

, 2015

UNIVERSITY OF BELGRADE

FACULTY OF LAW

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**SUBJECTIVE ELEMENT OF A CRIMINAL
OFFENCE IN ENGLISH LAW**

Doctoral Dissertation

Belgrade, 2015

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: 343(410.1)

TITLE: SUBJECTIVE ELEMENT OF A CRIMINAL OFFENCE IN ENGLISH LAW

Summary:

The subject matter of a doctoral thesis titled „Subjective Element of a Criminal Offence in English Law” is the analysis of guilt and guilt-related legal institutes in English (Anglo-Saxon) criminal law. The main purpose of this research is to establish the manner in which one of most important criminal and legal concepts of the Anglo-Saxon law was formed and to which extent the Anglo-Saxon body of law differs from prevailing concepts in the countries influenced by the Greco – Roman – Germanic legal tradition.

Criminal Law in England, as well as the rules from other branches of law, evolved in the first place spontaneously from a long lasting process of judicial decision making, and is traditionally more inclined toward procedural rather than toward substantive law rules and institutes. The manner of conducting a criminal proceedings with significant presence of layman’s terms, and general orientation towards practical issues in an attempt to justly resolve a dispute without ample referral to complex theoretical constructs, stand behind the fact that the Anglo-Saxon system of criminal jurisprudence is at a lower level of dogmatic development than the European-Continental system of criminal jurisprudence.

The Anglo-Saxon concept of guilt is conceptually simplified and fits into the framework of traditional subjective and psychological learning. Despite the fact that guilt is considered a constitutive element of a general term of criminal offence, its structure is simplified (it is reduced only to the forms and degrees of guilt) and unlike the European-Continental understanding, it does not include the normative content (awareness of unlawfulness of the act).

The nature of the subject matter and target of the research were decisive in determining a methodological approach. The analysis of a subjective side of criminal offence in common law, through referential literature and corresponding legal sources, has dictated the necessity to use the methods of social sciences and primarily those of legal jurisprudence: dogmatic, normative, comparative, sociological and, to a certain extent, a historical legal method.

Research has revealed that despite the fact that Anglo-Saxon and European-Continental systems of criminal jurisprudence evidently differ on the matters of guilt that clearly reflects their different origins, the basics of practical preference in one and theoretical in the other legal system (which affected the forms of reasoning of law practitioners), then different and particular terminology, in effect, once some concrete solutions giving rise to the contrast are excluded, it can be concluded that with respect to the postulates and the basic principles, and in terms of a huge number of final solutions there is actually a great closeness and high degree of similarity between the *common law* and *civil law* systems.

Key words: common law – criminal offence – guilt – intent – recklessness – negligence – strict liability – defences.

Field of study: LAW

Specific field of study: CRIMINAL LAW

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(*Human Rights Act* [1998])

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[*Draft Criminal Code*])

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— . , . *actus reus* : (.) . , , *mens rea* .

, , , , , . *Common law felonies misdemeanours Criminal Law Act- 1967.* :

(*intent*), (*recklessness*), (*knowledge*) (*negligence*).

mind.

guilty

nulla poena sine culpa

() (*strict liability*),

(

actus reus–),

19. .

(*public*

welfare offences)

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(*vicarious liability*).

I.

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19.

(common law)³

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common law

16. 17.),

common law

² P. R. Glazebrook /2001/: How Old Did You Think She Was?, *The Cambridge Law Journal*, 1, . 30.

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civil law, .

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common law).

(). *Common law*

common law

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common law (.
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common law .

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1. *Common law*

common law,⁹ ,¹⁰

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⁹ *common law*
common law

(*case law*),

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() „14
(,) , . 15

, *common law*

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(*murder, manslaughter*)¹⁸

common law

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, *obiter dicta,*

(*to distinguish a precedent*),

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. 53.

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(*felonies*). 14.

misdemeanours.

. . 14.

common law

common law

. J. Dressler /2001/: . 28.

17

. G. P. Fletcher /2000/: *Rethinking Criminal Law*, Oxford (etc.), . 553.

18

. *Murder*

;

. *Manslaughter,*

common law

: 1) (provocation), 2)
 (diminished responsibility) 3) (suicide pact).
 manslaughter, manslaughter
 mens rea (murder)
 N. Haralambous /2010/: *Criminal Law. Directions*, Oxford, . 86-135.
 /2008/: , . 48-56.), manslaughter
 () (manslaughter)
 () ; . . /2014/:
 (corporate manslaughter)
 , 4-6, . 275.).

¹⁹ D. Ormerod, K. Laird /2015/: *Smith and Hogan's Criminal Law*, Oxford, . 17.

(murder)
 (manslaughter)
 common law
 / R. Card /2010/: . 15.
²⁰ (Coke), (Hale), (Hawkins), (Blackstone), (East)
 . A. Ashworth, J. Horder /2013/: *Principles of Criminal Law*, Oxford, . 8-9.
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. R. C. van Caenegem /1988/: . 86.

²² ” , , “ . . . /2008/: . 181.

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common law

common law

() *common*

23

/1991/:

2, . 59-67.

24

” “ /2015/:

— , : . 5.
25 , (. . .), , . 54.

. J. Dressler /2001/: . 28-29.

common law

A. Ashworth /2009/: . 48.

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Jones et al. [2006]

(*statute law*)

. D. Ormerod /2011/: *Smith and Hogan's Criminal Law*, Oxford, . 17.

common law

. R. M. Jackson /1937/: *Common Law Misdemeanors*, *The Cambridge Law Journal*, 2, . 193-201.

law

27

common law

common law

28

common law

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2.

(statute law)

(statute),

27 . G. McBain /2009/: Abolishing Some Obsolete Common Law Crimes, *King's Law Journal*, 1, . 89-114.

28

(defences)

common law

2008.

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law

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common

3.

(, .)

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4.

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1998.

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common law

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common law-

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common law

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()
(*declaration of incompatibility*)

2. —

()

42

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(*Model Penal Code*)
1962. (American
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communis opinio doctorum

M. /1966/:
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(*Law Com. No. 311, Tenth Programme of Law Reform*). A. P. Simester, J. R. Spencer,
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Card /2010/: . 36.

II.

(*common law*)

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stare decisis et non quieta movere,

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common law- ⁵⁴

civil law common law

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(barristers),
(solicitors),

57

1990. (*Courts and Legal Services Act*)

58

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⁵⁶ . /1990/:
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⁵⁷ . R. J. Terrill /2009/: . 46.

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1.

(*Magistrates' Courts*),
 (*Crown Court*), (*Court of Appeal*) (*Supreme Court*)
common law *felonies*
misdemeanours 20. : (*misdemeanours*)
 (*felonies*)

1. (*Magistrates' Courts*)

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 (90)
 (*Justices of Peace*)
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⁵⁹ , . 162.

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63 ” “ 1363.

(*Quarter Sessions*)

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prima facie

(*Clerk to the Justices*),

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(John Marshall),

. E. A. Farnsworth /1973/: . 7.

66 P. S. James /1976/: . 40.

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68
 (District Judges)⁶⁹
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⁷⁸ F. Cownie, A. Bradney, M. Burton /2010/: . 328.

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⁸⁴ F. Cownie, A. Bradney, M. Burton /2010/: . 330.

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/2010/: . 6.

. R. Card

2. (Crown Court)

⁸⁶

1971.

70

(High Court of Justice)⁸⁷

(Circuit Judges)

Recorders,

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indictment’

(true bill)

„indictment“ . „
(grand jury)

1933.

(. G. Hughes /1984/: . 541.),

/1990/: . 587.

„indictment“

⁸⁷

(Chancery Division),
(Family Division).

(Queen's Bench Division)

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. P. S. James

/1976/: . 42.

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(Lord Chancellor)

⁸⁹ G. Hughes /1984/: . 540-541.

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/2008/:

: , , . 89-104.

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(*cross-examination*),
(*re-examination*),

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10 (*Juries Act [1974]*).

(*de novo*)

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3. (*Court of Appeal*)

(*High Court*)

(*County Courts*).
of the Rolls,

– *Master*

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⁹⁸ M. Jefferson /2009/: *Criminal Law*, Harlow (etc.), . 18.

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1966. , *Court of Criminal Appeal.*

(),¹⁰⁰

(*Circuit Judge*) .¹⁰¹

(*Criminal Appeal Act*) 1968. , 1996. .

