

THE PHILOSOPHY BEHIND THE CONCEPT OF STRICT LIABILITY OFFENCES

1.1 INTRODUCTION

This paper undertakes to examine the philosophy underlying the concept of strict liability offences. This will be done, by first examining the position of the law on the offence under common law and, this will be followed by examining the various techniques adopted by courts to impute strict liability into a penal section, where the legislative intention is not clear. Factors, which weigh on the court to imply strict liability in this regard, will also be examined.

2.1 THE OFFENCES OF STRICT LIABILITY UNDER COMMON LAW

Under common law, mens rea was an essential element that determines criminal responsibility. Absence of mens rea under common law was considered sufficient to negative a crime. But today under English law and, under many jurisdictions that based themselves on the English law principles, many types of conducts are being prohibited, irrespective of whether or not moral blame can be attach to them. The argument in favour of this trend, is that:

Public interest require the highest possible standards of care be exercised by those engaged in forms of conduct that touch on the lives and health of people¹

Strictly liability offences are crimes which do not require intention, recklessness or even negligence as to one or more elements in the actus reus.² Sometimes, they are called offences of absolute prohibition. An example of this kind of offence can be seen from the English Medicines Act 1968, s. 58(2) which provides that no person shall sell by retail, specified medicinal products except in accordance with a prescription given by an appropriate medical practitioner.³

This provision was allegedly violated in the case of Pharmaceutical Society of Great Britain v. Storkwain.⁴ In this case D supplied specified drugs on prescription purporting to be signed by a Dr. Ireni. The prescription were forged. There was no finding that D acted dishonestly, improperly or even negligently. So far as appeared, the forgery was sufficient to deceive the pharmacists without any shortcoming on their part. Yet the House of Lords held that the Division Court was right to direct the Magistrate to convict.

The term “absolute liability” is said to be misleading. This is because it creates an impression that an accused whose conduct has caused an actus reus will necessarily be held liable. In Kilbaride v Lade⁵ discussed by Budd and Lynch,⁶ D was acquitted of

permitting a vehicle not displacing a current warrant of fitness to be on the highways. when the warrant was detached during his absence. The court took the view that there was an actus reus but that D had not caused it and he was not liable even if the offence was one of strict liability.

It is common to content that “no mens rea” need be proved in the case of these offence.” This suggest that an offence person can be properly be said to be a strict liability if no mens rea need be proved as to a single element in the actus reus.⁸ While the single element will usually be one of great significance, but it does not follow, that mens rea should not be required as to the remaining constituents of the offence. In construing the Hong Kong Building Ordinance, Lord Scarman said, “Each provision clearly requires a degree of mens rea, but each is silent whether it is required in respect of all the facts which together constitute the offence created”.⁹ The Privy Council held that D was liable for deviating in a material way from the approved plan, even though there was no evidence that he knew that his act constituted a material deviation from the plan liability as to that element was strict.¹⁰

Crimes of strict liability are the creation of statutes. It used to be said that at common law there were only two exceptions requiring mens rea. There were public nuisance and criminal libel.¹¹ For a nuisance, an employer could be held liable for the acts of his employee even though he himself did not know it had taken place. For libel, a newspaper proprietor was liable for libel published by his employees without his authority or consent. Under the English Law, criminal libel has been modified by the Libel Act 1843 which makes it a defence for the defendant to prove that the publication was without his authority, consent or knowledge and did not arise from want of due care or caution on his part.¹²

Another opinion postulated that blasphemous is another example of strict liability at common law.¹³ In Lemon and Gay News Ltd¹⁴ the minority of the House of Lords thought that was what the majority decided in this case although the majority denied that this was so. The contention was that a writing is blasphemous “when it has the tendency to shock and outrage Christians”.¹⁵ In Lemon’s case, the majority decided that it was not necessary to prove that the accused was aware of this tendency. What is required, according to the decision, is that he “intentionally used words which in fact, are likely to shock and outrage”.¹⁶ Smith and Hogan argues that the minority were right to regard this as the imposition of strict liability. This means that the accused may be convicted irrespective of the fact that he is quite unaware that his act has the quality which makes it criminal. The same principle is applicable to a butcher who sold meat, which is unfit for human consumption, even though he is unaware of a dangerous character of the meat.¹⁷ This is the position with regard to the common law offence of outraging public decency.¹⁸

The authority which is said to be the first to impose strict liability is the case of Woodrow.¹⁹ D was found guilty of having in his possession adulterated tobacco. The prosecution argued that the purpose of the statute was for the protection of the revenue. He also drew attention to the absence of “knowingly” or any similar word from the statute. Parkes B, was of the opinion that “the prosecution would very rarely be able to prove knowledge, and that the public inconvenience which will follow if they were required to do so would be greater than the injustice to the individual if they were not. Even the exercise of reasonable care would not have saved D... he was liable even if the adulteration was discoverable only by a nice chemical analysis”.

