4

STRICT LIABILITY

CENTRAL ISSUES

1. An offence of strict liability is one where it is not necessary to prove any mental state of the defendant. All that needs to be shown is that the defendant caused a particular result or carried out a particular act.
2. The courts will only interpret the offence to be one of strict liability where Parliament has made it quite clear that there is no *mens rea* requirement for the offence.
3. There are some offences which just require proof that the defendant possessed a prohibited item.

PART I: THE LAW

DEFINITION

A defendant is guilty of a strict liability offence if by a voluntary act he or she causes the prohibited result or state of affairs. There is no need to prove that the defendant had a particular state of mind.

1 WHAT IS A STRICT LIABILITY OFFENCE?

Offences of strict liability require proof that the defendant performed the prohibited conduct, but do not require proof that the defendant was blameworthy.[1] For example, in *Harrow London BC v Shah*[2] the defendant was convicted of selling a lottery ticket to a person under

[1] e.g. *Callow v Tillstone* (1900) 83 LT 411. For a detailed discussion of the meaning of strict liability, see Green (2005).

[2] [2000] Crim LR 692 (DC).

the age of 16, even though he was not aware that the purchaser was under 16 nor was it obvious that the person was under that age. In fact nearly half of all criminal offences are offences of strict liability.[3]

Most strict liability offences are minor offences. The criminal law covers a wide range of crimes, from murder at the one end to parking tickets at the other. At the lower end such offences are often regarded by the general public as 'not really' criminal. These 'less serious' offences play the role of regulating people's behaviour so that society can work effectively, rather than indicating that the defendant has behaved in a morally reprehensible way.[4] These regulatory offences often do not require proof of *mens rea* because they do not carry the weight of moral censure that more serious crimes carry. It should be added that it is possible for an offence to be one of strict liability for some aspects of the *actus reus*, but not others.[5] →1 (p.226)

Strict liability offences should be distinguished from negligence-based offences where the prosecution must demonstrate that the defendant acted unreasonably. As already indicated for strict liability offences, if the defendant has committed the *actus reus* he or she is guilty even if he or she was acting reasonably.[6] The line between a strict liability offence and a negligence-based offence is somewhat blurred where a statute does not require proof that defendants acted unreasonably, but the defendants will have a defence if they can prove they acted with 'due diligence'[7] in avoiding the prohibited harm. These are distinct from negligence offences because the burden of proof lies with the defendants to prove that they were acting reasonably, rather than the prosecution proving they were acting negligently.

2 WHICH OFFENCES ARE STRICT LIABILITY?

The vast majority of strict liability offences are found in statutes, although there may be a few common law strict liability offences.[8] For statutes, the key question for a court is how to interpret a statutory offence if Parliament has not included a *mens rea* requirement. In such a case the court has to decide whether to interpret the crime as one of strict liability or to read in a *mens rea* requirement. If Parliament made it absolutely clear for every offence what the *mens rea* requirement (if any) was the courts' job would be easier. Unfortunately Parliament has not.

The following two cases have recently reinforced the common law that in construing statutory offences there is a presumption against strict liability and in favour of *mens rea*: →2 (p.226)

[3] Ashworth and Blake (1996).

[4] A distinction is sometimes drawn between crimes that are *male in se* (the activity is in itself harmful (e.g. killing)) and crimes that are *male prohibita* (where the activity is wrong only because it has been prohibited (e.g. driving on the left hand side of the road)).

[5] *Hibbert* (1869) LR 1 CCR 184.

[6] As acknowledged, e.g., by Maurie Kay J. in *Barnfather v Islington London Borough Council* [2003] EWHC 418 (Admin), at para. 30.

[7] Ashworth (2006: 165) suggests that such statutes might not, strictly speaking, be strict liability offences. See Manchester (2006) for further discussion of the due diligence defence.

[8] E.g. criminal libel or public nuisance. However, these are rarely charged and there is some debate whether these are strict liability offences or not. See Allen (2007: 104–5).

B *(A Child) v Director of Public Prosecutions*
[2000] 2 AC 428 (HL)[9]

B, a 15-year-old boy, repeatedly asked a 13-year-old girl on a bus in Harrow to perform oral sex on him. The girl refused. B was convicted of inciting a child under the age of 14 to commit an act of gross indecency contrary to section 1(1) of the Indecency with Children Act 1960. It was accepted that B honestly believed that the girl was over 14, but the justices ruled that that belief did not provide B with a defence. B appealed on the basis that the justices' ruling was wrong. His appeal was dismissed by the Divisional Court and he appealed to the House of Lords.

Lord Nicholls of Birkenhead

. . . Section 1(1) [of the Indecency with Children Act 1960] makes it a criminal offence to commit an act of gross indecency with or towards a child under the age of 14, or to incite a child under that age to such an act. The question raised by the appeal concerns the mental element in this offence so far as the age ingredient is concerned.

The answer to this question depends upon the proper interpretation of the section. There are, broadly, three possibilities. The first possible answer is that it matters not whether the accused honestly believed that the person with whom he was dealing was over 14. So far as the age element is concerned, the offence created by s 1 of the 1960 Act is one of strict liability. The second possible answer is that a necessary element of this offence is the absence of a belief, held honestly and on reasonable grounds by the accused, that the person with whom he was dealing was over 14. The third possibility is that the existence or not of reasonable grounds for an honest belief is irrelevant. The necessary mental element is simply the absence of an honest belief by the accused that the other person was over 14.

The common law presumption

As habitually happens with statutory offences, when enacting this offence Parliament defined the prohibited conduct solely in terms of the proscribed physical acts. Section 1(1) says nothing about the mental element. In particular, the section says nothing about what shall be the position if the person who commits or incites the act of gross indecency honestly but mistakenly believed that the child was 14 or over.

In these circumstances the starting point for a court is the established common law presumption that a mental element, traditionally labelled *mens rea*, is an essential ingredient unless Parliament has indicated a contrary intention either expressly or by necessary implication. The common law presumes that, unless Parliament indicated otherwise, the appropriate mental element is an unexpressed ingredient of every statutory offence. On this I need do no more than refer to Lord Reid's magisterial statement in the leading case of *Sweet v Parsley* [1970] AC 132 at 148–149:

'. . . there has for centuries been a presumption that Parliament did not intend to make criminals of persons who were in no way blameworthy in what they did. That means that, whenever a section is silent as to *mens rea*, there is a presumption that, in order to give effect to the will of Parliament, we must read in words appropriate to require *mens rea* . . . it is firmly established by a host of authorities that *mens rea* is an essential ingredient of every offence unless some reason can be found for holding that that is not necessary.'

