
DILUTING MENS REA: THE RISE OF STRICT LIABILITY IN WHITE-COLLAR CRIME

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ABSTRACT

The present study is aimed at analyzing the importance of the concept of mens rea in socio-economic and corporate crimes in the contemporary times. Traditionally, criminal laws have been guided by the necessity of having the existence of mens rea along with physical act in relation to the commission of crime. But with the passing of time, it has become highly difficult to prove mens rea for many offenses due to changes in socio-economic conditions. Consequently, there has been an increasing importance of strict liability to regulate such acts that have public interest objectives.

With the help of the doctrinal research approach, the present researcher carries out a study on the legal statutes, judicial decisions, and literatures concerning socio-economic crimes such as money laundering, cyber crimes, and identity theft with the intention of finding the importance of switching over to strict liability from mens rea. It is observed from the present analysis that while strict liability is helpful in regulating socio-economic offenses, yet its excesses could influence the ethical dimension of criminal law.

Keywords: Mens Rea, Strict Liability, White Collar Crimes, Criminal Liability.

INTRODUCTION

Mens rea, a term derived from the Latin principle “actus non facit reum nisi mens sit rea” (an act does not make one guilty unless the mind is also guilty), used to be considered the basis of criminal law¹. In other words, the guilty intention was considered a necessary component of a criminal offense and a prerequisite for prosecution since the absence of a guilty mind behind the crime was an obstacle in establishing criminal responsibility. According to traditional conceptions of criminal law, the criminal act was viewed as a manifestation of a certain moral misconduct committed by the offender. Nevertheless, as the legal system started developing, the distinction between tort liability and criminal liability emerged, and mens rea became an indispensable component of the former². However, in the process of global economic development, which was facilitated by industrialization and further advancements in the twentieth century, a whole new aspect of criminality appeared. Specifically, the emergence of large organizations together with technological development gave rise to white-collar crime.

'White-Collar Crime' is a term introduced by Edwin H. Sutherland³ in 1939 and means an act performed by individuals who belong to a highly hierarchical level of society in connection with their occupation. Typically, the acts of white-collar offenders tend to exhibit several unique characteristics such as non-violence, elaborate planning, and abuse of authority⁴. Consequently, owing to the complex and indirect nature of the crime, it becomes rather challenging to establish mens rea in such cases⁵. Hence, there is significant difficulty involved in applying the fundamental concepts of criminal law to socio-economic violations. Although there is a great deal of literature on the issue, along with numerous judicial rulings, the discourse in question has remained highly controversial. While the academics are likely to either defend the extension of strict liability as being beneficial for the public welfare or oppose the practice as damaging the core of the law, there is no consideration given to reconciling the two. It is precisely this objective that the current study seeks to accomplish.

¹Edwards, James, "Theories of Criminal Law", *The Stanford Encyclopedia of Philosophy* (Fall 2021 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/fall2021/entries/criminal-law/>>.

²<https://indiankanoon.org/doc/1569253/>

³Sutherland, E. H. (1940). White-Collar Criminality. *American Sociological Review*, 5(1), 1–12.
<https://doi.org/10.2307/2083937>

⁴https://www.researchgate.net/publication/374011495_White_collar_crimes_A_comprehensive_analysis

⁵<https://indiankanoon.org/doc/159121041/>

RESEARCH GAP

Despite the existence of extensive academic and judicial discourse on the two principles of mens rea and strict liability, the extant literature assumes one of two extreme viewpoints—the need to promote more strict liability due to efficient regulation or the indispensability of mens rea in criminal jurisprudence. However, no literature exists that seeks to reconcile the two competing doctrines, especially in socio-economic crimes in India.

Moreover, there is hardly any research that attempts to formulate a framework that can effectively ensure a middle ground between the two dimensions of law enforcement and morality. The objective of the present study is to examine the interplay between mens rea and strict liability.

OBJECTIVES OF THE STUDY

1. In order to conduct an analysis on the importance of mens rea in socio-economic and white-collar offenses based on the present criminal law of India.
2. In order to conduct an analysis on the weakening of mens rea due to the inclusion of strict liability offenses in present socio-economic offenses and the comparison with criminal liability.

RESEARCH QUESTION

1. In what way will the increasing application of strict liability regarding socio-economic crimes impact the classical notion of mens rea?
2. What are some of the problems that come into play in establishing mens rea in complex cases of corporate and white-collar crime?

