A CRITICAL EVALUATION OF CRIMINAL RESPONSIBILITY FOR STRICT LIABILITY OFFENCES IN NIGERIA*

Abstract

The purpose of criminal law is the deployment of instrumentality of state authority to strike a balance between corporate survival our group security on one hand and individual freedom and self-actualization on the other hand, In Nigeria the dynamics of criminal responsibility is founded on the principle that wrongdoing is anchored on the twin pillars of prohibited conduct and guilty mind or evil intention the physical and mental elements of an offense. However, the doctrine of strict liability is regarded as an exception the rule for the reason that it inflicts punishment on an offender based exclusively on the physical element of the offence. This study examines the principle of criminal responsibility in Nigeria and its impact on strict liability offences with a view to establishing its deterrent capacity, impact on sentencing and compliance with the universal principle of Fair hearing. Methodologically, the study relies on the doctrinaire orientation in evaluating the instruments governing criminal responsibility in Nigeria as well as their manifestations in extant legislations relating to strict liability. The research findings show that in spite of the fact that strict liability is regarded as an exception to be rule of criminal responsibility, it does not, however, qualify as a valid exception. It is also often touted as an instrument of criminal deterrence for the enthronement of higher standards of care for public protection it is its application is, however a negation of the principle of criminal responsibility and fair hearing as well as disincentive to diligence (arising from the boomerang effect of strict liability). The research findings also show that strict liability is not the only anachronistic but also runs against the tide of contemporary criminal theory for the reason that it seemed to command the doing of impossibility. In view of the findings the study is expected to be of immense benefits to scholars, lawmakers, judicial officers and public makers who will gain insight from the work for the benefit of the society. The studied therefore recommends among other things the expurgation of the doctrine of strict liability from the couples of Nigeria's criminal law, and its replacement with the doctrine of due diligence and negligence as has happened in some progressive jurisdictions in the world.

Keywords: Criminal Responsibility, Strict Liability Offences, Nigeria, Critical Evaluation

1. Introduction

In spite of the avalanche of jurisprudential disputation as to the chemistry of crime and the object of punishment there seems to be a consensus that the extent to which a society may be adjudged orderly and stable is inversely proportional to its definition of crime and the justness of the parameters for punishing it. These factors constitute the operational touchstone of what has come to be known as criminal law. Owing to the imperatives of history and the variables of geography the contours of crime vary from place to place with the result that what is condemned in one place may be condoned in another[1]. Regardless of the environmental factors that inform the configuration and the classification of crimes in various climes, there is universal resonance in the notion that's the corpus of what constitutes societies criminal law evolves from its ethical and existential worldview. For this reason, a society's criminal law embodies its strategic code of conduct which governs its social relations the bridge of which gives rise to sanction by the community or state as an organized entity[2].

Historically, while the mechanics of action and reaction has found expression in the notion of sanction for the infraction of established rules, controversy abound as to the justification of the quantum of punishment for what conduct and the congruence of factors that fully bear out culpability. Thus, 'criminality Liability is the strongest formal condemnation that society can inflict, and it may result in a sentence which amounts to a severe deprivation of the ordinary liberties of the offender[3] ' In effect, the chief concern of the criminal law is the gamut of a society's antisocial behavior. According to Roscoe Pound, 'criminal law is a body of precepts defining and forbidden antisocial conduct[4] '. While there is hardly a straightforward moral or social compass for determining and justifying the conducts which are imbued with criminal liability there is however a formal test to wit: whether the conduct in question is prohibited by law and whether it's breach in attended with conviction and sentence. Generally, the dimensions of criminal liability may be considered within the ambit of a tripartite schema: the range of the offences the scope of criminal liability, and the conditions of criminal liability.

In most criminal law jurisdictions, the range of offences involves existential violations in respect of pressing property and public interest. Viewed from this classic factory perspective, offences against person include those causing death, physical injury, safety standards in work and recreational areas, fire arms and related weapons offences as well as

***By Donatus Ikechukwu NJOKU,** Faculty of Law, Ebonyi State University, Abakaliki,
***Favour Ozioma ELOM-OBED,** Faculty of Law, Ebonyi State University, Abakaliki; and
***Josephine N. OKORIE,** Faculty of Law, Ebonyi State University, Abakaliki

[1] C.Elliot and F.Quinn, *Criminal Law (2nd Edition)* (Essex: Addison Wesley Longman,

[2] E. Orji, *Responsibility for Crimes under International Law* (Lagos: Odabe Publishers, 2013), 2.

[3] *Op cit*, Ashworth,

[4] *Op cit*, Ashworth, 2

traffic offences. Property offences include crimes of damage and offences of theft, fraud and obtaining by deception, criminal entry into residential areas, etc. Furthermore, crimes related to public interest include offences against state security, public decency, administration of justice and public obligations as payment of taxes, etc. Under this sub-head we also have offences related to the environment and conditions of life, such as pollution, health and sanitation, public order and public nuisance[5]. Apart from the above mode of classification offences may also be classified according to the mode of trial: Those that can be tried summarily and those to be tried on information. However, For the purposes of substantive law, offences are classified in Nigeria according to the Criminal Code into: felonies, misdemeanors and simple offences.

With respect to the scope of criminal liability, the question arises as to the circumstances in which a person who does or does not cause any of the above listed harms may be adjudged criminally liable. These relates to inchoate offences, conspiracy and criminal complicity. On the other hand, *'*conditions of criminal liability*'* refer to the circumstances or ingredients which must be satisfied before a person is convicted of an offence. While the conditions may vary from one offence to another, it is essential to note that criminal liability generally adjudged as the congruence between guilty mind and guilty action otherwise knowns as *mens rea* and *actus reus* respectively. As Karibi-Whyte has stated, the principle of criminal law in Nigeria consists of the notion expressing: intentions (*mens rea)*; act (*actus reus*); the concurrence of intention and act; the harm, the causation of the harm; punishment and legality[6] However, as we shall see in course of this work, there are many offences which may require only minimal fault or no personal for the club to warrant the infliction of punishment yet the law punishes them. These are known as offences of strict liability which are also tangential to offences of vicarious and corporate liability.

For the reason that criminal justice is founded on the notion of punishment for guilty conduct guilt itself is determined by position in the network of relationships in which an act is only deemed to be caused in a particular state of mind while the principle of legality is the controlling parameter in the evaluation of conduct. The corollary of this network of relationships is that for a person to be justly liable to punishment, the must have caused something (harm) which is prohibited by law. In criminal theory, therefore, causation is the link between conduct and harm *'*which are qualified and made complete by the principles of legality and punishment*'*[7]. The strategic importance of the principle of legality in criminal theory arises from the fact that *'*no harm conduct open shipments has any valid effect unless it is legally prescribed… for a conduct or harm to constitute an offence, it must also be legally prescribed*'*[8]. While punishment on the other hand must also be legally prescribed for it to be valid. However, as noted earlier while criminal sanction flows from legal prohibition such sanction must arise from conduct caused by the act or in a prescribed state of mind. The implication of this is that *'*the fact that the conduct of the person resulted. Any prescribed how by itself does not involve criminal liability… [because] a person can only legally be the cause of the forbidden harm, if he knew what he was doing and intended to do such harm or did not care whether the harm resulted from his conduct*'*[9] . Therefore, to properly locate liability for your prohibited conduct a person must be held responsible for the conduct. This explains why it has become a universal principle of criminal justice that *'*guilt is measured by responsibility and that punishment should be measured by guilt*'*[10] subject to the express provisions of this code relating to the negligent acts and omissions a person is not criminally responsible for any act or mission which occurs independently of the exercise of his will, or for an event which occurs by accident[11]