[9] [2000] 1 All ER 833, [2000] 2 WLR 452, [2000] 2 Cr App R 65, [2000] Crim LR 403.

Reasonable belief or honest belief

The existence of the presumption is beyond dispute, but in one respect the traditional formulation of the presumption calls for re-examination. This respect concerns the position of a defendant who acted under a mistaken view of the facts. In this regard, the presumption is expressed traditionally to the effect that an honest mistake by a defendant does not avail him unless the mistake was made on reasonable grounds. Thus, in *R v Tolson* (1889) 23 QBD 168 at 181, Cave J observed:

'At common law an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence. This doctrine is embodied in the somewhat uncouth maxim "*actus non facit reum, nisi mens sit rea*." Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy. . . . So far as I am aware it has never been suggested that these exceptions do not equally apply in the case of statutory offences unless they are excluded expressly or by necessary implication.'

[Lord Nicholls then referred to *Bank of New South Wales v Piper* [1897] AC 383 and *Sweet v Parsley* where statements to similar effect were made.]

The 'reasonable belief' school of thought held unchallenged sway for many years. But over the last quarter of a century there have been several important cases where a defence of honest but mistaken belief was raised. In deciding these cases the courts have placed new, or renewed, emphasis on the subjective nature of the mental element in criminal offences. The courts have rejected the reasonable belief approach and preferred the honest belief approach. When *mens rea* is ousted by a mistaken belief, it is as well ousted by an unreasonable belief as by a reasonable belief. . . .

Considered as a matter of principle, the honest belief approach must be preferable. By definition the mental element in a crime is concerned with a subjective state of mind, such as intent or belief. To the extent that an overriding objective limit ('on reasonable grounds') is introduced, the subjective element is displaced. To that extent a person who lacks the necessary intent or belief may nevertheless commit the offence. When that occurs the defendant's 'fault' lies exclusively in falling short of an objective standard. His crime lies in his negligence. A statute may so provide expressly or by necessary implication. But this can have no place in a common law principle, of general application, which is concerned with the need for a mental element as an essential ingredient of a criminal offence.

The traditional formulation of the common law presumption, exemplified in Lord Diplock's famous exposition in *Sweet v Parsley*, cited above, is out of step with this recent line of authority, in so far as it envisages that a mistaken belief must be based on reasonable grounds. This seems to be a relic from the days before a defendant in a criminal case could give evidence in his own defence. It is not surprising that in those times juries judged a defendant's state of mind by the conduct to be expected of a reasonable person.

[Lord Nicholls referred to *DPP v Morgan* [1976] AC 182 and *R v Williams* (1984) 78 Cr App R 276 and other cases which he stated confirmed the 'honest belief' approach.]

The construction of s 1 of the Indecency with Children Act 1960

In s 1(1) of the 1960 Act Parliament has not expressly negatived the need for a mental element in respect of the age element of the offence. The question, therefore, is whether, although not expressly negatived, the need for a mental element is negatived by necessary implication. 'Necessary implication' connotes an implication which is compellingly clear. Such an

implication may be found in the language used, the nature of the offence, the mischief sought to be prevented and any other circumstances which may assist in determining what intention is properly to be attributed to Parliament when creating the offence.

I venture to think that, leaving aside the statutory context of s 1, there is no great difficulty in this case. The section created an entirely new criminal offence, in simple unadorned language. The offence so created is a serious offence. The more serious the offence, the greater is the weight to be attached to the presumption, because the more severe is the punishment and the graver the stigma which accompany a conviction. Under s 1 conviction originally attracted a punishment of up to two years' imprisonment. This has since been increased to a maximum of ten years' imprisonment. The notification requirements under Pt I of the Sex Offenders Act 1997 now apply, no matter what the age of the offender: see Sch 1, para 1(1) (b). Further, in addition to being a serious offence, the offence is drawn broadly ('an act of gross indecency'). It can embrace conduct ranging from predatory approaches by a much older paedophile to consensual sexual experimentation between precocious teenagers of whom the offender may be the younger of the two. The conduct may be depraved by any acceptable standard, or it may be relatively innocuous behaviour in private between two young people. These factors reinforce, rather than negative, the application of the presumption in this case.

The purpose of the section is, of course, to protect children. An age ingredient was therefore an essential ingredient of the offence. This factor in itself does not assist greatly. Without more, this does not lead to the conclusion that liability was intended to be strict so far as the age element is concerned, so that the offence is committed irrespective of the alleged offender's belief about the age of the 'victim' and irrespective of how the offender came to hold this belief.

Nor can I attach much weight to a fear that it may be difficult sometimes for the prosecution to prove that the defendant knew the child was under 14 or was recklessly indifferent about the child's age. . . .

Similarly, it is far from clear that strict liability regarding the age ingredient of the offence would further the purpose of s 1 more effectively than would be the case if a mental element were read into this ingredient. There is no general agreement that strict liability is necessary to the enforcement of the law protecting children in sexual matters. . . .

Is there here a compellingly clear implication that Parliament should be taken to have intended that the ordinary common law requirement of a mental element should be excluded in respect of the age ingredient of this new offence? Thus far, having regard especially to the breadth of the offence and the gravity of the stigma and penal consequences which a conviction brings, I see no sufficient ground for so concluding.

. . .

Accordingly, I cannot find, either in the statutory context or otherwise, any indication of sufficient cogency to displace the application of the common law presumption. In my view the necessary mental element regarding the age ingredient in s 1 of the 1960 Act is the absence of a genuine belief by the accused that the victim was 14 years of age or above. The burden of proof of this rests upon the prosecution in the usual way. If Parliament considers that the position should be otherwise regarding this serious social problem, Parliament must itself confront the difficulties and express its will in clear terms. I would allow this appeal.

Lord Steyn

. . .

Practical difficulties

Counsel for the Crown finally submitted that it would in practice be difficult for the Crown to disprove defences of lack of knowledge of the age of the victim. In my view counsel has overstated the difficulties. After all, the legislature expressly made available such an excuse in the case of the so-called 'young man's defence' under s 6(3). Moreover, as Brooke LJ ([1998] 4 All ER 265 at 277) pointed out, recklessness or indifference as to the existence of the prohibited circumstance would be sufficient for guilt. And in practice the Crown would only have to shoulder the burden of proving that the defendant was aware of the age of the victim if there was some evidential material before the jury or magistrates suggesting the possibility of an honest belief that the child was over 14. In these circumstances the suggested evidential difficulties ought not to divert the House from a principled approach to the problem.

