

Is the law fault based?

Law



A2 AQA LAW Is the law fault based? According to the Oxford English Dictionary, Fault is defined as “ error” or “ blame”, the wrongdoing and extent of which the defendant is responsible for his actions. The law should only punish those who are at fault and impose punishments which are deserved, whilst being more lenient to those who are not at fault and did not foresee the consequences. In criminal law, fault is proven by the prosecution where people are found guilty, beyond reasonable doubt. In civil law, people are found liable, on a balance of probability.

In order to discuss and evaluate the definition of fault as a basis of crime, it must first be understood and identified where fault can exist. Offences in law are often graded accordingly depending on how much fault they reflect. E. g. indictable offences such as rape and murder are the most serious of crimes and therefore receive the mandatory life sentence in order to reflect this. They cause the most serious damage to the victim and require more intention. However, summary offences such as “ common” assault only receive minimal prison sentences, but normally fines up to ? 000. This is because the fault is deemed far less as the victim does not suffer as much and there is less intention to commit such a crime. Sentences also reflect to what extent the defendant was at fault. Aggravated factors, like a racially motivated attack or using a weapon indicates a higher level of intention and fault whilst mitigating factors like pleading guilty somewhat lessens the defendants fault in the eyes of the law. The severity of the crime depends on the level of fault. This can be found in the actus reus of a crime- the guilty physical act.

Murder, for example is a voluntary act which demonstrates a higher degree of fault and blame (Smith- where a soldier stabbed another soldier with a bayonet.) A voluntary act is normally a deliberate act and therefore seems fair to greater level of blame. An omission is defined as the failure to act and shows a lower amount of fault as there is no physical act. For example, in the case of R v Dytham, a policeman witnessed a fight take place, but did not stop it and the victim was seriously injured. An ordinary passerby would not be regarded as at fault in this way but because a police officer has a public duty, he was deemed at greater fault.

Causation is another aspect which is very fault-based in both criminal and civil law. There are tests to prove causation: factual, the “but for” test- But for defendant’s actions, would the outcome still be the same? legal causation- was the defendant’s actions the substantial and operating cause in victim’s injuries? and novus actus intervenes- was there a break in causation? Was there other factors that could have contributed? So if the defendant did cause the injury suffered by the victim then the defendant should be held at fault, vice versa if the defendant did not cause the injury then he is not at fault.

In Jordan, the defendant had shot the victim however the victim was completely recovered in hospital when he received a wrong injection which killed him. The defendant did not cause the death of the victim as the hospital treatment was an intervening factor and the substantial cause of death, therefore not fault. In comparison, in R v Smith, a soldier was stabbed and was in hospital when he died from loss of blood from the stab wound. Unlike Jordan, Smith was found guilty of causing the defendant’s death as it

was the original stab wound which was the operating cause of death proving he was at fault.

Fault can also be shown through mens rea- the guilty mind. There are specific intent crimes such as murder or GBH s. 18, which can only be committed intentionally, where it was the defendant's main aim or purpose indicating a higher level of fault. On the other hand, crimes of a less serious nature can be committed either intentionally or recklessly- basic intent crimes like assault or battery. Recklessness shows less fault and blame than intention (although some fault is given due to subjective recklessness e. g.

Cunningham- the defendant realises there is a risk of harm but acts anyway) because the outcome is only a possibility and sometimes is not foreseen. Similarly, Gross negligence manslaughter depicts how civil negligence can become criminal liability as a result of a death. This offence allows businesses to be liable and found at fault even though it is impossible to prove their mens rea. The use of defences in the legal system can also indicate how the defendant may possess both the actus reus and mens rea of a crime, but still not completely at fault.

Insanity is a full defence which means the defendant is unable to form the mens rea of the crime in question due to a disease of the mind. Also, Automatism removes all fault on the defendant's behalf as he is suffering from an external factor or influence. Intoxication (only applicable to specific intent crimes) shows an appropriate mens rea could not be formed due to the use of drink or drugs. However, other defences such as Diminished responsibility used as a defence in murder situations, only

partially removes the defendant's fault as he is suffering with an abnormality of the mind.

This shows fault is lower than that of an intentional killing. Certain areas of criminal law where there are offences do not require any fault to be proved such as speeding offences. These are called strict liability crimes, where no mens rea is needed just the pure act of doing it makes you guilty whether you intended to or not. These offences are imposed throughout society in order to uphold social policies, but some people feel that no fault offences are unfair because they impose liability on people who did not necessarily foresee any consequences. In *Shah v DPP*, a lottery ticket was sold to a member of the public under the age of 16.

Although there were many signs and notices about checking ID of those looking underage, the ticket was still sold and the defendant was found guilty. This case had led to a requirement for an evaluation of the need for fault, as *Shah*, could be seen as not at fault as the child had used fake identity. These no-fault arguments are based on the public's interest that it is better to protect the innocent public and compensate them than to prove an individual's fault, applicable for businesses that have to accept the risks and benefits of running a company.

Smedleys v Breed, a manufacturer defendant who was found guilty when a caterpillar was found in a tin of peas, where it is obvious that it was this manufacturer's fault and responsibility to take blame. On the other hand, this can encourage higher standards amongst employers to encourage them to know the law and avoid injury and take care of themselves. It is believed that

we should be accountable for our own actions, no matter whether fault can be proved or not- based on the principle “ we reap what we sow”.

This is was shown in R v Howells where the defendant failed to obtain a certificate for the gun he was possessing unwittingly, but will still guilty of this offence. Another argument is that imposing strict liability crimes helps that of deterrence on society to encourage better diligence. However, despite these no-fault arguments, many people believe there is a necessity for a proof of fault. Fairness is at the heart of the legal system and would seem unfair not to require a person to be proven at fault in order for them to be guilty.

Having a no-fault system was implicate distrust for the public and would reflect poor values of society. It would also result in serious consequences for the sentenced defendant with a conviction. In conclusion, it has become clear that proving fault is already an essential element of criminal liability in the English legal system already and no fault only exists in a small number of offences, but can still have serious repercussions. In order for justice to continue to be served, criminal offences and their combined penalty should be limited to those who are evidently guilty and at fault and who truly deserve the punishments.