It seems that under common law, once an offence has been adjudged to be one of strict liability, the offender cannot be indemnified, even if there is an Act which provides that any person who has suffered damages as a result of an act which he was not in default, should be paid full compensation. In Hubbs v Winchester Corporation,²⁰ the plaintiff, a butcher, was suing for compensation for certain unsound meat which had been destroyed under the Public Health Act 1875. The Act provides that, where any person sustained damage in relation to any matter as to which he was not himself in default, full compensation should be paid. In answering the question whether the plaintiff was in default, taking into consideration that he was unaware and could not discover by an examination which he could reasonably be expected to make, that the meat was unsound, the Court of Appeal reversing Channel J, that the plaintiff was in default because he was guilty of the crime of selling unsound meat. Kennedy L. J. said:-

the clear object, the important object (of the statute)... is as far as possible to protect the buyer of that which, in the opinion at all events of most people, is a necessity of human life, from buying and consuming meat that is unwholesome and unfit for the food of man, and I should say that the natural inference from the statute and its object is that the peril to the butcher from innocently selling unsound meat is deemed by the legislature to be much less than the peril to the public which would follow from necessity of proving in each case a mens rea.

It has also been held that where a statute prohibits the selling of intoxicating liquor to a drunken person the offence will be held to have been committed, once the actus reus is proved. Thus in Cundy v La Cosy,²¹ D was convicted of selling intoxicating liquor to a drunken person contrary to 13 of the Licensing Act 1872. It was proved that D did not know the person was drunk and nothing had occurred to show that he was drunk, while some sections of the Act contained the word “knowingly”, s. 13 did not do so. The Division Court held that:

“It was not necessary to consider whether D knew, or had means of knowing, or could with ordinary care have detected, that the person served was drunk. If he served a drink to a person who was in fact drunk, he was guilty”

2.2

RECOGNITION OF OFFENCES OF STRICT LIABILITY

The argument here is that since these offences are the creation of statute, the Courts “in enforcing them, are merely implementing the expressed intention of parliaments.”²² Smith and Hogan contend that this assertion is a mere lip services²³ Smith and Hogan quoted Devlin as arguing that the issue whether or not a particular provision of an Act created a strict liability offence, is judicial, since the Parliament does not bother about mens rea.

The fact is that Parliament has no intention whatever of troubling itself about mens rea. If it had the thing would have been settled long ago. All that Parliament would have to do would be to use express words that left no room for implication. One is driven to the conclusion the reason why Parliament has never done that is that it prefer to leave the point to the Judges and does not want to legislate about it.²⁴

From this, it means that the Courts have fairly free hand to determine whether an Act has created a strict liability. In this regard, the dictum of Wright J. in Sharras v Da Rutzen²⁵

There is a presumption that mens rea, or even 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 which it deals and both must be considered.

The House of Lords seems to have re-affirmed this principle in the case of Sweet v Parsley²⁶ “...wherever 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” and “...it is a universal principle that if a penal provision is reasonably capable of two interpretations, that interpretation which is most favourable to the accused must be adopted. According to Lord Diplock,²⁷ the implication of mens rea.

...stems from the principle that it is contrary to a national and civilized criminal code, such as Parliament must presumed to have intended, to penalized one who has

performed his duty as a citizen to ascertain what acts prohibited by law (ignorant juris non excusat) and had taken all proper care to inform himself of any facts which would make it conduct unlawful.

3.3 THE OFFENCE IN ITS STATUTORY CONTEXT

- (a) It is from the words used in a statute that decides whether the act is a strict liability offence. For instance the use of such words like “uses or caused or permits to be used,” a motor vehicle is contravention of certain regulations, have been upheld to create strict liability offences. In James & Son Ltd. v. Smee²⁸ the court held that using a vehicle in contravention of a regulation (in that it had a defective breaking system) was an offence of strict liability, but D was charged with permitting the use which, said the court, “in our opinion at once imports a state of mind”.

