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| **The *Mens Rea*of murder** | |
| **Malice aforethought** | ‘Malice aforethought’ is the same as ‘Intent’.[*Vickers*(1957)](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Vickers, R v (1957))  Therefore intention is a key to proving murder. |
| **Not ill-will, wickedness or premeditation.** | "Malice aforethought" (intention) does not require ill will towards the victim nor premeditation nor has it anything to do with wickedness.  It can be either:  (a) an intention to kill; or (b) an intention to cause grievous bodily harm. |
| **Motive is not intention** | If I kill you for your money, my intention is to kill you but my motive is to obtain your money.   If I kill you from the motive of compassion - mercy killing - I still intend to kill you and the crime is one of murder.    However, motive is relevant in cases and these appear to be an exception to the rule, see [*Airedale NHS Trust v Bland* [1993] HL](http://sixthformlaw.info/02_cases/mod3a/cases_31_murder_actus.htm#Airedale_HA_v_Bland_[1993]_HL)    Also, three specific and partial defences to murder; suicide pact, provocation and diminished responsibility are in effect relevant to motivation, because the defendant is agreeing he intended to kill, but he had a reason. |
| **Lord Mustill’s concept of "indiscriminate malice"** | *"I pause to distinguish the case of indiscriminate malice from ... [grievous bodily harm and transferred malice rules] ... although even now it is sometimes confused with them. The terrorist who hides a bomb in an aircraft provides an example. This is not a case of "general malice" where under the old law any wrongful act sufficed to prove the evil disposition which was taken to supply the necessary intent for homicide. Nor is it transferred malice, for there is no need of a transfer. The intention is already aimed directly at the****class of potential victims****of which the actual victim forms part. The intent and the actus reus completed by the explosion are joined from the start, even though****the identity of the ultimate victim is not yet fixed****. So also with the shots fired indiscriminately into a crowd. No ancient fictions are needed to make these cases of murder."* |
| **Intention may not be a desired outcome** | |
| **The outcome may not be D's** | |
| **Wish** | [*Nedrick, R v*(1986) CA](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Nedrick, R v (1986) CA)  *"Where a man realises that it is for all practical purposes inevitable that his actions will result in death or serious harm, the inference may be irresistible that he intended that result, however little he may have desired or wished it to happen"*per Lord Lane |
| **Want** | [*Moloney, R v* (1985) HL](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Moloney, R v (1985) HL)  *"I didn't want to kill him. It was kill or be killed. I loved him, I adored him."* Moloney (and [below](http://sixthformlaw.info/01_modules/mod3a/3_30_murder/03_murder_mens.htm#Motive))    [*Nedrick, R v*(1986) CA](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Nedrick, R v (1986) CA)  *"I didn't want anyone to die, I am not a murderer..."*Nedrick |
| **Desire** | [*Hyam v DPP*(1975) HL](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Hyam v DPP (1975) HL)  *‘[A] man may desire to blow up an aircraft in flight in order to obtain insurance moneys. But if any passengers are killed he is guilty of murder, as their death will be a moral certainty if he carries out his intention.’*  [*Nedrick, R v* (1986) CA](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Nedrick, R v (1986) CA) ([above](http://sixthformlaw.info/01_modules/mod3a/3_30_murder/03_murder_mens.htm#Wish)) |
| **Motive** | [*Moloney, R v*(1985) HL](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Moloney, R v (1985) HL)  *"A man who at London Airport, boards a plane which he knows to be bound for Manchester, clearly intends to travel to Manchester, even though Manchester is the last place he wants to be and hismotive for boarding the plane is simply to escape pursuit."*per Lord Bridge |
| **Indirect or oblique intention** | |
| **Section 8 Criminal Justice Act 1967** | S.8 requires that a jury shall not be **bound** to infer whether a defendant intended or foresaw a result of actions by reason only of its being a **natural and probable consequence**but shall decide by reference to all the evidence.  This has been interpreted as requiring a jury to consider only the subjective state of mind of the accused.    Reference to the consequences being **"natural and probable"**met with disapproval by Lord Bridge in [*Moloney*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Moloney, R v (1985) HL)). It is straightforwardly subjective and must be put to the jury in such terms - what did the defendant intend?  The wording of s.8 prohibits drawing a conclusion about the accused's mental state only by reason of it being the**natural and probable consequence**.    The word "only" seems to suggest that the jury can follow a line of reasoning that entitles them to draw a conclusion about the accused's mental state from the objective view of the reasonable man.    If they reason that the reasonable person might have intended the consequence they must, nevertheless, be satisfied that the defendant did. |
| [*Moloney*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Moloney, R v (1985) HL)**,**[*Hancock and Shankland*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Hancock and Shankland, R v (1986) HL)**,**and[*Nedrick*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Nedrick, R v (1986) CA)  Confirmed by  [*Woollin*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Woollin, R v [1998] HL) | Referred to as the 'line of cases' are the main *Mens Rea* cases in murder, they tell us what intention, particularly indirect/oblique means. |
| [*Moloney, R v* (1985) HL](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Moloney, R v (1985) HL) | Tells us about the relationship between foresight of consequence and proof of intention. The significance of the case is that a prudent jury might well argue that Moloney had foresight of consequences.    Did Moloney foresee that the death of his stepfather was a **"natural consequence"** of his actions? The answer seems not.    If D did not wish or desire the consequences of his actions the judge will have to direct on oblique intention. |
| [*Hancock and Shankland* (1986) HL](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Hancock and Shankland, R v (1986) HL) | Murder convictions overturned, manslaughter substituted, because the defendants had not intended to bring about death.  Though death was a probability it was not a **"natural consequence".** |
| [*Nedrick*(1986) CA](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Nedrick, R v (1986) CA)  supports [*Hancock and Shankland*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Hancock and Shankland, R v (1986) HL) | The facts of which were essentially the same as in [Hyam](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Hyam v DPP (1975) HL), but paraffin this time.  The principles coming from it being:  Lord Lane approved Lord Scarman's speech in Hancock where he said:  *"... the greater the probability of a consequence the more likely it is that the consequence was foreseen and that if that consequence was foreseen the greater the probability is that that consequence was also intended."*  In other words, evidence of foresight, is evidence of intent.    When determining whether the defendant had the necessary intent, it may therefore be helpful to ask (1) How probable was the consequence which resulted from the defendant's voluntary act?  (2) Did he foresee that consequence?    "Natural consequence" becomes **virtual certainty**which is a matter for the jury to consider in seeking whether death was intended. |
| **Can we forget every case except**[*Nedrick*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Nedrick, R v (1986) CA)**then?** | No. The rules in [*Hyam*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Hyam v DPP (1971) HL), [*Moloney*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Moloney, R v (1985) HL), and [*Hancock and Shankland*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Hancock and Shankland, R v (1986) HL) have been developed and we need to extract from them the meaning of [*Nedrick*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Nedrick, R v (1986) CA).    In [*Nedrick*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Nedrick, R v (1986) CA) Lord Lane gave a model direction a Judge should use when instructing a jury in the rare event a direction on oblique intent is necessary. |
| **What about**[*Woollin*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Woollin, R v [1998] HL) | Made slight amendments to the direction in [*Nedrick*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Nedrick, R v (1986) CA). |
| **Defendant's wish different from outcome** | If the evidence is that the defendant’s wish may have been something other than to cause the result in question then [*R v Nedrick*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Nedrick, R v (1986) CA)and [*R v Walter and Hayles*](http://sixthformlaw.info/02_cases/mod3a/cases_32_murder_mens.htm#Walker and Hayles, R v (1990) CA)apply. |