



## Nature of Criminal Intent

Intention, in general, is the purpose or design with which an act is done. It is the fore knowledge of an act; coupled with the desire to do it; such foreknowledge and desire

Nature of Criminal Intention being the cause of the act in as much as they fulfill themselves through the operation of the will

Holmes in 'The Common Law' says Intent will be found to resolve itself into 2 things: -

Foresight that certain consequences will follow from an act and the wish for those consequences working as a motive which induced the act”

An act therefore is truly intentional.

Intention generally is thus the combined operation of the intellect and will. It is the striving of the will towards a certain end represented as desirable by the intellect.

Carrara's distinction with regards intent; it can be Direct or Indirect;

- **Direct (Dolus)** – It is the foresight of a desired issue, the intention is direct when the act is done and although it could miscarry has been done with the direct purpose of producing a desired effect. Intention doesn't always involve certainty of expectation. Whenever the consequences of one's acts are foreseen as certain or even as probable and desired, the intention is direct. Direct intention is the foresight of a desired issue, however improbably, not the foresight of an undesired issue, however probable.

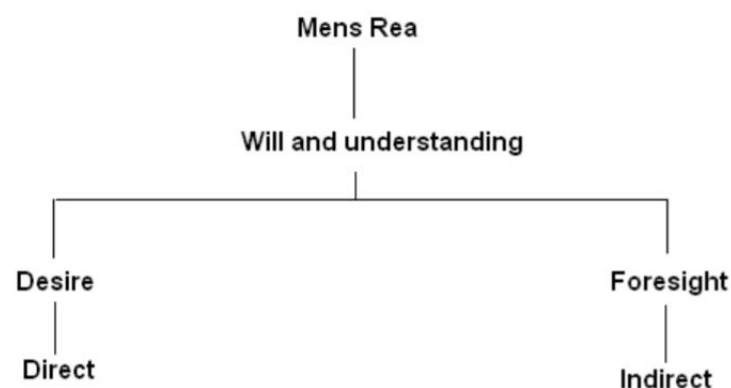
Example – If I fire a rifle in d direction of a man a mile away, I know that there is a probability of me not hitting him; nevertheless, I intend to hit him if I shot

- **Indirect** – the intention according to Carrara is indirect when the event was merely a possible consequence of one's act, which was either not foreseen at all or was foreseen but not desired
  - **Positive Indirect Intent** – if such an event was foreseen and notwithstanding such foresight the means were desired although the event itself ensuing upon the use of such means was not desired.

- o **Negative Indirect Intent** – if, on the other hand, the possible event was not only not desired, but not even foreseen

**Direct intention** and (in some appropriate cases) **Positive Indirect Intention** gives rise to Dolus – criminal intent

**Negative Indirect Intent** gives rise to Culpa –negligence or to Casus (accident)



**Act:** - must always be willed and aware of surrounding circumstances

**Consequences:** - material offences amount in crime. They must be foreseen and desired

**Positive:** - Act is willed and consequences are foreseen but not desired

**Negative:** - Act is willed but consequences are not foreseen and neither desired

Carrara defined criminal intent (dolus) as “the more or less perfect intention of doing an act which is known to be contrary to the law”. This doesn’t mean that in each particular case it is either necessary to enquire whether the defendant actually knew of the existence of the law prohibiting the act. For as we know ignorance of the law is no excuse – *“Ignorantia legis neminem excusat”*

**Kenny:** - *“In all ordinary crimes the psychological element which is thus indispensable may be fairly accurately summed up as consisting simply in intending to do what you know to be illegal.*

This element requires:-

- a) The power of volition, the offender must be able to choose whether to do what you did
- b) Knowledge that what the offender is doing is wrong;  
wrong either intrinsically or at any rate, in prospect of such circumstances as he has grounds for foreseeing
- c) Foresight of such circumstances It is important that the existence of a complex mental element is present in order for the offender to be legally liable. The prosecutor must obtain evidence of it.

This is a very daunting task since as a medieval judge once said (which Sir Frederick Pollock) made familiar to readers.

***“The thought of man is not triable, for the Devil himself knoweth not the thought of man”***

In England and Malta, the settled principle in this matter is that ***“every sane adult is presumed to intend the natural or necessary consequences of his wilful conduct.”***

The law treats as intentional all consequences which the actor foresees as the probable results of his wrongful act. Thus, it has been judicially said in reference to the offence of wilful damage to property – A man must be held to do a thing wilfully when he does it either intending to cause damage or knowing that the acts that he commits will cause damage. (Roper Vs Knott -1989) This presumption is however can be rebutted if the accused can satisfy the court or the jury that the possibility of such a result never occurred to him then he cannot be held to have intended the result but if he was aware of the fact that certain consequences might follow that act which he contemplated doing and yet deliberately proceeded to do that act, he must be taken to have intended those consequences to follow even though he may have hoped they may not.

Also, this presumption may be rebutted by proof that the accused at the time he committed the act had not a mind capable of forming an intention.

Carrara points out that for a man to be held liable for a completed crime to which he has given cause, it is not necessary that his wrongful intent be contemporaneous or coincide with the last act of completion of such a crime. In some cases the act from which the criminal responsibility of the

agent arises is separated by a long interval from the actual completion of the crime by that further act which brings about the intended event but which is executed by another person.

