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Introduction

Most serious criminal offences require a specific state of mind of the accused, in addition to the existence of the actus reus. This is usually known as mens rea. Less serious offences usually do not require the proving of a specific intention, and simple proof that the accused had caused the damage in question is sufficient to establish the crime – these are known as strict liability offences. The requirement of mens rea for serious offences on the other hand can be justified because where criminal law ought to deter people from engaging in such crimes, then it should only punish those that are definitely guilty.

Similarly, if a criminal conviction must carry an element of censure, then it makes fair sense to require a guilty mind here. At the same time, it must be noted that the mere fact of finding a mens rea does not make the party guilty of the offence. Hence, even though mens rea refers to a guilty mind, it must be noted that a defendant may have a mens rea even though he is not guilty. Hence, this paper seeks to study the main types of mens rea, and how they are proved. These are namely intention, recklessness and negligence.

First Mens Rea - Intention

The term intention is one that has eluded proper definition by the courts, owing to the inherent difficulty in doing so. This is also because there are very few offences for which intention alone will be sufficient to make a finding of a mens rea. However, a consistent idea that permeates all cases dealing with intention is that the person in question had intended the particular result when he undertook an action. James LJ has explained in the case of R v Mohan that intention is that which refers to the aim or a decision to ensure that a particular outcome is attained. It is therefore not relevant as to whether the intended outcome was likely to occur or not.

Furthermore, it has been made clear in the case of R v Moloney that intention is completely different from the desire of the defendant, or even his motive. Motive can however be used to prove intention in certain cases, such as mercy killing and murdering of kith and kin in order to obtain complete inheritance of the ancestral property. However, the core definition of intention is that it must be the purpose of the defendant to commit a particular action. From that, the juries are supposed to apply what they understand of the term intention, and the judges will only correct them if their understanding is very different from the regular meaning.

At the same time, in rare and exceptional cases where it is hard to ascertain the meaning of intention, the courts will give more guidance to the juries. This will be particularly needed where the defendant has undertaken a particular course of action so as to ensure that one particular outcome is achieved, but it is highly probable that another outcome will occur through that action. In such cases, the court will direct the jury as to what is meant by intention.

While these rules apply with regard to direct intent, the case is different for scenarios involving the oblique intent of the defendant. Oblique intent refers to those situations where the result of a course of action was not what the defendant had intended, but a different result was virtually certain to arise from that course of action. The House of Lords ruling in the case of R v Woollin is illustrative here as to how the notion of oblique intent applies to criminal law cases.

In this case, it was firstly stated that in the example of murder, it has to be shown that the defendant had indeed intended to kill the victim or cause grievous bodily harm to the victim. In such cases, the judge should simply direct the jury to give intention its ordinary meaning here, which would mean that it had indeed been the intention of the defendant to cause such an outcome. If the case entails a situation where the intention of the defendant was something else, but serious injury or death of the victim was likely to occur, then the judge must direct the jury to consider two questions.

Firstly, the jury must consider whether the serious injury or death was virtually certain a result of the actions of the defendant. Secondly, the jury must consider whether the defendant appreciated that such an outcome of grievous injury or death was virtually certain to result from the action that he/she had chosen to adopt. Where both of these questions are answered in the positive, then the jury can find intention here. Therefore, this is how both direct and oblique intents are found and applied in practice.

Finally, with regards to intent, it is useful to consider how intoxication applies in the context of the finding of intent. Where the defendant has been charged with an offence that requires intent, and he had been intoxicated at the time of the offence, then this can be taken into account along with all other evidence available in finding whether he meant to cause the harm. It must be noted at this juncture that a drunken intent is still considered to be intent. However, if say the charge is

murder, and the defendant in his drunken state had not intended the murder of the victim, then he will not be convicted of murder. He might instead be convicted of manslaughter, which is a lesser offence.