In DPP v Fisher,²⁹ the offence of permitting a vehicle to be used without insurance is committed by a person who is uninsured. Thus in this case, D who says “Here is my car, but you must not drive it until you have insurance”, was taken to permit what he actually forbid, driving without insurance.

This sort of prohibition can be found in section 24(1) of the Road Traffic Regulations (now s. 25(1) which provides that “No person shall cause or permit a motor vehicle or trailer to be used on any highway... unless the conditions hereinafter is satisfied”. In Arabs Transport v Police,³⁰ a company was charged with permitting one of its lorries to be used for the carrying of passengers contrary to Regulations. But they were acquitted because liability was held not to be strict. The Court was of the opinion that the company could only have been found guilty:

If it knew that the carrying of passengers was a likely consequence of its motor vehicles being used on the highway and yet continued to allow them on the road without taking adequate steps to prevent passengers being carried in other words if it shut its eyes to the possibility of an offence being committed.

- (b) Where the statute used the word “knowledge,” it means that Parliament explicitly makes mens rea a constituent element of the offence. In Roper v Taylor's Central Garage (Exeter Ltd)³¹ Devlin J, said that “knowingly” only say expressly what is normally implied. It has been argued that:

The use of the word suggests that Parliament wanted to make sure that the courts would not find some reason for

holding the presumption to be excluded – similarly where Parliament provides the word ‘permits’ would have been sufficient to import mens rea – but the draftsman was taking no chances.³²

It has been argued that where knowledge is a constituent element, that the requirement of “knowingly” is satisfied by proof of what is sometimes called “wistful blindness”.

It is always open to the tribunal of facts, when knowledge on the part of a defendant is required to be proved, to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth, but did not want to have his suspicion confirmed.³³

What the above means is that where the word “knowingly” is used in a section, the prosecution must prove guilty knowledge.³⁴

- (c) Willfully – this word is said to look like a mens rea word and, that it is sometimes treated as such. In Willmoth v Attack,³⁵ it was held that D does not “willfully” obstruct a Police Officer simply because he does a deliberate act which in fact obstruct the officer, an intention to obstruct must be proved. However, the courts may still impose liability notwithstanding the use of the word. In such cases, the argument in support of such imposition of liability, is that willful apply only to the act but not some circumstances or willfully fishing in private water, although he believed that was public right to fish there,³⁶ of willfully killing house pigeon when he shot a bird believing it was a wild pigeon,³⁷ and of willfully destroying an oak tree in contravention of a tree preservation order when he was unaware of the order and believed that permission had been given for the tree to be felled.³⁸

However, there appears to be conflicting decision on whether the word “willfully” creates a strict liability offence or whether it requires the prove by the prosecution, that the accused had knowledge of all the essential elements of the offence. In the English case Young husband v Luftiq,³⁹ the word “willfully” in a statute was said to import mens rea.⁴⁰ Likewise, in the Nigerian case of Clergy v C.O.P.,⁴¹ the word “willfully” was said to govern the whole definition of the offence and thus to require knowledge of all the facts constituting it.⁴² But it seems that the court took a contrary view in the case of Re D.P.P (Western Nigeria) v Associated Newspapers of Nigeria,⁴³ wherein the accused persons were charged of willfully publishing any false or perverted report of any debate or proceeding of the House... “The publication was intentional, although the prosecution

did not lead evidence to show that they knew that the publication was false". The court based the conviction of the accused persons on the grounds that it was sufficient that they had made no attempt to ascertain whether the report was true or false. According to Okonkwo and Naish,⁴⁴ the decision was clearly based on the negligence of the accused, irrespective of their actual lack of knowledge. Where negligent is a constituent of a crime, liability can be attached irrespective of the accused's state of mind. To that extent, it simply meant that the court took a contrary view as to whether the word "willfully" under s.224(1) and schedule Part A, para. 5 of the then Western Region Legislative Houses (Powers and Privileges) Law, did not require actual proof of mens rea by the prosecution.

In the case of Sheppard,⁴⁵ Lord Diplock, was of the view that if the word is given such a narrow meaning it is otiose, because "in the absence of the word and even in offences of strict liability, the law requires a voluntary i.e. a willful act". In Sheppard, it was held that "willfully" in s.1 of the Children and Young Persons Act 1993 was not to be limited to requiring an intention to do one of the physical acts described in the section (assault, ill-treat) but unnecessary suffering or injury to health).

- (d) Effect of usage of mens rea words in some sections but not others. The effect of a mens rea word used in one section of a statute but not in another, has been held to mean that mens rea is not a constituent of the other section.