Lord Irvine of Lairg LC, Lord Hutton and **Lord Mackay of Clashfern** handed down speeches agreeing with **Lord Nicholls**.

Appeal allowed.

A detailed analysis and discussion of this case can be found in the extract by Jeremy Horder at p.42.

R v K
[2001] UKHL 41 (HL)[10]

K, aged 26, was charged with indecently assaulting a 14-year-old girl, contrary to section 14 of the Sexual Offences Act 1956. He claimed that the sexual activity between them was consensual and that he believed the girl was 16 as she had told him. The judge indicated that the prosecution would be required to prove that at the time of the incident the defendant did not honestly believe that the girl was 16 or over. The prosecution argued that this direction was wrong and appealed. The Court of Appeal allowed the appeal, but granted leave to appeal to the House of Lords, certified that the following points of law of general public importance were involved in the decision, namely:

> '(a) Is a defendant entitled to be acquitted of the offence of indecent assault on a complainant under the age of 16 years, contrary to section 14(1) of the Sexual Offences Act 1956, if he may hold an honest belief that the complainant in question was aged 16 years or over? (b) If yes, must the belief be held on reasonable grounds?'

Section 14 of the 1956 Act reads:

> '(1) It is an offence, subject to the exception mentioned in subsection (3) of this section, for a person to make an indecent assault on a woman.
>
> (2) A girl under the age of 16 cannot in law give any consent which would prevent an act being an assault for the purposes of this section.

[10] [2002] 1 AC 462.

(3) Where a marriage is invalid under section two of the Marriage Act 1949, or section one of the Age of Marriage Act 1929 (the wife being a girl under the age of 16), the invalidity does not make the husband guilty of any offence under this section by reason of her incapacity to consent while under that age, if he believes her to be his wife and has reasonable cause for the belief.

(4) A woman who is a defective cannot in law give any consent which would prevent an act being an assault for the purposes of this section, but a person is only to be treated as guilty of an indecent assault on a defective by reason of that incapacity to consent, if that person knew or had reason to suspect her to be a defective.'

Lord Steyn

33. It is now possible to face directly the question whether section 14(1) makes it compellingly clear that the supplementation of the text by the presumption is ruled out. The actual decision of the House in *B (A Minor)* [sub nom. *B (A Child) v DPP*] *v Director of Public Prosecutions* [2000] 2 AC 428 on the meaning of section 1(1) of the Indecency with Children Act 1960 springs to mind. The House concluded that on the statutory provision involved in that case the presumption was not displaced. But the particular wording of section 14(1) gives greater scope for the Crown's argument in the present case. Thus it is noteworthy that subsection (4) of section 14, but not subsection (2), makes specific provision, in the context of consent, for a defence of absence of *mens rea*. Nevertheless, I would hold that in the present case a compellingly clear implication can only be established if the supplementation of the text by reading in words appropriate to require *mens rea* results in an internal inconsistency of the text. Approaching the problem in this way, one can readily accept that section 14(2) could naturally have provided that a genuine belief by the accused that the girl was over 16 was no defence. Conversely, section 14(2) could have provided that a genuine belief that the girl was under 16 was a defence. In my view a provision of the latter type would not have been conceptually inconsistent with any part of section 14. By contrast, the terms of sections 5 and 6 of the 1956 Act namely offences of having sexual intercourse with girls under 13 (section 5) and with girls under 16 (section 6) are inconsistent with the application of the presumption. The 'young man's defence' under section 6(3) makes clear that it is not available to anybody else. The linked provision in section 5, dealing with intercourse with younger girls, must therefore also impose absolute liability. There is nothing in section 14(1) as clearly indicative of the displacement of the presumption. In these circumstances it cannot in my view be said that there is a compellingly clear implication ruling out the application of the presumption.

34. This is a result which serves the public interest. It would have been a strange result to conclude that Parliament created by section 14(1) offences of strict liability where any heterosexual or homosexual contact takes place between two teenagers of whom one is under 16. Fortunately, the strong presumption of *mens rea* enabled the House to avoid such a result.

35. For these reasons, as well as the reasons given by Lord Bingham of Cornhill, I would allow the appeal.

Lord Millett

40. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Bingham of Cornhill, with which I agree. For the reasons he gives I would allow the appeal and answer the certified questions as he proposes.

41. I do so without reluctance but with some misgiving, for I have little doubt that we shall be failing to give effect to the intention of Parliament and will reduce section 14 of the Sexual Offences Act 1956 to incoherence. . . .

44. . . . [T]he age of consent has long since ceased to reflect ordinary life, and in this respect Parliament has signally failed to discharge its responsibility for keeping the criminal law in touch with the needs of society. I am persuaded that the piecemeal introduction of the various elements of section 14, coupled with the persistent failure of Parliament to rationalise this branch of the law even to the extent of removing absurdities which the courts have identified, means that we ought not to strain after internal coherence even in a single offence. Injustice is too high a price to pay for consistency.

Lord Bingham of Cornhill, Lord Nicholls of Birkenhead and **Lord Hobhouse of Woodborough** gave speeches allowing the appeal.

Appeal allowed.

These two decisions of the House of Lords have strengthened the presumption in favour of *mens rea*, and all cases decided prior to these decisions have to be read in the light of them.[11] As a result of these decisions the court will read *mens rea* into a statute unless either:

(1) there is clear wording in the statute indicating that the offence is to be one of strict liability;[12] or

(2) there is a 'compellingly clear' inference that the offence is to be one of strict liability.[13]

3 WHEN WILL A COURT NOT PRESUME *MENS REA?*

The factors which a court will take into account in deciding whether there is a 'compellingly clear' inference that the offence is to be one of strict liability include the following:

(1) if some sections of a statute refer explicitly to a *mens rea* requirement and others do not that may indicate that those sections which do not are meant to be strict liability.[14] However, this will not be a conclusive factor,[15] as is clear from the decision in *K* itself;

(2) the court will examine not only the statute in question, but also other statutes which cover analogous offences,[16] in an attempt to ascertain the will of Parliament;

(3) the court will consider the social context of the offence.[17] In some cases it has been suggested that the court will consider whether the offence is intended to be 'truly

[11] *Kumar* [2005] 1 Cr App R 34. Although see *R v Doring* [2002] EWCA Crim 1695 where the Court of Appeal declined to alter the interpretation of the strict liability offence in the Insolvency Act 1986, section 216.

[12] For a recent case where it was felt that the statutory words made it clear that the offence was to be one of strict liability, see *Kirk and Russell* [2002] Crim LR 756 (CA), which considered the Sexual Offences Act 1956, section 6.

