

Index

Absolute Liability Offences

administrative penalties, 379-380
Charter and, 29-30
defences, 318-320
strict liability offences distinguished,
37-44

Abuse of Process

defences, 301-308

Acts of God

defences, 291-295

Administrative Orders/Instruments

collateral attacks on validity of, 286-
289
licences, validity of, 289
orders, validity of, 286-289
permits, validity of, 289

Administrative Monetary Penalties ("AMPs") — see Penalties

Administrative Penalties — see Penalties

Admissibility

agents/employees, by
 basis for, 359
 Charter implications, 361
 generally, 358-363
 independent proof of authority, 360
 prerequisites for, 359-360
 procedural requirements for, 362-
 363
 voluntariness, 361

Availability of Alternatives

fact-specific considerations, 115-116
null alternative, 91-92
when none, 85-93

Broken Promises

defences, 303-307

Cause

meaning of, 34

Charter

absolute liability, 29-30
admissibility of statements by agent/
employee, 361
classification criteria, 29-31
defences, 308
offences, 16-17
status of corporation to seek remedy,
352-357
strict liability, 31

Classification of Offences — see Absolute Liability Offences; Continuing Offences; Crimes; Regulatory Offences; Strict Liability Offences

Codes of Practice

compliance with, 138-143

Collateral Attacks — see Administrative Orders/Instruments

Colour of Right

mistake of fact and, 282-283

Compliance

checks, 178
codes of practice, 138-143
due diligence factor, 138-145
guidelines, 138-143
industry standards, 113-117
legislation, 143-145
preventive systems, 178

Consultants

parties, as, 239-240

Continuing Offences

due diligence and, 110-111

Common Law Defences

availability, 22

Control

ability to, liability based on, 210, 211-212

criminal notion of, 210

due diligence, distinct from, 213-214

duty, basis of, 210-211

fact, whether finding of, 214-217

fact-specific considerations, 123-128

factors, 217-222

justification for basing liability on, 211-212

law, whether finding of, 214-217

matters beyond, 123-128

mixed fact and law, whether finding of, 214-217

offences, elements of, 212-214

prevention, 210-211

regulatory notion of, 210

reasonable doubt, beyond a, 212-213

what is, 125-126

Corporations

admissibility of statements by employee/agent

basis form 359

Charter implications, 361

generally, 358-363

independent proof of authority, 360

prerequisites for, 359-360

procedural requirements for, 362-363

voluntariness, 361

Charter rights

admissibility of agent/employee statements, 361

status of corporation to seek remedy, 352-357

evidence

admissibility of employee/agent statements, 358-363

generally, 358-363

generally, 341-363

liability of

Criminal Code, 344-347

express imposition of, statutorily, 349

generally 341-352

identification theory, 342-344, 350-351

implied imposition of, statutorily, 349-350

mens rea, offences without, 348

strict liability offences, 348

“Westray” amendments, 344-347

status to apply for *Charter* remedy, 352-357

Cost of Compliance

as a factor in due diligence, 94, 96, 98-99

Crimes

regulatory offences distinguished, 25-26

Criminal Code

corporate liability and, 344-347

party liability under, 223-227

“Westray” amendments and, 344-347

Crown — see also Government; Officials; Parties

party, as, 243-244

De minimis non curat lex

defences, 314-318

Defects

latent, 74-76

Defences

absolute liability offences, 318-320

abuse of process, 301-308

acts of God, 291-295

broken promises, 303-307

Charter and, 308

common law defences, 22-23

de minimis non curat lex, 314-318

due diligence, *see* Due Diligence

economic necessity, 300-301

entrapment, 310-313

evidence, 297-298, 307-308

generally, 291-321

Defences — Continued

impossibility, 295-301
 interrelationship of, 301
 issue estoppel, 308-310
 mistake of fact, *see* Mistake of Fact
 necessity, 295-301
 reasonable care, *see* Reasonable Care

