

## STRICT LIABILITY 1

### INTRODUCTION

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Offences of strict liability are those crimes which do not require *mens rea* with regard to at least one or more elements of the *actus reus*. The defendant need not have intended or known about that circumstance or consequence. Liability is said to be strict with regard to that element. For a good example see:

*R v Prince* [1874-80] All ER Rep 881  
*R v Hibbert* (1869) LR 1 CCR 184.

It is only in extreme and rare cases where no *mens rea* is required for liability, thereby making the particular offence "absolute". For example see: *R v Larsonneur* (1933) and *Winzar* (1983).

### GENERAL PRINCIPLES

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The vast majority of strict liability crimes are statutory offences. However, statutes do not state explicitly that a particular offence is one of strict liability. Where a statute uses terms such as "knowingly" or "recklessly" then the offence being created is one that requires *mens rea*. Alternatively, it may make it clear that an offence of strict liability is being created. In many cases it will be a matter for the courts to interpret the statute and decide whether *mens rea* is required or not.

What factors are taken into account by the courts when assessing whether or not an offence falls into the category of strict liability offences?

### THE MODERN CRITERIA

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In *Gammon (Hong Kong) Ltd v Attorney-General for Hong Kong* [1984] 2 All ER 503, the Privy Council considered the scope and role of strict liability offences in the modern criminal law and their effect upon the "presumption of *mens rea*". Lord Scarman laid down the criteria upon which a court should decide whether or not it is appropriate to impose strict liability:

"In their Lordships' opinion, the law ... may be stated in the following propositions ... :

- (1) there is a presumption of law that *mens rea* is required before a person can be held guilty of a criminal offence;
- (2) the presumption is particularly strong where the offence is "truly criminal" in character;
- (3) the presumption applies to statutory offences, and can be displaced only if this is clearly or by necessary implication the effect of the statute;
- (4) the only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern, and public safety is such an issue;
- (5) even where a statute is concerned with such an issue, the presumption of *mens rea* stands unless it can be shown that the creation of strict liability will be effective to promote the

objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act."

These principles were recently applied by the Court of Appeal in:

*R v Blake* (1996) *The Times*, 14 August.

**(1) PRESUMPTION OF MENS REA**

Courts usually begin with the presumption in favour of *mens rea*, commonly the well-known statement by Wright J in *Sherras v De Rutzen* [1895-9] All ER Rep 1167:

There is a presumption that *mens rea*, or evil intention, or knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered.

**(2) GRAVITY OF PUNISHMENT**

As a general rule, the more serious the criminal offence created by statute, the less likely the courts are to view it as an offence of strict liability. See:

*Sweet v Parsley* [1969] 1 All ER 347.

**(3) WORDING OF THE STATUTE**

In determining whether the presumption in favour of *mens rea* is to be displaced, the courts are required to have reference to the whole statute in which the offence appears. See:

*Cundy v Le Cocq* (1884) 13 QBD 207.

**(4) ISSUES OF SOCIAL CONCERN**

See the comments in: *Gammon* (1985) and *R v Blake* (1996), above.

**(5) IS THERE ANY PURPOSE IN IMPOSING STRICT LIABILITY?**

The courts will be reluctant to construe a statute as imposing strict liability upon a defendant, where there is evidence to suggest that despite his having taken all reasonable steps, he cannot avoid the commission of an offence. See:

*Sherras v De Rutzen* [1895-9] All ER Rep 1167

*Lim Chin Aik v R* [1963] 1 All ER 223.

## **CLASSIFICATION OF STRICT LIABILITY OFFENCES**

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In *Sherras v De Rutzen* (1895), Wright J stated that apart from isolated and extreme cases like bigamy and abduction of a girl under sixteen, the principal classes of strict liability may perhaps be reduced to three:

1. One is a class of acts which are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty (eg, the sale of adulterated food: *Roberts v Egerton*, 1874).

2. Another class comprehends some, and perhaps all, public nuisances: *R v Stephens* (1866) where the employer was held liable on indictment for a nuisance caused by workmen without his knowledge and contrary to his orders.

3. Lastly, there may be cases in which, although the proceeding is criminal in form, it is really only a summary mode of enforcing a civil right (eg, see *Hargreaves v Diddams* (1875) as to a bona fide belief in a legally impossible right to fish).

But, except in such cases as these, there must in general be guilty knowledge on the part of the defendant, or of someone whom he has put in his place to act for him, generally, or in the particular matter, in order to constitute an offence.

## MODERN EXAMPLES

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**The following cases are modern examples of the imposition of strict liability:**

*Warner v MPC* [1968] 2 All ER 356  
(the first strict liability case to reach the House of Lords)

*Alphacell v Woodward* [1972] 2 All ER 475

*Smedleys Ltd v Breed* [1974] 2 All ER 21

*R v Howells* [1977] 3 All ER 417

*R v Lemon; R v Gay News Ltd* [1979] 1 All ER 898

*PSGB v Storkwain* [1986] 2 All ER 635.