STRICT LIABILITY OFFENCES IN SINGAPORE AND MALAYSIA

This article will be divided into four sections. The first section will explore the meaning of "strict liability" with particular reference (a) to what appear to be some misconceptions on the subject in a few of the local[1] cases, (b) to degrees of guilty knowledge and strict liability, and (c) to mental elements in the *actus reus* in relation to strict liability. The second section will deal with the effect of the General Exceptions under the Penal Codes[2] on strict liability here. The third section will examine the criteria that have been invoked by the courts here for the exclusion of *mens rea* as a requirement of criminal liability. The fourth section will focus on the many judicial conflicts here as to whether or not liability for particular offences should be strict.

I. MEANING OF STRICT LIARILITY

(a) *Some Misconceptions*

As we shall see the expression "strict liability" is not always used in criminal law with an invariable meaning. For a start we shall adopt the usual meaning of that expression — an offence is said to be one of strict liability if *mens rea* (guilty mind) is not necessary for a conviction, or alternatively if liability may be established on proof of the *actus reus* alone.[3] *Mens rea* we shall understand as foresight of consequences and knowledge of surrounding circumstances.[4] Absolute liability and absolute prohibition are often used to convey the same meaning as strict liability, though the two former expressions suggest disregard for more than just *mens rea* and should therefore be taken as capable of a wider meaning than the latter.[5] We shall illustrate and explore this usual meaning of strict liability by reference to what appear to be misconceptions about it in some local cases. If absolute liability is understood to mean that *mens rea* is not necessary for liability, then it is no argument in support of *mens rea* being required for a particular offence to say

1. "Local" and "here" throughout this article refer to Singapore and Malaysia (including the latter's political predecessors).

2. Laws of Singapore, 1955, cap. 119; Federated Malay States (F.M.S.) Laws, 1935, cap. 45 as extended throughout Malaya by the Penal Code (Amended and Extended Application) Ordinance, 1948; Sabah (then North Borneo) No. 3 of 1959; Revised Laws of Sarawak, 1958, cap. 57.

3. See Glanville Williams, *Criminal Law: The General Part,* (2nd ed., 1961), p. 215; J. LI. J. Edwards, *Mens Rea in Statutory Offences,* (1955), p. 244; Colin Howard, *Strict Responsibility,* (1963), pp. 1-2.

4. Williams, *op. cit.*, 31, 34.

5. Williams, *op. cit.,* 215.

that *mens rea* is always required unless the offence is one of absolute liability. Yet this appears to have been done in the recent West Malaysian case *Ayavoo* v. *Public Prosecutor*.[6] The accused, a police supervisee, had been convicted of failing to comply with a restriction that he remained indoors at night, an offence punishable under section 15(4) of the Prevention of Crime Ordinance, 1959. On the way home in time to beat his curfew he had fallen off his bicycle and, having also consumed some intoxicating liquor, he had passed out. One of the issues on the appeal was whether the offence committed by the appellant required *mens rea* or not. The appellate judge stated that although section 15(4) did not contain the word "knowingly", "*mens rea* is nevertheless the rule in all offences except in those of absolute liability."[7] If the usual meaning of absolute liability is accepted, this amounts to saying that *mens rea* is the rule in all offences except for those which do not require *mens rea.* The circuity here would seem to be the result of a lack of appreciation that absolute liability and the non-requirement of *mens rea* are just two ways of saying the same thing.

A related misconception is to be found in some local cases in which an offence has been described as being of absolute liability but where the accused's state of mind has then been considered to see whether he was entitled to an acquittal. In *Sulong bin Nain* v. *Public Prosecutor*,[8] the Malayan Court of Appeal held that "carrying arms" contrary to section 3(1) of the Public Order and Safety Proclamation No. 50, 1946, was an offence of absolute prohibition. The court then proceeded to consider a defence submission that the accused was taking the arms (two hand grenades) to surrender them to the police under a mistaken belief that a circular had been issued to the effect that any person delivering arms to the police would be rewarded. It was argued that the defence of mistake under sections 76 and 79 of the Penal Code[9] applied. The court rejected this argument on the ground that there had been no mistake of fact as these sections required. It said: "If a person is deliberately carrying arms to the police station there is no mistake as that term is used in jurisprudence. He knows that he is carrying and he is intentionally carrying those arms."[10] Now the court is here suggesting that if the accused had been mistaken as to what he was carrying — if for instance he had believed he was carrying mangoes instead of hand grenades — he would have been entitled to the defence of mistake. But this is inconsistent with the court's earlier ruling that carrying arms was absolutely prohibited. If carrying arms is absolutely prohibited then if a person carries what are in fact arms he is liable, no matter what he thought he was carrying or how unintentional his carrying was. The offence is either one of absolute liability or lack of *mens rea* will

6. [1966] 1 M.L.J. 242.

7. *Ibid.*, at p. 243.

8. (1947) M.L.J. 138.

9. Section 79, so far as relevant, reads: "Nothing is an offence which is done by any person . . . who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it." Section 76 reads "bound by law" instead of "justified by law".

10. (1947) M.L.J. 138 at p. 141.

prevent a conviction. The error here seems to lie in a failure to appreciate that mistake as a defence negatives *mens rea.* If *mens rea* is held not necessary for liability then there can be no scope for the defence of mistake.

There is the possibility that the court in *Sulong* used the notion of absolute prohibition in a different sense. After ruling that the offence of carrying arms was one of absolute prohibition, the court continued that it was "not necessary to prove any ulterior intention to establish the offence." [11] This seems to suggest that the offence is being described as absolute in the sense that an intention to use the arms in a way prejudicial to public order and safety is not necessary for liability. This could still leave a measure of *mens rea* required for proof of "carrying", *e.g.,* knowledge that it is arms that are being carried. Then mistake as to the nature of what is being carried could be a defence. It is submitted, however, that this possible second sense of "absolute prohibition" is quite untenable. As the offence of carrying arms was not defined to include an intent to use the arms in a prejudicial way, this intention could only be regarded as a motive for the offence. Whatever else it may mean, absolute prohibition can hardly be used to signify no more than the irrelevance of motive.

Another case where the accused's state of mind was considered by way of defence to a so-called absolute prohibition offence was *R.* v. *Tan Hoay.*[12] The accused had been convicted by a magistrate in Penang of having in her possession chandu other than Government chandu contrary to section 11(3) (d) of the Chandu Revenue Ordinance.[13] The appellate judge described the offence as one of absolute prohibition. He then stated that as there were no words like "knowingly" or "intentionally" in the provision, the onus of proof that any possession was innocent was on the accused. The accused having failed to show this, the appeal had to be dismissed. Now if this was truly an offence of absolute prohibition, whether the accused's possession of the chandu was innocent or not would be immaterial to her liability. Guilty knowledge would not have to be proved and lack of guilty knowledge would afford no defence. Absolute liability does not mean that the defence is obliged to prove lack of *mens rea* rather than the prosecution having to prove its existence. Absolute liability means that *mens rea* is irrelevant to guilt. It would of course be possible to hold that the absence of *mens rea* words in the definition of an offence relieved the prosecution of the necessity of proving *mens rea* and placed on the accused the burden of proving that there was no *mens rea.* But it would be incorrect to describe this state of affairs as one of absolute prohibition. There is a further difficulty with *Tay Hoay's* case, and that is as to what is meant by describing a "possession" offence as one of absolute prohibition. It could mean either that an accused need not even be aware that the object in question is physically juxtaposed to him, or it could mean he knows he is in possession of an object but does not realise that it has certain offending qualities. It is difficult to tell which (if either) of these two interpretations was intended in

11. (1947) M.L.J. 138 at p. 140.

12. (1938) M.L.J. 216.

13. Laws of the Straits Settlements, 1936, cap. 223.

Tan Hoay as the defence evidence tried to suggest both types of lack of knowledge — that the accused did not know that packets containing chandu were in her house and that she knew certain packets were in her house but did not realise that they contained chandu. It is possible that knowledge that chandu was possessed (or lack of proof that it was not knowingly possessed) was actually being required for conviction in *Tan Hoay,* as is usually the case with "possession" offences.[14] If so, the offence should not have been described as one of absolute prohibition.

An equivocation on *mens rea* similar to that suggested in *Sulong* and *Tan Hoay* seems to be present in the Singapore case, *Omar Aiffin* v. *R.*[15] The accused, a policeman, had been charged with being asleep on duty contrary to section 26 (i) of the Police Force Ordinance.[16] His story was that he had been overcome by dizziness. On appeal against his conviction it was said that the dizziness theory had been rightly rejected for it seemed that he had deliberately lain down, perhaps to sleep, but at least with a view to relaxing his vigilance. It was then stated that *mens rea* did not have to be proved. Now if *mens rea* was not necessary for the offence, it would not seem to matter for liability (as distinct from punishment) whether going to sleep was deliberate, negligent or completely without fault on the accused's part. All that would be necessary for liability would be the fact of being asleep while on duty. The harshness of this result could of course be avoided by requiring at least some degree of fault, even if only negligence, for liability. Purporting to banish *mens rea* entirely will often not be necessary to ensure convictions, and where the *actus reus* can, as here, be constituted by a minimum of voluntary activity by the accused such banishment could be quite unjust.

(b) *Knowledge and Strict Liability*

In discussing *Tan Hoay's* case three kinds of "possession" of chandu were postulated — physical juxtaposition of the accused and the packets of chandu without the accused being aware that any packets were so juxtaposed (a case of "planting", the accused knowingly possessing certain packets but not knowing that they contained chandu, and the accused knowingly possessing the packets and knowing that they contained chandu. Three corresponding kinds of possession can usually be postulated in relation to other proscribed objects — uncustomed imports, obscene books, adulterated drinks, and impure foods. The problem of immediate concern for us is what the designation of a "possession" offence as one of strict liability is to be taken as meaning. Is proof of the first kind of possession mentioned sufficient for liability or must the second kind, involving knowledge that something is possessed though not necessarily of its offensive character, be proved? The answer is usually that the second kind of possession must be proved.[17] Thus some sort of mental element may be required for liability even for a strict liability offence. This mental element is imported into the offence through the

14. See the next sub-section and section IV hereof.

15. (1939) M.L.J. (S.S.R.) 308.