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” “, 2)

3) ”

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1996. ,

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(*Criminal Cases Review Commission*)¹⁰⁵

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¹¹⁰

(*Supreme Court*)

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„élément matériel“,

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(responsabilité pénale).“¹²⁶

¹²³ (14. , . , . 85/2005, 88/2005- , 107/2005- , 72/2009, 111/2009, 121/2012, 104/2013 108/2014).

¹²⁴ . /2005/: , , 3-4, ,
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¹²⁶ , . 100.

2.

(*actus reus*)

(*mens rea*)

.¹²⁷ *Actus reus*

, *mens rea*

.¹²⁸

*actus non facit reum, nisi mens sit rea*¹²⁹ (
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§ 30.

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actus reus-a.

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¹³⁰

(strict liability).

1) () (actus reus)

Actus reus (guilty act)

20.

(,)

¹³¹ .

¹³² .

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¹³¹ J. Dressler /2001/: . 81. ,

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actus reus, mens rea.

actus reus

mens rea

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actus reus mens rea

([Lord Diplock]) ,

. N. Haralambous /2010/: . 19; R. Heaton, C. de Than /2011/: . 18. actus reus,

(),

. D. N. Husak /1991/: The Orthodox Model of the Criminal Offense, *Criminal Justice Ethics*, 1, . 20.

: *Actus facit reum.*

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actus reus-

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actus reus-a

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actus reus

).¹³⁷

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/1909/:

(,, “)

, 8, , .376-384.

()

/1991/:

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134

([Oliver

Wendell Holmes])

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Criminal Law. Two Lectures, Jerusalem, . 50.

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¹³⁷ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 67; D. Ormerod /2011/: . 49.

(conduct crimes)

(result crimes).¹³⁸

actus reus- ,

).¹³⁹

actus reus- ,

.¹⁴⁰

(

(mens rea)

(actus

reus).¹⁴¹

actus reus- –

(Glanville Williams). A. T. H. Smith /1978/: On Actus Reus and Mens Rea, *P. R.*

Glazebrook (ed.) Reshaping the Criminal Law: Essays in Honour of Glanville Williams, . 98.

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¹⁴⁰ actus reus-

offences – defences, .

(defences),

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() ;

- () .

actus reus-

. R. Card

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(*evil thoughts*)

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(*defence of automatism*)

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¹⁴² R. Heaton, C. de Than /2011/: . 21.
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actus reus-

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1967. . (*Criminal Justice Act*) ()

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2006. ,

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³⁰¹ G. Williams /1978/: The Mental Element in Crime. The Law Commission's Report No. 89, *The Criminal Law Review*, . 589; N. Haralambous /2010/: . 53.

³⁰² G. Coffey /2009/: . 395.

³⁰³ N. Lacey /1993/: . 628; R. Heaton, C. de Than /2011/: . 60; R. Card /2010/: . 83. ,
Woollin (Lord Steyn) *intent*

176; D. Ormerod /2011/: . 114.

³⁰⁴ G. Coffey /2009/: . 404.

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7. ()³⁰⁶

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(*principle of coincidence*)

. *Mens rea*

actus reus-

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– *cogitationis*

poenam nemo patitur.³⁰⁹

³⁰⁵ N. Haralambous /2010/: . 59; A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 132; D. Ormerod /2011/: . 116.

. R. Heaton, C. de Than /2011/: . 56.

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³⁰⁷ A. Ashworth /2009/: . 157; N. Haralambous /2010/: . 67.

³⁰⁸ J. Dressler /2001/: . 198.

³⁰⁹

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Card /2010/: . 108.

Kaitamaki [1985],

. F. Ba i /1986/: . 390.

Miller [1983]

(*duty principle*).

Haralambous /2010/: . 68.

312

(*actus reus-a*)

Santana-Bermudez [2003]. N.

/2011/: . 78.

. R. Heaton, C. de Than

. D. Ormerod /2011/: . 114-115.

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recklessness. . G. R. Sullivan /1992/: . 381.

313

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³¹³ A. Ashworth /2009/: . 159; A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 170.

(*Dutch courage rule*). M. Jefferson /2009/: . 126.

314

(*Khandu* [1890])

(*murder*),

Shorty [1950]. D. Ormerod /2011/: . 139.

315

Thabo Meli v R [1954]

mens rea

Ashworth /2009/: . 158; N. Haralambous /2010/: . 68.

(*dolus generalis*) ,,

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“ . /2012a/:

. 137.

(*the transaction principle*),

(

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(*the causation principle*),

316

³¹⁶ D. Ormerod, K. Laird /2015/: . 155.

ratio decidendi

S v Masilela [1968].

(*manslaughter*)

Thabo Meli

. D. Ormerod /2011/: . 140-141.

8.,,

“(transferred malice/intent)

(*aberratio ictus*)

„ ()“(transferred malice/intent).³¹⁷

318

319

: „
transferred malice

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³¹⁷ M. Jefferson /2009/: . 123; . Herring /2011/: . 75.

³¹⁸ M. Bohlander /2010a/: Problems of Transferred Malice in Multiple-actor Scenarios, *The Journal of Criminal Law*, 2, . 145.

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transferred malice/intent

*transferred fault.*³²³

[§ 2.03(2)(), § 2.03(3)()].³²⁴

(*Latimer*).³²⁵

mens rea

common law-

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³²² A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 164.

³²³ R. Card /2010/: . 95; . A. Ashworth, J. Horder /2013/: . 189-190.

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(*Sanders and Archer*)

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Prosser /1967/: . 652; D. N. Husak /1996/: *Transferred Intent*, *Notre Dame Journal of Law, Ethics and Public Policy*, 1, . 65; A. M. Dillof /1998/: . 504; J. Dressler /2001/: . 122.

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³²⁸ W. L. Prosser /1967/: . 653.

Saunders and Archer [1573]

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³²⁹ N. Haralambous /2010/: . 70.

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³³⁰ . M. Jefferson /2009/: . 125; . M. Bohlander /2010a/: . 149.

(defence).³³¹

332

(32(2)).³³³

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337

(Horder).

³³¹ W. L. Prosser /1967/: . 653.

. M.

Bohlander /2010a/: . 159.

³³² A. Ashworth /2009/: . 193.

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, *transferred malice*

, *felony murder*,

transferred malice. , . 71-72.

” “ , . 338

” “ ” ” “
(manslaughter).³³⁹ (murder)

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³³⁸ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 165-166.

³³⁹ , . 166.

³⁴⁰ . R. Card /2010/: . 96.

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(recklessness)

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2. Recklessness ()

mens rea

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recklessness ().³⁴⁵

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() *mens rea* . E. Colvin /1982/: Recklessness and Criminal Negligence, *The University of Toronto Law Journal*, 4, . 345.

³⁴⁷ R. A. Duff /1980c/: Recklessness, *The Criminal Law Review*, . 282; R. Heaton, C. de Than /2011/: . 65.

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³⁴⁹ N. Haralambous /2010/: . 59.

³⁵⁰ D. Ormerod, K. Laird /2015/: . 129.

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351 . ,
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354 .
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recklessness
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³⁵¹ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 147.

³⁵² . /2014/: . 110.

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³⁵⁴ , . 147.

³⁵⁵ N. Haralambous /2010/: . 60.

356

(*Cunningham recklessness*)

1981.

(*Caldwell recklessness*),

357

358

R v G and another [2003]

359

(*Criminal Damage Act- [1971]*),

Cunningham 360

³⁵⁶ M. Molan, D. Lanser, D. Bloy /2000/: . 76.

³⁵⁷ *reckless*
(*gross*)

³⁵⁸ . A. Ashworth /2009/: . 177-178.

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³⁶⁰ *R v G and another* [2003]

(18.)

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. D. Ormerod /2011/:

. 127.

. N. Haralambous /2010/: . 60.

Caldwell ³⁶¹

recklessness

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³⁶¹ R. Heaton, C. de Than /2011/: . 65.

³⁶² E. Colvin /1982/: . 346.

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³⁶³ C. Crosby /2008/: *Recklessness-the Continuing Search for a Definition*, *The Journal of Criminal Law*, 4, . 330.

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a priori

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³⁶⁶ R. A. Duff /1980c/: . 282.

³⁶⁷ R. Heaton, C. de Than /2011/: . 66.

³⁶⁸

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1. (Cunningham recklessness)

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³⁷¹ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 140-141.

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³⁷⁴

actus reus-

actus reus).

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()

(*oblique intent*).

379

maliciously

mens rea

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reckless knowledge,

G. J. Virgo /2010/: . 145.

³⁷⁵ R. A. Duff /1980c/: . 289.

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³⁷⁷ W. R. LaFave, A. W. Scott /1986/: . 239-240.

