

Examine the meaning and significance of ‘fault’ within criminal law

On February 18, 2003, 192 innocent people died and 151 were injured due to a fire inside an underground train in Daegu, South Korea. A 56-year-old man named Kim Dae-han ignited a plastic container inside the train¹. The motive was to express sentiments of violence and depression from medical treatment for his illness - a stroke which left him partly paralysed and disabled. Kim was sentenced to death in the first trial; however, the court of appeals sentenced him to life in prison on account of his remorse and mental instability². In this essay, it will be mainly discussed what ‘fault’ in criminal law is and why it is important with studying Kim’s case.

Fault in criminal law is defined as the blameworthiness of a defendant³. There are two basic elements - actus reus and mens rea - that authority needs to prove someone is responsible for a crime. First, actus reus is ‘guilty act’ in Latin and it is for investigating the outcome of blameworthy activity that causes injury to the victim⁴. It is composed of three elements: 1) a voluntary act or omission, 2) that contains a physical element of a crime, 3) causing a social harm condemned under a criminal statute⁵. Liability can be only found once the fault is proven, so it is vital to assign fault for a blameworthy activity. In other words, the whole law system would not function if it does not work. In this case, Kim’s arson attack is identified as actus reus because it is a physical attack that harmed about 330 people.

Although actus reus is crucial, mens rea, referring to ‘guilty mind’ in Latin, is of great importance to check the defendant’s state of mind at the time of the offence⁶. Stated in a common law maxim “actus non facit reum nisi mens sit rea” (“act is not guilty until the mind is guilty”), the greater the degree of

¹ G. Hong, ‘Decade after fire, Daegu victims still suffer’, *Korea Joongang Daily*, 4 January 2013, <https://koreajoongangdaily.joins.com/2013/02/13/socialAffairs/Decade-after-fire-Daegu-victims-still-suffer/2967039.html?detailWord=daegu+subway>, (accessed 26 December 2022).

² S. Korea Subway Arsonist Gets Life Sentence’, VOA, 28 October 2009, <https://www.voanews.com/a/a-13-a-2003-08-06-6-s-66859737/376242.html>, (accessed 26 December 2022).

³ Lawaspect, *Consider the meaning and importance of fault-based liability in English law* [website], <https://lawaspect.com/consider-the-meaning-and-importance-of-fault-based-liability-in-english-law/>, (accessed 28 December 2022).

⁴ Not Guilty Adams, *What is Actus Reus and Mens Rea?* [website], <https://www.notguiltyadams.com/faqs/what-is-actus-reus-and-mens-rea-cfm>, (accessed 28 December 2022).

⁵ Legal Information Institute, *Actus reus* [website], https://www.law.cornell.edu/wex/actus_reus, (accessed 28 December 2022).

⁶ S. William, ‘MENS REA, ACTUS REUS, AND THE ROLE OF THE STATE’, *Unimaginable Atrocities: Justice, Politics, and Rights at the War Crimes Tribunals*, 2012, p.125-152.

mens rea in a crime, the harsher the punishment is⁷. The case of Daegu underground fire relies on mens rea to prove Kim's fault. Kim's intention was to use a water demon strategy. In Korean mythology, water demon refers to a devil who drags children who approach it into the water. He had the intention to harm the mass public in order to express his personal emotion and dissatisfaction against the society, but Kim used the water demon strategy to justify his crime⁸. According to mens rea, his recklessness to harm innocent people should be punished at the highest level.

In criminal law, there are several requirements that a person's degree of fault can be reduced: insanity, doli capax (not able to fully understand their action), or having acted under a duress. Here, Kim suffered from a severe depression until he was not able to make rational judgement. Additionally, the venue where Kim started a fire did not cause many casualties but non-flame-retardant materials in the trains were mainly affected. As this was not part of Kim's intention when he started the fire, it was accepted as the main reason for the reduction in Kim's punishment⁹.

Fault, therefore, is significant when deciding the guilt, but even present in defences to lessen the amount of fault which the defendant is thought of having.

⁷ Unacademy, *Mens Rea and actus reus* [website], <https://unacademy.com/content/upsc/study-material/law/mens-rea-and-actus-reus/>, (accessed 30 December 2022).

⁸ J. Choi, 'What are arsonists thinking?', *The Korean Herald*, 23 June 2022, <https://www.koreaherald.com/view.php?ud=20220623000619>, (accessed 30 December 2022).

⁹ G. Hong, 'Arsonist to serve life in Daegu subway fire', *Korea Joongang Daily*, 7 August 2003, <https://koreajoongangdaily.joins.com/2003/08/07/socialAffairs/Arsonist-to-serve-life-in-Daegu-subway-fire/2017401.html?detailWord=daegu>, (accessed 2 January 2023).

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