Directors

parties, as, 228-233

Double Jeopardy

administrative penalties and, 377

Due Diligence — *see also* Reasonable Care

absence of alternatives, 85, 93
 administrative penalties and, 370-373
 alternatives available, 85-93, 115-116
 approach, 66
 conduct relating to, 56-58
 control distinct from, 213-214
 effects, latent, 74-76
 evidence, *see* Evidence
 fact-specific considerations, *see also* factors
 absence of notice of earlier incidents, 112
 adequacy of equipment/technology, 117-122
 available alternatives, 115-116
 continuing offences, 110-111
 control, matters beyond, 123-128
 control, what is, 125-126
 generally, 105-128
 industry standards, compliance with, 113-117
 knowledge, 105-111
 maintenance, proper, 120-122
 mistake of fact, 116-117
 notice of earlier incidents, 111-113
 previous experience, 105-111
 repairs, proper, 120-122
 replacement, proper, 120-122
 similarity, 109-110
 standard of care, raising, 106-109
 factors, *see also* fact-specific considerations
 abnormal sensitivities, 103-104
 actions by officials, 129-134

advice by officials, 132-134
 codes of practice, compliance with, 138-143
 compliance, 138-145
 decreasing skill level expected, 81
 directions from officials, 132-134
 economic considerations, 94-100
 efforts to address problem, 136-138
 fact-specific considerations, *see* *fact-specific considerations* (above)
 formal standards, 139
 foreseeability, 71 — *see also* Foreseeability
 general application of, 77-104
 government interference, 134
 government publications, 139-141
 gravity of potential harm, 67-71
 guidelines, compliance with, 138-143
 illegal acts, 134-135
 inaction by officials, 130-132
 increasing skill level expected, 81
 industry publications, 141-143
 interrelationships of, 82-84, 102, 134
 justifying lower/diminished skill level, 82
 legislation, compliance with, 143-145
 list of, 64-66
 neighbourhood, character of the, 100-102
 preventive systems, 104
 publications, 139-143
 sabotage, 134-135
 sensitivities, abnormal, 103-104
 skill level, 77-79, 81-84
 speed of response, 136-138
 staffing levels, 135-136
 vandalism, 134-135
 generally, 63-76
 necessity, defence of, 93
 null alternative, 91-92
 onus, shift in, 93
 preventive systems, relevance of, 201-205
 reasonableness, test of, 80

Due Diligence — *Continued*

relationship to reasonable mistake of fact, 269

Economic Necessity

defences, 94-100, 300-301

Employees

admissibility of statements by corporate

agent

basis for, 359

Charter implication, 361

generally, 358-363

independent proof of authority, 360

prerequisites for, 359-360

procedural requirements for, 362-363

voluntariness, 361

defence, whether provided, 252-257

error, 247-260

foreseeability, extent of, 257-259

misconduct, 247-260

Efforts

demonstration of, 136-138

Emergency Preparedness

preventive systems and, 198-199

Entrapment

defences, 310-313

Entry

powers of, 16-17

Equipment

adequacy of, 117-122

maintenance, proper, 120-122

repair, proper, 120-122

replacement, proper, 120-122

Error — *see also* **Mistake of Fact**

employee, by, 247-260

Estoppel

issue, 307-310

Evidence

admissibility of employee/agent statements, 358-363

due diligence, of, 323-340

fact, question of, 337-340

impossibility, 297-298

issue estoppel, 307-308

law, question of, 337-340

mistaken characterization, 327-330

necessity, 297-298

preventive systems, of, 325-327

privilege

generally, 331-337

litigation, 335-336

onus, 336-337

solicitor-client, 332-335

similar fact, 327-330

timing of, 323-325

Experience

due diligence and, 105-111

enhancement of, 189-190

previous, 105-111

preventive systems and, 189-190

similarity of, 109-110

Foreseeability

employee error/misconduct, 257-259

extent of, 257-259

foreseeable occurrences, examples of, 73

generally, 71-74

principles, fundamental, 71-72

unforeseeable occurrences, examples of, 73-74

what is, 73

Government — *see also* **Officials**

interference, 134

party, as, *see* **Parties**

publications, 139-141

Guidelines

compliance with, 138-143

Hazard

identification, 198-199

History of Regulatory Offences

19th century, 3-4

1930s, 4

1940s, 4-5

1960s, 5

1970, 5-6

1971-1977, 6-8

1978, 8-9

ancient history, 2-3

History of Regulatory Offences — *Continued*

Australia, in, 4-5
generally, 2-9

Identification Theory

corporate liability and, 342-344, 350-351

Ignorance — *see also Knowledge*

law, of, 281-284

Impossibility

defences, 295-301
evidence, 297-298

Industry

publications, 141-143
standards, compliance with, 113-117

Insolvency Practitioners

parties, as, 238-239

Inspections

enhancements, to, 190-191
powers re, 16-17
preventive systems and, 180-184
results, 191

