



NATIONAL OPEN UNIVERSITY OF NIGERIA

COURSE CODE: LAW 341

COURSE TITLE: CRIMINAL LAW I

COURSE GUIDE

LAW 341

CRIMINAL LAW I

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Introduction

The Criminal Law is a vital part of the Public Law. It is a compulsory course in your degree programme. You are required to study it a compulsory 300 level four credit course.

The Criminal Law is the principal law on crimes. It is not contained in any single statute book or even a fend. This tends to suggest that a good way to study the criminal law is to study one statute after another. This may prove difficult because the catalogue of Criminal Law has not been compiled, nor is any attempt being made. Since the Criminal Law is all about crime, a better approach may be to study one crime after another. The number of acts and omissions that are forbidden by Criminal Law are inexustable. More are still being created directly or indirectly few are de-criminalised. The existing ones are either expanded or contracted in extent and scope through judicial interpretation.

There may be another approach. Form the works of earlier writers, it may be possible to isolate certain features that may be common or different in a majority of crimes and make those features the subject of study. This is the approach adopted in this course.

The Criminal Law is a reflection of the fundamental character and intellectual life of the society in which it operates. Customary Criminal Law once prevailed but It was largely unwritten. It has given way to written law. Thus Customary Criminal Law has remained part of the law of crime to the extent it is written.

This course consists of 21 Units of study and adequately takes care of the conveniences of the students whom we know are working and at the same time learning. This Course Guide offers you in a nutshell, what the Criminal Law is about: it gives you an insight into the course materials which have been deliberately compressed in order to ensure that you are able to cover as much as possible within the given period.

Self Assessment Exercise and Tutor Marked Assignments

You will find some useful self-examination questions and tutor-marked assignments in the Course Guide. It is advisable that students should attempt them as strictly as possible under real examination conditions. One may caution that many students who fail examinations in law do so because they answer questions out of “common sense”. You are beginning to learn the Law, its institutions, enactments and enforcement processes. Problems that arise from them are legal problems. Their solutions must be founded not in common sense but in law itself.

What You Will Learn In This Course

The Criminal Law is a useful study to anyone who aspires to be a legal practitioner. It is also useful to those who want to know about the Criminal Justice Administration or about crimes and how they are treated or disposed off. It is a course you have to study in two semesters, namely Law341, and Law342. Each of them is a 4-Credit Unit Course. This implies that you are expected to devote a minimum study time of four hours per week, for the duration of each of the two semesters.

The same acts and omissions may constitute crimes on one occasion, while the same acts or omission may not be criminal in another set of circumstances. In other words studying crime or criminal law may not first be about studying acts or omission but the varying circumstances which the acts or omissions would constitute crimes and those which do not.

The language of the criminal law is sometimes vague and archaic, saxon-germanic, or even Latin and jargons. These are imprints of the sources and the history of the Criminal Law. They make the knowledge of the subject tick.

Importance of Cases

This study guide, like any textbook on any aspect of law, makes references to important judicial decisions as well as to some statutory enactments. Any statement of law has its foothold on a case or statute, which forms its authority. The issues you need to know about important cases or statutory provisions are set out in the study guide or any average textbook. However, you may want to refer to the statute or law report itself in order to better understand specific aspects. You are not limited to cases cited. The more recent your authority, the better.

You refer to a case by the names of the parties to it e.g. *Police v Ajidagba* for cases from a Police Division, *C.O.P. v Mandilas & Karaberis*; for case from State CID; *IGP v. Akerele*; for cases originating from the Force CID; *State (or DPP or Queen or Attorney-General) v. Service Press Ltd.* for cases instituted by the Office of the Attorney-General. Civil cases are identified by names of parties: e.g. *Aoko v. Fagbemi*, *Lekanmi v. Attorney-General (Western States)* etc.

It is an added advantage to be able to learn and quote the correct names of cases. Please note, that it is dangerous to give wrong names. If you are sure of their correct names, give them. If you are not, it may suffice to give the facts and the *ratio decidendi*. Alternatively, you may indicate the case by 'x' v. 'y' or (?) v. (?) and proceed to give the facts and decisions. Do not invent cases; but feel free to make illustrations of the point(s) as you wish. It is not advisable that you cite a case and fail to give the brief facts or the point of law it decides or both.

Course Aims

This Course aims at providing the participants with basic knowledge and understanding of the Nigerian Legal System. The approach is to give a bird's-eye view of a legal system, followed by detailed study of each of its components. You will learn in the Course, among other things, additional definitions of legal terms, enactments, interpretation and functions, among other things. In essence, the aims of the Course include:

General introduction and purpose of Criminal Law
The content of Crime
History and Sources of Nigerian Criminal Law
The elements of an offence
Classification of Offences
General Principles of Criminal Responsibility
Parties to an offence
Offences against the Person..

Course Objectives

At the completion of the Course, you should be able

- (i) To understand the historical background, nature and origin of the Criminal Law.
- (ii) To discuss the extent to which the Criminal Law is home-grown or alien and the extent to which the operative legal system conforms or departs from the traditional justice administration.
- (iii) To appreciate the interdependence of the different Criminal Law at Federal level and as between the federation and the States.
- (iv) To identify the problems in the Criminal Law and its enforcement.
- (v) To provoke a choice between judicial conservation and activism.
- (vi) To point to the direction of improvements in the Criminal Law
- (vii) To demonstrate an understanding of the source of Criminal Law

Study Units

This study material Comprise the following five modules and 15 Units:

MODULE 1

- Unit 1 General Introduction And Purpose Of Criminal Law
- Unit 2 The Content Of Crime
- Unit 3 History And Sources Of Nigeria Criminal Law
- Unit 4 Elements Of An Offence: Mens Rea
- Unit 5 Elements Of An Offence: Mens Rea Cont'd
- Unit 6 Element Of An Offence: Actus Rues

MODULE 2

- Unit 1 General Principles Of Criminal Responsibility
- Unit 2 General Principles Of Criminal Responsibility Cont'd
- Unit 3 General Principles Of Criminal Responsibility cont'd
- Unit 4 Classification Of Crimes
- Unit 5 Parties To An Offence: Principal Offenders
- Unit 6. Parties to an offence
- Unit 7 Parties To An Offence – Accomplices

MODULE 3

Unit 1 Offences Against Persons: Introduction

Unit 2 Lawful Homicide

Unit 3 Unlawful Homicide

unit 4 Homicide: Murder

unit 5 Murder Cont'

unit 6 Novus Actus Interveniens

Unit 7 Intervening acts of self preservation or prevention of crime

Module 4

Unit I Homicides: Manslaughter

Unit 2: Offences Against The Person: Infanticide And Suicide

Unit 3: Offences Against Persons: Offences Endangering Life Or Health

Unit 4: Assault

Course Marking Scheme

The following table lays out how the actual course marking is done.

Assessments	30% of course marks
A Final examination	70% of overall course marks
Total	100% of course marks

It is instructive to learn to question, rather than taking things for granted; to speak or write and cite authorities rather than speculate or merely apply common sense to essentially legal issues.

In conclusion, we hope you will enjoy this course. Wish you good luck.

**MAIN
COURSE**

LAW 341

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MODULE 1 3

Unit 1 General Introduction And Purpose Of Criminal Law 3

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Unit 4: Assault

Module 1

Unit 1: General Introduction and Purpose of Criminal Law

1. Introduction
2. Objective
3. Main Content
 - 3.1 Crime
 - 3.2 Running offences
 - 3.3 The Criminal Code
 - 3.4 Purpose of Criminal Law
 - 3.5 Dynamism of the Criminal Law
4. Conclusion
5. Summary
6. Tutor-Marked Assignment
7. References

1.0 Introduction

Law is the pillar of any society, an instrument of stability and above all, the machinery for regulating the conduct and activities of the individuals and institutions of the society. Every society therefore creates law in order to regulate the conduct of the citizenry. Hence, law is better understood in terms of its role in the society. The Criminal law is the principal law of crimes and the focus of this course, which you are about to study. It is also the substantive law which prescribes what crime is, the type of acts or omissions which the law prescribes or proscribes; as well as the sanctions for violation or non-compliance.

The Criminal law imposes restrictions on human activities or omissions. This is suggestive that law generally and criminal law in particular is antithesis of freedom. In this context, freedom would mean, not liberty to do whatever pleases you but liberty to do whatever you want within the limits imposed by the criminal law. Viewed from the opposite

perspective, criminal law expands rather than contracts your freedom. The reason is that man is not just an individual, living alone in an unrestrained state of nature. Rather, he is a human being living in a community with other humans and the criminal law merely exists, in the circumstance, to limit your freedom with the objective and reality of expanding your freedom as a whole.

As you proceed in the course, you will learn a number of these prescriptions and proscriptions.

2.0 Objectives

When you have studied this unit, you should be able to:

- Enumerate the purpose(s) of the Criminal law from different perspectives
- Critique the constitutional and other provisions on crimes and fair hearing

3.0 Main Content

There is no single law on crimes. Criminal law is written, and forms part of our statute laws. In pre-independence times, criminal law was contained in various ordinances drawn up by the Governor in-Council on the advice of members of the House of Representatives and published from time to time in the Nigeria Gazette. Now they are laws passed by the State Assembly or Acts passed by the National Assembly. They are contained also in edicts passed by the Military Governor of a State or decrees passed by the Federal Military Government. Examples of such ordinances, edicts, decrees, laws or Acts are:

- The Criminal Code Law or Act
- The Penal Code

- The Sharia'h law
- The Road Traffic Ordinance or law or Act
- The Dogs Ordinance (or Act)
- The Liquor Ordinance (or Act)
- Corruption and Financial Crimes Act etc

There are other numerous Acts or laws and subsidiary legislations which have created crimes. However, the prescriptions of the crimes you will be learning are contained in the Penal Code applicable in the 19 Northern States and the Criminal Code which applies in the 17 Southern States.

3.1. Crime

The word "crime" is derived from the Latin word "Crimen" meaning an accusation

3.1.1 Legislation on Crime

The Constitution and both the Penal and the Criminal Codes contain references or definitions of crime which you need to be familiar with.

The Constitution section 36: Right to fair hearing:

(a) Sub-section:

No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

(b) ".....a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law and in this subsection, a written law refers to an Act of

the national Assembly or a law of a State, any subsidiary legislation or instrument under the provision of a law”

Section 13

All authorities and persons exercising judicial powers shall conform to, observe and apply the provisions of the provisions of the constitution

Section 17

The independence, impartiality and integrity of courts and easy accessibility thereto shall be secured and maintained

3.1.2 The Penal Code

(a) Section 3: Punishment of offences

- (i) Every person shall be liable to punishment under the Penal code for every act or omission contrary to the provisions thereof of which he shall be guilty within the Northern States.
- (ii) After the commencement of this law, no person shall be liable to punishment under any native law or custom.

(b) Section 4. Offences against laws of a state:

- (i) Whereby the provision of any law of state in the North, the doing of any act or the making of any omission is made a offence, those provisions shall apply to every person who is in Northern Nigeria at the time of his doing the act or making the omission.

3.2 Running Offences

When the offence is a running offence and the elements making up the offence occur across a number of States, the offender is as guilty as if all the elements occur in one State under the following situations:

- (a) Where the offender commits in the Northern states, the act which makes up the initial element of the offence
- (b) where the act constituting the initial element of the offence has been committed outside the Northern States but the offender has subsequently entered the Northern States.

A person cannot be convicted for an offence wholly committed outside the Northern States whether or not he re-enters the Northern states thereafter. To gain a conviction, there must be some element of the offence occurring within the Northern States. It is not enough that all that occurs in the North is the death of the victim

3.2.1: Words referring to acts

- (a) In every part of the Penal code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions: (section 24)

- (b) **Act Omission**

The word “act” denotes a series of acts as well as a single act: and the word “omission” denotes a series of omissions as well as a single omission: (section 25)

- (c) **Offences**

Except where otherwise appears from the context, the word “offence” includes an offence under any law for the time being in force: (section 28)

3.3 The Criminal Code

(a) Section 2: Definition of Offence

An act or omission, which renders the person doing the act or making the omission liable to punishment under this Code, or under any order-in-council, Ordinance, or law or statute is called an offence.

(b) **Legal Notice No 47 of 1955**

This Legal Notice provides that the provisions of the Criminal Code shall, except otherwise specified, be the law of the Federal Capital Territory and of the Southern States.

3.4 Purpose of the Criminal Law

Neither the constitution, the Penal Code, the Criminal Code nor any other law expressly declares what the purpose of the Criminal law is.

Different theories of crime may arrive at different functions or purposes of the Criminal law. Thus the purposes of law as may be formulated by the sociological theory may differ significantly from the purposes acceptable to biological, psychological, social-psychological or economic deterministic theories of crime.

You may find relief in the American Law Institute's Model Penal Code which informs us that the objectives of the Criminal Law includes the following:-

1. To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.
2. To subject to public control persons whose conduct indicates that they are disposed to commit crimes.
3. To safeguard conduct that is without fault from condemnation as criminal.
4. To give fair warning of the nature of the conduct declared to be an offence.
5. To differentiate on reasonable grounds between serious and minor offences.

The Wolfenden Committee on Homosexual offences and Prostitution, 1957 (UK) expressed the view that the objective of the criminal law includes

Preservation of public order and decency

Protection of the citizen from what is offensive and injurious and

Provision of sufficient safeguards against the exploitation and corruption of special groups – the vulnerable groups

These stated objectives are by no means exhaustive, neither are they adequate. For instance, criminal law punishes strict liability crimes and these offences are without fault to enhance public safety and welfare. The Federal Military government made retroactive and draconian decrees prescribing offences some of which are punishable with death for the purpose of inculcating discipline, transparency and accountability among public officials.

Writers have said that there are four aims of the criminal law. These are:

Retribution

Deterrence (particular or general)

Incapacitation

Rehabilitation and reformation

But punishment is a method by which criminal law seeks to achieve its larger objectives. The objectives of criminal should therefore be confused with objectives of a dispositional method, which may differ from one convict to another or from one occasion to another.

Activity

Let us discuss certain issues relating to the purpose of the criminal law.

1. Can you really say that Criminal law prevents unjustified and inexcusable conduct that inflicts or threatens harm?
2. Is mere proscription of an act under pain of sanction or even a sentence sufficiently deterrent?

Self Assessment Exercise

What criteria, if any, has the Criminal law laid down to enable you, as a reasonable man, to identify which conduct is serious or which is minor?

3.5 Dynamism of the Criminal Law

The American legal philosopher and law teacher, Roscoe Pound informs us that

“Law is a species of social engineering whose function it is to maximize the fulfillment of the interests of the community and its members and to promote the smooth running of the machinery of society.

For example, the National Assembly reported the following decrees:

- (i) Decree No 2 which had permitted the State to detain any person without Warrant.
- (ii) Decree No.4 which sought to gag the press

- (iii) The Miscellaneous Decree which had capitalized new offences and decapitalised others. The offences involving hard drugs ceased to be capital crimes.

Karibi Whyte, JSC (as he then was) said that the function of law is to harmonise the diverse social interests in a manner that will ensure greater social well-being with minimum friction. The learned justice of the Supreme Court invited us to consider the interplay between the following:

1. Criminal Law in action, and
2. Criminal Law and law texts

In relation to this interplay, Karibi Whyte invited us to consider three additional issues.

- a) Criminal law in the hand of the law-giver or as a means of shaping the society.
- b) Criminal law as a framework of development administration
- c) Criminal law as a way of anticipating the failure of the society or defence of humans against intending technology.

He concluded that the criminal law in actual operation is law behind law and offers an understanding of the law and its role than conceptual analysis.

Sociologists have warned against certain false assumptions e.g

- Consensus on interests
- That interests are known and that what is required is to tailor the criminal law to it.
- That law is natural , and operates outside the control of sectional interests.

4.0 Conclusion

Criminal law is an aspect of public law. It relates to conduct which the State considers with disapproval and which it seeks to control and /or

eradicate. Criminal law involves the enforcement of particular forms of behaviour.

5.0 Summary

This is a general introduction to the Criminal law and its purpose. The purpose of the criminal law is one thing; whether it serves that purpose is another. This challenges us to investigate the interplay between conceptual analysis and the reality of the criminal law in action. You also have noted certain false assumptions associated with the criminal law as well as its neglected side – Futurology of the Criminal Law

6.0 Tutor-Marked Assignment

“The Criminal or Penal code is a perfect piece of legislation”

- (a) Is your assessment, is this true or false.
- (b) If true, enumerate at least 5 areas when the criminal can be said to have served its purpose.
- (c) If false, enumerate at least five areas of default and propose measures you consider as panacea.

7.0 References

Slapper; G : The English Legal System, 7th Ed, Cavendish Publishing Ltd

FGN: - The Criminal Code

- The Penal Code

The Constitution of the Federal Republic of Nigeria

Unit 2: The Content of Crime

- 1. Introduction
- 2. Objectives
- 3. Main Content

- 3.1 Common Law
- 3.2 Public Law
- 3.3 *Mens rea*
- 3.4 Act or Commission
- 3.5 Strict and Absolute liability offences
- 4. Conclusion
- 5. Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References

1.0 Introduction

In the last unit, you learned about the technical use of the term “crime”. It is much narrower than ‘deviance’. You saw few constitutional and other statutory safeguards to ensure a fair trial of persons accused of crime. You discussed the purposes of criminal law its dynamics as well as its neglected side. In this unit, you will be learning more about the concept of crime. As pointed out earlier, criminal law is all about crime control and prevention.

2.0 Objectives

When you have studied this unit, you should be able to:

1. Distinguish as far as practicable moral wrong and public wrong.
2. Classify some criminal conduct.
3. Recognise criminal proceedings as well as the distinguishing mark between civil wrong and a crime.
4. Recognise the peculiarity of human rights violation.

3.0 Main Content

The Criminal Code is a codification of the common law with few amendments but both are not congruent. The Common law is a

seamless wells and it assumes that law always existed even if you cannot immediately find it. Conversely, in Nigeria, exclusionary rule operates and the Criminal Code or Penal Code is exhaustive. Consequently, you are not permitted to look at materials beyond the legislation to decide the meaning of what any of them contains. Your concern should be the language (call it esoteric jargons or strange language) consumed in the statute. To these you must turn as we explore the contents of crime.

Self Assessment Exercise

1. Define the term “crime”
2. What do you understand by “act” ?

3.1 Common law

Common impacts the content of the Criminal Law.

Common law is the customs of the Anglo-Saxon England. It has its root in the life of the ancient English people. It reflects their social structure, and their way of life. It is a historical creation, with features that reflect the contingencies and accidents of history rather than any rational design. It is no more than an input of the Norman rationalization and its bid to centralize his authority. Although the distinctive features of the common law were not relevant to Africa; the law was nonetheless engaged into the local laws of the dependencies and subsequently changed that character and legal institutions of the latter. This explains why in our laws, you find expressions in Latin, Norman French, Anglo-Norman among others. The doctrines of equity as franchise in England still obtains in Nigerian courts. Inquisitorial system was suppressed and replaced by other accusatorial system. The English legal system was, during the colonial period, exposed around the world from the United States of America, to Australia and New Zealand, Singapore and Malaysia, to Nigeria and most other Commonwealth countries, with local, secular and sometimes religious variations.

In *R v Jacobs Kehinde* (1927) Combe J., said, “The primary purpose of the criminal Code was to define offences and to prescribe penalties and I

do not consider that I should be justified in assuming that the legislature intended that the very necessary and proper provisions regard procedure in section 6 of Lord Campbell's Act should cease to apply in Nigeria because those provisions were not incorporated in the Code.

3.2 Public Law

The Criminal law is an aspect of Public law. It is a specialized body of rules on treatment of conduct which the states see to punish, prevent or control. The state, as representatives of the society, acts positively to ensure enforcement. For this purpose, the state employs the police, Judges and magistrates, prosecutors and prisons.

3.3.3 *Mens rea*

(a) Blackstone expressed the views that the conditions precedent to criminal liability are:

- Guilty mind plus moral blame
- *Actus reus*

(b) Stephens (1883) expressed a contrary view arguing:

The maxim is frequently, though ignorantly supposed to mean that there cannot be such a thing as legal guilt where there is no moral guilt, which is obviously untrue, as there is always a possibility of a conflict between law and morals.

(c) Cockburn CJ in *R v Sleep* (181) held that "it is a principle of our law that to constitute an offence, there must be a guilty mind, and that the principles must be imported into the statute."

You should be careful not to be led to carry the doctrine further than necessary. These are crimes where normal and legal guilt coincide. Example is murder m stealing, robbery, rape etc. They are in *mala in se*. These are conduct that 'may involve' a husband raping his wife. Compare with normal guilty crime of absolute or crime of vicarious liability.

