R v Woollin: An Analysis of the Concept of Oblique Intention in the English Legal System

Dr. Abdulrahman Alhajri
Assistant Professor
Kuwait International Law School

Abstract

Oblique intention is a relatively uncommon aspect of intent to consider. The guidelines for applying the concept have been negotiated and renegotiated in particular cases, including that of R v Woollin, which remains the leading case for this area of the law. A body of literature exists that discusses the topic from the perspective of the legislation in different countries, but the recent literature dedicated to it is relatively scarce, and it does not consider certain countries, including Kuwait, which calls for additional investigation.

The paper present analyses the case R v Woollin and attempts to determine its effect on the law as related to murder trials. Then, it proceeds to discuss different approaches to oblique intention in several countries: France, Egypt and Kuwait. The review of primary sources (R v Woollin and other cases, as well as the Kuwaiti and French penal code) and secondary ones constitutes the methodological approach of the article. The concept of direct intention is discussed and compared to that of oblique intention. Further, the term "oblique intention" is investigated to determine whether it is a definition or evidence of intention.

The primary conclusion is that the law is satisfactorily capable of assisting the jury in determining intention, but it still fails to define the key terms that it uses and may result in inclusivity issues. Additional conclusions are that there are significant differences in the way individual countries approach the concept, which offers opportunities for improvement.

The paper contributes to the investigation of oblique intention and related guidelines, including those of Kuwait, and contains implications for their improvement, which are supported by some reliable sources on the topic. It also highlights the problems associated with the definition of intent in general and oblique intent in particular.

Keywords: oblique intention, law, jury, judges, criminal.

Introduction

The concept of intent is a complex one, and to this day, debates are held about the interrelationships between oblique intention and direct intention. The modern case law incorporates the concept of intent, which describes the direct intention of a perpetrator and can be identified as a subjective test(1). The term could be applied to a case if the outcomes of the defendant's actions were intended by him or her.

For instance, a defendant may intend to kill their victim, and the death of the latter is the reason for his or her action. The feasibility of the defendant's plan to kill the victim is irrelevant in this respect; even if the actions of the defendant presupposed a high chance of them failing, the direct intention might still be found.

Naturally, it may be difficult to determine the presence or absence of direct intent unless the defendant states it. As pointed out by Lord Bridge in R v Moloney(2), this decision is typically performed by the jury and can be considered the jury's duty. According to Lord Bridge, judges are not expected to define the term "intention" to assist the jury, but he also highlighted that it is necessary to differentiate it from other terms like "desire" or "motive."

> The golden rule should be that, when directing a jury on the mental element necessary in a crime of specific intent, the judge should avoid any elaboration or paraphrase of what it meant by intent, and leave it to the jury's good sense to decide whether the accused acted with necessary intent, unless the judge is convinced that, on the facts and having regard to the way the case has been presented to the jury in evidence and argument, some further elaboration is strictly necessary to avoid misunderstanding(3).

There are exceptions to the above-described tendency to avoid explaining terms to the jury. In certain cases, judges may need to provide a definition for the term "intention." The examples include the situations in which the jury explicitly asks for an explanation or elaboration; also, judges may decide that the jury could benefit from an explanation.

(1) Itzhak Kugler *Direct and Oblique Intention in the Criminal Law: An Inquiry into Degrees of Blameworthiness* (Routledge 2017) at 12-6.

(2) [1985] A.C. 905.

(3) *Ibid* at p. 926.

In Moloney, Lord Bridge called such events "rare"[4], but he did not describe such exceptions. However, it can be proposed that explanations might be required when there is no direct desire or motive to kill or harm the victim, even though the actions of the defendant did result in such outcomes.

A defendant's actions might cause death even if he or she had no direct wish to kill anybody. However, even in such cases, a defendant may be considered to have had intention if it can be argued that he or she had an oblique intention[5]. An example is a situation in which a person realises that their action can result in somebody's death and accepts this possibility, even though his or her actions have another purpose (not causing death)[6].

Even if the defendant regrets the results of his actions, the fact that he or she understood the possibility of the victim's death is sufficient for oblique intention to be found.

Oblique intention can be proven if the defendant understood that his actions would result in the victim's death with a "high degree of probability" at the time of the murder[7]. However, as was established in 1985 by the House of Lords, the understanding or foresight of probability should not be considered equal to intention. The following direction was provided to the jury by Lord Bridge:

> First, was the death or really serious injury in a murder case (or whatever relevant consequence must be proved to have been intended in any other case) a natural consequence of the defendant's voluntary act? Secondly, did the defendant foresee that consequence as being a natural consequence of his act? The jury should then be told that if they answer yes to both questions, it is a proper inference for it to draw that heintended that consequence…[8].