Instructions

preventive systems and
 appropriate, 165
 clear, 163-164
 generally, 162-166
 ongoing, 165-166
 precise, 163-164
 specific to the task, 164
 written, 166

Interpretation

rules of statutory, 20-22

Issue Estoppel

defences, 308-310
evidence, 307-308

Knowledge

due diligence and, 105-111
offence, as element of, 281

Landlords

parties, as, 235-238

Lenders

parties, as, 238-239

Liability

control, *see* Control
corporate, *see* Corporations
employees, *see* Employees
parties, *see* Parties

Licences

validity of, 289

Litigation Privilege

generally, 335-336

Maintenance

proper, 120-122

Mens Rea Offences — *see Corporations; Strict Liability Offences***Misconduct**

employee, by, 247-260

Mistake of Fact

colour of right, statutory exception for, 282-283
criminal context, 261-262, 269-270
due diligence and, 116-117
generally, 261-284
ignorance of the law as excuse, 281-284
“invincible”, 281-282
knowledge of law as element of offence, 281
mistake of law distinguished
 criminal context, 269-270
 generally, 269-274
 regulatory context, 271
officially induced, 274-280
regulatory context
 due diligence distinguished, 269
 fact-based belief vs. prospective guess, 267
 generally, 262-269, 271
 honest, objectively, 263-264
 honest, subjectively, 263
 inquiry, reasonable, 264-266
 negating mistakes, 268-269

Mistake of Fact — *Continued*regulatory context — *Continued*reasonable grounds for mistake ,
263-264

relevance of mistake, 266-267

risk, mistakes re degree of, 267-268

Mistake of Law

mistake of fact distinguished

criminal context, 269-270

generally, 269-274

regulatory context, 271

Monitoring

preventive systems and

compliance checks, 178

correction of deficiencies, 184-188

generally, 177-188

inspection, 180-184

supervision, 178-180

Municipalities

parties, as, 244-245

Negligence

as a basis for penal liability, 227-228

Necessity

defences, 295-301

economic, 300-301

evidence, 297-298

Notice

earlier incidents, 112-113

Null Alternative — *see Availability of Alternatives: null alternative***Officers**

parties, as, 228-233

Officials

actions by, 129-134

advice by, 132-134

directions from, 132-134

inaction by, 130-132

mistake of fact induced by, 274-280

parties, as, 241-243

Officially Induced Error — *see Mistake of Law***Orders** — *see also Administrative Orders/Instruments*

