

Chapter 2: Fundamental Principles of Criminal Liability 2: *Mens Rea*

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Aims of this Chapter

This chapter will enable you to achieve the following learning outcome from the CILEx syllabus:

- 1 Understand the fundamental requirements of criminal liability

2.1 Introduction

Most serious criminal offences, in addition to the *AR*, also require the prosecution to prove a specific state (or states) of mind. As noted in **Chapter 1**, this is referred to as the *mens rea* (*MR*) of an offence. The reason for this requirement is that the law recognises that liability for criminal offences involves a good deal of stigma being attached to D. It also involves potential loss of liberty for D in the form of custodial sentences. Because of this, it is important that criminal liability, especially for serious crimes, should only result when D is, in some way, culpable or morally blameworthy in respect of his conduct.

The first part of this chapter looks at the main states of mind that form the *MR* requirements for offences in the manual. Later in the chapter we look at strict liability offences (see **2.6**). These are the offences, mainly of a minor nature, where no *MR* is required – liability is therefore strict. The most important, and serious, states of mind considered in this chapter are intention and recklessness. This chapter will also consider negligence (which is actually more of a non-state of mind) and dishonesty – which will be considered in much more detail in **Chapter 7**.

At the end of this chapter (see **2.8**), we will consider the impact of human rights issues on English criminal law.



People recklessly passing on sexual diseases face jail

People who recklessly infect their partners with sexually transmitted diseases could soon be jailed. In a crackdown by the Crown Prosecution Service, adults with diseases such as chlamydia, syphilis and herpes will be liable for arrest and prosecution unless they warn their lovers about their condition.

Before a prosecution is mounted, the CPS will have to assess whether a defendant knew about their infection, their level of knowledge about its potential impact and whether they told their lover.

Cases where a person knows of their infection but fails to reveal it, leading to their partner contracting the disease, are likely to be classed as examples of "reckless" transmission that can be prosecuted.

The charge in such cases will be one of inflicting grievous bodily harm, an offence which carries a maximum penalty of five years in jail for each person infected.

In more serious cases, where there is clear evidence that transmission was intentional, a more severe charge carrying a maximum life sentence could be brought.

However, the difficulty of legally proving deliberate transmission means that most offenders are likely to be prosecuted on the lesser charge.

Daily Mail website, 22 January 2007

2.2 Intention

There is no statutory definition of "intention" and the courts have struggled to define it. It is important to understand that "intention" does not relate to motive. "Rea" refers to legal guilt, not moral guilt. This means that D may commit a crime where he intends the result even though he has a good motive (***Chandler v DPP [1964]***). In ***Yip Chiu-Cheung [1994]*** the Privy Council held that an undercover drugs enforcement officer would be guilty of conspiring to export drugs because the *MR* of conspiracy would be present: the intention that one party to the conspiracy commit the crime. This is despite the presence of his good motive, to catch the co-conspirator. In practice such cases are not brought to trial.

In ***Re A (Children) (Conjoined Twins: Surgical Separation) [2000]*** doctors operating on conjoined twins were said to have the *MR* of murder in relation to one twin who would certainly die with or without the separation procedure,

even though the motive for the operation was the continuance of the other twin's life. In such cases the defence of necessity may apply (this defence will be considered in detail in **Chapter 11**).

There have been cases where a good motive has allowed D to escape conviction. In ***Steane [1947]*** D, who was a UK citizen, had broadcast from Germany during the Second World War. He was convicted of doing acts likely to assist the enemy with intent to assist the enemy, but his conviction was quashed because the jury had not been directed that it should acquit him if he had the innocent intention of wishing to save his family, who had been threatened with a concentration camp if he did not broadcast. The Court of Appeal defined intention very narrowly in order to acquit Steane, confining it to purpose, but he had still intended to assist the enemy even though his motive had been to help his family. This is now considered to have been an incorrect legal decision. Steane probably had an intent to assist but could have been acquitted by applying the defence of duress (see **Chapter 11**).

Motive **is** relevant in establishing some specific crimes. These are "racially aggravated offences" under the **Crime and Disorder Act 1998**.

