## Thinking point 3.1

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

1. 1. A dislikes B and decides to run him over with his car. He succeeds in doing so with the result that B dies.

* Direct intention

1. 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.

* Direct intention

1. 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?

* Oblique intention.

1. 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.

* Oblique intention

## Thinking point 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 have intention?

* The jury would be ‘entitled to find’ intention: they are not obliged to do so.

1. D places a bomb on an airplane 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?

* Was death a virtual certainty?
* Did D foresee that it was certain?
* If so, he has oblique intention regardless of his purpose.

1. 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?

* Was the death of the bomb disposal expert virtually certain?
* Did D foresee it as virtually certain?
* In *Woollin*, Lord Steyn pointed out that D might not have the necessary foresight but would be guilty of manslaughter.

1. The ‘indefinable notion of intent’ referred to by J.C. Smith below implies flexibility in the meaning of intention. Why should a court want to avoid rigidity?

* The mandatory life sentence prevents a court from exercising discretion in sentencing murder cases.

## Thinking point 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?

* What answer does the *Nedrick/Woollin* test give?
* Does *Steane* suggest a different answer?
* S73 Sexual Offences Act 2003 now specifically excludes people giving such advice from committing an offence.

1. 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?

* Remember that motive is distinct from intention.
* Was there oblique intent?

## Thinking point 3.4

1. Which two cases were cited by Lord Mustill with reference to transferred malice?

* *Latimer* and *Pembliton*

1. Which provided authority for the doctrine?

* *Pembliton*

1. Did Lord Mustill approve of the doctrine of transferred malice?

* Not entirely

1. Is transferred malice necessary to convict a terrorist who kills by exploding a bomb?

* No – they will have direct intention to kill/seriously injury anyone in the location of the explosion

1. Why did Lord Mustill not apply the doctrine of transferred malice in this case?

* It would involve a double transfer

## Thinking point 3.5

List the AR/MR elements of criminal damage and assault defined earlier.

* AR: damage/destruction of property belonging to another without reasonable excuse
* MR: intention/recklessness

Is the interpretation of recklessness clear (i.e. subjective/objective)?

* Not specified in the definition

D slams a shop door so hard on leaving a shop that the plate glass window shatters. Identify her state of mind in the following:

1. she wanted the window to break

* Direct intention

1. she did not want it to break but knew damage was virtually certain

* Oblique intention

1. she thought it probable that the window would break

* Subjectively reckless

1. she was unaware of any risk of damage

* No MR

## Thinking point 3.6

1. If Cunningham had failed to think about any risk to others, would he have been reckless?

* Remember that a subjective test requires D themself to appreciate the risk.

1. After Parker, would Cunningham have been considered subjectively reckless if he had failed to think of any risk because he was impulsive or angry?

* Yes

1. Would you re-consider your answer if he genuinely did not think there was any risk, for some innocent reason or through carelessness?

* Genuine failure to perceive risk is not subjective recklessness.

## Thinking point 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?

* Criminal damage

1. Would they be considered reckless if the reason for their conduct was:
2. to see how much force the phone could withstand?
3. temper or impulse?
4. momentary distraction?
5. young age or mental incapacity?

* Consider *Cunningham*, *Parker* and *Stephenson*.

## Thinking point 3.8

Which of the following are offences of strict liability?

* Any person who sells to a person under the age of 16 years any tobacco or cigarette papers, whether for his own use or not, shall be liable on summary conviction to a fine not exceeding level 4 … (s7 Children and Young Persons Act 1933)
  + Yes: no MR requirement
* A person commits an offence if he intentionally touches another person, the touching is sexual, and the other person is under 13. (s7 Sexual Offences Act 2003)
  + Yes: MR as to touching but no MR for age
* If a person drives a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, he is guilty of an offence. (s3 Road Traffic Act 1988)
  + No: negligence required
* Whosoever shall assault any person with intent to resist arrest … shall be guilty of an offence. (s38 Police Act 1996).
  + No: intention required

Can you think of any advantages of strict liability?

* You might have thought of advantages such as:
  + Ease of getting a conviction
  + Low stigma
  + Deterrence.
* You will explore the advantages and disadvantages more in following sections

## Thinking point 3.9

In order to decide whether the offence required MR, many social issues concerning the sexual exploitation and autonomy of young people arose in the case.

The act in question was accepted as being grossly indecent. Do you think there is a moral difference between an act of gross indecency with a child under 14 and a child under 16—the legal age of consent?

Should it make any difference whether D is around the same age or older than the victim?

