

“In a just society criminal liability should never be imposed without some degree of blameworthiness”

Offences of strict liability are those, which do not require any mens rea with regards to at least one or more of the actus rea. The mens rea usually requires intention and or recklessness.

However some crimes are possible to commit without any knowledge, intention or responsibility on behalf of the defendant. Therefore the primary issue is should these defendants be guilty and held liable for these crimes under strict liability.

In Gammon (Hong Kong) Ltd v Attorney General (Hong Kong) 1984, the grounds on which strict liability can be imposed were brought about;

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. For acts, which are truly criminal mens rea should be needed in order to make the defendant liable and this is the case in law, however the type of offence where mens rea is not necessary and one can be liable is when the statute is concerned with an issue of social concern.

This principle was outlined in **Sweet v Parsley 1970**; the defendant was convicted under s5 of the Dangerous Drugs Act 1965, of "being concerned in the management of premises used for the smoking of cannabis". She appealed alleging that she had no knowledge of the circumstances and indeed could not expect reasonably to have had such knowledge. The House of Lords, quashing her conviction, held that it had to be proved that the defendant had intended the house to be used for drug-taking, since the statute in question created a serious, or "truly criminal" offence, conviction for which would have grave consequences for the defendant.

Even with offences surrounding issues of social concern mens rea is still expected unless it can be argued that by making a person liable through strict liability would increase the vigilance of others to prevent the commission of the prohibited act.

Strict liability is a delicate area for many judges and disagreement lies as to whether there needs to be some sort of reform, the argument can be debated as follows;

Strict liability allows a prosecution to be brought in many difficult cases as it is very difficult in some cases to prove any form of mens rea and in order to maintain standards the courts sometimes have to resort to delegated principles.

The Privy Council said that as well as keeping high standards strict liability can be necessary 'to encourage greater vigilance to prevent the commission of the prohibited act'. Food manufacturer, builders, doctors must realise they have to keep to the highest standards or face possible prosecution.

Therefore strict liability is acting as more of a deterrent and warning for others than a punishment for the defendants, who may not themselves, have committed an offence.

Using strict liability as a deterrent for other people and making the general public more attentive may help to stop similar incidents occurring in the future, but this comes at a cost, the cost can be argued as unjust. In some cases of strict liability defendants were completely unaware that an offence was being committed however they were held liable for the offence that took place.

I believe that that this is a delicate area for judges and that each case should be reviewed in isolation and judges should have the right for discretion. Each case will have different facts and diverse levels of responsibility and so one rule cannot be made for all strict liability cases. Strict liability should not be overruled entirely, however should be reviewed by the law commission in order to prevent those with no control over an offence and without the means to prevent it being accountable for the crime. In a just society people should not be sentenced just to make a point for the general public or for the single reason that a judge feels someone should be held responsible and the defendant is the only reasonable person to charge, as this is not reasonable ground to charge someone.