"It is also firmly established that the fact that other sections of the Act expressly require mens rea, for example because they contain the word "knowingly", is not itself sufficient to justify a decision that a section which is silent as to mens rea creates an absolute offence"⁴⁶

In Sherras v De Rutzen,⁴⁷ "D was charged with supplying liquor to a constable on duty, contrary to s.16(2) of the Licensing Act 1872. The Policeman as not wearing his armlet which, it was admitted, was an indication that he was off duty. D, who was in the habit-quite lawfully – of serving constables in uniform but without their armlets, made an enquiry and took it for granted that the Policemen were off duty. S.16(1) harbour or suffer to remain on his premises any constable on duty, s.16(1) did not include the word "knowingly". Yet D's conviction was quashed Day J, said that the only inference to be drawn was that under s.16(1) the prosecution had to prove knowledge, while under s.16(2) the defendant had to prove he had no knowledge. Wright J. pointed out that:

If quality knowledge is not necessary, no care on the part of the Publican could save him from conviction. 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.⁴⁸

4.4 THE OFFENCE IN ITS SOCIAL CONTEXT

(a) Here crimes have been categorized into “real” or “quasi crime.” It has been stated that Parliament makes no such distinction.⁴⁹ This is because an act either is or is not declared to be a crime by Parliament.⁵⁰ The decision whether an offence is a “real” or “quasi-crime” is usually made by courts. In doing this, it seems that the court is influenced by the way the public perceive a particular act. Thus, an offence which carries little or no stigma and does not involve the disgrace of criminality is only a quasi-crime. The philosophy behind the imposition of strict liability on such quasi-crime has been stated to be because “it does not offend the ordinary man’s sense of justice that moral guilt is not of the essence of the offence”.⁵¹ While an act is prohibited because it is assumed that the result would be harmful, and penalty should be attached in such a situation, where the causing of the result is intentional likewise, the motorist who deliberately leaves his car in a parking space for longer than is permitted by law – it is an anti-social act, likely to cause inconvenience to others. It has been stated, that few people, even “right-thinking” people would consider “such an act so iniquitous, even when done internationally, that the actor ought to be locked up or even shunned and avoided.”⁵² But the offence of strict liability do not distinguish between degrees of fault and no fault at all, the conviction fixed the offender with whatever stigma might attach to an intentional offender.⁵³

(b) The courts may constitute a statute as imposing strict liability, where the object of the section is to protect a particular trade, profession or special activity.⁵⁴

Lord Diplock explain it as follows:-

where penal provisions are of general application to the conduct of ordinary citizen in the course of their everyday life, the presumption is that standard of care required of them in informing themselves of facts which would make their conduct unlawful is that of the familiar common law duty of care. But where the subject-matter of a statute is the regulation of a particular activity involving potential danger to public health, safety or morals, in which citizens have a choice whether they participate or not the court may feel driven to infer an intention of Parliament to impose, by penal

sanctions, a higher duty of care on those who choose to participate and to place on them an obligation to take whatever measures may be necessary to prevent the prohibited act, without regard to those considerations of cost or business practicability which play a part in the determination of what would be required of them in order to fulfill the ordinary common law duty of care.⁵⁵

(c) The courts consider the social danger which will result from breach of the particular prohibition. In doing that, the courts will take into consideration the problems confronting the country. The courts will apply the principle of the greater the degree of social danger, the more likely is the offence to be interpreted as one of social liability offences in which the courts would be ready to evoke the doctrine of strict liability,⁵⁶ include inflation, drugs, road accidents and pollution.⁵⁷ Because of the evils which the society will suffer from such offence, judges invoked strict liability as a protection for society.⁵⁸

The degree of the social danger is not only the yardstick used by courts to impute into a particular section, the offence of strict liability. The courts at times adopts a utilitarian approach, in order to imply into a section, strict liability offence. In this regard, the general well-being of the public is taken into account for the courts to hold that the policy underlying a particular statutory provision is intended to make it, a strict liability offence. This was pointed out in the case of Lim Chin Aik v R⁵⁹

Where the subject matter of the statute is the regulation for the public welfare of a particular activity – statutes regulating the sale of food and drink are to be found among the earliest examples – it can be and frequently has been inferred that the legislature intended that such activities should be carried out under condition of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with... Thus sellers of meat may be responsible for seeing that the meat is fit for human consumption and it is no answer for them to say that they were not aware that it was polluted.