RESEARCH METHODOLOGY

In the present study, the doctrinal research approach is adopted that relies heavily on the doctrines, statutory laws, and case laws related to the principle of mens rea along with their application in socio-economic crimes and white-collar crimes. The primary research sources such as case laws and statutory laws and secondary research sources like academic literature and textbooks have been used extensively in the present study. An analytical approach has been

used by the researcher to examine the issues associated with the conflict between the ancient doctrine of mens rea and strict liability. The main objective of the study is to identify the problems that occur while establishing mens rea in the case of white-collar crimes. Last but not least, an appropriate theoretical framework has been developed in the present study that can maintain a balance between regulation and criminal law principles

CONCEPT OF WHITE COLLAR CRIMES

There exists a definite connection between white-collar crimes and the socio-economic structure of the society⁶. This kind of criminal acts is distinguished and considered unique since there is a difference between the white-collar crimes and ordinary criminal acts⁷. For example, traditional crimes normally involve acts of violence such as murders, thefts, burglaries and robberies that inflict injuries on other individuals. Nevertheless, criminal activities do not end with this limited scope since there are other forms of crimes such as white-collar crimes that are financially motivated⁸. The concept of white-collar crimes became widely known after Edwin H. Sutherland defined it as acts of violation committed by individuals of high socio-economic statuses while working in offices⁹. It is essential to emphasize the importance of identifying the white-collar crimes because they show that criminal acts can be performed not only by people lacking economic means, but also by individuals from the higher social strata. These crimes did not come into public notice in the past due to social status of offenders

It should be noted that the academic discussion on white-collar crime highlights the structural aspect of white-collar crime¹⁰. Researchers have discovered that industrial capitalism and economic concentration may lead to a situation in which the system becomes exploitable by those who control the system for their self-interests. In this regard, the perpetrators involved might be legally responsible for their wrongdoing, but such an act is not considered to be a crime even by the perpetrators themselves. White-collar crimes are committed when there are

⁶Dr Vikasdeep Singh Kohli, & Neeraj. (2025). Socio-Legal Dimensions of White-Collar Crimes in India: Issues, Impacts, and Reforms. *Innovative Research Thoughts*, 11(3), 88–94. <https://doi.org/10.36676/irt.v11.i3.1668>

⁷Clinard, M., Quinney, R., & Wildeman, J. (2014). *Criminal behavior systems: A typology*. Routledge.

⁸ Dr. Geetika Sood | Meenu Bala "White Collar Crimes in India" Published in International Journal of Trend in Scientific Research and Development (ijtsrd), ISSN: 2456-6470, Volume-3 | Issue-4, June 2019, pp.288-290, URL: <https://www.ijtsrd.com/papers/ijtsrd23700.pdf>

⁹Sutherland, E. H. (1940). White-Collar Criminality. *American Sociological Review*, 5(1), 1–12. <https://doi.org/10.2307/2083937>

¹⁰Braithwaite, J., & Geis, G. (1982). On theory and action for corporate crime control. *Crime & Delinquency*, 28(2), 292-314.

opportunities for those in positions of power in the organization to commit crimes.

With respect to India, socio-economic crimes become white-collar crimes, as both types of crimes have many similarities. Such crimes include corporate fraud, financial irregularities, and other related crimes, and they are usually committed via organizational structures. The involvement of these crimes in criminology raises doubts regarding the classical view on the role of poverty in crimes¹¹. Thus, white-collar crime can be defined as not only an act of violating the law but also an unethical act and one where there exists a breach of fiduciary duty. White collar crime is therefore detrimental to social welfare, manipulative and calls for punishment. In addition, what makes it hard to determine mens rea in cases of white-collar crime is the complexity involved.

TYPES OF WHITE COLLAR CRIMES

The list of offenses included under the category of white-collar crimes is varied and numerous, but they all have one thing in common; they are committed either within the premises of work, corporations or institutions themselves. The characteristics of these crimes include the lack of violence, economic motivation and the use of power and influence for the purpose of achieving their goals¹². The following are the categories of white-collar crimes and the questions that arise in connection with mens rea in relation to these crimes.