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³⁸¹

. A. P. Simester, J. R. Spencer, G. R. Sullivan,

(
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(*Cunningham* [1957]).

382

malice (

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“383

Stephenson [1979].

(*arson*),

(

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: 1)

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³⁸² , .79.

³⁸³ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 141; D. Ormerod /2011/: . 120.

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(*Anti-terrorism Crime and Security Act* [2001]

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³⁸⁴ N. Haralambous /2010/: . 61.

³⁸⁵ D. Ormerod /2011/: . 120.

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2.

(*Caldwell recklessness*)

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*Caldwell Lawrence*³⁹⁰

391

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Metropolitan

Police Commissioner v Caldwell [1982].³⁹³

³⁸⁸ G. P. Fletcher /2000/: . 443.
³⁸⁹

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³⁹³ *Caldwell* [1982] (arson);

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, 2)
(*inadvertent recklessness*)
(*advertent recklessness*).³⁹⁴ a
(*advertent recklessness*)

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Cunningham,

. *Caldwell*

,
(*reasonable person*).³⁹⁵

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Lawrence [1982]

. W. Wilson /2008/: . 141.

basic intent,

. N. Haralambous /2010/: . 62.

³⁹⁴ G. Williams /1981/: . 267; M. Jefferson /2009/: . 111.

³⁹⁵ N. Haralambous /2010/: . 62.

(Ingeborg Puppe). G. Taylor /2004 /: .

360-361.

³⁹⁶ A. Ashworth /2009/: . 181.

(Reid [1992])

Caldwell

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³⁹⁷ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 143.

³⁹⁸ G. Williams /1988/: . 74.

³⁹⁹ . M. Jefferson /2009/: . 111.

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Criminal Damage Act- [1971],

reckless

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, Caldwell

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Caldwell Lawrence.

Caldwell

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(Cunningham).

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(gross negligence)

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Than /2011/: . 71.
413

(Reid [1992]),

Caldwell

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(Lamb [1967])

. G. Williams /1981/: . 281; R. Heaton, C. de

. L. H. Leigh /1993/: . 213.

414

4.

2003.

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Caldwell

Caldwell

Cunningham

⁴¹⁴ N. Haralambous /2010/: . 65.

⁴¹⁵ R. Heaton, C. de Than /2011/: . 70.

416

G [2003]

Caldwell

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418

, *Caldwell*

419

Caldwell

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Brady [2006];

⁴¹⁶ D. Ormerod /2011/: . 124.
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⁴¹⁹ N. Haralambous /2010/: . 63.

⁴²⁰ M. Jefferson /2009/: . 110.

⁴²¹ W. Wilson /2008/: . 144.

. J. B. Brady /1996/: . 186.

Caldwell,

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(Gleichgültigkeit)

(Karl Engisch)

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wilfully, *mens rea* *wilful*,
common law . 19.
 (*Sheppard*
 [1981]).⁴²⁵
constructive recklessness.⁴²⁶
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(advertent or conscious negligence)

„Recklessness is advertent negligence.“ D. W. Morkel /1982/: . 329.

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(),
().⁴³¹

432

3. (knowledge)

crimes)

(conduct crimes)

(result

433

()

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. A. R. Duff /1980c/: . 282; J. B. Brady /1996/: 198.

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432 , . 192.

433 W. Wilson /2008/: . 147.

. A. Ashworth /2009/: . 182.

reasonable grounds to suspect, recklessness.⁴³⁴

knowledge (Montila [2004])

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⁴³⁴ D. Ormerod, K. Laird /2015/: . 142.
maliciously . *Dishonestly*

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⁴³⁵ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 149; D. Ormerod /2011/: . 129.
(*belief*)

(). R. Heaton, C. de Than /2011/: . 78.
Hall [1985];

. N. Haralambous /2010/: . 66.
⁴³⁶ R. Card /2010/: . 97.

,),

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knowledge.⁴³⁸

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” “ ,

mens rea

(*knowledge*)

(*intention*)

(

). ” “

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()

, Warner [1969].

⁴³⁷ W. Wilson /2008/: . 148.

⁴³⁸ D. Ormerod /2011/: . 129.

” “ (“).
” *Proceeds of Crime Act* [2002] ().

“ — ” *mens rea*

⁴³⁹ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 149.

Warner

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1. *Wilful blindness*

knowledge

(*wilful blindness*). *Wilful blindness*

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wilful blindness (*connivance* [
deliberate ignorance]⁴⁴³

⁴⁴⁰ , . 161-163.

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98.

⁴⁴² R. Heaton, C. de Than /2011/: . 78.

⁴⁴³ J. Dressler /2001/: . 126.

19. . R. Card /2010/: .

), *wilful blindness* () *constructive knowledge* (*actual knowledge* (*wilful blindness*) *constructive knowledge*).⁴⁴⁴

⁴⁴⁵ *Constructive knowledge (knowledge of the third degree)*

, (*wilful blindness*)⁴⁴⁶

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, ()

, *wilful blindness*

⁴⁴⁴ . Wasik, M. P. Thompson /1981/: . 328.
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⁴⁴⁶ R. Heaton, C. de Than /2011/: . 79-80.
⁴⁴⁷ , . 79.

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, *wilful blindness* ,
recklessness,

mens rea

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wilful blindness

recklessness,

, *wilful blindness*

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wilful

blindness (18 (1)).⁴⁵⁰

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⁴⁴⁸ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 150.

⁴⁴⁹ D. Ormerod, K. Laird /2015/: . 145.

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451

. R. Heaton, C. de Than /2011/: . 79.

(*handling stolen goods*)

. Wasik, M. P. Thompson /1981/: . 335.

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wilful blindness

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wilfulness

453

Sheppard [1981].

(wilfully)

Wilfulness

wilfulness

(Caldwell reckelssness),

Caldwell.

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wilfully.⁴⁵⁴
maliciously (, ,).
(Cunningham recklessness).
()
maliciously
[1861]
maliciously
maliciously
strict liability. , *maliciously*⁴⁵⁵

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5. (negligence)

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common law- 458

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G. P. Fletcher /2002/: The Fault of Not Knowing, *Theoretical Inquiries in Law*, 2, . 267.

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mens rea

D. Ormerod /2011/: . 147.

G. P. Fletcher /1971/: . 414.

460 A. Ashworth, J. Horder /2013/: . 181.

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common law

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⁴⁶¹ A. Ashworth /2009/: . 185-186.
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(*Criminal Law Revision Committee*)

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⁴⁶³ J. Horder /1997/: Gross Negligence and Criminal Culpability, *University of Toronto Law Journal*, 4,
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Sexual Offences Act [2003];

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1996. 540

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Sexual Offences Act [2003]

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⁴⁶⁶ G. Williams /1982/: . 189; R. A. Duff /1980c/: . 289. ,
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Negligence, *Theoretical Inquiries in Law*, 1, . 339-365.

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(Hall),

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([Arthur Kaufmann]).

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⁴⁷⁰ /2010a/: , :

.4. ,(), , .32-38.

⁴⁷¹ . J. Hall /1963 /: . 634-643.

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actus reus-

(“ ” “ ”)

(conduct crime)

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⁴⁷² D. Ormerod /2011/: . 128.

. Kao

B. Brady /1980/: . 381; J. Dressler /2001/: . 133; W. Wilson /2008/: . 139; A. Ashworth /2009/: . 179.

⁴⁷³ R. Card /2010/: . 103-105.

⁴⁷⁴ W. R. LaFave, A. W. Scott /1986/: . 234; J. Dressler /2001/: . 128-129; C. Elliott, F. Quinn /2010/: . 25.

⁴⁷⁵ R. Heaton, C. de Than /2011/: . 74.

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⁴⁷⁶ . G. P. Fletcher /1971/: . 409; W. Wilson /2008/: . 137; N. Haralambous /2010/: . 66.

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⁴⁷⁷ . J. B. Brady /1972/: . 144.

() . 113-114; A. Ashworth /2009/: . 187.

W. Scott /1986/: . 236-237.

⁴⁷⁹ D. Ormerod /2011/: . 146.

. W. R. LaFave, A.

480 ,

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⁴⁸⁰ R. Card /2010/: . 102; D. Ormerod /2011/: . 128.

⁴⁸¹ . P. H. Karlen /1978/: . 223-224.

⁴⁸² A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 151.

⁴⁸³ , . 152.

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common law-

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(*reasonable person*).

. J. Dressler /2001/: . 131.

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/2008/: . 241. „

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. J. Dressler /2001/: . 132; . P. Westen /2008/: Individualizing the Reasonable Person in Criminal Law, *Criminal Law and Philosophy*, 2, . 152-155.