[13] Although it should be noted that in *R v K* [2001] UKHL 41 Lord Steyn seemed to suggest that the presumption could be rebutted only by specific language. However this is not consistent with his *obiter* refusal to apply the presumption of *mens rea* to section 5 of the Sexual Offences Act 1956 in *B v DPP* ([2000] 1 All ER 839 at 843g–h) even though there was nothing in the wording of that section that would exclude it.

[14] *Cundy v Le Cocq* (1884) 13 QBD 207; *Pharmaceutical Society of Great Britain v Storkwain Ltd* [1986] 1 WLR 903 (HL); *R v Muhamad* [2002] EWCA Crim 1856; *R v Matudi* [2003] EWCA Crim 697.

[15] *Sherras v De Rutzen* [1895] 1 QB 918 (DC).

[16] *B v DPP* [2000] 2 WLR 452 (HL).

[17] *Gammon (Hong Kong) Ltd v A-G of Hong Kong* [1985] AC 1 (HL).

criminal'. If it is intended not to be 'truly criminal' and more in the nature of a regulatory offence then that may be a factor indicating that the offence is to be one of strict liability. In deciding whether an offence is 'truly criminal' the court will look at the following factors:

(a) the severity of the punishment[18] and the level of stigma that attaches to a conviction for that offence.[19] The lower the maximum sentence the more likely it is that the offence is regulatory. However, in *Howells*[20] the fact that the offence[21] carried five years' imprisonment did not prevent the imposition of strict liability.[22] Even more dramatically in *G*[23] the rape of a child under 13 was seen as a strict liability offence, even though it carries a life sentence;

(b) whether the offence is aimed at preventing a very serious danger. Where an activity involves a potentially grave social harm (e.g. a potentially polluting activity) it is more likely to be an offence of strict liability.[24] Where there is no public danger the offence is less likely to be one of strict liability;

(c) whether rendering the offence one of strict liability will assist in discouraging the activity.[25] An argument that being strict liability will make it easier to prove and so easier to enforce will not of itself be sufficient to persuade a court to interpret the offence to be one of strict liability.[26] But if rendering the offence one of strict liability could be said to persuade potential defendants to change their behaviour this would be an argument in favour of strict liability;

(d) whether the offence applies generally to members of the public or if it is addressed to a group of professionals or to those who engage in a particular kind of activity.[27] It is less likely to be one of strict liability if the offence is addressed to members of the public at large.

4 WHAT *MENS REA* WILL BE PRESUMED?

If there is no clear evidence that the statute is to be one of strict liability the court will presume *mens rea*. The presumed *mens rea* will be that the defendant will have a defence if the defendant believed (even if unreasonably) that an aspect of the *actus reus* did not exist. This can be made clearer by considering the facts of *B v DPP* where the defendant was charged with the offence of inciting a girl under the age of 14 to commit an act of gross indecency, into which the court decided to presume *mens rea*.[28] Contrast the

18 *B v DPP* [2000] 2 WLR 452 (HL).
19 *Barnfather v Islington London Borough Council* [2003] EWHC 418 (Admin).
20 [1977] QB 614 (CA).
21 Firearms Act 1968, section 1(1)(a).
22 In *Matudi* [2003] EWCA Crim 697 the point was made that the wide range of offenders could be guilty of a strict liability offence, ranging from a defendant who deliberately caused the harm to a defendant who was blameless in doing so. A strict liability offence might therefore carry a high maximum sentence which would be appropriate for the defendant who deliberately caused the harm.
23 [2006] EWCA Crim 821.
24 e.g. *McCrudden* [2005] EWCA 466; *Alphacell Ltd v Woodward* [1972] AC 824 (HL).
25 *R v Matudi* [2003] EWCA Crim 697. See also *Lim Chin Aik v R* [1963] AC 160 (PC).
26 *Barnfather v Islington London Borough Council* [2003] EWHC 418 (Admin).
27 *Sweet v Parsley* [1970] AC 132 (HL).
28 It is important to realise that the age of the girl was here an aspect of the *actus reus*.

following states of mind:

(1) D believes the victim is 16. Here he will be not guilty. This is so even if his belief as to her age was unreasonable;

(2) D has not thought about the age of the victim. D will be guilty. He has a defence only if he honestly believes that the victim is over 14;

(3) D knows the victim is under 14 but believes that she is Tina (his friend's sister) when it is in fact Becca (who looks like Tina). Here his mistaken belief does not relate to an aspect of the *actus reus*, and so he is guilty.

5 THE HUMAN RIGHTS ACT AND STRICT LIABILITY OFFENCES

The courts have so far not accepted an argument[29] that Article 6 of the European Convention on Human Rights prohibits the existence of strict liability offences.[30] The fact that a defendant can be convicted without proof of his *mens rea* does not infringe the right to a fair trial. Article 6 requires that the trial procedures will be fair, but cannot be used to challenge the substance of the law.[31] However, in *R v G*[32] the Court of Appeal suggested that where the defendant was not blameworthy, although technically guilty of a strict liability offence, a prosecution for that offence might interfere with the defendant's rights under Article 8 of the Convention.

6 COMMON LAW DEFENCES AND STRICT LIABILITY OFFENCES

As is clear from the definition of a strict liability offence there can be no defence of no *mens rea* because *mens rea* is not required. But what about other common law defences such as self-defence, duress of circumstances or insanity? The Court of Appeal in *Backshall*[33] has confirmed that duress is available as a defence to a strict liability offence. Presumably, therefore, so would be self-defence, necessity or automatism.[34] There seems, however, to be some doubt over insanity. In *DPP v H*[35] McCowan LJ stated:

> The [insanity] defence is based on the absence of *mens rea*, but none is required for the offence of driving with an excess of alcohol. Hence the defence of insanity has no relevance to such a charge as it is an offence of strict liability.

[29] Arden (1999).

[30] *Muhammed* [2002] EWCA Crim 1856; *Barnfather v Islington London Borough Council* [2003] EWHC 418 (Admin); *R v G* [2006] EWCA Crim 821.

[31] See Sullivan (2005) and Salako (2006) for a detailed argument on the potential impact of the Human Rights Act on strict liability offences.

[32] [2006] EWCA Crim 821.

[33] [1999] Crim LR 662 (CA).

[34] *Hennessey* [1989]2 All ER 9 (CA); *Issit* [1978] RTR 211 (CA).

[35] Times, 2 May 1997; discussed in Ward (1997).

This reasoning has been strongly criticised.[36] Insanity is not an absence of *mens rea*. It is quite possible for a defendant to be insane and yet intend to kill, for example.

