

## Answers to problem solving questions

### Problem question

You are unlikely to meet problem questions on strict liability. The most likely means of assessing your knowledge of this subject will be through essay questions, eg 'Analyse the arguments in favour or against strict liability'.

You are unlikely to meet problem questions solely on corporate manslaughter although the latter may be included in a question on homicide. Therefore, if you see that D has killed in the course of employment and a company is identified, that is a signal for you to discuss corporate manslaughter, e.g. a train driver kills when he crashes his train, through a momentary loss of concentration, or a manager of an adventure centre fails to equip teenagers with lifejackets before sending them out on a sailing trip.

It is more likely that you will be presented with an essay question such as:

'To what extent is it possible in England and Wales to prosecute a company for serious harm?'

### Outline answer for problem question

A good answer here will cover all or most of the following points:

- Strict liability offences present little difficulty because no mens rea needs to be proved. Offences of strict liability are to be found in relation to social activities posing a risk to the public (see 4.1.4). Illustrate each with relevant authorities briefly.
- In practice these offences will concern relatively minor infringements of the law. However, occasionally, cases will be more serious as in the case of serious environmental pollution or breaches of health and safety legislation involving injury or loss of life. Examples would be the various rail crashes which have occurred in recent years (illustrate briefly with examples from 4.2.3).
- The rules on attribution allow companies to be prosecuted for the acts/omissions of an employee in strict liability offences (see 4.2.2).
- Offences of Mens Rea. The liability of a company can be achieved in each of three ways:
  - Delegation (see 4.2.2)
  - The identification principle (see 4.2.3)
  - The Corporate Manslaughter & Corporate Homicide Act 2007 (4.2.3).

Here you should explain each method of prosecution. You need to concentrate in particular on the limitations of the identification principle by reference to authorities and

explain why it was necessary to provide another means of prosecuting companies for homicide under the new statute. Reference to the social context behind the Act will assist. You will need to explain the provisions of the 2007 Act and its limitations. A good answer will engage with the academic analysis of both the identification principle and the Act (see 4.2.4).