Recklessness

Next, mens rea can also be established by the finding of recklessness in a case. In the case of R v G, the House of Lords produced the current definition of recklessness that is being decisively followed in all such cases. It was held that a person is taken to act recklessly with regards to a circumstance when he is aware of a risk that is bound to exist or already exists, and with regards to a result when it can be shown that he was aware of a risk that such an outcome could occur. Recklessness is usually found when the defendant has foreseen that a particular type of harm could be done, and yet has taken the risk and continued with the action. The risk in question need not be one that is substantial – it is sufficient to show that there was indeed a risk. This will help institute recklessness. The important point here is that it must be shown that the defendant was subjectively aware that there is a risk that her actions will lead to a particular harm. Even if the result was one that was very obvious, if the defendant was not aware, then she cannot be called to be reckless in her behaviour.

One point to consider here is what happens when the defendant was aware of the risk/outcome, albeit at the back of his mind. The case law guides us that even where the defendant was only aware of the danger at the back of his mind, the fact that he was aware should be enough to hold him reckless in his behaviour. A policy reason behind this could be that by not finding such parties guilty of being reckless, many people will be able to escape liability by saying that they had only been aware of the danger at the back of their mind. Hence, in order to avoid this situation, recklessness is usually found even in such cases.

With regards to intoxication then, where a defendant is voluntarily intoxicated, then she cannot seek to rely on that intoxication to hold that she did not foresee a particular outcome or the harm related to that outcome. She will be treated as being sober in such cases, where the court will only consider whether she would have been aware of the risk/outcome in her sober state. On the other hand, where she has been involuntarily and forcibly intoxicated, then the courts will take this into account when considering whether she was reckless in her behaviour.

Negligence

Finally, mens rea can be established through the finding that the defendant had been negligent. Negligence essentially seeks to compare the actions of the accused with the actions of a hypothetical reasonable person. An act is considered to be negligent where a prudent and average person would not have engaged in such a conduct. In this case of mens rea, the state of mind of the defendant is not necessary and is not of concern to the courts, unlike in the other two categories above. Rather, the jury will quite simply seek to establish whether the defendant had conducted himself in a way a reasonable person would have.

However, it must be noted that the notion of negligence plays a much stronger role in the civil law of tort rather than in criminal offences. There are only a handful of criminal offences that require the establishment of negligence. Negligence is particularly important in the field of criminal law when one considers statutory offences, especially those that are concerned with professional regulations.

Some have argued that negligence should not be used to identify mens rea at all, for mens rea is by definition one that is concerned with the state of mind of the individual at the time that he had engaged in a particular activity that had caused the physical damage to the victim (the actus reus). Mens rea cannot therefore be the mental state of an average person who was not there on the scene at all, and cannot be taken as the marker of what the defendant ought to have done with regards to mens rea.

However, it is still argued that negligence is a very important and useful concept when it comes to certain offences such as manslaughter. Indeed, the notion of negligence is the most important in manslaughter offences. In order to establish manslaughter, it is necessary that the level of negligence is gross, and is to a very great extent as opposed to being marginal. In order to establish negligence in such cases, it is necessary to prove that the defendant had owed the victim a duty of care, the defendant had been negligent in executing that duty of care, and this ultimately led to the harm/death that the victim experienced.

As such, it is clear that negligence plays a central role in helping to establish such manslaughter cases, for the regular notion of mens rea/intent cannot be of use here. There are many mistakes in the field of clinical negligence or corporate manslaughter where the harm done to the victim was not done intentionally or with a guilty mind. Hence, both recklessness and intent will not be of much use in such cases. This is why it is argued that the notion of negligence is very important and must be retained within the idea of mens rea. This is so even if it has the effect of widening the scope of mens rea beyond the traditional understanding of mens rea being strictly confined to the state of mind of the defendant.

Conclusion

In summary, it has been shown that there are three main types of mens rea concepts – intention, recklessness and negligence. All three concepts can be placed in a hierarchy, whereby intention is the most serious type of mens rea, followed by recklessness and finally negligence. While both intention and negligence are applicable to a select few instances, this is owing to the difference between both concepts.

While intention is applicable only to a few crimes owing to the seriousness of the crimes, negligence is only applicable to a select few crimes because it does not fit easily within the jurisprudence of mens rea, and can only be invoked in specialist instances. However, what can be decisively said is that the criminal law indeed treats the issue of mens rea very seriously, and has developed various concepts that help prove the guilty mind of the defendant, so as to curb crimes.

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