Crime *mala prohibita* have no moral stigma, e.g drug related crimes. These are crimes for which legal guilt is a precondition, eg homosexuality. The criminal law should aim at greater concurrence between law and moral so that they can supplement and reinforce each other and factual observation of the law.

3.4 Assumption of Freewill

The classical orthodoxy is that an offender commits crime by choice and therefore should be deemed to intend the consequences of his act or omission.

The criminal code subscribe to the idea that an offender may sometime act involuntarily or act of force will. See section 24 of the criminal code general defence to crime.

3.4.1 Act or Omission

The law defines crime or offence in terms of Acts or Omission. Assault involves bodily movement, like murder or arson. They are offences usually committed by "acts". An omission to provide necessities to an infant by somebody who has a duty to do so is criminally liable should the infant die as a result. A crime can be in part an act and in part an omission.

3.4.2 Harm

The criminal law sticks to punish harm, e.g wounding, assault occasion harm etc. Act crime may cause harm. Whereas the event crime may or may not. Inchoate offences are punishable even if the desired results are impossible of achievement and no harm has occurred. Example is stealing from an empty pocket.

3.5 Strict and Absolute liability offences

3.5.1. Absolute liability Crimes

Absolute liability offences and strict liability offences are something wrongfully used interchangeably. Absolute liability offences are offence which admits of no defence. Whatever and no requirement of proof of *mens rea*. Strict liability offence admits defences, and proof that the offender has acted voluntarily.

3.5.2 Strict liability Crime

This is an exception to the *mens rea* rule that guilty intention is a precondition in crime. In strict liability crimes there is no *mens rea*, the fault element does not or need not correspond on the external element. It suffices that the forbidden conduct has occurred..

For example, when you drive dangerously, you commit offence. Your intention is immaterial.

Other Contents

There are other important features of administration of justice contained in the criminal law. Examples are :

- Presumption of innocence
- Burden of proof
- Protection against double jeopardy

- One process provision such as rules guarding arrest, bail, detention and fair Hearing
- Defence to criminal liability (general and partial)
- Penal measures constructed around reformation and rehabilitation of the offender.

4.0 Conclusion

It should not be assumed that the criminal law in Nigeria follows the common law. What is of paramount consideration is the language of the statute creating the offence.

5.0 Summary

Criminal law is an aspect of police law. It has acts foundation on common law; and provides for *mens rea*, act or omission (*Actus reus*) to crimes. There are also strict and absolute liability offences.

6.0 Tutor-Marked Assignment

Distinguish between Absolute and strict liability offences

7.0 REFERENCES/FURTHER READING

Slapper; G : The English Legal System, 7th Ed, Cavendish Publishing Ltd
India

FGN: - The Criminal Code

- The Penal Code

The Constitution of the Federal Republic of Nigeria

Unit 3: History and Sources of Nigeran Criminal law

1. Introduction
2. Objectives
3. Main Content

4. Conclusion
5. Summary
- 6 Tutor Marked Assignment

1.0 Introduction:

Nigeria has over 350 ethnic – linguistic groups, each with its own custom, level of socio-economic development; social needs and challenges. Each of the different groups had its own system of administering justice – criminal or civil. The system of law was informed, based largely on unwritten customary law (including Sharia'h law which was written). These laws were humane, and flexible but also served the law.

The linguistic groups have their custom which guided their behaviour. Among them, there are broad similarities which serve as bounds among the groups. These bounds are further reinforced by strong and common beliefs and traditions. It is from the custom of these communities or particular ethnic groups that customary law is distilled. It is law by virtue of its nature as an expression of the general consciousness of right, not by virtue of the sanction.

Characteristics of a customary law:

- Minor of accepted usage or incline of the people that observe it
- Flexible, organic, regulatory and a living law of the indigenous people who are subject to it.
- Unwritten, either wholly or partly
- Long and unvarying habits and in existence at the internal time, not dead ashes or customs of by gone days.
- Accepted as a custom of universal application and enjoying the assent of the community

Colonial law

The British and other foreign traders, missionaries, explorers or aliens came with their notion of justice, order and the society. In this unit, you will learn how these laws evolved.

Customary Criminal Law.

The notion of ethnic – linguistic groupings connotes some level of interaction and human organizations, implying that they probably existed, a scheme of rules or law coupled with instruments of compulsion which had the effect of enforcing obedience. If this was not the case, the groups would not have survived.

The laws, as they were, varied with groups, space, character, and level of social and economic development and challenges. As one moved from one group to another or one place or age to another, there were observable different and sometimes conflicting norms and practices. Certain practices by common adoption and long unvarying habits, have grown to have the force of law. They became the organic law of the indigenous peoples, and they regulated their lives and transactions.. These became the customary law- civil or criminal.

It is not every custom that is customary law and customs. As a result of the cession of Lagos and the Berlin Conference and subsequent partition of Africa,. Britain increased her concerted effort to assert her authentic claim over Nigeria. By various ordinances, British laws were extended to Nigeria.

At first, the received law operated side by side with indigenous law. Later, the British type of courts presided over by Britons enforced local laws which they considered were not repugnant to natural justice, equity and good conscience or incompatible with any local statute. Still much later customary criminal law was completely abolished. This received

constitutional expression in the Constitution of 1960 which provided as follows:

No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law.

This provision has been replicated in all the subsequent Constitutions.

Codification of the Criminal law.

In the last few decades of the 19th Century, an attempt was made to codify the Common Law. That draft Code by Sir James Fitzstephen in 1878, was modified and adapted as the Criminal Code for Queensland, Australia in 1899 and the protectorate of Northern Nigeria in 1904. Following the amalgamation of the Colony and protectorate of Southern Nigeria and the protectorate of Northern Nigeria in 1914, the Criminal Code was made applicable to the whole of Nigeria. In 1959, the Northern Region of Nigeria repealed the Criminal Code and adapted the Penal Code, which was modeled after the Maliki law and the Penal Code of the Sudan and India. Thus at Independence, the Penal Code applied in the Northern Nigeria while the Criminal code applied in the Western and the Eastern Nigeria. To day, the Penal Code applies in the 19 Northern States while the Criminal code applies in the rest of 17 Southern States of the federation.

Source of the Criminal Law is:

The source of the Criminal Law is the statute.

A statute includes the following:

- An Act of the National Assembly
- A law of the State House of Assembly
- A decree of the Federal Military government.
- An edict of the state military governor
- A subsidiary legislation

4.0 Conclusion

The Nigerian legal system has substantial body of detailed legislation which comprises the primary sources of Nigerian Criminal Law. The Criminal law is written, pragmatic and exhaustive.

5.0 Summary

Pre-colonial law on crime was the customary criminal law. During the British dependency, the English type of law and judicial institutions, and the customary law initially operated side by side. Following the Parliament's articulation of what should be the law on crime, the customary law ceased to exist except in so far as they are written. The source of Criminal in Nigeria is statute.

6.0 Tutor-Marked Assignment

Account for the History of the Law on Crime in Nigeria.

7.0 References

1. Slapper , A Slapper; G : The English Legal System, 7th Ed, Cavendish Publishing Ltd India
2. Jefferson, M The Constitution of the Federal Republic of Nigeria
3. FGN: - The Criminal Code
- The Penal Code

Unit 4: Elements of an Offence: Mens Rea

- 1 Introduction
- 2 Objectives
- 3 Main Content

- 3.1 Definition
- 3.2 The Principle of law
- 3.3 Intention
- 3.4 Knowledge
- 3.5 Recklessness.
- 4 Conclusion
- 5 Summary
- 6 Tutors Marked Assignment
- 7 References.

1.0 Introduction

A crime consists of both external element (*actus reus* or *overt act*) and a mental element (*mens rea* or guilty intent). Accordingly, a person is deemed not liable for his/her conduct unless the prescribed state of mind concurs with the proscribed event or state of affairs. Hence the axiom: *actus non facit reum, nisi mens sit rea* (meaning, an act does not make a man guilty of a crime unless his mind be also guilty). As Lord Hailsham explains, what is *reus* is not the *actus* but the man and his mind respectively. Certain common words are used to donate the mental element of an offence, e g 'knowingly', 'wilfully', 'recklessly' 'maliciously' etc. We shall be learning more of these in this Unit

2.0 Objectives

When you have studied this Unit, you should be able to:

1. Identify the mental elements in a crime
2. Describe *mens rea* as an element of a crime

2. Identify common words or expressions which connote both the physical and the mental elements of crimes e.g possession, permit, appropriate, cultivate, abandon etc.
3. Critique the terms *actus reus* and *mens rea*

3.0 Main Contents

There are two elements of an offence. These are *mens rea* and *actus reus*. To constitute a crime, there must be a causal link between both.

3.1. Definition of Mensrea

Mens rea is a state of mind. No single word can successfully denote it and there has been no consistency in the choice of descriptive words concerning it. It may take any of the following forms

Intent to do the actual wrong done

An intent to do unlawful act though not the actual wrong done e.g X shoots at B intending to kill him, but hits C

A complete disregard of the consequences of dangerous act. An example is where Z throws bricks into a busy street without warning the passersby.

Gross negligence and disregard of the consequence

Negligence, e.g. Y, a railway signal man leaving his post, without good cause

An intent to do something wrong morally though not a wrong in law. Example is where one 'steals' an object, which turns out to be his/her property

Aguda subsumed the general principle of *mens rea* into three categories, namely:

An intention to do the act forbidden by law

Recklessness as to whether or not a legally forbidden consequence is brought about.

Negligence in so far as negligence can be required as a state of mind

3.2. Doctrine of *mens rea*

As a general rule, a person cannot be convicted of a crime, unless it is proved that he/she has a guilty intent. (*Fowler v Paget*) This is enshrined in the principle: *actus reus non facit reum nisi mens sit rea*. The principle seemed to have enjoyed some elements of sacrosanctity such that Cockburn, CJ could say that to constitute an offence, there must be a guilty mind and that “the principle must be imported into the statute”. In line with this thought, the court in *R V Hibbert (1867)* held that the ‘Knowledge’ that a girl seduced was in possession of her parents was one of the conditions precedent to liability

Probably, the principle was an off shoot of the dichotomy between law but it morality and has not always been true; for there can be legal guilt without a moral guilt as you already learned in your discussion of the Nigerian Legal System. For example, offences of absolute liability, e.g. public nuisance do not require *mens rea*.

The doctrine of *mens rea* therefore means no more than that an offence is constituted only if the perpetrator has intentionally brought about the consequence, which the law forbids, or in some cases has brought about such a consequence recklessly or negligently.

The idea is not to punish one for whatever consequence(s) which may flow from one’s act or omission but only for such consequence(s) of one’s conduct as one actually foresaw or which one should have foreseen.

Self Assessment Exercise

Examine the following cases and point out the following:

- (a) what the persons named intended;
- (b) what he/she did or omitted to do;
- (c) the direct result of his/her act or omission;
- (d) the consequences

(e) extent of his/her liability.

Case 1: Chinedu lights a match, maliciously sets Ngozi's picture on fire; the fire spreads, burning down the whole house.

Case 2: Uncle Dan went into the ship, where it berthed in Port Harcourt, stole some rum. As he rushes out of the ship, the bottles fell; the bottles were broken and the liquid caught fire, setting the whole ship ablaze.

Let us learn a little more on the components of *mens rea*.

3.3 Intention and motive

It is important to distinguish motive from intention

3.3.1 Intention

Intention may mean the following:

Willingness to bring about something planned or foreseen

The state of being set to do something

The purpose or design with which an act is done or omission made

Foreknowledge of the act or omission coupled with the desire of it, such knowledge and desire being the cause of the act or omission

According to Glanville William, an act or omission is intentional if and in so far as it exists in idea before it exists in fact, the idea realising itself in the fact because of the desire by which it is accompanied.

Upon analysis, intention manifests in the following:

Fusion of thought and volition

Foresight that certain consequence will flow from an act or omission

Desire (or wish) for that consequence working as a motive, which induces the act

Turner says that Intention denotes the state of mind of the person, who not only foresees but also desires the possible consequences of his/her conduct.

3.3.2 Specific Intention

The statute creating an offence may specify particular intent. See for examples:

Criminal Code, section 316 (murder) and

Penal Code section 221(a) (culpable homicide punishable with death)

Both sections have provided intention for murder or culpable homicide punishable with death, to wit: the intention to kill or cause injury likely to cause death. See *R v Vickers (1957)*

Criminal Code section 508 and Penal Code section 95 also proscribe under pain of punishment, the offence of attempts to commit offence.

Criminal Code section 383 (stealing) and Penal Code 286 (theft) require, for their intention, that the taking or appropriation must be fraudulent or dishonest

3.3.3 Intention and Motive

Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act or to form an intention is immaterial so far as regards criminal responsibility.

Sometimes it is necessary for the prosecution to prove it in order to succeed. This is because evidence of motive is always admissible in order to show that it is more probable that the accused committed the offence charged

A good motive may mitigate sanction while a bad motive may aggravate it.

3.3.4 Experts:

There are exceptions to this general rule. Motive may be a good defence for instance where Dike does an act or makes an omission reasonably and in good faith in order to save life or protect property, which destruction or loss would have been greater evil.

Statute may expressly or by implication require motive as an element of an offence. For an example, the Criminal Code, section 337 and the Penal Code, section 249 seek to punish 'whoever administers to any person any poison etc in order to facilitate the commission of an offence.

3.3.5 Proof

Intention is incapable of positive proof. Its proof may be by way of the following:

Confession.

Presumption, e.g. that one intends the natural and probable consequence of his/her act or omission.

Inference from facts which are proved or from surrounding circumstances.

Statutory prescriptions, e.g. Penal Code sections 19(1) and 27

3.3.6 Test

Suppose Ado stabs Teddy "to make him feel pain" or Haruna scribbles a libel against Kolo and posts the letter with the intention that it may be read but the letter got lost in transit or was not read.

How is intention to be imputed?

Is the test to be used subjective or objective?

See the important case of *DPP v Smith (1960)*. In that case the Police suspected D of stealing or of being in possession of stolen goods; they stopped him but he refused to stop. One of the Policemen clung to the vehicle. D then drove zig zag in order to shake off the Policeman and avoid arrest. The Policeman drops off and is killed by an on coming vehicle driven by Y

The trial Judge, Donovan, J, applying the Objective test, directed the jury as follows:

If you are satisfied that he must as a reasonable man have contemplated that grievous bodily harm was likely to result to that officer and that such harm did happen and the officer died in consequence, then the accused is guilty of murder..

The Court of Appeal substituted objective, for subjective test, affirming that what was material is what the accused contemplated, not what a reasonable man would.

On further appeal, the House of Lords held that what was material was:

Whether the accused was unlawfully and voluntarily doing *something to someone*. It matters nothing what the accused in fact contemplated as the probable result or whether he ever contemplated at all, provided he was in law responsible and accountable for his actions. In their Lordships opinion, the only test available is what the ordinary man would, in all the circumstances of the case, have as the natural and probable result

4.0 Conclusion

Mens rea means a guilty intent, It is a state of blameworthiness required in a crime. Except where statute expressly provides otherwise, a person cannot be convicted for a criminal offence unless it is proved that he has a guilty intent

5.0 Summary

Guilty intent may take any of the following forms:

- a) An intent to do the actual wrong done
- b) An intent to do an unlawful act, though not the actual wrong done.

6.0 Tutor Marked Assignment

To what extent does DPP v Smith represent or depart from the Nigerian law.?

Be guided by the Criminal Code section 316 and the Penal Code, section 221.

7.0 REFERENCES

- (1) Slapper; G : The English Legal System, 7th Ed, Cavendish Publishing Ltd India
- (2) Jefferson , M FGN: - The Criminal Code
- The Penal Code
- (3) Molan; The Constitution of the Federal Republic of Nigeria

Unit 5: Elements of an Offence; Mens rea Cont'd

Introduction

Objectives

Main Contents

3.1 Recklessness

3.2 Negligence

3.3 Knowledge

3.4 Malice

s

Conclusion

Summary

Tutor Marked Assignment

1. Introduction

In the last unit you learned about ‘intent’, ‘intention’ as a form of mens rea. An unlawful intent is the intent to do something, which is morally or legally wrong. It is the intention to do the actual wrong done or do an unlawful act though not the one done. In this unit, you will learn additional forms of mens rea.

2. Objectives

When you have studied this Unit, you should be able to:

- 1.Explain what Recklessness is.
2. Explain the term Negligence
- 2.Distinguish between Intention, Recklessness and Negligence
4. Critique the doctrine of mens rea.

3. Main Content

Mens rea may take any of the following forms of intention, recklessness or negligence.

3.1 **Recklessness**

Recklessness is a lesser degree of fault than intentional wrongdoing but a greater degree of fault than negligence. It’s akin to rashness or being rash.

Recklessness has been described as:

- A state of mind in which a person does not care about the consequences of his/her actions.

- Conduct whereby the person doing the act or making the omission does not desire harmful consequence but nonetheless foresees the possibility and consciously takes the risk.
- A high degree of carelessness; e.g Doing something or omitting to do something, which omission or doing of the thing involves a grave risk to others, whether the doer or omitted realizes or not.

Over the years the Courts have also given 'Recklessness' several different shades of meaning, thus compounding our understanding of "Recklessness".

Judicial interpretations of the term include the following:

- High degree of negligence for a conviction for manslaughter
- Actual awareness of the risk of prohibited consequence occurring.
- Failure to give thought to an obvious risk that the consequence would occur.
- Creation of a substantial and unjustifiable risk of harm to others and by conscious (and sometimes deliberate) disregard for or indifference to that risk.
- Gross deviation from what a reasonable person would do.

3.2 NEGLIGENCE

Negligence implies .

A failure to exercise the standard of care that a reasonable prudent person would have exercised in a similar situation

- Any conduct that falls below the legal standard established to protect others against unreasonable risk of harm.
- Culpable carelessness of inadvertence.

Negligence implies an intentional conduct, which is not intended to be harmful but which an ordinary and reasonable prudent man would recognize as involving a strong probability of injury to others.

3.2.1 Categories of Negligence

The Nigerian law followed the Common Law on Manslaughter to quantify negligence into;

(a) Criminal negligence

This is reckless disregard to the lives of others e g: illegal surgical operation by a grossly incompetent and unqualified person which results in death: *R v Ozegbe (1957)*

(b) "Grossest Negligence" *R v Adedoyin (1955/56)*

(c) Gross Negligence: *R v Akerele*

See the Criminal Code section 317 and the Penal Code section 227 (7)

3.2.2 Intention, Recklessness and Negligence

Jerome Hall explains:

In intention, the actor chooses, decides, and resolves to bring a proscribed harm into being; he consciously employs means to that end.

The reckless person makes no such decision, resolution, and choice. But while he has not made that drastic decision, he has made an ominous one. He has chosen to increase the existing chance that a proscribed thing will 13

Mens rea is a general requirement for crime, but negligence is not usually sufficient. In other words, negligence is not the kind of *mens rea* that characterizes the ordinary run of crime.

3.2.3 Statutory Consideration

In a number of cases statute may prescribe negligence as a form of *mens rea* for an offence. Examples are:

- (a) Criminal Code 317 and Penal Code 227 (7). Both ascribe criminal liability for unlawful homicide due negligence i.e manslaughter or culpable homicide not punishable with death
- (b) Criminal Code, section 343: reckless and negligence Acts
 - © Penal Code, section 196: Negligent Conduct causing danger to property and person
- (d) Criminal Code section 48 (2) and Penal Code section 415: Negligently and unlawfully permitting the escape of prisoners of war.
- (e) Penal Code section 128: Public servant omitting to arrest or negligently permitting escape from custody.
- (f) Criminal Code section 138: A prison or police officer negligently permitting a person in lawful custody to escape.
- (g) Road Traffic Act, section 18: Driving on the Highway recklessly or negligently.

The Prison Warder from whom one of the prisoner escape when he took them out to work or a police constable who loosened the handcuff to allow a dangerous prisoner to attend to nature and the prisoner raised a false alarm of snake and escape were inefficient but did not negligently suffer of negligently permit such escape.

The court will not border itself to distinguish between the categories of negligence once it is satisfied that the result of conduct not have occurred without rashness or negligence on the part of the accused person.

Self Assessment Exercise

I gross negligence the same as recklessness?

3.3 Knowledge

Knowledge is a concept of *mens rea*. The statutes creating some crimes may use certain words or phrases to denote knowledge as a condition precedent to a finding of guilt or of criminality apportionment responsibility. Examples of such words are: Knowingly, willfully, knowingly and recklessly, knowingly and with intent to defraud, knowingly and fraudulently, willfully cases, permit, willfully refusing etc.

These words and others like them suggest that before you can gain conviction for the offence in question, you must at any rate prove that the accused person knows the circumstances, which constitutes the offence.

