

Examine the arguments for and against strict liability illustrating your answer with example of s deciding case.

This essay will be exploring the various reasons for and against strict liability which will be complemented with a case study. Strict liability involves offences in which the crimes do not require mens rea and does not have to be proved. The defendant need not to have intended or known about the consequences of the crimes as it is enough to have the actus rea at present to be convicted.

Overall strict liability cases are less serious such as regulatory offences involving road safety, pollution or food hygiene as convictions would be very hard to obtain if the prosecution had to prove recklessness, negligence or intent in every case, and it would cost a lot of money to bring every single one of these cases to court, so therefore strict liability makes law implementation more resourceful. Parliament sometimes gives in to the process of proving the guilty mind as most strict liability cases are statutory as it is for example in the public interest against the selling off unfit food. Such as the case of Callow v Tillstone (1900) where the butcher was convicted of selling inedible meat as it was held to be unfit for public consumption, even though the vet deemed it edible.

Although liability is said to be strict concerning one aspect of an element, other elements of the actus rea too require the mens rea case, as the main reason for the strict liability is to protect the public. To illustrate this is the case of R v Prince (1875) whereby the defendant ran off with an under-age girl and was later charged with an offence of taking an unmarried girl of 16 out of the possession of her father under s55 of the Offences Against the Person Act 1861. He was convicted because the court held that liability was strict in respects of the girl's age, even though his defense was that he reasonably believed the girl was 18 however she was in fact 15, was not required in order to establish the offence. It was sufficient enough to show that the defendant intended to take the girl out of the possession of her father.

However in R v Hibbert (1869), the defendant met a girl less than sixteen years of age, induced her to go with him, seduced her and detained her for some hours. He returned her back to where he met her and she returned home to her father. The defendant was charged under s55 OAPA 1861; however it was acquitted because liability with this regards to the actus reus was not strict as it was not proved that he knew the girl was in possession of her father.

Strict liability is in some drug offences and as a result of that there is more effective protection against dangerous drugs. Both to protect the public and to make it more difficult for offenders to evade (avoid) liability by arguing that they did not know the drug were in their possessions. Case Warner v MPC 1969, the defendant had taken possession of some boxes left for him at a cafe. He sold perfume as a sideline and argued that he thought that this was what the boxes contained. In fact prohibited drugs were found. The House of Lords upheld his conviction.

Another explanation of why strict liability is favourable is that People are discouraged from holding unlawful weapons. Howells 1977 the defendants conviction for failing to obtain a firearm certificate was upheld, despite the fact that he believed his gun was an antique one and therefore didn't need a certificate. Also in Bradish 1990 the defendant was unaware that a canister in his possession contained prohibited CS gas. Once again it was upheld.

Another reason for strict liability is that the public gains grater protections from pollution in the case of Alphacell v Woodward (1972) the defendant was convicted for causing polluted matter into a river was upheld, despite the claims that the company was unaware of any obstructions to its pumps.

It is only in extreme and rare cases where no mens rea is required for liability as the prosecution must still prove that the defendant committed the actus reus, thereby making the particular offence "absolute". In the case of R v Larssonneur (1933), the defendant who went to Eire who previously was forced to leave England was deported back to England against her will, she was found guilty of being of "being an alien to whom leave to land in the Uk has been refused", according to the Aliens Act 1920 an offence regarded by statute to be one of strict liability the mens rea was not needed.

Common law offences of strict liability are very minimal as courts have mainly disapproved of them such as blasphemous libel and/or criminal cases for example Lemon and Gay New ltd (1979). The defendants were charged with the offence of blasphemous libel concerning 'an obscene poem and illustration homosexual acts performed on Christ's dead body. The defendants were convicted and appealed but the House of Lords held that in order to secure a conviction for the offence of publishing a blasphemous libel it was enforced that mens rea needed to be proved it was sufficient for the intention to publish material which was in fact blasphemous and that the liability was strict thus the defendants appeal was rejected.

Another reason in support of strict liability is to ensure that businesses and companies concerning issues such as the issuing of tobacco, pollution, and foodstuffs and other public interests have become more common, an example of this is London Bough of Harrow v Shah& Shah (1909) the defendants charged of selling a lottery ticket to and underage boy. They appealed however it was held that obligation of strict liability would encourage better awareness in preventing commissions of such an offence.

