

## Intention<sup>1</sup>

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“Intent” and “intention” are familiar words. In this legal context, they carry their ordinary meaning. In ascertaining the defendant’s intention, you are drawing an inference from facts which you find established by the evidence concerning his state of mind.<sup>2</sup>

Intention may be inferred or deduced from the circumstances in which [the death eventuated], and from the conduct of the defendant before, at the time of, or after he did the specific act which [caused the death]. And, of course, whatever a person has said about his intention may be looked at for the purpose of deciding what that intention was at the relevant time.<sup>3</sup>

In respect of the offence of [insert offence], proof of intention to produce a particular result, [namely...], is an element of the offence. Accordingly, the prosecution must prove beyond reasonable doubt that the defendant meant to produce that result by his/her conduct.<sup>4</sup>

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<sup>1</sup> A direction as to the meaning of intent (and its derivatives) should not be given unless the jury requests assistance concerning the concept: *R v Willmot (No 2)* [1985] 2 Qd R 413 at 418-419; *Cutter v The Queen* (1997) 71 ALJR 638 at 648. See too the discussion in *R v Glebow* [2002] OCA 442. It may sometimes be useful to tell a jury which requests assistance and seems troubled that intent connotes premeditation, that the prosecution has to prove that the defendant had the necessary intention at the time of the alleged offence, that it need not have been a long-standing intent, and that it is sufficient for it to have formed in a matter of seconds, say in a sudden flash of temper. In other words, it may be a momentary intent formed immediately before the relevant event. In *Willmot*, Connolly J wrote that the ordinary meaning of “intent” is to have in mind, to have a purpose or design, to mean. See also discussion in *R v Reid* [2007] 1 Qd R 64.

<sup>2</sup> Though motive is rarely an element of an offence, evidence of motive, or of absence of motive, could bear on whether the defendant actually did (or omitted to do) something; or where intention is critical, be pertinent to that issue. Accordingly, it may sometimes be appropriate to inform the jury, in effect, that, although it is unnecessary for the prosecution to prove a motive, as motive is not an element of the offence, nonetheless the presence, or absence, of motive may be taken into account when considering whether the prosecution has proved guilt: cf *R v Neilan* [1992] 1 VR 57; *Griffiths v The Queen* (1994) 69 ALJR 77, 79; see also *De Gruchy v The Queen* (2002) 190 ALR 441.

<sup>3</sup> Care is to be taken to ensure that adequate reference is made in the summing up to the defendant’s evidence of lack of intent: *R v Butler* (2006) 45 MVR 391; [2006] OCA 51 at [37] – [40].

<sup>4</sup> *Zaburoni v The Queen* (2016) 256 CLR 482 at [10], [14] (Kiefel, Bell and Keane JJ). The intention to be proved is an actual subjective intention to achieve the result as distinct from awareness of the probable consequence of the accused’s actions (at [55] per Gageler J).