What is the meaning of intention in English criminal law? Is it always possible to distinguish between intention and motive?

The law generally requires that the accused possess a 'blameworthy' state of mind at the time the act comprising the offence was committed, and the basic presumption is that mens rea is required for every offence ('actus non fit reus nisi mens sit rea'), authority for which stems from *Sherras v De Rutzen* [1895] –

> "There is a presumption that mens rea … is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject matter with which it deals, and both must be considered."

This proposition, that mens rea is the default position for an offence unless its implication is clearly outweighed by other factors, was secured in *Sweet v Parsley* [1970]. *Per* Lord Reid: "it is universal principle that if a penal provision is reasonably capable of two interpretations, that interpretation which is most favourable to the accused must be adopted." Thus the requirement of intention is presumed where a matter is uncertain. However, many statutes do not use the language of 'knowingly' or 'intentionally' acting; in the case of such strict liability offences, usually regulatory offences without the "disgrace of criminality"[1], there is no element of intent whatsoever for the prosecution to establish.[2]

Normally, an objective view of mens rea, where the defendant fails to recognise the risk of his acts where a reasonable person would have done so, (recklessness in the *Caldwell* sense) cannot be said to constitute intention. Rather, a subjective, purposive view of intent encompasses the intention to act or to cause a consequence, or foresight or awareness of a risk of acting or causing the consequence (*Cunningham* [1957]). For the majority of offences, recklessness will suffice for a conviction, but some do require proof of an intent, including murder (an intent to kill or inflict grievous bodily harm), theft, burglary, and wounding with intent. For the distinction between murder and manslaughter, then, the law uses intention as its main method; thus the crime and therefore the sentence can differ considerably depending on the presence or absence of intention.

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[1] *Warner v Metropolitan Police Commissioner* [1969] (Lord Reid)

[2] Whether an offence is to be considered one of strict liability depends on the court's construction of the statute, as in *Gammon* [1985] and *Lim Chin Aik* [1963]

There has been much controversy as to the proper meaning of intention in English criminal law. Some, including Sir John Salmond and Dr JWC Turner, believed that a result is intended only when it is desired. Conversely, it is sometimes maintained that an 'intended' result is not necessarily desired "directly" but merely one foreseen by the defendant as an "oblique" or probable result of his actions.

Antony Duff considered that one feature of intention is that a defendant who intends to kill another would regard himself as somehow having "failed" if that person did not die, no matter how remote the likelihood of "success"; on the other hand, if he does not intend a death, he will not think he has failed if the person survives.[3] Thus the defendant's true 'purpose' in acting may be more easily discovered. In *Steane* [1947], the defendant had been compelled, through concern for the sake of his family, to make broadcasts for the enemy during the Second World War, and was prosecuted for doing an act likely to assist the enemy "with intent to assist the enemy". His conviction was quashed, however, in holding that although he did intend to make the broadcasts, he did so under duress: his ulterior intent had been to protect his family. In this sense, in *Cunliffe v Goodman* [1950], Lord Asquith stated that the 'core' sense of intention "connotes a state of affairs which the party 'intending' … does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about".

In *Smith* [1961], the House of Lords upheld an objective test of mens rea in murder, holding that a person is guilty where a reasonable person would have seen death as the natural and probable consequence of their actions, and simply presumed that Mr. Smith intended whatever he foresaw[4]. Further, in *Hardy v Motor Insurers' Bureau* [1964], it was said of the accused that "he must have foreseen, when he did the act, that it would in all probability injure the other person. Therefore he had the intent to injure the other person."

However, somewhat more recent cases accept the distinction between intention and mere foresight. The question was raised in *Hyam* [1976], where the accused sought to frighten her husband's mistress to leave the area, while realising that serious harm was a probability. It was held that, although she was reckless, she did not intend to kill. In *Moloney* [1985], the House held that an intent to cause serious bodily harm is sufficient mens rea for murder,[5] while Lord Bridge appeared to suggest that the law should regard "morally certain" consequences as intended.