16. Laws of the Straits Settlements, 1936, cap. 177.

17. The case are discussed in section IV, *post.*

word "possession". Some other statutory offences may be related to strict liability in a way similar to the possession offences. Thus if permitting a defective vehicle to be used is treated as an absolute prohibition, it is still usually necessary for it to be proved that the vehicle was used to the accused's knowledge even if he did not know that it was defective.[18] Similarly with selling impure foods, importing prohibited imports, and making false declarations.[19]

(c) *Actus Reus and Strict Liability*

It has just been suggested that some sort of mental element may be required for "possession" even where prohibited absolutely. This is because the word "possession" implies consciousness that some object is possessed. A corresponding consciousness is implied by such words as "using", "making", "permitting" and "consorting". An object is usually not said to be "used", a statement "made", an activity "permitted" or a person "consorted with" unless the person doing these things is aware that he is using an object, making a statement, permitting some kind of activity or consorting with another person. This is not necessarily to say that awareness of all the qualities and characteristics of that object, statement, activity or other person is also implied by the words in question. But at least these offences cannot be committed in a state of unconsciousness. The *actus reus* of an offence may however be defined with words that do not even import this much mental activity as a requirement. Take for instance offences like "being found" in a place used for smoking opium or in the company of a person carrying arms, "failing to comply" with a restriction order, or "being asleep" while on duty. Offences like these could, as a matter of language, be constituted without any relevant consciousness or voluntary activity on the part of an accused. This could of course be the legislature's intention. but it is more likely that the words used to define the prohibited "acts" in the type of offences we have been considering are selected rather haphazardly and without particular regard to the extent of the mental activity that may be impliedly required. There is surely something to be said for some minimum mental or psychological requirement for any criminal liability no matter what words are used to define the prohibited act, omission or condition.[20] There should at least be consciousness of the behavioural pre-condition to liability (*e.g.*, awareness of being where "found" to be) and the capacity to behave in a non-offending way (*e.g.*, to comply with a restriction on movement). If this consciousness or capacity is lacking at the time an offence is alleged to have been committed but it is lacking through some fault on the part of the accused then a conviction need not be out of order, for the initial fault must presuppose consciousnesss and capacity.

II. THE GENERAL EXCEPTIONS AND STRICT LIABILITY

Section 40 of the Singapore and Malaysian Penal Codes apply the

18. See, *e.g.*, *Public Prosecutor* v. *Ong Cho Teck* (1946) M.L.J. 85.

19. Illustrative cases will be discussed later, particularly in section IV.

20. This has been advocated by H.L.A. Hart, "Acts of Will and Responsibility", *The Jubilee Lectures of the Faculty of Law, University of Sheffield,* 115, particularly at pp. 133-144.

General Exceptions under Chapter IV of the Codes to offences ". . . punishable under this Code or under any other law for the time being in force." The General Exceptions provide complete defences. They include mistake of fact,[21] accident,[22] infancy,[23] insanity,[24] intoxication (in certain circumstances) ,[25] necessity [26] and duress.[27] Mistake, accident and intoxication are based on a lack of *mens rea,* as essentially are infancy and insanity. Necessity and duress excuse on grounds other than *mens rea* as we have defined it. It would seem that, unless these Exceptions had been expressly or by necessary implication excluded by a particular statute, it would hardly be proper to speak of strict or absolute liability for the offences created by that statute. (There may of course be some cases where there is in fact an absence of *mens rea* but where none of the General Exceptions are applicable. For example an accused could be simply ignorant of a material fact rather than mistaken about it.[28] Although such an accused might be convicted despite his lack of *mens rea*, *it* would not follow that the offence of which he was convicted was one of strict liability.) In fact the General Exceptions have seldom been expressly or impliedly excluded by statutes here so there are probably very few strict or absolute liability offences in the proper sense. It is however true that the General Exceptions are very often disregarded when offences outside the Penal Code are being construed. This is not so with offences under the Penal Code. As the vast majority of the Penal Code offences include *mens rea* words in their definitions,[29] and as the General Exceptions are readily applied to Penal Code offences, there is really no scope for strict liability under the Penal Code.

We shall consider next some cases where the General Exceptions have been taken into account in determining liability under non-Penal Code offences, and then consider some other cases where they could have been. It will be recalled that in *Sulong,* where the charge was carrying arms, an alleged mistaken belief in the existence of an exculpatory circular was rejected as a defence because the mistake, if any, was one of law. It was implied that a mistake of fact might have exonerated, although it had been ruled earlier that the offence charged was one of absolute prohibition. The defence of mistake under section 79 was held available on appeal in the Singapore case of *Arumugam and Another* v. *R.*[30] The two appellants had been convicted on a charge that they "did

21. Sections 76 and 79.

22. Section 80.

23. Sections 82 and 83.

24. Section 84.

25. Sections 85 and 86.

26. Section 81.

27. Section 94.

28. See Williams, *op. cit.*, 151-2.

29. The only significant exceptions are some of the "public nuisances" under Chapter XIV, *e.g.*, sections 268 and 292.

30. (1947) M.L.J. 45.

move a controlled article", namely rice, without a permit from the Assistant Food Controller, an offence under the Food Control No. 13 Order, 1946. Both appellants were members of the police force, the first was an acting detective and the second a driver. They had assisted in the movement of rice but under instructions from a more senior police officer who, not having been issued with the necessary permit, had been acting illegally. The appeals were allowed on the basis that the appellants' defence, "in effect a plea of justification under section 79 of the Penal Code", that they were "sincerely mistaken in fact in thinking that the third person was acting *bona fide*,[31] had not been properly appreciated by the trial judge. It seems the appellants' contention was that they mistakenly believed their superior officer had been issued with the necessary permit rather than that they were unaware the law required a permit for the movement of the rice in question. Their mistake would therefore have been one of fact rather than one of law. Section 79 can be seen as importing a defence based on the lack of *mens rea* into the offence here charged which itself contained no *mens rea* words. The defence of mistake under section 79 was also accepted in *R.* v. *Von Roessing*.[32] Here the charge was importing arms without a permit contrary to section 18 of the Indian Act XXXI of 1860 which was in force at the time in Singapore, where the offence was allegedly committed. The accused was the manager of the agents of a foreign shipping company. Some cases under consignment to Bangkok were unloaded in Singapore from one of the company's ships for transhipment. When they were reloaded for Bangkok two of them were found to be damaged and were unloaded again. The two damaged cases were then discovered to contain parts of guns. The cases were taken to the agents' godown. The accused had not been aware that the cases contained guns, his manifest stating that the cases contained "sundries". It was held on appeal that the offence charged did not require the prosecution to prove that the appellant knew the cases contained arms but that a defence of mistake of fact as to the contents of the cases was nevertheless open to the accused under section 79 of the Penal Code.

In *Tan Hua Lam* v. *Public Prosecutor*[33] a defence allegation essentially of mistake was rejected by the Federal Court on charges under the Malaysian Internal Security Act, 1960. The accused was one of a number of Malaysians who, with some Indonesian soldiers, had parachuted with arms and ammunition into West Malaysia from an Indonesian aircraft during confrontation. He was convicted on three charges under the Internal Security Act — consorting with members of the Indonesian Armed Forces contrary to section 57(1), unlawful possession of a firearm contrary to section 57(1) (a), and unlawful possession of ammunition contrary to section 57(1) (b). He argued on appeal that he was under the impression at the beginning that the expedition was merely a training exercise and that when he realised a landing in Malaysia was contemplated he could do nothing to withdraw himself. This argument was rejected by Lord President Thomson for the Federal Court on the grounds that the accused had voluntarily gone to Indonesia for military training

31. (1947) M.L.J. 45 at p. 48.

32. (1905), 9 S.S.L.R. 21.

33. [1966] 1 M.L.J. 147.

during that country's confrontation of Malaysia, that he intended at some stage to participate in an attack against Malaysia, that on the aircraft he was consorting with Indonesian soldiers and was in possession of arms and ammunition even if he believed he was still only undergoing training for an attack, and that if he then came physically within a Malaysian security area, as he had, he should take the consequences. The English cases *Cotterill* v. *Penn*[34] and *Horton* v. *Gwyne*[35] were cited in support of this conclusion. These were cases of conviction for unlawfully and wilfully killing house pigeons contrary to section 23 of the Larceny Act, 1861. The defendants in both cases honestly believed that they were shooting wild pigeons but this was held to afford no defence. It is submitted that had section 79 of the Penal Code been applicable in these two cases this defence should have been sustained. As a result of a mistake of fact the defendant in each case in good faith believed himself to be justified by law in doing what he did. Even assuming that two English cases on shooting pigeons (that seem also to be of dubious authority)[36] are of any value in construing offences under the Internal Security Act, it is submitted that these cases are readily distinguishable on the facts from *Tan Hua Lam.* There the accused was engaged in an unlawful activity when his mistake, if any, was made. He was preparing to wage war against Malaysia, an offence under section 122 of the Penal Code. He would not therefore have been entitled to a defence under section 79 because he would not have believed himself "to be justified by law" in training for an attack on Malaysia. Thus the same result could have been reached in *Tan Hua Lam* by the explicit application of section 79 and it is suggested that this would have been the better approach. Section 79, or any of the other General Exceptions, were not in fact mentioned in *Tan Hua Lam.* In the more recent case of *Lee Hoo Boon* v. *Public Prosecutor*,[37] however, the Federal Court, again under Lord President Thomson, stated that the reasons why sections 76, 79 and 80[38] of the Penal Code afforded no defence to Indonesian-backed Malaysian invaders had been set out in *Tan Hua Lam.*

Intoxication was advanced as a defence to a charge of failing to comply with restrictions imposed upon a police supervisee in *Seah Eng Joo* v. *R.*[39] The restriction was that the supervisee remained within doors at a certain address between 7 p.m. and 5 a.m. and the charge was under section 49A(3) of Singapore's Criminal Law (Temporary Provisions) Ordinance, 1955. The accused was found outdoors at 9.30 p.m. He alleged that he had been to a bar in the afternoon where he had become drunk and fallen asleep. His defence was that he was incapable through intoxication of possessing the *mens rea* necessary for the offence. The accused's story was rejected by the trial judge whose finding the appellate judge was not prepared to disturb. That would have been enough to

34. [1936] 1 K.B. 53.

