

# STRICT LIABILITY IN CRIMINAL LAW

A COMPARATIVE APPROACH

Zaleha Kamaruddin

Foreword by Tun Mohamed Suffian

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Kulliyyah of Laws  
International Islamic University  
Kuala Lumpur



NURIN ENTERPRISE  
KUALA LUMPUR

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Say, "If I am astray, I only stray to the loss of my own soul: but if I received guidance, it is because of the inspiration of my Lord to me. It is He who hears all things, and is (ever) near."

(The Holy Qur'ān, Surah Al-Sabā verse 50)

*Specially dedicated to my MOTHER  
with love, prayer and hope that Allah  
grant her soul eternal peace.*

# FOREWORD

In law the basic principle is that no act is criminal unless there is mens rea i.e. committed with a guilty mind. But during the last 100 years or so the world has become crowded and life complicated and it has become necessary to regulate many kinds of activities that if left unchecked would cause great inconvenience and harm to fellow human beings. And that is why the lawmaker has made many acts criminal even if committed without mens rea. Examples are acts concerning the sale of food and drugs, the supply of intoxicating liquor, safety at work, control of weights and measures and the like. Such strict-liability offences (as they are called) which affect a large number of usually law-abiding citizens are the less serious road traffic offences created because of the need to reduce congestion and accidents on our roads in crowded towns and cities. In these cases all the prosecutor needs to prove is only the actus reus i.e. the guilty act without the need to prove mens rea.

Chapters in learned books and umpteen articles have been written by scholars on the modern concept of strict liability. This book is however a departure from most – because here we have a comparative study of the concept as it exists in secular law on the one hand and on the other in *syariah* i.e. Muslim law which is basically divine law to which Muslim jurists later added man-made law.

In Malaysia where there is growing awareness of and interest in the *syariah*, this book is most welcome.

K.Lumpur  
Date: 6/10/88

Tun Mohamed Suffian,  
(former Lord President,  
Federal Court, Malaysia)

# PREFACE

This book was largely based on my dissertation submitted as partial fulfilment for Master of Comparative laws in International Islamic University.

It is the aim of this book to highlight the lacunae in the common law concept of strict liability. Strict liability is a technical area of the law. Its apparent simplicity is complicated by many inconsistencies and anomalies within many of the statutory offences that form the bulk of its manifestations. I therefore offers shariah as solution to the problems manifested by strict liability.

The chapter on case-study of strict liability offences and its solution in shariah are based on discussions, interviews and conversations with persons knowledgeable in this area such as Dr. Ata'Al-Sid, Dr. Mahmud Saedon, Ustaz Hashim Mehat and other shariah lawyers.

The comparative study presents many challenges especially in Chapter III, where all the cases involving strict liability are modern cases arising out of the modern technological era. Since shariah has not been practised totally by any muslim country, therefore no examples could be relied on. I therefore quote the general principles found in the Holy Qur'an and Sunnah in support as solutions.

I am indebted to many people who have generously contributed to the completion of this book. My special thanks goes to En. Baharudin Harun for his time and advice. I am indebted to my husband. Manaf and my sons, Mu'az and Irfan who never fails to provide me with the love and warmth that helped to lessen the pressure of the task of accomplishing this work.

Finally, I am very conscious of my shortcomings and imperfections, and I leave it to those more competent than me to give the subject a comprehensive treatment.

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