

Intention in the case of woollins law essay



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The actus reus for murder is the unlawful killing of a human being caused by an act or omission of the defendant. [1] The mens rea for murder is malice aforethought or intention. What constitutes an intention to commit a criminal offence has been a difficult concept to define. [2] Intention can be divided into two sub categories: 'direct intent' and 'indirect/oblique intent'. The majority of murder cases involve direct intent and are usually unproblematic as the defendant makes clear his intention. [3] The case of Woollin is concerned with oblique intent and it is with this case category that difficulties arise. To better understand why the direction in Woollin may lack clarity it is necessary to look at the issues surrounding this area of law and identify some previous contentious cases and then investigate whether there should be a statutory definition for intention.

In cases of oblique intent the consequence of the offence was not the person's purpose or aim, but was something that occurred as a side effect of the persons actions, he foresees the result but does not necessarily desire it [4] ; the judge is required to follow judicial guidelines on giving directions to the jury on the meaning of this key term. Leading up to the case of Woollin there were a number of murder cases that created problems for the judiciary which arose from directions by the judge to the jury on oblique intent. [5] The courts indicated that there are two questions that should be considered: [6]

Does the defendant need to have foreseen the result?

How likely is the 'adverse effect' to occur, does it have to be virtually certain to occur or does it have to be merely probable?

The first case to examine is DPP v. Smith where the House of Lords ruled that intention can be established if a person intended the natural and probable consequence of his actions. This judgment was not considered to be sound and the passing of the Criminal Justice Act 1967 reversed the decision. Through the Act, parliament defined that the mere foresight of death being likely was not sufficient to amount to intent and stated that the jury is not bound to find that the defendant intended the result just because it was a natural and probable result of the defendant's act; the jury are to look at all the relevant evidence and then draw an appropriate inference as to the defendant's intention. [7] The courts interpreted this as requiring a subjective test and this settled the answer to the first question, but led to a series of conflicting decisions on the second question: [8] How likely is the adverse effect to occur, does it have to be virtually certain to occur or does it have to be merely probable? In Hyam the House of Lords held that the mens rea was established if a result is intended even though it may not have been desired by the defendant, if it was foreseen as a probable consequence; [9] The differing judicial opinions in this ruling on the meaning of intention have shown the ruling to be unsatisfactory as it resulted in a considerable state of confusion. [10] In Maloney the approach to the meaning of intention was narrowed and their Lordships held that intention did not equate to foresight and that the event had to be a natural occurrence of the defendant's action [11] . In Hancock & Shankland their Lordships stressed " that moral certainty or overwhelming probability was necessary in order to constitute intention" [12] . The Maloney direction was criticised as it did not provide any reference to probability [13] . The lack of uniformity of the meaning of intention in the above cases was addressed in

Nedrick [14] by Lord Lane CJ when he provided what is considered to be a 'model direction':

" 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" [15]

In attempting to clarify the law on oblique intent the House of Lords in Woollin unanimously validated the Nedrick direction with one amendment, agreeing to the requirement of a virtual certainty test: the word 'infer' was replaced with 'find' to ensure the clarity of the model direction. [16] The House of Lords held in cases concerning oblique intention then the jury may not find intention for the offence of murder unless death or serious bodily harm was a virtual certain result of the defendant's prohibited act and also that the defendant had appreciated this. [17] Some legal commentators welcomed the Woollin direction and Professor Smith described the decision as:

"[I]mportant and most welcome in that it draws a firm line between intention and recklessness...and should put an end to substantial risk directions" [18]

In his commentary Professor Smith also identifies and agrees with Lord Hope and Lord Steyn that the modification of using the word 'find' will and should get away from the strange and much criticised notion of inferring one state of mind from another. [19] Alan Norrie initially agrees that the decision

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appears to end the long-running saga concerning indirect [oblique] intention, but suggests that the case of Woollin may not be the last word in this area of 'intention' as it may not be impossible to achieve a conclusive position in the law of [oblique] intention [20] and that "Woollin leaves unanswered...the moral basis for judging someone a murderer". [21] Arfan Khan identifies that when a judge directs a jury to 'infer the requisite intention' that this in effect increases the weight of the prosecution evidence; this appears to be contrary to article 6. 2 of the European Convention on Human Rights. [22] The lack of clarity of the Woollin direction arises as the House of Lords in Woollin agree with the judgement in Nedrick. However, the case of Hyam is similar to Nedrick, but with a different outcome and has not been overruled by the House of Lords. Even though as stated the two cases were similar the Hyam decision was focused upon the probability based on foresight and the Nedrick decision was based on the test of virtual certainty and realisation. It is suggested that the guidelines formulated by the superior courts on intention are not definitive and may lead to confusion when trial judges instruct juries. [23] Alan Norrie addressed this issue: [24]

