

THE HIGH COURT

[Record No. 2019/1107 SS]

IN THE MATTER OF SECTION 52 OF THE COURTS  
(SUPPLEMENTAL PROVISIONS) ACT, 1961

BETWEEN

NATIONAL TRANSPORT AUTHORITY

PROSECUTOR

AND

ERNEST BEAKHURST

DEFENDANT

**JUDGMENT of Mr. Justice Barr delivered electronically on the 17th day of June, 2020**

**Introduction**

1. The central issue in this case can be summarised in the following way: Section 22(2) of the Taxi Regulation Act 2013 (as amended) prohibits a person, who is not the holder of a Public Service Vehicle licence for a particular vehicle, driving that vehicle for hire or reward in a public place. Section 22(4) provides that where a person drives a small public service vehicle in breach of the provisions of s.22 (2), they commit an offence and the owner of the vehicle is also criminally liable.
2. The prosecutor maintains that the offence provided for under s.22(4) is one of strict liability, which does not require it to prove knowledge on the part of the owner in respect of the use of the vehicle by the unlicensed driver.
3. The defendant submits that similar to the cases concerning the offence of possession of contraband substances, the prosecution must establish some knowledge or awareness on the part of the owner, as part of the *actus reus* of the offence provided for under s.22(4).

**Questions raised by the learned District Court Judge.**

4. In the course of a prosecution against the defendant, being the owner of a taxi, the learned District Court judge raised the following questions of law for determination by the High Court:

*"(i) Was there adequate admissible evidence before me tendered by the prosecutor to prove the offence had been committed by the accused?"*

*"(ii) Is the accused entitled to raise a defence that the vehicle of which he was the registered owner was being used without his permission or knowledge in the context of s.22(4) of the Taxi Regulation Act 2013 as amended?"*

**The statutory offences.**

5. Section 22(2) of the Taxi Regulation Act 2013 (as amended) (hereinafter 'the Act') provides as follows:

*"(2) A person shall not drive or use a mechanically vehicle to which this section applies in a public place for the carriage of persons for hire or reward unless –*

*(a) The vehicle is-*

(i) *A small public service vehicle licensed under licensing regulations, and*  
(ii) *licensed to be operated or driven in that place,*  
*and*

(b) *The person holds a licence to drive a small public service vehicle of the category that he or she is driving or using."*

6. Section 22(4) of the Act is in the following terms:

"(4) *A person who contravenes –*

(a) *Subparagraph (i) or (ii) of paragraph (a) or paragraph (b) of subsection (2),*  
*or*

(b) *Paragraph (a) or (b) of subsection (3),*

*commits an offence and, if that person is not the owner of the vehicle, such owner commits an offence, in respect of each such contravention and each is liable in respect of each such contravention on a summary conviction to a class A fine."*

**Evidence proved or admitted in the District Court.**

7. The following is a very brief summary of the relevant evidence at the District Court prosecution which was brought against one David Beakhurst, being the driver of the taxi at the relevant time, who it was alleged did not hold a PSV licence to operate the taxi at the relevant time and place. It appears that at the hearing it was intimated that the same evidence would be tendered against the defendant, who was the owner of the relevant vehicle and who was the holder of a valid PSV licence for that vehicle.
8. At approximately 23.58 hours on the evening of Saturday 12th August, 2017, one of the prosecutor's compliance officers, a Mr. Carey, was conducting compliance checks at an appointed taxi stand on Baggot Street Upper, Dublin 4, a public place. He observed the defendant's taxi standing at the taxi stand with the roof sign illuminated and with the words "For Hire" showing on the taxi meter. On checking the relevant database, Mr. Carey noticed that the driver sitting in the vehicle did not look like the person whose photograph appeared in the database as being the licence holder.
9. Mr. Carey approached the vehicle and identified himself to the driver. He demanded production of the large driver identification card, which displayed the name of the accused, and gave the PSV driver licence number that had been issued to him. Mr. Carey then suspected that the driver of the vehicle did not hold a valid PSV licence to drive the particular vehicle. He cautioned the driver, who identified himself as David Beakhurst, born on 7th May, 1968.
10. Mr. David Beakhurst told Mr. Carey that he was waiting to collect his father, who had been in town celebrating his birthday in a number of pubs and he believed that his father was then in Searsons Public House, which was adjacent to the taxi rank.