Let us use examples:

Penal Code sections 48 (1), 120(2), 170, 225, 439, 480 etc

Criminal Code sections 104, 132, 140, 156, 178, 321, 356, 387, 389, 468, 472(2), 476 etc.

3.3.1 Forms of Knowledge

Knowledge may be actual, imputed or constructive.

See sections 18, 178, and 317 (PENAL Code) and 427 (Criminal Code)

Activity

Read the following cases:

Caldwell (1982) Act 341

Andrew v DPP (1937) Ac. 576

Steane (1949) KB 997 and *Chandler (1963) Ac 763*

From the reading of these cases, explain :

- Oblique intention
- Willful blindness

Attempt the following:

Is oblique intent part of intention or foresight?

Is willful blindness recklessness?

3.4 Malice

Malice, as an element of *Mens rea* may be implied when such terms as maliciously, willfully, without lawful excuse are contained in the definition of the offence. Malice connotes Intention and Recklessness.

See the Criminal Code sections 305, 337, 443 – 447, 450, etc. Also the Penal Code, section 326.

3.4.1 Intention, Foresight and Recklessness.

Turner explains:

Intention cannot exist without foresight, but foresight can exist without intention.

For a man may foresee the possible or even probable consequences of his/her conduct and yet not desire them to occur; nonetheless, if he persists on his/her course he/she knowingly runs the risk of bringing about the unwished result.

Recklessness therefore is an advertent negligence, some kind of rashness, an attitude of mental indifference to obvious risk.

4.0 CONCLUSION

This unit is an introduction into the “Elements of the Offence” – that is ‘all the consequences and circumstances of the offenders act (or state of affairs). Which constitute the *actus reus*.__This unit specifically has address the issue of *mens rea*

The motion that a court neither should nor find a person guilty of an offence against the criminal law unless he has a blameworthy state of mind is common to all civilized penal systems. It is founded upon respect for the person and for the freedom of human will. To be labeled a criminal the wrong doing must have been consciously committed. To subject an offender to punishment, a mental element as well as a physical element is an essential concomitant of the crime.

The statue creating the crime may express dispense with the requirement of *mens rea*

5.0 SUMMARY

Mens rea means “guilty mind” intension, knowledge, or recklessness with respect to all the elements of an offence together with any ulterior intent, which the definition f the crime requires.

You have learned the principles of *mens rea*, its different forms and how it may be injected. Any ambiguity you may face may be resolved when you read a few of the important decided cases on the matter.

Do not forget to distinguish ‘motive’ from intention’ and note the few instances when the former may be required.

6.0 TUTOR MARKED ASSIGNMENT

1. The Act is not guilty unless the mind is guilty. Discuss the validity of this statement with reference to decided cases

7.0 REFERENCES

- (1) Slapper; G : The English Legal System, 7th Ed, Cavendish Publishing Ltd India
- (2) Jefferson , M FGN: - The Criminal Code
- The Penal Code
- (3) Molan; The Constitution of the Federal Republic of Nigeria

Unit 6: Element of an Offence: *Actus Reus*

- 1. Introduction**
- 2. Objectives**
- 3. Main Content**

- 3.1 Description**
- 3.2 Identifying the Actus Reus.**
- 3.3 Omission**

- 1. Conclusion**
- 2. Summary**
- 3. Tutor marked Assignment**
- 4. References**

1.0 Introduction

When a person goes to the Police and complains that an offence has been committed, the police is bound to record his/her complaint. Having recorded it, the police may refuse the complaint or dismiss it summarily at the counter. He may also receive and refer it for investigation. Much depends on whether he is satisfied that an offence has been committed.

Even when the police themselves are responsible for discovering the crime, they would have been satisfied that a prohibited act or omission had taken place. That prohibited act is the conduct of the suspect or element of the proscribed act or omission. It is the *actus reus*.

In the course of investigation, further questions are asked. Very importantly the police try to find out whether the suspected person possessed the requisite state of mind at the time of the act or omission. That requisite state of mind or fault element is the *mens rea*.

Both the *mens rea* and the *actus reus* are not mutually exclusive concepts, but they are required to be contemporaneous. And this brings us to the third stage, when the police have to examine the defences available to the defendant in respect of his actions or omissions.

Essentially therefore, these are two elements of an offence, namely:

- *Actus reus* , and
- *Mens rea*

Both *actus reus* and *mens rea* must concur in order to constitute a crime. It is only in exceptional cases that the act is guilty and the mind not guilty.

The presence or absence of defences goes to issues of criminal responsibility as we shall see later.

2.0 Objectives

When you have studied this Unit, you should be able to:

1. describe actus reus
2. describe mens rea

3.0 Main Content

Actus reus is an overt act, an act done where is for the purpose of furthering a guilty intent.

A lawful act which is done without a guilty intent is not an offence. In the way, a wicked thought or bad mind without more may not constitute a crime

Activity

Suppose Ojo, intending to steal Amaka's umbrella, later finds out that the umbrella, which he stole in fact is his.

Describe Ojo's mind

Describe Ojo's act

Are Ojo's act and Ojo's mind congruent; do they concur; are they contemporaneous?

An overt act may be incomplete. It suffices that it constitutes a step towards the completion of an offence. Such would be the actus reus in offences of "attempt", or 'incitement'.

3.1 Description of *Actus Reus*

Smith and Hogan states:

It is a fundamental principle of Criminal law that a person may not be convicted of a crime unless the prosecutions have proved beyond reasonable doubt both:

- (a) that D has caused a certain event (in a result crime) or that responsibility is to be attributed to him for the existence of a certain state of affairs (in a conduct crime), which is forbidden by criminal law, and
- (b) that D had a defined state of mind in relation to the causing of the event or the existence of the state of affairs.

(a) **Event or State of Affairs**

The event or state of affairs from the external element of an offence and are referred to as the *Actus reus*.

The Event or Conduct:

The event which forms the *actus reus*, is external to the physical activities of the suspect. It is the result, the consequences of the defendant's act or omission.

If D shoots and kills V, the physical act of D is shooting, the result of such shooting is the killing of V. The factual cause of the killing is D's shooting – the *actus reus*.

(b) **State of Affairs:**

This is a condition which has been found to exist with little or no participation from the defendant. There may even be no 'act' at all.

Examples are as follows:

- being found drunk in a public place
- being in possession of articles used for house breaking
- being in possession of a controlled drug
- membership of a proscribed society.

State of affairs type of *actus reus* arises often in conduct crimes, public nuisance etc.

In a charge of dangerous driving, the *actus reus* is itself the dangerous driving. It is a state of affairs brought about by the defendant. What the defendant did itself constitutes the *actus reus*.

It is obvious by now that *actus reus* is not just a guilty act. It is more than that. It extends to a state of affairs.

2.2 Identifying the *Actus reus*

Each definition of crime contains the element of its *actus reus*. As there are numerous kinds of offences in our statute books, it becomes impracticable to state every kind of *actus reus*. One has to examine the definition of an offence in order to determine the requisite *actus reus*.

Illustration;

Stealing has been defined as the fraudulent taking of anything capable of being stolen, or fraudulent conversion to one's own use or to the use of any other person, anything capable of being stolen, with intent permanently to deprive the owner of the thing of it.

(Criminal Code, section 383).

Under the Penal code, whoever intending to take dishonestly any movable property one at the possession of any person, without that person's consent, moves that property in order to take it is said to commit theft.

Whoever dishonestly abstracting, diverts, consumes or uses any electricity or electric current also commits theft. See section 286, Penal Code.

In either case, the terms 'fraudulent (or fraudulently)' intention to permanently deprive or intending' dishonestly refer to the state of mind (*Mensrea*)

Act of "taking" (conduct) the "property of another" (circumstance) pertain to *actus reus*

You can understand why some writer define *actus reus* as all the element of an offence except the mental element (*mens rea*)

See the following cases : *Winzar v Chief Constable of Kent (1983)* In any case, *actus reus* must be proved *R v Deller (1952)*

3.3 Commission

The general rule in Criminal law is that there can be no liability for omission to act, unless at the time of the omission to act, the defendant may have a legal duty to act or take positive action. A moral duty to act is not enough. One is not his brother's keeper in Criminal law. See the case of *R v Akanni, R v Speck (1977)*

Note that the decision in this case would have been different if the defendants were employed as a pool attendant employed to ensure the safety of pool users.

Legal Duty:

Legal duty to do an act and liability for failure to act, may be derived from common law or statute .

A statute may impose upon the defendant a legal duty to take some positive actions. Example:

The Children and Young Persons Act 1933 imposed on parents or persons *in loco parentis* the duty to provide food and medical care for their wards and created the defence of willfully neglecting a child.

The Road Traffic Act imposes on motorists, a duty to report accidents to the police.

See *Re A (Children (Conjoined twins: surgical Separation (2004)*

Contractual Duties

The term of a contract may be such as to impose a duty on one of the parties and that other party or families have accepted or acquiesced.

See *R v Pithhwood (1002)* and *R v Bengel (1865)*

Family Obligation

A parent owes his/her child a duty to feed him or her. This duty probably extends beyond parent – child and may cover the aged person over where

one is responsible or whose there is established a relationship of reliance between parties: *R v Instan (1893)*; *R v Stone and Dobinson (1977)*

Unwilled Acts

The effect of section 24 of the Criminal Code is to relieve a defendant from responsibility for unwilled act or from its consequences ensuring through no ones fault. Examples are:

Where something is done by the defendant's muscles without the control of his mind (i.e when his actions are "automatic" and arise from spasms, reflex actions, sleep walking nightmares, fits etc).

This may not apply if the state of automatism is self induced as whose defendant voluntary consumes a large quantity of alcohol or other drugs. (*R v Bacley (1983)*).

Problem of defining *Actus Reus*

(a) Different *actus reus*

Actus reus may differ from crime to crime This may in part be the ause or effect of conceptual clarification surrounding '*actus reas*'.

Illustration:

<u>Offence</u>	<u>ActusReus</u>
Murder	Causing death
Burglary	Breaking and entering a building or part of a building without the consent of the owner.
Stealing or theft	appropriating the property of another.

(b) Sameness of *Actus reus*

Conversely, the same kind of *actus reus* may suffice for a number of offences.

For example causing death is the *actus reus* for each of the following offences:

Murder

Manslaughter

Infanticide

Other homicide offences

3. Situational *Actus reus*

Suppose, there is an arson. Somebody's house is burnt down; causing damage to the property of another.

Damage constituted in the offence of arson and arising from the situation of arson is an *actus reus*.

Proof

Actus Reus requires proof:

Let us explain this duty by reference to decided cases.

R v Deller (1952)

D took his car to a trade-in. he represented that there was no money owing on it. He believed that there were payments outstanding. It

looked as if he had made a false pretence. He was arrested and charged with false pretence.

The evidence before the court was that he had a loan on the car; the loan was void and in law did not exist. In essence, he did not own any debt. His representation turned out to be true, though he mistakenly believed it to be false.

The Court of Criminal Appeal quashed the defendant's conviction on the ground that the prosecution had failed to prove that the pretence was false.

You can see that in Criminal law, you cannot be guilty of an offence simply because you believe that you are guilty. It is for your accused (prosecution) to prove the whole of the *actus reus*.

The defendants' guilt in this case is in the realm of thought; and that won't do. A belief cannot make a lawful act unlawful.

R v Dadson (1850)

In this case, a constable guarded a corpse from which wood had been stolen on several occasions in the past. The constable saw the victim come out of the corpse, carrying wood. The victim had stolen the wood. The constable shot at and injured him, and was charged with shooting with intent to cause grievous bodily harm.

Court

At that time, stealing was felony only if a person had two previous convictions and it was lawful for a constable to shoot an escaping felony.

The Court found that the victim had two previous convictions but the constable not known. The constable was convicted.

The court of Criminal appeal held that an accused did not have a defence unless he was aware of the facts justifying the defence at the time of the offence.

This case is over 150 years old. Its importance lies on:

1. The policy that you should ask questions first and shoot later.
2. Authoritative proportion that circumstances of justification or excuse are part of the mental element, not *actus reus* of part of it

Activity

Identify the element that is absent in :

- (a) Deller's case
- (b) Dadson's case.

Identify the required actus reus in

- (a) Deller's case
- (b) Dad's case

Self Assessment Exercise

It has been contended that Dell and Dadson are in all years identical, that in both cases there was no *actus reus* and Dadson is wrongly decided. Comment

Caveat

Dadson may be decided differently to day. In Nigeria it is legitimate to use force to effect an arrest if the victim was committing. One when he was arrested.

If he was not in the act of committing an offence, a reasonable ground for suspecting that the victim has committed a felony suffices’.

4.0 Conclusion

Separation of elements of crime into *actus reus* and *mens rea* is for convenient of exposition and discussion of crime. In practice crime is considered holistically as there may be inter mixture in that definition of several crimes.

5.0 Summary

Actus reus or the *actus* act is the external element of crime. It is the residual in the definition of crime after you have removed the *mens rea*. It may be an event, a state of affairs or the result of an act or omission. It is either an act or omission.

6.0 Tutor marked Assignment

1. (a) Define Actus Reus
- (b) Separate the elements of the offence of “Conspiracy” into
 - (i) mens rea
 - (ii) actus Reus

3. Is it true that Actus Reus differs from Crime to crime?

7.0 References

Slapper; G : The English Legal System, 7th Ed, Cavendish Publishing Ltd
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FGN: - The Criminal Code

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The Constitution of the Federal Republic of Nigeria. 1999

Module 2

Unit 1: GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

1. Introduction
2. Objectives
3. Main Content
 - 3.1 Intention, Motive
 - 3.2 Mistake
 - 3.3 Corporation
 - 3.4 Husband and Wife
 - 3.5 Exemption from Criminal Responsibility
 - 3.6 Compulsion/Coercion
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 - 3.8 Intoxication
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 - 3.10 Immaturity
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1.0 INTRODUCTION

The Constitution of Nigeria provides that no person shall be criminally liable and punished without there being first, a law creating the offence and prescribing a punishment for it. The Constitution also proscribes a retroactive criminalisation. Where the written law proscribes a conduct and a person violates the law and the prosecution is able appropriately to prove the facts of the case, the court may yet acquit the purported offender. In essence, though a person may in fact be responsible for an act or omission, he/she may not, in law, be held responsible. The reason may be that the act or omission was excusable or justifiable. Perhaps the accused would have been exonerated because he avails himself/herself of the defences or immunities allowed in law, or for some reasons as we shall see in this unit.

2.0 OBJECTIVES

When you have studied the unit, you should be able to:

- Apply the defence of Accident under the criminal law
- Apply the defence of an event occurring independently of the will.
- Apply the defence of ignorance of law under the criminal law
- Apply the defence of Mistake in law
- Critique the defence of accident
- Critique the defence of mistake.

3.0 MAIN CONTENT

Definition

Literarily. Criminal responsibility means:

Liability to suffer or pay compensation in certain eventualities

Legal accountability; liability to be made to account or pay;
Capacity which normal people have to control their actions and conform to law

Statutorily, the Criminal code defines the term to mean

liability to punishment as See for an offence. See section 1

The Criminal has laid down certain circumstances in which a person who breaks the law and ordinarily ought to be punished should not legally be held accountable. The reason may be that the person lack the mental capacity, he is excused by law, his conduct constituting the offence is justifiable or by reason of his status, position or office or other grounds. sfollowing defences are open to any person charged with an offence; legal accountability

Section 24: Intention, Motive

A person is not criminally responsible for an act or omission, which occurs independently of the exercise of his will or for an event which occurs by accident.

An event occurs by accident if:

It is too remote and indirect a consequence of the accused's unlawful act or omission

A reasonable man in the shoes of the accused, would not have foreseen it as likely or probable
 The accused person could not reasonably have foreseen as likely or probably

Illustration through cases:

DTimbu Kohan (1968) H and W quarrelled violently. H became tired of the verbal exchanges, went outside the house and sat down. W followed H outside, berating him. It was dark. He picked up a light stick, aimed a moderate blow in the direction of W's voice. The blow struck the little baby W was carrying in her arms on the head and killed it. Held the event is an accident in that the accused could not reasonably have foreseen it and did not in fact foresee it.

StatevAppoli(1970)

A and B were pushing each other near a river, T warned them that they were playing a dangerous game. B pushed A further. A slipped, fell into the river and drowned.

Rejecting a defence of accident, the court held that a reasonable person would have appreciated the danger of pushing another near a river in the particular circumstance

An act or omission which occurs independently out of the exercise of one's will is an accident and this term is in two senses

1. Of consequences due to some external agency over which the accused has no control
 e.g. a person riding a horse bolting against the will of the rider and without any fault on his part, knocks another person down.
2. Of unintended consequence of a lawful or voluntary act,

(e.g. where a man working with an axe and its head flies up and kills a bystander or where in a lawful game, e.g one of the parties in the boxing tournament kills his opponent.

Mistake

Mistakes as a defence to crime, are of two kinds:

1. mistake of law
2. mistake of facts

Mistake of Law

Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence. Mistake of Law, also called ignorance of law, is an invalid defence.

Except where knowledge of the law is an element of the offence charged. Thus a mistake of Law would be a valid defence in the following cases.

23 Action from a bona fide claim of right

257 Action from execution of an erroneous sentence, process or warrant.

258 Action from Sentence or Process or warrant without jurisdiction

260 Action from Irregular process or warrant

To avail a defence in such cases, the accused must act in good faith and in the belief that the sentence, process or warrant was issued with authority.

Ogbu v R (1959)

O was alleged to have given a bribe to D in order to induce him (D) to appoint O a village head and therefore a tax collector.

O and D were both charged. O pleaded a mistake of law, contending that he did not know it was an offence to so bribe D and was acquitted. On appeal by the other accused (D). The Federal supreme Court expressed its opinion that it was not satisfied that the trial court was right in law in acquitting the first accused on those findings.

Ignorance of law is a good defence where knowledge of the law by the offender is expressly declared to be an element of the offence. Examples are:

receiving stolen property, not knowing them to be stolen.

Uttering Counterfeit coins, not knowing them to be counterfeits.

Mistake of facts

A person who does or omits to do an act under an honest and reasonable but mistaken belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist, section 25, Criminal Code

Where there is a reasonable and honest mistake of fact the offence is treated as if the fact had been true.

B reasonably mistakes D's bicycle for his and takes it.

The mistake must be such that any reasonable man would be likely to make the same mistake.

It is a defence when the accused believes in a state of affairs, which if true, would justify the act done. In other words, an actor is not responsible for the consequence, which ultimately follow his/her act which results from a mistake on his/her part.

Where Amuda shoots and kills at an object which he thinks is a dog or a ghost which turns out to be a man, he would not be treated as though he killed a dog or a ghost as the case may be.

Note the limitation of the defence: the operation of this rule may be excluded by the express or implied provisions of the law

relating to the subject

Corporation

A corporation is responsible for its corporate acts or omissions like any adult and it may be charged in its corporation name with any offence other than capital crimes or offences involving violence.

As in servant-master relationship, a corporation may be responsible for the acts of its servants.

Corporate Mens rea

A Corporation may be guilty of offence involving mens rea.

1. See *DPP v Kent of Sussex contractors Ltd (1994)*
2. *R v I.C.P Haulage Ltd (1944)*

A Corporation can not be charged with murder, being a capital crime. But there is authority that it can be guilty of manslaughter

In *R v Coroner for Eash Kent, ex parte Spooner (1989)*, the court was prepared to accept that a corporate body could be guilty of manslaughter

where both the mens rea and actus reus could be established against those who were the “embodiment of the corporate body itself”

Also in *R v P & O European Ferries (Dover) Ltd (1991)* Turner J held that a company could incur liability for manslaughter, arguing that He state:

“.....if it be accepted that manslaughter in English Law (as in Nigeria law) is the unlawful killing of one human being by another human being (which include both direct and indirect acts) and that a person who is the embodiment of a corporation acting for the purposes of the corporation is during the act or omission which caused the death, the corporation as well as the person may also be guilty of manslaughter

Molan considers this judgment at least a theoretical victory for the prosecution and proponent of corporate liability for manslaughter. To convict a company, there must be evidence of gross criminal negligence, unless the offence is one of strict liability. The person doing that act is a senior manager, Director or other officer of sufficiently high status who is a manifestation or embodiment of the corporation and whose human mind can be identified as that of the corporation. If the

offence is of strict liability the evidence required is absence of due diligence. Generally, Corporate liability depends on the interpretation of the particular statute creating the crime.

Conclusion.

As a general principle of criminal responsibility, no person is criminally responsible for any act or omission unless it is voluntary and intentional except as expressly provided by statute, or for an event which occurs by chance. A mistake of law is an excuse only where the law so prescribes but a mistake of fact, generally, is a defence.