487

. T. Hörnle /2008/: . 8.

. G. P. Fletcher /1971/: . 434.

” “ 489
(, ,).⁴⁹⁰

⁴⁸⁸ . A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 154.

() ,

. R. Heaton, C. de Than /2011/: . 75.

⁴⁸⁹ . /2014/: . 180.

⁴⁹⁰

() .

/2008/: . 243-249.

() . P. Westen /2008/: . 141.

. /2008/: . 241.

⁴⁹¹ . J. Dressler /2001/: . 132.

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: 1) ()

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, *Road Traffic Act* [1988]

“ ”

⁴⁹² A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 155.

(§ 2.02[])

; , . T.

Hörnle /2008/: . 24.

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/2008/: . 234-235.

⁴⁹⁴ W. A. Seavey /1927/: Negligence – Subjective or Objective?, *Harvard Law Review*, 1, . 13.

T. Hörnle /2008/: . 10.

/1985 /: . 1291.

2)

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⁴⁹⁶

⁴⁹⁷

⁴⁹⁵ D. Ormerod /2011/: . 148.

(*Bannister* [2009]).

⁴⁹⁶ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 155.

⁴⁹⁷ D. Ormerod /2011/: . 148.

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499

Hudson [1966]

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501

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. T.

Hörnle /2008/: . 26.

⁴⁹⁹ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 156.

⁵⁰⁰ D. Ormerod /2011/: . 149.

⁵⁰¹ . A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 157.

(Hart)

. D. Ormerod /2011/:

. 153.

⁵⁰² T. Hörnle /2008/: . 25.

2.

(*luxuria*)

(*negligentia*),⁵⁰⁴

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505

: (*ordinary negligence*)

() (*gross negligence*).⁵⁰⁶

⁵⁰³ D. Ormerod, K. Laird /2015/: . 168.
⁵⁰⁴

(),
/2014/: . 178-179.

. A. Ashworth /2009/: . 187.

. P. H. Karlen /1978/: . 223.

505

/2009/:

. 3. (), . 254-255.
/2009/: . 187-220.

506

() . 510

(manslaughter).⁵¹¹

common law-⁵¹²

(*Andrews v DPP* [1937]),

⁵¹³ *Adomako* [1995].

()

⁵¹⁴

⁵¹⁰ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 152.

⁵¹¹ D. W. Morkel /1982/: . 326; N. Padfield /2012/: . 59.

⁵¹² 19. . J. Horder /1997/: . 496.

reckless . G. Syrota

/1983/: Mens Rea in Gross Negligence Manslaughter, *The Criminal Law Review*, . 776.

⁵¹³ R. Heaton, C. de Than /2011/: . 75.

⁵¹⁴ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 153.

520
,
,
(*actus reus*),
(*mens rea*)
521
. *strict liability*, .

522
,
(*vicarious liability*).

523
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520

(1798. .)

strict liability

– *constitutive manslaughter* –

strict liability offence

. G. R.

Sullivan /2007/: . 195-196.

521

Woolmington v. DPP [1935]

common law

. P. Roberts /2007/: . 167.

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. A. Hopkins /1988/:

Mens Rea and the Right to Trial by Jury, *California Law Review*, 2, . 398.

523

1. *Strict liability* – ()

524

strict liability

()⁵²⁵

,
526

()

strict liability

527

, *strict liability*

(*actus reus*)

(*mens*

rea).⁵²⁸

mens rea

actus reus,

,
529

strict liability

524

strict liability

(/1996/:
II, , . 93, . . . /1966/: . 80-82.)

()

⁵²⁵ D. N. Husak /1995/: Varieties of Strict Liability, *Canadian Journal of Law and Jurisprudence*, 2, . 190.

⁵²⁶ . A. Ashworth, J. Horder /2013/: . 160.

⁵²⁷ J. Dressler /2001/: . 143; S. P. Green /2007/: Six Senses of Strict Liability: A Plea for Formalism, in: *Appraising Strict Liability* (ed. A. P. Simester), Oxford, . 2; D. Ormerod /2011/: . 155.

⁵²⁸ M. Jefferson /2009/: . 134; R. Card /2010/: . 139-141.

⁵²⁹ *actus reus* *strict liability*

, . K. W. Simons /1997/: When is Strict Criminal Liability Just?, *The Journal of Criminal Law and Criminology*, 4, . 1080; S. P. Green /2007/: . 4. *Strict liability*

, . A. C. Michaels /2007/: Imposing Constitutional Limits on Strict Liability: Lessons from the American Experience, in: *Appraising Strict Liability* (ed. A. P. Simester), Oxford, . 221.

. *Mens rea*

actus reus-

. *Strict liability*

530

strict liability

531

*constructive liability*⁵³²

(murder)

⁵³⁰ D. N. Husak /1995/: . 191.

⁵³¹ W. Wilson /2008/: . 152.

strict liability *felony murder* *statutory rape*. *Felony murder* ()

. R. G. Singer /1994/: *Strict Criminal Liability: Alabama State Courts Lead the Way into the Twenty-First Century*, *Alabama Law Review*, 1, . 50; ([*greater crime theory*] –

; . 68. . A. Ashworth /2008/: *A Change of Normative Position: Determining the Contours of Culpability in Criminal Law*, *New Criminal Law Review*, 2, . 232-256.). *statutory rape*; ()

, *strict liability* . J. Dressler /2001/: . 145; R. W. Thomas /2012/: *On Strict Liability Crimes: Preserving a Moral Framework for Criminal Intent in an Intent-Free Moral World*, *Michigan Law Review*, 4, . 650.

⁵³² *constructive crime*. . D. Ormerod /2011/: . 135.

mens rea

533

assault battery,

534

(assault occasioning actual bodily harm),

535

mens rea

536

⁵³³ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 196.
(manslaughter by an unlawful act).

mens rea

⁵³⁴ . . . /2013 /: Assault Battery:

), , . 250-261.

⁵³⁵ N. Haralambous /2010/: . 149.

⁵³⁶ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 196.

M. Jefferson /2009/: . 155.

mens rea

(

(*Callow v Tillstone* [1980]).

27. § 18.).

strict liability,

strict liability

mens rea (.
).⁵³⁷ .

Montana v. Egelhoff

(purposely or knowingly)

(murder). , ,

(involuntary).

strict liability –

.⁵³⁸ , ()

strict liability

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⁵³⁷ D. N. Husak /1995/: . 210-213.

⁵³⁸ S. P. Green /2007/: . 5.

⁵³⁹ , . 14-15.

strict liability

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mens rea

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strict liability

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strict liability

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strict liability

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mens rea

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540 , . 5-6.

541 , . 6.

542 , . 6-7.

mens rea
strict liability

(public welfare offences, regulatory offences)

543

strict liability,

544

strict liability –

(mala prohibita).

strict liability

⁵⁴³ , .8.

⁵⁴⁴ *Felony murder*

.15.

mens rea

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strict liability

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strict liability

(*legal/elemental strict liability*),

()

(*moral strict liability*).

strict liability

mens rea

, *strict liability*

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strict liability

⁵⁴⁵

, . 9. *Felony murder* *mala in se*
() , .

malum prohibitum

mens rea

, . 15-16.

⁵⁴⁶

(Husak).

strict liability

. D. N. Husak /1995/: . 190-191.

⁵⁴⁷ A. P. Simester /2007/: Is Strict Liability Always Wrong?, in: *Appraising Strict Liability* (ed. A. P. Simester), Oxford, . 22-23; D. Husak /2007/: Strict Liability, Justice, and Proportionality, in: *Appraising Strict Liability* (ed. A. P. Simester), Oxford, . 86-87.

strict liability

: *strict liability*

(.
).⁵⁴⁸

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” ” , .

strict liability.

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strict liability.

*strict liability offences,*⁵⁴⁹

, *strict liability*

⁵⁵⁰

(*offences*)⁵⁵¹

*strict liability.*⁵⁵²

⁵⁴⁸ . D. N. Husak /1995/: . 194.

⁵⁴⁹ . S. P. Green /2007/: . 13.

⁵⁵⁰ , . 10.

⁵⁵¹

strict liability

. A. Ashworth /2009/: . 166.

⁵⁵² M. Jefferson /2009/: . 134.

(public welfare offences),⁵⁵³

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common law.⁵⁵⁸

(Crown

Prosecution Service).⁵⁵⁹

strict liability,

19. - Woodrow [1846]

strict liability;

⁵⁵³ F. B. Sayre /1933/: Public Welfare Offenses, *Columbia Law Review*, 1, . 56.