35. [1921] 2 K.B. 661.

36. See Williams, *op. cit.*, 146-8.

37. [1966] 2 M.LJ. 167.

38. Sections 76 and 79 deal with mistake and section 80 with accident.

39. (1961) M.LJ. 252.

have disposed of the appeal, but it was then ruled that section 49A(3) imposed an absolute liability on the appellant and that *mens rea* was not a "constituent" of the offence he had committed. It was thus implied that intoxication could not give the accused a defence in any event. No reasons were advanced as to why this should be an offence of absolute liability. It will be recalled that *Ayavoo* held that the same offence in West Malaysia requires *mens rea.* It was suggested earlier that, unless those General Exceptions that are based on a lack of *mens rea* are expressly or by necessary implication excluded by the statute creating an offence, that offence should be construed as subject to those Exceptions, in which case it could hardly be called strict or absolute. To rule from the wording of an offence that it is one of strict liability and then to say that therefore an Exception based on a lack of *mens rea* is excluded is to put the horse after the cart. This argument, it must be admitted, is not as easy to apply with intoxication as it is with mistake and accident. Intoxication is a defence under the Penal Code if the accused did not thereby know what he was doing or that it was wrong and the intoxication (i) was involuntary or (ii) had resulted in insanity (section 85). Intoxication shall be taken into account also "for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence" (section 86). The circumstances required by section 85 are not likely to occur frequently, so intoxication as a *defence* will rarely be available. This section could generally be ignored when determing the mental elements required for liability for any offence. Under section 86 intoxication is only relevant to liability if intention is required for the offence in the first place, so this section can hardly be used in the initial determination of whether intention is required for liability. But if it is found, after considering *inter alia* the applicability of the other General Exceptions, that intention is required for liability then intoxication becomes relevant. And intention is nonetheless required for liability where the accused has the burden of proving the lack of it.

Although duress does not really go to negative *mens rea,* and it is possible to have strict liability consistently with the availability of duress as a defence, it cannot properly be said that liability is absolute if duress is available. In *Subramaniam* v. *Public Prosecutor*,[40] the Privy Council ruled that the defence of duress under section 94 of the Penal Code was available on a charge of possession of ammunition without lawful excuse contrary to Regulation 4(1) (b) of the Malayan Emergency Regulations 1951. The Board rejected a contention that as "lawful excuse" had been defined in Regulation 4(2A), the applicability of duress (and the other General Exceptions) was circumscribed by the terms of that definition. It would seem therefore that the exclusion of the General Exceptions has to be done clearly by the legislature. To make the application of section 94 to non-Penal Code security offences conform with its applicability to offences under the Penal Code, section 69 of the Malaysian Internal Security Act, 1960, makes the defence unavailable for those offences under Part 2 of the Act that are punishable with death.[41]

It is the writer's contention that, except in the rare case where they

40. [1956] 1 W.L.R. 965, (1956) M.L.J. 220,

41. See *e.g.*, *Tan Hoi Hung* v. *Public Prosecutor* [1966] 1 M.L.J. 288.

are excluded, the General Exceptions should have the effect of preventing offences here being treated as strict or absolute. The courts, however, seem not generally to accept this contention. In determining whether an offence is strict or absolute they simply apply tests from English cases. These tests will be examined in the next section of this article, but it might be noted here that there are no General Exceptions in England applicable to all offences unless excluded.

If the General Exceptions should generally prevent strict liability here, they are also of course available as defences in particular cases. We shall now consider some decided cases in which the General Exceptions, particularly mistake, could have been applicable but were not mentioned. It will be recalled that in *Omar Ariffin* v. *R.* a policeman was convicted of being asleep while on duty. His story that he became dizzy and passed out was rejected but it was said anyway that *mens rea* was not necessary for liability. If the dizziness story had been believed the accused should have been entitled to the defence of accident under section 80 of the Penal Code or perhaps necessity (avoiding greater harm) under section 81. In the Singapore case *Ong Aik Phow* v. *R.*[42] the manager of a firm dealing in rubber was convicted of importing rubber that was not accompanied by a certificate of origin contrary to section 14(1) of the Rubber Regulation Ordinance, 1934. An excess over the quantity shown in the certificate of origin had been landed but the appellant denied any knowledge of the excess. The conviction was confirmed on appeal on the basis that the offence was one of absolute liability. If the appellant had believed in good faith that only the quantity shown on the certificate of origin was being landed he should have been entitled to the defence of mistake of fact under section 79. The magistrate had found that the appellant's firm was privy to an attempt at smuggling and he imputed the firm's knowledge to the manager. The appellant could therefore have been convicted on the basis that his plea of mistake failed rather than on the basis of absolute liability for the offence.[43]

The Federated Malay States (F.M.S.) case *Chong Kwong* v. *Public Prosecutor*[44] was an appeal against conviction for offering for sale adulterated chandu dross, an offence under section 15(i)(e) of the Opium and Chandu Enactment, 1931. It was again held that the offence was one of absolute prohibition. It appeared the appellant had collected most of the dross from other people and had no reason to believe that it was adulterated. If he had acted with due care and attention he would have fallen within section 79 and been entitled to an acquittal. In *Goonatillake* v. *Public Prosecutor*[45] the charge was wilfully furnishing false information as to the number of tappable rubber trees on an estate contrary to section 21 (i) (c) of the Johore Rubber Regulation Enactment, 1934. It was held that an offence was committed if the false information

42. (1937) M.L.J. 73.

43. *Ong Aik Phow* has been a comparatively influential case for absolute liability. It was followed in *R.* v. *G. H. Kiat* (1938) M.L.J. (S.S.R.) 150. *Rowland* v. *Public Prosecutor* (1940) M.L.J. (F.M.S.R.) 131, and *Lim Eng Soon* v. *Public Prosecutor* (1953) M.L.J. 166 (Federation of Malaya).

44. (1935) M.L.J. 41.

45. (1936) M.L.J. 47.

was wilfully furnished irrespective of whether that information was or was not wilfully false. If the accused was genuinely and reasonably mistaken as to the information furnished he should again have been entitled to a defence under section 79.

As suggested earlier there may be cases where the accused has no *mens rea* but he may not be able to bring himself within any of the General Exceptions. We may take *Tan Yong Sin* v. *Public Prosecutor*[46] as an example of this. The accused was charged with having chandu other than Government chandu in his possession, an offence under section 9 (b) of the F.M.S. Opium and Chandu Enatment.[47] His defence was that the chandu had been "planted" by an enemy, but the prohibition was held to be absolute and the conviction was confirmed. The accused here was alleging that he was ignorant of the fact he had chandu in his possession, that he had no guilty knowledge because he had no knowledge. Ignorance of a fact is distinguishable from mistake as to that fact, so the accused could not have come under section 79. It seems that accident would be no more appropriate, nor indeed any of the other General Exceptions.

Why is it that the courts here have been so reluctant to consider the General Exceptions in relation to offences outside the Penal Code? One guess is that common lawyers find it difficult to work with codified defences of general application. Related to this may be the strangeness of having always to keep in mind one statute when construing another. A further difficulty may lie in the general tendency here to seek the law in English cases, specifically in those that have promoted the philosophy of strict liability (though in the significant absence of General Exceptions). The problem would seem to be of some moment even if the answers to it are likely to be speculative.

We may conclude this section with a few words on burden of proof. If the General Exceptions are to be applied to non-Penal Code offences, must the prosecution prove that they do not in fact apply or must the accused prove that they do? And if the accused must prove that they do, to what extent must he prove this? The Evidence Ordinances[48] place the burden of proving the existence of circumstances bringing a case within any of the General Exceptions on the accused and the court is to presume the absence of such circumstances.[49] This is, in effect, a general "reversal of onus" provision.[50] The courts here, however, have ruled that an accused's burden is discharged if he creates a doubt about the applicability of an Exception, if he shows, that is, that there is a reasonable possibility of the Exception applying.[51] This rule has been developed

46. (1939) M.L.J. 86.

47. F.M.S Laws, 1935, cap. 134.

48. Laws of Singapore, 1955, cap. 4; Federation of Malaya Ordinance No. 11 of 1950.

49. Sections 106 in Singapore and 105 in Malaya.

50. "Reversal of onus" provisions are taken up again in the next section.

51. See generally the writer's "Burden of Proof on an Accused in Malaysia", (1964), 6 *Malaya L.R.* 250.

in murder cases mainly, and the courts may not wish to apply it to regulatory offences outside the Penal Code. There is no clear indication in the cases we have just discussed of the extent of the burden on an accused to establish any of the General Exceptions there considered. If an accused were required to prove any General Exception he was relying on in answer to a regulatory offence on the balance of probabilities,[52] a useful middle way between the extremes of proof of *mens rea* and strict liability could be opened up.

III. CRITERIA FOR THE EXCLUSION OF *mens rea*

We have so far been concerned with what strict liability is and how far strict liability is possible here having regard to the General Exceptions. We shall now examine the criteria that have actually been used by the courts here to determine whether liability for an offence should be regarded as strict or not. There has been steady support for the application of the English formula stated perhaps most clearly by Wright J. in *Sherras* v. *De Rutzen*:[53]

> There is a presumption that *mens rea* or evil intention or knowledge of the wrongfulness of the act is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the Statute creating the offence or by the subject-matter with which it deals and both must be considered.