Summary

In this unit, you have learned some defences to a criminal charge. You learned that accident or events which occur independently of exercise of

one's will and mistake of facts are exculpatory. It used be law that a corporation can not commit crimes. This has ceased to be law. You will learn more defences to criminal responsibility in the next unit.

Tutor Marked Assignment

1. Discuss the scope of the defence of accident under the criminal law.
2. In what circumstances will a mistake be a defence to criminal liability?
3. A corporation is capable of mens rea. Discuss.

References.

Slapper; G : The English Legal System, 7th Ed, Cavendish Publishing Ltd
India

FGN: - The Criminal Code

- The Penal Code

The Constitution of the Federal Republic of Nigeria.

Unit 2. Principles of criminal Responsibility Cont'd

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Introduction

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3.1 Defence of husband and wife

3.2 Exemptions from criminal responsibility

3.3 Compulsion

3.4 Bona ide claim of right

3.5 Intoxication

3.6 Insanity

Conclusion

Summary

Tutor Marked Assignment

References.

1. Introduction.

The defences of accident, events occurring independently of exercise of the will as well as mistake, which you learned in the last unit, are effective response to a criminal charge. There are more of defences (general or partial) as you may have observed in chapter 5 of the

Criminal Code. In this Unit you shall learn some of these other defences and their application

2. Objectives

When you have studied this unit, you should be able to :

5 When you have studied the unit, you should be able to:

Apply the defence of husband and wife under the criminal law

Apply the defence of insanity

Apply the defence of Necessity

Apply the defence of Self defence

Critique the defence of husband and wife

Critique the case of *R v Stephens & Dudley*

Critique the defence of insanity.

3. Main Content

3.1 Husband and Wife

Criminal law does not discriminate between couples and other adults. However there may be full or partial defences to criminal responsibility available to husband and wife in certain cases: Examples are:

- (a) A married woman is not criminally responsible as an accessory after the fact where she shields her husband who commits a felony provided such husband is not a deserter from the Armed Forces of Nigeria.
- (b) Neither the husband nor the wife can be criminally liable for a crime of conspiracy between both, to the exclusion of any other.
- (c) Husband and wife are not criminally responsible for stealing each other's property while living together. Either of them bears

responsibility if they are living apart or where the property is taken with the intention of leaving the other.

- (d) Where a husband or wife publishes a libel concerning the other, no criminal responsibility is attached.
- (e) Couples are competent witnesses even in cases concerning the other. but neither is compellable other than in certain exceptional cases, where the law so provides.
- (f) A wife is excused from criminal responsibilities if she commits the crime in the presence and under the compulsion of the husband. This does not apply to offences of grievous bodily harm to the person of another or
 - (i) offences punishable with death
 - (ii) offences committed in the presence of but not under the compulsion of the husband.

3.2. Exemption from Criminal Responsibility

The certain categories of persons are exempted from criminal responsibility by reason of the public office they held. See some examples :- Sovereign, Heads of foreign states

The maxim is that the Sovereign can do no wrong and therefore beyond the reach of the law Diplomatic Representatives,

3.2.1 Judicial Officers

Judges and magistrates are not criminally responsible for anything done or omitted to be done by them in the exercise of their judicial functions, although the act done is in excess of their judicial authority or although they are bound to do the act omitted to be done.

3.2.2. Justification

An act which is not forbidden by law is justified and no criminal liability may be attached if done in the following circumstances:

1. in execution of the law. authorized execution carrying out the sentence by court
2. in obedience of the order of a competent Authority bound by law to obey, unless the order is manifestly unlawful.
If the Police breaks into a house, uses force to arrest a felon on a written authority of a magistrate, neither the police nor the magistrate incurs any criminal liability
3. in the prevention of a forceable and atrocious crime , e.g permissible murder person cannot kill a burglar who only tries to escape and plead justification. See section 32 Criminal Code.
4. if done in battle against a foreign enemy.

3.2.3. Excuse

An act is excusable and no criminal responsibility is attached when it is under the following circumstances:

1. in order to resist unlawful violence e.g. when the act is reasonably necessary in order to resist actual and lawful violence threatened to him or to another person in his presence
2. in self defence or in defence of near relations so long as the force used is in proportion to that threatened.
Reasonable force may be used in defence of property.

3.3 Compulsion or Coercion

The compulsion must be such that the person was in fear of death or grievous bodily harm if he did not comply and believing himself to be unable or otherwise or to escape the carrying of threat to execution. If however the crime which he commits is one which is punishable by death or one which causes bodily harm to another, the compulsion is no excuse neither will he be excused if by his own free will, he enters into lawful association and thereby makes himself liable to such compulsion.

3.3.1 Actual Physical Compulsion

Compulsion is a defence if it renders the act in question, one which cannot be imputed to the accused e.g. if A seizes the hand of B, compels him to stab C. No crime is committed by B.

3.4 Bona Fide Claim of Right

A person is not criminally responsible as for offence relating to property, for an act done or omitted to be done by him with respect to any property in the exercise of an of right and without intention to defraud

Example: if a father takes away his illegitimate child from its mother who is reluctant to part with the child, he merely exercises his bona fide claim of right. He has a defence to child stealing. Cc. 23 & 371.

3.5. Intoxication

If KJ allows himself to be intoxicated of his own free will, he is responsible for his acts and its consequences.

Voluntary Intoxication is never an excuse in a crime. But if it is as to prevent a person from knowing what he was doing or that what he was doing was wrong; offender will be treated in the same way as a man, who is insane or under delusion as the case may be. Intoxication includes a state produced by drinking, drugs, narcotics etc. The cases where intoxication is raised as a defence are dealt with in the same way as insane. To avail a defence, therefore, the accused must show that he was so drunk at the time of the criminal act as to be incapable of forming the special intent in the crime.

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Intoxication is a defence if:

1. intoxication is caused by the negligent act of another
2. the person charged was by reasons if intoxication insane temporarily or otherwise at the time of such act or omission.

In *Ahmed v State 1999*)

Ogundare, JSC said:

Intoxication per se is not a defence. To be a defence, it must be shown by the accused that the intoxication is not self induced or that the extent of it rendered him at the time of the act or omission insane temporarily or otherwise, that is that he did not know² what he was doing.

In *Imo v State* (1991), per Nnaemeka, JSC observed:

For the defence of intoxication to be available to the accused person, as a defence, he must prove on a preponderance of evidence, that at the time of the act or omission, that is called in question, he was in such a state that he did not know that such an act or omission was wrong or did not know what he was doing. Furthermore, he has to prove either that the state of intoxication was not self induced or was caused without his consent by the malicious or neglected act of another person (s. 29 (2) (a) or that the extent of intoxication was so high that he was insane, temporarily or otherwise at the time of the act or omission (S, 29(2) (b)).

Also remember two principles of law relating to this defence:

4. The presumption of law that a person intends the natural consequences of his act.
5. The presumption of law that every person is sane.

Both presumption are rebuttable

Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequence of his act: See *R v Owarey* and *Egbe Nkanu v Stae* (1980)

The burden of proving intoxication is on the accused person. The standard of proof is preponderance of evidence

3.6 Insanity

You have learned that sections 24 and 25 of the Criminal Code provide general defences to criminal responsibility. Thus no person can be held liable for acts or omissions which occur independently of the exercise of his will or by accident. Insanity prevents the exercise of ones will and therefore a general defence in criminal law.

Every person is presumed to be sane, until the contrary is proved. A person is exempted from criminal responsibility if it is proved that his insanity is such that:

1. he did not understand what he was doing
2. he did not know that he ought not to do the act or make the omission.
3. he was incapable of controlling his action.

In this context insanity means

either

a state of mental disease

or

a state of natural mental infirmity

3.6.1 Mental disease

Means mental abnormalities; defect of reasoning from disease of the mind

3.6.2 Natural mental infirmity

Means a *defect* in mental power neither produced by his own default nor the result of disease of the mind.

3.6.3, Mental defectiveness

Means a condition of arrested or incomplete development existing before the age of 18 years, whether arising from inherent causes or induced by disease or injury.

3.6.4. M’Naghten Rules (1843)

The House of Lords (UK) formulated the M’Naghten rules to guide the Judges in determining the degree of mental defect which amounts to insanity. These rules are:

3. That every one is presumed sane until the contrary is proved

4. That it is a defence for the accused to show that he was laboring under a defect of reason, due to disease of the mind as either
 - (a) Not to know the nature and quality of his act, or
 - (b) If he did know this, not to know that he was doing wrong.
5. That if a man commits a criminal act under an insane delusion, he is under the same degree of responsibility as he would have been on the facts as he imagined them to be.

3. 6.5 Proof

The burden of proof of insanity is on the accused. The requisite standard of proof has been expressed as: “ most probable” or ‘not higher than that which rests on the plaintiff or defendant in a civil proceeding’

Insanity as a defence is to be distinguished from insanity as a ground of unfitness to stand trial. A person committed for trial, who is either certified insane or is found an arraignment to be under a disability and unfit to plead, is ordered to be detained in an hospital

3.6.6 Insane delusion

Where a person commits a crime under insane delusion, he is under the same degree of responsibility as he would have been on the facts as he imagined them to be. If a person under insane delusion thinks that a child is a dog and hits him with a stick, the court treats it as if the child was a dog (akin to a defence of mistake of fact).

To succeed, the defence must prove insanity at the time of the crime. That is to say he has to prove as follows:

That at the time he did the criminal act, he was labouring under such an insane delusion on some specific matter or matters

That if the matter or matters of his false belief were true, his act or omission would have been justified..

3.6.7 Irresistible impulse

This refers to insane automatism or incapacity to one's action due to;

- (a) Natural mental infirmity, or
- (b) Mental disease

Read the important case of *R v Omoni (1949) 12 WACA 511*

Conclusion

Every person is presumed to be sane until the contrary is proved. Insanity is a general defence but it is hardly pleaded in any other criminal charge than that of murder. The reason is obvious. On a successful plea of insanity, the accused person could be detained for more than the maximum sentence for other offences. Intoxication is a partial defence under the criminal code. It is not a valid defence at all under the sharia'h. Rather it is as crime per se.

Summary

You have learned a number of defences in this unit. Nothing could be inculpatory that is justifiable or excusable. Acts of Judicial Officers *qua* Judicial Office constitute a partial defence only. So also is the defence of husband and wife. Intoxication may be through drinks or drugs. Intoxication is involuntary if it administer by the malicious or negligent act of another without consent. If the accused

Accused person had a preconceived intention to commit a crime and voluntarily got himself drunk, Lord Denning opined that "the wickedness of his mind before he got drunk is enough to condemn him" See the case of Attorney General for N. Ireland v Gallagher. If intoxication led to a 'state of mental disease or natural mental infirmity' the defence may graduate to insanity. See DPP v Beard and R v Owarey. You also learned about the complex defence of insanity. The ingredients in the Mc

Naghten are not in all fours with Section 28 of the Criminal code, which introduced technical terms such as 'Irresistible impulse,' 'Insane delusion,' 'Mental defective' 'Mental disease' and 'Natural mental infirmity' These terms have been explained in the discourse.

Tutor Marked Assignment.

1. In relation to the defence of intoxication, critique the following cases:

Attorney General for N. Ireland v Gallagher
DPP v Beard and

R v Owarey.

2. Explain the following terms

Irresistible impulse,'

'Insane delusion',

'Mental defective'

'Mental disease' and

'Natural mental infirmity'

References

Slapper; G : The English Legal System, 7th Ed, Cavendish Publishing Ltd
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Unit Principles of criminal responsibility Cont'd

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- 3.2 Provocation
- 3.3 Necessity.
- 3.4 Self defence
- 3.5 Defence of another person.
- 3.6 Defence of property

Conclusion

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1. Introduction

Certain fundamental principles of law cannot be sufficiently stressed. One of such is that the whole account which an accused person gives of the transaction must be taken and considered as a whole. After you have sifted out the *mens rea*, and the *actus reus* and have established the causal link between both of them, you still have to test the statement of the defence. This means that you should consider not only the unfavourable part of the defence but also the favourable part. Very importantly, you should consider all the defences **open** to him in the same statement, For this reason any amount of time you devote to understanding the principles of criminal responsibility is worth a while. In this unit you will still learn more defences open to persons charged with committing a crime.

2. Objectives

When you have studied this unit, you should be able to :

- 1. Recognise in any transaction the possible defence or defences open to the suspect
- 2. Explain the elements of the defence or each of the defences.

3. Demonstrate an understanding of defences of:
 - a. Immature age
 - b. Provocation
 - c. Necessity
 - d. Self-defence
4. Evaluate the principles of liability to punishment as to an offence.

3. Main Content

3.1 Defence of Immaturity,(non-age or , infancy)

it is an irrebuttable presumption of law that a child under seven years in age has no *mens rea*. He/she is exempted from criminal responsibility.

A child of 7 years and under 12 years of age is presumed to be incapable of crime unless a mischievous discretion is clearly proved.

A male child under 12 years is presumed to be incapable of any offence involving sexual intercourse by him.

3.2. Provocation

The term “provocation” used with reference to an offence of which an assault is an element, includes, except as hereinafter stated, any wrongful act, or insult of such a nature as to be likely when done to an ordinary person or in the presence of an ordinary person to another person who is under the immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal, relation, or in the relation of master or servant, to deprive him of the power of self-control, and to induce him to assault the person by whom the act or insult is done or offered, (section 283 CC

3.2.1 Defence of provocation

A person is not criminally responsible for an assault committed upon a person who gives him provocation for the assault if he is in fact deprived by the provocation of the power of self control, and acts upon it on the sudden and before there is time for the passion to cool; provided that the force used is not disproportionate to the provocation and is not intended and is not such as is likely to cause death or grievous harm, (section 284, CC)

3.2.2. Killing on provocation

When a person who unlawfully kills another in circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death is the heat of passion caused by sudden provocation, and before there is time for his passion to cool, he is guilty of manslaughter only, (section 318,CC).

The provisions of the criminal code as stated above did not define the term “provocation” They merely attempted to explain it.

Fakayode (1977) stated that the defence of provocation consists of such matters of fact as to tend to show that:

(a) the victim did a wrongful or insult

(b) (i)to the accused, or

(ii)to somebody related to or under the care of the accused and in the presence of the accused

© capable of depriving the ordinary man of his power of self control

(d)Accused was actually deprived of his power of self control

(e)accused acted on the sudden and in the heat of passion without cooling time

(f) (i) no unreasonable or excessive force was used, or

(ii) the means of retaliation was appropriate.

Examples of words or acts to which the defence of provocation has succeeded are as follows:

Wife telling her illiterate and primitive husband that hwe was impotent and for that reason, he has been committing acts of adultery with other men, R v Adekanmi (1944).

Wife, taunting her husband with his impotence and spitting on his face, R v Igiri (1948).

Deceased stabbing the appellant, Mensah v King (1945).

Wife saying her illiterate husband and a dog were the same, Ruma v Daura N A (1960)

Wife calling her husband a slave, Edache v The Queen, (1962)

Deceased suddenly gripping the throat of th3e appellant during a dispute, R v Josiah Onyemaizu,(1959)(1959)(1959).

Examples of cases where courts have rejected the defence of provocation:

Confession of adultery, Queen v Udo Akpakpan (1956)

Refusal by wife to prepare food for her husband, Queen v Eseno (1960)

Deceased brother taunting the Appellant, and saying he provided money tom enable appellant to marry, Nungu v Queen (1953)

The defence of provocation can succeed only if the effect of abuse or insult would cause a reasonable man to lose his self-control and also that the accused did actually lose his self-control consequent upon the provocation

In criminal law, words alone may not amount to constitute provocation. But the court has held that that in some particular cases they can. Much would depend on the words used and what they mean, having regard to the custom or background of the person son whom the words are used

3.2.3. Defence of Provocation in Murder Cases

In relation to murder, Devlin, J described provocation as some act of series of acts, which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind. See R v Duffy (1949)

The important element of what constitutes provocation is that the act leading to death must be shown to have been done “*in the heat of passion caused by sudden provocation and before there is time for his passion to cool.*”

In Bedder v DPP (1954), The accused was sexually impotent. He tried unsuccessfully to have intercourse with a prostitute. She thereafter jeered at him, and also kicked him causing him to lose self-control, whereupon, he stabbed her twice and killed her.

On a charge of murder, the accused pleaded provocation and the House of Lords upheld the direction that the proper test was the effect which the conduct of the prostitute would have on an ordinary person, not on a sexually impotent person.

The mode of resentment must bear a reasonable proportion to the provocation offered –a fist blow for a fist blow, not a savage attack with a lethal weapon in return for a mere vituperative abuse

Where the defence of provocation is successfully established, the offence of murder is reduced to manslaughter.

3.3 Necessity

Necessity entails a choice of evil or duress of circumstances. A defence of necessity avails a person who is faced with an emergency for which he is not responsible and commits harm that is less severe than the harm that would have occurred but for his action. It enables the accused person to escape liability for intentional interference with the security of another's person or property on the ground that the wrong complained of was necessary to prevent greater injury to the public or to another or the

accused himself or their property. It has a strong affinity with self defence

In *R v Dudley & Stephen* (1884), two seamen were shipwrecked and were without food for 20 days. Faced with imminent death and out of the instinct to survive, the seamen killed and ate up the cabin boy who was with them in the boat. They were rescued four days later and brought to England where they were charged with the murder of the cabin boy. Both of them raised the defence of necessity

Lord Coleridge's observation is instructive:

Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? It is to be strength, or intellect, or what? It is plain that the principle leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own. In the present case, the weakest, the youngest, the most unresisting life was chosen. Was it more necessary to kill him than one of the grown men? The answer be No

Both were convicted for murder but the death penalty imposed on them was commuted to six months imprisonment.

The decision in *Dudley and Stephens* is important for several reasons

It preserved the dichotomy between law and morality and between intention and motive.

It shows that criminal law is no respecter of one family or social connection more than another

It confirms that no life is more worthy of protection than others.

Dudley and Stephens gave inadequate consideration, if at all, to the "Lesser of two evils" principle. It 'set up standards we cannot reach ourselves and laid down rules which we could not ourselves satisfy'

3.4 Self defence against unprovoked assault

When a person is unlawfully assaulted and has not provoked the assault, it is lawful for him to use such force to the assailant as is reasonably necessary to make effectual defence against the assault: provided that the force used is not intended and is not such as is likely to cause death or grievous harm.

If the nature of the assault is such as to cause reasonable apprehension of death or grievous harm and the person using force by way of defence believes on reasonable grounds, that he cannot otherwise preserve the person defended from death or grievous harm, it is lawful for him to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous harm. (section 286, CC)

The victim of an unlawful and unprovoked attack is entitled to use such force as is reasonably necessary to make effectual defence against such attack. However, he is not entitled to use such force as is intended or likely to cause death or grievous harm unless the original attack was such as to cause reasonable apprehension of such harm, and the prisoner believed on reasonable grounds that he could not, otherwise preserve himself from death or grievous harm.

The test of reasonableness is objective and act of self defence is to be distinguished from revenge. As Lord Morris has observed:

It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack, it would not be common sense to permit some action of retaliation which was wholly out of proportion to the necessities of situation.....

.... If there has been attack so that defence is reasonably necessary, it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his necessary defensive action. If the jury thought that in a moment of unexpected anguish, a person attacked had only what is honestly and instinctively

thought was necessary, that would be most potent evidence that only reasonable defensive action had been taken. A jury will be told that the defence of self defence, where the evidence makes its raising possible, will fail only if the prosecution show beyond doubt what the accused did was not by way of self defence

3.4.1 Self defence against a provoked assault.

When a person has unlawfully assaulted another or has provoked an assault from another and that other assaults him with such violence as to cause reasonable apprehension of death or grievous harm and to induce him to believe, on reasonable grounds that it is necessary for his preservation from death or grievous harm or use of force in self defence, it is not criminally responsible for using any such force as is reasonably for such preservation, although such force may cause death or grievous harm.

This defence is not open to the accused person in the following circumstance:

- a) Where the accused first assaulted the victim with intent to cause death or grievous harm, or
- b) Where the accused endeavoured to cause death or grievous harm to the victim before the necessity of preserving himself arose, and
- c) Where, in either case, the accused has not first declined from further conflict or retreated as far as was practicable

3.5 Defence of another person

In any case in which it is lawful for any person to use force in any degree for the purpose of defending himself against an assault, it is lawful for any other person acting on good faith on his aid to use a like degree of force for the purpose of defending such first-mentioned person

In *Ahmed v State* (1999), the case for the appellant was that three people waylaid and robbed him in the process of N3000.00 and a wrist watch

and he stabbed one of them. There was no evidence that the deceased was armed when he struggled with the appellant.

