In law there are two types of intention. Direct intent (also known as purpose intent) is the typical situation where the consequences of a person's actions are desired. Oblique intent (also known as foresight intent) covers the situation where the consequence is foreseen by the defendant as virtually certain, although it is not desired for its own sake, and the defendant goes ahead with his actions anyway.

Example An aeroplane owner decides to make a fraudulent insurance claim on one of his planes. (a) He plants a bomb on it knowing that when it explodes, some passengers will certainly die but he does not mind and wants this to happen as it will make his claim more realistic. This is direct intention - the consequences of his actions (the deaths of the passengers) are desired. (b) Alternatively, he knows that some passengers will certainly die, although he can honestly say that he does not want them to die, and would be delighted if they all survived! This is oblique intention - the consequences (the deaths of the passengers) were not what he planned, but he nevertheless knew that they would inevitably follow from his actions in blowing up the plane.

(See *R v Moloney* (1985)

To require proof that it was the defendant's purpose to bring about a particular consequence may involve placing a very heavy evidential burden on the prosecution. Not surprisingly, given the above example, criminal law normally only requires proof of oblique intent (ie, foresight intent) as opposed to direct intent.

INTENTION BASED ON FORESIGHT OF CONSEQUENCES

The courts have stated that foresight of consequences can only be evidence of intention if the accused knew that those consequences would definitely happen. Thus it is not sufficient that the defendant merely foresaw a possibility of a particular occurrence. How can a jury be directed to understand how the existence of such foresight is to be ascertained?

RECKLESSNESS

Recklessness is the taking of an unjustified risk. However, two different tests have been developed by the courts, the result of which is that recklessness now has two different legal meanings which apply to different offences.

CUNNINGHAM OR SUBJECTIVE RECKLESSNESS

The first test for recklessness was subjective, ie the defendant knows the risk, is willing to take it and takes it deliberately. The question that must be asked is "was the risk in the defendant's mind at the time the crime was committed?" This test was established in:*R v Cunningham* [1957] 2 QB 396.

CALDWELL OR OBJECTIVE RECKLESSNESS

The second test for recklessness is objective, ie the risk must be obvious to the reasonable man, in that any reasonable man would have realised it if he had thought about it.

A person is reckless in the new wider sense when he performs an act which creates an obvious risk, and, when performing the act, he has either given no thought to the possibility of such a risk arising or he recognised that some risk existed, but went on to take it. This test was established in:

MPC v Caldwell [1982] AC 341.

The risk must be obvious to the reasonably prudent person; it need not be obvious to the defendant:

NEGLIGENCE

Negligence consists of falling below the standard of the ordinary reasonable person. The test is objective, based on the hypothetical person, and involves the defendant either doing something the reasonable person would not do, or not doing something which the reasonable person would do.

It does not matter that the defendant was unaware that something dangerous might happen, if the "reasonable person" would have realised the risk, and taken steps to avoid it. For an example see:

MENS REA 2

TRANSFERRED MALICE

Under the doctrine of transferred malice a defendant will be liable for an offence if he has the necessary mens rea and commits the actus reus even if the victim differs from the one intended. The basis for this principle is the decision of the court in:

R v Latimer (1886) 17 QBD 359.

If the defendant has the mens rea for a different offence from that which he commits however, the intent cannot be transferred. See:

R v Pembliton (1874) LR 2 CCR 119.

COINCIDENCE OF ACTUS REUS AND MENS REA

It is a general principle in criminal law that for a person's liability to be established it must be shown that the defendant possessed the necessary mens rea at the time the actus reus was committed - in other words the two must coincide.

In some cases a literal interpretation of this rule would manifestly lead to injustice, and the courts have developed ways of finding coincidence of actus reus and mens rea (a) when the events take place over a period of time, and (b) where they constitute a course of events.