The application of this formula here has usually resulted in *mens rea* being held unnecessary. This has happened in the following cases in respect of the following offences:— *Chong Kwong* v. *Public Prosecutor* [54] — offering for sale adulterated chandu dross; *Ong Aik Phow* v. *R.*[55] — importing rubber without a certificate of origin; *R.* v. *G. H. Kiat*[56] — owner permitting a dog to be out of doors within an infected area without a lead or a muzzle; *Tan Yong Sin* v. *Public Prosecutor* [57] — possession of chandu other than Government chandu; *Rowland* v. *Public Prosecutor* [58] — possession of toddy to which water had been added; *Lee Lip Ngee* v. *Crown Counsel* [59] — moving a controlled article without authorisation; *Sulong* v. *Public Prosecutor*[60] — carrying arms; *Lim Eng Soon* v. *Public Prosecutor* [61] — importing raw opium; *Seah Eng*

52. The extent of proof normally required where the burden is placed on an accused. See *R.* v. *Carr-Briant* [1943] K.B. 607.

53. (1895) 1 Q.B. 918, at p. 921.

54. (1935) M.L.J. 41.

55. (1937) M.L.J. 73.

56. (1938) M.L.J. 150.

57. (1939) M.L.J. 86.

58. (1940) M.LJ. 131.

59. (1947) M.L.J. 68.

60. (1947) M.L.J. 138.

61. (1953) M.L.J. 166.

Joo v. *R.*[62] — police supervisee failing to comply with a restriction order; *Mohamed Ibrahim* v. *Public Prosecutor*[63] — possessing for purposes of sale an obscene book. One of the very few cases where the formula stated by Wright J. in *Sherras* v. *De Retzen* has been applied in favour of the requirement of *mens rea* was *Si Ah Fatt* v. *Public Prosecutor*.[64] The offence there was being "found in the company of another person who was carrying arms" contrary to Regulation 4 of the Malayan Emergency Regulations, 1948. It was held by the F.M.S. Court of Appeal that the accused must know that the other person was armed.[65]

In a few cases the courts here have adopted a compromise position between requiring proof of *mens rea* and treating *mens rea,* as unnecessary. They have placed on the accused the onus of proving lack of *mens rea,*. Thus in *Tan Hoay* it was held that once the prosecution had proved possession of chandu, "the onus of proof shifted, and it becomes the duty of the appellant to satisfy the [trial judge] that such possession was innocent".[66] In Tow *Roessing* it was held that on a charge of importing arms without a permit the prosecution did not have to prove guilty knowledge but that it was open to the defence to establish mistake of fact. And in *Public Prosecutor* v. *Sin Lee Yok*[67] it was said on a charge of making a false declaration in an application for a driving licence that, if the accused alleged that he was not aware he was making a declaration, the onus was on him to establish such lack of awareness. We have already noted that the Evidence Ordinances place the burden of proving the General Exceptions contained in the Penal Codes on the accused but that judicial interpretation has reduced the extent of this burden to creating a doubt as to whether the Exception may not have been made out. The Evidence Ordinances also place the burden of proving facts especially within a person's knowledge on that person.[68]

The courts here have not been slow to find employers guilty for offences committed in the operation of their businesses where employees have been at fault without the knowledge of their employers. Such liability has often been placed on the basis that otherwise the prohibition would be ineffectual as masters could shelter behind their servants. This was the *rationale* of the F.M.S. case *Ang Lock Toon* v. *Public Prosecutor* [69] in which it was held that an exporter had an unconditional obligation to furnish a true account of goods liable to duty for the purposes of section

62. (1961) M.L.J. 252.

63. (1963) M.L.J. 289.

64. (1950) M.L.J. 161.

65. The Privy Council decision in *Sambasivan* v. *Public Prosecutor* (1950) M.L.J. 145 was cited in support of this holding. In that case the prosecution had conceded that "carries" means "carries to the knowledge of the person carrying".

66. (1938) M.L.J. 216, at p. 217.

67. (1940) M.L.J. 40.

68. Singapore, section 107; Malaya, section 106.

69. (1922), 1 F.M.S.L.R. 199.

20 of the Excise Enactment, 1907, and that it was no defence that his employee had furnished a false account without the exporter's knowledge.[70] Similar reasoning has been used in convicting those who hold licences for various public services. Thus in *Public Prosecutor* v. *Manager, Great Eastern Park, Kuala Lumpur*[71] the accused was the licensee of a Chinese wayang. A condition of the licence was that cymbals were not to be used during performances. Cymbals were in fact used, but during the licensee's absence. A conviction under section 9(iii) of the Theatres Enactment, 1910 for a breach of the condition of the licence was sustained.[72] There has equally been little hesitation in finding owners guilty for the misuse of their property without their knowledge by their servants. In two Malayan prosecutions for using overloaded vehicles[73] the owners of the vehicles were held liable though the overloading was without their knowledge. In one case it was said that liability would still exist even if the overloading was against the owner's express commands or was the result of directions from a third party.[74] A similar result against the owner was reached by the F.M.S. Court of Appeal on a prosecution for permitting a vehicle to be used with defective brakes.[75] In all the cases of vicarious liability so far mentioned, there appears to have been some fault on the part of the servants or agents involved. But in two cases it was held that principals could be liable even though the offences committed by their agents were absolute.[76] So faultlessness added to faultlessness could amount to criminal liability. The only prosecution seeking to impose liability vicariously that has resulted in any judicial suggestion that *mens rea* was necessary for conviction is the Sarawak case *Sim Poh Ho* v. *Public Prosecutor*.[77] The appellants were the registered proprietors and publishers of a Chinese

70. Cases in which it has been held that importer-principals may be convicted irrespective of knowledge of their agents' transgressions include *Arthanarisami Chettiar* v. Public Prosecutor (1940) M.L.J. 67, and *Wong Ngian Thin* v. *Public Prosecutor* (1941) M.L.J. 199.

71. (1934) 11 F.M.S.L.R. 250.

72. Other licensee cases in which there have been convictions in similar circumstances include *Siew Yong* v. *Public Prosecutor* (1932) 2 F.M.S.L.R. 364, and *R.* v. *Mohamed Ali* (1933) M.L.J. 74. In the latter case the decision in the English case *Allen* v. *Whitehead* [1930] 1 K.B. 211 was followed.

73. *Public Prosecutor* v. *Ginder Singh and Chet Singh* (1948) 1 M.L.J. 194, and *Public Prosecutor* v. *Sundram* (1955) M.L.J. 159. The latter case followed James *& Son, Ltd.* v. Smee [1955] 1 Q.B. 78, which held the prohibition against "use" of an overloaded vehicle to be absolute but not the prohibition against "permitting the use".

74. *Ginder Singh* (1948) M.L.J. 194, at p. 195.

75. *Public Prosecutor* v. *Ong Cho Teck* (1946) M.L.J. 85. See also *R.* v. *G. H. Kiat* (1938) M.L.J. 150 (owner of dogs liable for permitting them to be outdoors unmuzzled, though against his express instructions). This absolute interpretation of "permitting" is contrary to the English position: see *James & Son, Ltd.* v. *Smee* mentioned in n. 73 *supra,* and Williams, *op. cit*., 163-8.

76. *Arthanarisami Chettiar* and *Wong Ngiam Thin,* cited in n. 70 *supra.* Both cases involved making incorrect declarations in connection with the importation of goods. They are discussed more fully in section IV. It should be pointed out here, however, that the liability of the importer for the acts of his authorized servants or agents was statutorily imposed.

77. [1966] 1 M.L.J. 275.

newspaper in which it was alleged that they advertised that obsence photographs could be procured from certain persons, an offence under section 292 (d) of the Penal Code. The appeal was allowed on the ground that there was no finding that the advertisements proclaimed that the photographs that could be procured were obscene. It was also suggested that *mens rea* was required for liability (*i.e.*, the appellants must have known about the advertisements), following the Privy Council in *Lim Chin Aik* v. *R.*[78] rather than Thomson C.J. (as he then was) in *Mohamed Ibrahim* v. *Public Prosecutor.*[79]

The impression may have been given that the courts here have preferred to find strict liability as opposed to requiring *mens rea* where they have had the choice. In fact the position is that of 49 cases decided by local courts that the writer has found reported in which the issue was raised, 24 have required some form of *mens rea,* for liability and 25 have opted for strict liability. Included among the 25 strict liability cases are the cases of vicarious liability (where masters without knowledge thereof have been held liable for the transgressions of their servants) and the cases discussed earlier in which there has been a ruling of absolute liability but coupled with a consideration of defences based on a lack of *mens rea.* The 49 cases examined are listed in an Appendix at the end of the article.

The decisions that *mens rea* is a necessary ingredient of the offence in question are often not based on articulated premises. In many cases it would be safe to infer that the presumption that *mens rea* is required for criminal liability has been operative. In other cases *mens rea* words used at the beginning of the description of the *actus reus* have been applied to all elements of the *actus reus.* For example, "wilfully using a forged document" has been held to require both intention to use and knowledge that the document is false,[80] and "knowingly permitting premises to be used as brothel" as requiring knowledge that it was as a brothel that the premises were being used.[81] In still other cases the words used in defining the *actus reus* have been held to imply the necessity for *mens rea.* Thus "possession" has been held to require knowledge that something is possessed and knowledge also of the proscribed characteristics of the things;[82] "imports" has also been found to require possession in the sense just indicated.

The recent Privy Council decision in *Lim Chin Aik* v. *R.*[83] should have the effect of modifying the judicial approach here to the question of whether liability for an offence should be strict or not. The accused was charged for that he "did remain" in Singapore having been prohibited by an order of the Minister from entering Singapore and thereby

78. [1963] A.C. 160, (1963) M.L.J. 50.