7 POSSESSION OFFENCES

Several statutory offences involve possession of, for example, offensive weapons,[37] drugs[38] and articles for use in burglary, theft or deception.[39] Strictly speaking these are not strict liability offences, but their *mens rea* requirement can be minimal and so are analogous to them. Possession offences, from a theoretical point of view, are problematic. There are two particular difficulties:

(1) does possession involve an act? The difficulty may be that at the time when the person is arrested in possession of the prohibited thing, she may not be doing anything. This may infringe the so-called 'voluntary act principle' discussed in Chapter 3. It could be argued that possession involves an initial act of taking into possession, followed by failure to divest of possession. An analogy could be drawn with the decision in *Fagan*[40] (excerpted at p.172) where the defendant (accidentally) parked his car on the victim's foot and then refused to move it off;

(2) does the word 'possess' include any *mens rea* element? In *Warner v Metropolitan Police Commissioner*[41] the defendant picked up two boxes which he thought contained perfume. In fact they contained drugs and the defendant was charged with possession of drugs. The House of Lords held that if a person possesses a container he possesses the items in the container.[42] There are two exceptions to this:[43]

   (a) if the item has been placed in the defendant's bag or pocket without his or her knowledge and without an opportunity to discover that the item has been placed there then it is not possessed by the defendant;

   (b) if the accused believed that the container had something in it which was completely different from what was actually there then the defendant does not possess the item. However, the width of this exception is not as wide as may appear because in *Warner* it was held that perfume was not wholly different from drugs and in *McNamara*[44] it was suggested that pornography was not radically different from cannabis resin, both of which are rather surprising findings.

[36] Simester and Sullivan (2003: 178).
[37] Prevention of Crime Act 1953.
[38] Misuse of Drugs Act 1971.
[39] Theft Act 1968, section 25.
[40] [1969] 1 QB 439.
[41] [1969] 2 AC 256 (HL).
[42] The leading case where drugs are found on or in something which is not a container is *Marriot* [1971] 1 All ER 595 where the defendant possessed a penknife. Unknown to him, the penknife had cannabis attaching to the blade. It was held that unless he was aware that there were substances attaching to the penknife he could not be convicted of possession of the cannabis.
[43] The defendant bears the evidential burden in respect of these exceptions (*McNamara* (1988) 87 Cr App R 270 (CA)).
[44] (1988) 87 Cr App R 270 (CA).

The House of Lords has recently confirmed the definition of possession in *Warner* in the following decision:

R v Lambert
[2001] UKHL 37 (HL)[45]

The appellant was charged with possession of a class A drug with intent to supply contrary to section 5(3) of the Misuse of Drugs Act 1971. He had picked up a duffel bag containing 2 kilograms of cocaine at a railway station. His defence, based on section 28 of the Misuse of Drugs Act 1971, was that although he had been in possession of the bag he did not know or suspect, or have reason to suspect, the nature of the contents of the bag. He was convicted and appealed on the basis that he should not have been required to establish his defence on a balance of probabilities. (The case involved a discussion of the impact of the Human Rights Act on the burden of proof which was discussed in Chapter 1.)

Lord Slynn of Hadley

16. The first question asks whether it is an essential element of the offence of possession of a controlled drug under section 5 of the Misuse of Drugs Act 1971 that the accused knows that he has a controlled drug in his possession. Bearing fully in mind the importance of the principle that the onus is on the prosecution to prove the elements of an offence and that the provisions of an Act which transfer or limit that burden of proof should be carefully scrutinised, it seems to me that the Court of Appeal in *R v McNamara* (1988) 87 Cr App R 246 rightly identified the elements of the offence which the prosecution must prove. I refer in particular to the judgment of Lord Lane CJ, at p 252. This means in a case like the present that the prosecution must prove that the accused had a bag with something in it in his custody or control; and that the something in the bag was a controlled drug. It is not necessary for the prosecution to prove that the accused knew that the thing was a controlled drug let alone a particular controlled drug. The defendant may then seek to establish one of the defences provided in section 5(4) or section 28 of the 1971 Act.

Lord Hope

61. . . . I consider the settled law to be correct on this point. As far as the 1971 Act is concerned, there are two elements to possession. There is the physical element, and there is the mental element. The physical element involves proof that the thing is in the custody of the defendant or subject to his control. The mental element involves proof of knowledge that the thing exists and that it is in his possession. Proof of knowledge that the thing is an article of a particular kind, quality or description is not required. It is not necessary for the prosecution to prove that the defendant knew that the thing was a controlled drug which the law makes it an offence to possess. I observe that Mr Owen did not submit that it was necessary for the prosecution to prove that the defendant was aware that the thing was a class A, B or C drug, as the case may be, although the class into which the drug falls will usually be relevant to any sentence he may receive.

Appeal dismissed.

[45] [2001] 3 WLR 206.

PART II: THE THEORY OF STRICT LIABILITY OFFENCES

8 THE ARGUMENTS FOR AND AGAINST STRICT LIABILITY

We will shortly consider the arguments that can be made for and against a strict liability offence. But first it is important to appreciate the wide range of alternatives available to a legal system which wishes to restrict the need to prove *mens rea*. Here are some:

(1) to require that the defendant was negligent as to the *actus reus*;

(2) to provide a defence for a defendant who can prove that he was not negligent;

(3) to establish special defences based on a legal or evidential burden on the defendant;

(4) only to require that the defendant caused the *actus reus*.

As these alternatives show, if it is decided that the prosecution should not be required to prove any *mens rea* on the defendant's part, strict liability is not the only option by any means.

8.1 ARGUMENTS FOR STRICT LIABILITY OFFENCES

The following are some of the main arguments in favour of strict liability offences:

Protection of the public

The main justification in favour of strict liability offences is that they protect the general public.[46] Most strict liability offences are found in those areas of life which pose a risk to others: for example, the sale of food, medical drugs and alcohol; the prevention of pollution. The argument is that where a person or company is about to engage in an activity which is potentially dangerous (e.g. an industrial activity that may cause pollution) we want the company not just to take 'reasonable steps' to prevent the harm, but to do everything it possibly can.[47] The imposition of strict liability, rather than negligence, may encourage the company to pull out every stop to prevent pollution.[48] The difficulty with this argument is that it suggests that the law expects people to take unreasonable steps to prevent harm.

Ease of proof

Strict liability offences are easier for the prosecution to prove because there is no need to prove the defendant's state of mind. Imagine, for example, that a motorist could be convicted

[46] Levenson (1993). See Wooton (1963) who argues that strict liability should be the norm for all criminal offences.

[47] See *Alphacell Ltd v Woodward* [1972] AC 824 (HL) and Wootton (1981).