One of the white-collar offenses is the bank fraud, which involves fraud, forgery and breach of trust in banks. Such offenses may include crimes involving the use of negotiable instruments, investments and misuse of funds. One of the cases where the court got involved is the case of **Sahara Securities and Investment Ltd**¹³, which was embroiled in a conflict with SEBI. The result of the case was that huge sums of money had to be returned to the investors.

These terms refer to the act of gaining an unfair advantage, especially when making decisions, by those who have been vested with a position of authority. These are acts that are very detrimental to the sanctity of institutions and governance. Though in **Satya Narayan Sharma v. State of Rajasthan**¹⁴ the Supreme Court laid emphasis on the need for the adherence to the

¹¹Braithwaite, J. (1991). Poverty, power, white-collar crime and the paradoxes of criminological theory. *Australian & New Zealand Journal of Criminology*, 24(1), 40-58.

¹²Aarav Singhania. (2024). White collar crime identification in India: A Critical study. *Indian Journal of Law*, 2(3), 32–37. <https://doi.org/10.36676/ijl.v2.i3.31>

¹³Sahara Vs. SEBI (2012) 10 SCC 603

¹⁴Satya Narayan Sharma vs. State of Rajasthan 1AIR 2001 SC 2856

Prevention of Corruption Act, there are occasions when it becomes hard to establish mens rea due to the clandestine nature of such acts.

The third act is money laundering. This refers to an act where money earned through criminal activities is transformed in order to appear legitimate. This is usually done at more than one point, making mens rea and scienter very hard to prove. In **Rohit Tandon v. Enforcement Directorate** it was established that disguising illegal money as being legitimate is an offense. The difficulty posed demands that there should be a shift to strict liability.

Food adulteration and offences against public health are examples of regulatory offences where emphasis is on the protection of public interest. The reports highlighting the wide prevalence of the offence confirm its seriousness and the impact of the same on society. In **Municipal Corporation of Delhi v. Kacheroo Mal**¹⁵, it has been established that such legislation is enacted for the protection of public health, and strict liability may apply. There can be an exception to the rule of proving mens rea in cases like these.

Identity theft and cybercrimes, which cannot be easily noticed, have gained significance in today's world. These offences generally occur where a person misuses personal information or financial information to commit an offence. These offences are often committed anonymously and are highly technical, and hence, proving mens rea becomes difficult.

Tax evasion and financial frauds are among those crimes that entail actions intended to conceal one's income and manipulate accounting books. Apart from causing losses in revenues, such crimes tend to lead to the erosion of financial institutions' integrity. When analyzing the criminal judicial process in the case above, it is evident that there is an increasingly growing need to show some form of responsibility, despite the difficulty involved in proving the existence of mens rea.

Healthcare fraud constitutes one of the most prominent instances of white-collar offenses. Healthcare fraud refers to the act of manipulating and exploiting the healthcare system and insurance schemes in a bid to make profit from the gains. The act could be carried out by the healthcare provider himself, corporations or any other party, involving acts such as overcharging insurance companies, charging for services at more than their fair price, creating

¹⁵<https://ijirl.com/wp-content/uploads/2021/12/JUSTICE-DELIVERY-OF-ECONOMIC-OFFENCES-WHITE-COLLAR-CRIMES-CASE-OF-INDIA.pdf>

false medical conditions so as to conduct procedures that aren't necessary, and filing false health insurance claims. This form of crime is costly, as reported by regulatory agencies around the globe, and affects health systems negatively as well as patients' access to health care. One of the main challenges when it comes to uncovering this form of fraud is establishing the mental aspect of the crime.

THE CONCEPT OF MENS REA AND STRICT LIABILITY

Mens rea is an important consideration when establishing criminal responsibility because there must be some level of culpability associated with guilty intent. While this principle is viewed as an elementary concept in criminal law, it has complexities that remain to be unraveled until now. For instance, mens rea has been described as "the kindergarten of criminal law" as pointed out by Williams. This simply means that even if the principle is easy to understand, applying it can be very difficult. It is also necessary to note that mens rea came about through the principles of English common law. Mens rea is a term which means the mental aspect of the prohibited act and has various degrees. The first degree is the intention which implies that the act was performed with the objective of performing something. Knowledge is the second degree that is related to the intention and implies the awareness of the consequences that may arise from the performance of the act. The third degree is recklessness which implies the act performed with disregard for the risk that would arise from performing it. The fourth degree is negligence which implies the failure to exercise proper care while performing an act. Mens rea has been developed based on judicial construction, and it has been shown that mens rea cannot be considered a fixed term. For example, in the case of **R v Prince**¹⁶, mens rea has been used by the court despite the fact that the intention was absent on the part of the defendant owing to his misunderstanding of the age of the minor. In the same way, in the case of **R v Faulkner**¹⁷, there was no liability imposed for any unforeseen results arising out of the absence of intention.

