

## FAULT IN CRIMINAL LAW REVISION WORKSHEET

This is reflected in the phrase:

- *Actus non facit reum nisi mens sit rea* which means:
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The importance of fault can be demonstrated in four aspects of Criminal law.

### 1. The *actus reus* must be voluntary or freely willed for there to be liability.

(a) There are situations where the *actus reus* will be involuntary and D will therefore not be at fault nor liable. For example, explain the following points:

Automatism: *R v Quick*

Reflex actions: *Hill v Baxter*

(b) An exception to this rule is “state of affairs” cases (also known as absolute liability offences). Here, D may not be at fault but will still be liable. For example, explain:

*R v Larsonneur*

*Winzar*

(c) There is no liability for an omission to act, even if D is morally at fault, eg the example of the drowning person given by Fitzjames Stephen, *Digest of the Criminal Law*.

Exceptions to this general rule have been created where the law has imposed a duty to act. For example, explain the following:

*R v Pittwood*

*R v Miller*

(d) Causation must be established for result crimes. There are two tests:

(i) Causation in Fact, the \_\_\_\_\_ Test applied in \_\_\_\_\_.

(ii) Causation in Law, the \_\_\_\_\_ Test applied in \_\_\_\_\_.

They establish fault and, therefore, liability.

(e) Criminal liability can sometimes depend on a chance result rather than on the D's level of fault. For example, consider:

- *R v Blaue*

What crime would D have been liable for when he stabbed V?

What crime did he become liable for when V died?

Why?

- *R v White*

What did D intend to do?

What crime was he actually liable for?

Why?

## 2. *Mens rea* must be established for most offences and shows blameworthiness.

(a) There are three types of *mens rea*, decreasing in the level of fault required.

(i) Intention, which can be either direct, where D desires the consequences of his/her actions, so is at fault and therefore liable; or oblique where D foresees the consequences of his actions as virtually certain and continues: *R v Nedrick* and *R v Woollin*.

(ii) Recklessness, which is now solely subjective. Explain this test and its application in:

*R v Cunningham*.

Objective, or *Caldwell* recklessness, which required less fault as shown by *Elliott v C*, was recently abolished by the House of Lords in *R v G* (2003).

(iii) Negligence, which is falling below the standard of the ordinary reasonable person. State a crime for which this will be sufficient, citing authority:

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(b) Some crimes do not require *mens rea* for every part of the *actus reus*. They are offences of strict liability. Give two examples:

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**3. An example of a crime requiring fault is murder, the unlawful killing of a human being under the Queen's Peace with malice aforethought.**

(a) Liability can be reduced because of extenuating circumstances, which reflect a lower level of fault, eg the Homicide Act 1957 creates three partial defences to murder:

(i) Provocation, where D must fulfil the requirements of which two tests?

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(ii) Diminished Responsibility which is based upon:

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(iii) Suicide Pact, where D is not at fault because ...

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(b) Liability can be extinguished by a complete defence, eg

(i) Self-defence, where a killing will be lawful if reasonable force is used to defend oneself. A case example is:

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(ii) Insanity under the *M’Naghten Rules*. D suffers from a defect of reason and so is not at fault (but still under the control of the court).

**4. Fault is relevant to the sentencing process whether D pleads guilty or is found guilty.**

(a) The court will consider aggravating and mitigating factors.

(b) There can be a \_\_\_\_\_ for an early plea of guilty – D admits s/he is at fault.

(c) Minimum sentences, in some circumstances, were introduced by the Crime (Sentences) Act 1997. For example, a mandatory life sentence for a second serious offence unless there are exceptional circumstances. Why may this not reflect fault?

**SHOULD FAULT BE REQUIRED IN CRIMINAL LAW?**

Fault is usually established through the presence of *mens rea*. Therefore, the arguments for and against strict liability, ie, crimes which do not require full *mens rea*, need to be considered:

List four arguments for strict liability	List four arguments against strict liability