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regulatory offences (

). C. M. V. Clarkson, H. M. Keating, S. R. Cunningham /2010/: *Clarkson and Keating Criminal*

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W. Mueller /1955/: . 44.

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Road Traffic Act [1988];

Hughes [2013]. D. Ormerod, K. Laird /2015/: . 174.

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. M. Jefferson /2009/: . 134.

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Sayre /1933/: . 62.

558

D. Ormerod, K. Laird /2015/: . 175-176. common law

mens rea

. Strict liability

common law

mens rea

public decency),

(the various forms of criminal libel),

(outraging

court),

(public nuisance),

(contempt of

; 2005.

common law

. M.

Jefferson /2009/: . 140; R. Card /2010/: . 144-145.

559

A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 175.

⁵⁶⁰ *strict liability*

mala in se, .

⁵⁶¹ ,

1. (absolute liability)

strict liability

. *Mens rea*

strict liability

(*absolute liability*)

⁵⁶² *strict liability*

mens rea

actus reus

(*defence*),

(

⁵⁶⁰ F. B. Sayre /1922/: . 58.
19.

Woodrow

strict liability.

strict liability

. R. G. Singer /1989/: The Resurgence of Mens Rea: III – The Rise and Fall of Strict Criminal Liability, *Boston College Law Review*, 2, . 340-345.

⁵⁶¹ J. Stanton-Ife /2007/: Strict Liability: Stigma and Regret, *Oxford Journal of Legal Studies*, 1, . 154.

⁵⁶² *strict liability*

absolute liability. . A.

Paisez /1998/: A closer Look at the Presumption of Innocence in our Constitution: What is an Accused Presumed to be Innocent of?, *South African Journal of Criminal Justice*, 3, . 416.

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Larsonneur [1933]

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Winzar v Chief Constable of Kent [1983]

Licencing Act-om [1872]

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⁵⁶³ M. Allen /2005/: *Textbook on Criminal Law*, Oxford, . 99; R. A. Duff /2007a/: . 232-233; R. Card /2010/: . 141.

: 1) (*mens rea*), 2) *strict liability* 3) . M. Jefferson /2009/: . 136.

⁵⁶⁴ „ / *strict liability*“ (*pure strict liability*), *strict liability*, „ / *strict liability*“ (*impure strict liability*). K. W. Simons /1997/: . 1081; S. P. Green /2007/: . 3. ⁵⁶⁵ (*DPP v H* [1997])

. R. Card /2010/: . 140-141.

⁵⁶⁶ M. Jefferson /2009/: . 137.

⁵⁶⁷ R. Card /2010/: . 142.

⁵⁶⁸ *situational liability*, (*status offences*). M. Jefferson /2009/: . 138.

absolute liability, ()

(*Lambert v. California*)

2. *strict liability*

strict liability,

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569 (,
,) a *mens rea*
actus reus- , *strict liability*
(.
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()⁵⁷¹

*strict liability,*⁵⁷²

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. S. P. Green /2007/: . 3.

. R. M. Perkins
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⁵⁶⁹ W. Wilson /2008/: . 159.

⁵⁷⁰ . M. Jefferson /2009/: . 139.

⁵⁷¹ J. Horder /2007/: Whose Values Should Determine When Liability is Strict?, in: *Appraising Strict Liability* (ed. A. P. Simester), Oxford, . 105; P. Roberts /2007/: . 153.

⁵⁷² *mens rea*
,
. S. P. Green /2007/: . 16.
strict liability,
Comprehensive Drug

Reform Act [1986] (), *strict liability*
(a. Any person who manufactures, distributes or dispenses ... any ... controlled dangerous substance classified in Schedules I or II ... is *strictly liable* for a death which results from the injection, inhalation or ingestion of that substance, and is guilty of a crime of the first degree). D. Husak /2007/: . 82. *New Jersey v. Rodrigez* [1994] (),

(intentionally), (recklessly), (knowingly)

Hallam [1957]

(Explosive Substances Act [1883])

(knowledge)

strict liability. mens rea

strict liability,

: actus non facit reum nisi mens sit rea.⁵⁷⁵

strict liability

. 81-82.

strict liability

felony-murder, strict liability offences, felony-murder

strict liability

(, , ,),

. 83-86.

⁵⁷³ D. Ormerod, K. Laird /2015/: . 183.

⁵⁷⁴ R. Card /2010/: . 146.

⁵⁷⁵ D. Husak /2007/: . 91.

()).

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⁵⁷⁶

mens rea

(),

(*stare decisis et non*

quieta movere).⁵⁷⁷

; Warner

[1969]

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Sweet v Parsley [1970]

,

S. P. Green /2007/: 16.

strict liability . M. Wasik /1982/: Shifting the Burden of Strict Liability, *The Criminal Law Review*, 570; R. G. Singer /1989/: 375-377. (*Proudman defence*) ,

strict liability, ,

strict liability . G. L. Peiris /1983/: Strict liability in Commonwealth criminal law, *Legal Studies*, 2, 131-132; K. J. Arenson /2012/: Rape in Victoria as a Crime of Absolute Liability: A Departure from Both Precedent and Progressivism, *The Journal of Criminal Law*, 5, 408-410.

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⁵⁷⁶ J. Horder /2007/: 106.

⁵⁷⁷ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: 175-176.

578

- mens rea

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B v DPP [2000]

(
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mens rea

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mens rea

DPP v Collins [2006];

Communications Act [2003],

⁵⁷⁸ W. Wilson /2008/: . 154; M. Allen /2005/: . 102.
⁵⁷⁹

strict liability,

strict liability

20.

strict liability. . D. K. Brown

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mens rea

. R. G. Singer /2000/: The Model Penal Code and Three Two (Possibly Only One) Ways Courts Avoid Mens Rea, *Buffalo Criminal Law Review*, 1, . 139-216.

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182.

. C. M. V. Clarkson, H. M. Keating, S. R. Cunningham /2010/: . 215-216; A. Ashworth /2009/: . 167.

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mens rea

(*intent*), (*recklessness*),⁵⁸³ (*knowledge*) (*belief*).
(*negligence*),

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” (*full subjective mens rea or strict liability*).⁵⁸⁵

mens rea

strict liability.

Gammon Ltd v A-G of Hong Kong

[1985]. *mens rea*

⁵⁸² R. Card /2010/: . 149.

⁵⁸³ *recklessness* (20. *General Requirement of Fault*): (1) *Every offence requires a fault element of recklessness with respect to each of its elements other than fault elements, unless otherwise provided.* D. Ormerod /2011/: . 164.

recklessness

(§ 2.02[3]).

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W. R. LaFare, A. W. Scott /1986/: . 245.

⁵⁸⁵ C. M. V. Clarkson, H. M. Keating, S. R. Cunningham /2010/: . 216; A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 179.

strict liability

586

587

(*mala in se*)

(*truly criminal*), *strict liability*

(*mala prohibita*),

(*quasi-criminal*),

588

589

mens rea

actus reus- 590

mens rea

591

mens rea

strict liability

Howells [1977]

⁵⁸⁶ M. Jefferson /2009/: . 153; K. Reid /2008/: . 173-174.

⁵⁸⁷ F. B. Sayre /1933/: . 72.

⁵⁸⁸

strict liability. A. P. Simester, J.

R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 179; A. Brudner /1990/: Imprisonment and Strict Liability, *The University of Toronto Law Journal*, 4, . 742.

⁵⁸⁹ A. Ashworth /2009/: . 164.

⁵⁹⁰ R. Card /2010/: . 161.

⁵⁹¹ W. R. LaFave, A. W. Scott /1986/: . 244; M. Allen /2005/: . 107.

⁵⁹² C. M. V. Clarkson, H. M. Keating, S. R. Cunningham /2010/: . 219.

Borough Council v Shah [1999]

Harrow London

()

strict liability offence

⁵⁹³ , *Hussain* [1981]

strict liability.

Sexual Offences Act [2003]

strict liability, .

⁵⁹⁴

strict liability

⁵⁹⁵

(*violations*)

(*crimes*).

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strict liability

. M. Jefferson /2009/: . 154.

⁵⁹³ *Dangerous Drugs Act* [1965]

strict liability. , . 144.

Champ [1981]

() *strict liability*

. M. Molan, D. Lanser, D. Bloy

/2000/: . 97.

⁵⁹⁴ R. A. Duff /2007a/: . 257.

⁵⁹⁵ . A. Ashworth /2009/: . 164.

strict liability offences

/1989/: . 380.

; A. C. Michaels /2007/: . 225; R. G. Singer

regulatory offences

. G. L. Peiris /1983/: . 124.

