

### Think box 4.1

Which of the following are offences of strict liability?

- 'Any person who sells to a person under the age of sixteen years any tobacco or cigarette papers, whether for his own use or not, shall be liable on summary conviction to a fine not exceeding level 4 . . .' (s7 Children and Young Persons Act 1933);
- 'A person commits an offence if he intentionally touches another person, the touching is sexual and the other person is under 13.' (s7 Sexual Offences Act 2003);
- 'If a person drives a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, he is guilty of an offence.' (s3 Road Traffic Act 1988);
- 'Whosoever shall assault any person with intent to resist arrest . . . shall be guilty of an offence.' (s38 Police Act 1996). Can you think of any advantages of strict liability?

### Answer guidance

1. All but the last two: negligence and intention.
2. Easier to get convictions;  
Offences are not truly criminal;  
No stigma;  
Low penalties;  
Common activities which risk public safety or threaten a particular section of society such as the young or vulnerable ought to be regarded as strict for symbolic reasons;  
Deterrence;  
Encouragement of higher standards.

### Think box 4.2

In order to decide whether the offence required MR, many social issues concerning the sexual exploitation and autonomy of young people arose in the case. The act in question was accepted as being grossly indecent. Do you think there is a moral difference between an act of gross indecency with a child under 14 and a child under 16 – the legal age of consent? Should it make any difference whether D is around the same age or older than the victim?

**Answer guidance**

The legal age of consent is embedded into the system but sexual and mental maturity develops at different ages. Until 1885 the age of consent was 13. Is there a good reason for criminalizing sexual activity with a 14-16 year old? Safeguards against exploitation of the vulnerable? Many children of that age lack the maturity to decide freely whether to engage in sex or not. On the other hand, 16 might be seen as arbitrary.

**Think box 4.3**

Suppose D is a paedophile who commits a consensual sexual assault upon a 14-year-old victim. He honestly believes that she is 16 because of the adult way she dresses and acts. Would B and K provide him with a defence? Should his own belief provide him with a defence? Alternatively, should there be objective standards against which to measure any belief? Or should this be an offence of strict liability where belief is irrelevant? Under the Sexual Offences Act 2003, sexual offences against children under 13 are now offences of strict liability. Offences against children between 13 and 16 are based on reasonable belief as to age.

**Answer guidance**

If D is charged with a sexual offence, his mistake will need to be reasonable under the Sexual Offences Act 2003. The test is objective: an honest belief will not excuse unless it is also reasonable.

**Think box 4.4**

Do you think a publican should be punished for serving alcohol to under-age drinkers where he has done all that is reasonably possible to prevent the offence?

**Answer guidance**

Under S146(6) Licensing Act 2003 (The sale of alcohol to children) there is now a defence of due-diligence to a publican whose employee has committed the offence. See 'Due diligence' defences below.

### Think box 4.5

- Is the criminal law the best way to enforce higher regulatory standards?
- Should *Storkwain* be overturned in the light of *B* and *K*?

### Answer guidance

The first question is asking for your opinion on whether you think criminal punishment is always the best way of enforcing compliance – particularly where someone has done the best they can to prevent an offence from happening. Maybe there is always more that could be done. People can always take more time, trouble, and care to ensure that harm does not happen to others. Perhaps there are different arguments for strict liability in the case of corporations/commercial undertakings, with resources to effect safety policies rather than in the case of ordinary individual activities like driving. What are the risks of such activities? Would a county court summons have the impact of a magistrates' court summons?

The House of Lords in *B* and *K* clearly disapproved of strict liability in relation to serious offences. But as you will see, the courts continue to apply strict liability in certain areas of public concern. What do you think?

### Think box 4.6

- Do you consider that punishment of individuals who have taken all necessary steps to prevent harm will promote greater vigilance and observance of the law?
- Can you think of any serious offence that is not concerned with protecting the public from danger?
- Does it automatically follow therefore that such an offence should be one of strict liability? Should murder and offences against violence become crimes of strict liability?

### Answer guidance

This is a matter of opinion. Perhaps there is always more that could be done. Safety standards at work or in commercial organisations are always increasing for instance. Risk assessment procedures highlight issues that might be preventable. On the other hand, staff/employee error is inevitable. Should employers be penalized?

No.

There is no rationale for the distinction between these offences. Why do some so called minor offences require negligence or knowledge whilst in others liability is strict? There is no satisfactory answer.

#### **Think box 4.7**

- If Mr and Mrs Shah had done all they could to prevent the offence, how would strict liability have encouraged greater vigilance?
- In view of the penalty for the offence, do you agree that it is not truly criminal in nature?
- Was the conviction fair?

#### **Answer guidance**

See answers above in 4.5 and 4.6.

There was a substantial maximum term of imprisonment as a maximum penalty here. What do you think? Many people feel the decision was unjust. See above.

#### **Think box 4.8**

Does Dyson J give any clear reason for stating that the offence should not be regarded as truly criminal in 2002?

#### **Answer guidance**

No!

#### **Think box 4.9**

A man is asked to deliver a box. He believes the box contains stolen goods but asks no questions nor does he open the box to find out. Is he knowingly in possession of the contents?

#### **Answer guidance**

The law would treat him as knowing the box contained stolen goods if he deliberately avoided asking appropriate questions or avoided taking steps to

confirm his belief. Knowledge includes wilful blindness. He must be more than suspicious. He must be pretty sure that the contents are stolen.

**Think box 4.10**

D organizes a public protest outside a weapons factory which blocks the road. A police officer attempts to arrest D by putting his arm around D's shoulders but D pulls away and the officer falls over. Has D wilfully committed any offences?

**Answer guidance**

Obstruction of the highway but no obstruction of arrest unless he intended to obstruct.

**Think box 4.11**

1. Do you think it is right to divide the presumption of innocence into two halves: procedural and substantive?
2. D, the mother of a child, gets a criminal record when she is convicted and fined £75 under s444(1) Education Act 1996: 'If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.' There is no defence. She had done all she could to get her child to attend but he was beyond control. Do you think the offence offends Article 6(2) ECHR? Is the conviction fair? Look at what was said in Salabiaku regarding D's rights and proportionality.

**Answer guidance**

This was *Barnfather v LBI* [2003] 1 WLR 2318. The majority held that Art.6 was not offended since it applied only to procedural matters of fairness such as the burden of proof which did not apply here. *Salabiaku* permitted strict liability offences and thus Art 6 was not violated. However, Mr. Justice Elias dissented by stating that the issue under *Salabiaku* was still one of proportionality. To impose criminal liability upon a parent who has done her best to secure school attendance was disproportionate.