**Example** – A has determined to kill B who lives very far away. So, he sends him a letter bomb. The act of sending him a letter bomb doesn't complete the crime; which is completed perhaps days after, when it reaches its destination and is opened by B, who in consequence, dies. – A is accountable for his murder and he is accountable for the act of having sent the letter bomb and for the wrongful intent which accompanied the act. If A claims that in the interval between the sending of the letter bomb and the day of B's death, he fell victim of a delirium tremens which makes him utterly irresponsible and it was in such a state that his victim dies and he subsequently recovered. He certainly cannot escape responsibility for the murder by saying that at the time the crime was completed "dolo incapax".

To hold him responsible if it was sufficient that he was of murderous intent at the time when he committed the act which was the cause of B's death. This is what is meant when it is said that it is not always necessary that the wrongful intent on the part of the agent should continue or preserve to the time of the actual completion of the crime.

The same rule applies in all cases in which the last act of consummation is not performed by the defendant but by the victim himself, or by a third party not concerned in the crime or by a co-offender (e.g. co-assassin)

The criminal intent is an essential ingredient of every crime except where the liability arises from negligence or where it is an exceptional case of Absolute Liability. Yet it is only in respect of some crimes that the definitions of certain words specify this mental element with terms such as knowingly, maliciously, wilfully, fraudulently

## **Intention and Motive**

Intention and motive are different. Intention is one and the same for every criminal offence. Motive may vary from one to another. A wrongful act is seldom intended and desired for its own sake. The wrongdoer has in view some ulterior object which he desires to obtain by means of it.

**Example** – The thief, who appropriates another person's property or money, may have the ulterior intent to buy food with it to satisfy his hunger or to pay his debt. This ulterior intent is called the motive of the act

Every wrongful act may raise 2 distinct questions with respect to the mental attitude of the doer:-

1. How did he do the act? – intentionally or accidentally
2. If he did it intentionally, why did he do the act?

The first is an enquiry into his intention; the second is connected with his motive.

Thus, a man's intention is his determination to do or not to do a particular act. His motive is his reason behind such determination. He intends to do that which he means and tries to do; his motive is what makes him intend to do that act. (e.g. the satisfaction that revenge brings)

Now on the question of guilty and not guilty English and Maltese law disregard as a rule the prisoner's motives, though they may affect the amount of punishment given. It is the intention and not the motive which gives the character and quality of an act.

*"The intention to do the act exists for all criminal purposes where it is wilfully done although the act itself was merely intended as a means for obtaining some ulterior object" (Criminal Law Commissioners)*

If a man has done an act which is forbidden by the law, it will be no defense for him to urge that he had a laudable motive. No act otherwise unlawful is excused or justified because of the motives of the doer, however good.

Example - a theft is not less criminal because the ulterior motive of the thief may have been to obtain money for Charitable Purposes.

The general rule in law is that a man's motives are irrelevant, is subject to certain qualifications; for occasionally it is material to take into account the doer's motives into account since they may affect the amount of punishment

Example – if a man steals a loaf of bread to feed his starving children, he nevertheless commits a theft but it is clear that he should be punished very much less than a man who steals for improper motive

With regards to the following particular provisions in our code, it would appear the purpose of the agent is taken into account under the following aspects:-

- Special Purpose required in addition to the ordinary intent, and which forms part of the definition of the crime and constitutes, as such, an ingredient thereof. Examples:-
  - Section 68 (unlawful assembly)
  - Section 94 (bodily harm caused to Judge, Attorney General, magistrate or Juror)

In such cases the ulterior intent or purpose of the agent is the source, in whole or in part, of the mischievous tendency of the act and is, therefore material in law.

- Special Purpose which by reason of its turpitude or wickedness, operates as an aggravating circumstance of the offence and. Therefore, of the punishment. Examples:-
  - Section 87(e) (f)
  - Section 101(2)

These sections both relate to aggravating circumstances

- Special purpose which, conversely, by reason of its less blameworthy character extenuates the offence and punishment. Example: - Section 199 – Abduction for the purpose of marriage

As Harris says – in some cases the presence or absence of a particular motive may be the test as to whether conduct is criminal

Example: - If A strikes B with the intent to wound him, his motive being that of self defence, such a motive excuses or justifies his conduct

### **Kinds of criminal Intent**

- **Generic and specific:** - the intent is said to be generic (*dolus genericus*) when it consists simply in intending to do an act which is known to be illegal. This ordinary generic intent is the necessary and as a rule sufficient psychological element for imputable in respect of willful crime –But in some cases a particular or specific intent is required by the definition of certain crimes

This specific or particular intent is constituted by the special purpose which the doer had in actually committing the crime

- **Determinate and Indeterminate:** - the first refers to when the issue falls completely within the boundaries of the intent. The crime committed corresponds precisely to the crime intended.

Example – A wants to kill B and not merely hurt him, and actually kills him

- **Good faith:** - from the notion of wrongful intent the concept of its opposite good faith emerges clear. As the former consist in fore knowledge and the desire – i.e. the intention of causing an event which is contrary to the law. Good Faith is – the reasonable belief of

the lawfulness of the event which is voluntarily caused. Thus a man is said to have acted in good faith who has done an act which is materially or objectively contrary to criminal law not only without any intention of violation such law but also without any intention of committing a wrongful act at all. Good faith always resolves itself into a mistake of fact or a mistake of law, but other than criminal law.

Example: - If an accused person proves, for instance, that in taking and carrying away a thing belonging to others, he reasonably thought that he was taking and carrying away lawfully his own thing, He cannot be found guilty of Theft or any other crime. Not so however, if he merely proves that he had a doubt.