11. Mr. Carey then invited Mr. David Beakhurst to telephone his father so that he could verify his account. Mr. David Beakhurst made a telephone call and afterwards stated to Mr. Carey that his father was no longer at Searsons pub and that he had moved to another pub.
12. Mr. Carey then proceeded to conduct an interview with Mr. David Beakhurst at the scene, which he noted in his notebook. In the course of that interview Mr. David Beakhurst stated that he did not know that the roof sign was illuminated. He stated that he thought that it always lit up. He stated that he was due to pick up his father, who was in Searsons pub, but he was not there any longer. He was asked as to why he had not removed the roof sign if he was not operating for hire or reward, to which he answered that it was always on and he left it on.
13. Mr. David Beakhurst was asked when he had got into the vehicle, to which he replied that he had got into the vehicle twenty minutes earlier. When asked why he was operating the vehicle for carriage of persons for hire or reward without a valid small public service vehicle driver licence, he stated that he was not working for hire. When asked as to how he got possession of the vehicle, he stated that he just jumped into the car, as it was the first car outside the house. Mr. David Beakhurst signed the memorandum of interview, which had been recorded in Mr. Carey's notebook.
14. It appears to be common case that Mr. David Beakhurst did not hold a PSV licence at the relevant time.
15. On 15th August, 2017, the accused voluntarily attended at the NCT offices at North Point, Ballymun, Dublin for an interview with Mr. Carey. In the course of that interview, he stated that he had not allowed anyone to operate his taxi on 12th August, 2017 for the carriage of persons for hire or reward. He stated that he had left his car outside his house. It had been parked there from twelve midday. He stated that he had gone into town with friends to celebrate his birthday. They had gone to several different pubs as part of a pub crawl, which he did on his birthdays. He stated that he had asked several times to be picked up by his wife. When asked as to whether he had received a telephone call from Mr. David Beakhurst on the night in question, he stated that he may have done, he did not know because he had received a number of telephone calls, but he did not answer them. He stated that he first found out that Mr. David Beakhurst was driving his taxi at about 02.30 hours. They had managed to get another taxi to St. James's Hospital because there was an accident. He stated that his large identification card was on the front dashboard of his taxi. He had left it lying down flat on the dashboard, which he did by force of habit. The accused declined to sign the memorandum of interview.
16. Along with the memorandum of interview with the accused, the learned District Court judge also forwarded a copy of the certificate showing that on 12th August, 2017 the registered owner of the vehicle bearing registration number 141 D 34610 was the accused. The class of vehicle was stated to be "taxi". The licence was stated to have started on 20th June, 2017 and expired on 31st May, 2018.

**Submissions on behalf of the prosecutor.**

17. Mr. Farrell SC on behalf of the prosecutor began his submissions by stating that it was clear from the long title to the Taxi Regulation Act 2013 and from the provisions of the Act (as amended), that the Act was regulatory in nature. It was designed to regulate the use of small public service vehicles for hire or reward. The provisions were designed to ensure that there was a properly regulated taxi service and to protect members of the public, who would have occasion to use this service. To that end, part 2 of the Act made detailed and elaborate provisions for a scheme of licensing of taxi drivers. In order to obtain a licence applicants were subject to assessment on a number of grounds pursuant to s.8 of the Act. One of the primary purposes of the Act was to ensure that it was only those who had become licence holders and thereby had satisfied the relevant assessments, be permitted to operate a taxi. The provisions were designed to ensure a number of important regulatory goals, including the safety of the public; an appropriate supply of taxis and value for money.
18. It was submitted that it followed from the overall structure of the Act that the prohibition on anyone other than a licence holder plying for hire, was absolutely fundamental to the operation of the Act. It was submitted that the provisions of s.22 had to be viewed within the context of the Act as a whole. It was not simply a provision that created a regulatory offence; it was a provision that prohibited the undertaking of an activity without the appropriate licence. When considered from that prospective, it was submitted that it was clear that the prohibition in s.22 and its enforcement by way of criminal prosecution was one of the cornerstones of the regulatory scheme as a whole.
19. Turning to the provisions of s.22 itself, counsel submitted that the offence created by s.22(4) in respect of the activity prohibited under s.22(2), did not explicitly require the proving of any state of mind or knowledge on the part of the defendant. It criminalised driving a vehicle for hire or reward without holding a licence to do so. It was submitted that the offence thereby created was straightforward in nature, in that it prohibited the undertaking of an activity that was subject to a strict licensing regime. It was submitted that such offences are invariably regarded as strict liability offences, e.g. the offence of driving without insurance, or driving without a driving licence,
20. It was submitted that s.22(4) rendered the breach of the prohibition established by s.22(2) a criminal offence. It created only one offence, which could be committed both by the person driving the vehicle and simultaneously by its owner. As such, the provision imposed in simple and prosaic terms criminal liability on the owner of such vehicle without further qualification. In particular, there was no mention in the section that the owner had to either know of the driving of the vehicle by the unlicensed driver, or that he had to have permitted such driving on the occasion in question.
21. Counsel further submitted that when considering whether such offences were within the term "regulatory offences" or "public welfare offences", it was relevant to have regard to the fact that such offences are generally regarded as regulatory in nature and do not carry the moral opprobrium that would attach to criminal acts in the true sense. Furthermore, it was relevant that there was no custodial sentence attaching to the