⁵⁹⁶ /1966/: . 81-82.

strict liability

offences, strict liability.⁵⁹⁷ strict liability prima facie

mens rea
598
(actus reus)
(possession)
(aware)
(permitting), (knowledge).⁵⁹⁹
(cause)
mens rea ;⁶⁰⁰ Alphacell v Woodward [1972]

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(. knowingly)

strict liability
(§ 2.05). R. G. Singer /1989/: . 382.
(sexual assault) (§ 213.6[1]). . D. N.

Husak /1995/: . 206.

⁵⁹⁷ K. Reid /2008/: . 185; A. Ashworth /2009/: . 170.

⁵⁹⁸ D. Ormerod /2011/: . 165.

⁵⁹⁹ R. Card /2010/: . 154-155; W. Wilson /2008/: . 156. James & Son Ltd v Smee [1955]

strict liability offence, . M. Jefferson /2009/:
. 144.

⁶⁰⁰ „ ...“

⁶⁰¹ C. M. V. Clarkson, H. M. Keating, S. R. Cunningham /2010/: . 213.

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strict liability,

mens rea

Sexual Offences Act

[2003],

strict

liability.⁶⁰³

3. *Strict liability*

strict liability

(*non-negligence*),

actus reus-⁶⁰⁴

strict liability offences

due diligence defence

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Misuse of Drugs Act [1971]

⁶⁰² R. Card /2010/: . 157.

⁶⁰³ . A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 185.

⁶⁰⁴ M. Jefferson /2009/: . 145.

⁶⁰⁵ W. Wilson /2008/: . 158-159.

⁶⁰⁶ *Strict liability*

– *actus reus*

1964.

⁶⁰⁷

strict liability

⁶⁰⁸

(),

(*defence*)

⁶⁰⁹

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⁶⁰⁶ *Food Safety Act* [1990]

. A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 185.

⁶⁰⁷ R. A. Duff /2007b/: *Strict Liability, Legal Presumptions and the Presumption of Innocence*, in: *Appraising Strict Liability* (ed. A. P. Simester), Oxford, . 126.

⁶⁰⁸ . A. Ashworth /2009/: . 160.

⁶⁰⁹ . *halfway house approach* –

(
) *strict liability*. L. L.

Levenson /1992-1993/: . 438.

⁶¹⁰

(*defence*)

. *Patterson v. New York* [1977]

(*extreme emotional disturbance*).

⁶¹¹

(*Human Rights Act*) 1998.

strict liability

⁶¹²

6. 2.

()

strict liability (

actus reus- mens rea-)

).⁶¹³

strict liability,

Salabiaku v France [1988]

R. M. Perkins /1983/: . 1068.

⁶¹¹ D. Ormerod /2011/: . 181.

. V. Tadros, S. Tierney /2004/: The Presumption of Innocence and the Human Rights Act, *The Modern Law Review*, 3, . 402.

. 402-403.

⁶¹²

strict liability. G. R.

Sullivan /2007/: . 201.

⁶¹³ , . 211-212.

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strict liability

6.

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(*Divisional court*)

Barnfather v Islington Educational Authority [2003]

6. 2.

*strict liability offences.*⁶¹⁷

G [2008]

strict liability

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⁶¹⁴ M. Jefferson /2009/: . 135. . V. Tadros, S. Tierney /2004/: . 423.

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. R. A. Duff /2007b/: . 133.

437.

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Tadros, S. Tierney /2004/: . 407.

⁶¹⁷ S. E. Salako /2006/: Strict Criminal Liability: A Violation of the Convention?, *The Journal of Criminal Law*, 6, . 537.

⁶¹⁸ R. Card /2010/: . 143-144. , *strict liability*

strict liability

strict liability

strict liability

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common law equity law,⁶²⁰

()⁶²¹

Strict liability

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strict liability

. A. Paisez /1998/: . 409-42; V. Tadros, S. Tierney /2004/: . 422-424.

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8. (

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2003.

strict liability; Education Act [1996]

. A. C. Michaels /2007/: . 232-235.

⁶²⁰ *Equity law*

common law-

(*Court of Chancery*)

common

law /2008/: . 156-158.

⁶²¹ A. C. Michaels /2007/: . 227.

strict liability

,⁶²²

strict liability

⁶²³

„mens rea,

“⁶²⁴

4. *Strict liability*

, *strict liability*

(*absolute liability*)

, *strict liability*

⁶²⁵

⁶²²

strict liability.

(*constitutional innocence*): *strict liability*

strict liability,

(*constitutional doubt*)

strict liability

offences,

strict liability

strict liability. , . 221-222, 227-228.

. R.

M. Perkins /1983/: . 1070-1072.

/2014/: . 129-130.

⁶²³

strict liability

per se

. W. R. LaFave, A. W. Scott /1986/: . 246; R. W. Thomas /2012/: .

655.

⁶²⁴ A. C. Michaels /2007/: . 223.

⁶²⁵

strict liability

strict criminal responsibility,

strict liability

;
actus reus, .⁶²⁶ , *due*
diligence ,
 , *common law*
(*dures*), (self-defence), (necessity)
strict liability.⁶²⁷
(insanity).⁶²⁸ ,
 ,
mens rea .⁶²⁹ *DPP v*

H [1997]

strict liability
 , .⁶³⁰
 ,
strict liability offences ,
 .⁶³¹

. R. A. Duff /2007a/: . 233.
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⁶²⁷ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 186; D. Ormerod /2011/: . 177.
⁶²⁸ () (defences)
() .
strict liability , *mens rea* .
C. M. V. Clarkson, H. M. Keating, S. R. Cunningham /2010/: . 222.
⁶²⁹ F. B. Sayre /1933/: . 83.
⁶³⁰ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 186.
⁶³¹ , . 187.

5.

strict liability

strict liability

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strict liability

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strict liability

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. R. A. Duff /2007a/: . 128.

633

strict liability

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strict liability.⁶³⁵

offence

(*crime*).

(*quasi-criminal offences*).

(*not truly criminal in character*).⁶³⁶

strict liability

(*stigmatic crime*),

strict liability

633

Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 190.

634

strict liability

/2007/: . 93.

635 A. P. Simester /2007/: . 22.

636

, . 23-24.

. A. P. Simester, J. R.

. D. Husak

rule). (1996.) (year and a day)

common law

()
regulations) ().⁶³⁷ (quasi-criminal)
strict liability .⁶³⁸

mala in se.

prohibitum.⁶³⁹ malum

– (administrative violations) –
strict liability

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⁶⁴¹

strict liability

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⁶³⁷ , . 42.

⁶³⁸ , . 21.

⁶³⁹ R. M. Perkins /1983/: . 1074.

⁶⁴⁰ A. P. Simester /2007/: . 40-41.

⁶⁴¹ D. Ormerod /2011/: . 169. (contraventions)

strict liability offences.

). J. R. Spencer, A. Pedain /2007/: . 262.

642

strict liability (
mens rea
)

2003.

strict liability.⁶⁴³

, *strict liability*

644

645

strict liability

⁶⁴² . A. P. Simester /2007/: . 26.

⁶⁴³ J. R. Spencer, A. Pedain /2007/: . 274-275.

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strict liability

? A. Hamdani /2007/: Mens Rea

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⁶⁴⁵ V. Tadros, S. Tierney /2004/: . 423.

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strict liability

: *strict liability*

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strict liability

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. *Strict liability*

strict liability

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⁶⁴⁶ A. Ashworth /2009/: . 162-163.

⁶⁴⁷ A. P. Simester /2007/: . 28.

⁶⁴⁸

strict liability,

strict liability,

. D. N. Husak /1995/: . 191.

⁶⁴⁹ A. Paisez /1998/: . 415.

⁶⁵⁰ A. P. Simester /2007/: . 21.

⁶⁵¹ L. L. Levenson /1992-1993/: . 427.

strict liability

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strict liability offences

Regulatory Enforcement and Sanctions Act [2008]

()

*strict liability.*⁶⁵⁸

⁶⁵² R. A. Wasserstrom /1960/: Strict Liability in the Criminal Law, *Stanford Law Review*, 4, . 735.
strict liability

offences,

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⁶⁵³ M. Jefferson /2009/: . 155.

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⁶⁵⁸ K. Reid /2008/: . 188.

(,)

(. *Environment Agency, the Food Standards Agency*) ,

(. , , .)

659

actus reus- ,
(*no-negligence*
defence).⁶⁶⁰

strict liability. J. Horder /2007/: . 107.