79. (1963) M.L.J. 289. Both these cases will be discussed later.

80. *Barbour* v. *Public Prosecutor* (1923) 4 F.M.S.L.R. 264.

81. *Lau Eng Teck* v. *Public Prosecutor* [1965] 1 M.L.J. 34.

82. The cases are discussed in section IV.

83. [1963] A.C. 160, (1963) M.L.J. 50.

"contravened" section 6(2) of the Singapore Immigration Ordinance, 1952, an offence punishable under section 6(3) of the Ordinance. There was no dispute about the accused being in Singapore after the Minister's order but there was no evidence that anything had been done to bring the order to the attention of the accused or that it had in fact come to his attention. The accused was convicted and appealed unsuccessfully to the Singapore High Court. The main issue before the Privy Council was whether a "guilty intent" was an essential ingredient of the offence charged. The Board accepted as correct the rule regarding the presumption of *mens rea* as formulated (and reproduced above) by Wright J. in *Sherras* v. *De Rutzen.* The Board, however, qualified in an important respect that part of the rule which allows the presumption to be displaced by the "subject-matter with which [the statute] deals". It said:[84]

> It is not enough merely to label the statute as one dealing with a grave social evil and from that to infer that strict liability was intended. It is pertinent also to inquire whether putting the defendant under strict liability will assist in the enforcement of the regulations. That means that there must be something he can do, directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the regulations.

Applying the rule so qualified to Lim's case, the Board found that control of immigration as a subject-matter did not generally attract strict liability,[85] that there was nothing the accused could have done so as to comply with the regulations, that the tendency of the words "remain" and "contravened" was towards the requirement of *mens rea,* and that the absence of *mens rea* words from the section under consideration together with their presence in other sections of the Ordinance was insufficient to prevail against the conclusion suggested by the language as a whole. The Board accordingly found that the presumption of *mens rea* had not been displaced and allowed the appeal.

The acceptance of the *mens rea* rule as modified by *Lim Chin Aik* would destroy as precedents a number of earlier Singapore and Malayan decisions. Thus cases of illegal importation where the fault was beyond the control of the accused could not be relied on: *e.g., Ong Aik Phow* [86] where the accused had relied on documents sent to him by the exporter, and *Lim Eng Soon*[87] where the accused was not in a position to know that the lorry he was driving was being used by his attendant for the importation of opium. Similarly, "possession" cases where the accused establishes that the subject-matter has been "planted" should be discounted: *e.g., Tan Yong* Sin.[88] Also, "selling" cases where the seller could not be expected to know of the offending quality in his merchandise:

84. [1963] A.C. 160 at p. 174; (1963) M.L.J. 50 at p. 53.

85. But the Board was quite prepared to accept the view of the Singapore courts on this question.

86. (1937) M.L.J. 73.

87. (1953) M.L.J. 166.

88. (1939) M.L.J. 86.

e.g.,'*The Manager G. H. Long Bros.* v. *Public Prosecutor*[89] in which a retailer was convicted for selling soft drinks not containing proper ingredients, and *Chong Kwong*[90] in which a middleman was convicted of offering for sale to the government adulterated chandu dross. Finally those cases in which a convicted master's instructions have been disobeyed by his servant and the master could not have been expected to supervise the servant personally must be regarded as suspect: *e.g.*, *G. H. Kiat*[91] where a servant took dogs out of doors without leads or muzzles against her master's instructions and in his absence.

There are three other matters dealt with in the judgment in *Lim Chin Aik* that call for comment. The Board declined to assent to the proposition that if *mens rea* words, such as "knowingly", are absent from the definition of an offence, the onus is shifted to the accused to prove lack of *mens rea.* The case of *Tan Hoay, Sin Lee Yok* and *Chong Kwong,* which accepted this proposition, should therefore not be relied on in the future. The second matter concerns the Board's rejection of a prosecution submission that the accused's plea was simply one of ignorance of law which was no defence. The Board ruled that the maxim 'ignorance of the law is no excuse' could not apply where there was no provision for the publication of the relevant Ministerial order nor any other provision allowing a person to discover what the law was. This comes close to saying that because there was no way for the accused to know about the order it cannot be regarded as law. If the order was not law it imposed no legal duty on the accused and hence he had not committed the offence charged. This might have represented a more satisfactory solution of the problem raised by this case than the one actually adopted. Another solution of course would have been to have recognised some exception to the maxim that ignorance of the law is no excuse. The reason Lim had no *mens rea* was because he was ignorant of the existence of the order, so in allowing the appeal the Board did in fact seem to be admitting through the back door a plea of ignorance of the law. There is a growing call for recognition of non-culpable ignorance of law as a defence in certain circumstances.[92] Some jurisdictions already give a degree of recognition.[93] The third matter for comment from the judgment in *Lim Chin Aik* is the *dictum* that if the "subject-matter plus promotion of observance of the regulations" test is adopted, then the view "that strict liability follows simply from the nature of the subject-matter and that persons whose conduct is beyond any sort of criticism can be dealt with by the imposition of a nominal penalty"[94] should be rejected. The palliative of a nominal penalty to mitigate the stricter view has not

89. (1961) M.L.J. 222.

90. (1935) M.L.J. 41.

91. (1938) M.L.J. 150.

92. See the literature cited by Williams, *op. cit.*, 291, n. 10.

93. See particularly the U.S. Supreme Court decision in *Lambert* v. *California* 355 U.S. 225 (1957) and Johannes Andenaes, *"Ignorantia Legis* in Scandanavian Criminal Law" in *Essays in Criminal Science,* (ed. Mueller, 1961), 215; P K Ryu, "The New Korean Criminal Code of October 3, 1953", (1957-58), 48 *J. of C.L., C.* and *P.S.* 275, at pp. 280-1.

94. [1963] A.C. 160 at pp. 174-5, (1963) M.L.J. 50 at p. 53.

been unusual here. In *G. H. Kiat* a fine of $1 for each unmuzzled dog was confirmed on appeal, in *Rowland* the fine imposed on the manager of the toddy shop was reduced on appeal from $250 to $5, and in *Tan Yong Sin* (possession of chandu) and *Lim Eng Soon* (importing opium) the penalties imposed at the trial were substantially reduced on appeal. If *Lim Chin Aik* is applied here there should be a lower liability rate but a higher penalty level for regulatory offences.

While on penalties, it has often been said that an offence should not be interpreted as strict if the possible punishment is heavier than a fine.[95] There have been some cases locally that have held offences to be of absolute liability where not only the offence charged has carried imprisonment as a possible punishment but where also the accused has actually been sentenced to imprisonment. In *Omar Ariffin* the policeman asleep on duty had his sentence of one month's imprisonment confirmed. In *Tan Hoay* eight months simple imprisonment was confirmed for the offence of possession of chandu which carried a maximum of three years rigorous imprisonment. And in *Seah Eng Joo* the police supervisee who failed to comply with a restriction to remain at home at night had an eighteen month sentence confirmed. The minimum sentence for this offence was one year and the maximum three years[96] — very heavy for an offence of absolute liability, even if it can only be committed after imprisonment for an antecedent offence.

We may next note two legislative devices allowing intermediate positions between proof of *mens rea* on the one hand and strict liability on the other. The first is the familiar "reversal of onus" provision whereby an accused is required by statute to prove lack of *mens rea* or the existence of some lawful excuse. The *mens rea* or lack of excuse is usually "presumed . . . unless the contrary is proved". Reversal of onus provisions do not dispense with the requirement of *mens rea,* rather they are concerned with the manner of its proof. And whereas the prosecution is obliged to prove *mens rea* beyond reasonable doubt, the accused may usually disprove it (where he is required to) on the balance of probabilities. Examples of reversal of onus provisions are that possession and knowledge of the nature of a thing are to be presumed from custody or control of that thing,[97] that uncustomed goods shall be deemed uncustomed to the knowledge of the accused,[98] and that premises are to have been used for smoking a dangerous drug if that drug and a pipe are found in the premises[99] — in each case unless or until the contrary is proved. The other legislative device is known as a "third-party

95. *E.g.*, Sayre, "Public Welfare Offenses", (1933), 33 *Col. L.R.* 55 at pp. 72, 78-83; Howard, Strict *Responsibility,* (1963), pp. 29-35.

96. Criminal Law (Temporary Provisions) Ordinance, 1955 (Singapore), section 49A(3).

97. See, *e.g.*, section 37(d) of the Dangerous Drugs Ordinance, Laws of Singapore, 1955, cap. 137 (as amended by No. 23 of 1959).

98. See, *e.g.*, section 131(2) of the Malayan Customs Ordinance, 1952.

99. See, *e.g.*, section 37(c)(i) of the Dangerous Drugs Ordinance, Laws of Singapore, 1955, cap. 137 (as amended by No. 23 of 1959).

procedure". This is coming into use in England,[1] though it does not yet seem to have been introduced here. Under this procedure, a defendant (A) may escape liability by bringing in another defendant (B) and proving that the contravention was due to B and that he, A, was not at fault. B may then be convicted. This procedure could have prevented, for example, the conviction of the seller of the unlawful drinks in *The Manager, G. H. Long Bros*., and perhaps the conviction of the master who had forbidden his servant to take out his dogs unless they were muzzled in *G. H. Kiat.*

Another intermediate position between *mens rea* and strict liability has often been suggested by jurists but has not generally been adopted by the courts. This is to base liability on negligence.[2] In many cases where strict liability has been imposed the accused has fairly clearly been guilty of negligence, so substituting negligence for strict liability would not make much practical difference, and it would prevent injustices. From the other side, the *mens* rea-strict liability issue arises almost entirely in connection with regulatory or public welfare offences where *mens rea* in the common law sense is not always particularly appropriate. So there does seem scope for a compromise between *mens rea* and strict liability in the form of negligence. Liability for negligence would of course include liability for intentional or reckless contraventions. Considerable support is lent to a negligence basis for liability locally by the requirement of "due care and attention"[3] for mistake and "proper care and caution" for accident as defences under sections 79 and 80 of the Penal Codes.[4]

It would seem to be much sounder and more realistic to talk about whether an accused, on the facts of his case, should be liable for the offence charged rather than whether the offence charged is one of absolute liability. This would shift the emphasis from the words and object of the offence to the conduct of the particular accused, a shift towards the traditional common law approach and the minimization of injustices. A ruling of absolute liability for an offence will invariably go beyond the requirements of any one case as there are so many ways in which a lack of *mens rea* may manifest itself. If an offence is ruled to be one of absolute prohibition in a case in which that ruling is not necessary for the decision, the ruling could be a great embarrassment when the court later has before it a completely blameless accused.