This advice lacks the definition of the term "natural consequence"; no direct explanation of this concept was provided by Lord Bridge. This problem appears to have led to misunderstandings and appeals as can be seen from subsequent cases.

(4) *Ibid* at p. 907.

(5) Mohammad Belayet Hossain and Saida Talukder Rahi 'Murder: A Critical Analysis of the Common Law Definition' (2018) 9 *Beijing Law Review* 460, 478.

(6) Dana Kay Nelkin & Samuel Rickless 'The Relevance of Intention to Criminal Wrongdoing' (2016) 10 *Criminal Law and Philosophy*, 745, 752.

(7) *Hyam v DPP* [1975] AC 55 at p.68.

(8) [1985] A.C. 905 at p. 929, per Lord Bridge.

The topic of oblique intention will be considered from the perspectives of different countries, including France, Egypt and Kuwait (with a focus on Kuwait), to determine which of them has interesting and helpful views on the concept. The implications of the research will be then described, and a conclusion will be drawn.

Methodology

The methodology of the paper consisted of a review of primary and secondary sources with their analysis, which makes it a literature review(9). The selection of the secondary sources involved ensuring that the source was dedicated to an analysis of intention in different countries.

Regarding the former, primary sources were introduced for a discussion of the concept of oblique and direct intention with references to the key relevant cases. Additionally, primary sources were used for the countries which have not received much attention in secondary research; basically, when a gap in secondary research was found, primary sources were used to cover it.

The introduction of those primary sources that cover research gaps is what ensures the originality of the present article. There exists research on the concept of oblique intention in multiple different countries, but Kuwait is not one of those countries. In fact, there appears to be no research on intent in Kuwait. By employing both secondary and primary sources, the present article covers this gap while also producing a literature overview on the topic. The result is the implications on both oblique intention and its use in different countries, as well as intention research, and both these types of implications can be employed to expand our knowledge of the current use and understanding of potential uses of oblique intention.

The Facts and Decision in the House of Lords Decision in Woollin

Oblique intention is not very commonly used in practice, and since it tends to blur intention, volition, and certainty, its definition and application are considered relatively subjective and complicated to this day(10). Among other things,

(9) Tim May, *Social Research: Issues, Methods and Research* (Open University Press 2011) at 132; see also Paivi Eriksson and Anne Kovalainen, *Qualitative Methods in Business Research* (SAGE 2015) at 4.

(10) Mohamed Elewa Badar, 'The mental element in the Rome Statute of the International Criminal Court: a commentary from a comparative criminal law perspective.' (2008) 19 *Criminal Law Forum* 3-4 473, 473-475; see also Mohamed Elewa Badar, 'Dolus Eventualis and the Rome Statute without it?' (2009) 12 *New Criminal Law* 3 433, 434-35; Matthew Dyson 'Ever Working in Practice, but Never in Theory? The New English law of Criminal Complicity' (2017) 129 *Zeitschrift für die Gesamte Strafrechtswissenschaft* 1, 8-9; see also David Hayes 'Proximity, Pain, and State Punishment' (2018) 20 *Punishment & Society* 235, 242; Kevin Heller & Markus Dubber *The handbook of comparative criminal law* (Stanford University Press 2010) at 218-220; Markus Dubber & Tatjana Hörnle *Criminal law: A comparative approach* (Oxford University Press 2014) at 223-224.

it is not clear if the oblique intention should be considered a part of an aspect of direct intention; alternatively, it can just be used as a form of evidence which implies intention.

This consideration is important for the cases when oblique intention can be found, especially in murder trials when the jury (common law) is supposed to determine the presence of intention.

R v Woollin[11] provides some context on the way the jury may be instructed to solve the dilemma and achieve a level of objectivity when handling oblique intention cases; to this day, it remains the leading case, which highlights its importance for the topics of oblique intention and intention from the perspective of murder[12].

The starting point is to present the facts and decision of the case under analysis. The appellant was the man who killed his three-month son by throwing him onto a hard surface. This state of affairs denotes that it is necessary to identify whether the man intended to cause harm. To be more exact, the most significant question is whether the jury has sufficient evidence to rule that this intention resulted in death.

The ratio decidendi is the judge's statement that the jury should define whether the defendant should have predicted substantial risk of his action[13]. Woollin's[14] authority comes from a series of critical decisions, and it is to be found from the previous decisions in Hyam[15] and Nedrick[16].