[48] See Nemerson (1975) for arguments in favour of strict liability offences when people engage in ultra-hazardous activities.

of speeding only if he knew that he was speeding. It would become almost impossible then to succeed in a prosecution for speeding and court cases would take far longer.[49]

Risk-creating activities

It can be argued that if someone chooses to undertake a dangerous activity the law is justified in requiring him to ensure that he does not harm others. A person performing a dangerous activity should not escape criminal punishment by saying that he did not foresee that the act might harm someone. ←1 (p.214)

Difficulties in convicting corporations

Many strict liability offences involve commercial activities. This means that for many statutory offences the defendant is likely to be a company. As we shall see in Chapter 13 there are real difficulties in demonstrating that a company has *mens rea*. By making such offences strict liability it is far easier to convict companies. However, negligence liability could also be used to assist in the conviction of companies.[50]

8.2 ARGUMENTS AGAINST STRICT LIABILITY OFFENCES

Many opponents of strict liability accept that there is some merit in the points just made, but argue that they do not demonstrate why the law must require strict liability rather than a negligence-based offence or at least one where there is a defence of 'due diligence'.[51] They point out that there is no evidence that strict liability is more effective than negligence-based offences at preventing harmful activities.[52] Opponents argue further that it is unjust to convict defendants who have acted in an entirely reasonable way but unpredictably caused a harm.[53] To convict such defendants weakens the stigma that attaches to a criminal conviction and endangers the distinction between criminal and civil law.[54] Such draconian criminal laws may also have the effect of discouraging people from engaging in socially beneficial commercial activities.[55]

Supporters of strict liability suggest that such concerns are overreactions. Where a defendant is genuinely blameless he will not be prosecuted or if he is only a lower sentence will be imposed.[56] Indeed there is evidence that regulatory agencies charged with enforcing some strict liability offences exercise considerable discretion in deciding whether or not to prosecute.[57] Further, supporters of strict liability offences reply that many of the objections overlook the fact that these offences are not, as the courts have put it, 'truly criminal', to which Professor Smith[58] has replied 'this is a peculiar notion of truth. The truth is that it is a crime.' ←2 (p.214)

[49] Michaels (1999: 1137).
[50] Simester and Sullivan (2003: 173).
[51] See Horder (2005) for a detailed argument in favour of a 'due diligence defence'.
[52] Jackson (1991); Richardson (1987); Baldwin (1990); Packer (1962: 109).
[53] Michaels (1999) examines the issue from the perspective of the American constitution.
[54] P. Robinson (1996a).
[55] *Contra* Brady (1972).
[56] *Smedleys Ltd v Breed* [1974] AC 839.
[57] There are concerns that the agencies are under-funded and unable to enforce the strict liability offences effectively: Ashworth (2003: 167).
[58] J.C. Smith (2002: 125).

In the following extract, Andrew Simester considers the moral case against strict liability offences:

A. Simester, 'Is Strict Liability Always Wrong?' in A. Simester (ed.), *Appraising Strict Liability* (Oxford: OUP, 2005) at 33–7

Intrinsic Objections to Strict Liability

It is, in short, arguable that there are instrumental benefits to be gained from the device of strict liability, although their scope and extent is uncertain. However, assuming they exist, those benefits must be weighed against the intrinsic moral objections to strict liability set out below. In the context of stigmatic crimes, it seems to me that these objections are decisive.

Objections Specific to Paradigm (Stigmatic) Crimes

Suppose that the state were to create a crime of 'homicide', defined as a strict liability offence of causing death. Objections to crimes of this type depend, in turn, on the nature of the criminal law. Without dwelling on the familiar analysis, there seem to me to be certain paradigm features associated with the criminalization of μing. *Ex ante*, μing is prohibited and declared to be wrong: citizens are not merely requested but instructed not to. *Ex post*, where D is found to have transgressed, he is convicted of μing and liable to punishment which may be substantial, perhaps including imprisonment. The conviction and the punishment also express censure, to D, Y, and the public at large. As well as suffering hard treatment, D is labelled as a particular sort of criminal (a 'μer'), a labelling that conveys a public implication of culpable wrongdoing.

These paradigm features of the criminal law imply certain objections to making μing a strict liability crime, at least where strict liability leads to conviction of blameless defendants…

Wrongful Censure

The main objection to strict liability in stigmatic crimes law is that it involves the conviction and punishment of persons who are not at fault. Morally speaking, it is wrong to convict the innocent. If a person does not deserve to be convicted then he has a right not to be; and his conviction cannot be justified by such consequential considerations as deterrence.

Since both are censorious, this objection applies to both conviction and punishment. The imposition of punishment is, *qua* punishment, justified only when D deserves it, in virtue of culpably having done wrong. Indeed, the imposition of hard treatment cannot count as punishment unless it conveys this message. But in the context of strict liability, the state does not rely on the proposition that D is culpable as a precondition of imposing punishment. So the state cannot claim to be punishing D in accordance with D's desert; it is simply imposing hard treatment in virtue of the fact that μing (an *actus reus*) has occurred.

This criticism may be evaded, in part. Even if μing is a strict liability offence, the quantum of punishment imposed for transgressions might still be related to desert in a criminal legal system that required *sentences* to take account of D's level of culpability, with fault being a post-conviction matter for consideration during sentencing.

However, the same get-out is not available with regard to the conviction itself. Independently of the sanction imposed, the conviction also conveys censure. A conviction for μing has the effect of naming D a criminal (in respect of that particular offence), a branding which is communicated to society as well as to D. Assuming that, if imposed on a strict liability basis, the

label 'criminal-μ' continues to retain its stigmatic quality, this amounts to systematic moral defamation by the state. Given the public understanding of that designation, when it labels him a criminal the state is no longer telling the public the truth about D. People have a right not to be censured falsely as criminals, a right that is violated when one is convicted and punished for a stigmatic crime without proof of culpable wrongdoing.

That falsehood is no ordinary lie. There is something especially troubling when wrongful censure is imposed by the state. In ordinary defamation cases, the attack is characteristically private; it may affect D, and even harm D's interests, but it lacks the authoritative voice of the state and normally does not undermine his membership of the community. An act of defamation may bring D into conflict with P, but it normally does not alienate D from society. By contrast, convictions are official. They condemn D on behalf of society as a whole. To say that D has a criminal record is to say that he has been labelled as a reprehensible wrongdoer; that the state has made a formal adverse statement about *him*. Moreover, the statement marks D out in such a way that it becomes appropriate, within the community, for the regard in which he is held to be affected. Certain exclusions, both social and professional, may legitimately follow. As such, the criminal record becomes part of the material that frames D's engagement with his community, with adverse implications for D's ability to live his life—a life that is, in part, defined in terms of D's interactions within, and membership of, his society. The conviction (and indeed the punishment, in its censorious facet) tends not only to censure D for the particular act that is proscribed, but also to undermine D's participation in the society itself.

