

LLAW 1222 Exam Notes

Strict & Absolute Liability

Mens Rea + Actus Reus – Defence = MR Offence

He Kaw Teh v The Queen

- The first presumption is that mens rea is rebuttable.
- Through construction it needs to be assessed whether the offence contains the mens rea element
- “wilful blindness” is treated as knowledge.

Pereira v Director of Public Prosecutions

- Actual knowledge can be inferred from a combination of suspicious circumstances and a failure to make inquiries must be the only rational inference available and the tribunal of fact must still consider knowledge as a matter to be proved beyond reasonable doubt.

Kural v R

- If the person believes that there is a real or significant chance that they are committing the offence, this would equate to a form of recklessness.

Actus Reus – Defence = Strict Liability

If mens rea can be rebutted the liability is to be assessed whether there is an honest and reasonable but mistaken belief of a set of facts which would render the omission innocent.

The burden of proof lies on the defendant to show that there was a reasonable mistake of the facts that would make the conduct innocent.

Proudman v Dayman

The defendant was not able to demonstrate that she believed that the driver was licenced, therefore she still committed the act. (If the defendant had taken steps to ensure the driver was licenced and in fact, unbeknown the driver was not actually licenced the decision would have likely found her act innocent.”

R v Clarke

Whether the act would have been innocent on the basis of reasonable mistake of the fact. To be assessed in the construction and the aim of the legislation. When that legislation does not allow for the reasonable belief of mistake of the fact, the defence would not be entertained, In the case of possession of child pornography, Chief Justice Doyle stated that “[t]he evil of child pornography is not confined to the exploitation of very young children. Punishing persons like Ms Clarke will demonstrate the need for those who deal with pornographic material to take great care that persons under the age of 16 years are not involved”.

Actus Reus Only = Absolute Liability

Hickling v Laneyrie

As this goes against the general presumption that all prohibited conduct should be accompanied by a guilty mind, the legislative intention must be clear and unambiguous before the courts will characterise an offence as one of absolute liability.

Statutory Construction (Stage 1)

1. Presumption of Mens Rea (**He Kaw Teh**).
2. Presumption can be displaced
3. To decide whether presumption of mens rea displaced, consider:
 - a. The words of the statute
 - i. Words of the section
 - ii. The words of the surrounding sections
 - b. The purpose of the subject matter of the section
 - i. True crime or regulatory offence
 - ii. Will SL or AL encourage vigilance?
 - c. Consequences for the community
 - i. Will SL or AL promote administrative efficiency?
 - ii. Will SL or AL advance the community standards (health etc)?
 - iii. Will SL or AL discredit the justice system?
 - d. Consequences for the accused
 - i. Penalty
 - ii. Social Stigma
 - iii. Class of 'luckless victims' created

Statutory Construction (Stage 2)

1. Presumption that Parliament intends the defences to apply (**Proudman v Dayman; He Kaw Teh**).
2. But the presumption can be displaced
3. To decide whether the presumption that defences apply can be displaced,
 - a. The words of the statute
 - i. Words of the section
 - ii. The words of the surrounding sections
 - b. The purpose of the subject matter of the section
 - i. True crime or regulatory offence
 - ii. Will SL or AL encourage vigilance?
 - c. Consequences for the community
 - i. Will SL or AL promote administrative efficiency?
 - ii. Will SL or AL advance the community standards (health etc)?
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