The case of the prosecution was that the appellant came to the deceased house late in the night, knocked at a woman's door and when the deceased came out of his room, the appellant stabbed him with a dagger. In his statement to the Police, the appellant said 'the deceased abused me and i stabbed him'

The question for determination on appeal was whether the defences of self defence or defence of property, provocation and intoxication do avail the appellant

The opinion of the Supreme Court was as follows:

Where an accused, armed with a lethal weapon is attacked by another, who is equally armed with a lethal weapon and during the encounter, one kills the other, the survivor has a right to put up a defence of self defence

However, if the person attacked exceeds that right and kills the offender when in fact it was unnecessary to cause grievous harm to the attacker, the offence committed is manslaughter if the intention of the accused was to do no more harm than he believed necessary in the exercise of his right. Even though there was a reckless criminality in the act of the accused, he can still succeed in pleading the right to self self defence so long as he did not kill with a vengeful motive in the purported exercise of his right.

Defence of self defence is not at large.m It is mandatory that who pleads self defence must establish that the nature of attack by the deceased was such as to cause a reasonable apprehension of death or grievous bodily harm

The test of reasonableness of defendant's apprehension of death or grievous harm is objective. Defence is not open to an abnormally nervous or excitable person. It is predicated on the reasonableness of the apprehension of death or grievous harm

Defendant must further show that he could not otherwise have preserved himself from death or grievous harm that loomed from the deceased's attack.

The Supreme Court was unable to visualize by what stretch of imagination a defence of self defence can avail the appellant in the circumstance of this case. Satanic abuse (e.g. that the defendant is a wizard) will not avail.

3.6. Defence of property.

A person who is in peaceable possession of any property to use such force as is reasonably necessary in order to defend the property, provided that he does not do harm to such other person.

In *Ahmed v State* (1999) Achike, JSC said:

Where a person puts up a defence of his property, the law allows him the use of reasonable force in the defence of the said property, provided no harm is inflicted in the person against whom the property is being defended.

The force employed as well as the nature of the object (e.g. weapon) used must not be out of proportion with the one the appellant employed in defence of the property

Conclusion

Under our law, it is an irrebuttable presumption of law that a child under the age of seven is incapable of committing a crime. The presumption that one who is seven but less than twelve years of age cannot commit crimes is rebuttable by evidence of mischievous discretion. Britain has increased the ages of responsibility to ten and fourteen years respectively. It is trite that an accused person can properly plead self defence where he admits that he did the act which, for instance, caused the death of the deceased but was

justified in doing so in order to protect his own life and would have been killed or was in such fear when he committed the act.

Summary

You have learned more defences to criminal liability. Particularly in this unit you learned about the defences of immature age, provocation, necessity and self defence. The decisions in *R v Dudley & Stephen (1884)* and *Re A (Children) Conjoined Twins; surgical Separation (2000)* are not to be seen as conflicting. The latter is not a case of evaluating the relative worth of two human lives but of undertaking surgery without which neither of the twins' lives will have the bodily integrity or wholeness which is its due. The case of conjoined twins is to be regarded as an exceptional case with its own unique problems. We shall anchor the discourse of defences to criminal liability at this point and turn to other aspects of criminal responsibility, to wit: parties to an offence, but before doing so. Let talk briefly of Classification of crime.

Tutor marked Assignment.

1. How true is it that *Re A (children) Conjoined Twins* has overruled *R v Dudley and Stephen*
2. The defence of Insanity is a replication of the common law as expressed in *Mc Naghten's case*. Discuss
3. What do you understand by the defence of Provocation.

Referencs

Slapper; G : *The English Legal System*, 7th Ed, Cavendish Publishing Ltd
India

FGN: - *The Criminal Code*

- *The Penal Code*

The Constitution of the Federal Republic of Nigeria.

UNIT 4: CLASSIFICATION OF CRIMES

CONTENT

- 2. Introduction**
- 3. Objectives**
- 4. Main Content**
 - a. Definition**
 - b. Classification**
 - c. Classification by Actus Reus**
- 3. Conclusion**
- 4. Summary**
- 5. Tutor Marked Assignment**
- 6. Reference**

4. INTRODUCTION

The statutes do not lay down how crimes are to be classified. As should be expected, crimes have been classified in various ways and no one mode of classification is superior to the other. We shall discuss some of these briefly.

4 OBJECTIVES

When you have studied this Unit, you will be able to:

- a. classify crimes
- b. critique each of the existing definition

5 MAIN CONTENT

5.2 Definition of Offence

An act or omission which renders the person, doing the act or making the omission liable to punishment under the criminal or Penal Code, Order I Council, Law or Statute is called an offence.

In Nigeria, no person can be charged with offence unless

That offence is prescribed in a written law

Punishment for the offence is also prescribed

The act or omission must be prescribed prospectively

3.0 Classification

Offences may be classified according to:

(a). Source: Source of an offence may be Common Law or Statute. All offences in Nigeria are statutory.

(b). Type of Harm: Examples are offences against property, offences against the person, etc.

c). Mode of Trial: that is to say

(c) Indictable Offences: Offences that can be prosecuted only, are offences which on conviction they can be punished by:

a). a term of imprisonment exceeding two years, or

b). imposition of a fine exceeding N400 Naira, not being an amount declared by the law creating it to be punishment in summary conviction.

Indictment means the filing of an information against a person who is committed for trial to the High Court.

- (d) Summary Conviction offences: these are offences punishable by a magistrates' court on summary conviction, and includes any matter in respect of which a magistrates' Court can make an order in the exercise of its summary jurisdiction by a magistrate with the consent of an accused: *Obiyomi v Joloko* (1954) 14 WACA 621.
- (e) Hybrid Offences: these are offences which can be tried summarily or on indictment. The punishment for the type of offences are provided for trial both summarily and on indictment. An offence declared to be punishable "either on summary conviction or on indictment" is not an indictable offence. (*Ebiri* (1967) NMLR. 35)
- (f) Mode of Blameworthiness
- (g) Gravity of the consequence of particular offences, occupation or motive
- (h) Official Statistics: in official Criminal Statistics, offences are recorded according to the harm done, namely;
- (i) offences against the person; these are offences decreed against the body of another, eg. Homicides, murders, manslaughter, infanticide, assault, abortion, kidnapping, seduction and abductioner, robbery
 - (ii) offences against property; these are offences against another's personal property, eg. Stealing, embezzlement, cheating, false pretends, robbery, material damages, forgery and witering
 - (iii) offences against public order; these are disorganisational crimes which tend to disturb the peace not unlawful assembly.

Mode of Operation

Operationally, offences are classified into;

1. Felony
2. Misdemeanour
3. Simple offence

This classification is borrowed from the common law. It is also the classification adopted in the criminal code which provides:

Offences are of three kinds, namely

1. Felony: A Felony is any offence, which is declared by law to be a felony, or is punishable, without proof of previous conviction, with death or with imprisonment for three years or more.
2. Misdemeanour: A misdemeanour is any offence, which is declared by law to be a misdemeanour, or is punishable by imprisonment for not less than six months, but less than three years
3. simple offences: An offence, other than a felony and a misdemeanour is a simple offence.

The statutory classification may be helpful to the legal practitioner. To the generality of the public, it is unhelpful. Indeed, it distorts facts.

If Chukwu steals an Orange valued N20.00, he commits an offence of stealing. This is a felony and Chukwu may be liable for imprisonment for three years or more.

If Titi, by means of any fraudulent trick or device obtains from Ngozi, property valued say N20 million, Titi commits an offence of obtaining. This is a misdemeanour and Titi may be liable to imprisonment for two years.

By statutory classification of offences, felonies are most serious crimes and do attract a punishment ranging from imprisonment for three years or more. Misdemeanour, ostensibly a less serious category carries a punishment of less than three years. In essence, stealing an orange valued N20.00 is by this classification, a more serious offence than obtaining N20million. Is not the law an ass or is it the classification system that is anachronistic?

Crimes According to Act area.

Crimes may be classified also according to their act area and these may manifest in

Result crimes

Conduct crimes

Other circumstances

3.3.1 Result Crimes

These are crimes which arise from the consequences that flow from the act or omission of the defendant. In these type of cases, what the defendant actually did or omitted to do and the result of that deed or omission. For these types of crime there are:

1. Causes in fact (or factual Cause)
2. Causes in law (or legal causes)

Unless the factual cause is also the legal cause, the prosecution for the offence fails. Examples are murder, manslaughter etc.

Conduct Cases

Irrespective of the result of an act or omission, the doer or ommitter is criminally responsible for his/her initial act or omission;

“If Abubakar drives dangerously, he commits the offence of dangerous driving simpliciter”

“f Ibrahim lies under an oath before a judicial tribunal, he commits perjury. It is not material that the tribunal believes or disbelieves, or whether any body was injured by it or not. He perjured and so he/she is liable for perjury”

Circumstances

If a crime, not a result or conduct crimes which occur directly or indirectly form the act or omission of an offender, it could belong to a group of offences that are external to the physical act of the Accused. In these cases, the actus reus consists of a “state of Affairs”

The group of crimes, which are neither result nor conduct crimes arise out of a state of affairs which had been found to exist with or without the participation of the offender. It is even possible that the offender would not have desired the state of Affairs. But the state of Affairs now exists,

it is prescribed under pain of punishment and the law must have its free course. See the cases of *R v Larssonneur* (1933).

Accused a French, entered the UK Lawfully and scheduled to leave on 22 March 1933. she did leave that day for Ireland, instead of returning to France, Irish immigration officers refused her entry and deported her back to the UK. The Immigration (UK) took her to inland to Holyhead where she was arrested and charged for being found in the UK without permission. The court rejected her defence that her being found in the UK was involuntary and that she was forcefully taken to Holyhead by the Immigration Authorities. She was found guilty.

In *Wenzar v Chief Constable of Kent* (1983). The accused was taken to the hospital on a stretcher. The doctor found he was only drunck, and asked him to leave. He would not. Having been called in, the Police took him in a car, drove along the highway to the Police Station, arrested and charged him for being found drunk in a public highway. He was found guilty. He appealed unsuccessfully on the ground that he had not been to the highway on his own volition. The appellate Court said it was irrelevant how he came there: and it sufficed he should be perceived to be drunk while on a public highway.

The two cases were based on the existence of a state of affairs – in UK without permission, or on the public highway while drunk.

Other example of this group of offences are public nuisance, theft or stealing.

CONCLUSION

Offences may be classified according to their nature and actus reus. The classification are of no relevance except for convenience, exposition and discussion of law.

5.0 SUMMARY

Crimes may be classified according to the source, harm, trial procedure, degree of blameworthiness, gravity or convergence and actus reus.

6.0 TUTOR MARKED ASSIGNMENT

Write a critique on either of the following:

1. Classification of crimes
2. The judicial decision in both cases of *R. v Larsonneur* (1933) and *Winzar v. Chief Constable of Kent* (1983)

7.0 REFERENCES/FURTHER READINGS

1. Beatty v. Gillbanks (1882) 9 QBD 308
2. R v Bryce (2004) Crime L.R. 936
3. Ormerod, D: (2005) Smith & Hogan Criminal Law, Oxford University Press,.

Unit 5: Parties to an offence: Principal offenders

- 1. Introduction**
- 2. Objectives**
- 3. Main Content**

- 3.1 Parties to an offence**
- 3.2 Primary offender**
- 3.3 Aider and Abettor**
- 3.4 Persons who counsel or procure**
- 3.5 Innocent Agency**

- 4. Conclusion**
- 5. Summary**
- 6. Tutor Marked Assignment**
- 7. References**

1.0. Introduction:

An offence may be planned, hatched and executed by one person against another. It may also involve a member or group of people, a gang, either acting differently at the same or at different times in the course of one transaction or acting in concert with one another in committing the offence. The members of the group or gang who get involved in one way or the other may undertake different roles, assume different levels or degree of involvement and hence merit differential treatment. The way the criminal law has classified the degrees of involvement or blame worthiness for purposes of criminal responsibility is the focus of this unit.

2.0 Objectives

When you have studied this unit, you should be able to:

1. Define a principal offender
2. Distinguish each class of “Principal Offenders”

3. Assimilate the application of the statutory provision by reference to decided cases.
4. Compare and contrast the common law and statute on the subject matter.

3.0 Main Content

In criminal law, there are certain distinctive parties to an offence. This include:

1. The principal offender;
2. Accessory after the fact;
3. Persons who compound felonies;
4. Accomplices.

3.1 Parties to offence

At common law, parties to a crime include primary offenders and secondary parties. Under the Nigeria law, the nomenclatures are different.

The Criminal Code, Section 7, provides as follows:-

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say:

- (a) every person who actually does the act or makes the omission, which constitute the offence.
- (b) Every person, who does or omits to do any act as for the purpose of enabling or aiding another person to commit the offence.
- (c) Every person who aids another person is committing the offence
- (d) Any person who counsels or procures any other person to commit the offence.

In the fourth case, he/she may be charged either with himself committing the offence or with counseling or procuring its commission.

A conviction of counseling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission, and he may be charged with himself doing the act or making the omission.

Let us consider each class of offenders a little more:

3.2 Categories of Parties to an offence

- (a) Person who actually does the act or makes the omission.
- (b) He is the person to whom, mens rea is attributed.
- © Fires a gun or administers poison, which courses with death,
- (d) Appropriates the goods stolen ,
- (e) Goes through a second ceremony of marriage

If an offence is committed by a group of people, say 20 persons, and the police have solved the case by arresting 9, 10, 11, or 12 of them. No law binds the police to charge all of them. They may, in exercise of their discretion charge 3, 4, 5 or none of them. They may deliberately (and legitimately too) omit to charge the person who actually did the act or made the omission which constitutes the offence. However, although they have the power, they may not necessarily and are not likely to exercise it that way. It all depends on the facts and circumstances of each case, and the vagaries of police policy

For example suppose among the 20 people that committed the offence, the person who actually did the act or made the omission which constitutes the offence is an infant. It would be illegitimate to charge but quite legitimate to charge the adults falling under sub-section (b) (c) (d) of Section 7 to the exclusion of the infant under 7(a).

Where it is proved that two or more persons have acted in concert when the act or omission which constituted the offence was actually done or made, it is not necessary to prove which of them did the act or omission, as long as it is proved that one

Of them, must have done so: *Alagba (1950) 19 NLR 128 (PC)*.

3.3 “Aiders and Abettors’ and “Aid and Abet”

Aiding or enabling another is to aid and abet, to assist or facilitate the commission of a crime or to promote its accomplishment.

Aid:

To aid is to “give help, support or assistance to” before or at the time of offence. Aid denotes the actus reus. Example: supplying a weapon of offence. Transporting the offender to the scene

Aiding or enabling. To abet, excite, encourage, advise, or instigate the commission of a crime.

The person who does or omits to do an act for the purpose of aiding or enabling another (section 7, sub-section (b) or who aids another (section 7, sub-section (c)) to commit an offence is a party to the offence committed.

R v Bryce (2004), (1) transported P (the killer) who was acting on the orders of B. (a drug baron) to the scene; but killing did not occur until 13 hours later. Held there was no overwhelming supervening event "sufficient to break the chain of causation.

Akran v IGP (1960)

A police officer, who merely aided two men to procure for themselves, a driver's licence by false pretence, was charged with actually obtaining the licence. The court held that the prosecution was entitled to do so.

What each of the parties did in facilitating the commission of the crime must be clear. Mere presence, at the scene of crime, without more, would not suffice except if by nature of his status (position of rank or influence) his presence could be taken to tantamount to a direct encouragement.

R V Akpunonu (1942)

A father buried alive a newly born twin in the presence of their mother. Held there was no evidence that the mother took part, aided, enabled, counseled or procured or did anything to enable or aid. The court considers the definition of each principal offender in relation with the facts of each particular case and labels them accordingly.

Self Assessment Exercise

Examine the situation below and answer the questions which follows:

Yakub is accused of stealing a goat. It was alleged that Bassey lent him a rope which enabled him to overcome and carry away the goat. Salami stood a few yards away to watch if anyone was coming their direction in order to ward off their capture. Nwonu was present, watching the scenario. Yakub, Bassey, Salami and Nwonu are arrested and charge as parties to the offence of theft of a goat. The counsel for Yakubu has made a no case submission and he is discharged on the ground that the

prosecution has failed to establish any prima facie case against him. The prosecution seeks to proceed with the case.

1. What are the chances of Bassey, Salami and Nwonu?
2. Would it make a difference if Bassey, Salami and Nwonu were charged to the exclusion of Yakubu either because he is an innocent agent relieved of criminal responsibility or simply not charged?

Let us consider some differences between section 7 (b) and 7 (c)

Section 7 (b)	Section 7 (c)
<p>Does or omits to do any act for purpose of enabling or aiding another to commit a crime.</p> <p>Abets incites, investigates, or encourages.</p> <p>Does not imply the offence has been committed, the encouragement may have failed. But the offence must have been committed.</p> <p>Act of aiding or enabling takes place before the Commission of the crime.</p> <p>At Common Law, a principal in the second degree.</p> <p>It is not requirement of the criminal law that the act or omission “enabling or aiding” must facilitate the commission of the</p>	<p>Aids another person in committing an offence.</p> <p>Gives help, support, or assistance.</p> <p>The assistance as well as the commission of crime are simultaneous.</p> <p>At Common law, this is accessory</p>

<p>crime charged.</p> <p>But there must be (i) some connection, at least, an awareness that there is the authority, encouragement or the approval to do the relevant acts (i) meeting of minds between the abettor and the principal (or otherwise the abetting would not be operative.</p>	<p>before the facts.</p> <p>Assistance falls short of actual commission but there must be clear evidence of the act of assistance something to facilitate the commission of the crime charged.</p>
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R Idiong and Umo (1950)

Idiong intending to procure an abortion, induced Umo to administer a drug to the woman and she died as a result.

Held Umo is an innocent agent and Idiong , was solely liable “as if the unlawful act had been done by himself”. If Umo knows of Idiong’s intendment and still acted the way he did, he would probably be a principal offender under (section 7,sub-section(a) while Idiong falls under section 7 sub-section (d)for counseling and procuring .

However, one can only aid and abet a substantive offence which has been committed (*State v Nwanoga (1979)*).

Self Assessment Exercise

Kalu and Uba intend to steal from Yinka. Uba drills a hole through the wall to let Kalu into Yinka’s bed room unknown to B, who eventually entered the room through the chimney, and successfully steals?

It is not enough that the suspect was present and did nothing more to facilitate the commission of the offence charged..

In Akanni VR

The Court held that the members of a crowd who stood by, watching house burning, knowing an old woman to be locked in, behaved disgracefully but that does not bring them within section 7 as to be regarded as participants in murder.

To constitute an offence, one's presence must purposely facilitate or aid the commission of crime charged. In which case, he/she is an accomplice. His presence and omission to act constitute intentional aid. *Azuma VR (1950)*.

Enweonye v R

There was a clash between occupants of canoes in a river. The evidence against the appellant was that he was at the bank of the river at the time and a call was made to him to pursue one of the disputants but this call had no effect.

The court confirmed that a man cannot be liable under section 7(c) unless his act or omission is of actual assistance, although he can under 7(b).

R.V Ukpe

The court held the presence at a meeting at which a killing was planned coupled with a solemn oath to do the killing was not enough to bring the accused within the ambit of section 7, sub section (b)

SR V Mayberry

This is a Queensland case based on an identical Criminal Code with the Nigerian Criminal Code.

B and D were charged with raping V (B for raping and D for aiding). The evidence against D was that he did acts of assistance to B in the course of B raping V. The act of assistance consisted of the fact when V screamed as a result of the pain upon penetration, D prevented Carol (V's girl friend), who had been with them in a car from going to V's rescue.

By a majority decision, B and D was held to be parties to the rape and convicted. The dissenting judgment found B guilty and D not guilty.

Let us digress on this case a little more so that you can assimilate the judicial reasoning.

Rape is an unlawful sexual intercourse of a female without her consent. To constitute this offence, there must be penetration. The Criminal Code provides that the offence “is complete upon penetration” (section 6).

The dissenting judgment thought that D’s act of assistance came after penetration and therefore after the offence of rape had been completed.

In the opinion of the majority of the judges, although penetration had taken place, what takes place thereafter (eg ejaculation) is still part of the act of rape.

4.0 Conclusion

Parties to crimes at common law are primary and secondary parties. Under our law they are four categories. Three of the categories are: the person who actually does the act or makes the omission which constitutes the crime; the person who does an act or makes the omission for the purpose of enabling another to commit the crime and one who aids another to in committing the crime.