PRESUMPTION OF MENS REA

One of the rules which has been recognized as a firm rule in the interpretation of statutes dealing with mens rea is that the existence of mens rea would always be deemed to be one of the important elements in the commission of the crime, provided that the legislative body has not expressly or implicitly dispensed with it. The rationale for such a rule lies in its safeguard

¹⁶L.R. 2 Cas. Res. 154 (1875)

¹⁷4 13 Cox C.C 550 (1877)<https://publications.parliament.uk/pa/ld200203/ldjudgmt/jd031016/g-1.htm>

of an individual's personal liberty through making sure of his guilt. The principle of mens rea as an essential element in establishing criminal liability has never been doubted by judicial decisions in this regard. In the case of **Brend v. Wood**¹⁸, the Lord Goddard, C.J. held that no person can be considered liable in terms of criminal law unless there is evidence that a guilty mind has been involved, unless the law makes any express exception in favor of the same in a given statutory provision. This clearly shows the time-honored notion that moral guilt is a necessary ingredient in committing any crime.

However, there was a definite shift in judicial thinking which could be seen in subsequent cases. In **Hobbs v. Winchester Corporation**¹⁹, it was held that the concept of mens rea does not always hold good in connection with modern regulatory legislation. The reason being that these are not intended to punish any moral evil, but only to secure compliance with certain standards of conduct and to safeguard the health and safety of the community.

This can be considered against the background of socio-economic issues like industrialization, liberalization, globalization, among others, that have made the size of business dealings and economic activities more substantial. Disregard for regulations in cases like these resulted in catastrophic outcomes. In the matter of the Bhopal Gas Tragedy, for example, the escape of lethal gas has caused extensive loss of human lives and ecological imbalance. In response to this kind of scenario, the law in India followed the rule of strict liability by enacting preventive laws aimed at benefiting the whole community. There are numerous examples of modern day regulations enacted without any discussion of mens rea. In the case of **Reynolds v. G. H. Austin & Sons Ltd.**²⁰, for instance, whenever there is legislation for public good, for example, in relation to food products, the doctrine of strict liability is automatically applicable.

CONDITION WHERE PRESUMPTION IS EXCLUDED

However, despite being an integral element of criminal jurisprudence, there are several cases when the principle of presumption of mens rea may stop functioning. Thus, in **State of Maharashtra vs. M.H. George**²¹, the assumption became invalid because of the defendant's

¹⁸L.T. 306 175(1946)<https://indiankanoon.org/doc/1489747/>

¹⁹(1910) 2 K.B 471

²⁰Kunthe, C. A. (2022, January). *Mens rea in statutory offences with special reference to white collar offences*. *Supremo Amicus*, 28, ISSN 2456-9704. <https://supremoamicus.org/wp-content/uploads/2022/01/Chaitanya-Anil-Kunthe.pdf>

²¹(1958) 1 W.L.R. 522

ignorance of the law. It means that ignorance of law is not the cause to deny the responsibility of the guilty party. Moreover, another example when similar issues could arise is **Ranjit D. Udeshi vs. State of Maharashtra**²², where the presumption was rejected regarding proving the knowledge about obscenity. Therefore, based on the discussed instances, it can be assumed that the judicial practice in the country has shown its flexibility concerning the perception of mens rea in those cases where the crimes affect society severely. In this context, it will be correct to mention that the application of the principle of strict liability together with the focus on public interest becomes common practice.

MENS REA AND THE CONCEPT OF STRICT LIABILITY

Where there is no express requirement of mens rea in particular instances, the doctrine of strict liability has increasingly been used on grounds such as purpose, scope, and exact language of the statute. This has departed from the old doctrine which required the establishment of mens rea in all circumstances. The doctrine of strict liability²³ has been built through judicial construction, particularly in matters of legislation for regulatory purposes. For instance, the doctrine has been developed from enactment of acts such as Food and Drugs Act 1955 in England. Where failure to conform to regulations is proved, strict liability arises and the issue of mens rea will be irrelevant in this situation. The courts have taken a purposive approach in interpretation of statutory requirements, and it is apparent that mens rea could never serve any purpose in such situations.

