

## Strict Liability

Strict liability is a legal doctrine in tort law that makes a person responsible for the damages caused by their actions regardless of culpability (fault) or mens rea. The plaintiff needs only to prove that the tort happened and that the defendant was responsible. Neither good faith nor the fact that the defendant took all possible precautions are valid defences. Strict liability often applies to those engaged in hazardous or inherently dangerous ventures.

The vast majority of strict liability crimes are statutory offences. However, statutes do not state explicitly that a particular offence is one of strict liability. Where a statute uses terms such as "knowingly" or "recklessly" then the offence being created is one that requires mens rea. Alternatively, it may make it clear that an offence of strict liability is being created. In many cases it will be a matter for the courts to interpret the statute and decide whether mens rea is required or not.

In *Gammon (Hong Kong) Ltd v Attorney-General for Hong Kong* [1984] 2 All ER 503, the Privy Council considered the scope and role of strict liability offences in the modern criminal law and their effect upon the "presumption of mens rea". Lord Scarman laid down the criteria upon which a court should decide whether or not it is appropriate to impose strict liability:

"In their Lordships' opinion, the law ... may be stated in the following propositions ... : (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 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."

These principles were recently applied by the Court of Appeal in *R v Blake* (1996).

The courts usually begin with the presumption in favour of mens rea, commonly the well-known statement by Wright J in *Sherras v De Rutzen* [1895-9] All ER Rep 1167:

There is a presumption that mens rea, or evil intention, or knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered.

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 example, in *Sweet v Parsley* (1970) where a landlady who let to tenants was taken to court because cannabis was found in the house. The defendant was convicted under s5 of

the Dangerous Drugs Act 1965 (now replaced), of "being concerned in the management of premises used for the smoking of cannabis". She appealed declaring know knowledge of the circumstances and her conviction was quashed as it was 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.

The courts will be reluctant to construe a statute as imposing strict liability upon a defendant, where there is evidence to suggest that despite his having taken all reasonable steps, he cannot avoid the commission of an offence. For example, *Sherras v De Rutzen* (1895), where the defendant was convicted of selling alcohol to a police officer whilst on duty, contrary to s16(2) of the Licensing Act 1872. He had reasonably believed the constable to be off duty as he had removed his arm-band, which was the acknowledged method of signifying off duty. The Divisional Court held that the conviction should be quashed, despite the absence from s16(2) of any words requiring proof of mens rea as an element of the offence. Wright J expressed the view that the presumption in favour of mens rea would only be displaced by the wording of the statute itself, or its subject matter. In this case the latter factor was significant, in that no amount of reasonable care by the defendant would have prevented the offence from being committed. Wright J stated:

"It is plain that if guilty knowledge is not necessary, no care on the part of the publican could save him from a conviction under section 16, subsection (2), since it would be as easy for the constable to deny that he was on duty when asked, or to produce a forged permission from his superior officer, as to remove his armlet before entering the public house. I am, therefore, of opinion that this conviction ought to be quashed."

Also In *Sherras v De Rutzen* (1895), Wright J stated that apart from isolated and extreme cases like bigamy and abduction of a girl under sixteen, the principal classes of strict liability might perhaps be reduced to three:

1. One is a class of acts which are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty (eg, the sale of adulterated food: *Roberts v Egerton*, 1874).
2. Another class comprehends some, and perhaps all, public nuisances: *R v Stephens* (1866) where the employer was held liable on indictment for a nuisance caused by workmen without his knowledge and contrary to his orders.
3. Lastly, there may be cases in which, although the proceeding is criminal in form, it is really only a summary mode of enforcing a civil right (eg, see *Hargreaves v Diddams* (1875) as to a bona fide belief in a legally impossible right to fish).

But, except in such cases as these, there must in general be guilty knowledge on the part of the defendant, or of someone whom he has put in his place to act for him, generally, or in the particular matter, in order to constitute an offence.

A modern example of strict liability would be such a case as *R v Howells* (1977) where the defendant bought a revolver believing it to be an antique firearm, apparently manufactured in 1860 or 1870. As it was purchased as a "curiosity or ornament", he believed that no firearm certificate was required for it by virtue of s58(2) of the Firearms Act 1968. He was charged with possessing a revolver without a firearm certificate, contrary to s1(1)(a).

The Court of Appeal held that s1 was to be construed strictly: the wording of the section, on the face of it, so indicated; the danger to the community resulting from the possession of lethal firearms was so obviously great that an absolute prohibition against their possession without proper authority must have been the intention of Parliament when considered in conjunction with the words of the section; and to allow a defence of honest and reasonable belief that the firearm was an antique and therefore excluded was likely to defeat the clear intention of the Act.

Matthew Redfern