

Table of Contents

STRICT AND ABSOLUTE LIABILITY	- 2 -
PRESUMPTION 1 – FAULT IS AN ELEMENT. (HE KAW TEH) CAN FAULT BE DISPLACED?	- 2 -
STAGE 2 PRESUMPTION – COMMON LAW DEFENCES APPLY	- 3 -
STAGE 3: DOES DEFENCE OF HONEST AND REASONABLE MISTAKE OF FACT APPLY TO SL OFFENCE?	- 4 -
STAGE 4: DOES DEFENCE OF ACT OF A STRANGER APPLY?	ERROR! BOOKMARK NOT DEFINED.
ABSOLUTE LIABILITY	ERROR! BOOKMARK NOT DEFINED.
THEFT	ERROR! BOOKMARK NOT DEFINED.
CONDUCT	ERROR! BOOKMARK NOT DEFINED.
DEALS WITH	ERROR! BOOKMARK NOT DEFINED.
PROPERTY	ERROR! BOOKMARK NOT DEFINED.
CONSENT OF OWNER	ERROR! BOOKMARK NOT DEFINED.
DISHONESTLY	ERROR! BOOKMARK NOT DEFINED.
FAULT	ERROR! BOOKMARK NOT DEFINED.
DISHONEST	ERROR! BOOKMARK NOT DEFINED.
SERIOUS ENCROACHMENT	ERROR! BOOKMARK NOT DEFINED.
SENTENCING	ERROR! BOOKMARK NOT DEFINED.
ATTEMPTS	ERROR! BOOKMARK NOT DEFINED.
FAULT	ERROR! BOOKMARK NOT DEFINED.
CONDUCT	ERROR! BOOKMARK NOT DEFINED.
PROXIMITY	ERROR! BOOKMARK NOT DEFINED.
LAST ACT TEST	ERROR! BOOKMARK NOT DEFINED.
UNEQUIVOCALITY TEST	ERROR! BOOKMARK NOT DEFINED.
SUBSTANTIAL STEPS TEST	ERROR! BOOKMARK NOT DEFINED.
WITHDRAWAL/ABANDONMENT/DESISTANCE	ERROR! BOOKMARK NOT DEFINED.
IMPOSSIBILITY	ERROR! BOOKMARK NOT DEFINED.
COMPLICITY	ERROR! BOOKMARK NOT DEFINED.
1. ACTING IN CONCERT	ERROR! BOOKMARK NOT DEFINED.
CONDUCT	ERROR! BOOKMARK NOT DEFINED.
FAULT	ERROR! BOOKMARK NOT DEFINED.
WITHDRAWAL	ERROR! BOOKMARK NOT DEFINED.
2. DOCTRINE OF COMMON PURPOSE	ERROR! BOOKMARK NOT DEFINED.
CONDUCT	ERROR! BOOKMARK NOT DEFINED.
FAULT	ERROR! BOOKMARK NOT DEFINED.
3. ACCESSORY AACP	ERROR! BOOKMARK NOT DEFINED.
CONDUCT	ERROR! BOOKMARK NOT DEFINED.
FAULT	ERROR! BOOKMARK NOT DEFINED.
DECISION TO PROSECUTE	ERROR! BOOKMARK NOT DEFINED.
LAYING OF A CHARGE	ERROR! BOOKMARK NOT DEFINED.
PLEA	ERROR! BOOKMARK NOT DEFINED.
SENTENCING FACTORS	ERROR! BOOKMARK NOT DEFINED.
SENTENCING OUTCOMES	ERROR! BOOKMARK NOT DEFINED.

STRICT AND ABSOLUTE LIABILITY

CHARGE

- Statutory interpretation every word has a meaning– *Thanos; Project Bluesky*
- Must construct offence as parliament intended - MR SL AL?

PRESUMPTION 1 – Fault is an element. (He Kaw Teh) Can fault be displaced?

- Not weighed equally but put in balance to see if presumption displaced to see if parliament can use defences without fault

Words

- Actual terms in section, did it intentionally include/exclude fault?
- Words in other part but not this one, intention of Parliament to exclude it

Subject Matter

- true crime (murder, rape) or more regulatory (speeding fine) or administrative
- Bringing in heroin more true than regulatory could argue that they are regulating what comes in and less of criminal component, more nature of true crime

Consequences for community

- does it advance community standards?
- Yes easier to prosecute, cheaper
- Murder we want to argue there is MR, as large sentence
- penalty for public purpose or sanction person involved
- setting standards, proportionate sentences

Consequences for accused

- severe penalty, social stigma
- Luckless victims – crime was something that can be checked on such as registration of vehicle.

- **MR applies – *Kural v R* – MR can include in respect to an act, circumstance or consequence**
- conclude whether MR or not, if no MR move onto defences

STAGE 2 PRESUMPTION – COMMON LAW DEFENCES APPLY

(***Proudman*** – ignorance to facts insufficient must be actual mistake of a fact held)

Words

- does statute have words of defence? specific or otherwise

Subject

- Regulatory (road traffic), administration (details in tax forms)

Vandenberg v Police

- exceed speed offence, AL as intention of Parliament was regulatory to enhance public road safety therefore defences displaced.

Consequences for community

- does it advance community standards?
- Would it be 'just' not to be able to defend against the offence?

McFarlane v Police

- Unreg/uninsured vehicle: discusses statutory interpretation as literal where interests of individual can be subordinate to public therefore MR can be displaced.

Jasiniski v Police

- drink driving offences are important social regulatory legislation and a matter of public knowledge and concern, should be treated as AL.

Consequences for accused

- Right to defend, punishment outweighs intention of legislation and lack of defence
- **OR:** Penalty imposed not severe therefore should be displaced (***Vandenberg v Police***; cf ***He Kaw Teh***)
- Luckless victims – crime was something they can check up on
- ***CTM v the Queen*** – HRMF effect on accused – related to underage sex offence victim – alleged defence of HRMF of victim age. Not upheld as he

did not raise it as a defence during trial but if he had it would have applied as a contestable defence.

- ***R v Clarke*** – child pornography being offence of AL no defence available due to intention of parliament being one of protection of minors taking precedence over defendant rights. This is to ensure people take active steps to avoid such conduct.

Stage 3: Does defence of Honest and Reasonable Mistake of Fact Apply to SL offence?

- Defence to raise on a balance of probabilities
- Prosecution to disprove beyond reasonable doubt

Elements of HRMF defence:

. Affirmative mistake

ignorance will not suffice: ***Proudman v Dayman***

a continuing or general belief will sometimes suffice: ***Mayer v Marchant***

. Mistake of **fact, not law**

. Honest mistake

. Reasonable mistake

Mistake if true situation would have rendered the accused **innocent** of any offence

Proudman v Dayman - mistake

- Allowed unlicensed driver to drive car but did not know driver unlicensed.
- She did not inquire or turn her mind to it
- NOT a **mistake** of fact as not sufficient to ignorance facts. Accused must have believed in the mistaken facts

Ostrowski v Palmer - fact

- Found to be fishing in prohibited area after had asked for regulations on where he could fish. Not given a FACT.
- Mistake of fact would be if he were fishing in another position, mistake was not where ship was it was whether or not the law had impact on that area, Court held still criminally liable
- HC says that the fact that he was misled is unfortunate but it was a mistake of law and ignorance of the law is no defence.

