

Recklessness & Intention

1. Critically assess the meaning of the term 'reckless' in criminal law.

Recklessness is the taking of an unjustifiable risk. There are two levels of recklessness. First, 'subjective' recklessness; this is where the defendant realises that a risk may arise if a certain action is taken, and in spite of this he takes that action and ignores the consequences involved. Second, 'objective' recklessness arises when it is obvious to all that a reasonable prudent person would have realised that there was a risk, so the fact that the defendant may not have even considered whether there were any risks is irrelevant (as a normal person would have in that situation).

The idea of subjective recklessness ties in more readily with the policy of punishing someone for something she is morally responsible for, as it takes into consideration the state of mind of the defendant. The concept of objective recklessness, on the other hand, ignores the defendant's mental state, and this could lead to an injustice as some people who are mentally sub-normal (but not insane) may not be aware that what they are doing will involve further risks, and because of this it would seem harsh to compare them to a reasonable prudent person.

Recklessness has two further divisions, first the 'Cunningham' subjective test of recklessness and the 'Caldwell' objective test of recklessness. In *Cunningham (1957)*, the defendant tore a gas meter from the wall of an empty house in order to steal money in it. This caused gas to seep into the house next door affecting a woman there. Cunningham was not guilty of an offence against s23 of the Offences against the Person Act 1861 of maliciously administering a noxious gas, as he did not realise the risk of gas escaping into the next-door house. He had not intended to cause the harm, nor had he been subjectively reckless as suggested by the term 'maliciously' in s23 OAP 1861.

The Caldwell test for recklessness is mainly applied in the Criminal Damage Act 1971. This is a wider test covering both subjective and objective recklessness. Caldwell who was drunk set fire to a hotel. The fire was put out and no serious damage was done. Caldwell was charged with arson with intent to endanger life or being reckless as to whether life was endangered. The House of Lords ruled that a person was reckless if he commits an act, which creates an obvious risk (recognisable by a reasonable prudent person) and has either failed to realise this risk or has simply ignored it (subjective recklessness). However, the defendant would not be convicted if he had wrongly inferred that there were no risks which would have probably also been the conclusion of a reasonable person. This is named the 'Lacuna' of the Caldwell test. Caldwell recklessness now mainly applies to criminal damage, partly due to the injustice that arises in some cases e.g. *Elliot V C (1983)*, where a normal prudent person cannot be compared to a person with completely different characteristics who may not realise the consequences of her actions.

A possible alternative method of testing recklessness which would overcome the criticism of unfairness in the current objective Caldwell method, would be to compare defendants to other people with similar characteristics e.g. age, sex and mental ability as opposed to reasonable prudent men.

2. What problems have the courts found in attempting to define intention and how satisfactorily have they been resolved?

Intention is the highest level of mens rea. It is also referred to as specific intention. Intention has never been defined by Parliament, but the draft criminal code suggested the following definition. '...a person acts intentionally with respect to a result when he acts either in order to bring it about or being aware that it will occur in the ordinary course of events.' Intention can be divided into direct intent and oblique intent. Direct intent (which is also known as purposive intent), is where the defendant has a certain aim or result in mind and intends to achieve that result. Oblique intent arises when the defendant has one purpose in mind but in achieving that purpose also causes other consequences. This area of intention has caused many problems, with the courts attempting to define this type of intention many times throughout key cases.

First, in *Moloney 1985* (where the defendant shot and killed his stepfather in a drunken challenge to see who was quicker on the draw) the House of Lords decided that foresight of consequences was only evidence of intention. The Lords also gave guidelines, which referred to the natural consequence of the defendant's act, but omitted to mention probability. This was overruled in the next case.

Hancock and Shankland 1986 (the defendants dropped two large concrete blocks from a bridge onto a road below in order to scare a fellow worker from going to work in a taxi and breaking the strike, they intended to stop the taxi but did not desire or intend the death of the driver). The Lords pointed out that the probability of the result occurring was something to take into account in deciding whether there was sufficient evidence from which intention could be inferred.

In *Nedrick 1986*, the defendant poured paraffin through the letterbox of a house in order to frighten the women who lived there. A child died in the fire. The Court of Appeal suggested that juries ask themselves two questions. One, how probable was the consequence, which resulted from the defendant's voluntary act? And two, did the defendant foresee the consequence? The jury should be directed that they are not entitled to infer the necessary intention unless they feel sure that the consequence was a virtual certainty as a result of the defendant's actions and that the defendant appreciated that this was the case.

Finally, the last case that put an end to all this confusion was *Woollin (1998)*. The defendant threw his three-month-old baby towards the pram, which was against the wall some three feet away. The baby suffered head injuries and died. The Lords approved of the direction in *Nedrick*, provided the word 'infer' was changed to 'find'. However, the House of Lords disapproved of the use of the two questions in *Nedrick*. It seems that the courts have finally settled on a test for oblique intention, and therefore, is perceived to have been successful in finally finding a definition for this indirect intention.