

Think box 3.1

Consider whether A has either a direct or indirect/oblique intention in the examples below:

1. A dislikes B and decides to run him over with his car. He succeeds in doing so with the result that B dies.
2. A, a very short person, has a quarrel with B. B is 6'6" tall and a fast runner. A wishes to hit B on the nose.
3. A has a toothache and goes to the dentist knowing that the treatment will result in unwanted pain. Does he intend to suffer pain?
(This example is taken from Norrie/Duff in the indicative reading.)
4. A puts a bomb on a plane hoping to collect insurance money when it explodes in mid-air. He hopes that the crew and passengers will survive. The explosion kills all on board.

Answer guidance

1. Direct.
2. Direct.
3. Oblique.
4. Oblique.

Think box 3.2

1. Under the amended Nedrick/Woollin Direction, do you think a father who kills his terminally ill son, who can no longer bear being in pain, would necessarily be intentional?
2. D places a bomb on an aeroplane which is timed to explode mid-flight so that he might recover insurance money. His purpose is not to kill or injure those on the plane. Does he nevertheless intend that result?
3. D plants a time bomb in a public building and gives a warning to enable the public to be evacuated. A bomb disposal expert is killed by the explosion whilst attempting to defuse the bomb. Is D guilty of murder?
4. The 'indefinable notion of intent' referred to by Professor Smith below implies flexibility in the meaning of intention. Why should a court want to avoid rigidity?

Answer guidance

1. The test allows sufficient scope to juries to decide either way in deserving cases so that a murder conviction would not necessarily be automatic. The jury could decide that a defendant had recklessly killed and was guilty of manslaughter.
2. Looking at the ration of Moloney, D would intend death because it is a moral certainty that few people would survive a mid-air explosion. In other words, the result would not only be objectively morally certain but would also be foreseen by D to be so.
3. Was the death of the bomb disposal expert virtually certain? Did D foresee it as virtually certain? This situation was considered in Woollin, and Lord Steyn pointed out that D might not have the necessary foresight – but would be guilty of manslaughter.
- 4.. The mandatory life sentence prevents a court from exercising discretion in sentencing morally deserving murder cases. Therefore, some flexibility is desirable so as to distinguish suitable cases.

Think box 3.3

1. A doctor gives confidential contraceptive advice to a 15-year-old girl whom he knows is virtually certain to commit the offence of unlawful sexual intercourse under s13 Sexual Offences Act 2003. Does the doctor have an intention to encourage the offence?
2. A woman organizes and addresses a public meeting on a highway. The meeting blocks the road and she is charged with wilful obstruction of the highway. It was not her purpose to cause an obstruction. Has she intentionally committed the offence?

Answer guidance

1. If Steane is followed, motive for the advice is paramount and intention will be defined as direct intent. If her motive is innocent and based on a clinical judgment that the advice is necessary to protect the health and welfare of the child there will be no direct intent to commit an offence. Moreover, s73 Sexual Offences Act 2003 now specifically excludes people giving such advice for these reasons from any offence of intentionally aiding/abetting unlawful sexual intercourse.
2. Motive and intent are conventionally regarded as distinct. Her motive was to hold a meeting. This would be disregarded in considering her intention (Chandler). If the Chandler principle was followed (i.e.: that the word purpose in an offence should be objectively determined) then, applied to 'wilfully' it would mean an act which objectively, in fact, caused an obstruction regardless of

whether it was intended or not. Alternatively, there might be said to have been an oblique intent in this case.

Think box 3.4

1. Which two cases were cited by L. Mustill with reference to transferred malice?
2. Which provided authority for the doctrine?
3. Did L. Mustill approve of the doctrine of transferred malice?
4. Is transferred malice necessary to convict a terrorist who kills by exploding a bomb?
5. Why did L. Mustill not apply the doctrine of transferred malice in this case?

Answer guidance

1. Latimer & Pembliton.
2. Pembliton.
3. Not entirely.
4. No – s/he will aim to kill/seriously injure anyone who happens to be in the location of the explosion.
5. It would involve a double transfer.

Think box 3.5

1. List the AR/MR elements of criminal damage and assault defined above.
2. Is the interpretation of recklessness clear? (i.e.: subjective/objective).
3. D slams a shop door so hard on leaving a shop that the plate glass window shatters. Identify his state of mind in the following:
 - a) He wanted the window to break.
 - b) He did not want it to break but knew damage was virtually certain.
 - c) He thought it probable that the window would break.
 - d) He was unaware of any risk of damage.

Answer guidance

1. AR: Damage/destruction of property belonging to another without reasonable excuse. MR: Intention/Recklessness
2. No particular type of recklessness is identified in the definition.
3. a. Direct intent b. Oblique intent.
c. Subjectively reckless.
d. No criminal state of mind.

Think box 3.6

1. If Mr. Cunningham had failed to think about any risk to others would he have been reckless?
2. After Parker, would Cunningham have been considered subjectively reckless if he had failed to think of any risk because he was impulsive or angry?
3. Would you re-consider your answer if he genuinely did not think there was any risk, for some innocent reason or through carelessness?

Answer guidance

1. A subjective approach to mens rea means that D must have appreciated the risk no matter how small. Here he would not be reckless.
2. Yes
3. Genuine failure to perceive risk should not be considered reckless under a subjective test.

Think box 3.7

D borrows X's mobile phone to make an urgent call. The phone has run out of credit. D slams down the phone so hard on a table that it breaks.

1. What offence would D be charged with?
2. Would he be considered reckless if the reason for his conduct was:
 - a) to see how much force the phone could withstand?
 - b) temper or impulse?
 - c) momentary distraction?
 - d) young age or mental incapacity?

Answer guidance

1. Criminal damage.
2. Following Cunningham, Parker and Stephenson, he would be subjectively reckless in a) and b) but not c) or d).

Think box 3.8

Consider the examples below (taken from the Law Commission report, No 237, at p 36).

Would each fall within the Bateman/Adomako test of gross negligence?

In each case you need to identify:

- A duty of care;
- Breach of that duty involving an obvious risk of death;
- That the breach caused death;
- Whether the breach was accompanied by gross negligence which was so bad as to be regarded as criminal.

1. D is an anaesthetist who causes her patient V's death because she fails to notice that a ventilation tube has become disconnected and that V has turned blue.
2. D, an adult of average intelligence, in the course of a fight hits V over the head with a spanner. In the heat of the moment, D does not realize that death or serious injury may result; but the blow cracks V's skull and causes her death.
3. D, in the course of a fight, slaps V once across the face. V loses her balance and falls to the floor, cracks her skull, and dies.

Answer guidance

1. D would be grossly negligent if expert evidence showed that the risk of death would have been obvious to a competent anaesthetist in D's position. D would also be grossly careless under the Law Commission's criteria provided expert evidence showed that the risk of death or serious injury was an obvious one.

2. D's conduct created an obvious risk of death and would be considered so grossly negligent as to deserve punishment. D would also be grossly careless under the Law Commission's recommendations because she was capable of appreciating the risk. If D were of low intelligence, the question of whether she would be grossly negligent would be for the jury to consider. Under the Law Commission's recommendations, she would not be considered grossly careless if she could not appreciate the risk of her actions.

3. D would not necessarily be either grossly negligent or grossly careless since the risk of death (or serious injury) is not obvious.