Defining Intention and Oblique Intention from Hyam to Woollin

When it comes to interpreting and commenting on the decision in R v Woollin[17], one should admit that the court faced a few significant problems. One of them refers to the case that numerous defendants are tired with murders instead of being prosecuted for manslaughter. The police and the prosecution service are responsible for interpreting cases and choosing a single option.

The difference between the two is that murder results in a life sentence (16

(11) [1999] A.C. 82.

(12) Beatrice Krebs 'Oblique Intent, Foresight and Authorisation' (2018) 7 *UCL Journal of Law and Jurisprudence* 1, 13.

(13) [1999] A.C. 82

(14) *Ibid*.

(15) [1975] AC 55

(16) [1986] 1 W.L.R.

(17) [1999] A.C. 82.

years or more), while manslaughter implies a range of sentences between an absolute discharge to 10-15 years. It is possible to say that murder is chosen more often, and there is specific reasoning behind this claim. It refers to the fact that the threshold of murder was lowered in the Hyam case[18].

This legal case involved defendant Hyam who put petrol through her ex-boyfriend new fiancé's box and ignited it. Two young children were killed as a result of this wrongdoing, and Hyam was accused of murder.

Even though the Court of Appeal allowed an appeal, it was refused. This decision was made because the defendant knowingly committed an act to cause death or injury. Lord Hailsham stated that intention was present if the person:

> knew there was a serious risk that death or serious bodily harm will ensure from his acts, and he commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts. It does not matter in such circumstances whether the defendant desires those consequences or not[19].

This information demonstrates that the jury had sufficient evidence to infer the necessary intention in the case under analysis. As has been mentioned above, this decision influenced R v Woollin[20] because the jury followed the same reasoning that was utilised in the previous case.

It denotes that Woollin[21] relied on confusing points regarding "inference," which led to the jury's decision. In this case, it would have been more useful to draw attention to the fact that an act's wrongfulness depends on the manner of its doing[22].

It implies that the inability to infer an intention of consequence should be an essential factor to influence the decision. However, the cases under consideration reveal that this fact was not considered, and the jury made confusing statements.

The Decision in Nedrick and Its Significance

From the above-presented information, it is not clear if oblique intention

(18) [1975] AC 55.

(19) *Ibid* at 79.

(20) [1999] A.C. 82

(21) *Ibid.*

(22) Andrew Simester, 'The Mental Element in Complicity' (2006) 122 *Law Quarterly Review* 598.

should be viewed as a definition of intention or its evidence[23]. R v Moloney[24] may be one of the causes for this confusion because in that case, Lord Bridge said that oblique intention could only be described as the evidence of intention.

This statement affected the decision of the Court of Appeal in R v Nedrick[25] where it was not possible to follow the provided explanation of oblique intention; as a result, the jury was offered a different guidance. This case is of significance because Woollin[26] relied on it.

The case revealed the problem referring to the absence of statutory definition of murder, which happens because English law is uncodified. Specialists have criticised the suggestion of Lord Bridge[27], though, for example, asking what state of mind the jury was supposed to find[28]. Thus, a clear test was provided by the Court of Appeal in R v Nedrick:

> (the jury) are not entitled to infer the necessary intention, unless they feel sure that death or serious bodily harm was a virtual certainty and that the defendant appreciated that such was the case[29].

In R v Woollin[30], the House of Lords chose to use the latter test with the following guidance provided to the jury:

> Where the charge is murder and in the rare cases where the simple direction is not enough, the jury should be directed that they are not entitled to find the necessary intention unless they feel sure that the death or serious bodily harm was a virtual certainty (barring some unforeseen event) as a result of the defendant's action and that the defendant appreciated that such was the case. The decision is one for the jury to be reached upon consideration of all the evidence[31].

One may observe that Lord Steyn seemed to include oblique intention (spe-

(23) William Wilson *Criminal Law: Doctrine and Theory* (Longman 1998) at 126-8.

(24) [1985] A.C. 905.

(25) [1986] 1 W.L.R.

(26) [1999] A.C. 82.

(27) William Wilson 'Doctrinal Rationality after Woollin' (1999) 62 *Modern Law Review* 448, 448

(28) Charles Mitchell, 'Retrospective Mistakes of Law' (1999) 40 *King's Law Journal* 121, 121.

(29) [1986] 1 W.L.R. 1025 at 1028, Per Lord Lane CJ.

(30) [1999] A.C. 82.

(31) *Ibid* at p.88, Per Lord Steyn.

cifically, the above-described foresight) into the definition of intention. According to him, "a result foreseen as virtually certain is an intended result"[32], which means that oblique intention is the direct intention.

It should be pointed out that the alternative option was also included in R v Woollin[33] to an extent; specifically, the case suggests that an event being virtually certain could be viewed as a form of evidence indicating the presence of intention rather than intention itself[34].