Having regard to the above provision of section 24 of the Criminal Code, therefore, the principles of criminal law have understandably refused to ascribe criminality to the consequences of conducts arising from involuntary acts or even for the consequences of voluntary acts which were neither forced nor intended. This is so because in general, criminal law is concerned with the morality of the conduct of the wrong doer the result that it bases its notion of responsibility on the principles of blameworthiness. It follows, therefore, that all cases were moral culpability cannot be attributed to the wrong door then there is no responsibility. Furthermore, in order to determine the blameworthiness of an act, *'*the moral content of the criminal law requires that the accused must actually intend to commit the prohibited conduct

The jurisprudence of strict liability indicates that though it is of common law origin, it has now become more flavored by statue. It is generally believed that strict liability offences involve conduct prohibited in the interest of social expediency moving to the alleged public interest undercurrent or strict liability offences, it has been noted that the courts are usually influenced in the construction of the statutes creating such offences by the degree of social danger which they believe to be involved in the offense in question consequently in order to inflict punishment for strict

[5] Section 3, *Criminal Code*, Cap C38, Laws of Federation of Nigeria, 2004.
[6] *Op. cit*. Ashworth, 2.
[7] *Ibid*, 7,
[8] *Ibid*, 18.
[9] *Ibid.*
[11] Section 24, *Criminal Code Cap* C38, Laws of the Federation of Nigeria, 2004.

liability offences, the courts 'take judicial notice of the problems with which the country is confronted… By their very nature, strict liability offences do not admit of any excuses or defense as to the commission of a prohibited conduct. They are, therefore, regarded as exceptions to the general rule that the grounding of liability must be on the basis of the dual elements of intention or guilty mind and prohibited conduct or guilty act. Public interest matters such as inflation, drugs, traffic matters, pollution etc frequently regarded as pressing social evils which require the judicial invocation of strict liability as a protection for the society.[13] In the foremost case of *Gammon (Hong Kong) Ltd v Attorney General*, the Privy Council held that although there is presumption of *mens rea* in all statutes this can be displaced in two main situations: case of public protection where social danger exist, and quasi criminal offences of a regulatory nature.[11] The reasons for the displacement of the requirements of *mens rea,* according to the Privy Council, were to encourage a higher standard of vigilance, ease of administration of justice and to facilitate the investigation and control of corporate crime. As Marianne Gills has stated, 'regulatory offences are created by parliament for the bettering of society and the penalties imposed to encourage observance of the law'.[12] Like other jurisdictions where it is part of the corpus of its criminal law, the Nigerian criminal theory recognizes the doctrine of strict liability as an exception to the general rule of Criminal liability as provided by section 24 of the Criminal Code. It has does been noted that in general the creation of strict liability offences is:

> Consistent with the theory of prohibiting conduct as necessary in the public interest. The elements of intention and awareness are excluded either because of the extreme severity of the penalties on their ability or their political character or that they are so minor as not to constitute real crimes; but in any event, ought in the public interest to be prohibited and their infraction subject to punishment.[13]

Furthermore, moral considerations account for the imposition of strict liability on some sexual offences as provided in Nigerian Criminal Code. Such offences are therefore punished as an affront to the moral failing of the community. In sum, one of the universal principles of criminal law in the criminal liability is found on the dual pillars of intention and action in respect of a prohibited conduct as the just basis for the punishment of the offender. This principle is captured by section 24 of the Criminal Code. The punishment of an alleged lawbreaker is, therefore, deemed immoral and unjustifiable if the elements of guilty mind and guilty conduct are not concurrently established. Lord Diplock adumbrated this point when he noted that the presumption of *mens rea* (guilty intention) In grounding criminal liability:

> Stems from the principle that it is contrary to irrational uncivilized Criminal Code parliament to be presumed to have intended to penalize one who has performed his duty as a citizen to ascertain what apps are prohibited by law and has taken all proper care to inform himself of any acts which would make his conduct unlawful.[14]

Consequent upon the universal requirements for the establishment of the elements of *mens rea* and *actus reus* as the basis of criminal liability, the operation of the doctrine of strict liability negates this general rule. This is so because in strict liability offences all that is required of the prosecution is to provide the Commission of the guilty act in order to ground liability in spite of its non compliance with the twin pillars of intention and guilty conduct has grown from criminal liability the imposition of strict liability has frequently been justified on the ground that it encourages greater safety standards for the prosecution of the difficulty task of proofing men's rear thereby enhancing judicial and distributive efficiency as well as promoting the deterrent effect of conviction.[15] The renowned jurisprudent Roscoe Pound elucidates the notion of public safety as justification for strict liability by contenting that:

> The good sense of the courts has introduced a doctrine of acting at one's peril with respect to statutory crimes which expresses the needs of society. Search statutes are not meant to punish the vicious will but to put pressure upon the thoughtless and inefficient to do their whole duty in the interest of public health all safety morals.[16]

In this regard, if the surgeon who performs an operation with all use care and skill and his patient dies, and the surgeon is found guilty of murder, it would unwittingly divorce the law from social and moral context. It will not only deter all surgeons from performing all operations involving any risk of death, it will also disable the public from obtaining the due benefits of medical science. In the light of the foregoing, there is evident conflict between the noble aspiration to deploy the instrument of strict liability for the promotion of public good and the need to ensure that the goal of criminal law to punish the offender and protect the innocent is not miscarried. This conflict brings to the forecourt, the ageless question as to the role of the law in social relations. According to Michael Allen:

---

[10] J.C Smith and B.Hogan, Criminal Law (5th ed). (London: butterworths, 1983), 92.
[11] M. Giles, 'Reasons for the strict Liability', Nutshell's Criminal Law (4th ed.) (London: Sweet & Maxwell, 1996), 25-26
[12] *Op cit*, Smith and Hogan, 100.
[13] *Opt cit*, Allen, 110.
[14] *Op cit,* Giles, 101.
[15] *Op cit*, Karibi-Whyte, 27
[16] R. Pound, 'The Spirit of the Common Law' in Karibi-Whyte, op.cit, 103.

> It is possible to protect people from all harm the laws rule however is to seek to protect them from the intentional or reckless infliction of harm and in some circumstances from the negligent infliction of harm if harm could not have been prevented by the exercise of reasonable care the prosecution of the blamelessly inadvertent will not prevent the occurrence of such harm in future.[17]

In the face of the jurisprudential conflict between it and the principle of criminal liability the doctrine of strict liability is regarded as an exception to the general rule. This, however, raises the issue as to reasonableness of the exception and the difficulty of establishing the real intention of the legislature in the enactment of strict liability provisions.