⁶⁵⁹ . C. M. V. Clarkson, H. M. Keating, S. R. Cunningham /2010/: . 234-235.

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(*good faith defence*)

strict liability.

405. *strict liability*

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Kantor [1988]

(Traci Lords).

strict liability (

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1978. *strict*

offences

⁶⁶¹

mens rea.

- *strict liability,*

()

mens rea

⁶⁶²

6. *Strict liability*

strict liability ()

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⁶⁶¹ M. Jefferson /2009/: . 157; . G. L. Peiris /1983/: . 143-144; R. G. Singer /1989/: . 339.

⁶⁶² C. M. V. Clarkson, H. M. Keating, S. R. Cunningham /2010/: . 235.

⁶⁶³ . 43. 3.

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liability (contaventions)⁶⁶⁵ (strict liability).⁶⁶⁷

⁶⁶⁴ J. R. Spencer, A. Pedain /2007/: . 237.

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common law

Hughes /1984/: . 507-614; S. Shute /1998/: With and Without Constitutional Restraints: A Comparison Between the Criminal Law of England and America, *Buffalo Criminal Law Review*, 2, . 329-348.

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strict liability

⁶⁶⁷ J. R. Spencer, A. Pedain /2007/: . 275.

⁶⁶⁷

strict liability

common law

common law

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strict liability
([]),
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668

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(). . 269-274.
668 ()
strict liability.
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400.

669 , . 242. (Vollrausch)
().
(reckless)
basic intent. , . 244.

*nullum crimen sine culpa.*⁶⁷⁰

strict liability offences

strict liability

mens rea

⁶⁷¹

⁶⁷⁰ . /2014/: . 129.

⁶⁷¹

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- . . . /2012 /:
1-2, . 27-28.
(. , . 65/2013) (2.)
(.),

/2015/: , . 41.

(2.),

. 38-41.

. 672

dolus indirectus.⁶⁷³

versari in re illicita.⁶⁷⁴

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), *strict*

liability

common

law

(*misdemeanours*)

. 675

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(Carpzow),

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2. Vicarious liability –

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strict liability

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vicarious liability

vicarious liability

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vicarious liability

(

strict liability)

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/2014/: . 27.

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A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 263; D. Ormerod /2011/: . 273; J. Samaha /2011/: . 219.

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/2013 /:

. 288-301.

vicarious liability

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1. *Vicarious liability*

Vicarious liability

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Healt and

Safety at Work Act [1974]

()

British Steel plc. [1995]

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(qui facit per alium facit per se)

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18. . ,

. M.

strict

liability,

682

strict liability

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common law

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vicarious liability

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Jefferson /2009/: . 210; A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 263; D. Ormerod /2011/: . 274-275. *vicarious liability* : H. J. Laski /1916/: The Basis of Vicarious Liability, *The Yale Law Journal*, 2, . 105-135; A. O. Sykes /1988/: The Boundaries of Vicarious Liability: An Economic Analysis of the Scope of Employment Rule and Related Legal Doctrines, *Harvard Law Review*, 3, . 563-609; G. T. Schwartz /1996/: The Hidden and Fundamental Issue of Employer Vicarious Liability, *Southern California Law Review*, 5, . 1739-1767; C. McIvor /2006/: The Use and Abuse of the Doctrine of Vicarious Liability, *Common Law World Review*, 4, . 268-296.

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⁶⁸³ D. Ormerod, K. Laird /2015/: . 311.

⁶⁸⁴ (*public nuisance, criminal libel, contempt of court*)

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vicarious liability. A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 264.

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Road Traffic Offenders Act [1988]

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. D. Ormerod /2011/: . 276.

Transport Act [1982],

. M. Jefferson /2009/: . 211.

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vicarious liability.

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2. *vicarious liability*

vicarious liability.

(*the delegation principle*).

(*the attributed act principle*).⁶⁸⁹

⁶⁸⁷ D. Ormerod /2011/: . 276.

⁶⁸⁸

Environment Agency v Empress Cars [1999]

⁶⁸⁹ N. Haralambous /2010/: . 81.

) *The delegation principle*

690

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(*Allen v Whitehead* [1930])

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⁶⁹⁰ D. Ormerod /2011/: . 279.

⁶⁹¹ M. Molan, D. Lanser, D. Bloy /2000/: . 136.

⁶⁹² *vicarious liability*

M. Jefferson /2009/: . 217.

() , 693

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vicarious liability.⁶⁹⁵

() , *mens rea*
strict liability

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) *The attributet act principle*

strict liability ,

⁶⁹³ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 265.

⁶⁹⁴ D. Ormerod, K. Laird /2015/: . 314.

⁶⁹⁵ M. Jefferson /2009/: . 214; A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 266.

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⁶⁹⁷ M. Jefferson /2009/: . 215. A. Ashworth /2009/: . 149,

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, *vicarious liability*

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propria)

(delicta

⁶⁹⁸ N. Haralambous /2010/: . 81-82.

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G. R. Sullivan, G. J. Virgo /2010/: . 270.

strict liability,

703

strict liability

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vicarious

liability.

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(vicarious liability)

⁷⁰³ D. Ormerod /2011/: . 282.

mens rea (),
liability
strict liability.

common law
vicarious

vicarious liability. M. Jefferson /2009/: . 215; D. Ormerod /2011/: . 282-283; R. Heaton, C. de Than /2011/: . 522.

⁷⁰⁴ M. Jefferson /2009/: . 215-216.

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⁷⁰⁷ D. Ormerod /2011/: . 283.

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(companies, corporations)

(strict liability).⁷¹²

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due diligence

strict liability

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(vicarious liability),

strict liability

, . 273.

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respondeat superior
20. (1909.)

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strict liability ,
mens rea ,

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nulla poena sine culpa,

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(*doctrine of identification*)

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. C. de

Maglie /2005/: . 547.

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vicarious liability,

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alter ego

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(Denning LJ).

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alter ego,

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controlling officers.

D. Ormerod /2011/: 260.

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Redfern [1993]

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(*vicarious liability*).⁷⁴¹

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strict liability

mens rea

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common law

(*ultra vires*).⁷⁵¹

, *ultra vires*

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mens rea

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/2010/:

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Guidelines)

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(violations)

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(*OLL Ltd.*)

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2007.

(*corporate killing*).

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118.)

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Clarke [1972]

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2. (involuntary intoxication)

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(R v. Kingston

[1994])

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¹⁰⁶⁹ M. Jefferson /2009/: . 308.

¹⁰⁷⁰ R. Card /2010/: . 700.

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D. Ormerod /2011/: . 313.

¹⁰⁷²

2009.

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¹⁰⁷³ M. Jefferson /2009/: . 306; A. Loughnan /2012/: . 192.

¹⁰⁷⁴ R. D. Mackay /1995/: . 152.

¹⁰⁷⁵ . L. M. Clements /1995/: After R v Kingston: Is There Scope For A New Defence of Voluntary Intoxication?, *Journal of Criminal Law*, . 305-309.

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 1080
 (*actus reus*)
 (*mens rea*).¹⁰⁸¹

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¹⁰⁷⁶ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 696.

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¹⁰⁷⁹ W. Wilson /2008/: . 224. ,
 . L. Buttles /1980/: . 236.

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¹⁰⁸¹ R. Smith, L. Clements /1995/: Involuntary Intoxication, the Treshold of Inhibition and the Instigation of Crime, *Northern Ireland Legal Quarterly*, 2, . 211.

¹⁰⁸² D. Ormerod /2011/: . 314.

3. (voluntary intoxication)

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mens rea
common law
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16.
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¹⁰⁸³ J. Dressler /2001/: . 320.

¹⁰⁸⁴ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 687.

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431.

common law
: *specific intent* *basic intent crimes*.

1091

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mens rea
specific intent crime.

(*a drunken intention is nevertheless an intention*).¹⁰⁹³

basic intent crime.¹⁰⁹⁴

¹⁰⁹¹ S. A. Anderegg /1988/: . 937; S. Dimock /2011/: What are Intoxicated Offenders Responsible for? The „Intoxication Defense“ Re-examined, *Criminal Law and Philosophy*, 1, . 2.

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¹⁰⁹⁴ . *general intent*. J. Dressler
/2001/: . 323.

. W. Wilson /2008/: . 228.

(
(automatism).¹⁰⁹⁵)

(*specific intent crime*) , (*basic intent crime*)

(*intent, knowledge, dishonesty*)
 – *specific intent*. (*recklessness, negligence, strict liability*) *basic intent* ,
 () *Heard* [2007]
¹⁰⁹⁶

Majewski [1977], ¹⁰⁹⁷
 (*Beard* [1920])
specific intent.