1. See Williams, *op. cit*., 220.

2. As to the jurists, see Williams, *op. cit*., 262-5; Sir Patrick Devlin, "Statutory Offences", (1957-58), 4 *J. of S.P.T.L.(N.S.)* 206 at p. 210; Howard, *op. cit*., vii, 38-9, and *passim.* Some cases have used negligence as a basis for liability: see the English cases cited in Edwards, *Mens Rea in Statutory Offences,* (1955), pp. 205-216, and more particularly the Australian case-law discussed in Howard, op. *cit*., chapters 5 and 6.

3. The expression "good faith" used in section 79 is defined by section 52 to require "due care and attention".

4. The only local cases that suggest negligence as a basis for liability seem to be *Mohamed Ibrahim* v. *Public Prosecutor* (see n. 79, *ante*) and *Attorney-General* v. *Lim Ho Puah* (1905), 9 S.S.L.R. 13, both of which are discussed in the next section. *Lim Chin Aik* (see n. 78, *ante*) could also be interpreted as requiring at least some failure to exercise due care.

IV. JUDICIAL CONFLICTS OVER STRICTNESS OF LIABILITY

The local cases are often in conflict on whether particular offences or types of offences should be construed strictly or as requiring *mens rea.* Worse, it is not unusual for a case to be decided one way without reference to earlier cases either supporting or inconsistent with that decision. We shall now examine some offences and types of offences that have given rise to judicial conflicts.

It is the "possession" offences that seem to have given rise to the most sustained splitting among the cases. There have been splits on two main issues. The first is as to whether the thing possessed must be known to be possessed. The second is as to whether knowledge of a proscribed quality in the thing possessed is required. For this second issue to arise there must first have been proof of knowledge that the "thing" in question was possessed, though this is not usually an issue in the second type of cases. The first issue has usually arisen in possession of opium cases, where if you know you possess something that is in fact opium you normally know that it is opium you possess. There is some authority that knowledge of possession is not required. Thus in *Tan Yong Sin* v. *Public Prosecutor*[5] it was held in a reasoned judgment that a prohibition against the possession of opium was absolute and that a defence that it was "planted" by an enemy was not open. And we have seen that in *R.* v. *Tan Hoay*[6] absolute prohibition was decreed for the same offence, though innocent possession was contemplated as a defence if it could be proved by the accused. There is more and better authority, however, requiring knowledge of possession. In *Ong Ah Huat* v. *Opium Farmer*[7] a brothel-keeper in Penang had been convicted of possession of chandu. The chandu was found in a room occupied by one of his prostitutes. His conviction was quashed for lack of proof that he knew the chandu was in his possession. The Singapore Court of Appeal in *Toh Ah Loh* v. *R.*[8] found the same way on a charge of possession of ammunition.[9] The accused were villagers who had been engaged, as part of a police trap, to unload boxes which contained ammunition from a sampan onto a lorry. It was not proved that the accused knew the boxes contained ammunition. Quashing the convictions, the Court of Appeal ruled that for "possession" to incriminate, the possessor must know the nature of the thing possessed, he must have a power of disposal over the thing, and he must be conscious of his possession of the thing. The first requirement would resolve our second issue on possession in the affirmative, while the third requirement would similarly resolve pur first issue. In the Singapore case *Sim Chwee Chua* v. *R.*[10] a conviction for possession of raw opium was upheld as there

5. (1939) M.L.J. 86.

6. (1938) M.L.J. 216.

7. (1878), 3 Ky. 100.

8. (1949) M.L.J. 54.

9. Contrary to section 3 of the Firearms and Ammunition (Unlawful Possession) Ordinance, 1946.

10. (1951) M.L.J. 227.

was found to be sufficient evidence that the appellant was aware that there was opium in his sampan. In another Singapore case, *Ho Seng Seng* v. *R.*,[11] *a* conviction for possession of raw opium was quashed where the prosecution had not proved that the appellant had knowledge that there was opium in the basket he was carrying. The appellant had alleged that the basket had been given to him by another person and that he knew nothing of its contents. The Court of Appeal ruling in *Toh Ah Loh* was cited in support. *Ho Seng Seng* is the more remarkable as the decision there was reached despite a provision that possession was to be presumed from custody or control until the contrary was proved.[12] It was said that custody of control also required proof of knowledge. Finally in *'Tan Peng Heng* v. *R.*[13] a conviction for possession of opium was quashed on the view that the appellant may have been an innocent carrier not aware of the contents of the parcel he was carrying. It seems clear, therefore, that apart from any clear statutory provision to the contrary, possession must be to the knowledge of the accused before there can be criminal liability.

The second issue on which the "possession" cases have diverged is as to whether knowledge of a particular, proscribed quality of the thing possessed is required. The cases are evenly divided on this. In *Beh Ah Teng* v. *Public Prosecutor*[14] it was on a charge of being "knowingly in possession of uncustomed goods"[15] that "knowingly" governed the whole of the rest of the phrase and that the prosecution had to prove that the accused knew the duty had not been paid. This decision is perhaps distinguishable from the other cases on this second issue by the presence of the word "knowingly" in the offence charged. Much stronger authority for a full *mens rea* interpretation of "possession" is *Toh Ah Loh,* the Singapore Court of Appeal decision noted in connection with the first "possession" issue. That case required the possessor to know the nature of the thing possessed as one of the three requirements for incrimination in possession cases. Two cases have taken the opposing view on this issue. *Rowland* v. *Public Prosecutor*[16] concerned a charge of possession of toddy to which water had been added.[17] The accused was the manager of the government toddy-shop and the toddy in question was apparently diluted before it came to the shop. There was no evidence that the accused had any knowledge of the dilution. The accused's conviction was upheld though the fine was reduced to a nominal amount. The conviction was said to follow from an application of the formula described by Wright J. in *Sherras* v. *De*

11. (1952) M.L.J. 225.

12. Dangerous Drugs Ordinance, 1961, section 37(d).

13. Singapore Magistrate's Appeal No. 161 of 1953, unreported, but noted in (1953) M.L.J. xxv.

14. (1931) 8 F.M.S.L.R. 92.

15. Contrary to section 111(e) of the Customs Enactment, 1923.

16. (1940) M.L.J. 131.

17. Contrary to Rule 92 and section 67 of the Excise Enactment, cap. 133, F.M.S. Laws, 1935.

Rutzen. Support was found in an English case, *Parker* v. *Alder*,[18] in which a supplier of milk was convicted for an adulteration which occurred after despatch by him of the milk and before its receipt by the consignee. The decision in *Rowland* may not be inconsistent with *Lim Chin Aik* as it seems that the accused could have declined to accept diluted toddy. But then to discover whether it was diluted he would probably have to take it into his possession for the purpose of testing it, in which case *Lim Chin Aik* could be applied to prevent conviction for such possession.

The other case for the strict view on the present issue is the Malayan case of *Mohamed Ibrahim* v. *Public Prosecutor*.[19] The accused had been convicted of having in his possession for purposes of sale copies of an obscene book (Henry Miller's *Tropic of Cancer),* an offence under section 292 (a) of the Penal Code. Thomson C.J. (as he then was) upheld the conviction. The appellant managed the sale of books in a shop which did other business as well. Sixty-five copies of *Tropic of Cancer* were found under the counter. We may note first that Thomson C.J. accepted that the appellant was in possession of the books, indicating that consciousness of possession is necessary for "possession" offences. The main issue in the case was whether it was necessary for the accused to have knowledge that the book was obscene and this issue arose because the evidence was that the accused did not know the English language and hence was ignorant of the book's contents. Thomson C.J. obtained "assistance" on this issue "from a consideration of the line of cases where it has been held that the public interest demands a construction of considerable strictness." [20] Thus weighting the scales in favour of a strict construction, he considered four English cases,[21] two of which dealt with the sale of unsound meat.[22] He then stated that one object of section 292 was to protect the public, particularly youths, from the corrupting influence of obscene books, that the section would be nugatory if it was always open to an accused to say that he did not know the contents of the books he was selling, that obscene books could then always be sold by employing a vendor ignorant of their language, that it was the business of sellers of beer, beef, tobacco and books *to* ensure that their merchandise was such that the public did not suffer, and that "the most the prosecution can be expected to prove is not knowledge but the existence of means of acquiring knowledge." [23] *Lim Chin Aik* was distinguished on the ground that there the appellant could not have had knowledge that he was committing an offence. It will be noted that Thomson C.J. spoke of "considerable" rather than absolute strictness and that he required the prosecution to prove the existence of means of acquiring knowledge. This suggests some compromise between absolute liability and the requirement of *mens rea,* something perhaps approximating to negligence.

18. [1899] 1 Q.B. 20.

19. (1963) M.L.J. 289.

20. *Ibid*., at p. 293.

21. *R.* v. *Woodrow* 15 M. & W. 404, *R.* v. *Bishop* (1879), 5 Q.B.D. 259; *Blaker* v. *Tillstone* [1894] 1 Q.B. 345, and *Hobbs* v. *Winchester Corporation* [1910] 2 K.B. 471.