It is a trite that criminal theory is based on the principle that crime is attended by the punishment and the punishment is indexed on responsibility for a prohibited conduct while responsibility is founded on mental and physical elements of conduct otherwise known as *mens rea* and *actus reus*. Consequently, the notion of responsibility is crucial to the principle of punishment because it is a general rule of fairness that the man merits punishment only to the degree that he was responsible for his criminal act.[18] It follows that when any of the limbs of responsibility (intention or action) is missing, a person is generally absolved of liability. The explanation is not far-fetched with respects to the *actus reus*, it is settled law that no matter how wicked or obnoxious a man's intention may be, he cannot be punished unless and until he begins to take some step(s) to implement or put his wicked intention into action. Therefore, intention without action negates liability. This explains the universal principle that the criminal law generally ascribes responsibility for criminal conduct only to adult offenders mentally able to account for their actions.'[19]

In the light of the foregoing, the doctrine of strict liability may be regarded as a jurisprudential and legislative contradiction for the reason that it negates the known canons of responsibility and violates the principle of fairness for a man to be punished for an unintended and involuntary action. This is because in strict liability offences, the prosecution need not prove any mental element against the accused.[20] The problematics of strict liability stem, therefore, from the fact that it ' admits of no excuses and is seriously in conflict with all the formulated theories of punishment '.[21]

Notwithstanding the contention that 'the existence of strict liability does induce organizations to aim at higher standards,[22] there is however wide spread belief that the logic or illogic of strict liability should be weighed against its realistic potential for the deterrence of public health in this regard the Privy Council in the case of *Lim Chin AIK*[23] stressed that: 'It is pertinent to inquire whether putting the defendant under strict liberty to assist in the enforcement of the regulations. Unless this is so there is no reason in penalizing him and it cannot be inferred that the legislature imposes strict liability merely in order to find a luckless victim'. Viewed from its potential for deterrence the imposition of strict liability may seem unfair and illogical in that the law cannot command the doing of an impossibility because a law requiring one to go beyond the bounds of reasonability or possibility would be odd indeed.[24] In this regard, the application of the doctrine of strict liability is a negation of the *maxim Lex non Cogit ad impossibilia*, which means that 'the law does not authorize the doing of impossibility'[25]. The oddity of strict liability arises from the fact that it imposes punishment on a person who neither have board the intention to commit a prohibited conduct nor had the capacity to prevent himself from doing so. Okonkwo and Naish put it succinctly thus 'no liability is or should be strict that a man is to be convicted even if he had not the mental capacity to prevent himself from commiting the act which is the *actus reus* of the offence in question'.[26] Owing to the conflict between the attainment of the ends of justice by following due process and the temptation to protect the public through exigent or unjust methods, this works seeks to interrogate and balance the lofty intents of the doctrine of strict liability as an instrument of public protection against the universal principle of criminal law which seeks the protection of the innocent and the punishment off the offender on the basis of his responsibility for a prohibited act.

In Nigeria section 24 of the Criminal Code embodies the principle of criminal responsibility founded on the concurrence of *actus reus* and *mens rea* having regard to its provision that '… a person is not criminally responsible for an act or omission which occurs independently of its exercise of his will, of an event which occurs by accident'. Remarkably in spite of the jurisprudential and statutory acknowledgement of the interplay between intention and conduct in the grounding of criminal liability, the offences of strict liability constitute an exception to the rule for the

---

[17] Ibid, 111
[18] Okonkwo and Naish, *Criminal law in Nigeria* (2nd ed.) (Ibadan: Spectrum Books Ltd, 2009), 32
[19] *Op cit*, Karibi –Whyte, 95
[20] Op cit, Okonkwo & Naish, 49
[21] Op cit, Karibi – Whyte, 97
[22] Smith & Pearson, 'The Value of Strict Liability' (1969), *Crim LR* 5 and 16.
[23] (1963) AC at 174, (1963) I AII ER at 228
[24] Op cit, Smith & Hogan, 104.
[25] A. Obi Okoye, *Law in Practice in Nigeria: Professional Ethics and Skills* (2nd edition) (Enugu: Snaap Press Ltd, 2015), 266
[26] Op cit, Okonkwo & Naish, 62

reason that it inflicts punishment on offenders even in the absence of intention or guilty mind. This gives rise to a situation where the law tends to punish the innocent with the attendant injustice it portends. Consequent upon the foregoing, this work seeks to assess the impact of the principles of criminal responsibility on strict liability offences. The general objective of this work is to determine the reconciliation ability or otherwise of the principle of criminal responsibility with the doctrine of strict liability and criminal justice delivery. This study will be carried out under the platform of doctrinal research orientation. We shall however make use of available empirical research on this subject matter. The libraries shall be our primary sources of information elicitation and data generation. We shall also rely on authoritative textbooks by renowned jurisprudence, scholars and jurists which have relevance to our research focus. We also expect to make copious use of relevant statutes and case laws to advance the thesis of this work.

2. Literature Review

The focus of this section is the review of relevant literature on the doctrine of strict liability from the perspective of different jurisprudence: text writers, jurist and allied commentators. For the reason that strict liability is one of the means through which the law inflicts punishment on the offender for the breach of prohibited conduct, this chapter undertakes a survey of the major theories of punishment with a view to arriving at a deeper understanding of the doctrine of strict liability. This chapter also examines the rules adopted by the courts and determining the offences of strict liability. In reviewing the relevant literature on the subject in survey of the arguments for and against the imposition of strict liability is also carried out in this chapter. The chapter is organized under the subheads of: conceptual, empirical, and theoretical frameworks, the rules for the determination of strict liability offences, the justification of strict liability, the arguments against strict liability, and the summary of the review and gap in knowledge of this research work.

The Doctrine of strict liability

In criminal law liability refers to the class of offences which are adjudged committed without evil intention regarding at least one aspect of the prohibited conduct. They are thus often referred to as no-fault offences[27]. Conceptually speaking, strict liability is an exception to the general principle of criminal law which holds that criminal liability is the consequence of prohibited conduct (*actus reus*) and prohibited or evil intention (*mens rea*). According to Elliot and Quinn, although most offences of strict liability are created by statute, some offences like public nuisance and blasphemous libel examples of strict liability offences under the common law[28]. When a statute imposes strict liability, all that is necessary to secure conviction is the proof of the physical element of the crime the (commission of the crime) as the mental element or intention is irrelevant in grounding such offences. Molan house on this point by defining strict liability as *'*the term used to describe the imposition of criminal liability without proof of fault on the part of the defendant*'*.[29] According to the this writer, strict liability represents an exception so one of the basic principles of Criminal responsibility which holds that the prohibited conduct or *actus reus* and the evil intention or *mens rea* must be proved in view of the fact that the presence of the mental element on the part of the defendant is what constitutes his fault oh blameworthiness, the punishment of a person for the Commission of a strict liability offense is unjust, at least on its face value. The objective of imposing strict liability is said to be to place the onus on those who engage in certain activities to ensure that they do not run file of the prohibitions and limitations imposed by the law. The implication of this is that those who are in doubt as to whether their actions will constitute a transgression of the law should completely avoid such activities[30]. In Nigeria the meaning of strict liability also falls within the definition of the offence in the English jurisdiction and indeed in other parts of the world. According to Karibi- Whyte, strict liability refers to offences which could be committed without culpability such offences are prohibited in the public interest. In such types of offence, the elements of intention and awareness are excluded either because of the extreme severity of the penalties on the ability of their political character or that they are so minor as not to constitute real crimes; but in any event, ought in the public interests, to be prohibited and they are infractions subject to punishment[31]. Whyte contends that crime and punishment our concepts which are ordinarily inter-twined with the notion of guilt and culpability but this does not hold true in offences of strict liability. He further stresses that the offences of vicarious liability and corporate liability are offshoots of strict liability.[32] On this subject, Fakayode contends that at common law, the test of criminal liability is summed up in the Latin maxim of *actus non facit reum nisi mens sit rea* which means that a person will be criminally liable only if the offence with which he is charged is the result of his voluntary outward conduct concurring which is morally blame-worthy mind. He notes, however, that this rule is displaced by the offences of strict or absolute liability which are prohibited in the interest of public morals, health or business[33]. He further notes that in such offences, the only ingredient necessary to establish liability is willful conduct or inadvertent omission because the elements of intention, negligence or recklessness are usually regarded