Still, as stated by Lord Steyn in Nedrick, "what state of mind (in the absence of a purpose to kill or cause serious harm) is sufficient for murder."[35]

Lord Steyn also changed the previously used direction, which was introduced by Lord Lane, and suggested instructing the jury to "find" intention instead of inferring it. He also removed the two-part guidance on how to infer intention but preserved its structure. Specifically, the jury was to be informed that they could only find the necessary intention in case the above-described foresight was found, and it explicitly indicated that the necessary intention did not have to be found in such cases.

In other words, in both models, oblique intention or the foresight of the outcomes (victim's death) might amount to the necessary intention but not necessarily. On the other hand, if oblique intent is absent, the necessary intent cannot be found.

In Nedrick[36] and Woollin[37], the main question that was being considered can be phrased as follows: is foresight equal to direct intention or is it a piece of evidence that might indicate direct intention? The term of oblique intent is sufficiently defined, but in both models, the jury might find the foresight but not the necessary intention.

Woollin[38] involved an attempt at devising a clear, direct definition of foresight which was supposed to hinge on the degree of foresight. Finding this definition remains important because it would allow differentiating intention and recklessness, as well as motive.

(32) [1999] 1 A.C. 82 at p. 93.

(33) 1999] A.C. 82.

(34) Iryna Marchuk *Fundamental Concept of Crime in International Criminal Law* (Springer 2015) at 18.

(35) *Ibid* at p.94.

(36) [1986] 1 W.L.R.

(37) [1999] A.C. 82.

(38) *Ibid*.

Woollin's[39] view, which can be described as subjectivist and orthodox (the examples include the views of Smith or Williams)[40], remains the dominant one for the time being. On the other hand, this perspective is also being contested, for instance, by Norrie[41] or Duff[42].

The two latter views presuppose reviewing intention together with motive and desire, and this approach can be described as the 'desirability package.' From this perspective, separating intention from the rest of the package is artificial and inappropriate.

Further, the problem of inclusiveness is also associated with Woollin[43]; specifically, it can be excessively or insufficiently inclusive. An example of the former case is doctors; they are likely to have an understanding and foresight of potential harm to humans, and they can also be in situations when they have to perform operations that will harm with a high degree of certainty. Non-medical cases are also possible; Norrie or Duff could suggest citing the example of a parent who, intending to save a child from a fire in a building, threw that child out of a window.

Under-inclusiveness is also a possibility. In Moloney[44], the case of a terrorist was considered: after planting a bomb, a terrorist who issues a warning might not appreciate the fact that the people working on diffusing the bomb could be killed by it[45].

Admittedly, terrorism is a particular form of crime that is concerned with public safety, which is why it is not a typical murder scenario[46]. However, this example still indicates that Woollin's[47] view on intent can potentially be under-inclusive.

From the perspective of the writer of this paper, Lord Steyn's view on the topic is sensible. As pointed out by Norrie, the label of murder is assigned subjectively and seems to preoccupy courts to an excessive extent.

(39) () *Ibid*.

(40) Wilson, supra (n 23), 448; see also Sir John Smith comment on Woollin [1997] Crim LR 519, at p, 520-21.

(41) Alan Norrie, 'Oblique Intention and Legal Politics' (1989) *Criminal Law Review* 793, 800-7

(42) Anthony Duff, 'The Politics of Intention: A Response to Norrie' (1990) *Criminal Law Review* 637, 637

(43) [1999] A.C. 82

(44) [1985] A.C. 905

(45) [1985] A.C. 905 at p. 910

(46) [1999] A.C. 82 at p. 94-95

(47) *Ibid*.

For instance, the above-presented case of the parent who intended to save the child but ended up killing them is less likely to involve the word "murderer" than that of the terrorist. The label has strong connotations, and it is commonly used as more than a term(48).

Additionally, such cases are relatively rare, as well as those related to oblique intention in general. Therefore, the majority of murder trials can be successfully managed with the help of Nedrick(49)/Woollin(50).

When it comes to considering these two cases, one should focus on the distinction between substantive law and the law of evidence. While the former refers to how case facts are handled, the latter focuses on how evidence can be obtained and what evidence may be used. One should state that this distinction has become blurred, resulting in some issues.

Regarding the cases under analysis, the appeals focused on judges' misdirection. For example, in Nedrick(51), Lord Lane offered a test to direct the jury to plead the defendant guilty. In turn, Woollin(52) shows that Lord Steyn changed the direction, and it denoted that it was possible to find foresight to claim oblique intention. Thus, the importance of that case was that the identified foresight could introduce oblique intention.

