

# **CRIMINAL LAW CASE NOTES**



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SAMPLE

# **Fagan v Metropolitan Police Commissioner [1968]**

**3 all ER 442; [1969] 1 QB 439**

## **- Court details**

Queen's Bench Divisional Court.

## **- Procedural history**

The case was heard at the Willesden Magistrates where the defendant was convicted of assault. The defendant appealed to the Middlesex Quarter Sessions but the appeal was dismissed. The defendant then appealed to the Queen's Bench Divisional Court.<sup>1</sup>

## **- Facts**

The appellant, Vincent Fagan, was convicted of assaulting David Morris, a police constable, whilst on duty on August 31, 1967. The appellant was reversing a car when Constable Morris directed him to drive the car forwards to the kerbside and standing in front of the car pointed out a suitable place in which to park. Firstly, the appellant stopped the car too far from the kerb and Morris asked him to park closer, indicating a spot. The appellant drove towards him and stopped the car with the front offside wheel on Morris's foot. Morris told him to get off indicating that the wheel was on his foot. The appellant responded 'fuck you, you can wait.' The engine of the car stopped running. Morris repeated several times 'Get off my foot'. The appellant reluctantly agreed and then slowly turned on the ignition and reversed off Morris's foot. The accused claimed he accidentally drove onto Morris's foot. Fagan was convicted of assault. In the lower courts it was not

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<sup>1</sup> *Fagan v Metropolitan Police Commissioner* [1969] 1 QB 439, per James J.

proven whether the mounting of the wheel on Morris's foot was deliberate or accidental. But the lower courts were satisfied assault occurred as Fagan knowingly allowed the wheel to remain on the constables foot.<sup>2</sup>

### **- Issues**

The question is whether the prosecution successfully proved the necessary facts which in law amounted to assault. On appeal, Fagan argued that driving onto Morris's foot occurred without the required mens rea. The question before the court was whether there was a coincidence of mens rea and actus reus in Fagan's actions.<sup>3</sup>

### **- Reasoning / Decision (commentary)**

Where assault involves a battery (as in the present case) it does not matter whether the battery is inflicted directly by the body of the accused or through the use of a weapon or instrument controlled by the accused.<sup>4</sup>

The majority in this case used the analogy of stepping on someone's toe and maintaining that position even when requested to not do so (which would be assault) in comparison with the present facts. Here they stated that driving a car onto someone's foot and sitting in the car whilst its position on the foot is maintained is the same and as such constituted an assault.<sup>5</sup>

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2 Ibid.

3 Ibid.

4 Ibid.

5 Ibid.

The majority stated that assault must involve an intentional act as a mere omission to act cannot be assault.<sup>6</sup>

The majority found that for an assault to be committed both the elements of actus reus and mens rea must be present at the same time whilst the assault was committed. The majority stated the actus reus is the action causing the effect on the victim's mind whilst the mens rea is the intention to cause that effect. They further stated that it is not necessary that the mens rea be present at the beginning of the actus reus as it can be superimposed upon an existing act. This is what occurred on the facts in this case. The mens rea of assault was not present when the appellant drove the car onto Morris's foot but by not removing the car when asked the requisite mens rea of assault was superimposed on the actus reus of parking on Morris's foot, thus constituting an assault.<sup>7</sup>

However, the majority stated the subsequent inception of mens rea cannot convert an act which has been completed without mens rea into an assault.<sup>8</sup>



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6 Ibid.

7 Ibid.

8 Ibid.