

STRICT LIABILITY

Offences of strict liability are those crimes which do not require *mens rea* with regard to at least one or more elements of the *actus reus*. The defendant need not have intended or known about that circumstance or consequence. Liability is said to be strict with regard to that element. For a good example compare the following contrasting cases:

<i>R v Prince</i> (1875) LR 2 CCR 154	<i>R v Hibbert</i> (1869) LR 1 CCR 184
<p>The defendant ran off with an under-age girl. He was charged with an offence of taking a girl under the age of 16 out of the possession of her parents contrary to s55 of the Offences Against the Person Act 1861 (now s20 of the Sexual Offences Act 1956).</p> <p>The defendant knew that the girl was in the custody of her father but he believed on reasonable grounds that the girl was aged 18.</p> <p>It was held that knowledge that the girl was under the age of 16 was not required in order to establish the offence. It was sufficient to show that the defendant intended to take the girl out of the possession of her father.</p>	<p>The defendant met a girl under sixteen years of age in a street, and induced her to go with him to a place at some distance, where he seduced her, and detained her for some hours. He then took her back to where he met her and she returned home to her father. The defendant was charged under s55 OAPA 1861.</p> <p>It was held that in the absence of any evidence that the defendant knew, or had reason for knowing, or that he believed, that the girl was under the care of her father at the time, that a conviction under s55 OAPA 1861 could not be sustained.</p>

These two cases be analysed as follows:

	<i>Actus reus</i> →	Taking a girl	Under 16	Out of possession of parents	
	<i>Mens rea</i> needed? →	Yes	No	Yes	Guilty?
R v Prince	D's knowledge →	✓	✗	✓	Yes
R v Hibbert	D's knowledge →	✓	✓	✗	No

Note: offences of absolute liability are rare cases where no *mens rea* is required for liability. For example, see: *R v Larsonneur* (1933) and *Winzar v Chief Constable of Kent* (1983). These offences are also known as “State of Affairs” cases.

In *Gammon (Hong Kong) Ltd v Attorney-General for Hong Kong* [1984] 2 All ER 503, Lord Scarman laid down the criteria upon which a court should decide whether or not it is appropriate to impose strict liability:

- (1) there is a presumption of law that *mens rea* is required before a person can be held guilty of a criminal offence;
- (2) the presumption is particularly strong where the offence is “truly criminal” in character;
- (3) the presumption applies to statutory offences, and can be displaced only if this is clearly or by necessary implication the effect of the statute;
- (4) the only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern;
- (5) even where a statute is concerned with such an issue, the presumption of *mens rea* stands unless it can be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.