

Basic v specific intent classification

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The Tests

Majewski was unclear and was criticized for that; unfortunately, Heard, which claims to be clarifying Majewski, is in fact even more unclear so that now we have at least 4 (!) different tests about when a crime is of basic or specific intent.

Note: that there are at least 4 different tests is very **unsatisfactory**: the law should just have **one** test. In a problem question, you may want to discuss whether a crime is of basic or specific intent on the basis of two or more of these tests - obviously, some tests may favour the prosecution, and some the defence. It will be up to the judge to decide which test he should apply.

1. Specific intent = ulterior intent (when MR extends beyond AR):

- Based on: Majewski (Lord Elwyn-Jones), Heard (on aggravated criminal damage)
- Examples: burglarious entry (intent to commit offence inside building), aggravated criminal damage (recklessness as to whether someone's life is endangered); therefore, sexual assault (the crime in Heard) is basic intent only)
- Problem: fails to explain the case law that had developed after Majewski, which case law consistently treated murder (Beard, Gallagher, Sheehan) and s18 OAPA as crimes of specific intent, whereas on test (1):
 - o murder would never be specific intent (the MR never goes beyond the AR; indeed, the AR can go beyond the MR when it's intent to cause GBH)
 - o s18 would only sometimes be specific intent (namely, when the AR is a wound and the intent is to cause GBH)

2. Specific intent = ulterior intent or purposive element:

- Based on: Heard, mainly
- Includes: all cases of ulterior intent as well as whenever it is D's purpose to bring about the consequence (even if it's not ulterior intent)
- Problem: excludes murder and s18 when there's only virtual certainty (Woollin)

3. Specific intent = the predominant MR for the crime is intent as opposed to recklessness (even if that intent is neither ulterior nor purposive)

- Based on: Herring's and Simester&Sullivan's generalization from the traditional understanding of Majewski (by Courts and doctrine)
- Hence, it fits the well-established precedents, which said that:
 - o murder, s18, theft, burglarious entry, handling... are crimes of *specific* intent
 - o assaults (other than s18), involuntary ms... are crimes of *basic* intent

- It also explains the decision in Heard re sexual assault being basic intent (the MR for sexual assault is intent about the touching, but not about its being sexual and about V's consent, so intent is not the predominant element).
- Problem: well, that's not quite what the Court says in Heard.

4. By element - apply your favourite test (1, 2 or 3) for each MR element in the offence:

- Based on: Heard
- Problem: lots and lots of complication!

Rough list

The following are widely (but not always unanimously) considered to be:

1. crimes of specific intent: murder, s18, theft, robbery, burglarious entry, handling, and attempts to commit crimes of specific intent
2. crimes of basic intent: manslaughter, rape, sexual assault, s47, s20, common assault and battery, and attempts to commit crimes of basic intent

This means that, if you're pressed for time, you can assume the classification of any of the above without much discussion (but it's always good to **at least SAY** that there are several tests, even though they yield the same classification).

More difficult cases

- Crimes that mix ulterior intent and recklessness: eg aggravated criminal damage, poisoning with intent (s24 OAPA)...
- Criminal damage: Smith & Hogan (303-4) suggest that it's basic intent unless only intention is alleged
- SCA 2007 and complicity of any kind: unclear because they have ulterior intent elements, but also recklessness elements
- General problem with all inchoate offences and complicity (which all are about a main offence): do we apply the tests below to the relevant inchoate offence/complicity type, or to the main offence? Or to both? Yay multiplication of tests!