5.0 Summary

You have learned about three groups of parties to a crime in this unit, You will learn about the remainder in the next unit. See below for an illustration of the principal offender:

-) Person who actually does the act or makes the omission.
- (b) He is the person to whom, mens rea is attributed.
- © Fires a gun or administers poison, which courses with death,
- (d) appropriates the goods stolen ,

(e) goes through a second ceremony of marriage

The person who aids and the other who abets have also been distinguished from one another.

6.0 Tutor Marked Assignment

1. Bayo breaks into Daisy's shop at 6.00am. Tunji, seeing someone approaching, went to the shop, knocked on the window signaling to Bayo to leave. Bayo left, taking with him, a set of gold trinket which he intends to give to his wife Pauline, on her birthday.

Discuss the criminal liability of Bayo and Tunji.

(For a guide see the case of R V Johnson(1973) Qd. R. 303 and R V Mayberry(1973)QdR.211.

2. Advise Sina, Essiet, Emeka, and Aluko in the following transactions

a) Sina is charged with aiding Feso, and Bartholomew and all are arrested and charged. Feso and Bartholomew are acquitted.

b) Essiet assists a 5 year old boy, X, to carry home what the boy has shop lifted.

c)Police alleged that an offence has been committed and charged Emeka of aiding the commission of the offence.

d)X, a 6 year old helps Aluko to carry home what Aluko lifted from the shop without paying for them.

7.0 Reference

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Unit 6 Parties to an Offence Cont'd

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 - 3.1 Persons who counsel or procure
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7. Reference.

1.0 Introduction

Parties to an offence are of two categories – principal offenders and accessories. Principal offenders are of four groups. You have learned about three of the group. The last of the groups of principal offenders is what you will learn in this unit

2.0 Objectives.

When you have studied this unit, you should be able to;

1. Identify each category of offenders among groups of persons who may be involved in committing an offence in one way or another
2. Distinguish each of the categories of principal offenders
3. Define ‘Counseling’ ‘procuring’

3.0 Main Content.

When an offence is committed, the following person is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing it, that is to say:

Any person who counsels or procures any other person to commit the offence

Such a person may be charged either with himself committing the offence or with counseling or procuring its commission See Section 7(d), CC

Persons who counsel and procure others (7d)

To procure is to induce or prevail on another to commit a crime that is in fact later committed.

Counseling or procuring must be by positive act, some positive encouragement to those who carry out the proscribed act.

Persons who counsel or procure other to crime may or may not be present when the crime is being committed. Usually, they are absent unlike those who aid or abet who are often present.

Let us take some illustrations.

- (A) A group of people met; they are faced with orders to kill Kudi; and they decided unanimously to obey those orders; Kudi has been killed.

The members of the group present in the meeting can be said to encourage one another to kill Kudi.

- (B) The group of men (above) had resolved to kill Kudi in her home on Saturday night, but that plan failed. Some days later, three of the men cornered Kudi on the highway and assassinated her.

Suppose among the group there was a police officer who feigned participation in order to observe and obtain evidence.

See *R V Okoye*, (1950), 19 NLR 103, *Olukola*, (1939), 5 WACA 188, *Diamantides V Chief Inspector of Mines* (1950) 13 WACA 94, *Obasi* (1965) NMR 119 and *R V Idika* (1959) 4 FSC 106.

If a person joins a Society of which one of its objects is murder, and is present and acquiescent when a murder is carried out in pursuance of the objects of the society, it is no defence to say that he did not commit the murder with his own hands, or even that he refused a command to

do so, unless the circumstances of his refusal were such as to indicate a complete and final repudiation of the society.

R v. Obodo & Ors (1958) 4 FSC 1 The accused and other persons were members of a secret society whose object was to kill thieves and anyone it chooses. At one of their meeting, the chief ordered them to kill his wife and when they refused the chief carried out the killing. On appeal against conviction, Ademola, CJ, said:

If a person joins a society of which one of the objects is murder and is present and acquiescent when a murder is carried in pursuance of the objects of the society, it is no defence to say that he did not commit the murder with his own hands or even that he refused command to do so, unless the circumstances of his refusal were such as to indicate complete and final repudiation of the society, which n one of the present applicants can claim to have made

The Supreme Court dismissed the appeal.

Read also *R v. Idika (1959) 4 FSC 106*

The English case of *R.v Craft (1944) KB. 295* is also relevant to the Nigerian situation.

3.5 Innocent Agency.

An Innocent agent is one who, without means rea, directly brings about the actus reus.

The innocent agent or other person under disability is an extention of the hand of the person who procures his/her.

Thus if a man or woman procures an innocent person to do an act or make an omission of such a nature that if he/she had done the act or made the omission, the act or omission would have constituted an offence, he/she would be a party to the crime committed.

Invalid Considerations:

1. Ordinary Words

Unless they involve positive act of encouragement to those who committed the offence, the following will not suffice for a charge of counselling or procuring:

- Ordinary words alone
- Words amounting to
 - Tacit acquiescence
 - Bare permission

See *Idika v R*(1959).

In *Ajao v Alkali Amodu* (1960) an Alkali ordered a policemen to slap an accused person for contempt of his court and he was held liable under Section 7 subsection (d).

2. Minor variations

(a) Changes in time.

If Adoye counsels Oliver to commit a crime on a certain Friday but Oliver committed the offence on Monday, Adoye's counsel is still operative.

(b) Presence or absence of the person counselling or procuring.

If a person intentionally counsels a crime, he continues to be liable whether or not he is present.

3. Counselling for purpose of section 7 (a) does not include professed advice or encouragement, which has no effect on the mind of the principal offender. Liability lies even if, when he counselled, the person counselled had already made up his mind to commit the offence.

Break in the chain of Counselling or Procuring

Counselling or procuring the commission of an offence ceases to have effect when the person Counselling or procuring expresses by countermands or revokes the previous Counselling or procuring.

To be effective, the repudiation foundation must be communicated to the confederates.

Examine the following cases.

- (i) Fidelia, on Wednesday, counsells Umah and Etim to waylay and hijack the trailer load of goods from Dubai on Saturday. Early on Saturday, Fidelia announces her complete renunciation of the common intention but Etim, unknown to Fidelia has already carried the intention to effect.
- (ii) Ejike counsells Obele and Felicitas to beat up Margaret and teacher her “certain lessons” at Tundun Wada as the return from the Study Centre on Friday. On Thursday, Ejike informed the confederates of her change of mind and complete repudiation of their earlier common intention. Obele and Felicitas disagree with Ejike act of betrayal. Felicitas met Margaret and beat her up and wounded her.

Nweke counselled or procured Ejike Etuk and Ahmed to commit a crime on a Sunday night. On Friday Nweke changed his mind and informed Ahmed. He pleaded with Ahmed to inform Etuk. On Saturday, Etuk carried their earlier common intention into effect, and committed the crime as previously arranged.

Attempt to analyse the criminal responsibility of each of the characters.

Refer to the following cases.

R V. Idiaka (1959)

Okafor V State (1965)

There is force in Stephen’s assertion that one who procures is liable only for an offence “which is committed in consequence of such counseling, procuring or commandment” (Digest 4th .ed. Art 39).

You have completed the discourse on Principal parties. Note that each of the principal offenders you have learned –the perpetrator, the aider, the enabler, the procurer and the counselor -is liable for the full punishment for the offence

Activity

Consider the hypothetical case given by Okonkwo and Naish.

A tells B and C that a warehouse has a large sum of money inside; D knowing of their intention to burgle it, lends them a rope to tie up the night watchman; E drive them to the scene of the crime, not knowing their purpose, F witnesses their entry into the warehouse but does not prevent it; B stands on guard while C actually robs the cashbox; a night watchman surprises them and B uses the rope to strangle him; G knowing of the burglary but not of murder diverts a policeman's attention while B and C escape; H hides them. All the parties have now been arrested

Attempt to identify, with justification, the liability of the various parties for the crime committed.

4.0 Conclusion

A principal offender directly and immediately causes the actus reus of a crime. Others who aid, enable, counsel or procure are derivative from the liability of the principal. Lord Widgery C.J rightly notes that these four words connote different things; otherwise, "Parliament would be wasting time in using four words where one, two or three would do" The definition of an offence prescribes the requisite actus reus and your knowledge of it coupled with the facts of each case enable you to identify:

- (i) the elements of actus reus
- (ii) Form(s) of conduct constituting aiding, enabling, counselling or procuring

- (iii) Causal link between aiding, enabling, counselling or procuring AND the principal offence
- (iv) Consensus *ad idem* between aider, abettor, counselor, procurement AND the principal.

5.0 Summary

In this unit, we have identified 4 groups of principal offenders. We looked into a number of cases to see how the judges have tried to differentiate one class from another; such that in a given case, you should be able to do the same. A sole principal offender causes the *actus reus*: There may also be joint principals when two or more persons jointly engage in the activity. Other participants in the “joint enterprise” are persons who aid, enable (abet), counsel or procure. A procurer of an innocent agent to commit an offence is deemed to have caused the *actus reus*. Where procuring is charged, consensus is immaterial. As Smith and Hogan has observed, the terminological difficulties with four possible methods of participating in crime complicate the statement of law. It has been suggested that in substance these are only two kinds of actions involved:

- (i) Intentionally influencing the decision of the primary party to commit the crime, and
- (ii) Internationally helping the primary actor to commit the crime.

The pitfall in this suggestion is its failure to consider situations where the principal is strictly liable.

6.0 Tutor-Marked Assignment

1. A person who procures, assists or encourages another to cause a result that is an element of an offence does himself cause that result so as to be guilty of the offence as a principal when:
 - i. Innocent agency has been involved.
 - ii. The offence itself consists in the procuring, assisting, and encouraging another to cause the result.
2. Discuss with reference to decided cases and statutes

3. Discuss the criminal liability of each of the following characters
 - a. D who induced a child of 10 to take money from a Fill and give it to D
 - b. K who procures a child of 10 to have sexual intercourse, of F without her consent.
4. Distinguish with reference to decided cases and statute the following statutory provision.
 - a. Section 7, sub-section (b) of the Criminal code
 - b. Section 7, sub-section (c) of the Criminal Code
 - c. Section 7 sub-section((d) of the Criminal Code

7.0 References

1. *Beatty V. Gillbanks (1882) 9 QBD 308*
2. *R V BBryce (2004) Crime L.R. 936*
3. Ormerod, D: (2005) *Smith & Hogan Criminal Law*, Oxford University Press,.
4. Gurland, N.M (2003), *Criminal Law for Criminal Justice*. Professional, Glencoe MC Graw-Hill, new York

UNIT 7 Parties to an offence – Accomplices

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Accomplices

3.2 Accessory after the fact

3.3 Perverting Justice

3.4 Compounding Felony

3.5 Neglect to prevent felony

4.0 Conclusion

5.0 Summary

6.0 Tutor marked assignment

7. References

1.0 Introduction

In the last unit, you learned about the primary offenders and persons who aid, enable, counsel or procure the commission of crimes. That does not exhaust the parties to an offence. In this, unit you shall learn about other participants in crime. Examples are: accomplices and accessories.

2.0 Objectives

When you have studied this unit, you should be able to:

1. Classify confederates in crimes according to their roles in the commission of crime and their liability to punishment.
2. Differentiate primary offenders from accomplice and accessories.
- 3 Distinguish accomplices, accessories and persons compounding felonies
4. Critique statutory definition of parties to an offence.

3.0 Main Content

3.1 Accomplices

Participants in the commission of an offence are *participes criminis*.

An accomplice is a person who is, in any way, concerned with another in the commission of a crime.

Torcia (1993; 220) explains that a person is an accomplice of another in omitting a crime if, with the intent to promote or facilitate the Commission of the crime, he/she solicits, requests, or commands the other person to commit it, or aids the other person in planning, or committing it.

An accomplice has the same characteristics as a ‘perpetrator,’ ‘abettor,’ ‘inciter,’ but not as an accessory after the fact. He is a person who knowingly, voluntarily, and intentionally unites with the principal offender in a crime and thereby becomes punishable for it.

By definition, an accomplice must be a person who acts with the purpose of promoting or facilitating the commission of the substantive offence for which he/she is charged as an accomplice.

Illustration

Tosin just left the University and got pregnant. She received a letter calling her up for NYSC. She could not be admitted in her State, for every female Corper is required to submit to pregnancy test and would only be deployed if certified “not pregnant”. Tosin presents herself. The Nurse at the Camp centre demands N20, 000 to secure a clean report. Tosin pays, Tola provides a substitute urine and Tosin obtains a clean report and is duly deployed.

Uzor, an unemployed graduate is desperately in need of a job. Tunde offers to give him one but demands N50,000 bribe. Uzor has paid but no job has been given to him.

Tosin, Tola the Nurse, Uzor, Tunde have been arrested on charges of bribery and corruption.

In these case of corruptly demanding and corruptly receiving bribes, the approach of the court is that a person who pays money in consequence of a corrupt demand is not only an accomplice in the offence of making the demand but will not be an accomplice in the offence of receiving of the money if the circumstances are such that he is to be regarded as a victim rather than a participant.

Looking at the illustrations critically, you would observe the following.

- One party made the following
- The party making the demand holds some position of authority by which he/she should act to the advantage or detriment of the other.

The other party is exposed to:

- Demand with menace
- Involuntary act of payment.

Distinguish the *actus reus* and *mens rea* in the case of one party and on the other party

Where there is an acquittal under section 7(a) the probability is that the accomplices and other persons charged with aiding, abetting, counseling or procuring the commission may also be acquitted .See *R v Vkata* (1958).

This may not always be so. See a contrary view in *R v. Obosi* (1965).

There are occasion where accomplices and the victim are themselves parties to the offence. At other times, the accomplice may be regarded as

a victim rather than a participis criminis. Often it is difficult to determine whether a participant is an accomplice or the victim of an offence.

Statutory Provision

3.1.1 Statutory Provision

The Criminal Code provides

(a) Section 8: offence committed in prosecution of common purposes.

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

(b) Section 9: Mode of execution immaterial.

When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is:

- (a) the same as that counseled, or
- (b) a different one, or
- (c) committed in the way counseled or in a different way.

Provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel

In either case, the person who gives the counsel is deemed to have counseled the other person to commit the offence actually committed by him.

Sections 8 and 9 as stated above are subject to the provision of section 24 which states, 'Subject to the express provision of this Code, relating to negligent acts and omission, a person is not criminally responsible for an act or omission, which occurs independently of the exercise of his will or for an event which occurs by accident'.

Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

3.1.2 Common intention

May be express or implied from circumstances.

R V Offor & Offor (1955).

A and B were charged jointly with murder of V. Each had struck V a violent blow with intent, at least, to cause grievous bodily harm. B had a cutlass, A had a stick. The cutlass cut V on the hand when V was defending himself against the attack. The blow from the stick hit his skull. V fell and died of fractured skull and cerebral hemorrhage. Evidence was open to the construction that the intention of each accused person was suddenly formed and formed independently of each other. B and A were convicted of murder.

On appeal, A's conviction for murder was set aside and one of attempted murder was substituted. Of the second Appellant (B), the court held:

“But the conviction of the second accused (B) could not be founded upon pre-conceived intention only. No doubt, he had a preconceived intention just as the first accused had. The intention of both accused was the same, each to cause grievous harm, but since the wound inflicted by B was not in fact the cause of death, it is necessary in order to sustain a conviction against B to establish that he was acting in furtherance of a common intention in conjunction with A to cause grievous harm. See 8 of the Criminal Code. It seems to us on the evidence that the intention of each accused was suddenly formed and formed independently of each other.”

“Common intention may be referred from circumstances disclosed in the evidence and should not be by express agreement, but a presumption of a common intention should not be too seriously applied. That proof of common intention is a condition precedent to conviction in this type of case is appreciated when it is remembered that if a combination of this kind is proved, a fatal blow, though given by one of the party is deemed in the eye of the law to have been given by all those present and aiding. The person actually delivering the blow is no more than the hand by which the others all strike. But on the evidence, it may be that A killed the deceased of his own impulse with a stick suddenly caught up.

Offor & Offors Case was distinguished in *R v. Muonwen* (1963). In the latter case, appellants in concert assaulted a police officer. One beat him with a baton, others with their fists. They threw the body, apparently lifeless into a river. The postmortem examination revealed bruises on the head, chest, knee, trachea and thyroid cartilage. The medical report was that the police officer died of strangulation. The evidence before the court was that the first appellant first attacked and beat the police officer with a baton and called on the other appellants to join him in the assault against the deceased. Appellants joined in the beating, using their fists. It was

not certain who strangled the deceased but they all joined in throwing him into the river in an apparently lifeless state.

In dismissing the appeal against conviction for murder the appellate court held that by obeying the call of the first appellant to assault the deceased, other appellants had evidenced a common intention with him.

Distinguishing *Offors & Offor's* case, the court said:

“ In the present case, we consider that the odds of five to one, the use of the baton and signs of severe beating about the head, chest, and knee of the deceased, coupled with the throwing of his body into the river as soon as he appeared to be dead, all indicate an assault of such violence as to justify the judge in holding that there was a common intention at least to do grievous harm and that the killing of the deceased in circumstances amounting to murder was a probable consequence of the prosecution of that intention. In the result the appeals of the five appellants are dismissed”.

R V Alagba

The Judicial Committee Of the Privy Council approved the judgment of the West African Court of Appeal(WACA) to the effect that where on a murder charge, the evidences established that a deliberate and unprovoked attack of a kind likely to endanger human life and resulting as probable consequence in the infliction of grievous harm on one and the death of another was carried out in concert by all the accused in circumstances pointing irresistible to common design, the judge in dealing with the execution of common design, was correct in saying “it does not matter which of the accused did what”

Garba V Hadejia N A (1961)

Two men set out to meet a girl as she was returning from the market. Both carried sticks; one of them struck her from the back and she died later in consequence of it.

Held: There was no doubt that both men intended that actual violence should be used and it seemed a highly probable consequence of the use of violence in these circumstances that the violence would cause death.

Atanyi V R (1955)

Two men went out to steal at night from a compound. One was armed to the knowledge of both. The owner surprised them and one of them killed him. Held the appellant killed.

Sometimes, the court omits to consider section 8.

Liability for unwilled Act

3.1.3 The import of section 24 of the Criminal Code is to exculpate a person from liability for acts or omission which occur independently of the exercise of his will or from the unwilled act of another.

The operation of this section may be excluded expressly or by necessary infliction as in section 8 and 9.

3.1.4 Victim or Accomplice

Principes Criminis include principal parties, accessories and accomplices. Accomplices are sometimes principal offenders and at other times victims.

In order to determine whether a participant in crime is an accomplice or a victim of the offence charged, Bairamian FJ. proffered this very helpful test.

“It would be wiser to focus one’s attention, rather on the question of accomplice vel non, and ask oneself:-

- (a) did the witness counsel the commission of the offence,
or
- (b) did he aid in the commission of the offence
- (c) did he help to over up the offence.

If the answer is yes, to any of those questions, then the witness is an accomplice”

See *R v Ezekpe & Anor* (1962) for details.

4.0 Conclusion

An accomplice is a participant in the commission of a crime,; he either facilitates, solicits, requests or commands another to commit an offence or incites, abets, and aids in planning or committing it. What distinguishes an accomplice from a principal offender is the degree of liability to punishment.

5.0 Summary.

In this unit, you learned about accomplices, and distinguished them from the principal parties to an offence. Sometimes it is difficult to decide whether one is an accomplice or a victim. You also learned about parties to an offence who form a common intention, act in concert with one another in prosecution of the common purpose. Any member of the confederate in crimes who seeks to resile from the common intent and purpose must clearly put others on notice, if he is to escape criminal responsibility.

6.0 Tutor-Marked Assignment

1. Who is an accomplice in the commission of crime and how is he/she different from (a) primary offender (b) a victim of offence.
2. Distinguish sections 7 (d), 10, and 127 of the Criminal Code.

7.0 REFERENCES

Gurland, N.M (2003), Criminal Law for Criminal Justice. Professional, Glencoe MC Graw-Hill, new York

Unit 8 Accessories

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3.1 Accessory after the fact

3.2 Perverting the cause of justice

3.3 Compounding Felonies

3.4 Neglect to prevent felonies

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1.0 Introduction

A crime may involve many people playing different roles, voluntarily or involuntarily, with or without the requisite *mens rea* for the offence in question. Among these people may be all or any of the categories of the principal offenders, and accomplices. These may not be all that may be involved. Some of the people may get involved only after the crime has been committed. This is the group you will learn in this unit

2.0 Objectives

When you have studied this unit, you should be able to :

1. Identify an accessory before the fact at common and its location under the Nigerian law
2. Identify the accessory after the fact

3.0 Main Content.

Common law recognizes accessory before the fact; the Nigerian Criminal law does not. Such a person would probably be a principal offender under section 7 of the Criminal Code.