22. The last two cited *ibid.*

23. (1963) M.L.J. 289 at p. 293.

If possession for sale of an obscene book is prohibited then, apart from the difficulty of discovering whether a book is obscene, there should be no objection to requiring a book-seller to take the steps that may be necessary for him to ascertain whether a book is obscene. It is hard to imagine a necessary step that would be unreasonable. It is unfortunate, but not unusual, that no local cases were referred to in the judgment in *Mohamed Ibrahim.* The Singapore Court of Appeal ruling in *Toh Ah Loh* that the possessor must know the nature of the thing he is charged with possessing is against the decision in *Mohamed Ibrahim,* though the decision in *Rowland* on possession of diluted toddy goes even further than *Mohamed Ibrahim.* Finally it is noteworthy that the charge in *Mohamed Ibrahim* was under the Penal Code. Unlike most of the Penal Code offences, the offence charged contains no *mens rea* words. The General Exceptions are of course applicable but none of them were available on the facts. The accused's lack of knowledge was due to ignorance rather than mistake.[24]

Before leaving "possession" offences we might advert to one more judicial conflict. It is as to the effect of the provision in section 37 (d) of the Singapore Dangerous Drugs Ordinance, 1951, that possession with full knowledge is to be presumed from custody or control until the contrary is proved. This provision was virtually rendered nugatory (apparently in the cause of *mens rea*) by the decision in *Ho Seng Seng* v. *R.*[25] to the effect that proof of knowledge was anyway required to establish custody or control. This decision was rejected in *Neo Koon Cheo* v. *R*[26]

Not unrelated to the "possession" offences are the offences involving importing and exporting. The issues that have arisen in the importation cases are again as to whether knowledge that something was in fact brought in is necessary, and whether the qualities of the thing imported must be known. There is again serious splitting among the cases. As to the first issue, *Cheng Ong San* v. *Public Prosecutor* [27] held on a charge of importing opium contrary to section 7(2) (a) of the Malayan Opium and Chandu Proclamation, 1946, that it was necessary to prove that the appellant was in possession of the opium he endeavoured to import and that possession required conscious and exclusive custody or control which was lacking in the instant case. Similarly in *Beh Chang Hin* v. *Public Prosecutor*,[28] on a charge of attempting to import gold and diamond jewellery without an import licence contrary to section 2 of the Malayan Prohibition of Imports Order, 1949, it was held necessary to prove that the accused knowingly both possessed and tried to import. On the other

24. If the decision in *Mohamed Ibrahim* drove all Malaysian and Singapore book-sellers who could not read their wares out of the business for fear of becoming possessed unknowingly of an obscene book there would be a noticeable increase in unemployment and an appreciable decrease in the distribution of all books.

25. (1952) M.L.J. 225.

26. (1959) M.L.J. 47.

27. Digested in (1949) M.L.J. 69.

28. (1950) M.L.J. 239.

hand in the Straits Settlements case of *Ong Aik Phow* v. *R.*[29] it was held that importing rubber without a certificate of origin was an offence of absolute liability, it being no defence that the accused was unaware that excess rubber had been shipped to him. Tim case was followed in Malaya in *Lim Eng Soo* v. *Public Prosecutor*,[30] where a lorry driver who was unaware that his attendant was importing opium was also convicted of the importation. As to the second issue on importing (knowledge of the proscribed quality of the thing imported), it will be recalled that the accused in *R.* v. *Von Roessing* [31] was acquitted on a charge of importing arms without a permit when he established that he was mistaken about the contents of the cases relanded. The two reported cases on exporting both took a strict liability line. In *Ang Lock Toon* v. *Public Prosecutor* [32] an exporter was convicted for not furnishing proper details of goods liable to duty, an offence under section 20 of the Excise Enactment, 1907. The false details had been furnished by an employee of the accused, without the latter's knowledge. The conviction was upheld on appeal, it being said that otherwise the objects of the statute would be defeated. It was also suggested that the appellant had been careless in the matter. The other exportation case was *'Tan Wang Keng* v. *Public Prosecutor*,[33] the charge being attempting to export opium contrary to section 33 of the Malayan Dangerous Drugs Ordinance, 1952. A conviction was upheld on appeal. It was said, *obiter,* that in import and export prosecutions there was no need for the accused to know of the existence of the thing imported or exported. More interestingly, it was said that if liability for exporting was strict, there was no reason why liability for attempting to export should not also be strict. This could be said to do violence to the word "attempt" and would seem to be at odds with the position in England,[34] but if a person can export something without knowing of its existence it is probably not inconsistent to say he can attempt to export it in the same circumstances.

There are two other importation cases of interest. Both cases deal with the liability of the owner or master of a ship used for the importation of opium. In *Attorney-General* v. *Lim Ho Puah* [35] liability to the forfeiture of the ship under section 24(1) of the Straits Settlements Opium Ordinance, 1894, was in issue. Section 24(2) provided that if more than a certain weight of opium was found on the ship (as had been in this case), the ship was deemed to have been used for importation until the contrary was proved. The owner was held to have taken every reasonable precaution to have prevented the importation in the present case so the claim for forfeiture failed. It was said that to punish a person for an act of which he was unconscious and which could

29. (1937) M.L.J. 73.

30. (1953) M.L.J. 166.

31. (1905) 9 S.S.L.R. 21.

32. (1922) 1 F.M.S.L.R. 199.

33. (1962) M.L.J. 47.

34. See *Gardner* v. *Akeroyd* [1952] 2 Q.B. 743.

35. (1905) 9 S.S.L.R. 13.

not have been prevented could have no effect in preventing future offences, the only reason for punishment in this sort of case. This would seem to anticipate *Lim Chin Aik*. The other case was *Jacob Bruhn* v. *The King*[36] a Privy Council decision. The proceedings here were against the master of a ship for a fine under section 73 of the Straits Settlements Opium Ordinance, 1906. Under this Ordinance the presumption that a ship had been used for the importation of opium specifically required for rebuttal a showing that (i) every reasonable precaution had been taken to prevent such user and that (ii) no-one employed on the ship had been implicated in the user. The Privy Council stated that strict liability was acceptable in revenue statutes. It found that the appellant had not established (ii) above and dismissed his appeal.

The cases on false statements or documents also reveal a division on the *mens* rea-strict liability issue. The issue here has arisen in three ways. The first poses the question whether a *mens rea* word placed immediately before such operative verbs as "uses" or "furnishes" imports a requirement of knowledge of the falsity of the statement used or furnished. In *Barbour* v. *Public Prosecutor*,[37] the charge was wilfully using a forged document contrary to section 18 of the Export of Rubber (Restriction) Enactment, 1923. It was held that "wilfully" required actual knowledge, or at least reason to believe, that the document in question was counterfeit. However in *Goonatillake* v. *Public Prosecutor*,[38] it was held that the offence of wilfully furnishing false information under section 21 (i) (c) of the Johore Rubber Regulation Enactment, 1934, was committed if false information was wilfully furnished whether or not the information was wilfully false. The second way the issue has arisen has been in prosecutions for making a statement known to be false for the purpose of obtaining a driving licence, where the statement has been written in English by one person on behalf of another who does not know English but who has signed the statement. The question posed has been whether the person signing the statement is liable if the statement, unknown to him, is false. The three reported cases have said 'no'. In *Public Prosecutor* v. Sin *Lee Yok*[39] it was held that a person does not "make" a statement "if he is not in fact aware that he is making that statement, making it in the sense that he signs his name at the foot of a series of questions and answers, unaware that amongst them is that particular statement."[40] The onus was placed on the person signing to establish lack of such awareness. This ruling was confirmed by a 2-1 majority of the F.M.S. Court of Criminal Appeal in *Public Prosecutor* v. *Ng Chong*,[41] in which it was said that "'making' necessarily presumes a conscious act"[42] and that the accused "must know that he is making the

36. [1909] A.C. 317.

37. (1923) 4 F.M.S.L.R. 264.

38. (1936) M.L.J. 47.

39 (1940) M.L.J. 40. This and the next case concerned prosecutions under section 116 (i) (a) of the F.M.S. Road Traffic Enactment, 1937.

40. *Ibid*., at p. 41.

41. (1946) M.L.J. 68.

42. *Ibid*., *per* Terrell Ag.CJ. (F.M.S.). at p. 70.

[false] statement."[43] The minority judge[44] took the view that the accused could properly be regarded as having made the statement and that he should therefore be liable if it was false to his knowledge, a view, it was said, that would give effect to the object of the legislature and avoid a considerable mischief. The view taken in these two Malayan cases was also taken in the Singapore case *Tng Geok Chuan* v. K.[45] It should be noted that the position taken in these cases is that the *actus reus* of the offence is not established for lack of awareness that the particular statement is being made. The mental element required for the prohibited act is missing, not *mens rea* proper.[46] The third way the *mens* rea-strict liability issue has arisen in this context has been through the question whether simply "making an incorrect declaration" requires knowledge of the incorrectness. In two cases[47] under the F.M.S. Customs Enactment, 1936, this question was answered in the negative. Both cases were concerned with offences of making an incorrect declaration in connection with the importation of goods. In both cases the incorrect declaration had been made by another person on behalf of the importer, without the latter's knowledge. It was stated in both cases, though without reasons, that the prohibition against making an incorrect declaration was absolute. The Enactment contained a provision making a person liable for the acts of his authorized servants or agents.[48] In one of the above cases, the importer was acquitted because there was no authorization, in the other, there was authorization so the conviction was upheld. As opposed to the ruling that there was no "making" of the statements in the driving licence application cases, here there is an imputed "making" by the importers by virtue of the authorization provision.