From strict liability, it becomes evident that liability does not necessarily involve the presence of intention. This is seen where a person makes a false representation whereby one may be held liable regardless of the fact of whether they intended to make a misrepresentation in favor or against a certain person. Even though the act of knowing what one says may be a form of proving wrong intention, it is not necessary as liability still applies because the acts are unlawful. In this case, the responsibility of an act shifts from intention to consequence. In cases involving strict liability in offenses of possession like guns and others, possession alone is sufficient in holding a person liable. Presumptions of knowledge are made by the law where ignorance is assumed not to apply. It becomes clear from cases like Howell that mistake of law, such as assuming a particular type of unlicensed guns to be an exception to licensing laws

²² (1967) 2 B 243

²³<http://hdl.handle.net/10603/132472>

cannot be taken as defense of liability. Therefore, while the traditional approach in criminal law is that mens rea is always required, contemporary developments have pointed out the benefits associated with strict liability for different social, economic, and regulatory offenses. However, there are certain considerations that should be taken into account every time strict liability is applied.

REASONS FOR STRICT LIABILITY

Contrary to the conventional criminal law which takes a stand that mens rea is a necessary element of liability, there exist legal systems which have carved out exemptions from this principle by totally dispensing with the requirement for mens rea or by shifting the burden of proof on the part of the accused. The exemptions have been based largely on policy considerations, particularly for those offences which carry socio-economic or regulatory significance. Various factors account for strict liability attached to some acts:

Necessity : Strict liability offence may be viewed as a “necessary evil” in the contemporary world²⁴. Proving mens rea has become difficult in the modern times owing to the complexities involved in the activities of persons or corporations in respect of their trade, industry and technology. This could create serious difficulties in enforcement of law. Consequently, strict liability is necessary to ensure that socio-economic and regulatory issues are taken care of. Persons and corporations engaging themselves in such activities ought to assume risks and responsibilities for them.

Public Interest : The concept of strict liability is also very much connected to public interest. The reason for imposing liability to the violator with regard to regulatory offences is to ensure the protection of the public, which includes their safety and health, among others. Using the ideas of utilitarianism²⁵, there is an awareness of the shift in the function of the state to become no longer a police state²⁶ but rather a welfare state where the objective is not punishment but the protection of the whole community based on the standard imposed.

Social Importance : Social protection can also be considered as another factor in creating strict liability. From what was said by Roscoe Pound and other legal scholars, regulatory offences

²⁴P.J. Fitzgerald, in Block Review of Colin Howard, Strict Responsibility, (1964) 7 Lawyer 41.

²⁵Yeandelv. Fisher[1966] 1Q B 440.

²⁶Stone J., Province & Function of Law, p. 475-76.

also contribute to the general objective of protecting society²⁷.

Deterrence : The concept of strict liability also serves as a form of deterrence in the sense that individuals and organizations are prevented from engaging in actions that might pose harm not only to themselves but to others as well. The implication here is that certain standards must be strictly adhered to, as the strict liability rule implies that there is no room for excuses.

CASE LAW

The evolution of the criminal liabilities of white-collar crime in India has been brought forth from the judicial pronouncements pertaining to different cases of fraud that took place on a massive scale. There are certain regulatory bodies that perform vital functions of regulating the securities market by monitoring the intermediaries in the market. The legislative, executive, and adjudicatory powers held by SEBI have played an important role in developing regulatory policies to counter the financial crimes. One such important case that deals with the development of laws against the financial crimes in India is the case of **Harshad Mehta vs Central Bureau of Investigation**²⁸, relating to the infamous scam committed by Mr. Harshad Mehta. He was guilty of committing manipulation of the banking sector by utilizing the funds received during inter-bank dealings for making the price of stocks rise artificially. Market crash with resultant huge losses of the investors highlighted the weaknesses present in the system. In terms of legal problems, it poses a great difficulty of proving mens rea in the complex financial transactions. The **Ketan Parekh Scam** also involved the misuse of banks' services and manipulation of inflated share prices known as K-10 scrips. The result of the fraud led to the crash of the market indices that resulted in measures such as the reduction of the settlement period from T+5 to T+2, demutualization of the stock exchanges, and facilitating derivative trade. From these examples, it is evident that the current trend is more focused on strict regulation regardless of the proof of mens rea. Examples of cases regarding the existence of fraudulent acts in IPOs can be illustrated by the YES Bank IPO scam where there was an off-market transaction and manipulation in the allocation process. Such cases include **SEBI v. Burman Plantation and Others**²⁹ in which SEBI sought to regulate activities that involve violations of disclosure provisions. In these examples, it is apparent that there has been

²⁷ The Eclipse of Mens Rea, *The Law Quarterly Review* (1936) p. 66.