After Woollin: The Decision of the UK Supreme Court in R v Matthews and Alleyne and R v Jogee

One should admit that Wollin(53) was not the only case that focused on the issue of oblique intention, and some further proceedings have considered this phenomenon. On the one hand, Matthews and Alleyne(54) highlighted the case that the jury could find foresight instead of evidence.

This problem was reconsidered, but the Judges did not view the question as important, which is why the case provides no direct answer to it. From this perspective, it can be suggested that despite the additional investigation of the problem, Woollin(55) did not lead to its solution: the law remains unclear, and in certain cases, the jury might discard the question completely.

(48) Norrie, *supra* (n 41), 800.

(49) [1986] 1 W.L.R.

(50) [1999] A.C. 82

(51) [1986] 1 W.L.R.

(52) [1999] A.C. 82

(53) *Ibid*.

(54) [2003] 2 Cr. App. R. 30.

(55) [1999] A.C. 82.

An analysis of R v Matthews and Alleyne[56] can also be used to demonstrate that there is no certainty in the law. In this case, the judge decided to direct the jury to view the necessary intent as the understanding or appreciation of the "virtual certainty" of the victim's death. According to the Court of Appeal, Lord Steyn's proposition did not result in any changes in the law, which means that foresight is not equal to intention and can only evidence it.

> "The law has not yet reached a definition of intent in murder in terms of appreciation of a virtual certainty"[57].

On the other hand, it is reasonable to draw attention to the Supreme Court decision in R v Jogee[58]. Even though this case is unrelated to the facts of Woollin[59], it focuses on the intention of an accomplice and makes a valuable contribution to the discussion through the modern lens. The case of Jogee[60] demonstrates that a person can be considered guilty because they could foresee that the offender's actions would constitute a crime.

However, it is possible to state that the case under analysis makes the future of oblique intention more challenging to predict. It refers to the fact that the case highlighted the lack of clarity concerning the level of foresight that is necessary to infer intention from a substantive to an evidential test[61].

Since Jogee[62] indicates that foresight of a consequence equals to intention, it is reasonable to doubt this claim because foreseeing does not mean that an accessory authorises a crime. That is why the prosecution does not attempt to identify the foresight of a virtual certainty because the jury is only asked whether the defendant had intention[63].

Simultaneously, Norrie[64] admits that foreseeing a result as virtually certain fails to imply that the individual had intent to achieve this outcome. Nevertheless, the Supreme Court ordered a retrial, and the defendant was sentenced to 12 years for manslaughter[65].

(56) [2003] 2 Cr. App. R. 30.

(57) *Ibid*, at 476, paragraph 43, Per Rix LJ.

(58) [2016] UKSC 8.

(59) [1999] A.C. 82.

(60) [2016] UKSC 8.

(61) David Ormerod and Karl Laird, 'Jogee: Not the End of a Legal Saga but the Start of One?' (2016) 8 *Criminal Law Review*, at 544.

(62) [2016] UKSC 8.

(63) Ormerod and Laird, *supra* (n 61), at 544-8.

(64) Alan Norrie, "After Woollin" (1999) *Criminal Law Review*, 532.

(65) 2016] UKSC 8.

Oblique Intention in Other Jurisdictions

An investigation of other legislation further broadens the understanding of intention. In French law, intent consists of knowledge and willingness (la conscience et la volonté) to do an act and achieve the result(66). When the willingness is the primary component in an individual case, the case of direct intent (dol spécial) occurs; when the situation is reversed, indirect or dol général occurs(67).

Therefore, dol général includes the knowledge of the wrongfulness of an act; it does not have to involve the knowledge of the specific legislation, though(68). This focus on the knowledge of the wrongfulness of the act, as well as the consideration of the will to act, does not coincide with the concept of intention in English law, where both of these features are not considered as a part of intention(69).

Dol éventuel refers to a situation in which the defendant does not will for the result of an act to occur but recognises them as possible (foresees them) and remains indifferent toward them(70).

Badar and Marchuk point out that this element of mens rea is contentious because it is not very clearly defined against negligence; generally, the difference is in the element of willingness to let the outcome of an act occur compared to the lack of such willingness in the case of negligence(71).