The public also is protected from unsafe buildings for example in the case of Atkinson v Sir Alfred McAlpine 1974 building company were convicted under the Asbeston Regulations for failing to state that it was using crocidolite, even though it was unaware of this fact. Likewise in Gammon v AG for Hong Kong 1984, the defendants were found accountable when a part of the building, they were helping to construct collapsed, even though the company was oblivious that the plans were not being followed.

There are however many negative qualities of using strict liability the major one is that a criminal conviction is imposed to a company of person in which they did not foresee making them helpless.

However a reason against strict liability is that the courts themselves often face problems in identifying such offences as many statutes are not clear whether an offence of strict liability has been created and that strict liability goes against the saying that a person is innocent until proven guilty, like in the case of Gammon V AG for Hong Kong 1984.

Another argument against strict liability is that it can be unfair as a person and company should only be liable if they have done something wrong yet those cases in which the defendants are completely unaware of the offence often get charged. for example in the Pharmaceutical Society of Great Britain v Storkwain Ltd 1986 where an unaware pharmacist was selling drugs to patients with forged prescriptions. It would be reasonable in this case to say that it was negligent behaviour giving an innocent defence.

Also here is little solid evidence that strict liability works in other cases as it could build up feelings of resentment and inequality which may lead lack of respect for the law. in some cases they have taken harsher approach in Cundy v Le Cocq 1884 the statute in questions used the adverb “knowingly” but the section under which defendant was convicted did not, so it was said be of strict liability. This outcome shows that the courts have been inconsistent in their approach towards strict liability. This was the case also in Warner v MPC 1969 which upheld the conviction of defendant being in possession of drugs whereas in Sweet v Parsley 1970 the defendant conviction was as she did not have the mens rea of the crime.

A negative cause for strict liability is that the courts may also have a lack of clarity in some judgments in Warner as there were too many speeches it was difficult for them to extract the ratio decidendi which is the main important part of the judgement. This could lead to legal academics to criticise the house and thus lead their actions to do the opposite of what they intended.

However one of the many problems is whether the offence was of strict liability or if mens rea is required. Many courts have to refer to statutory interpretation in the case of Sweet v Parsley (1970) a landlady was convicted of allowing cannabis to be smoked on her premises. However the landlady had no knowledge of what her lodgers were doing and did not live on the premise. This conviction was quashed by the House of Lords who said that it was essential for the defendant to have knowledge of what her premises was being used for, and since she had no such knowledge her conviction could not stand, therefore declaring that this offence was not one of strict liability. This was the right decision for the House of Lords to make as it would be completely unjust to punish the landlady for a crime that she had neither any part in or any knowledge of.

However there maybe some reforms as serious crimes have edged away from strict liability as strict liability issues in sexual offences cases may be changed after the cases of B (a minor) v DPP (2000) and K 2000 in which the House of Lords decided that *mens rea* was required. Changes may also come about with reference to strict liability in regulatory offences, as there is confusion with some of these offences.

Also if the draft criminal code is brought into practice it will lay down the presumption that all offences will require *mens rea* of intention, recklessness, knowledge or negligence. Therefore if parliament wishes for an offence to be classed as strict liability then they would have to say so explicitly in the relevant provision.

Overall strict liability is a necessary commodity which helps to protect the environment and the public from certain injustices as some offences for which there is no excuse and no reasonable defence. It also provides a strong restriction for people against committing certain offences as well as it may also increase the standard of society and order allowing the courts to save time and money. Businesses as a whole are encouraged to have better standards and that they are respectful in acknowledging the law. Baroness Wootton stated that all crimes should be of strict liability however it is unfair to subject a conviction to a person who is unaware being involved in the offence or who does not have the guilty mind.

There are many problems with the way that strict liability is currently forced. In some cases I have also shown that in some cases the imposition of strict liability can be both unfair and unjust. Problems with strict liability include that it may not be successful in raising standards as people often do not realise that they are wrongdoing, decisions are often unfair and unjust, and there is also complexity in identifying strict liability offences and inconsistency with their attitude and decisions. Judgements often lack clarity and decisions with regard to strict liability which can lead to conclusions that are the opposite of what was intended by the law. A massive penalty and criminal conviction are imposed on the defendant for an offence even though they may not have been able to foresee/intend or been able to prevent.

However strict liability ensures that the public is protected from unfit food. The public and countryside is better protected against pollution. People are discouraged from possessing unlawful weapons and drugs. The public is protected against hazardous buildings. People attempt to improve standards so they are not to be liable for committing a criminal offence.

To conclude strict liability is essential in society as there would be a devastating and damaging effect if it was eliminated, but the statutes should be worded with great consideration to stop some confusion.