

## **Chapter 3: Mens rea**

### **Problem Questions**

The issues discussed in this chapter will rarely be 'directly' examinable within a problem question. However, the vast majority of offences discussed in this textbook include mens rea elements, and so when answering problem questions on these offences it will be essential to be able to identify and apply the mens rea terms. This is particularly true for offences such as murder that can only be satisfied by a mens rea of intention (as opposed to intention or recklessness), and so the definition of intention and its distinction from recklessness becomes crucial.

### **Essay Questions**

There are a number of potential essay questions related to mens rea. These will tend to focus on the role of mens rea within an offence definition, the distinct functions and/or merits of subjective and objective mens rea, evaluating the definitions of individual mens rea terms, and so on.

Below is an example of an essay-type question, and a bullet-point plan for a possible answer. This is for illustration purposes only. When writing an essay of this kind yourself, there will usually be alternative ways you could structure your answer, alternative points of discussion that could be raised, and you would certainly be expected to write in full prose (i.e., not in bullet-point form). The most important point to take from these plans is how they focus on identifying and discussing the debate within the question, not simply listing information about the relevant topic.

'The mental states of intent and recklessness have in common the need to prove foresight of the prohibited consequence. For either form of culpability the defendant chooses to bring about the consequences of his conduct. That being so there seems little point in retaining both these forms of culpability. For serious crimes the culpability required should be recklessness.'  
Discuss.

### Introduction:

- The quotation here is reasonably complex, and so it will be useful to explain the point that is being made in the introduction. Essentially, the quote is maintaining that as intention and recklessness both require D to have *chosen* to commit or risk committing an offence, there is no need to distinguish them.
- It will then be useful to explain how you are going to answer the question. For example, setting out reasons to agree with the statement, and then exploring reasons against it.

### Body of the essay:

- Agreeing with the statement.
  - Both subjective mens rea states.
    - As such, where D foresees a criminal result, is likely she should stop – her choice to continue is a choice to risk breaking the law. Where she does not stop, she qualifies for criminalisation.
  - Most crimes are satisfied by either state of mind.
  - The line between them is far from clear anyway (*Woollin*), and the law would therefore be considerably simpler if the distinction were removed.
- Disagreeing with the statement.
  - There is a difference between foreseeing a risk (recklessness) and acting with a purpose to cause (intention) – and the latter is more culpable.
    - Foresight creates a spectrum of culpability, and oblique intention recognises the top end of this as equal to intention, but this does not mean that the rest of the spectrum should be similarly regarded.
  - Certain crimes require only the top end (ie, recklessness would not seem sufficient). For example:
    - Murder – because it is so serious;
    - Attempt and Conspiracy – to justify criminalisation where the actus reus may be otherwise innocent;
    - Consider changes in the law of complicity.

- The distinction allows for a laddering of offences – e.g., murder/manslaughter.

**Conclusion:**

- The nature of this question and debate is such that you should come down on one side or the other. Although you can recognise advantages in the alternative, you should tell the reader why you come down on the side you prefer (i.e., why are the arguments on that side more convincing?).