"... the House's view in Woollin departs from a previous reluctance to recognise that Hyam could not stand with the later cases. The judges have heretofore been "unnecessarily...and dangerously...coy about declaring that their brethren or predecessors have got it wrong" [25] ... if Hyam is materially the same as Nedrick, then Mrs Hyam should not have been convicted of murder and had her appeal dismissed... it is however clear that coyness breeds a lack of clarity in the law [26]

If the House of Lords are not prepared to rectify a previous ambiguous decision then this leads to uncertainty. It is clear that the Woollin direction tells us the defendant has the necessary mental state when he either (1) acts with the purpose of killing or doing serious bodily harm; or (2) acts while correctly foreseeing that his action is virtually certain to result in death or serious bodily harm. But it does not so clearly tell us how these two prongs are related and the direction fails to provide a clear distinction between intention and recklessness. [27] There is no clear line and it is difficult to ascertain from a consequence foreseen as 'virtually certain' which would be evidence of intent and from one foreseen as 'highly probable' which would be evidence of recklessness. These are difficult to distinguish and yet this is the dividing line between murder and manslaughter' [28]. The jury have to determine having regard to all the evidence and the direction from the trial judge, whether the defendant intended to kill or cause serious bodily harm. [29] The judicial guidelines for judges regarding directions for intent have been regarded as unsatisfactory, [30] and there are calls for the definition to be laid in statute.

Addressing whether a legislative definition is required to ensure that there is no space for Judicial Moralism to enter the court room, we must remember that the traditional attitude of the common law has been that crimes are essentially immoral acts deserving punishment. The dominant approach of orthodox subjectivism in the criminal law has been, when laws are broken the offender is culpable and deserves to be punished, criminal conviction expresses the social judgment of blameworthiness. [31] Emotions are ubiquitous in criminal law as they are in life; when emotions such as passion

and anger drastically alter a person's behaviour, should the law be more sympathetic? [32] As moral values of society and the government changes, so should the law. [33] The Judiciary is affected by moral standards and it would be impossible to prevent morality from entering the judicial process [34] . The criminal law involves a process of moral judgment. [35] Judge and juror alike have their individual morals and beliefs, the Judge should however be able to set his moral prejudices aside and give clear unbiased advice to the jury. The Woollin direction does not tell the jury which factors are meant to be taken into account, when considering intention. A jury can use their common sense when deciding whether a state of mind was ' bad enough' to be called an intention. However, a jury is made up of 12 random people with possible different cultural backgrounds and different morals and what may appear to be common sense and morally acceptable to one person, might not appear the same to another. The moral evaluation of a person's action concerns the intention, and actions although innocent may be immoral because of the person's motive. Due of the nature and flexibility of the Woollin direction different juries could reach different conclusions on the same set of facts.

When issues of morality arise ' the reality of judgment, blame and punishment generates the contrary pressure and insures that the quest for a value free science of law cannot succeed' [36] . Andrew Ashworth has identified from the case of Weller [37] that the jury is allowed some ' moral elbow room' when deliberating on a case; [38] ' the jury may occasionally ' perversely' refuse to convict if the law is too far outside their common sense

conception of what is reasonable, [39] this in itself leaves the door open for judicial moralism in the court room.

Professor Smith [40] and Arfan Khan [41] are proponents to have the definition of 'intention' laid in statute. A report by the Law commission investigated the issue and the commission concluded [42] "... that the existing law governing the meaning of intention should be codified" [43] ; in their findings they stated that the simple definition should be 'acting in order to bring a result about'. Ashworth indicates that this is based on the Woollin direction. [44] The commission also identifies that directions to the jury which explain the facts that relate to the law, should be given orally and written. [45] Lord Hope identifies and states in Woollin: "I attach great importance to the search for a direction which is both clear and simple. It should be expressed in as few words as possible" [46] ; this could be seen as an advantage as one of the criticisms of the court of appeal was that the trial judge had completed the direction after an overnight adjournment and may have confused the jury. [47] In Woollin Lord Steyn laid down a model direction for trial judges to use in cases where the defendant's intention is unclear, subsequently this direction has been used in the cases of R. v. Matthews & Alleyne [2003] [48] and in R. v. Matthew Stringer [2008]. [49]

The current definition is largely the product of judicial law making in individual cases and it was suggested by the law commission that if a definition of indirect intention was to be put in statute then the Woollin direction would be used. The definition of intention appears to have reached a reasonably stable state, but it is not possible to have complete consistency due to the fluidity of the law, and trial judges do not always follow model

directions. As no murder case before the court is identical, the need for flexibility is required in allowing judges to decide on which points of law the jury should be directed; as identified earlier the definition of intention still lacks clarity and if the definition was to be set rigidly in statute to give a clear meaning, the judges would still retain significant interpretive power.