

Issues in Criminal Law Exam Notes

Strict & Absolute Liability

Summary.

Offence of Mens Rea:

- Actus Rea + Mens Rea - Defences = Offence of Mens Rea.

Strict Liability Offence:

- Actus Rea - Defence of honest and reasonable mistake of fact = SL Offence.

Absolute Liability Offence:

- Actus Rea = AL Offence.

Road Map.

1. Charge/Penalty.
2. Statutory Construction: MR offence or SL/AL offence?
 - a. Presumptions of mens rea: *He Kaw Teh*.
 - i. "When a statute creates and defines an offence only by reference to its external elements, the mental element is usually implied in the definition. ... The mental element is mens rea or **guilty mind**."
 - ii. Depending upon the offence, and sometimes upon the element of the offence in question, the relevant state of mind might be intent, knowledge, foresight of a given consequence and so on.
 - iii. Unless the offence is one of absolute liability, if the issue is raised on the facts, the prosecution must establish the absence of an honest and reasonable belief.
 - b. Presumptions can be displaced. To decide, consider:
 - i. The words of the statute.
 1. Words of the section.
 2. Words surrounding the section.
 - a. It is also noticeable when one looks through the various provisions that from time to time Parliament has identified a relevant state of mind that must be established – *Pfiefer*.
 - b. In above because one section referred specifically to intent it possibly meant that leaving it from the others must have been purposeful.
 - ii. The purpose and subject matter of the section.
 1. True crime or regulatory offence?
 2. Will SL/AL encourage vigilance?
 - a. In *Pfiefer* the purpose of the legislation is to compel people to take care that, without intending it, they should not give offence. Only those whose belief is unreasonable will be punished for conduct that they did not regard as offensive.
 - iii. Consequences for the community.
 1. Will SL/AL promote administrative efficiency?
 2. Will SL/AL advance community standards?
 - a. Is it an acceptable way to regulate social conduct?
 - b. They set the minimum standard from social good.
 3. Will SL/AL discredit the justice system?
 - iv. Consequences for the accused.
 1. Penalty.
 - a. Severity of the penalty proportionate to the offence.
 2. Social stigma.
 - a. They do not intrude too much into our traditional rights and freedoms.
 3. Class of 'luckless victim' created?
 - a. Need to consider how imposing absolute liability will assist the intent of the legislation and not just catch a luckless victim.
 - b. *Pfiefer* was to promote deterrence for the types of crimes regardless of whether you meant it or not. Offensive language/behaviour should be deterred.
3. Statutory Construction: AL offence or SL offence? (Defences or no defences?)
 - a. Presumption that the parliament intends the defences to apply.
 - i. *Proudman v Dayman*.
 - ii. *He Kaw Teh*.
 - b. This presumption can be displaced. To consider, use above.
4. Application of law to facts: If a **SL offence**, does the honest and reasonable mistake of fact apply?
 - a. Elements of HRMF:
 - i. Affirmative mistake.
 1. Ignorance will not suffice - *Proudman v Dayman*.
 2. A continuing or general belief will sometimes suffice - *Mayer v Marchant*.
 - ii. Only applies to mistake of fact - *Ostrowski v Palmer*.

- iii. Honest and Reasonable mistake that, if true, would have rendered the accused innocent of any offences - *Proudman v Dayman*.
 - 1. In above thought driver was licenced so, if true, would not have been illegal.
- 5. Application of law to facts: If a SL offence, does the defence of act of a stranger apply?
 - a. Where the prohibited act or consequence was the **result of a third party** over whom the accused **had no control** and **against which the accused could not reasonably have been expected to guard**, this will afford a defence to an offence of strict liability - *Mayer v Marchant*.
 - b. Defence based solely on accused taking reasonable care.
 - i. Did the prohibited conduct take place due to the act of a third party?
 - ii. Could the accused have reasonable have guarded against the conduct?
- 6. DPP Policy.
- 7. Sentencing/Advice.

