

ACTIVITY: Fagan v MPC (1969)

1. What are the facts of the case?
2. What was the 'issue' in this case?
3. Did D commit an act or an omission?
4. What legal principle was established?
5. Explain if you agree with the case decision and why?

1. Fagan accidentally stopped his car on a policeman's foot. When the policeman asked him to remove the car from his foot, he swore and refused to move and switched engine off. He was charged with battery.
2. Issues is that the offence of battery cannot be committed from an omission of refusing to move off foot. Furthermore, Fagan's mens rea, the intention of refusing to move had been formed after the actus reus of reversing the vehicle onto the foot. However, both elements need to be formed at the same time for criminal liability.
3. Courts held battery cannot be committed by an omission of refusing to move off foot. However, courts held the crime was not an omission to move the car but rather it was a continuing act.
4. The legal principle of continuing act was established. The actus reus was formed when Fagan originally reversed the car onto the policeman's foot, and continued while the car remained there. When Fagan became aware and refused to move, the mens rea was formed during the continuing act. Thus, both elements coincide for criminal liability.
5. Any valid opinion such as Fagan clearly wanted to harm the police officer and justice was served when he was convicted. Furthermore, if Fagan had not been convicted then it could possibly set an example for future cases in how to avoid criminal liability.