But it seems that under Penal statutes in Nigeria, the offence, that can be rightly termed as “public welfare offences”, requires the proof of guilty knowledge for a criminal responsibility to be attached. For instance, s.184 of the Penal Code which deals with

adulteration of food or drink without notice to the purchaser requires proof that the accused knew that the food or drink was intended for sale as food or drink “without the requisite notice”. The mens rea word used in that section is “knowingly”. In contrast, s.185 which prohibits the sell of article of food or drink which is not of nature, substance and quality demanded by the purchaser, does not need the proof of any guilty knowledge. This is because such mens rea word like “knowingly” or having “reason to believe”, e.t.c. are not used in the section. But s.186 seems to require mens rea before a person can be convicted for the sale of adulterated food or drinks with an admixture made fraudulently to increase the bulk, weight or measure of such article, etc. in that any such article of food or drink should have been “intentionally” abstracted so as to affect its quality, substance or nature. Similarly s.187 dealing with the sale of noxious food or drink has mens rea, as an ingredient. This is gathered from the section which requires that the person “knew” or “have reason to believe” that the same is noxious or unfit for food or drink.

The above observations perhaps, prompted Okonkwo and Naish to contend that there appears to be no uniformity in respect of the proposition that strict liability offences are intended when the prohibited offences are in the interest of public welfare.

But, at least in Nigeria... it is plain that there is not always consistency of policy about public welfare offences for instance, in the chapter in the code on Offences against Public Health, the offences of selling or intending to sell things unfit for food or drink, and dealing in disease, meat, require proof of guilty knowledge.⁶⁰

5.5 CONCLUSION

Strict liability offence does not take into account the state of mind often referred to as mens rea. For liability to ensue, it is enough if the actus reus is proved. The offence is not inconsistent with the legal principle, to wit: “no liability without fault”. This contention is based on the fact that the doing of the act considered by the law as imposing a strict liability, constitute the fault elements in the offence. But unlike other offences where the prosecution is burdened with the duty of proving guilty mind, such a requirement is discharged in respect of strict liability offences, by the proof of actus reus, only.

It has been a controversial issue whether the proof of mens rea, is still a requirement having regard to section 24 of the Criminal Code. This section is split into two. The first limb reads:

Subject to the express provisions of this code relating the neglect acts and omissions, a person is not criminally responsible for an act or omission, which occurs

independently of the exercise of his will, or for an event which occurs by accident.

Commenting on a similar provision of the Queensland Code, Sir Samuel Griffith, said,

...under the criminal law of Queensland as defined in the Criminal Code, it is never necessary to have recourse to the old doctrine of mens rea, the exact meaning of which has been the subject of much discussion. The test now to be applied is whether the prohibited act was or was not done accidentally or independently of the exercise of the will of the accused person (underlining supplied).⁶¹

Okonkwo and Naish⁶² are of the opinion that it is a cardinal principle that the doctrine of mens rea extends throughout English criminal law, both to common law and statutory crimes. Commenting on the purport of the first limb of section 24, the learned authors argued that the section clearly provides a presumption against strict liability.⁶³

It could be that the assumption of the legislatures is that those classes of offences referred to as strict liability offences, cannot be committed against one's will or accidentally. But if they could be so committed, the effect would be that strict liability offence may be said to be an infringement of this limb of s.24 of the criminal code, which literally, prohibits meting out punishment to a person, whose act in question, is unintended or accidental. Here, mens rea is of significance. This is because an act done "independently of the exercise of his will", refers to situations where the doer of the act suffers from an imperfect mental control which could lead to inability to control one's impulses. Thus, an act or omission of a person whose mental control is defective, cannot be said to be intended. "Will" being a synonym of "intention", it is submitted that the inquiry by the court as to whether or not the act or omission in issue, occurred independently of the exercise of his will, or occurred by accident, is akin to the function of mens rea. It is therefore, hardly to justify the contention that the first limb of s.24 of the criminal code prohibits recourse to the doctrine of mens rea.

The second limb of section 24 of the criminal code reads:

Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or in part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

This limb of s.24 of the Criminal Code appears to be consistent with strict liability offences. We had seen that whether a particular section of the law creates a strict liability offence, depends on the words used in the said section. The criteria to determine

this, as pointed out, is whether any mens rea words, such as "intention, "knowledge "willful", etc appeared in the section. Where such words are not used, the result would be that the section in question creates a strict liability offence, and no inquiry as to whether the act in question or even its results, was intended or not, is allowed."