[27] Rusell Heaton, *Criminal Law* (London: Blackstone Press Ltd, 1996),328

[28] Catherine Elliot and Frances Quinn, *Criminal Law* (2nd edition) (Edinburgh: Addison Wesley Longman Ltd, 1998), 26

[29] Micheal T. Molan, *Criminal Law* (10th edition) (London), 358

[30] Ibid

[31] A. G. Karibi-Whyte, *Groundwork of Nigerian Criminal Law*. (Lagos: Nigerian Law Publications. Ltd, 1986), 8

[32] I*bid*

[33] E. O. Fakayode, *The Nigerian Code Companion* (Lagos: Jeromelaiho & Associates Ltd, 1985), 8

as being immaterial. Aguda notes that the emergence of the offences of strict liability followed the erosion of the principle of *mens rea* which was carried out by the courts under the guise of statutory interpretation[34]. He emphasizes that in English as well as Nigerian Criminal law, statutory enactments have prohibited many types of conducts to which moral turpitude are not attached, in the interest of the public in those areas that touch on the lives and health of the people. According to him, *'*such legislation therefore serves as a means of regulation to protect society which in the circumstances of modern industrialization cannot protect itself*'*.[35]

The Dynamics of Criminal Responsibility

In criminal theory, the investiture of responsibility for an act or omission which constitutes a crime is found on the twin pillars of action and intention otherwise known *as actus reus and mens rea.* Historically, the development of the concept of criminal responsibility may be traced to the early English common law which later crystallized in the notion that a man's act could not amount to a crime so as to make him liable to punishment unless he was himself conscious of doing wrong. This notion is captured in the maxim *'actus non facit reum, nisi mens sit rear'*, which is said to have made its first appearance in English criminal theory in the *Lages Henrici Primy V that's 28.*[36] Over the years, the principles of criminal responsibility has rested on the foundation that there could be no criminal liability without the accompaniment of *mens rea* such that they are location of criminal responsibility must not only be based on a guilty mind but also that he must be morally blameworthy for his act.[37] As we noted in the preceding section and as we will become clearer in the next chapter the pristine index for the measurement of criminal liability has come to be tempered by the doctrine of strict liability which is regarded as an exception to the rule. In Nigeria, the basis of criminal responsibility is enunciated in section 24 of the Criminal Code to the effect that a man is not responsible for an act which occurs independent of his will or by accident. The literature of criminal responsibility is summarized by Okonkwo and Naish as follows: *'*a man merits punishment only to the degree that he was responsible for his criminal act *'*.[38] For a comprehensive examination of the mechanics of criminal responsibility, see chapter 3.

A lot of theoretical disputation has centered on the issue as to whether or not strict liability is a deterrent to train. This is because apologies of strict liability believe that it is an important instrument for public protection especially with respect to regulatory offences. This contention has how has, however, been refuted by many other scholars and researchers. For instance, empirical research by Tom Tyler, on why people obey the law stressed that the threat of sanction is not a significant factor why people obey the law. Instead, people are more predisposed to obey the law when they feel that the system is legitimate and fair, and that it treats citizens with respect and consideration.[39] Another empirical research by Alberini and Austin on the deterrent effect of strict liability in environmental toxic waste management indicates that rather than deterring pollution, strict liability tended to Cosmo environmental pollution especially by small firms in the USA. How do the results vary with the type of chemicals being analyzed, there was conclusive evidence that for some chemicals such as halogenated solvents the presence of strict liability occasioned more spillage compared with states without strict liability.[40] According to the research, out of 12,662 Reported cases involving releases of acids between 1987 and 1995 more than 20% involved so folic acid, and over 14% involved hydrochloric acid. A significant fraction of these spills occurred in California weeds 2 354 reported cases followed by Texas; 2,027; Louisiana Cullum 720; Pennsylvania and Illinois with 435 cases each.[41] The researchers pointedly noted that *'*looking at the results… we find that the coefficient of strict liability is positive and significant. States that adopt strict liability continue to have higher rates of toxic spills.[42] The researchers also reported that states with strict liability policy generally have 30% to 70% more spills the states which maintain diligence base liability standard. The researchers contend that this situation may be attributable to the fact that in states where strict liability policy obtains, the firms have fewer incentives to adopt higher standard of care compared with states which adopt negligence standards. They also noted that the presence of strict liability may have caused the relocation of certain types of production operations which usually cause more spills. They explain that this may be caused by larger firms subcontracting riskier operations to smaller firms. The researchers also reported that for the other chemicals analyzed such as acids, chlorine, and ammonia, there are different statistics of spillage based on the presence of strict liability or negligence as the environment policy standard. In conclusion, the researchers submit as follows: *'*To Summarize, we have found evidence that strict liability can increase the frequency of accidental release of those

[34] T. A. Aguda and I. Okagbue, *Principles of Criminal Liability in Nigerian Law* (2nd Edition) (Ibadan: Heinemann Educational Books Plc, 1990), 113

[35] *Ibid*, 115

[36] Mainland & Pollock, History of English Law (2nd ed) (1898) Vol. 2, p. 476

[37] W.T.S Stallybrass, Modern Approach to Criminal Law, p. 95

[38] C. O. Okonkwo, *Criminal Law in Nigeria* (2nd edition) (Ibadan: Spectrum Books Ltd, 2009), 30

[39] Tom Tyler, *Why people Obey the Law* (New Haven: Yale University Press, 1990)

[40] Anna Alberini & David H. Austin, 'Strict Liability as Deterrent in Toxic Waste Management: Empirical Evidence from Accident and data Spill' in www.rff>RFF-DP-998-16.

[41] *Ibid*

[42] *Ibid*

substances to the environment [43]. This finding constitutes a potent rebuttal to the belief in some quarters that's strict liability is a deterrent to regulatory offences.

Furthermore, in another empirical study on: *'*Prison Decongestion in Nigeria *'* [44] with tangential focus on the issue of crime and deterrence, the researcher found that in spite of the deplorable condition of prison facilities in Nigeria, aggravated by overcrowding and other inadequacies, the problem of recidivism has persisted. According to the study, each of the two 227 federal prisons across the country is occupied by more than twice its carrying capacity. This study noted, for instance, that the Kirikiri Maximum Security Prison Lagos which was built for 956 persons was occupied by 2600 prisoners at the time of the research. Zeroing in federal prison (built in 1991) and Abakaliki Federal Prison (built in 1946) both in the Ebonyi State, the study noted that notwithstanding that the combined carrying capacity of the 2 prisons was 387: they were, however, occupied by 914 inmates most of whom were awaiting trial persons. According to the study, *'*the condition of the prisons was so deplorable that *'*the cells were terribly poor and hardly fit for habitation*'* as they were characterized by inadequate sources of hygienic water and healthcare facilities, unsanitary toilets, thread bare beds, beddings and improvised mats, poor ventilation and generally unkempt environment. Remarkably, in spite of the gloomy portraits of the 2 prisons, a total of 75.5% of the respondents sampled by the researcher reviewed that most of the inmates were recidivist[45]. Based on data generated from the study, the researcher outlined 38 recommendations for the redressal of prison congestion and concluded that *'*most prisons in Nigeria are carrying more than their built capacity occasioned by lack of legal representation and access to justice, recidivism, slow criminal justice system, and poor judiciary and prison infrastructure*'*.[46] Among other things, the clear implication of the research findings is that the deplorable and oppressive conditions of the prisons do not constitute meaningful deterrence to crime. This lends ample credence to other studies which indicate that the fact of strict liability legislation, for instance, does not deter crime.