Motive is also relevant in sentencing. A good motive will generally be seen as a mitigating factor (reducing the seriousness of the crime), whereas a bad motive is an aggravating factor.

2.2.1 The meaning of intention in criminal law

English criminal law recognises **two forms of intention – direct and indirect**. When dealing with an offence where the *MR* is intention, it is therefore important to consider whether either of the two forms of intention apply to D. For example, the *MR* for murder is "malice aforethought", which simply means that D must intend to kill or do serious bodily harm. As there are two forms of intention, it therefore follows that D can be guilty on the basis that he either had the direct or the indirect intention to kill or do serious bodily harm. The meaning of the two forms of intention will now be considered.

2.2.1.1 Direct intention: aim or purpose

Of the two forms of intention, direct intention is by far the most common in real life situations. Direct intention is the type of intention where it is D's aim or purpose, or desire, to do something or to cause a certain result. In the example of murder noted at **2.2.1**, this would mean that D's aim or purpose would be to kill or cause serious bodily harm.

D's aim or purpose can normally be deduced by his actions or by the surrounding evidence. For example, if D walks up to V and shoots him in the head from point-blank range, it would be easy to conclude that death or serious bodily harm was his aim or purpose. What else could D's aim or purpose have been? Similar examples would be where D stabs V in the heart or where D stamps on V's head many times whilst V is lying on the floor. In any of these cases, D would possess the *MR* for murder, as a jury would almost certainly conclude that D had the direct intention to kill or cause serious bodily harm. It is because most cases of intention are simple that Lord Bridge suggested a "golden rule"

in **Moloney [1985]**, that judges should not give juries detailed guidance on the meaning of intention. Intention is an ordinary word that juries can apply their common sense to.

2.2.1.2 Indirect intention: the current law

In most cases, there will be evidence of direct intention. If there is not, it may still be that the court will infer that D did intend the result if it was both virtually certain to occur and D appreciated this fact. This is referred to as indirect or oblique intention.

In **DPP v Smith [1960]** it was held that intention could be established where a reasonable person would have contemplated the result. This was an objective test and was criticised because the courts were not able to consider D's actual state of mind. At the time it was presumed that D intended or foresaw the natural and probable consequences of his conduct. **s8 Criminal Justice Act 1967** was enacted to reverse the decision in **DPP v Smith**. **s8** abolished the presumption that a person intends or foresees a result simply because the result was a natural and probable consequence of his conduct. Instead, the jury is now to decide intention (and awareness) by looking at all the evidence, drawing any inferences in the circumstances that appear proper. The test is therefore subjective.

Indirect intention applies where D has an ulterior purpose (X), which can only be achieved by first committing the offence in question (Y). So D will be guilty where offence (Y) is a virtually certain result of D's conduct and D is aware of this.

An example is where it is D's purpose to blow up a plane in order to collect an insurance payout. D may not want to murder the passengers (Y), but this is a virtually certain result required before the claim can be made.

Similarly, where it is D's purpose to bring about a result (X) and as a consequence another result (Y) will almost certainly occur, it can be inferred that D intended (Y). In **Re A (Children) (Conjoined Twins: Surgical Separation) [2000]** doctors separating conjoined twins were said to intend the death of one twin (Mary) because it was virtually certain that she would die from the operation. This was not the purpose behind the operation. The purpose was to save the life of the other twin (Jodie). Note that the doctors would have been able to rely on the defence of necessity.

The **current law** on indirect intention is that laid down in **Woollin [1998]**. Here, D lost his temper and threw his baby 5 feet across the room, causing him a fractured skull from which he died. It was not D's purpose to kill or cause serious bodily harm. The Court of Appeal held that the test for indirect/oblique intention was foresight (awareness) of a substantial risk of death or serious harm. If this could be established, intention could be inferred.

The House of Lords overruled the Court of Appeal and quashed D's conviction for murder, because the Court of Appeal test unacceptably widened the *MR* for murder so as to include recklessness. As will be seen in **Chapter 3**, murder is a crime of intention only. The courts have always been keen to avoid any blurring of the line between intention and recklessness.

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