Censure and Stigma

We can elaborate this concern by distinguishing between censure, which the state expresses through its action of convicting (and punishing) the defendant, and the *effect* of that action, in terms of the stigma that attaches to D and his conduct. Of course, as the foregoing discussion has suggested, one reason why the state ought not falsely to censure D for a serious crime is supplied by the consequences for D's life. But the two do not always go together, and D has a right to be neither falsely censured *nor* falsely stigmatized. Even if D suffers no stigma, the state should not purport to censure him without believing him to be culpable. Telling lies is wrong in itself and not merely because of the consequences.

Consider, on the other hand, an argument that the state is not *really* censuring D, since both the state and D know that fault has not been proved when D is convicted of a strict liability offence. The problem with this 'private colloquy' reasoning is that the state should not ignore the significance of its actions for others. When labelling D guilty of a stigmatic crime, the state is bound by the public meaning of the words it uses. Thus, for example, Parliament cannot legitimately enact an offence of 'paedophilia', defined as 'parking for more than one hour on a central London street'. It cannot do so because that is not what paedophilia means. Even if D understands that the label is a technical usage, the state may not disregard the rest of its audience, and the effect that such a label will have on D's life.

Treating a conviction for 'paedophilia' as highly stigmatic is, of course, a reasonable public response. A more difficult case would arise if the reaction of the public, in terms of stigmatizing D, is unreasonable and far exceeds what is deserved in light of the state's censure. Suppose that, in the public mind, parking offenders (labelled as such) came to be regarded like paedophiles. In that event, a strict liability parking conviction, although not intended as censorious, would be highly stigmatic. Even in this sort of case, at least where the stigma is predictable, it seems to me that the state should take account of the consequences of a conviction for defendants. The offence should no longer involve strict liability.

Rights and Instrumental Reason

Of course, some error in the criminal justice system is unavoidable. When the state convicts a person of a stigmatic offence, it generally requires that guilt be proved beyond reasonable doubt. Inevitably, this leaves open the possibility that a particular defendant, properly convicted on that standard of proof, is not in fact guilty. The defamation and wrongful punishment of such persons is none the less justified. Moreover, it is justified by consequential reasons: in particular, by the need to set an achievable standard of proof if society is to have a practicable criminal justice system at all. It might be thought that an analogy can be drawn between these instrumental considerations, which permit wrongful convictions whenever the criminal proof standard is met, and those set out [earlier in the essay], which support convictions on the basis of strict liability.

But the analogy strikes me as false. Where guilt is proved beyond reasonable doubt in stigmatic crimes, the state convicts in good faith—D is believed to be culpable. Further, although error is systemic it remains unsystematic: the distribution of error is unknown, and we cannot predict the likelihood that any particular conviction is a mistake. By contrast, where strict liability is employed in a stigmatic crime, the state consistently labels D as a culpable wrongdoer without believing this to be true. Moreover, defamation is predictable—there are reasons for thinking that the state is particularly likely to censure and punish D wrongly in that class of cases. Hence, while instrumental considerations of an institutional nature may sometimes be relied upon to justify the risk of good-faith erroneous convictions, arguments of this type seem inadequate to justify strict liability for stigmatic crimes.

8.3 ANALYSING THE ARGUMENTS

In the following extract, Laurie Levenson discusses in more detail some of the arguments that can be presented for or against strict liability offences:

L.L. Levenson, 'Good Faith Defenses: Reshaping Strict Liability Crimes' (1993) 78 *Cornell Law Review* 401 at 419–27

B. Justifications for Strict Liability Crimes

1. Public Welfare Offenses

The strict liability doctrine often applies to so-called 'public welfare' offenses or regulatory crimes promulgated to address the dangers brought about by the advent of the industrial revolution. Public welfare offenses include the sale of impure or adulterated foods or drugs, driving faster than the speed limit, the sale of intoxicating liquor to minors, and improper handling of dangerous chemicals or nuclear wastes. Defendants violate these laws regardless of their intent or absence of negligent conduct.

There are several reasons the strict liability doctrine is used to redress invasions of the public welfare. First, the doctrine is employed for these offenses because it shifts the risks of dangerous activity to those best able to prevent a mishap. For example, a pharmaceutical manufacturer is in a unique position to know and control product quality. Strict liability holds the manufacturer liable if that product becomes contaminated for any reason. The risk of mishap is shifted to the manufacturer who can be assured of avoiding liability only by not engaging in the particular high risk activity.

Yet, this reason alone cannot justify the doctrine. The strict liability doctrine is not the only possible method for shifting risk onto the manufacturer. A criminal negligence standard also shifts the risk to the party engaging in the activity and punishes those who act carelessly. Under a negligence standard, a defendant is liable for failure to act as a reasonable person would have under the circumstances, even if he did not intend or appreciate the risks of his activities. Under a negligence standard, if the defendant acts reasonably and harm results, no punishment follows. Nonetheless, the burden to learn and operate within society's standards rests with the defendant.

The strict liability doctrine operates in a fundamentally different way. While both negligence and strict liability shift the burden of risk avoidance to the defendant, only under strict liability are individuals imprisoned even if they take all possible precautions to act reasonably. The sole question for the trier of fact is whether the defendant committed the proscribed act. The jury may not decide whether the defendant could have done anything else to prevent the unlawful act.

Thus, there must be additional reasons for selecting the strict liability doctrine over the negligence standard. Among these reasons is the need by the legislature to assure that juries will treat like cases alike when judging conduct involving public welfare. Juries may be illsuited to decide what is reasonable in complex high risk activities. For example, in order for juries to decide what is reasonable conduct when dealing with nuclear waste, they would have to be educated on the nuclear industry, the risks posed by it, and the safeguards that might be taken. Legislatures prefer to make this assessment themselves, rather than relying on the competence of juries. Moreover, jurors may be swayed by sympathies or prejudices of a particular case. By dictating what is *per se* unreasonable, an individual jury cannot reassess the standard of reasonableness. Accordingly, a second reason for using the strict liability doctrine is that it assures uniform treatment of particular, high risk conduct.