validity of, 286-289

Parties

classes of

consultants, 239-240

Crown, the, 243-244

directors, corporate, 228-233

employees, *see* Employees

generally, 228-240

government officials, 241-243

insolvency practitioners, 238-239

landlords, 235-238

lenders, 238-239

municipalities, 244-245

officers, corporate, 228-233

purchasers, 238-239

shareholders, 233-234

liability under *Criminal Code*, 223-227

liability under provincial offences legislation, 223-227

Penalties

administrative monetary

absolute liability and, 379-380

benefit of, 369-370

challenging, 374

double jeopardy, 377

investigate, capacity to, 380-381

language, misuse of, 377-378

problems with, 374-380

use of generally, 367

due diligence, availability of, 370-373

generally, 366-382

purpose of, 368-369

what are, 367-368

Permit

meaning of, 34

Permits

validity of, 289

Preventive Systems

Canadian approach, 199-200

codes, 207-208

communication, 167-170

control, 210-211

due diligence

factors and, 104

Preventive Systems — Continueddue diligence — *Continued*

relevance to, 201-205

emergency preparedness, 198-199

enhancements to

adjustments, on-the-spot, 192-193

appropriate to the trainee, 192

dedication, 189-190

emergency situations, 193

experience, 189-190

generally, 189-208

inspection, 190-191

mock exercises, 193

records/communication of inspection results, 191

role-playing exercises, 193

spot checks, random/surprise, 190-191

supervision, 189-190

training, 191-193

written materials/procedures, 191-192

evidence, 325-327

hazard identification, 198-199

implementation of, 159-162

instruction

appropriate, 165

clear, 163-164

generally, 162-166

ongoing, 165-166

precise, 163-164

specific to the task, 164

written, 166

legislative requirements, 207-208

monitoring the operation of

compliance checks, 178

correction of deficiencies, 184-188

generally, 177-188

inspection, 180-184

supervision, 178-180

risk management, 198-199

standards, 206-207

training

clear rules, based on, 173

competency of instructors/trainers, 174

generally, 170-176

ongoing process, 173-174

multi-faceted approach, 174-176

specific to the task, 173

Privilege

generally, 331-337

litigation, 335-336

onus, 336-337

solicitor-client, 332-335

Purchasers

parties, as, 238-239

Reasonable Care

after the fact, steps taken, 58-59

“all”, significance of, 49-52

due diligence, conduct relating to, *see*

Due Diligence

general conduct, 56-58

generally, 47-62

mistake of fact, *see* Mistake of Fact

onus of proof, 59-62

positive steps, requirement of, 52-55

specific conduct, 56-58

standard of proof, 59-62

variable standard, as a, 48-49

where no steps taken, 54-55

Reasonableness, Test of

due diligence and, 80

Regulatory Offences

19th century, 3-4

1930s, 4

1940s, 4-5

1960s, 5

1970, 5-6

1971-1977, 6-8

1978, 8-9

absolute liability, *see* Absolute Liability Offences

ancient history, 2-3

application of criminal law concepts, 16

Australia, in, 4-5

categories, 27, 45

Charter and, 16-17

civil processes, concomitant, 19

common law defences, 22-23

consequences of unique character of, 14-19

crimes distinguished, 25-26

Regulatory Offences — Continued

criminal law process, use of, 10-11
 entry, powers of, 16-17
 factors not unique to, 20-23
 fundamentally important values, 11-12
 inspection, powers of, 16-17
 interpretation, rules of statutory, 20-22
 history of, 2-9
mens rea requirement, 15-16, 31-35
 nature of, 9-14
 non-criminal, unlawful conduct, addressing, 9-10
 onus shifts to defendant, 16
 protective purpose, 11
 proof of offence committed, 16
 release of information, compelling, 16-17
 remedies, available, 19
 self-regulation, 17-18
 self-reporting, 17-18
 strict liability
 offences, *see* Strict Liability Offences
 presumption of, 28
 voluntary participation, 12-14

Response

speed of, 136-138

Risk Management

preventive systems and, 198-199

Sabotage

due diligence factor, 134-135

Self-Regulation

regulatory offences, 17-18

Self-Reporting

regulatory offences, 17-18

Shareholders

parties, as, 233-234

Skill Level

decrease in, 81
 due diligence factor, 77-79, 81-84
 increase in, 81
 justifying lower, 82

Similar Fact Evidence

generally, 327-330

Solicitor-Client Privilege

generally, 332-335

Speed of Response

due diligence factor, 136-138

Staffing Levels

due diligence factor, 136-138

Standard of Care

raising, 106-109

Standard of Proof

reasonable care, 59-62

Statutory Interpretation — *see* Interpretation**Strict Liability Offences — *see also*****Due Diligence; Reasonable Care**

absolute liability offences distinguished, 37-44

Charter and, 31

corporate liability, 348

mens rea distinguished, 31-35

presumptions, 28

Supervision

enhancements to, 189-190

preventive systems and, 178-180

Technology — *see also* Equipment

adequacy of, 117-122

Ticketing

generally, 365-366

Training

enhancements to, 191-193

preventive systems and

 clear rules, based on, 173

 competency of instructors/trainers, 174

 generally, 170-176

 ongoing process, 173-174

 multi-faceted approach, 174-176

 specific to the task, 173

Vandalism

due diligence factor, 134-135

Voluntariness

admissibility statements by agents/
employees, 361

participation, 12-14

Warnings

as a factor in due diligence, 105-106,
111

**“Westray” Amendments (*Criminal
Code*)**

corporate liability and, 344-347