Dol *éventuel* is meant less for describing intentional crimes and more for creating a middle ground between intentional and unintentional ones(72). Additionally, dol indéterminé, which does not have an equivalent in English

(66) France, Penal Code (as of January 2020), art. 121-3; see also Mohamed Elewa Badar and Iryna Marchuk, 'A comparative study of the principles governing criminal responsibility in the major legal systems of the world (England, United States, Germany, France, Denmark, Russia, China, and Islamic Legal Tradition)' (2013) 24 *Criminal Law Forum* 1, 32-34, Sarah Finnin, 'Mental elements under Article 30 of the Rome statute of the international criminal court: A comparative Analysis.' (2012) 61 *International & Comparative Law Quarterly* 2 325, 329; Catherine Elliott *French criminal law* (Routledge 2001) at 29-32; Kai Ambos *Treatise on International Criminal Law: Volume 1: Foundations and General Part* (OUP Oxford 2013) at 267-270; Ilias Bantekas & Susan Nash *International criminal law* (Routledge 2009) at 29-32.

(67) Badar and Marchuk, *supra* (n 66), 32-34; see also Elliott *supra* (n 22) at 267-270.

(68) France, Penal Code (as of January 2020), art. 121-3; Badar and Marchuk, *supra* (n 66), 32-34.

(69) Ambos, *supra* (n 66), 267-268; Badar and Marchuk, supra (n 66), 32-34; Elliott *supra* (n 66) at 267-270.

(70) Elliott *supra* (n 66) at 267-270; see also Khalid Saleh Al-Shamari, 'The emergence of mens rea in common law and civil law systems' (2019) 7 *Kilaw Journal* 95, 100-111.

(71) Badar and Marchuk, *supra* (n 66), 35.

(72) *Ibid*.

law, refers to a situation in which a defendant wills for an outcome, but it is different from the one that actually occurs[73]. In the case of manslaughter, a person willing to hurt a person but not intending their death would likely be found to have dol indéterminé.

Many countries that use the Shari'a as the foundation of their legislation (for example, Egypt) will use Shari'a categories for intentional and unintentional crimes[74]. First, Shari'a law does not generally punish mental states that were not given expression; acting upon a thought or failing to act when it is required is typically needed for an act to be punishable[75].

The concept of al-Umūr bi Maqāsidihā implies that the intent (or will) of a person is important in judging their actions[76]. General intent refers to intending to carry out an action without intending the consequences; specific intent presupposes intending both elements.

For most intentional crimes, general intent is enough, but some of them (for example, murder or bribery) require specific intent[77]. Different degrees of intent can be found for a particular crime; for example, homicide can be intentional (when the death of the victim is willed for), quasi-intentional (when the death is not intended but the act leading to it is) and indirect (when a person becomes the cause of a lethal chain of events and fails to take the necessary precautions)[78]. Thus, the concept of intent is clearly present in the Islamic Legal Tradition, which is relevant for most Islamic countries, including Egypt and Kuwait.

In the Egyptian Penal Code, Article (238)[79] indirectly comments on the issue of oblique intention. It refers to the fact that a person should be considered guilty if they mistakenly cause the death of another problem "as a result of neglect, imprudence, carelessness, or unobservance of the laws, decrees, statutes and systems"[80].

In other words, if a person foresees that their action could result in the crime, and that crime occurs, they are considered guilty of the crime even if they did

(73) Elliott *supra* (n 66) at 267-270.

(74) Ambos, *supra* (n 66), 62; Badar, *supra* (n 10), 21.

(75) Badar, *supra* (n 10), 21.

(76) Badar and Marchuk, *supra* (n 66), 40-41.

(77) *Ibid*, 40-46.

(78) *Ibid*, 44.

(79) Egypt, Penal Code of 1937, article (238).

(80) *Ibid*.

not intend for it to happen. Additionally, as pointed out by Mohamed Elewa Badar[81], according to the Egyptian Court of Cassation, the Egyptian criminal system views dolus enventualis as possible when the unintended outcome of an action is foreseen and accepted as possible.

However, the Penal Code does not provide a detailed description of intention or its different forms, which is why the discussion of the Egyptian law perspective on intention is limited[82].

There is little information about Kuwaiti notion of oblique intention in secondary sources, but the primary one is very useful. According to Kuwaiti Penal Code[83], the mental element of crimes is important. Articles (40-44) specify the details of criminal intent and unintentional error.

According to Article (41)[84] criminal intent is present when the perpetrator "is determined to commit the act" and "produce the result" of it. The ignorance of the specific law applying to an act (as well as its incorrect interpretation) does not prevent criminal intent according to Article (42)[85].

However, according to Article (43)[86] a reasonable belief that an outcome could not be the result of an action might prevent criminal intent. Article (44)[87] specifies that an unintentional error occurs when no "recklessness, omission, negligence, lack of attention or failure to observe the regulations" can be found; when a person cannot expect an outcome or has done everything they could to prevent it, unintentional error applies.

