

Video transcript
Video Tutorial (e): The definition of mens rea terms (chp 3)

Hello, in this video we're going to talk about the definition of mens rea terms. This is something we deal with in Chapter 3 the textbook. Now I'm not going to talk about the minute detail of those definitions because of course that's something that's within the textbook itself, but rather I want to give you a few general tips or areas of caution that you should think about whilst you're revising in particular mens rea terms for an exam.

Now, the first thing to remember, always of course, is that you need to understand the definitions of these terms in order to be able to apply any criminal offence that has any kind of mens rea requirement. So these are essential building blocks for your knowledge in your ability to apply any of the offenses outside of those, apart from strict liability offenses. The other thing to remember here is that these are legal terms so even though for example words like recklessness we use in common parlance, we're not talking about a common understanding. We're talking rather about a legal definition and this is true of intention and recklessness and other mens rea terms of a similar kind. It's most often a problem actually for recklessness because people often think of the term recklessness and they think of reckless behaviour quite naturally because generally in common parlance when we talk about recklessness we're talking about description of behaviour. Remember when we're talking about recklessness as a mens rea term we're using it in its specific legal definition which is foresight, the subjective foresight of a particular risk and then going on unreasonably to run that risk.

Okay, so in terms of general advice and about when we're looking at mens rea terms, the first one is an area of caution. Now mens rea terms as I said are foundational they are very much a building block for the rest of criminal law so we tend to teach them in the early lectures of a criminal module. Now this also tends to be the time where students making notes tend to do so more fully write down more and more as the module goes on you perhaps get better at filtering, you get better at highlighting key points. Also, when we're teaching we tend to teach these terms in terms of their historical progression these are common law concepts the definition mens rea terms and so we tend to say the various case law that's developed an outlined the definitions. Now this is useful it's useful for your general knowledge both of those things the detailed notes and the historical progression, but also creates a bit of a danger sometimes. So first of all in relation to essay questions. If an a essay question asks you about the satisfactory nature of a particular mens rea term or its development of course you can draw on all that wealth of knowledge in order to engage with that question and in order to engage with that debate.

However, when you're answering a problem question you have to be a little bit careful here. There are two things that you really need to remember but the overriding theme is that you need to focus on the current law and be careful not to be caught into telling a story about the historical progression of the law. If you're being asked about potential liability at this moment in time then it's the law at this moment in time that you need to be applying. So let's say for example a couple of things that outline particularly in relation to intention. First of all we have a scenario whereby a defendant I don't know some kind of gangland shooting executes a victim, executes a rival as part of a gang dispute and it's very clear that they're doing so as a revenge attack. Now, in that scenario if you are asked to identify potential liability then of course it involves someone dying so you would start off by looking at murder and for murder of course when gets on to the mens rea you are looking for an intention to kill or cause grievous bodily harm. Now, it's very tempting, it's also very common for students to look at that and think - okay intention when I was looking at the definition of intention we spent a long time looking at oblique intention in Woollin and you start talking about whether it's a virtual certainty that the person's going to die, whether it's foreseen as a virtual certainty, whether intention will be found. Now in relation to that scenario that discussion is not necessary, it's a direct intention, it's very clear that the person has shot the other person with the direct purpose of killing them.

Therefore, if it's simple try and keep it simple in your analysis as well. Although you've spent a lot of time perhaps and learning about oblique intention, in that scenario a court wouldn't engage that wider understanding of intention because there's no need to. There is quite straightforwardly a direct purposeful intention to kill the other and so you can simply draw attention to that within your answer of the problem question and you don't need to go forward to then look at the oblique intention as well.

Another scenario might be where a defendant shoots the victim this time not because they want them to die but rather because they want them to get out of the way so they can make their escape or something like that. Now this time there is, if we're again analysing murder, this time there is some uncertainty about what their purpose was. The defendant's purpose might not have been to kill or to seriously harm but rather to simply shoot at in order to allow an escapee. And so in that sense you might have some doubts about whether there is a direct intention and so quite rightly in that scenario where there is an element of doubt you would then go on to look at the wider definition of intention which includes oblique intention as well and of course you would to apply Woollin - is it virtually certain, did the defendant foresee it as virtually certain that the victim would either die or suffer from serious bodily harm, and looking at whether the jury likely to find intention. Now, importantly when you're doing that you are correct to apply oblique intention but you don't need to take me through the historical catalogue of all the various cases which have helped develop the law to the state it is today, but rather if you're answering a problem question it's about applying the law as it stands. So when you're applying and when you're necessarily discussing oblique intention that's a discussion of Woollin, it's not a discussion of the historical cases which applied variable standards over the years.

So the point here, the overall headline, is when you apply these mens rea terms do so in relation to the current law. If the question essay question or problem question asks you to engage with historical development, of course you should do so, and that knowledge is important - but when it's simply asking to assess liability do so as simply as possible and in relation to the law as it stands.

Thank you.