In a bid to strike a delicate balance between group security and individual freedom. The criminal law uses the instrumentality of punishment not only to stem infraction of group ethics but also to ensure the infliction of sanction it's neither arbitrary nor personalized. The explanation for this is that any conduct deserving of punishment is considered not only harmful but also injurious to the community as a corporate entity and that the infliction of punishments for the breach of the society's code of conduct is undertaken by a public authority rather than an individual[47]. Thus, well punishment remains both the epicenter and object criminal law, the question has frequently been raised as to the object of punishment itself[48]. The search for an answer to this question leads us to an examination of the major theories of punishment as a basis for arriving at a rational explanation for the imposition of strict liability in criminal law. Generally, the sanction for anti-social conducts involves fines, forfeiture, imprisonment or other forms of physical discomfort or the threats of one or a combination of these punishments regardless of the different sanctions which may be meted out for different offences, penal sanctions may generally be objectified and accommodated under the major theories of punishment. In recent times, the leading principle of punishment is that sentence must be proportionate to the seriousness of the offence[49].

3. Rules for Determining Strict Liability Offences

For the reason that the wording of statutes does not always spell out the enactments which embody strict liability provisions, the courts are often left to their own devices in their attempt to determine the intention of the legislature. The principles which govern the decision of the courts in this regard were enunciated by the Privy Council in *Gammon (Hong Kong) Ltd v A-G*[50]. In that case, the defendants were involved in the building works in Hong Kong. Part of the building they were constructing fell down. It was found that the collapse had occurred because the builders failed to religiously follow the original plans. The Hong Kong building regulations prohibited any substantial deviation from such plans on account of which the defendants were charged with breaching the regulations at the pain of fine or imprisonment. They were convicted. On appeal, they argued that they were not liable because they did not adjudge the changes made in the plan as substantial. The Privy Council held that the relevant regulations created offences of strict liability and therefore upheld their conviction. In his explanation as to the principles that informed the decision, Lord Scarman acknowledged that there remains a substituting presumption of law that *mens rea* is required before a person can be held guilty of a criminal offence but added that there were factors which could displace that presumption. These factors have become the rules for the determination of strict liability offences by the courts. They include:

---

[43] *Ibid.*

[44] A. C. Omaka 'Decongesting Prisons in Nigeria: the EBSU Law Clinic Model' in *International Journal of Clinical Legal Education Vol*. 20 (2014) Northumbria University New Castle, United Kingdom, www.northumbriajournals.co.uk

[45] I*bid*

[46] I*bid*

[47] Elizabeth Oji, *Responsibility for Crimes under International Law* (Lagos: Longman Ltd, 1988), 12.

[48] Okonkwo & Naish, *Criminal Law in Nigeria* (2nd Edition) (Ibadan: Spectrum Books Ltd, 2009), 28.

[49] Andrew Ashworth*, Principles of Criminal Law* (2nd Edition) (oxford: Clarendoon Press, 1996), 17.

[50] (1984) 80 Cr. App.R 194

Regulatory Offences

A regulatory offence is regarded as *'*one in which no real moral issue is involved and usually (though not always) one for which the maximum penalty is small*'*[51]. Examples of such offences include pollution matters and sale of food and drugs among others. In Gammon (Supra), the Privy Council stated that presumption against strict liability was more for regulatory offences than for truly criminal offences. As to the distinction between true crimes and regulatory offences, the case of *Sweet v Parsley*[52] provides some insight. The defendant, Ms Sweet, was a teacher who took a sublease of a farmhouse outside Oxford. She rented the house to tenants, and rarely spent time there. Unknown to her, the tenants were smoking cannabis on the premises. When they were caught, Ms Sweet was also charged and found guilty of being concerned in the management of premises being used for the purpose of smoking cannabis contrary to *the Dangerous Drug Act, 1965* (later replaced by the *Misuse of Drugs Act, 1971*). Ms Sweet appealed on the ground that she did not know what the tenants were doing and could not reasonably have been expected to have known. Lord Reid acknowledged that strict liability was appropriate for regulatory offences or *'*quasi – crimes*'* regarded as not criminal in the real sense but are merely prohibited in the public interest. However, he said crimes to which real social stigma is attached should usually require the proof of *mens rea.* For such offences, it was not in the public interest that an innocent person should be convicted without being afforded a chance to prove his innocence. In the case of Sweer, the conviction was overturned on the ground that the offence was a true crime to which stigma attached which made her lose her job. The appellate judges therefore held that the offence ws not one of strict liability. In spite of the decision of the appellate court in *Sweet v Parsley* (Supra), the courts continue to regard regulatory offences or *'*white –collar*'* crimes as strict liability offences as approved by the House of Lords in *Alphacell Ltd v Woodward*[53]. As Rusell Heaton has noted, regulatory *'*offences to be those regulating a particular activity, often carried on by business for profit, which involves potential dangers to the public health, safety or welfare and in which citizens or companies have a choice whether or not they participate*'*[54]. By adopting strict liability to such offences, the courts seek to convey the message that if business entrepreneurs chose to engage in a particular activity, the onus is on them to ensure at all costs that they carry it on in the manner prescribed by legislation. While most regulatory statutes are aimed at the control of businesses, it is not all of them that do so. Examples are motoring nd driving offences. As distinguished from regulatory ones, truly criminal offences are the types which members of the society would readily regard as *'*crime*'* and which are generally recognized as morally reprehensible. Examples in this regard include offences against person or property. In view of the disposition of the courts, M.T Molan contends that it has now become a general rule that *'*the more serious the criminal offence created by statute, the less likely the courts are to view it as an offence of strict liability[55]. However, there is no hard and fast rule in this regard because the courts are sometimes persuaded to classify an offence as one of strict liability by balancing the potential unfairness to the individual against the potential harm which the conduct may cause the public. An illustrative example in this regard is the case of *R v Howells*[56] in which the defendant was convicted of possessing an unlicensed firearm contrary to section 58 (2) of *Firearm Act, 1968* notwithstanding his honest belief that it was an antique exempted from the provisions of the act. In the balancing the possible hardship to the accused in relation to the imperative of public protection, Browne I.J noted:

> … the danger to the community resulting from the possession of lethal firearms is so obviously great that an absolute prohibition against their possession without proper authority must have been the intention of parliament when considered in conjunction with the words of the section….to allow a defence of honest and reasonable belief that the firearm was an antique and therefore excluded would be likely to defeat the clear intentions of the Act.

The implication is that the courts undertake the balancing of priorities to decide the offences to which strict liability attaches and they generally lean in favour of public protection. In *Lim Chin Aik v The Queen*[57], the Privy Council per Lord Evershed reiterated the ned to protect the public as the explanation why regulatory offences are often classed as strict liability ones;

> Where the subject matter of the statute is the regulation for the public welfare of a particular activity – satutes regulating the sale of food and drink are to be found among the earliest examples – it can be and frequently has been inferred that the legislature intended that such activities could be carried out under conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of thr relevsnt activities are made responsible for

[51] Op. cit. Elliot and Quinn, 27
[52] (1970) AC 132;(1969) 1 AII ER 347
[53] (1972) AC 824;(1972) 2 ER 475
[54] Op. cit. Heaton, 332
[55] Op. cit. Molan, 362
[56] (1977) 3 AII ER 417
[57] (1963) A.C.160 (Privy Council).

seeing that they are compiled with. When such a presumption is to be inferred, it displaces the ordinary presumption of *mens rea.*

The corollary of the foregoing is that regulatory issues constitute important factors about which the courts have taken into consideration in deciding that strict liability attaches to such ofences.