(*assault*) *basic intent crime*,
¹⁰⁹⁸

¹⁰⁹⁵ D. Ormerod /2011/: . 314.

¹⁰⁹⁶

¹⁰⁹⁷ A. Loughnan /2012/: . 186.

¹⁰⁹⁸ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 691.

specific intent *basic intent*

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specific intent

mens rea

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mens rea

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basic intent *specific intent*.

¹⁰⁹⁹ D. Ormerod, K. Laird /2015/: . 357.

¹¹⁰⁰ D. Ormerod /2011/: . 315.

¹¹⁰¹ D. Ormerod, K. Laird /2015/: . 359.

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, *specific intent*

(*ulterior intent*)

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specific intent

specific intent (

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basic intent specific intent

mens rea (

specific intent) , (

basic intent).¹¹⁰⁵ ,

specific intent ,

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specific intent,

basic intent.

Heard [2007],

1107

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¹¹⁰⁵ R. Card /2010/: . 690.

¹¹⁰⁶ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 689; D. Ormerod /2011/: . 317-318.

¹¹⁰⁷ D. Ormerod /2011/: . 318-320. ,
actus reus- , ,
specific intent crimes.

(manslaughter), (rape),
 (assault), (reckless criminal
 damage), (false imprisonment) basic intent
 (murder), (theft), (robbery),
 (burglary with intent to steal),
 (intentional criminal damage) specific intent

4.

) Basic intent offences. *Majewski*

Majewski

Jaggard v. Dickinson [1981].

A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 689.

¹¹⁰⁸ R. D. Mackay /1995/: . 150.

¹¹⁰⁹ M. Jefferson /2009/: . 321.

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basic intent . *mens rea*

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Majewski .

basic intent

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) *Specific intent offences.*

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¹¹¹⁰ R. Card /2010/: . 696.

¹¹¹¹ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 692.

¹¹¹² , . 693.

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common law

*specific intent.*¹¹¹⁴

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5.

(Dutch courage)

courage)

(. *Dutch*

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¹¹¹⁴ W. R. LaFave, A. W. Scott /1986/: . 393; W. Wilson /2008/: . 230; D. Ormerod /2011/: . 324.

¹¹¹⁵ R. Card /2010/: . 686.

¹¹¹⁶ M. J. Boettcher /1987/: . 61.

M'Naghten

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mens rea actus reus

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6.

Majewski

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1120

Majewski

¹¹¹⁷ D. Ormerod /2011/: . 325. . M. Jefferson /2009/: . 306.

¹¹¹⁸ . A. Ashworth /2009/: . 197.

¹¹¹⁹

(.).

? D. Ormerod /2011/: . 326.

¹¹²⁰

rea, actus reus ,

basic intent crime. S. Dimock /2011/: . 6.

mens

1121

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specific intent basic intent crimes,

1123

Majewski

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*specific intent basic intent crimes*¹¹²⁷

1128

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basic intent specific intent crimes

mens rea

. M. Jefferson /2009/: . 322.

1122

. D. Ormerod /2011/: . 326.

1123

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1127

. J. Dressler /2001/: . 332-333.

(*purpose, knowledge*);

(*recklessness*) (*negligence*)

. J. B.

Brady /1980/: . 385; K. Huigens /1998/: . 435.

¹¹²⁸ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 699.

Jefferson /2009/: . 322-323.

1129

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7. (*duress*)

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¹¹²⁹ D. Ormerod /2011/: . 327.

¹¹³⁰ M. Jefferson /2009/: . 324.

¹¹³¹ . . /2013/:

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Common law

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/2010/: . 311.

¹¹³³ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 725.

¹¹³⁴ M. Wasik /1977/: Duress and Criminal Responsibility, *The Criminal Law Review*, . 453.

¹¹³⁵ M. Molan, D. Lanser, D. Bloy /2000/: . 276.

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¹¹³⁷

¹¹³⁸

¹¹³⁹

(*automatism*),

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actus reus-

¹¹³⁶

2005. *Hasan*. A. P. Simester, J. R.

Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 725.

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¹¹⁴⁰ M. Jefferson /2009/: . 256.

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D. Ormerod /2011/: . 344.

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W. R. LaFare, A. W. Scott /1986/: . 433.

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actus reus

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mens rea

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192.

¹¹⁴² M. Wasik /1977/: . 454; A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 736; D. Ormerod /2011/: . 344.

/2014/: . 198.

1143

mens rea

. M. Wasik /1977/: . 454-455.

1144 /2009 /: . 104.

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. M. Wasik

/1977/: . 462.

¹¹⁴⁶ W. R. LaFave, A. W. Scott /1986/: . 439; A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 737.

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(duress by threats).

(duress of circumstances).¹¹⁴⁹

2.

(duress by threats)

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¹¹⁴⁷ L. Newman, L. Weitzer /1957/: Duress, Free Will and the Criminal Law, *Southern California Law Review*, 3, . 313.

¹¹⁴⁸ W. R. LaFave, A. W. Scott /1986/: . 440; J. Dressler /2001/: . 299; R. Card /2010/: . 744.

¹¹⁴⁹ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 726.

“ (marital coercion).”

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. D. A. Stroud /1914/: . 264; W. R. LaFave, A. W. Scott /1986/: . 440.

. A. Ashworth /2009/: . 215; M. Jefferson /2009/: . 273-274; R. Card /2010/: . 742-744. 2014. . D. Ormerod, K. Laird /2015/: . 425.

¹¹⁵⁰ C. Elliott, F. Quinn /2010/: . 358.

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¹¹⁵¹ N. Haralambous /2010/: . 316.

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Dressler /2001/: . 315.

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(perjury).

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¹¹⁶⁰ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 727.

. D. Ormerod /2011/: . 347.

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¹¹⁶⁵ A. P. Simester, J. R. Spencer, G. R. Sullivan, G. J. Virgo /2010/: . 727.

¹¹⁶⁶ *Abdul-Hussain* [1999]

(immediate)

(imminent)

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(sober person of reasonable firmness),¹¹⁷¹

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. 728.

¹¹⁶⁷ M. Jefferson /2009/: . 261; C. Elliott, F. Quinn /2010/: . 359.

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261.

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. D. Ormerod /2011/: . 352.

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(*Howe* [1987]),¹¹⁷⁶

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strict liability . R. Card /2010/: . 736.

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1205; J. Dressler /2001/: . 306.

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R. v. Dudley and Stephens

. M. D. Bayles /1987/: .

3. Duress of circumstances –

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Conway Willer 1989.

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(necessity).

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(43.).

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Pommell [1995]

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duress of circumstances,
C. M. V. Clarkson /2004/: Necessary Action: A New Defence, *Criminal Law Review*, . 81.

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common law *civil law* ()

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(plea bargaining),

/2015/: .71-72.

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nulla poena sine culpa
(*strict liability*) *common law*
()

(*oblique intent, recklessness, knowledge*),
(*negligence*),
(*direct intent*).

civil law

illicita)

(*versari in re*

(),

dolus indirectus.¹¹⁹¹

¹¹⁹¹ /2014/: .205.

(defences)

culpability, liability responsibility,

(strict liability, vicarious liability)

(murder, manslaughter).

common law civil law

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. *common law* , ,
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Прилог 1.

Изјава о ауторству

Потписани-а Иван Ђокић

Изјављујем

да је докторска дисертација под насловом

„Субјективни елемент кривичног дела у енглеском праву“

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У Београду, 26. октобра 2015. године



Прилог 2.

Изјава о истоветности штампане и електронске верзије докторског рада

Име и презиме аутора Иван Ђокић

Број индекса _____

Студијски програм Кривичноправна научна област – кривично право

Наслов рада „Субјективни елемент кривичног дела у енглеском праву“

Ментор проф. др Зоран Стојановић

Потписани/а Иван Ђокић

Изјављујем да је штампана верзија мог докторског рада истоветна електронској верзији коју сам предао/ла за објављивање на порталу **Дигиталног репозиторијума Универзитета у Београду**.

Дозвољавам да се објаве моји лични подаци везани за добијање академског звања доктора наука, као што су име и презиме, година и место рођења и датум одбране рада.

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Потпис докторанда

У Београду, 26. октобра 2015. године



Прилог 3.

Изјава о коришћењу

Овлашћујем Универзитетску библиотеку „Светозар Марковић“ да у Дигитални репозиторијум Универзитета у Београду унесе моју докторску дисертацију под насловом:

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Дисертацију са свим прилозима предао/ла сам у електронском формату погодном за трајно архивирање.

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