consequence from evidence that he foresaw that consequence the word intention had no meaning.

The next question is what degree of foresight must be present, in cases of indirect intent, before a jury can infer intention from foresight? Lord Bridge stated (at 1039) that the inference could be made when the defendant foresaw the consequence as being a natural consequence of his act. In *Hancock and Shankland* Lord Scarman found (at 650) this to be misleading as there was no reference to probability. This would mean that the number of cases in which the inference could be made would be wide because a consequence could still be a natural consequence even though there was a low probability of it occurring. In *Nedrick* [1986] 3 All ER 1 the Court of Appeal acknowledged this problem when Lord Lane CJ took (at 4) the opportunity to give a direction to be used in cases of indirect intent only:

“Where the charge is murder and in the rare cases where a 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 judgment has been very valuable to juries because it gives clear guidance as to when they can infer intention from foresight as foresight of a natural consequence is not enough for there to be an inference of intention. Rather there has to be foresight of a virtual certainty which is a much narrower concept but it remained the case that intention, when inferred from foresight of a virtually certain result, still had no meaning.

In *Woollin* the House of Lords again considered the law of intention. The facts were that the appellant lost his temper and threw his three-month son on to a hard surface. The son sustained a fractured skull and died. The appellant was charged with murder. The prosecution did not contend that the appellant desired to kill his son or 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. The trial judge had initially given the *Nedrick* direction but, after an overnight adjournment, he instead directed the jury in terms of a substantial risk which is wider than virtual certainty, because an inference of intention could be inferred from foresight of a lower risk. The appellant was convicted of murder and his conviction was confirmed by the Court of Appeal. The House of Lords in an unanimous decision quashed the appellant’s conviction and substituted one of manslaughter.

Lord Steyn confirmed (at 113) the *Nedrick* direction (now the *Woollin* direction) was applicable in cases of indirect intent but he substituted the word “find” for “infer”. Lord Steyn states (at 110) “the effect of the *Nedrick* direction is that a result foreseen as virtually certain is an intended result”. Thus intention to kill (or to cause grievous bodily harm) now has two meanings. First, where it is the defendant’s purpose to kill (or to cause grievous bodily harm) (direct intent); and second, where the defendant’s primary purpose is not to kill (or cause grievous bodily harm) but he foresees that result as a virtually certain consequence of his act (indirect intent). It is submitted that this law applies to all crimes of specific intent that are

result crimes and to the law of attempt.

Discussion.

Should the law of murder (and other crimes of specific intent) include cases of indirect intent?the answer seems to depend on whether the defendant`s primary purpose or motive is morally wrong or not.It can be argued that if a jury is satisfied that the defendant foresaw a death as virtually certain then they *must* find an intention to kill otherwise a question of law will left to be decided by the jury as an issue of fact.But this is not what the *Woollin* direction states rather it states that are jury are *entitled to find* intention and there may be cases where a jury decide *not to find* intention.

There have been such cases ,for example,in *Steane* [1947] 1 All ER 813 where the appellant, a British subject ,was employed as a film actor in Germany and ,when war broke out, he was forced to broadcast German radio propoganda under the threat that if he did not do so his wife and children would be put in a concentration camp.After the war Steane was convicted of doing an act likely to assist the enemy with intent to do so.The Court of Criminal Appeal quashed his conviction on the basis that this was a case where there was a moral dilemma involving a good motive.Professor Norrie in “After *Woollin*” [1999] Crim LR 532 states (at 538) “the *moral* point in *Steane* was better achieved through a narrowing of the law of intention by recognising the moral threshold between the direct intent (saving the family) and the indirect intent (assisting the enemy).”In others words this was a case where the defendant should only have been convicted if his *purpose* was to assist the enemy.

There are situations involving murder which also have a moral dilemma,for example, in the *Herald of Free Enterprise* disaster a man was blocking an escape ladder and refused to move ,thus preventing the escape of others,so he was pushed off and drowned.The defence of duress of circumstances does not extend to murder,so if the person who pushed him off had been charged with murder it is likely he would have been convicted unless a jury,following the *Woollin* direction, had exercised its discretion *not to find* intention thus recognising the moral dilemma between the person`s primary purpose of saving others and his foresight of the man`s virtually certain death by drowning.

Conclusion.

By entitling a jury to *find or not to find* intention in cases of indirect intent,the result of the *Woollin* direction is that a question of law (the meaning of intention) will be decided as an issue of fact.But the decision to give a jury such a discretion is right as it enables any moral dilemma to be taken into account.Finally it should be remembered that the *Woollin* direction should only be given in cases of indirect intent and the great majority of murders involve cases of direct intent so such a direction is unnecessary.

A fuller discussion by Simon Parsons on the meaning of intention in criminal law appeared in the *Mountbatten Journal of Legal Studies* published by the Law School at Southampton Institute in December 2000.