The Wording of the Act

Another important factor which influences the courts in the imposition of strict liability is the actual wording of the act under consideration. As the court stated in *Gammon (supra)* the presumption that *mens rea* is required for a criminal offence can be rebutted if the words of the statute suggests that strict liability is intended by the legislature. While the legislature does not always include the words which indicate strict liability, there are some words which, if present in a section of statute would be deemed to suggest an attitude to strict liability. Such words include cause, possession, knowingly, etc. In *Alphacell v Woodward (supra)* he defendants were accused of causing polluted matter to enter a river. They were using equipment designed to prevent any overflow into the river. However, when the mechanisms became clogged by leaves, the pollution was able to escape. There was no evidence that the defendants had been negligent or that they even knew that the pollution was leaking out. The House of Lords stated that where the statutes create an offence of causing something to happen, then no *mens rea* is required, regardless of whether he or she knew or was doing so. The law Lord therefore held that having regard to the normal meaning of the word, the defendants had *'*caused*'* the pollution to enter the water. Their conviction was upheld[58].

4. The Justification of Strict Liability

In spite of the opposition against the imposition of strict liability by many jurists and scholars, its application has been justified by many on a number of grounds. Such grounds include: the promotion of care and diligence, deterrent value, case of enforcement (against the background of the difficulty in proving (*mens rea*), and profit from risk. Let us now examine these arguments in some detail. The doctrine of strict liability originated in the English common law. It refers to the class of offences which are punishable without culpability. As one of the devices through which the law inflicts punishment on an offender for the breach of a prohibited conduct, strict liability is regarded as no-fault offences for the reason that all that is needed to ground liability is the physical element of the offence (otherwise known as the *actus reus*) without more. Strict liability is considered an exception to the general principle of criminal law which holds that criminal liability is the congruence of prohibited conduct (actus reus) and prohibited or evil intention (mens rea). In Nigeria, this principle of criminal liability is captured by section 24 of the Criminal Code and to a large extent, section 48 of the Penal Code. As one of the penal strategies of the criminal law, there is serious doubt as to the exact theory of punishment to which strict liability is oriented. In spite of the fact that under the common law from which it developed, the scope of strict liability covered only about three offences: public nuisance, criminal libel and contempt of court, its scope has today widened to cover a multitude of regulatory or public welfare crimes. The consequence is that strict liability offences are predominantly the creation of the legislature geared towards public welfare or public protection. Being mostly the creations of statute, the courts depend on the agency of statutory interpretation to determine the offences to which strict liability attach.

While many scholars and jurists have striven to justify the imposition of strict liability on the basis of the larger interest of public safety and the common good, many others have denounced the application of strict liability on the ground that any system which inflicts punishment on a person for innocent, inadvertent or involuntary conduct is unjust and reprehensible. Although the proponents of strict liability have trumpeted its capacity to promote higher standard of care and to deter potential offenders from committing crime, the opponents of strict liability have argued and rightly too that its application may have the opposite effect of deterring innocent and law-abiding citizens from venturing into socially beneficial enterprises governed by strict liability. Where they are not completely deterred from engaging in such activities, it is further argued, strict liability may have the effect of acting as disincentive to taking precautions by business operators in the knowledge that no amount of care or diligence will constitute a defence in the event of breach of a prohibited conduct.

From the foregoing analysis, it is clear that there is neither an authoritative indicator as to the deterrent capacity of strict liability nor of its justification; it remains uncertain whether the application of strict liability in Nigeria is supported by any known theory of criminal liability. Consequent upon the prevailing uncertainty and gap in knowledge, this work set out to fill the subsisting gap by critically assessing the impact of strict liability offences in Nigeria vis a vis the country's criminal law and proffering some recommendations on the resolution of the uncertainty surrounding the basis of imposition of strict liability in Nigeria.

[58] Op. cit. Elliot and Quinn, 29

5. The Origin and Development of Strict Liability

In contemporary criminal theory, the doctrine of strict liability is generally regarded as an exception to the rule[59]. The rule being the common law Latin maxim of *actus non facit reum nisi mens sit rea* which means that a person will be criminally liable only if the offence with which he is charged is the result of his voluntary outward conduct concurring with his morally blameworthy mind[60]. In spite of the modern position that strict liability is an exception to the rule, Jurisprudential evidence from legal history hold that strict or absolute liability was originally the rule rather than the exception. Historically, before the Middle Ages and the advent of classical Roman and Cannon law influences on the common law of England, offences were generally of strict liability[61]. The law governing criminal liability was summed up by two maxims of the then ancient law: *qui inscienter peccat scienter emendant* which means (he who commits evil unknowingly must pay knowingly) and *volens aut volens* which means intending to or not intending to, the offender must be handed over to the next of kin of the deceased for vengeance[62]. The concept of the deodand in the old English law of crime by which a criminal instrument was capable of punishment is regarded as proof of the doctrine of strict liability in early English criminal law[63]. As noted earlier, the evolution of the doctrine of strict liability from being the rule in English criminal law to being the exception to the doctrine of *mens rea* or no liability without fault is traceable to the influences of Roman and Canon law principle on English legal Scholarship in the Middle Ages[64]. It has been stressed that from the time of Breton through the period of Sir Edward Coke, the principle of subjective blameworthiness gained ascendancy in English criminal theory such that it became only a matter of time before it supplanted the then existing doctrine of strict liability[65]. With the overthrow of strict liability as the basis of criminal liability, the dawn of the maxim of *actus non facit reum nisi mens sit rea* (no liability without fault) set in and has continued to hold sway ever since. With the enthronement of the principle of no liability without fault as the subsisting rule of criminal responsibility, the doctrine of strict liability not only became an exception to the rule, it also underwent radical jurisprudential contraction in the common law era. The doctrine of strict liability assumed a new significance in the 19th century with the development of what came to be known as social legislations regulating certain activities pertaining to public health, safety or welfare, especially with respect to food and drugs, liquor, health and safety in factories and other work places[66]. As an exception to the rule of criminal liability, the common law doctrine of strict liability was originally restricted to public nuisance, criminal libel and contempt of court with a more recent addition being blasphemous libel[67].

