

Answers to self-test questions

Chapter 3

1. Explain the difference between direct intent and oblique intent.

Direct intent relates to a person's aim or purpose. A person has direct intention in respect of a consequence, X, if he desires X and foresees that his actions will bring about X.

By contrast, oblique intent is not concerned with aim or purpose. A person will have oblique intent in respect of a consequence, X, if he does not desire X to occur but X is virtually certain to occur and he appreciates this (*Woollin* (1998)).

2. X puts some cyanide in tea that she thinks V is highly likely to drink. If V does drink the tea and dies, does X have sufficient *mens rea* for murder? Support your answer with case law.

If it is X's aim or purpose to kill or cause GBH to V, then X will have direct intent in relation to V and will have sufficient *mens rea* for murder. However, if X does not desire the death of V or does not desire to cause GBH to V, she will only have the *mens rea* of murder if death or GBH is virtually certain to occur and X appreciates this (*Woollin* (1998)). V was only "highly likely" to drink the tea (*Hyam v DPP* (1975)) and this degree of foresight is not sufficient for oblique intent since *Nedrick* (1986).

3. What is the test for oblique intent? Support your answer with case law.

A defendant will have oblique intent where the consequence is actually virtually certain to occur (objectively), and the defendant appreciates this (*Nedrick* (1986) and *Woollin* (1998)).

4. Y plants a bomb in a lecture hall and then sets off the fire alarms. The bomb explodes while the building is being evacuated and V dies. Does Y have the *mens rea* for murder?

The *mens rea* for murder is intention to kill or cause GBH. Consider first whether Y has a direct intention to kill or cause GBH.

Direct intention relates to one's aim or purpose. It could be argued that Y's aim or purpose is not to kill as he initiates an evacuation procedure after planting the bomb.

Consider whether Y has indirect or oblique intent. Applying *Woollin* (1998), Y would have the requisite *mens rea* if it was virtually certain that his actions would cause death or GBH and that he appreciated this. It could be argued that death or GBH is not virtually certain because he initiates the evacuation procedure by setting off the fire alarms, which should ensure that everybody is a safe distance from the building. However, if the bomb is a powerful one, this might not be enough. We would need to know more about Y's knowledge of the bomb. Another important factor to consider is any time delay on the bomb. Would there have been sufficient time to evacuate the building before the bomb detonates? However, even if it was probably or highly probable that somebody would still be in the building and would die or suffer injury, this is not sufficient for indirect intent.

5. What is the test for recklessness? Support your answer with case law.

A subjective test of recklessness is applied. The defendant must recognise a risk of the consequence occurring. The risk must be an unjustifiable one to take, but the defendant takes that risk anyway. This is *Cunningham* recklessness.

6. Explain the problems with *Caldwell* recklessness.

The *Caldwell* test of recklessness was too harsh because it required an objective assessment of risk. Thus, a child who did not recognise a risk that would have been obvious to the reasonable man would be deemed to be reckless: see *Elliott v C (a minor)* (1983) and *R v G and another* (2003).

Other criticisms include the fact that the *Caldwell* test meant that we had two different tests of recklessness. One objective test which applied to criminal damage and another subjective test for other offences. This was confusing for jurors, especially where a defendant was charged with criminal damage (to which *Caldwell* applied) and a non-fatal offence against the person (to which *Cunningham* applied). There was no clear rationale for the distinction. The objective test also conflicted with the traditional subjective approach to *mens rea*. The objective limb was closer to negligence than the traditional meaning of recklessness. It was also suggested by academics that *Caldwell* left a lacuna in

the law where the defendant considered that there was no risk. However, this was rejected by the courts.

7. Z thinks that he can shoot an apple on V's head without hitting V. He shoots and hits V in the ear. Is Z reckless? Support your answer with case law.

If Z recognises the risk of hitting V and goes ahead to take that unjustifiable risk, then he is reckless under *Cunningham* and *R v G and another*. The risk is certainly an unjustifiable one as it has no social utility. The fact that Z does not think that he will hit V does not mean that he is not reckless. Consider the courts approach in *Chief Constable of Avon and Somerset Constabulary v Shimmen* (1987).

8. How have the courts sought to circumvent the principle of coincidence of *actus reus* and *mens rea*?

Through the use of the continuing act theory: see *Fagan v MPC* (1969). This theory states that if the defendant forms the *mens rea* at any point while the *actus reus* is continuing, then there is coincidence of *actus reus* and *mens rea*. Thus, the courts have stretched the concept of an act. This was followed in *Kaitamaki* (1985), which has been further followed in the Sexual Offences Act 2003.

A further way in which the courts have circumvented the principle of coincidence is by interpreting a series of acts as a single transaction. If the *mens rea* is formed at some stage during that transaction, then there is coincidence. See *Thabo Meli* (1954), *R v Church* (1966) and *Le Brun* (1991).

The courts have also avoided the principle of coincidence through the application of the *Miller* principle of duty to avert a danger created by the defendant.

9. Using authorities, explain the doctrine of transferred malice.

Latimer (1886) demonstrates the application of the doctrine of transferred malice. The doctrine allows the *mens rea* in respect of one offence to be transferred to another offence for which the *actus reus* is committed. Thus, if I throw a punch at you, but you duck and I actually hit a person standing behind you, my *mens rea* in respect of you can be transferred to the person I actually struck (i.e., against whom I committed the *actus reus*).

The offences must be of the same kind in order for the doctrine to apply. If the offences are of a different kind, the doctrine will not apply: see *Pembliton* (1874). Thus, if I throw a stone at you in order to hit you, but you duck and the stone breaks the window, the doctrine does not apply. My *mens rea* towards you cannot be transferred to the window.