

Answers to Exam questions

Chapter 4

Question 1

To what extent, if at all, do you think that strict liability is justified?

Bullets

- You should begin by offering an explanation of strict liability. Strict liability offences do not require proof of *mens rea* in respect of one element of the *actus reus* of an offence. It is important to distinguish between strict liability and absolute liability. However, proof of *mens rea* may be required for some of the elements of the *actus reus*.
- Absolute liability offences are very rare. A defendant will be guilty if a certain “state of affairs” is proved to exist. An absolute liability offence does not require proof of a voluntary act, so the fact that the defendant involuntarily committed the offence is irrelevant and no defence. Consider drink-driving under s.4(1) of the Road Traffic Act 1998, *Larsonneur* (1933) and *Winzar v Chief Constable of Kent* (1983).
- Most strict liability offences are regulatory offences. They are usually statutory and govern issues such as health and safety, pollution, food safety, road traffic and licensing. Some strict liability offences carry the possibility of a sentence of imprisonment, but many are relatively minor and may be dealt with by a fine.
- There is a general presumption in favour of the requirement of *mens rea* in a criminal offence. However, this presumption may be misplaced, rendering the offence one of strict liability. Consider *Sherras v De Rutzen* (1895), *Sweet v Parsley* (1970) and *Gammon (Hong Kong) Ltd v Attorney General of Hong Kong* (1985). The presumption was more recently confirmed by the House of Lords in *B (A minor) v DPP* (2000).
- Strict liability offences permit a defendant to be convicted of a criminal offence without proof of some element of fault. It is important to understand the justifications for imposing criminal liability in the absence of clear blameworthiness.
- The first justification for strict liability is the protection of the public. Strict liability generally relates to regulatory offences, encouraging greater vigilance and safety and deterring incompetence and unsafe behaviour.

- Another justification relates to cost effectiveness. Strict liability offences are easier to prosecute as they do not require the prosecution to spend time and effort proving the *mens rea* element.
- Most strict liability offences are regulatory only and not “truly criminal”, so they only carry a minor penalty, such as a fine. The imposition of strict liability for imprisonable offences is rare. So the risk to an individual’s liberty without proof of *mens rea* is minimal.
- However, consideration must also be given to the arguments against strict liability. Strict liability violates the principle that criminal offences require proof of both an *actus reus* and a *mens rea*: *actus non facit reum nisi mens sit rea*. This means “an act does not make a man guilty of a crime, unless his mind be also guilty”: *per* Lord Hailsham in *Haughton v Smith* (1975).
- In some situations, a defendant who has taken all reasonably practicable steps to avoid liability may be strictly liable. Strict liability can be unjust and contrary to principles of fairness. Consider *Smedleys Ltd v Breed* (1974).
- A defendant may still be “punished” by the stigma which goes with being convicted of a criminal offence. In some cases, such a conviction may also damage the reputation of the defendant, potentially also affecting his livelihood.
- Students might consider the alternatives to strict liability, such as a requirement of negligence or a defence of due diligence.

Question 2

Section 1 of the Law Library (Modernisation) Act 2012 (fictitious) provides that it is a criminal offence “to be in possession of a hardback or paperback law textbook, law report or law journal”.

Ellie, a librarian, removes all law books from the library in preparation for a library inspection. Paul, a law lecturer, gives her a wrapped present, which she places on her desk, planning to open it later. The present is a signed edition of Ellie’s favourite law textbook.

Discuss Ellie’s criminal liability.

Bullets

- This question requires consideration of strict liability offences. You should explain that offences of strict liability lack at least one *mens rea* element in respect of the *actus reus*. Distinguish between strict and absolute liability.
- It is often difficult to identify offences of strict liability as Acts do not specifically state that an offence is strict liability. Where the statute uses a *mens rea* word, then the *mens rea* is clear and the offence is not one of strict liability. However, where a statute is not clear on the *mens rea* of the offence, it is left to the courts to determine whether the offence is one of strict liability or not.
- Discuss the general presumption in favour of the requirement of *mens rea*, which means that criminal offences are presumed to contain *mens rea* elements, even where the statute is silent as to the *mens rea*. However, this presumption may be misplaced, rendering the offence one of strict liability. Consider *Sherras v De Rutzen* (1895), *Sweet v Parsley* (1970) and *Gammon (Hong Kong) Ltd v Attorney General of Hong Kong* (1985). The presumption was more recently confirmed by the House of Lords in *B (A minor) v DPP* (2000).
- Consider the offence under the Law Library (Modernisation) Act 2012. The offence is one of possession. Although Ellie does not intend to be in possession of the book, nor is she really reckless in this regard, the statute does not specifically mention any *mens rea* words such as intention or recklessness. However, the presumption of *mens rea* applies. You should address the issue of whether the presumption can be misplaced.
- Consider the guidelines set out by Lord Scarman in *Gammon (Hong Kong) Ltd v Attorney General of Hong Kong* (1985).

(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 also 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.

- You should consider each of these guidelines and apply them to the facts in the question. Truly criminal offences are more likely to require proof of *mens rea*. Consider whether this offence is truly criminal in its nature or whether it is likely to be considered a regulatory offence.
- The court will consider the severity of the offence: *B (A minor) v DPP* (2000). This is not a serious offence.
- Regulatory offences are more likely to be strict liability. Consideration must be given to whether the offence deals with a social concern. You should discuss the possession of drugs case, *Warner v Metropolitan Police Commissioner* (1969). In this case, the possession offence was deemed to be one of strict liability. Thus, the prosecution did not need to prove that the defendant knew that he was in possession of a controlled drug. Applying this to the problem scenario, the prosecution would not need to prove that Ellie knew that the present contained a law textbook, provided it was proved that she knew she was in possession of a parcel.
- However, you might distinguish this case on the basis that there is clear issue of social concern in *Warner*, namely the misuse of drugs. Can the same be said of this case? Would a strict liability offence here encourage greater vigilance?