A third justification often offered for the strict liability doctrine is that it eases the burden on the prosecution to prove intent in difficult cases. Strict liability is based largely on the assumption that an accident occurs because the defendant did not take care to prevent it. No showing of intent or negligence is required, because the fact that a prohibited act occurred demonstrates the defendant's negligence. As with most irrebuttable presumptions, the legislature believes individual inquiries are unnecessary because the overwhelming majority of cases will show that the defendant acted at least negligently. Seen in this light, strict liability is a procedural shortcut to punish those who would be culpable under traditional theories of criminal law.

Fourth, even if the presumption is incorrect in a particular case, legislatures determine that this risk is outweighed by the need for additional protection of society and expeditious prosecution of certain cases. For example, driving in excess of a posted speed limit is typically a strict liability crime. With nearly 398,000 annual traffic cases in one [US] state alone, processing these cases as quickly as possible is important. The most efficient way to process such cases is to presume defendants drive carelessly when exceeding speed limits. The presumption is generally accurate and, even when it is not, the need for public safety and the relatively minor punishment minimizes any concern about injustice.

Finally, the strict liability doctrine is attractive as a powerful public statement of legislative intolerance for certain behavior. By labelling an offense as strict liability, the legislature can claim to provide the utmost protection from certain public harms. By affording no leniency for defendants causing harm, the legislature affirms society's interest in being protected from certain conduct. In this sense, strict liability expresses emphatically that such conduct will not be tolerated regardless of the actor's intent.

...

C. Opposition to the Strict Liability Doctrine

Opponents of the strict liability doctrine argue that its justifications are inconsistent with both utilitarian and retributivist theories of punishment. Under utilitarian theory, punishment is justified if it deters unlawful behavior. If punishing those who commit prohibited acts will deter others from acting similarly, punishment is justified. Under the retributivist approach, an individual should be punished for choosing to violate the law. Punishment reflects respect for an individual's autonomy to choose to do 'wrong.' If an individual chooses to transgress the boundaries established to protect society, he 'deserves' punishment.

The strict liability doctrine, especially when applied to defendants misled into committing an unlawful act, is not supported by either theory of punishment. Under retributivist theory, criminal law should hold individuals responsible for only those acts for which they are blameworthy. An individual is blameworthy, not because of accidental conduct, but because of a conscious and knowing breach of the law. At a minimum, the defendant must have acted below the standard of care that a reasonable person would have exercised under the same conditions. A strict liability defendant punished for an act that he has been misled into committing has not consciously decided to violate society's norms. Accordingly, under classic retributivist theory, this defendant does not 'deserve' to be punished.

Additionally, the strict liability doctrine conflicts with utilitarian theories of punishment. Strict liability laws are inefficient because they tend to overdeter individuals' behavior. If the strict liability defendant can be punished for *any* conduct crossing a certain proscribed line, the defendant will be inclined to abstain from *all* activity that could conceivably result in illegal behavior. In some situations, certain individuals might abstain from entering a high risk industry. In situations such as in *Kantor*, individuals may be deterred from engaging in constitutionally protected activity. Thus, strict liability may deter individuals from engaging in activities that are socially necessary or desirable, constitutionally protected, or both. In this manner, strict liability overdeters conduct.

More fundamentally, the strict liability doctrine violates utilitarian theories of criminal punishment because an individual who has no basis for believing he is engaging in unlawful conduct will not be deterred from engaging in that behavior. If an individual has no indication that he is doing anything wrong until the harmful act is completed, then he has no reason to alter his conduct. Given the conflicts with both the retributivist and utilitarian theories of punishment, it is understandable why opponents of strict liability do not want to use the doctrine against defendants who have made an affirmative effort to comply with the law but have been misled into committing a violation. Classic Anglo-American legal philosophy is that '[i]t is better that ten guilty persons escape than one innocent suffer.' Strict liability theory operates from the opposite perspective. Under the strict liability doctrine, an occasional innocent may be punished to assure the safety of the majority. Thus, the prosecution of good faith defendants under strict liability laws appears to conflict with the most fundamental principles of just punishment.

QUESTIONS

1. In what circumstances, if any, is the imposition of strict liability justifiable?
2. Jeremy Horder (2002b) has suggested that criminal offences which regulate activities which have intrinsic value for participants (e.g. they are aspects of an individual's vision of the good life) should not normally be strict liability offences. But offences which regulate activities which have instrumental value (i.e. the activities are not valuable in

themselves, but are only a means to another end (e.g. in Horder's view transport)) are more appropriate as being interpreted as strict liability. Do you think this is a helpful distinction?

For guidance on answering this question, please visit the online resource centre that accompanies this book: www.oxfordtextbooks.co.uk/orc/herringcriminal3e/

FURTHER READING

Gardner, J. (2005), 'Wrongs and Faults' in A. Simester (ed.), *Appraising Strict Liability* (Oxford: OUP).

Green, S. (2005), 'Six Senses of Strict Liability: A Plea for Formalism' in A. Simester (ed.), *Appraising Strict Liability* (Oxford: OUP).

Horder, J. (2001), 'How Culpability Can, and Cannot, be Denied in Under-Age Sex Crimes', *Criminal Law Review* 15.

—— (2002b), 'Strict Liability, Statutory Construction and the Spirit of Liberty', *Law Quarterly Review* 118: 459.

—— (2004), *Excusing Crime* (Oxford: OUP), ch. 6.

—— (2005c), 'Whose Values Should Determine When Liability is Strict?' in A. Simester (ed.), *Appraising Strict Liability* (Oxford: OUP).

Husak, D. (1995), 'Varieties of Strict Liability', *Canadian Journal of Law and Jurisprudence* 8: 189.

—— (2005), 'Strict Liability, Justice, and Proportionality' in A. Simester (ed.), *Appraising Strict Liability* (Oxford: OUP).

Jackson, B. (1991), 'Storkwain: A Case Study in Strict Liability and Self-regulation', *Criminal Law Review* 892.

Levenson, L. (1993), 'Good Faith Defenses: Reshaping Strict Liability Crimes', *Cornell Law Review* 78: 401.

Simester, A. (2005), 'Is Strict Liability Always Wrong?' in A. Simester (ed.), *Appraising Strict Liability* (Oxford: OUP).

Simons, K. (1997), 'Criminal Law: When is Strict Criminal Liability Just?', *Journal of Criminal Law and Criminology* 87: 1075.

Stanton-Ife, J. (2007), 'Strict Liability: Stigma and Regret' *Oxford Journal of Legal Studies* 27: 151.

Sullivan, G.R. (2005), 'Strict Liability for Criminal Offences in England and Wales Following Incorporation into English Law of the European Convention on Human Rights' in A. Simester (ed.), *Appraising Strict Liability* (Oxford: OUP).