3.1 Accessory after the fact

(a) Statute- A person who receives or assists another who to his knowledge, is guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence.

An accessory after the fact knows that a crime has been committed and helps the offender to escape arrest or punishment

(b) Common Law –

At common, an accessory after the fact is one whom knowing that a felony has been committed by another, receives, relieves, comforts, or assists a felon, or in any manner aids him to escape arrest and punishment.

To be guilty as an accessory after the fact, one must have known that a completed felony was committed and the person aided is the guilty party. The mere presence of the defendant at the scene of the crime will not preclude a conviction as an accessory after the fact where the evidence shows the deceased became involved in the crime after its commission.

(c) *Actus Reus* in Accessories -

The *Actus reus* for this offence is receipt or assistance after the commission of a crime. Reception into one's house for a few moment may probably suffice. Assistance would clearly be constituted by acts such as helping to dispose a body after a murder (*R v Enweoye*) or hiding the deceased's bicycle (*R v Ukpe*)

A person who assists an accessory after the fact may himself be an accessory provided his actions constitute assistance to the primary offender.

R.V Mckenna (1960)

Some doubts have been expressed if mere omission can sustain a charge of accessory after the fact.

If B sees A running away from the scene of a crime and deliberating refrains from drawing the attention of a nearby police officer in order to assist A; is B an accessory after the fact ?.

Liability may probably lie if B's omission was intended to be an assistance and was actually of assistance provided also that he owes a duty to report.

(a) *Mens rea* for Accessories

The *mens rea* required for accessory after the fact is knowledge of the guilt of the person assisted coupled with the intention to facilitate escape from punishment. See *COP V Glover (1923)*.

(b) Features of Accessories – Writers have identified four requirements of an accessory after the facts, namely:

1. Someone else must have committed a felony and it must have been completed before the accessory's act.
2. The accessory must not be guilty as a principal.
3. The accessory must personally help the principal to avoid the consequences of the felony.
4. The accessory's assistance must be rendered with guilty knowledge.

In *R V Ukpe (1938) 4 WACA 141*, three men came to the Appellants' house, told him that they had killed a man and left a bicycle with him. On the following day, he went with them to where the body was lying, dismembered and buried. Held these facts constituted him an accessory after the fact. Where a person is charged with an offence and the evidence establishes that he becomes an accessory after the fact to that offence or to some other offence of which a person charged with the first mentioned offence may be convicted as an accessory after the fact to that offence or that other offence, as the case may be, and may be punished accordingly.

A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment, nor by receiving or assisting in her husband's presence and by his authority, another person, who is guilty of an offence in the commission of which her husband has taken part in order to enable that other person to escape punishment, nor does a husband become accessory after the fact to an offence of which his wife is guilty by

receiving or assisting her in order to enable her to escape punishment.

In the context, the terms “wife” and “husband” mean respectively the wife and husband of a Christian marriage. A Christian marriage is managed under the Act. That is to say “marriage which is recognized by the law of the place, where it is contracted as the Voluntary Union for life of one man and one woman to the exclusion of all others”

3.2 Perverting Justice

Section 126 CC states

- (1) A person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of the felony and is liable to imprisonment for seven years.
2. Any person who attempts, in any way not specially defined in the Code, to obstruct, prevent, or defeat, the course of justice is guilty of a misdemeanour and is liable to imprisonment for two years.

In this context, an agreement by two or more persons to conceal a crime which has been committed is a crime of conspiracy to defeat the course of justice.

What about the person, acting independently, who took some positive step to conceal a crime which had been committed or an informant, who gives false information to the police.

Section 126 (2) is an omnibus provision; and would seem to cover certain unforeseen circumstances, e.g

- Concealing a crime that has been committed, but not acting in concert with another or others;

- Offering money to the prosecution in order that the officer may “hide the facts in the charges” whether or not he is ultimately acquitted;
- Conspiracy to substitute someone to serve the term of imprisonment.

See the case of *R V Odo (1938) 4 WACA 71*. In this case the accused placed a “magic” powder in the court room in order to influence the District Officer and the court members to enter a favourable judgment. Held not guilty.

3.3 Compounding felonies

This is an offence of either agreeing not to prosecute a crime that one knows has been committed or agreeing to hamper the prosecution.

‘A person who asks, receives, or obtains or acquires or attempts to receive or obtain any property or benefit of any kind for himself or any other person upon any agreement or understanding that will compound or conceal a felony, or will abstain from, discontinue, or delay a prosecution for a felony, or will withhold any evidence thereof, is guilty of compounding a felony’

If a prosecutor or a police officer should accept money from another to induce the officer to prevent the filing of an indictment against the person, this would be compounding a crime, if the officer knew the other was guilty of an offence, but would be bribery whether he had such knowledge or not.

3.4 Neglect to prevent Felony

Every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the

commission or completion thereof, is guilty of a misdemeanor and is liable to imprisonment for two year.

There are two aspects of neglect to prevent felony:

1. The person who knows that another designs to commit a felony and fails to use all reasonable means to prevent its commission.
2. The person who knows that another is committing a felony and fails to use all reasonable means to prevent its completion.

Benedict Obumselu v. COP (1958)

Accused was charged for neglect to prevent felony in that he failed to use all reasonable means to prevent one Bisi Fagbenle, from procuring her own miscarriage, knowing that she so designed.

In the opinion of the Court, “ the word ‘design’ implies a settled intention, and in many case the best evidence of a settle intention to commit felony will be the fact that a felony was actually committed, but we consider that the evidence in this case establishes that there was a settled intention right up to the last moment when the appellant still had it in his power to take any steps to prevent the commission of the felony and that the appellant knew of it and that is sufficient to warrant his conviction.

4.0 Conclusion

Participes Criminis include principal parties, accessories and accomplices. The *actus reus* for accessories is the post-crime receipt or assistance. What differentiates accessory from compounding felony is the element of consideration present in the latter. Persons who prevent justice or neglect to prevent felony are other participes criminis. Accomplice is participis criminis and may qualify as “primary offender on the one hand and a victim of the offence on the other hand. He is an

accomplice if he counsels, or aids the commission of the offence or helps to cover it up.

5.0 Summary

Section 7 of the Criminal Code defines parties to an offences, more particularly principal offenders. Sections 8 and 9 cover accomplices or persons acting in concert with common intention. Accessories after the fact and persons who compound felonies find statutory expressions in section 10 and 127 respectively. Perverting justice (section 126) and Neglect to prevent felony (section 515) are the awareness for participation in criminality. It is in the interest of justice that participants in the commission of crime are punished but the punishment must be measured according to their degree of blame worthiness and involvement

6.0 Tutor-Marked Assignment

1. Who is an accomplice in the commission of crime and how is he/she different from (a) primary offender (b) a victim of offence.
2. Distinguish sections 7 (d), 10, and 127 of the Criminal Code.

Always remember to support your assertions with the provisions of the statute or decided cases. It is not enough to cite a case. You must in addition give the facts and decision concisely and to the point. Good luck

7.0 Reference

1. Gurland, N.M (2003), Criminal Law for Criminal Justice. Professional, Glencoe MC Graw-Hill, new York
2. BeattyV. Gillbanks (1882) 9 QBD 308
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Module 4

UNIT 1: Offences against persons:

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1.0 Introduction

The boundaries of offences against persons are not clear. Strictly speaking there is no criminal activity which does not victimize a person. Where for instance, does the offence of rape belong? Is it an offence against morality, or the person or both? What about armed robbery? Is it a property or personal offence? This kind of intermixture arises from miscoding, differential treatment and definitional problems.

Perhaps for these reasons also, writers avoid definitions. They argue that definition is unfashionable and writers in other field of learning do not border defining their subject matter. Smith and Hogan have informed us that no where has this been more greatly felt than in criminal law. It is apt therefore that one devotes this initial unit on personal crimes to the legal meaning of the selected offences. This enables you to know from the outset, what the particular crime is. For the avoidance of doubt, we shall concentrate on the traditional offences against the person (or against persons).

2.0 Objectives

When you have studied this unit, you should be able to:

1. define any of the most important or prevalent offences against persons.
2. critique the definitions of the particular crimes against persons.

3.0 Main Content

The definitions in this unit are as contained in the Criminal Code Act , the principal law on Crimes.

3.1 Homicide

Killing of a human being – murder

Section 306 – Killing of a human being, unlawful

It is unlawful to kill any person unless such killing is authorized or justified or excused by law.

Section 308 - Definition of killing

Except as hereinafter set forth, any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person.

Section 310 – Causing death by threats

A person who, by threats or intimidation or by deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed him.

Section 315 – Unlawful Homicide

Any person who unlawfully kills another is guilty of an offence which is called murder or manslaughter, according to the circumstances of the case.

3.2 Murder:

Section 316 – Definition of murder

Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say:

- (1) If the offender intends to cause the death of the person killed, or that of some other person.
- (2) If the offender intends to do to the person killed or to some other person some grievous harm;

- (3) If death is caused by means of an act done in the prosecution of an unlawful purpose which act is of such a nature as to be likely to endanger human life;
- (4) If the offender intends to do facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;
- (5) If death is caused by administering any stupefying or overpowering things for either of the purpose last aforesaid;
- (6) If death is caused by willfully stopping the breath of any person for either of such purposes;
- (7) Is guilty of murder.

In the second case it is immaterial that the offender did not intend to hurt the particular person who is killed.

In the third case, it is immaterial that the offender did not intend to hurt any person.

In the last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

Self Assessment Exercise.

Explain the term "Murder".

Section 319 - Punishment for murder

- (1) Subject to the provisions of this section any person who commits the offence of murder shall be sentenced to death.
- (2) Where an offender who in the opinion of the court has not attained the age of seventeen years has been found guilty of murder such offender shall not be sentenced to death but shall be ordered to be

detained to during Majesty's pleasure and upon such an order being made the provisions of Part XLIV of the Criminal Procedure Ordinance shall apply.

3. Where a woman who has been convicted of murder alleges she is pregnant or where the judge before whom she is convicted is advisable to have inquiries made as to whether or not she be pregnant the procedure laid down in section 376 of the Criminal Procedure Act shall first be complied with.

Self Assessment Exercise

Critique for the punishment for murder.

3.3 Manslaughter

Section 317 – Definition of manslaughter.

A person who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughter.

Section 318 – Killing on Provocation

When a person who unlawfully kills another in circumstances which, but for the provisions of the section, would constitute murder, does the at which causes death in the heat of passion caused by sudden provocation, and there is time for his passion to cool, he is guilty of manslaughter only.

Self Assessment Exercise

Distinguish between the following:

1. Voluntary manslaughter and involuntary manslaughter

2. Offences related to homicide and offences ancillary to murder.

Section 309 – Death by acts done at childbirth

At birth, a child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

Section 311- Acceleration of death

A person who does any act or makes any omission which hastens the death of another person who, when the act is made..., is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.

Self Assessment Exercise

Compare and contrast murder and acceleration of death.

3.4 Suicide and suicide fact

Section 326- Aiding Suicide

Any person who

1. procures another to kill himself; or
2. counsels another to kill himself and thereby induces him to do so; or
3. aids another in killing himself; is guilty of a felony, and is liable to imprisonment for life.

Section 327 – Attempt to Commit suicide

Any person who attempts to kill himself is guilty of a misdemeanor, and is liable to imprisonment for one year.

Section 339 – Failure to supply necessities

Any person who, being charged with the duty of providing for another the necessities of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a felony, and is liable to imprisonment for three years.

The offender cannot be arrested without warrant.

Activity

1. Address a memorandum to the Attorney General proposing reform of the Criminal law to protect women and children against domestic Violence.

Section 341 – Abandoning or exposing children

Any person who unlawfully abandons or expose a child under the age of seven years, in such a manner that any grievous harm is likely to be caused to it, is guilty of a felony, and is liable to imprisonment for five years.

Child Destruction and Abortion**Section 327A - Infanticide**

Where a woman by any willful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that circumstances were such that but for this section of offence would have amounted to murder, she shall offences by

felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

Section 328 – Killing unborn child

Any person who, when a woman is about to be delivered of a child prevent the child from being alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a felony, and is liable to imprisonment for life.

Section 329 – Concealing the birth of children

Any person who, when a woman is delivered of a child, endeavours, by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at or after, its birth is guilty of a misdemeanor, and is liable to imprisonment for two years.

Offences Endangering Life or Health

Section 330 – Disability in order to commit felony and misdemeanor.

Any person who, by any means calculated to choke, suffocate, or strangle, and with intent to commit or to facilitate the commission of a felony or misdemeanor, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanor, renders or attempts to render any person incapable of resistance, is guilty of a felony, and is liable to imprisonment for life with or without canning.

Section 332 – Act intended to cause grievous harm or prevent arrest.

Any person, who, with intent to maim, disfigure or disable, and person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person.

- (1) unlawfully wounds or does any grievous harm to any person by any means whatever; or
2. unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear sword, knife, or other dangerous or offensive weapon; or
3. unlawfully cause any explosive substance to explode; or
4. sends or delivers any explosive substance or other dangerous or noxious things to any person; or
5. causes any such substance or thing to be taken or received by any person; or received by any person; or
- .6 puts any corrosive fluid or any destructive or explosive substance in any place; or
7. unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applied any such fluid or substance to the person of any person; is guilty of a felony, and is liable to imprisonment for life.

3.6 Assault and Battery

Section 252 – Definition of Assault

A person who strikes, touches, or moves, or otherwise applied force of any kind to, the person of another, either directly or indirectly, without his consent, or with his consent, if the consent is obtained by fraud, or who by any bodily act or gesture attempts to apply force of any kind to the person of another without his consent, In such circumstances that the

person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.

The term “applies force” includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever, if applied in such a degree as to cause injury or personal discomfort.

Aggravated Assault

Section 335 – Grievous harm

Any person who, unlawfully does grievous harm to another is guilty of a felony, and is liable to imprisonment for seven years.

Section 337: Maliciously administering poison with intent to harm

Any person who unlawfully, and with intent to injure or annoy another, causes any poison or other noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him some grievous harm, is guilty of a felony, and is liable to imprisonment for fourteen years.

Section 338 – Wounding and similar acts.

Any person who-

1. unlawfully wounds another ; or
2. unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, taken by, any person; is guilty of a felony, and is liable to imprisonment for three years.

Self Assessment Exercise

Distinguish between grievous harm and wounding.

Offences Against Liberty

Section 365 – Deprivation of Liberty

Any person who unlawfully confines or detains another in any place against his will, or otherwise unlawfully deprives another of his personal liberty, is guilty of a misdemeanor, and is liable to imprisonment for two years.

3.7 Section 364 – Kidnapping

Any person who-

1. unlawfully imprisons any person, and takes him out of Nigeria, without his consent; or
2. unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovering to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned, is guilty of a felony, and is liable to imprisonment for ten years.

Others abduction offences

Section 361 – Abduction

Any person who, with intent to marry or carnally know a female of any age, or to cause her to be married or carnally known by any other person, takes her away, or detain her, against her will, is guilty of a felony, and is liable to imprisonment for seven years.

Section 362 – Abduction of Girls under sixteen

Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other persons having the lawful care or charge of her, and against the will of such father or mother or other persons, is guilty of a misdemeanor, and is liable to imprisonment for two years.

Section 363 - Ignorance of age of girl or consent, no defence.

In the case of proceedings in respect of an offence under the preceding section.

- (a) it is immaterial that the offender believed the girl to be of or above the age of sixteen years;
- (b) it is immaterial that the girl was taken with her own consent or at her own suggestion.

3.8 - Sexual offences

Section 357 – Definition of Rape.

Any person who has unlawful carnal knowledge of a woman or girl, without her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape?

Section 359 – Attempt to commit rape.

Any person who attempts to commit the offence of rape is guilty of a felony, and is liable to imprisonment for fourteen years, with or without

whipping.

Section 360 – Indecent Assaults on female

Any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanor, and is liable to imprisonment for two years.

Self Assessment Exercise

What is Rape?

Should rape be a personal or morality offence?

3.9 Other offences against Persons

Section 371: Child Stealing

Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of twelve years, of the possession of such child, or with intent to steal an article upon or about the person of any such child-

- (1) forcibly or fraudulently takes or entices away, or detains the child ,
or
- (2) receives or harbours the child, knowing it to have been so taken or enticed away or detained; is guilty of a felony, and is liable to imprisonment for fourteen years.

It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed in good faith a right to the possession of the child, or, in the case of an illegitimate child, is its mother or claimed to be its father.

Section 372 – Desertion of children

Any person who being the parent, guardian or other person having the lawful care or charge of a child under the age of twelve years, and being able to maintain such child, willfully and without lawful or reasonable cause desert the child and leaves it without means of support, is guilty of a misdemeanor, and is liable to imprisonment for one year.

Section 360 – Slave Dealing

Any person who:-

1. deals or trades in, purchase , sells, transfers or takes any slave;
2. deals or trades in, purchases, sells, transfers or takes any person in order or so that such person should be held or treated as a slave;
- 3 places or receives any person in servitude as a pledge or security for debt whether then due and owing, or to be incurred or contingent, whether under the name of a pawn, or by whatever other name such person may be called or known;
- 4 conveys or induces any person to come within the limits of Nigeria in order or so that such person should be held. Possessed, dealt or traded in, purchase, sold, or transferred as slave, or be placed in servitude as a pledge or security for debt
5. conveys or sends or induces any person to go out of the limits of Nigeria in order or so that such person should be possessed, dealt or traded in, purchase, sold, or transferred as a slave, or be placed in servitude as a pledge or security for debt;
6. being a British subject or a non-native holds or possesses any person as a slave;

7. enters into any contract or agreement with or without consideration for doing any of the acts or accomplishing any of the purposes herein above enumerated; is guilty of slave dealing and is liable to imprisonment for fourteen years.

4.0 Conclusion

Definitions inform you of what we speak about. It enables you to know why in some cases it is difficult to tell. You should know the definition of the crimes you seek to punish or prevent.

5.0 Summary

The major offences against the person have been defined . Some are no definitions but descriptions. As definitions are skeletal, we shall now look into the case law to see the build.

6.0 Tutor-Marked Assignment

It is now rather unfashionable to begin a law literature with definition (Smith & Hogan)

Discuss.

7.0 References

1. The Criminal Code
2. Ormerod, D(ed) 2005, Smith & Hogan, Criminal Law, 11th ed . Oxford University Press,

UNIT 2: - Lawful Homicide

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Who is a human being?

3.2 Kinds of Homicide

3.3 Limitation in the heat of war**3.4 Right to life****4.0 Conclusion****5.0 Summary****6.0 Tutor-Marked Assignment****7.0 References****1.0 Introduction**

Homicide is the killing of a human being by another human being. It may be lawful or unlawful. In this unit we shall examine the circumstances in which the same nature of act or omission can be culpable on the one hand and excusable or legitimate on the other. If it is unlawful, it may be murder, manslaughter, causing death by reckless or dangerous driving, infanticide or genocide.

2.0 Objectives

When you have studied this unit, you should be able to :

1. Describe the circumstances when homicide may occur.
2. Recognise the elements of a lawful homicide
3. Distinguish between: Justifiable and excusable homicide

3.0 Main content

When a person kills another human being, there is homicide. When a person kills himself, this is suicide. What distinguishes both is killing of another person or oneself. For there to be homicide, there must be the killing of a human being.

3.1 Who is a human being?

Human personality is the gift of nature, but legal personality is conferred by positive law. Generally, personality commences with the birth of a child and terminates upon death. Although an unborn has no legal personality prior to birth, he is not necessarily without legal recognition. The reason is that equity regards as done, that which ought to be done; that equity to be born is treated as already born. For this reason, posthumous child can by law inherit his father's property.

In the Nigerian Criminal law, abortion is a crime. For homicide, the person involved must be a human being. If he is a newly born baby, he must be shown to have had an existence independent of its mother at the time it is killed.

A child becomes a person capable of being killed when he has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not .

(Criminal Code section 307).

3.2 Kinds of Homicide

They are two kinds of homicide

3.2.1 Felonious or Unlawful homicide, that is to say:

- Murder

- Manslaughter
- Infanticide
- Causing death by reckless or dangerous driving of vehicles.
- Genocide

Self Assessment Exercise

What do you understand by the term “Felonious homicide?”