offence under s.22(4), there was simply a provision for the imposition of a Class A fine on conviction.

22. It was submitted that the offence created by s.22(4) of the Act complied with the criteria which had been set down by McCarthy J. in *Reilly v. Pattwell* [2008] IEHC 466, at p.40 of the judgment. It was submitted that once these criteria were met, the crime could properly be classified as being one of strict liability.
23. It was submitted that the defendant was incorrect to submit that even where there is a strict liability offence, there was the necessity for some form of *mens rea* in the form of knowledge, or as contended for on behalf of the defendant, some "awareness" on the part of the accused. The nature of strict liability offences meant that knowledge, or consent, or permission, is not a necessary element of the offence. It was submitted that it would be absurd to require some element of awareness or knowledge on the part of the owner, when no such knowledge was necessary on the part of the driver, who committed the primary infraction prohibited by s.22(2). The law in this case was much simpler. It simply provided a prohibition on anyone driving a small public service vehicle for hire or reward, without holding the necessary PSV licence. Once a person drove a vehicle for hire or reward without holding such a licence, they contravened s.22(2) and thereby committed an offence pursuant to s.22(4). The Act further provided in s.22(4) that the owner of the vehicle was also guilty of an offence in those circumstances. There was no requirement for any knowledge, either on the part of the driver, or on the part of the owner.
24. It was submitted that the defendant was wrong in law in arguing that this case was similar to the cases dealing with possession of contraband material, which had held that it was a necessary part of the *actus reus*, for the prosecution to establish that the accused was aware that they had the item actually in their possession. In other words, an accused could not be held liable for possession of contraband material, if that material had been placed unknown to them into their bag, or on their person. Counsel submitted that that requirement was specific to the concept of being in possession of an article. In order to prove possession, the prosecution had to establish that the person was aware of the presence of the article on their person or property. This case was different because it concerned the carrying out of a prohibited activity by a person who was not licensed to do so.
25. Counsel pointed out that by designating the offence as a strict liability offence, that did not mean that the defendant was without any grounds of defence. It was submitted that it was clear from the decision in *Shannon Regional Fisheries Board v. Cavan County Council* [1996] 3 IR 267 and in particular from the dissenting judgment of Keane J., that even in a strict liability offence the defendant can avoid criminal liability by establishing that he or she had taken all reasonable steps to prevent a breach of the regulatory provisions: see judgment of Keane J. at p.288.
26. Counsel submitted that by requiring that there be some minimal form of knowledge, which the defendant was referring to as "awareness", on the part of the owner that his

taxi was being used by the unlicensed driver, was in effect an attempt to sweep away the strict liability nature of the offence. It was submitted that if the court were to hold that some form of knowledge, or awareness, was necessary on the part of the owner in order to sustain a conviction, the section would be all but unworkable as regards the owners of taxis; due to the fact that in the absence of a power of arrest or questioning, it would be almost impossible for the prosecuting authority to establish that an owner of a taxi was aware that his taxi was being used at a given time and place by an unlicensed driver. Such a set of circumstances would have severe repercussions for the overall regulatory scheme established by the Act.

