

## Non-fatal offence- Structuring Battery Question

Tony had been drinking heavily at a local pub when he ran into Idris on the street. The two men got into an argument, and Tony became very agitated. He picked up a small stone from the ground and attempted to hit Idris with it, but missed.

Idris tried to calm Tony down, but this only made him angrier. Tony then picked up a larger stone and threw it in Idris' direction, aiming for his head. However, the stone missed Idris' head and hit his shoe instead.

Explain using case law if the courts can establish the offence of battery taking place against Idris?  
(10 marks)

### Answer

Under **s39 of the Criminal Justice Act 1988**, battery requires that the defendant intentionally or recklessly applies unlawful force without consent.

To establish the actus reus, it must be shown that the D applied unlawful force without V consent, directly or indirectly. **Martin**, established that indirect application of force was sufficient for a battery. In **Thomas**, it was held touching someone's clothes is equivalent to touching them because it is closely connected to their body. In **DPP v K** the indirect unlawful force took place through an object, the hiding the acid in the hand dryer and therefore does not need an actual physical touch.

In the given scenario, Tony behaviour of throwing stones at Idris, and not one but two stone and second being larger than the first and aimed at his head which then landed on his shoe, can be construed as being an extension of Idris's body via shoe (**Thomas**). Furthermore, throwing of stone amounts to indirect application of unlawful force through object (**DPP v K**). In this scenario, it is clear that Tony's is clearly applying unlawful force towards Idris, thus establishing the actus reus of Battery.

To establish mens rea, it must be shown that the defendant applied unlawful force without consent, either intentionally it or was at the very least reckless to it. For intention, it can be direct (**Mohan**) where it is the defendant's aim and purpose to apply unlawful force, or the jury can find indirect intention (**Woollin**) where the consequences from the defendant's action is a virtual certainty of applying unlawful force and they appreciate this. For recklessness, the defendant foresees the risk of applying unlawful force but takes it anyway, and **Parmenter** established **Cunningham** recklessness can be used for non-fatal, battery.

In this scenario, Tony's behaviour demonstrates that application of unlawful force was a direct intention because he was aiming for Idris's head. However, Tony can argue that he had been drinking that he was unaware of his behaviour and therefore did not have the necessary mens rea for battery. Even if Tony was voluntarily intoxicated following **Majewski**, voluntary intoxication is no defence for basic intent crime such as battery, and can be inferred as recklessness. Hence, that throwing stones at Idris's direction Tony could foresee the risk of applying unlawful force but it took the risk anyway. Therefore, the mens rea of battery can be established.

In conclusion, in this scenario both the actus reus and mens rea of battery can be established. Tony committed battery by recklessly applying unlawful force on Idris without his consent through the throwing of stones at his head. However, the court must consider the issue of voluntary intoxication in determining the mens rea of battery.