The penalties for intentional crimes and unintentional errors are different (depending on the crime); thus, intentional killing of a person results in life sentence or death penalty, as well as a possible fine, but unintentional killing is punished differently (see Articles 149-431)[88].

In particular, if the crime results from "recklessness, negligence, lack of attention, or failure to observe the regulations"[89], no more than three years in

(81) Badar, *supra* (n 10), 473-475.

(82) *Ibid*.

(83) Kuwait, Penal Code 16/1960 (as amended), article (40).

(84) Kuwait, Penal Code 16/1960 (as amended), article (41).

(85) Kuwait, Penal Code 16/1960 (as amended), article (42).

(86) Kuwait, Penal Code 16/1960 (as amended), article (43).

(87) Kuwait, Penal Code 16/1960 (as amended), article (44).

(88) Kuwait, Penal Code 16/1960 (as amended).

(89) Kuwait, Penal Code 16/1960 (as amended), article (154).

prison and a fine are the punishment.

However, in what can be considered a description of oblique intention, "whoever intentionally injures or strikes another or gives him narcotic substances" without the intent to kill but with the outcome of death is punished with ten years in prison and a fine(90).

While this notion is not perfectly aligned with the concept of oblique intention (since it does not provide the rules related to foreseeing the outcome), it does appear to be similar to what other criminal codes would view as oblique intention.

It is necessary to comment on civil and common law differences. In terms of intent, common and civil law are generally similar in recognising the importance of volitional and cognitive elements as related to the result of an act(91).

Thus, direct intent would imply the desire to bring about the result, and indirect intent would presuppose the knowledge of the outcome being certain to occur without significant desire to achieve it. However, there are significant gradations to this distinction because the cognitive component is generally recognised to have different levels (from high to low certainty).

Oblique intent in common law can find counterparts in both direct and conditional intent in civil law. In general, oblique intent (common law) is equal to direct intent in the second degree (civil law), but it can also overlap with conditional intent, for which there is no willingness to achieve the result of an act, but it can be reasonably foreseen with moderate certainty(92).

Conversely, direct intent in the second degree presupposes high certainty in being able to foresee the outcomes of an act, and direct intent in the first degree refers to the desire to cause the outcome of an act(93).

Furthermore, it is reasonable to highlight a distinction between jurisdictions with jury trials and non-jury jurisdictions. It refers to the fact that when the question regarding intention is involved, the judge instructs the jury, and its members should decide whether the facts shown by the prosecution meet the legal definition.

Since such evidence may be insufficient to prove intention, the jury focuses

(90) Kuwait, Penal Code 16/1960 (as amended), article (152).

(91) Finnin, *supra* (n 66), 329.

(92) *Ibid*.

(93) *Ibid*.

on the oblique intention that refers to being virtually certain regarding adverse consequences. In non-jury countries, trained judges address these issues and make decisions.

Furthermore, one should admit that a written constitution's presence or absence affects the issue under analysis. For example, English law does not have a written constitution, and its criminal system is considered uncodified, which has been covered above. As a result, this state of affairs leads to the fact that English law does not have statutory definitions of murder, which results in issues in legal cases that relate to oblique intention.

Analysis

An opinion has been voiced that Woollin(94) could have provided a clearer definition for both foresight and intention, determining their correlation, but it missed the opportunity(95).

Another attempt at finding a clear definition can be found in the Law Commission Draft Criminal Code, which presupposes incorporating oblique intention into intention's definition.

> 1. .... a person acts (a) 'intentionally' with respect to a result when –
>
> (i) it is his purpose to cause it, or
>
> (ii) although it is not his purpose to cause it, he knows that it would occur in the ordinary course of events if he were to succeed in his purpose of causing some other result(96).

It is necessary to note, though, that this approach does not focus on murder; in fact, murder is not included in it. In order to improve this definition, it may be suggested to apply it to fatal offences. Further, the definition includes at least one vague term: "the ordinary course of events".

Given the issues with the lack of a specific definition for "virtual certainty," it appears necessary to provide a specific definition for the term or change it to reflect an easily definable phenomenon.

Finally, the definition may have some unforeseen outcomes, for example, miscarriages of justice. However, future revisions can address relevant issues as they arise.

(94) [1999] A.C. 82.

(95) Mitchell, *supra* (n 28), 121.

(96) Law Commission, *Criminal Law: A Criminal Code for England and Wales. Vol. 1: Report and Draft Criminal Code Bill* (HMSO 1989).

In terms of the legislation of different countries, the question of oblique intention does not receive a direct response. While there are parallels between different legislations, they are mostly demonstrative of the fact that all of the countries reviewed appreciate the importance of intention.