27. Counsel submitted that it was not at all uncommon for a person to be made criminally liable for the actions of another, even where he had no knowledge of the prohibited or criminal activity being carried out by that other person. For example, under the Noxious Weeds Act, 1936, an obligation was placed upon "relevant persons", which included the occupier of land and the owner of the land, to ensure that certain noxious weeds, such as ragwort, were not allowed to grow on the land. The owner could be liable for the actions of his tenant, even though he may have no knowledge of the existence of the noxious weeds on the land, as he may live some considerable distance from the leased lands. Another example furnished by counsel in argument, was the case of a factory owner, who may delegate the operation of his factory to a manager and if water or other pollutants were discharged from the factory into a nearby water source, the factory owner would be liable for such state of affairs, even though he may have had no knowledge whatever that the discharge of the pollutants was taking place. Another example was where the owner of a restaurant may not be on the premises when a breach of the Food Hygiene Regulations takes place and would therefore not be aware of the breach, but he would nevertheless be liable for the breach occurring in his restaurant during his absence..
28. Therefore, in relation to the second question raised by the learned District Court judge, counsel submitted that as there was a basis for coming to the conclusion that the offence created by s.22(4) was a strict liability offence, there was no obligation on the prosecutor to establish knowledge, or awareness, on the part of the owner in order to render him liable for the offence created by the subsection.
29. In terms of the defence available to the owner of the taxi, he submitted that it was not sufficient for a defendant to show that he did not have knowledge of the driving of his taxi by the unlicensed driver at the relevant time and place; he must go further and show that he had acted with due diligence so as to prevent a breach of the regulations taking place.
30. In relation to the first question raised by the learned District Court judge, counsel stated that the answer to that question very much depended upon the answer to the second question which had been raised by the learned District Court judge as to knowledge. If the court held with the submissions of the defendant, to the effect that it was necessary to prove some knowledge, or awareness, on the part of the owner; as that had not been done in this case, there would not be sufficient evidence before the learned District Court judge on which he could convict the accused of the offence charged.

31. On the other hand, if the court were to hold with the submissions made on behalf of the prosecutor, to the effect that knowledge, or awareness, on the part of the owner was not a necessary ingredient of the offence, then it was submitted that it was a matter for the District Court judge as to the weight and credibility that he attached to the evidence that had already been furnished to him and that had been outlined in his Case Stated to the court.
32. It was submitted that in the second scenario, it was not possible for this Court to state whether or not there was sufficient evidence before the learned District Court judge on which he could convict the accused, because the mere fact that a memo has been produced is not evidence in itself, it either has to be proven, or has to be admitted in evidence, and it is then necessary for the District Court judge to consider the weight of the evidence and make the necessary findings of fact. As the learned District Court judge had not yet made any findings of fact against the accused, it was not possible for the court to state whether, or not there was sufficient evidence before the learned District Court judge on which he could convict the accused.
33. In addition, there was the option for the defendant to raise the defence of due diligence and either to assert that that defence had been established on the facts elicited through the prosecution evidence, or to go into evidence on his own behalf, or call witnesses on his behalf to establish the defence of due diligence. However, the burden rested on the defendant to establish that he had acted at all times with due diligence and he had to establish that on the balance of probabilities. Accordingly, it was submitted that it was not possible for this Court to answer the first question raised by the learned District Court judge, as the answer would depend on his assessment of all the evidence that he had heard in the case to date and of the further evidence he may hear prior to the conclusion of the trial.

**Submission on behalf of the defendant.**

34. Mr. Dwyer SC on behalf of the defendant began by stating that they were in agreement with the prosecutor that the offence created by s.22(4) was a strict liability offence. However, it was submitted that notwithstanding that concession, there were some cases where, as part of the actus reus, the prosecution had to establish some level of awareness on the part of the accused. In this case the prosecution had not proven that the accused was aware that the offence had been committed by his son on the night in question. There was simply no proof that he was aware that his son was using his taxi for hire or reward at any time.
35. In support of the proposition that some element of awareness is necessary as part of the actus reus of the offence, counsel referred to the judgment in *People (DPP) v. Ebbs* [2011] 1 IR 778, where O'Donnell J. cited with approval the English case of *Lockyer v. Gibb* [1967] 2 QB 243, where Parker CJ had stated as follows:

*"In my judgment, before one comes to consider the necessity for mens rea or, as it is sometimes said, whether the regulation imposed an absolute liability, it is of course necessary to consider possession itself. In my judgment it is quite clear that*