We have already noted a judicial conflict on whether *mens rea* is required for the offence of a police supervisee failing to comply with a restriction on his movements. *Seah Eng Joo* in Singapore held the prohibition to be absolute while *Ayavoo* in West Malaysia held that *mens rea* was required. Two more judicial conflicts shall be noted in conclusion. We have seen that mistake of fact was allowed as a defence in the Singapore case of *Arumugam* on a charge of moving a controlled article (rice) without a permit contrary to Food Control No. 13 Order, 1946. In the Malayan case *Lee Lip Ngee* v. *Crown Counsel*[49] on the other hand, *mens rea* was said to be immaterial for the same offence under the Foodstuffs Movement (Restriction) Amendment Order, 1946, although it was then said, in what seems to amount to a contradiction, that the appellant was properly convicted as he was intending to move the rice in question. This suggests that mistake as to, and perhaps ignorance of, the nature

43. (1946) M.L.J. 68, *per* McElwaine C.J. (S.S.) at p. 71.

44. Aitken Ag.J.A.

45. (1954) M.L.J. 206.

46. See (c) of the first section hereof.

47. *Arthanarisami Chettiar* v. *Public Prosecutor* (1940) M.L.J. 67, and *Wong Ngian Thin* v. *Public Prosecutor* (1941) M.L.J. 199.

48. Section 124 (iv).

49. (1947) M.L.J. 68.

of the article moved could provide a defence.[50] The final conflict is between two "knowingly permitting" cases. In the Singapore case *R.* v. *Mohamed Ali*[51] the licensee of a cafe was charged with knowingly permitting prostitutes to meet and remain in the cafe contrary to section 33(c) of the Straits Settlements Minor Offences Ordinance.[52] The licensee was not aware that this had been happening, though his manager was. The licensee was nevertheless considered guilty. To the contrary effect is the decision in the Sarawak case *Lau Eng Teck* v. *Public Prosecutor*,[53] in which a charge under section 373c(c) of the Penal Code of knowingly permitting premises to be used as a brothel was held to require proof that the accused knew the premises were being so used. Where "permits" has been used in the definition of an offence without any *mens rea* adverb, guilty knowledge has been held unnecessary for liability in two cases.[54] This is at variance with the interpretation of "permits" in the English cases.[55]

It seems almost that for every case in which the courts here have opted for *mens rea* another case on the same or a similar offence can be found in which liability has been held to be strict, and *vice-versa*. It is a matter for some lament that earlier relevant cases are so seldom considered when decisions on the *mens rea*-strict liability issue are made. This makes for slow and erratic development of the law on the subject. The conflicts on this issue could be much reduced if more attention were given to the questions whether the particular accused fell within the words of the offence and whether any of the grounds of exemption within the statute creating the offence or within the Penal Code were available to him, and less attention were given to attempts to brand offences as absolute or as requiring *mens rea*. This sort of branding is highly generalised and invariably goes beyond what is necessary for the decision of the case. The real question should always be whether the accused is guilty rather than whether liability for an offence is absolute or not.

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50. This contradiction is similar to those in *Sulong* and *Tan Hoey,* discussed in (a) of the first section hereof. *"Mens rea"* in *Lee Lip Ngee* could be used to mean intention to do an act known to be unlawful, but this is no longer the accepted meaning of *mens rea* even if it ever was.

51. (1933) M.L.J. 74.

52. Ordinance 96, Straits Settlements Laws, 1926.

53. [1965] 1 M.L.J. 34.

54. *R.* v. G. *H. Kiat* (1938) M.L.J. 150, and *Public Prosecutor* v. *Ong Cho Teck* (1946) M.L.J. 85, both discussed *supra.*

55. See Williams, op. *cit.*, 163-8.

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APPENDIX

Singapore and Malaysian cases that have dealt with a *mens rea* — strict liability issue, how they have resolved that issue, and the offence that was under consideration.

Mens Rea Required

1. *Tan Toh Lee* v. *Hat* (1870) S.L.R. 356 — keeping a game house.
2. *Ong Ah Huat* v. *Opium Farmer* (1873) 3 Ky. 100 — possession of chandu.
3. *Tan Sim Tee* v. *Opium Farmer* (1884) 3 Ky. 174 — possession of chandu.
4. *Attorney-General* v. *Lim Ho Puah* (1905) 9 S.S.L.R. 13 — ship used for the importation of opium.
5. *R.* v. *Von Roessing* (1905) 9 SS.L.R. 21 — importing arms without a permit.
6. *Barbour* v. *Public Prosecutor* (1923) 4 F.M.S.L.R. 264 — wilfully using a forged document.
7. *Beh Ah Teng* v. *Public Prosecutor* (1931-32) F.M.S.L.R. 92 — knowingly in possession of uncustomed goods.
8. *Kader Batcha* v. *Public Prosecutor* (1935) M.L.J. 251 — carrying on a public lottery.
9. *Public Prosecutor* v. *Sin Lee Yok* (1940) M.L.J. 40 — making a declaration knowing it to be false.
10. *Public Prosecutor* v. *Ng Chong* (1946) M.L.J. 68 — making a declaration knowing it to be false.
11. *Arumugam* v. *R.* (1947) M.L.J. 45 — moving a controlled article.
12. *Toh Ah Loh and Another* v. *R.* (1949) M.L.J. 54 — unlawful possession of ammunition.
13. *Cheng Ong San* v. *Public Prosecutor* (1949) M.L.J. 69 — importing opium.
14. *Si Ah Fatt* v. *Public Prosecutor* (1950) M.L.J. — being found in the company of an armed person.
15. *Beh Chang Hin* v. *Public Prosecutor* (1950) M.L.J. 239 — attempting to import prohibited goods.
16. Sim *Chwee Chua* v. *R.* (1951) M.L.J. 227 — possession of opium.
17. *Ho Seng Seng* v. *R.* (1952) M.L.J. 225 — possession of opium.
18. *Tan Peng Heng* v. *R.*, noted (1953) M.L.J. xxxv — possession of opium.
19. *Tng Geok Chuan* v. *R.* (1954) M.L.J. 206 — making a declaration knowing it to be false.
20. *Lau Eng Teck* v. *Public Prosecutor* [1965] 1 M.L.J. 34 — knowingly permitting premises to be used as a brothel.
21. *Tan Hua Lam* v. *Public Prosecutor* [1966] 1 M.L.J. 147 — consorting with enemies, possession of arms and ammunition.
22. *Ayavoo* v. *Public Prosecutor* [1966] 1 M.L.J. 242 — police supervisee failing to comply with restriction order.
23. *Sim Poh Ho and Others* v. *Public Prosecutor* [1966] 1 M.L.J. 275 — advertising obscene photographs.
24. *Lee Hoo Boon* v. *Public Prosecutor* [1966] 2 M.L.J. 167 — consorting with enemies, possession of arms and ammunition.

Strict Liability

1. *Ang Lock Toon* v. *Public Prosecutor* (1922) 1 F.M.S.L.R. 199 — exporter furnishing untrue account of goods liable to duty.
2. *Siew Yong* v. *Public Prosecutor* (1931-32) F.M.S.L.R. 364 — admitting underage persons to a shooting gallery.
3. *R.* v. *Mohamed Ali* (1933) M.L.J. 74 — knowingly permitting prostitutes to meet and remain in a cafe.
4. *Public Prosecutor* v. *Manager, Great Eastern Park, Kuala Lumpur* (1934) 11 F.M.S.L.R. 250 — allowing cymbals to be used in a wayang in breach of a licence condition.
5. *Chong Kwong* v. *Public Prosecutor* (1935) M.L.J. 41 — offering for sale adulterated chandu dross.
6. *Goonatillake* v. *Public Prosecutor* (1936) M.L.J. 47 — wilfully furnishing false information.
7. *Ong Aik Phow* v. *R.* (1937) M.L.J. 73 — Importing rubber without a certificate of origin.
8. *R.* v. *G. H. Kiat* (1938) M.L.J. 150 — permitting a dog to be outdoors without a lead or muzzle.
9. *R.* v. *Tan Hoay* (1938) M.L.J. 216 — possession of chandu.
10. *Tan Yong Sin* v. *Public Prosecutor* (1939) M.L.J. 86 — possession of chandu.
11. *Omar Ariffin* v. *R.* (1939) M.L.J. 308 — policeman asleep on duty.
12. *Arthanarisami Chettiar* v. *Public Prosecutor* (1940) M.L.J. 67 — making an incorrect import declaration.
13. *Rowland* v. *Public Prosecutor* (1940) M.L.J. 131 — possession of toddy to which water had been added.
14. *Wong Ngian Thin* v. *Public Prosecutor* (1941) M.L.J. 199 — making an incorrect import declaration.
15. *Public Prosecutor* v. *Ong Cho Teck* (1946) M.L.J. 85 — permitting a vehicle to be used with inefficient brakes.
16. *Lee Lip Ngee* v. *Crown Counsel* (1947) M.L.J. 68 — moving a controlled article.
17. *Sulong bin Nain* v. *Public Prosecutor* (1947) M.L.J. 138 — carrying arms.
18. *Public Prosecutor* v. *Ginder Singh and Chet Singh* (1948) M.L.J. 194 — using an overloaded vehicle.
19. *Lim Eng Soon* v. *Public Prosecutor* (1953) M.L.J. 166 — importing opium.
20. *Public Prosecutor* v. *Sundram* (1955) M.L.J. 159— using an overloaded vehicle.
21. *Teoh Siew Lean* v. *Public Prosecutor* (1958) M.L.J. 145 — keeping premises as a brothel.
22. *The Manager, G. H. Long Bros.* v. *Public Prosecutor* (1961) M.L.J. 222 — selling drinks without proper ingredients.
23. *Seah Eng Joo* v. *R.* (1961) M.L.J. 252 — police supervisee failing to comply with restriction order.
24. *Tan Wang Keng* v. *Public Prosecutor* (1962) M.L.J. 47 — attempting to export opium.
25. *Mohamed Ibrahim* v. *Public Prosecutor* (1963) M.L.J. 289 — possession for sale of obscene book.