

The 'Currency' of Dolus Eventualis Considered during Sentencing for Murder

Authors : Reuben Govender

Abstract : Culpability is an essential element for an accused to be held liable for a crime. The mental element or mens rea determines blameworthiness of an accused on a charge of killing a person. The mens rea required for a conviction of murder is intent while culpable homicide requires negligence. Central to blameworthiness in mens rea is individual freedom and voluntariness. The test for intent is subjective and objective for negligence. This paper presents a review of dolus eventualis in the context of murder trials and from a South African perspective. This paper poses a central questions namely, is dolus eventualis a 'weaker currency' during sentencing for murder? This paper attempts to answer this question by reviewing the concept of dolus eventualis, the test in judicial application, a review of decided South African cases in its application, its incorrect application and finally, considerations for its correct application. Lastly, the 'weight' of a dolus eventualis conviction in terms of sentencing will be reviewed to support the central question which is answered in the negative.

Keywords : dolus eventualis, dolus indeterminatus, dolus generalis, mens rea

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