*a person cannot be said to be in possession of some article which he or she does not realise is, for example, in her handbag, in her room or in some other place over which she has control. I should have thought it elementary; if something were slipped into your basket and you had not the vaguest notion it was there at all, you could not possibly be said to be in possession of it."*

36. In the course of his judgment, O'Donnell J. stated as follows at p.786:

*"Possession is unusual in the criminal law, in that what is criminalised is a state, rather than an activity. It is clear that the concept of possession in criminal law necessarily involves an irreducible element of knowledge. One fixed point in the otherwise confused law of possession is that a person does not possess something of which he or she is unaware."*

37. Counsel submitted that the circumstances of this case were similar, in that while the unlicensed and therefore prohibited activity may have been carried out by the driver, Mr. David Beakhurst, criminal liability was imposed on the accused under the subsection merely for being the owner of the taxi. Similar to the possession cases, this was a state of affairs, being one of ownership of the vehicle, rather than any activity carried on by the accused. It was submitted that in these circumstances, some minimal mental element in the form of an awareness that the taxi was being used in a prohibited manner, was a necessary part of the actus reus, which had to be proved by the prosecution, even in a strict liability offence.
38. Counsel submitted that while the principal party who commits the offence i.e. the driver of the taxi, is clearly aware of the act being undertaken; the same did not apply to the owner; especially given the state of the evidence elicited by the prosecution in this case. It was submitted that beyond mere proof of the act itself occurring, there had to be some basic level of awareness proven by the prosecutor in respect of an owner. There had to be some level of connectedness between the offence and the accused before liability could arise.
39. Counsel submitted that while it may be difficult for the prosecutor to prove that the owner of a taxi was aware that the taxi was being used by an unlicensed driver at a particular time, this was not something that was impossible of proof. For example, if the owner was actually in the car when it was being used by the unlicensed driver, that would establish knowledge. Alternatively, if there was CCTV at his house or at another location, or if he had been seen by a witness, either handing the keys to the unlicensed driver, or perhaps even speaking in the window of the car to the driver, that would suffice to establish knowledge on the part of the owner; or he may make admissions in the course of an interview. Counsel submitted that the mere fact that a necessary element of the crime may be difficult of proof, did not relieve the prosecution of the duty to prove that element.
40. In summary, counsel stated that due to the provision of the Act imposing liability merely because the person was the owner of the taxi at the relevant time, that being a state and



not an activity, it implied that there had to be some minimal awareness on the part of the owner before he could be convicted of the offence. Accordingly, it was submitted that the second question raised by the learned District Court judge should be answered to the effect that the accused was entitled to raise a defence that the vehicle of which he was the registered owner was being used without his permission or knowledge at the relevant time.

41. In relation to the first question raised, if the court held with the defendant in relation to the answer to the second question as outlined above, then as there had been no evidence of any awareness or knowledge on the part of the accused, there was not adequate admissible evidence before the learned District Court judge to prove that the offence had been committed by the accused. Therefore, the court should answer that question in the negative.

**Conclusions.**

42. In *Gammon (Hong Kong Limited) v. Attorney General of Hong Kong* [1985] AC 1, Scarman LJ set out five general principles in relation to the imposition of criminal liability:
  - “(1) There is a presumption of law that *mens rea* is required before a person can be held guilty of a criminal offence;
  - (2) the presumption is particularly strong where the offence is “truly criminal” in character;
  - (3) the presumption applies to statutory offences and can be displaced only if this is clearly or by necessary implication the effect of the statute;
  - (4) the only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern, and public safety is such an issue;
  - (5) even where a statute is concerned with such an issue, the presumption of *mens rea* stands unless it can also be shown that the creation of strict liability will be effective to promote the objectives of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.”
43. The principles set down by Scarman LJ were referred to with approval in *Maguire v. Shannon Regional Fisheries Board* [1994] 3 IR 580 and also in the dissenting judgment of Keane J. in *Shannon Regional Fisheries Board v. Cavan County Council* [1996] 3 IR 267. In the course of his judgment Keane J. cited with approval the general categories of criminal liability, which had been set out by Dickson J. in *R. v. City of Sault Ste. Marie* [1975] 85 DLR(3d), which general statement of the law has been accepted in subsequent Irish decisions: see *Minister for the Environment, Heritage and Local Government v. Leneghan* [2009] 3 IR 727. In the course of his judgment, Keane J. cited the following dicta of Dickson J.:

