

Video transcript
Video Tutorial (g): Murder - mens rea (chp 5)

Hello! Hi! I want to talk in this video very briefly about the *mens rea* of murder. So murder, of course, we discuss in detail in Chapter 5 of the book. The reason I want to discuss the *mens rea* of murder is just to illustrate a point that's useful for this offense but equally applicable across the *mens rea* of multiple other offences as well.

So just as I'm sure you're aware, the *mens rea* of murder is defined in the case store as malice of forethought but that's been interpreted in modern parlance to be that the defendant must have acted with the intention with an intention either to kill or to at least to cause serious bodily harm or grievous bodily harm and that was interpreted in cases like *Vickers* and *Cunningham* etc. Now the point that I'm trying to make here is that when you think about the *mens rea* of a particular offense try and recognize the various ways in which that *mens rea* can be alternatively satisfied.

So, for example, here if we think about intention there are two broad ways in which we can find an intention. The most obvious one is a direct intention. Now direct intention is where the defendant acts with the aim or purpose or desire to bring about a certain result or a certain circumstance. The other is oblique, so oblique intention is where the defendant foresees as a virtual certainty a particular result for example will come about, it is a virtual certainty that that result will come about, and the jury choose to find an intention. So in that way we have two options. We also of course within the *mens rea* of murder have these two varied results that the defendant can intend in order to be liable for the offense, at least in order to satisfy the *mens rea*. So essentially, what we have are four ways in which the defendant can satisfy the *mens rea* of murder; either by direct intention to kill, a direct intention to cause grievous bodily harm, an oblique intention to kill, or an oblique intention to cause grievous bodily harm.

Now when applying the law to problem fact it's useful to think in these terms and basically to lead your reader through the various options. Sometimes it's quite tempting when you're asking a problem question to think *mens rea* of murder, intention to kill or cause GBH, and just apply one of these and miss out the others not think fully about the others. But sometimes it will be necessary to lead your reader through all of the options.

An example which is quite useful is actually from a problem question we set in an exam a couple years ago. In this scenario, we had a defendant who was out aiming to go and kill a rival from another gang, but on confrontation with this rival from another gang, that rival grabs one of the defendants friends and held him in front of him as a human shield. Now the defendant chose in that scenario that he still wanted to kill the rival so he shot through his friend in order to hit the rival and ideally kill him. And what happened is both of the victims in that scenario died, both of the individuals who were shot. Now when it comes to the person, the rival in the background, we can say, was there an intention to kill? The *actus reus* of murder is clearly satisfied, was there an intention to kill? And we can start here in the first

option - was there direct a intention to kill? Yes, of course there was. When the defendant shot, he intentionally shot through his friend in order to, with the aim, the desire, the purpose of killing the victim. But then we have to think about the second victim, the friend of the defendant. Again, the *actus reus* of murder is satisfied, he's done an action which has caused death. This time we can say is there a direct aim, intention to kill that person? This time no, there isn't. He hoped that his friend would survive, he intentionally tried to shoot in such a way that it would harm him but hopefully he would survive. Is there a direct intention to cause grievous bodily harm? Now this is perhaps more debatable but we could ask ourselves, what happens if the victim jogged out of the way at the last moment was dropped or managed to avoid the bullet? Would our defendant be unhappy no of course he wouldn't it's his friend he would be very happy. So therefore, it's at least debatable that perhaps there isn't a direct intention to cause grievous bodily harm.

Then we have to look is there an oblique intention maybe to kill? Does he foresee death as a virtual certainty? And again the answer on the facts was no he didn't. He foresaw a chance of the death happening but he absolutely hoped that it wouldn't and so therefore it doesn't look like there's an oblique intention. He not only hoped that it wouldn't but he foresaw a chance that it might not result in death, therefore, no foresight of a virtual certainty. And it's then the last option where you think well did he at least foresee as a virtual certainty that grievous bodily harm would be caused and answer here was, yes. Although, he didn't want grievous bodily harm to be caused he did foresee it as necessary, he did foresee it as inevitable essentially in order to kill the victim who he tried to kill. He saw it as basically inevitable that his friend would at least suffer serious bodily harm.

So the point here is that when you're writing an answer to a question of this kind it makes more sense to lead your reader through. And to think about the various options within the *mens rea* almost as a tick box inside your own head, where you can say in relation, for example, to that second victim 'there's no direct intention in either regard because it's not the aim or purpose therefore we need to engage with the idea of oblique intention again this is lacking in relation to causing death but it is present in relation to causing grievous bodily harm'. Now, exactly as this works in relation to murder, it works across whole offenses. A lot of offenses require a *mens rea*, for example, of intention or recklessness as to particular result or a particular circumstance. So, in that way again you can think, in your mind, what is the result and first of all does our defendant act with the intention to cause it if not do they act with at least foresight of a risk that they're going to cause it in terms of recklessness?

But again try and create that tick box within your mind of the various mental states that will be enough to satisfy the *mens rea* if any one of those are satisfied, as it was here, then the *mens rea* for the offense will be found.

Thanks!