6. The Legislative Goals of Strict Liability

Any inquiry into the factors that inform the creation of strict liability offences by the legislative should necessarily take its bearing from the prevailing socio-economic and political circumstances which underpin the notion of criminalization in the society. In criminal theory, the concept of criminalization refers to the deployment of state apparatus for the preservation of social order. By its very nature, the technique of criminal law is condemnatory on account of which it authorizes the infliction of state punishment on an offender. Consequently, to criminalize any kind of conduct is to officially declare that it should not be done, to institute a credible threat of punishment as a disincentive for breach, and to censure those who do the prohibited conduct[68]. These gave rise to the threefold purposes of criminal law: declaratory, preventive and censuring[69]. In constitutional theory, decisions as to what conduct to be criminalized is within the province of the legislature, its implementation is that of the executive and its application or interpretation is the preserve of the judiciary as exemplified by the courts[70]. The interpretation is the preserve of the judiciary as exemplified by the courts. The effect is that within the matrix of criminal law, the legislative provides the tools, resources o authority for law enforcement agents when it creates a criminal offence. However, decisions about when or when not to invoke the extant powers are within the purview of the law enforcement officers[71]. While the frontiers of criminal liability are not fixed but historically contingent on prevailing existential considerations, it should be kept in mind that a number of interests and factors such as the notions of harm and public protection frequently constitute the manure upon which the growth of criminal law is anchored. For the reason that strict liability is contrary to all the known theories of punishment and that it is also a negation of (and

[59] Op. Cit, Karibi-Whyte, 6-8
[60] The Principle of Criminal Liability is that the elements of an offence are the prohibited act and the evil intention
[61] Op. Cit; Fakayode, 8
[62] Vincent Akpotaire, 'Strict Liability and the Nigerian Criminal Codes: A Review', from the Dept of Public Law University of Benin (internet Source)
[63] F.B.Sayre, 'Mens Rea', *$ 5Harv. LR.* 974 - 1026
[64] Op. Cit, Akpotaire
[65] *Ibid.*
[66] Kenny, *Outlines of Criminal Law* (2nd edition) 39
[67] Op.Cit; Smith & Hogan, 80.
[68] Op.Cit; Ashworth, 22
[69] *Ibid, 34*
[70] *Ibid, 59*
[71] *Ibid 23*

therefore an exception to) the basic principles of criminal liability[72], the issue has often been raised that the legislative goal of strict liability is either vacuous or presumptive. In his regard, Okonkwo and Nash aptly capture the prevailing distemper as to the legislative objective of strict liability thus:

> The legislature has not declared exactly what its purpose is in imposing strict liability in respect of any particular offence. Presumably it is hoped to encourage people engaged in certain activities (usually those affecting the public welfare) to take extra care in not infringing the law[73].

In spite of the weighty objections to the imposition of strict liability, its application has frequently been rationalized on the basis that satisfies the ingredient of 'legality' which is a core element for the validity of a legislative enactment, the issue then arises as to whether the legislature has power to enthrone an absurdity in the case of *Sweet v Parsley*, Lord Morris of Bort - Y – Gest observed that… ' as parliament is supreme, it is open to parliament to legislate in such a way that an offence may be created of which someone may be found guilty though *mens rea* is lacking'[74], Similarly, in *Pearks, Gunston & Tee Ltd v Ward Henmen v Southern Counties Dairies Co. Ltd*[75] , Channel, J. anchored the application of strict liability on parliamentary supremacy. 'The Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done: and if it is done the offender is liable to a penalty whether he had any *mens rea* or not and whether or not he intended to commit a breach of the law'. It has been noted that the imposition of strict liability is often a response to political pressures on the government to do something to arrest an emergent socio-economic problem. In a bid to criminalize a perceived social menace, fundamental legislative values may be sacrificed on the altar of political expediency. The imposition of strict liability is one of such examples where the universal principle of criminal liability as embodying *mens rea* and *actus rea* is sacrificed in the pursuit of the 'common good'[76].

7. The Theory of Exception

In legal scholarship, the theory of exception occupies such a pride that it often finds expression in the saying that in every rule, there is an exception. Conceptually speaking, 'to except' denotes 'to take out', or to leave out' or 'to exclude'. Exception thus refers to the act of excepting or excluding that which is deemed not to belong to a set or a general rule[77]. In spite of the perversity of the concept of exception in legal theory, it has, however, remained a subject of misunderstanding and controversy. For instance, the popular expression: 'exception proves the rule' has been interpreted in diverse ways. In one sense, 'proves' in the expression is interpreted to mean 'to test', not that it demonstrates the rule to be true but that it tests the rule. This is usually employed when an exception to a rule has been identified. In another sense 'exception proves the rule' also means that 'the presence of an exception applying to a specific case establishes ('proves') that a general rule exists[78]. With respect to the diversity of perspectives as to the meaning of the expression, that 'exception proves the rule', Henry Watson Fowler has identified five different ways in which the phrase is commonly used. According to him, the original meaning of the phrase is derived from a legal principle of republican Rome: '*exceptio probat regulam in casibus nonexceptis*' which roughly translates as follows: 'the exception confirms the rule in cases not excepted'[79]. This concept is said to have ben first proposed by the Roman sophist Cicero in the defence of Lucius Cornelius Balbus to the effect that a stated exception implies the existence of a rule to which it is the exception[4]. In legal theory, an exception is essentially' a qualification of a rule that stands in certain relation to it, namely it stands outside the rule it qualifies'[80]. In criminal law for instance, where the definition of an offence is attended with some exceptions, such exceptions often constitute part of the defence to that offence. However, the subsisting issue as to the relationship between a rule and its exception has given rise to some jurisprudential debate on the intercourse between the elements of an offence and the affirmative defences that apply to it. The thrust of this debate is that there ae at least two different ways of structuring a defence to an offence. In one way, the exception which constitutes a defence can be incorporated into the definition of an offence by making it a negative offence element'. In another way, the exception constituting the defence can be set out in a separate provision and treated as an affirmative defence[81].

This can be illustrated with the offence of murder and the permission to kill in self defence. In this regard, the allowance to kill in self – defence can be incorporated in the definition of the offence of murder to the effect that if death results from an act of self-defence then a man did not kill. On the other hand, the defence can be articulated in general and abstract terms accommodating all offences to which murder may belong which the issue of killing in self-

---

[72] *Op. Cit;* Molan, 358
[73] *Op.Cit;* Okonkwo, 61
[74] 1969) 1 AII E.R. 342
[75] (1902) 2 K.B.I
[76] *Op. cit;* Ashworth, 28
[77] Websters Dictionary of contemporary English
[78] https://en.wikipedia.org/wiki/exception that proves the rule.
[79] *Ibid*
[80] Clair Oakes Finkelstein, when the Rule Swallows the Exceptions, p. 150
[81] Ibid, 147

defence may be separately set out as an exception to the foregoing provision. Essentially, in criminal law, the jurisprudential difficulty as to the relationship between rules of prohibition and the exceptions that qualify them often arise from the construction of what properly constitutes a rule and what qualifies as its exception. According to Dworkin, a rule, properly so called is self –sufficient and applicable 'in an all-or-nothing fashion'[82]. From this perspective, for an applicable rule to be valid, it must be self-contained, exhaustive and dictate the answer to the case. Thus, for a rule to be applicable and at the same time not be dispositive of the outcome, such rule is deemed invalid. The corollary of Dworkin's view is that valid rules preclude exceptions for the reason that the proper formulation Ronald Dworkin, 'The Model of Rules I' in Taking Rules Seriously (1977), 24-25 of a rule should take the exceptions into consideration to avoid the difficulty of making rules which approbate and reprobate.

Another perspective on the doctrine of exception is canvassed by Fred Schauer to the effect that the presence of exception is a recognition by a decision-maker that applying the rule (as formulated) would not achieve the purpose which the rule itself was originally designed to promote. In such situation, exception is employed as a strategy to ensure that the mischief which a rule is created to cure is not subverted. According to this view, to say that something is an exception to the rule is simply another way of saying that 'cardinal principle' that informed such rule does not warrant extending the rule to that specific case. The import of Schauer postulation is that the admission of an exception to a rule amounts to altering the rule in the light of the background justification of the rule. According to him:

> If arguments about exceptions are in reality arguments about the rule itself, then in many other contexts it is important to resist the idea that exceptions exist apart from rules, and , consequently, that adding an exception is anything other than changing the rule… now that we know that exceptions are continuous with the rules they are exceptions to, however contingent that continuity may be, we can see that there is no difference between adding an exception to a rule and simply changing it[83].

