

9. Offences of strict liability do not require mens rea for at least part of the actus reus.

Examine the meaning and significance of ‘fault’ within criminal law, and discuss the extent to which offences of strict liability criminalise those who are not at ‘fault’. [15 marks]

Indicative content AO1 = 5, AO3 = 10

AO1

- Identification and explanation of the meaning of fault within criminal law e.g. actus reus and mens rea issues
- Explanation of the significance of fault within specific areas of law in order to demonstrate how they indicate the presence or absence of fault and levels of fault e.g. murder and defences.
- Outline explanation of the offence of strict liability

A03

- Analysis of actus reus issues (e.g. voluntariness *Hill v Baxter*, causation, omissions) and mens rea issues (consideration of the presumption of mens rea and the distinction between intention and recklessness)
 - Analysis of the notion of levels of fault, the relevance of blameworthiness to sentencing, etc.
 - Analysis and evaluation of significance of fault as a marker of blame which imposes responsibility, and therefore justifies imposition of penalties or sanctions possible reference to argument to support this e.g. utilitarianism/protection of the public from harm
 - Analysis and evaluation of liability without fault, areas of strict liability in criminal law such as offences relating to food hygiene (e.g. **Smedleys v Breed**), pollution (e.g. **Alphacell v Woodward**), the protection of under-age children (e.g. **Harrow v Shah**)
 - Analysis and evaluation of the extent to which strict liability offences criminalise those who are at fault e.g. mens rea being present for part of the offence (e.g. **R v Prince and R v Hibbert**)
- Credit any other relevant point(s) Credit will be given for examples illustrating fault from any area of law.

Indicative Content Groups (ICGs)

1. Meaning and significance of fault
 2. Strict liability discussion
- Substantive= 5 Non-substantive =10

English law claims to operate a fault-based approach for apportioning liability. The significance of fault in criminal law is that it serves as a marker of responsibility or blame for an offence, which justifies the imposition of penalties or sanctions. This principle is based on the idea of utilitarianism, which states that criminal sanctions should be used to protect the public from harm. **Professor Hart** speaks of “...the principle that punishment should be restricted to those who have voluntarily broken the law...proof that the person punished broke the law by an act which was the outcome of his free choice..is a requirement of justice”.

Fault is fundamental to the actus reus element of a criminal offence the physical element of a crime, such as an act or omission. In order to be found guilty, the defendant must commit the actus reus voluntarily (**Hill v Baxter, Woolmington**). If the defendant is not in control of their actions for any reason, then they cannot be said to be acting voluntarily, therefore not at fault (**R v Hudson & Taylor**). Criminal defences such as automatism and duress will result in an acquittal as they prove that D did not act voluntarily, so was not at fault. For example, in **Quick**, a diabetic acted involuntarily during a blackout. He succeeded in claiming the

defence of automatism, and thus was not at fault. Also, in certain circumstances the accused can be at fault if they are under a legal duty to act and fail to do so under omission as demonstrated in **Miller**, D created a dangerous situation and failed to resolve it by ignoring it, and therefore was at fault. Under causation the defendant has caused the required consequence thus at fault and criminally liable (**Pagett**). However, in **White** the defendant did not factually cause his mother's death as she died of heart attack and was therefore not at fault to murder. Furthermore, the defendant will not be at fault where the chain of causation is broken by an intervening act. For example, if victims own act is unforeseeable, disproportionate or unreasonable it may break the chain of causation (**Williams**).

Fault is fundamental to the mens rea which refers to the mental element of a crime, demonstrates the degree of fault required for criminal liability. Direct intention is the highest level of fault where the defendant has the aim, purpose and desire is to bring about the consequence (**Mohan**). Recklessness requires lesser fault where the defendant foresees a risk but takes a risk anyway rather than necessarily wanting the result (**Cunningham**). In some areas of criminal law, fault is not fully required; an example being the non-fatal offences. In **Savage** the defendant only foresaw an assault but was found liable for GBH. All require proof of fault for conviction. The most serious crimes require higher degree of fault are specific intent crimes such as murder, as it fully tests fault. An anomaly in how far the courts consider the level of fault is the fact that despite any mitigation, there is always a mandatory life sentence for murder. This can be seen in in **Blaue**, the defendant had intention to cause serious harm and this is sufficient 'fault', or mens rea, for murder. Although the victim can be said to have been at fault in that she effectively caused her own death by refusing treatment, but the defendant was still found liable on the basis 'you take your victims as you find them'. Her death was arguably not his fault, with a transfusion she would have lived. Although the level of consideration differs, the Criminal law still operates a fault-based system. The sentence imposed and its severity, is in large part be determined by the level of fault involved in the offence. Also, the degree of fault shown by the defendant which can be seen in the both aggravating and mitigating factors as seen in **Tandy** despite the defence of intoxication which would seem to reduce the fault, mandatory life sentence was still given. This is why there might be opposition to mandatory life sentence as it breaks the relationship between the level of fault present in the offence committed and the sentence imposed.

As a general rule, in criminal law, the priority for courts to find the defendant to have the mens rea for the offence, known as 'presumption of mens rea'. While fault is an essential requirement of liability in most crimes, there are nevertheless some strict liability offences. These offences do not require proof of mens rea and this means that an individual can be held liable for a crime even if they did not have the intent to commit it. These usually related to statutory offences, though where the statute is silent, guidelines from the cases of **Gammon v Attorney-General of Hong Kong** and **Sweet v Parsley** may be used to infer strict liability. Often, strict liability offences are usually less serious and carry no stigma if convicted such as in traffic offence. The minor offences are mostly strict liability due to the lesser culpability of the offender. Law does impose strict liability in the area of consumer

protection or in consumer interest as seen in the verdict of **Harrow v Shah**. It can be said that protecting children outweighs of not convicting a defendant who was not at fault. Thus, taking a utilitarian position where the law prioritises the interest of the public over the faultless individual. However, as fault on the part of the defendant is not necessary, potential injustices can occur, such as those in **Pharmaceutical Society of Great Britain v Storkwain** and **Callow v Tillstone**, especially since in the latter the defendant had gone to great lengths to avoid breaking the law. The meat was passed due to the vet's negligence resulting in a conviction for the butcher. This may lead to butchers being less likely to get their meat inspected therefore it will lower standards. On the other hand, strict liability criminalise those who are at fault. Where the statute is silent as to one element of the mens rea for an offence, then the courts are not bound to read a mens rea requirement into the statute. For example, in the cases of **R v Prince**, D was held liable for a strict liability offence despite having mens rea for part of the offence. Defendant had no knowledge the girl was under 16 but was found to have intended to girl out of the possession of her father as he was aware she lived with her father, thus he was found criminally liable. Whilst, in **Hibbert** it was held that D did not intend to kidnap girl under 18 as he had no knowledge of her age or that she lived with her father. Thus, he was found not liable. This demonstrates that, in certain circumstances, strict liability offences can criminalise individuals who are at fault.

In conclusion, the concept of fault in criminal law serves as a marker of blame and responsibility, and the presence or absence of mens rea determines the level of fault in a crime. Offences of strict liability which require no mens rea can serve a regulatory function, however, they may also result in criminalising individuals who did not act with any intention to commit a crime. It is important to consider the impact on individuals and to balance the need for regulation with the protection of individual rights and freedoms. The extent to which strict liability offences criminalise those who are not at fault depends on the specific circumstances of each case and must be considered in the context of the principle of fault in criminal law.