However, they have different ways of handling this notion, which are not always as extensively developed as those of the English legislation. Admittedly, common and civil law are shown to have some parallels, which indicate that the concept of intention has some common features across countries, but details tend to differ to the point where comparative investigations are an option.

Furthermore, jurisdictions with jury trials and non-jury jurisdictions, as well as codified and uncodified law systems, show variations in approaching and interpreting the issue of oblique intent. This fact implies that the legislation of different countries may be a source of propositions for improvement in individual cases.

The presented findings have implications for the concept of oblique intent. First, they demonstrate that the R v Woollin[97] guidance, while functional, has significant limitations, including over- and under-inclusiveness, as well as insufficient definitions of relevant terms.

While, as shown above, there are supplementary sources, as well as alternative options[98], R v Woollin[99] remains the primary case to be considered when murder and oblique intent are reviewed[100]. It highlights the necessity to consider the distinction between substantive law and the law of evidence. As a result, the improved awareness of the limitations of the case is necessary to spread.

Furthermore, as it has been noted, the R v Woollin[101] issues are generally mirrored by the rest of the reviewed cases and even in the legislation of other countries[102]. This tendency supports the idea that oblique intent is not fully defined or sufficiently explained yet[103].

The potential outcomes of this issue consist of a subjective interpretation of

(97) [1999] A.C. 82

(98) Duff, *supra* (n 42), 637.

(99) [1999] A.C. 82

(100) Krebs, *supra* (n 12), 13.

(101) [1999] A.C. 82

(102) [1985] A.C. 905

(103) Dyson, *supra* (n 10), 8-9; see also Hayes, *supra* (n 10), 242.

the term[104], which is a major concern for legal procedures. Therefore, the presented findings justify a call for the reconsideration of the definition and contextualization of oblique intent in general with the review of it being a form or part of the intent, a piece of evidence supporting its inference, or both depending on particular circumstances.

One of the final implications of the paper is that the primary concerns of both R v Woollin[105] and other cases presented here seem to stem from insufficient definitions or explanations of particular terms.

Therefore, this example demonstrates the significance of careful and specific definitions of legal terms, especially those that can be subjectively interpreted. In general, R v Woollin[106] is a significant case both due to its use as the leading one in the described situation and because of the flaws in the current approach to the oblique intention that its analysis reveals.

Finally, the research shows that not all countries provide sufficient definitions of intention, especially oblique intention, and they can further benefit from research on the topic, which is not always very extensive.

For example, Kuwaiti legislation has not been studied, but it provides an interesting perspective on the different gradations of intent. Therefore, future research in the legislation of different countries has a lot of potential, especially where understudied countries are concerned.

Conclusion

The fact that oblique intent remains a relatively unclear concept that has been difficult to contextualise, explain (for example, to the jury), or employ (for example, by the jury) appears to be supported by the discussed cases, literature and a review of international legislation. So far, multiple suggestions on how to apply the concept have been based on relevant cases, including R v Woollin[107]. However, such cases also have their limitations, especially those related to definitions and inclusivity. Still, the information in the paper allows making the following conclusions.

The studied cases and literature, including that on the legislation of different countries, seem to separate the foresight of consequences and direct intention. It can be suggested that the two are indeed different, and the attempts at

(104) Dyson, *supra* (n 10), 9.

(105) [1999] A.C. 82

(106) [1999] A.C. 82

(107) [1999] A.C. 82.

viewing them as one and the same have caused confusion.

This area of case law is complex, but for the time being, the possibility of foresight not implying the necessary intent is taken into account in the available directions for the jury.

Currently, Nedrick[108]/Woollin[109] can be used for most cases since this system has been proven to be somewhat effective. It still holds significant defects, though, especially those related to the concepts that it operates. In general, the presented area of the law remains rather undefined and nebulous, which complicates legal procedures and has been resulting in appeals and confusion.

R v Jogee[110] has supported this claim because the case revealed the criminal system's inability to distinguish between foresight and intent, which results in relevant legal issues. Therefore, the presented investigation demonstrates that it may still be necessary to improve the current definitions of oblique and direct intent, which can be achieved through the investigation of international legislation.

Indeed, this study has shown that while not all countries pay a lot of attention to oblique intention in their fundamental legislation (for example, criminal codes), some countries, including Kuwait, have perspectives to offer on the topic. Specifically, the gradation of intent, which is also present in civil and common law, warrants consideration. Given the fact that Kuwait remains incredibly understudied, the study's recommendation is to invest in investigating how the oblique intent and gradation of intent concepts are presented in Kuwaiti legislation.

(108) [1986] 1 W.L.R.

(109) [1999] A.C. 82.

(110) [2016] UKSC 8.

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