Schauer concludes that rules ought to be modified only when their application in a particular case would produce a result that is 'so far out of bounds, so absurd, so preposterous that it is analogous to an abuse of discretion and would therefore be reversed'[9]. In the final analysis, Schauer's view about exception seems to be in tandem with Dworkin's though expressed in a different way the effect of which is the preclusion of exceptions within the configuration of a rule.

8. Strict Liability and the Criteria of Valid Law

In the preceding section of this chapter, we expressed the view, which some may regard as debatable, that the doctrine of strict liability as an exception to the rule of criminal responsibility does not pass the litmus test of a valid exception and that is, therefore, unjust and irregular. This raises the fundamental question as to the criteria of validity of law or the elements of just law. Like any other legal issue, opinions remain sharply divided on what constitutes a valid law. This division of opinion which dates back to the jurisprudential debate between natural law theorists and reconciled. For the adherents of the naturalist school of thought, a law is only valid to the extent that it is both moral and just. The thrust of natural thinking with respect to the validity of law is summed up by a statement credited to a character in Sophocles play- Antigone who, while stressing the overriding force of moral rules over state law, declared King Creon as follows:

9. Conclusion and Recommendations

Generally, the purpose of criminal law is the deployment of the instrumentality of state authority to strike a balance between corporate survival or group security on one hand and individual freedom and self-actualization on the other hand. Through the machinery of punishment, the state, vide its accredited agencies, not only seeks to stem the infraction of group ethics and code of conduct but also to ensure that the infliction of sanction is neither arbitrary nor personalized. The explanation for the visitation of sanction against prohibited conduct is that any conduct which is adjudged as deserving of punishment is deemed not only harmful to the individual but also injurious to the community as a corporate and organized entity[84]. In order to divest crime and punishment from the arbitrary whims and caprices of state agents, every organized society articulates the values which that society seeks to protect and also spells out the consequences of their breach. This is usually expressed in a society's principle of criminal responsibility. In most modern civilizations, the dynamics of criminal responsibility is founded on the principle that a man's act could not amount to crime (as to make him liable to punishment) unless he was conscious of doing wrong. This principle is based on the Latin Maxim of '*actus non facet reum, nisi mens sit rea*'[85] which holds that there can be no guilty conduct without a corresponding guilty mind. Thus, for the reason that the consequence of criminal conviction is punishment, the notion of responsibility is central to the appreciation of the trajectory of crime and punishment. Therefore, for punishment to be adjudged as fair, it should not only be imposed on the conduct which the offender has a reasonable

[82] Ronald Dworkin, 'The Model of Rules I' in Taking Rules Seriously (1977), 24-25

[83] Fredrick Schauer, 'Exceptions' (1991) 58 U. *Chi. L. Rev*. 893

[84] E. Oji, *Responsibility for Crimes under International Law* (Lagos: Longman Ltd, 1988), 12

[85] E. O. Fakayode, *The Nigerian Criminal code Companion* (Lagos: Jeromelaiho & Associates Ltd, 1985), 8.

chance of knowing to be criminal, he should also be blameworthy in relation to that conduct because 'a man merits punishment only to the degree that he was responsible for his criminal act'[86]. It would, therefore, be inappropriate or unjust to inflict punishment on an offender who was not morally responsible for his or her behavior. This explains why the criminal law of most civilized jurisdictions do not blame animals, minors, and insane for any harm they may have caused because they are not deemed responsible for the harm. In a criminal trial for instance, the issue of responsibility is attended with three main implications: whether or not the accused did the ct or made the omission for which he is charged; if the accused did the act or made the omission, whether or not he is responsible for it in the eyes of the law and whether or not (considering the circumstances of the act or omission), he is entitled to any mitigated sentence.

In Nigeria, the fundamentals of its criminal theory is rooted in the constitution and given amplification by the criminal and Penal Codes. The base of criminal responsibility is that there is no liability without fault. As the fulcrum upon which the principle of criminal responsibility revolves in Nigeria, section 24 of the Criminal code provides that'… a person is not criminally responsible for an act or omission which occurs independently of the exercise his will, or for an event which occurs by accident…' In light of the constitutional and other penal provisions on the mechanics of criminal responsibility based on physical and mental elements of an offence, the doctrine of strict liability which inflicts punishment-based exclusivity on the physical element is regarded as an exception to the rule.

Consequently, upon the forgoing, the main purpose of this research is to examine the doctrine of strict liability with a view to determining whether or not it can validly co-exist with the principle of criminal responsibility in Nigeria. Other objectives of the research include to:

- Evaluate the compliance of the doctrine of strict liability with the universal principle of fair hearing.
- Examine the theory of exception in relation to strict liability as a deterrent to criminality.
- Distinguish the doctrine of strict liability from the principle of non- exculpatory ignorance of the law.
- Evaluate the impact of strict liability on sentencing.
- Make informed recommendations on the continued application or otherwise of the doctrine of strict liability in Nigeria's criminal law.

In the course of conducting this research, we made the following findings: that the doctrine of strict liability originated from the English law; that the doctrine of strict liability was originally the rule (rather than the exception) governing criminal responsibility in the English common law; that the doctrine of strict liability was supplanted by the doctrine of *mens rea* (no liability without fault) owing to the influences of roman and cannon La Principles on English legal scholarship in the Middle Ages on account of which strict liability became an exception of the rule of criminal responsibility; that strict liability is a negation of the principle of fair hearing; that strict liability is neither justified by nor coterminous with the principle of non- exculpatory ignorance of law; and that owing to the fact that strict liability does not permit any inquiry into the circumstances of a criminal conduct; it negates the sentencing principle that the quantum of punishment should be proportionate to the degree of culpability.

In spite of environmental and geographical differences as to what constitutes crime, there is no dispute that crime embodies the gamut of anti-social conducts which are subjective to state sanction. In contemporary criminal theory, one of the cardinal indices for measuring the extent to which a society is governed by the rule of law is the proportionality of its definition of crime and the justness of the parameters for punishing it. While punishment is generally regarded as the consequence of crime, the search for the best form of punishment that will meet the diverse needs of the society has given rise to different theories of punishment. Such theories include: retribution, deterrence, incapacitation, and rehabilitation. The maxim of criminal law which holds that it is better for ten guilty persons to escape punishment than for one innocent person to be punished finds expression in numerous constitutional and penal safeguards aimed at protecting an accused person from the whims and caprices of state power. Apart from raising the standard of proof in criminal trials to proof beyond reasonable doubt, the adoption of the universal principle of criminal responsibility based on the intercourse of conduct and intent re additional mechanisms for the protection of any person accused of breaching the society's criminal law. Unfortunately, as this study has shown, the doctrine of strict liability negates the principle of criminal responsibility, runs contrary to the ideals of fair- hearing, and constitutes a potent treat to rule of law. In the light of these, it is recommended that the doctrine of strict liability should be expunged from the corpus of Nigeria's criminal law. This recommendation is informed by the fact that the application of strict liability is harsh, unfair, unjust, and runs contrary to the provisions of the constitution and sections 24 and 25 of the Criminal code governing criminal responsibility in Nigeria.

[86] C.O. Okonkwo, *Criminal Law in Nigeria* (2nd ed) (Ibadan: Spectrum Books Ltd, 2009)30