*"I conclude, for the reasons which I have sought to express, that there are compelling grounds for the recognition of three categories of offences rather than the traditional two.*

- (1) Offences in which mens rea, consisting of some positive state of mind such as intent, knowledge or recklessness, must be proved by the prosecution either as an inference from the nature of the act committed, or by additional evidence.*
- (2) Offences in which there is no necessity for the prosecution to prove the existence of mens rea; the doing of the prohibited act prime facie supports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care. This involves consideration of what a reasonable man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts, which, if true, would render the act or omission innocent or if he took all reasonable steps to avoid the particular event. These offences may properly be called offences of strict liability. Mr. Justice Estey so referred to them in R. v. Hickey [1996] 22 C.C.C.(2d) 23.*
- (3) Offences of absolute liability where it is not open to the accused to exculpate himself by showing that he was free of fault."*

44. In the area of what have been termed "regulatory offences" or "public welfare offences" the law has recognised that often it is necessary for the legislature to create strict liability offences, so as to ensure compliance with the law by the holder of the licence, or the operator of the activity, so as to protect those affected by the operation of the licence or activity, or to protect the public at large. In his judgment in the *Shannon Regional Fisheries Board v. Cavan County Council* case, Keane J. noted that the primary objective of treating an offence as one of strict liability was to encourage greater vigilance on the part of those in a position to prevent the commission of the prohibited act.

45. In *Maguire v. Shannon Regional Fisheries Board* [1994] 3IR 580, Lynch J. had to consider the offence created by s.171 of the Fisheries (Consolidation) Act, 1959 and he held that it was an offence of strict liability. He stated as follows at p.588/589:

*"It follows from the foregoing authority that prime facie mens rea is required for every offence be it a common law or a statutory offence and therefore including s.171 of the Act of 1959. However, it seems to me that s.171 is regulatory in essence and does not create an offence which would be regarded as of a truly criminal character. The pollution of waters is an issue of social concern and legislation against the pollution of rivers and streams has a long history and it has always been public policy to prohibit such pollution as far as possible and at least one of the grounds for this policy must be that such pollution creates a public nuisance. Moreover, it seems to me that the creation of strict liability in such pollution cases, coupled with heavy penalties is effective to promote the objects of*

*the statute by encouraging greater vigilance to prevent the commission of the prohibited act and therefore fulfils Lord Scarman's fifth condition for strict liability, the other conditions being in my view also fulfilled."*

46. In deciding whether an offence is a regulatory, or public welfare offence imposing strict liability, the court is assisted by the factors set down by McCarthy J. in *Reilly v. Pattwell* [2008] IEHC 446, where the learned judge set down the following non-exhaustive list of relevant factors:

*"(1) The moral gravity of the offence.*

*(2) The social stigma attached to the offence.*

*(3) The penalty.*

*(4) The ease (or difficulty) with which a duty is discharged or the law obeyed.*

*(5) Whether or not absolute liability would encourage obedience.*

*(6) The ease or difficulty with which the law might be enforced.*

*(7) The social consequences of non-compliance.*

*(8) The desideratum to be achieved when considering the statutes."*

47. I am satisfied that when one looks at the long title to the Act and to the general scheme of the Act, that it is regulatory in nature. I am further satisfied that the offence created by s.22(4) of the Act, complies with the criteria set down by McCarthy J. in the *Reilly v. Pattwell* case. In particular, I am satisfied that the offence concerned is not one that would involve high moral gravity, nor would a conviction for the offence carry any significant social stigma, nor would it give rise to any significant sense of public opprobrium. The penalty provided for on conviction of the offence is a relatively modest one, being a class A fine. The offence is not indictable and does not carry a custodial sentence.

48. In relation to the fourth criterion, being the ease (or difficulty) with which a duty is discharged or the law obeyed, in this case the provision only imposes obligations in respect of a sphere of activity, being the use of the taxi, whereby the owner of the taxi is expected to have control of his taxi. There is a logical and just connection between the imposition of criminal liability and the person having sufficient control, such as to take steps to avoid the commission of an offence. The imposition of strict liability in this context, as distinct from absolute liability, means that the obligation is limited to doing what one can reasonably do to avoid a breach, rather than imposing liability in an absolute manner. It is perfectly feasible for people to organise their affairs in such a way, that they might take such steps as are reasonable to ensure that their property, over which they have control, is not used to commit criminal offences.