* There is no right answer to these questions: views will differ.
* Historically, the age of consent has been as low as 12. Sexual, mental and emotional maturity develop at different ages for different people: the age of 16 might be seen as arbitrary. Do you think it is too high, too low, or about right?
* Why did you give the answer you did?

## Thinking point 3.10

Suppose D is a paedophile who commits a consensual indecent assault upon a 14-year-old victim. He honestly believes that she is 16 because of the adult way she dresses and acts. Would *B* and *K* provide him with a defence? Should his own belief provide him with a defence? Or should this be an offence of strict liability where belief is irrelevant?

Under the Sexual Offences Act 2003, sexual offences against children under 13 are now offences of strict liability. Offences against children between 13 and 16 are based on reasonable belief as to age.

* Following the Sexual Offences Act 2003, D’s belief must be reasonable. This is an objective test.

## Thinking point 3.11

Do you think a publican should be punished for serving alcohol to under-age drinkers where they have done all that is reasonably possible to prevent the offence?

* Your view may depend upon whether you think a strict liability offence would serve a useful social purpose.
* Under S146(6) Licensing Act 2003 there is now a defence of due diligence for a publican whose employee has committed the offence. Due diligence defences are discussed later in this section.

## Thinking point 3.12

Is the criminal law the best way to enforce higher regulatory standards?

Should Storkwain be overturned in the light of B and K?

* There is no single right answer to these questions.
* Your opinion may depend upon whether you think criminal punishment is the best way of enforcing compliance.
* Do your views depend upon whether the defendant is an individual or a large corporation?
* How would you support your opinion?

## Thinking point 3.13

Do you consider that punishment of individuals who have taken all necessary steps to prevent harm will promote greater vigilance and observance of the law?

Can you think of any serious offence that is not concerned with protecting the public from danger?

Does it automatically follow therefore that such an offence should be one of strict liability? Should murder and offences of violence become crimes of strict liability?

* Again, there is no single right answer to these questions.
* You might think that there is no justification for making all serious crimes offences of strict liability. However, that was proposed by Baroness Wootton, whose views are considered in section 3.4.6.

## Thinking point 3.14

If Mr and Mrs Shah had done all they could to prevent the offence, how would strict liability have encouraged greater vigilance?

In view of the penalty for the offence, do you agree that it is not truly criminal in nature?

Was the conviction fair?

* Your answers will depend upon the views you formed in thinking points 3.12 and 3.13.
* The maximum penalty here was two years’ imprisonment.

## Thinking point 3.15

Does Dyson J give any clear reason for stating that the offence should not be regarded as truly criminal in 2002?

* No! Do you agree with his view? If so, what reasons might you give?

## Thinking point 3.16

A man is asked to deliver a box. He believes the box contains stolen goods but asks no questions nor does he open the box to find out. Is he knowingly in possession of the contents?

* Consider the cases of *Parker* and *R v G* on wilful blindness.

## Thinking point 3.17

1. If a defendant accused of an offence under s17(b) was unable, because of disability or psychiatric illness, to understand the information available to them, would their state of mind still be blameworthy? (See Karl Laird’s ‘Case Comment’ (2019) Crim LR 178–181.)
   * The Supreme Court do not seem to have considered this situation.
   * On the Supreme Court’s reasoning, D would be guilty.
   * Could their conduct be considered blameworthy?
2. Could strict liability have been justified for this offence? Which factors might support strict liability? Which might suggest that mens rea should be required?
   * Factors supporting strict liability might include clear statutory wording and a strong public interest in preventing terrorism.
   * Factors supporting mens rea might include that the offence is truly criminal and carries significant penalties.
   * Your view on whether strict liability could be justified will depend upon how you weighed these factors.

## Thinking point 3.18

D organises a public protest outside a weapons factory which blocks the road. A police officer attempts to arrest D by putting his arm around D’s shoulders but D pulls away and the officer falls over. Has D wilfully committed any offences?

* Obstruction of the highway
* Was any other wrongful conduct deliberate?

## Thinking point 3.19

1. Do you think it is right to divide the presumption of innocence into two halves: procedural and substantive?
2. D, the mother of a child, gets a criminal record when she is convicted and fined £75 under s444(1) Education Act 1996: If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence. There is no defence. She had done all she could to get her child to attend but he was beyond control.

* *Barnfather v LBI* [2003] 1 WLR 2318 was decided on these facts.
* Held: Art 6 was not breached since it only applied to matters of procedural fairness. *Salabiaku* permits strict liability offences.
* Elias J, dissenting: the issue was of proportionality. To impose criminal liability on a parent who had done her best was disproportionate.