Lord Scarman's remarks in *Hancock and Shankland* [1986] held that "foresight does not necessarily imply the existence of intention". Although the defendants recognised the dangerousness of their

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[3] Things done as means or ends are intended; side effects are not. (Duff)
[4] *Per* Viscount Kilmuir LC: "the test of what a reasonable man would contemplate as the probable result of his act, and, therefore, would intend…"
[5] *Cunningham* [1982]

actions, they claimed they meant only to frighten their victim, not to harm anyone. *Per* Lord Scarman:

> "The greater the probability of a consequence the more likely it is that the consequence was foreseen and… if that consequence was foreseen the greater the probability is that that consequence was also intended… The probability, however high, of a consequence is only a factor."

Lord Lane in *Nedrick* (1986) believed that a defendant might intend a result albeit not desiring it, and said that juries must consider (i) how probable the consequence was and (ii) if the defendant foresaw that consequence. He reasoned thus: that if the defendant did not foresee the consequence, it cannot be said that he intended it. If he did foresee it but thought the risk slight, the jury might easily infer that he did not intend it. If he foresaw death as virtually certain, this is a matter of factual evidence from which the jury may infer that the defendant intendedthat death.

Section 8 of the Criminal Justice Act 1988 supported these more recent decisions:

> "A court or jury… shall not be bound to infer that he intended or foresaw a result… by reason only of its being the natural or probable consequence… but… shall decide whether he did intend or foresee that result by reference to all the evidence…"

This suggests that a jury must decide as a fact whether the defendant possessed the necessary intent, but that they may use evidence that a reasonable person would have intended the result as a guide.

Woollin [1998] approved *Nedrick*, but simplified its meaning to say that a jury are not entitled to find the necessary intent unless (i) the consequence was a 'virtual certainty' and (ii) D appreciated that this was the case.

However, under the continuing doctrine of transferred malice, established in *Latimer* [1886], where the defendant does an actus reus with the required mens rea, he is guilty of an offence even if the result is in some respects an unintended one. However, this does not operate when the divergence between actus reus and mens rea is relevant to the definition of the offence: the two must refer to the same crime (*Pembliton* [1874]).

As Glanville Williams once pointed out, "the act constituting a crime may in some circumstances be objectively innocent, and take its criminal colouring entirely from the intent with which it is done". Thus, in the case of *Court* [1988], it was the defendant's intention in spanking a young girl that made his assault on her indecent; he acted not to administer discipline but rather for sexual gratification.

Intention is normally not related to motive, and it is usually irrelevant whether the defendant had a good or bad 'motive' or ulterior reason to act in a particular way, although the motive may be circumstantial evidence of intent.[6] Thus "intention is something quite different from motive or desire".[7] A defendant may intend to poison his mother, to cause her death, to inherit her money. Although he intends all three of these, only the first two are constituent elements of the crime, and only in relation to those is one interested in the defendant's mental state. Even if a man should kill his terminally wife to end her suffering (his 'motive'), his intention to kill her counts as the mens rea for murder (*Cocker* [1989]).

However, there exist a further two situations where motive is almost indistinguishable from intention; first, in s. 18 of the Offences Against the Person Act 1861; and second, in the offence of burglary, where the requisite mens rea is both the intention to enter another's house without permission and (the ulterior intent or motive) to steal, commit rape, inflict GBH or unlawfully damage the building.

According to Lord Bridge in *Moloney* [1985], "the general legal opinion is that 'intention' cannot be satisfactorily defined and does not need a definition, since everybody knows what it means"; the analysis ought to be intuitively apparent. Nonetheless, guidelines are required for difficult cases, and two separate legal definitions have arisen. D 'intended' the actus reus if

(I) D *intended* the actus reus in the ordinary, paradigm sense of 'intention'; he seeks to bring about the relevant outcome and acts in pursuance of that aim; or

(II) D recognised that the actus reus was a *virtually certain* consequence of his actions, though he does not act in order to bring about the intended outcome. He acts for other reasons, but knows that the actus reus is an 'inescapable concomitant'.

[6] "To prove the intention, you may show the motive, and this is a link in the chain of evidence", in *Heeson* [1878].
[7] Lord Bridge in *Moloney* [1985]