49. The fifth criterion asks whether or not absolute liability would encourage obedience; it is arguable that that does not arise in this case, as the offence here is one of strict liability, rather than absolute liability. However, even if the question were re-phrased to ask whether or not strict liability would encourage obedience, I am satisfied that by imposing obligations on owners, a greater degree of compliance with the Act will be secured. In the circumstances of this case I am satisfied that interpreting the offence as one of strict liability, will do no more than impose on the owners of taxis an obligation to exercise due diligence in this regard. It does not make them an absolute guarantor for the conduct of others. Accordingly, the balance lies in favour of the imposition of strict liability. The sixth criterion concerns the ease, or difficulty, with which the law might be enforced; in this case, as a purely regulatory offence, which does not carry a custodial sentence, very few, if any, investigative tools are available to the prosecutor and its authorised officers. They do not have a power of arrest or questioning. The court is satisfied that in the absence of the imposition of strict liability, it is far from clear as to whether it would ever be possible to enforce this provision as regards owners.
50. The sixth and seventh criteria being the social consequences of non-compliance and the *desideratum* to be achieved when considering the statute, both lean in favour of the imposition of strict liability. There are consequences for members of the public if there is non-compliance with the regulations and in particular, with the obligation that persons driving a taxi for hire or reward should have a valid PSV licence. The object to be achieved by the statute is to ensure compliance with the overall regulatory requirements set out in the Act. The court is satisfied that both of these criteria favour the imposition of strict liability in this case.
51. For the reasons stated above, the court is satisfied that the offence created by s.22(4) is one of strict liability. Mr. Dwyer SC on behalf of the defendant, accepted that the offence in question was one of strict liability. However, by reference to the line of cases involving possession of contraband material, such as *Lockyer v. Gibb* and *DPP v. Ebbs*, he submitted that there was still an obligation on the prosecution to establish some minimal mental element on the part of the taxi owner, at least amounting to some awareness on his part that his vehicle was being used as a taxi by an unlicensed driver.
52. I am not satisfied that the offence created by s.22(4) by which the owner of the taxi is made criminally liable for the driving of his vehicle by an unlicensed driver, can be regarded as being the same as the possession cases referred to by counsel for the defendant. Those cases involved a person having in their possession a particular contraband substance or item (e.g. drugs or a weapon), it is entirely reasonable that the prosecution had to prove that they were aware that they had the item or substance in their possession. That was inherent in the very concept of possession. This case, which involves the use of a vehicle owned and controlled by the accused, where the obligation is to ensure that it is only used within the terms of the licence given to him, is in a quite different category. It is reasonable that the person who has control of the vehicle, being the owner, should bear the burden of proving that they acted with due diligence; in other

words, that they took all reasonable steps to prevent the mischief complained of, in this case being the use of the vehicle as a taxi by an unlicensed driver.

53. The court is satisfied that the submission made on behalf of the prosecutor to the effect that there is no obligation on the prosecution to establish knowledge on the part of the owner so as to establish the offence created by s.22(4), is correct. There is no mention of either knowledge or permission in the offence created by the statute. It merely states that the owner is liable if his or her car is driven for hire or reward by an unlicensed driver. The absence of any reference to knowledge, consent or permission, implies that there is no requirement to prove knowledge on the part of the owner of the vehicle of the particular state of affairs prohibited by the regulations.
54. There is also considerable force in the argument put forward by the prosecutor that proof of knowledge, awareness or cognition on the part of the owner would render the section effectively unworkable; thereby putting the whole scheme of the Act, which is designed to regulate the operation of licensed taxis, in jeopardy. If there were a requirement to prove that the owner had some knowledge, or awareness, that his vehicle was being used by an unauthorised person, that would be almost impossible to prove.
55. Mr. Dwyer SC on behalf of the defendant submitted that knowledge, or as he described it "awareness", could be proved in a number of ways: such as where the owner may be observed in the car being driven for hire or reward by an unlicensed driver; where the owner was observed on CCTV or by a witness, either giving the keys to the unlicensed driver, or talking to him through the car window; or by virtue of an admission that may be made by the owner during interview. While these are possibilities, the reality, particularly where there is no power of arrest or power of questioning, would mean that effectively it would be all but impossible to prove that the owner had knowledge that his taxi was being used by another person, who was an unlicensed driver. In the real world, it is all but impossible to prove that A had knowledge that B was driving his car at a particular time and place. I am satisfied that to impose such an obligation on the prosecution would make this section of the Act and the strict liability offence that it creates, unworkable.
56. In addition, and as has been held in a number of the cases which discuss the issue of strict liability for regulatory offences, it is fair and reasonable to place the burden onto the person who controls the activity, to establish that they took all reasonable steps to prevent a breach of the regulations in the course of carrying out the activity, of which they may have been unaware, but in respect of which they had the means of control. In this case, the accused being the owner of the taxi, had effective control over his vehicle by taking reasonable steps to ensure that the keys were only available to those who had proper authority to drive the vehicle for hire or reward.
57. Accordingly, I am satisfied that on a true interpretation of the Act, the offence created by s.22(4) is one of strict liability in respect of which the prosecution does not have to prove knowledge or awareness on the part of the owner of the taxi.