²⁸ Harshad S. Mehta v. CBI, (1992 Scam Cases), discussed in: Sucheta Dalal, *The Scam: Who Won, Who Lost, Who Got Away* (1993); also see articles on Indian capital market scams in *Economic and Political Weekly*

²⁹ SEBI v. Burman Plantation and Others, SEBI Order (available on Securities and Exchange Board of India official website: <https://www.sebi.gov.in>).

increased regulation due to the introduction of SEBI (Issue of Capital and Disclosure Requirements) Regulations without requiring mens rea. In regard to the case of **Abhay Singh Chautala v. Central Bureau of Investigation**³⁰, the measures were implemented on the accusation of disproportionate assets, following the provisions of the Prevention of Corruption Act, 1988 and the Indian Penal Code. The court upheld the liability charge, thus establishing the standard of officials being held strictly accountable. In such cases, it becomes clear that, in regard to any crimes related to public office and corruption, the requirements in terms of proof of mens rea may be adjusted in order to take into account broader social implications.

Cases like these indicate that there is a tendency toward stricter regulatory measures when it comes to economic crimes within the court system. It is noteworthy that the courts seem to make greater use of the compliance approach in terms of which the principle of mens rea is either revised or supplemented.

FINDINGS

Firstly, the traditional concept of mens rea proved itself problematic when applied to complex and intricate corporate and economic crimes owing to the division of responsibilities related to decisions made within the criminal acts.

Secondly, there has been an evident tendency towards the application of strict liability in cases involving crimes aimed at protecting public interest and well-being and economy via the implementation of regulatory measures.

Thirdly, although efficient in terms of law enforcement, the strict liability approach tends to undermine the fundamental idea of moral guilt and accountability involved in criminal activity.

Fourthly, the element of flexibility has become essential for contemporary judicial processes as regards the applicability of the mens rea criterion that can be adjusted accordingly depending on the circumstances of the case.

Finally, there arises a necessity to find a compromise between the long-established concept of mens rea and current needs.

³⁰ *Abhay Singh Chautala v. Central Bureau of Investigation*, (2019) SCC OnLine SC

SUGGESTIONS

Acknowledgment of Constructive Mens Rea: Where there is difficulty in establishing the mental state of the offender but all the other factors point out to the guilt of the offender, there is a need for courts and legislature to consider the concept of constructive mens rea.

Due Diligence Defense Adoption: Defendants in criminal trials, especially in corporate environments, should be allowed to prove due diligence by showing the steps they took to stop them from committing any criminal act.

Enhancement of Investigation Procedures: It is highly recommended to utilize high technology and scientific means of investigations in cases of fraud and cybercrime to ascertain adequately the element of intent.

Statute Interpretation: There is a need for legislators to specify clearly in the statute whether the mens rea is an ingredient in the statute under review.

Liability Grading Principle: There should be liability grading based on the level of fault for the crime committed, i.e., intentional crimes should be subject to greater penalties than reckless crimes, while reckless crimes should receive greater punishment than negligent offenses.

Corporate Criminal Liability Guidelines: Guiding principles on corporate criminal liability should be formulated.

CONCLUSION

It is generally recognized that the notion of mens rea forms the basis of all criminal responsibility, since it ensures that the punishment is grounded on the guilty intent. Nevertheless, the emergence of socio-economic and white-collar crimes casts doubt on whether there is any justification for employing the discussed rule in modern society. The tendency toward strict liability is viewed as a response to the new reality. Nevertheless, completely ignoring the role of mens rea appears to be unwise and unreasonable in terms of legal theory. Thus, the need to strike a balance between the two opposite views arises. The above analysis leads us to conclude that the best future of the criminal law would consist in reaching the balance.