Finally, it is recommended that in order to obviate the difficulties of ascertaining whether or not a particular section of a code creates a strict liability offence, the section creating such offences should be headed thus: "offences created under this section shall be strict".

In conclusion, it is important to state that under the Penal Code, it is not contentions whether or not mens rea still remains a constituent of offences proscribed therein.

END NOTES AND REFERENCES

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Aguda and Okagbue: Principle of Criminal Liability in Nigeria (Heinemann Educational Books Nigeria) (2nd Edition), p. 115.

Smith and Hogan: Criminal Law (ELBS with Butterworths, 1991) (7th ed). p.97.

Ibid

(1986) 2 ALL E.R. 35

(1962) nzlr 590

(1988) Crim L.R. 74

Smith and Hogan, op.cit, p.99

Ibid

Ibid, p. 100

Ibid

Ibid

Ibid. Contrast this with the case of Adjei v R (1951) 13 W.A.C.A. 2153 (Gold Coast), where the chairman of a newspaper was held vicariously liable for a seditious article: he had given no express instructions to the editor against publication of the newspaper: C. O. Okonkwo: Okonkwo and Naish on Criminal Law in Nigeria. (London: Sweet and Maxwell, 1980) p. 72.

Smith and Hegan, op.cit, p.100

(1979) A. C. 617; (1979) 1 ALL E.R. 878

Smith and Hogan, Ibid

Ibid (1979) Crim L. R. at 312

Gibson (1991) 1 ALL E. R. 431

(1846) 15 MP W 404

(1990) 2KB 471, C.A.

(1910) 23KB 471, C.A.

(1884) 13 QBD 207

Smith and Hogan, op.cit p.103

Ibid

See Devlin, Samples of Law Making, at 71 quoted by Smith and Hogan, op.cit, p.103

(1895) 1 QBO 918 at 921

(1970) AC 132

Smith and Hogan, op.cit, 104

(1955) 1 QB 78; (1954) 3 ALL E R 272

(1991) Crim. L. R. 787

(1952) 20 N.L.R. 65

(1951) 2 TLR 284 at 288

Smith and Hogan, op.cit. p. 105

Ibid

Dosumi v Controller of Customs (1956) L.L.R. 41

(1979) GB 498

Hudson v MacRae (1863) 4 B & 5 585 D - C

Cotterill v Penn (1936) 1 K B 53

Maidstone Borough Council v Mortimer (1980) 33 All E.R. 522, D.C

(194) 2 KB 354

But the court took a contrary view of “willfully” in Horton v Gwynne (1921) 2 K B 661; Cotterill v Penn (1936) 1 K B 533; see C. O. Okonkwo op.cit p. 72

(1949) 12 W.A.C.A 379

C. O. Okonkwo, op.cit pp. 72-73

(1959) W.R.N.L.R

C. O. Okonkwo op.cit. p. 73

(1981) A. C. 394, HL

Smith and Hogan, op.cit. p. 106; see also R v Efana 1927) 8 N.L.R. 81, Webber J. in interpreting a particular section in the customs ordinance as imposing strict liability, said that it could be contrasted with other sections in the ordinance which expressly allowed a defence of absence of mens rea.

(1895) 1 Q B 916

Ibid

Smith and Hogan, op.cit. p. 187

Ibid

Ibid

Ibid

J. C. Smith, ‘Responsibility in Criminal Law’, in Barbera Wotton, Essays in her Honour (edited Bean and Chynes, 1986) 141.

Smith and Hogan, Ibid

Sweet v Parsley (1970) A. C. 132 at 1633

Smith and Hogan, Ibid

Ibid

Ibid

(1963) A. C. 160 at 174

C. O. Okonkwo op.cit. p. 78

Widjee Shire Co. v Bonney (1907) 4 C.L.R. 977 at 981 – 982, see C. O. Okonkwo.

Ibid, footnote 51, on p. 79.

C. O. Okonkwo, Ibid, p. 80

Ibid p 84

Okonkwo and Naish are of the view that it would be contrary to the position in English Law to argue that the second limb of s.24 of the Criminal Code creates a presumption that mens rea is required unless the statute creating the offence says so. Their argument is that the ignorance of the accused would be reasonable if he was a seller of a newspaper as opposed to an editor, who cannot reasonably be expected to read a copy of each newspaper before selling them. This, in essence, is the hallmark of strict liability, since the policy underlying such offences is aimed at public good, while the individual is to bear his fortitude in the hope that public interest is paramount. See C. O. Okonkwo, op.cit p.8.