58. While it is a strict liability offence, there is of course the due diligence defence available to the owner of the taxi. However, it is not sufficient for the defendant owner to establish lack of knowledge on his part of the commission of the offence. Where regulatory offences are concerned an accused cannot avoid liability for breach of the regulations by establishing that he was not aware that the breach was occurring. If that were sufficient to establish a defence, much of the regulatory provisions provided for by statute, would be set at naught. Furthermore, it would only encourage those whose job it is to ensure compliance with the regulations, such as taxi owners and factory owners, to avoid making enquiries, or to avoid taking reasonable precautions, so as to thereby avoid acquiring knowledge of the breach of the regulations. In short, they would be encouraged not to make enquiries, or be vigilant, so as to avoid acquiring knowledge of the facts giving rise to a breach of the regulations. It would be absurd for the law to effectively put a premium on ignorance.
59. It is reasonable that where a person has the means of controlling the activity and thereby ensuring that it is only carried out in accordance with the relevant regulations, that he or she should be liable for a breach of the regulations, unless they can establish that they took all reasonable care to prevent a breach of the regulations occurring.
60. Accordingly, the answer to the second question raised by the learned District Court judge is that it is not sufficient for the defendant to raise a defence that the vehicle of which he was the owner, was being used as a taxi without his permission or knowledge; to avoid liability under the section, once the elements of unlicensed driving are proven, the owner must establish that he had taken all reasonable steps to prevent the vehicle being used in breach of the terms of his licence.
61. The answer to the first question would depend on how the learned District Court judge viewed the evidence that was given at the trial. As I understand the account of the evidence furnished by the learned District Court judge, the prosecution proceeded against both accused simultaneously, so that the evidence given by Mr. Carey in relation to his observations of Mr. David Beakhurst and his observation of the roof taxi sign being illuminated and the meter showing "For Hire" and his memos of interview with both David Beakhurst and the defendant, was treated as evidence against both accused.
62. It seems to me that once it was found by the learned judge that David Beakhurst was driving the taxi for hire or reward and did not have a PSV licence, which appears to have been established because David Beakhurst was convicted of an offence contrary to s.22(4), of driving contrary to the provisions of s.22(2) of the Act, that would imply that the learned District Court judge had accepted the prosecution evidence. That being the case, it follows that once there was evidence of ownership of the vehicle by the accused, *ipso facto*, there was adequate admissible evidence before the District Court judge to establish that the relevant offence had been committed by the accused.
63. However, as it appears that the trial in relation to the accused had not concluded, one would have to add the caveat that the defendant would be entitled to elect to go into

evidence to establish the defence of due diligence outlined above, that is available to him in answer to a charge of having committed a strict liability offence.

64. In light of the foregoing conclusions, I answer the questions raised by the learned District Court judge as follows:

- (i) As the learned District Court judge had convicted David Beakhurst of an offence contrary to s.22(4) in respect of the carrying out of the activity prohibited by s.22(2) at the relevant time and place and if the learned judge was satisfied that the prosecutor had established ownership of the vehicle by the accused; there was adequate admissible evidence before the learned District Court judge to prove that the offence had been committed by the accused.
- (ii) It is not sufficient for the defendant to establish a defence by proving that the vehicle was being used at the relevant time and place without his permission or knowledge; the defendant must go further and satisfy the trial judge, on the balance of probabilities, that he had taken all reasonable steps to prevent the acts which constituted a breach of the statutory regulations.