3.2.2 Non-felonious or lawful homicide,

Non-felonious or unlawful homicide includes justifiable and Excusable homicide

- A. Justifiable homicide – Homicide is justifiable where the killing is done under such circumstances that no guilt is attached to it another. This may occur in the following ways:
- (i) In the execution of public justice. It is lawful for a person who is charged by law with the duty of executing or a giving effect to the lawful sentence of a court (including a native tribunal) to execute or give effect to that sentence (Criminal Code section 254).
 - (ii) In the advancement of public justice
”When a peace officer or a police officer is proceeding lawfully to arrest, with or without warrant, a person for an offence, which is a felony, and the offence is such that the offender may be arrested without warrant, and the person sought to be arrested takes to flight in order to avoid arrest, it is lawful for the peace officer or police officer and for any person lawfully assisting him, to use such force as may be reasonably necessary to prevent the escape of the person sought to be arrested and if the offence is such that the offender may be punished with death or with

imprisonment for seven years or more, may kill him if he cannot by any means otherwise be arrested. (Criminal Code section 27).

(b) **Suppression of riot**

It is lawful for any person to use or order to be used such force as he/she believes, on reasonable grounds to be necessary in order to suppress a riot. The force used or applied must be reasonably proportioned to the danger which he believes, on reasonable grounds, is to be apprehended from its continuance.

(iii) **Self Defence**

When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for him to use such force on the assailant as is reasonably necessary to make effectual defence against the assault, provided that the force used is not intended, and is not such as is likely, to cause death or grievous harm.

(iv) **In preventing the commission of a forcible and atrocious crime:**

If the nature of the assault is such as to cause reasonable apprehension of death or grievous harm, and the person using force by way of defence believes, on reasonable grounds, that he cannot otherwise preserve the person defended from death or grievous harm, it is lawful for him to use any such force to the assailant as, is necessary for defence, even though such force may cause death or grievous harm. (Criminal Code section 286).

Self Assessment Exercise

Explain in your own words what you understand by justifiable homicide?

B Excusable homicide

- (i) Subject to the express provisions of the Criminal Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission, which occurs independently of the excuse of his will, or for an event which occurs by accident.

Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act of omission, the result intended to be caused by an act of omission is immaterial. Unless otherwise expressly declared, the motive by what a person is induced to do or omit to do an act or to form an intention, is immaterial so far as regards criminal responsibility. (Criminal Code sect 24). In essence homicide is excusable where the killing occurs in circumstances as to almost amount to misadventure i.e doing a lawful act without due care and with no intention to harm but results in the death of another. This may occur in any of the following ways;

(ii) Pure Accident

An example is where a man is splitting firewood and the axe-head pulls off and kills a bystander

(iii) Honest and reasonable mistake

If a hunter shoots and kills an object which he believes to be an animal and it turned out that the object was a man, not an animal, and the

circumstance was such that there is no reason to suspect human presence on the spot, such death may be excused.

(iv) Surgical Operation

A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case (Criminal Code sect 297).

(v) Self defence

Where a person kills another in a sudden affray and it is shown that the assailant had retreated as far as possible before this killing occurred, it is killing in self defence.

(vi) While engaged in lawful sports

Death occurring in a football pitch during a football match or in the ring during a boxing tournament is excusable

vii. **Killing in the heat of war**

Homicide excludes the killing of an enemy in the heat of war and in the exercise thereof. It is homicide to kill an enemy soldier who have been taken prisoners or have surrendered.

3.4 Right to life

The Constitution of the Federal Republic of Nigeria, 1999, provides as follows:

1. Every person has a right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.
2. A person shall not be regarded as having being deprived of his life in contravention of this section, if he dies as a result of the use if to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary.
 - (a) for the defence of any person from unlawful violence of for the degree of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of person lawfully detained; or
 - (c) for the purpose of suppressing a riot, insurrection or mutiny.

Self Assessment Exercise

Explain in your own words and with illustrations, what excusable homicide is?

3.3 Limitation as to the time of death

For homicide, it must be proved that the death of the person killed was caused by the conduct of the accused and it occurred within not more than a year and a day of the act or omission by which is alleged to have been caused.

Section 314 Criminal Code provides;

“A person is not deemed to have killed another if, the death of that other person does not take place within a year and a day of the cause of death.”

Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done.

When the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased.

When the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whatever is the later.

Self Assessment Exercise

The Fundamental right to life is hollow? Comment

4.0 Conclusion

Homicide is killing of a human being by another human being. A human being capable of being killed, must have “an existence independent of its mother” whether or not his navel-string has been severed . Homicide may be lawful (non-felonious) or unlawful (felonious). Unlawful homicide may be murder, manslaughter. It is lawful if it is justifiable or excusable.

5.0 Summary

You have learnt about non-felonious (lawful) homicide. Examples are homicide on the course of execution or advancement of justice, misadventure and self defence, among others. We shall turn to the unlawful homicide.

6.0 Tutor-Marked Assignment

What do you understand by “Lawful Homicide”?

7.0 References

1. Constitution of the Federal Republic of Nigeria. 1999.
2. The Criminal Code

UNIT 3: Unlawful Homicide

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Definition

3.2 Observations on definition

3.3 State Allegiance and alien enemy

3.4 Felonious Homicide

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 Reference/further Reading

1.0 Introduction

Homicide is unlawful (or felonious) when it is neither justifiable nor excusable. In that circumstance, homicide is either murder, manslaughter, infanticide, death by reckless or dangerous driving or genocide. We shall be discussing each of these particular crimes, beginning with murder.

2.0 Objectives

When you have studied this unit, you should be able to:

1. Describe the crime of murder.
2. Identify the elements of the crime of murder
3. Demonstrate an understanding of the element of “causation” in relation to murder.
4. Critique the statutory provisions on “murder”

3.0 Main Content

Smith and Hogan have acknowledged that murder is the most serious crime (apart perhaps from treason). Most murders arise out of quarrels, jealousy, arguments, over money, robbery etc, and many are committed against persons from the accused family or friends and the killing often takes place in the home of the victim or killer. Jefferson, (2003:3a)

Oyakhromen’s study of crime in Lagos State which records the highest crime density in Nigeria, has revealed that homicide is of the same frequency of 2 in every 300 crimes as robbery. This seems to suggest, that although the importance attached to human life is a widely fluctuating value in the world today, it is still high, relatively in Lagos

State and by implication in Nigeria. However what is by far more grievous than physical number and rate of recorded homicide is the dimension and degree of manifest violence, associated with it.

3.1 Definition of Murder

(a) At common law, murder occurs:

Where a person of sound memory and discretion, unlawfully kills a reasonable creature in being, under the Queen's Peace, with malice aforethought, express or implied, death occurring within 12 months and a day.

(b) Statute Law

See section 316 of the Criminal Code (unit 1).

3.2 Observation on Definition

3.2.1 Definition of Murder.

Neither the common law nor the Criminal Code has defined the term "Murder". In both descriptions there are imported additional legal terms whose meanings are assumed but require clarifications.

3.2.3 Who can commit murder?

Any reasonable man or woman may be answerable for murder except

- i. A person under the age of seven years.
- ii. A person under the age of twelve years unless he is proved to have a "mischievous discretion"
- iii. A person of unsound mind within the 'McNagkten rules
- iv. A corporation.

3.2.2 Who can be killed?

The victims of murder include:

- Innocent victims of murder.
- Innocent bystander.
- Law reinforcement officers.
- Non-law enforcement person, attempting to rescue the victim.
- All co-felon.

To constitute murder, there must be killing of a reasonable creature in *rerum natura*

A human being is capable of being killed between the moment the foetus or child has “an existence independent of its mother” and the moment of death.

The phrase ‘an existence independent of its mother’ implies that:

- The body of the child must be wholly expelled from its mother’s body (*R v. Poulton*) (1832)
- The entire child must be born into the world in a living state.
- It is not a requirement that the umbilical cord and afterbirth have or have not been expelled from the mother’s body or severed from the child (*R V Reece*) 1839.
- It must have independent circulation that the child breathed or: *R v. Enoch*, (1834) *R V Bran* , (1834), *R V Handby*, (1874)
- A creature ceases to be capable of being killed when life ceases. The test of death is “brain dead” indicating that, while one can be kept alive on a life support machine, there is no chance of his ever recovering consciousness.
- Breathing does not determine life or death

The reason is that many children are born alive and yet not breathe for some time after their birth. Examples are pre-mature children. What is of essence is that the creature exists as a live child, without deriving any of its living or power of living by or through any connection with its

mother. But the fact of the child's being still connected with the mother by the umbilical cord will not prevent the killing from being murder.

See the case of *R v. A, (children) co joined Twins surgical separation (2000)*. In that case, J and M are co joined twins. M was entirely dependent on J for her existence. The medical practitioner severed the twins, knowing full well, as indeed happened that the process would inevitably cause M's death. The question for the court was whether the killing of M was murder or whether M was a reasonable creature in *rerum natura* for purpose of homicide.

Brook J, obiter, observed that although M had for all practical purposes, a useless brain, a useless heart and useless lungs, she was still alive. Justice Broke endorsed the view that advances in medical treatment of deformed neonates have suggested that the protection of the criminal law would only be denied in the most extreme cases.

Self assessment Exercise

Discuss the criminal liability for pre-natal injury in the following cases.

1. Aminat conceives an unwanted child. She takes some drugs to kill the foetus. The child is born alive but with severe injuries from which it dies six months after birth.
2. Dolapo stabs his girlfriend who is three months pregnant with his child. Because of the wound the child is born prematurely and dies four months later as a result of the premature birth.

3.2.4 Killing.

Killing means causing the death of another (man, woman, child) – a reasonable creature or being (human being) between the time of birth with or without severing navel-string.

Causing death may be direct or indirect so long as the act or omission leads to death and has reasonable connection with the death. If a man's life ends, he ceases to be capable of being killed or murdered.

3.2.5 The moment at which a man dies?

Consider the following:

1. D in a state of deep coma.
2. N in a permanent vegetative state.
3. R in a hopeless condition and kept alive by means of a ventilator.
4. M's heart has stopped beating but the Doctor hopes it would start by an injection or mechanical device.

Neither statute nor any case law has defined the moment of death or provided any guideline as to when life can be deemed to come to an end. The reason perhaps is in part the fluid state of medical science. Even if a definition or guideline were provide, it might soon be out-dated because of the fast rate of advancement in medical technology.

Determining the moment when life ends has also been compounded by incidences of persons whose hearts have stopped beating whose breaths have ceased and are found to have subsequently revived and lived.

3.2.6 Brain death test.

Death is the ending of life, the cessation of all vital functions and signs. At present the very moment of death is determined by the 'Brain Stem Death Test'. Brain death is the bodily condition which shows no responses to external stimuli, no spontaneous movements, no breathing , no reflexes and a flat reading (usually for a full day) on a

machine that measures the brain electrical activity. This state also is referred to as legal death, the moment when one's brain stem ceases to function with the result that reflex actions, in particular, blood circulation and breathing have ceased to function.

Self Assessment Exercise

For purpose of criminal law, explain , with reference to decide cases, which life begins and terminate.

3.2.7 Causing death.

The unlawful killing may the form of poisoning, striking, starving, drowning, other forms of death by which human nature may be overcome.

What and who causes a certain event to occur is essentially a practical question of fact, which can best be answered by ordinary common sense rather than the abstract metaphysical theory. *(Per Lord Salmon in Alpha cell Ltd v. Woodward (1972) the dictum in Environment Agency v. Empress Car Co (Abertillery) Ltd (1999) 2 AL 22.*

However the problems have remained somewhat intractable and no single theory of causation has succeeded in providing a ready made answer to the question:

Whether the accused's action is the cause or a cause of some ensuing events.

It is probably a matter of selection of one or more causes out of a multitude of conditions according to the purpose in hand.

3.2 Death within a year and a day.

The limitation as to the time of death is a borrowed rule of common law.

Generally the time at which an offence takes place is not an essential element of the offence. But in a case of murder, statute demands that death must be proved to occur within a year and a day. The counting commences from the time at which the fatal injury is proved to have been caused. The first day is the day on which it was done: (*R v. Dyson* (1908) 2 KB. 45.4

3.3 State Allegiance and Alien enemy

It is unlawful to kill a person who owes allegiance to the state and under protection. This protection excludes killing of an alien enemy in actual exercise of war, but not otherwise. This would appear to be the case if the deceased were a rebel and killed in the actual practice of rebellion. Persons under sentence of death are protected

3.4 Felonious Homicide

It is an essential element of the offence of murder that the killing is unlawful (felonious). Killing is unlawful if it is not lawful (i.e justifiable or excusable). The following may not be murder (Jefferson, M, 2003: 41-42).

- i. Execution carried out by the person whose duty it is and in the manner appointed.
- ii. Killing by an officer of justice in the execution by duty to arrest, search or seize property, provided that the force was necessary to protect himself and execute his duty. A private person helping such an officer may also not be guilty.
- iii. Killing by a citizen affecting a lawful arrest and using reasonable force.

- iv. Killing by a person using force to prevent a crime
- v. Killing by a person using reasonable force to prevent trespass to land or goods.
- vi Killing as a result of lawful chastisement
- vii killing as a result of lawful operation.

Examples of what may be murder or other unlawful homicide include:

- (a) an acts or omission of which the probable consequences may be and eventually is death.
- (b) Acceleration of death

Devlin J. (as he then was) says that “if life were cut short by weeks or months, it was just as much murder as if it were cut short by years.

In Adams the court said it would afford no answer to the charge of causing death, that the deceased was already suffering from a fatal disease from which he would, in any event, had died before long, when the injury, which accelerated death was inflicted.

We shall say more on this in the next unit.

4.0 Conclusion

When faced with an enquiry as to any persons liability for homicide, it is important that you first establish the following:

1. Whether the person killed is a human being;
2. Whether the person killed was within the state protection;

3. Whether the death by the deceased was caused by the conduct of the accused;
4. Whether death has occurred within not more than a year and a day of the act or omission alleged to have caused the death.

5.0 Summary

You have learnt about unlawful homicide in general. Attempt has been made to clarify certain legal terms as they relate to homicide. Examples are killing, unlawful killing, reasonable creature in being, etc. It is important that you should be clear of these terms as we now proceed to deal with specific homicide related crimes.

6.0 Tutor-Marked Assignment

The Criminal Code or Penal Code does not tell us what murder is. It may tell us what is not murder. Comment.

7.0 Reference

Gurland, N.M (2003) Criminal Law for Criminal Justice
Professional, Glencoe MC Graw-Hill, New York

UNIT 4 Homicide: Murder

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Elements of Murder : *Actus Reus*

3.2 The *Mens rea* for Murder

3.3 Constructive Malice

3.4 Recklessness

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Reading.

1.0 Introduction

Murder is a heinous crime. It is a highly reported crime because it generally injures a strongly embraced social value and it is of such a public nature that it is likely to come to the attention of someone close to the victim and induce him/her to cooperate in bringing the offender to justice. A majority of murders arise from domestic conflicts and are

perpetrated by familiar persons. These murders are straight forward, but assassinations and other are typical murders, ritual killings or other forms of serial murders are not. In all cases, however, the object of the criminal law is to detect, arrest, prosecute, convict and punish the offender. In punishing the offender, the criminal law seeks to achieve its purposes which range from retribution, deterrence, incapacitation to reformation and rehabilitation of the offender. To this end, the criminal law and practice have laid down certain elements of murder which must be proved by the state law officers and law enforcement agents charged with responsibility for prosecution of offenders, in order to sustain conviction, to which we shall now turn.

2.0 Objectives

When you have studied this unit, you should be able to:

1. Explain the term murder.
2. Identify the essential elements of murder.
3. Analyse the rules on medical malpractices, escape cases etc.
4. Discuss issues of causation (factual or legal).
5. Explain the concept of *novus actus interveniens*.
6. Critique the criminal law of murder.

3.0 Main Content

It is a hard fact that no body living on earth today will be alive to celebrate the next millennium. It is certain that everyone including those born today shall have died. Murder (and in deed, every form of killing) therefore is merely an acceleration of death. As Devlin J., (as he then was) informs us, if life were cut short by weeks or months, it is just as murder as if it were cut short by years. One may add that the statement is still true even if life were cut short by minutes, hours, or days. It

would afford no answer to a charge of causing death that the deceased was already suffering from a fatal disease from which he would, in any event, have died before long, when the injury, which accelerated death was inflicted. *R v. Adams (1951) Crim LR.365.*

3.1 Elements of Murder

(a) *Actus Reus* (“deed of crime”)

This is the wrongful deed that comprises the physical components of a crime, such results of human conduct as the law seeks to prevent.

Turner explained that in a simple case of murder, the *actus reus* is the victim’s death (brought about by the conduct of the murderer).

In this context, *actus reus* comprises the act, omission, or other events in the definition of the crime in issue. In relation to murder, it encompasses the act, omission or other events of which probable. Consequence may be and eventually is death. In essence, *actus reus* refers to all the components of murder other than those which relate to the offender’s state of mind . e.g. X intending to kill Z, shoots him with a gun and Z dies on the spot.

An *actus reus* may be an omission

An omission is a form of non-feasance such as neglecting to supply necessaries to ones ward or a child , or an apprentice in the following situations;

- Where there is a duty on the offender to supply the necessaries,
- The ward (child or apprentice) is of tender age and unable to provide for him/herself.
- The offender is in actual possession of the means to provide for him or her.

There must be evidence of Death

Causing death of a living person directly or indirectly.

It is not fatal to the prosecution that the dead body of the deceased is not found. No body has been found where Aalaras body was buried, but the offenders were successfully prosecuted and hanged. See *R.v. Sala* 4 WACA 10, *R v Enweonye* 15 WACA; also see CC s. 307, 308, 309 unlawfulness.

▪ *Unlawfulness:*

That the killing is neither justifiable nor excusable (see previous unit) Reasonable creature, that is, a human being, man, woman, or child. Human being is capable of killing .

Hostility to the state e.g, alien enemy in actual prosecution of war.

Time of Death :

Death occurring within a period of the year and one day of the act or omission, which caused the death.

Self Assessment Exercise

What do you understand by “*actus reus*” in murder?

3.2 Mens rea (Guilty mind) for murder.

The *Mens rea* for murder at common law is ‘malice aforethought’. This consists.

i. Express Malice - Express malice is the specific intent to kill another human being.

- ii Implied Malice: Implied Malice includes:
- intent to inflict grievous bodily harm upon another.
 - intent to act in a manner that shows extreme reckless disregard for the value of human life.
 - intent to commit a felony that results in the death of another human being.
 - intent to resist a known, lawful arrest.

Read the Criminal Code, section 316 once again and also the Penal Code section 221 (1).

Identify the specific intent indicated in 316 (1) and (4); then 316 (2), (3), (5) and (6). Section 316 is not to be read in isolation. See also section 24: Intention: motive, which states: “subject to the express provision of the Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omissions, which occurs independently of exercise of his will, or for an event , which occurs by accident.

Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regard criminal responsibility.

This section has too often been repeated and should now be part of you.

There is not much difference between “Malice aforethought” (common law) and the intention for murder (section 316 and 24) of the Criminal Code applicable in Nigeria.

Accordingly the intention for murder may be expressed as:

- Intention to cause the death or grievous bodily harm to any person, whether such;
Person is the person actually killed or not.
- Knowledge that the act which causes death will probably cause the death of, or
Grievous bodily harm to, some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not or by a wish that it may not be caused.
- Deliberate cruel act committed by one person against another where death occurs as
the result of a voluntary act of a the accused, which was intentional and unprovoked.
- Malice is implied in all cases where a man wilfully administers poison to another .
- Lays poison for another and either he or another takes it and dies.

Illustration:

Kuti knowingly gives poison to Ade to administer as a medicine to Bayo. Ade neglects to do so. His child, Femi, accidentally gives it to Bayo, or other unconscious agent.

Kuti is as guilty as if he administered the poison by his own hand.

Bala intended to kill his wife, Mary. Mary is carrying their body on her back. Bala pursues her and inflicts match cuts on her back. The child fell and died of head injuries

There is an intention to kill, or cause grievous harm to some one. Bala therefore is criminally responsible for the death of the child. See *Basoyin v. AG (1966)*.

This is in line with a principle of law that a man intends the natural consequences of his act of omission. See *R v. Nungu (1953)*; *R v. Adu (1955)*

Activity

See this principle of law again that, a man intends the natural consequences of his act or omission” Is this always true?

Attempt to justify the statement by reference to decided cases where it has been applied. It also has limitations. For example, it can be rebutted by evidence of purely accidental circumstance and absence of intent to kill or cause grievous harm to any person.

Hyam v. DPP (1974) 2AER 41

Accused (H) was discarded by her lover who now began to pay his respects to another woman. At 2.0am, and driven by jealous, she set fire to the house in which the other woman lived with her three children. Two of his children were burnt to death. She pleaded that her intention was to frighten the other woman into leaving the neighborhood that she had no intention to cause death or grievous bodily harm.

Held: intention to cause death or grievous bodily harm is established if it is proved that the accused deliberately and intentionally did an act, knowing that it was probable (highly probable) that it would result in death or grievous bodily harm to the victim even though he did not desire that result.

Lord Hailsham

“If a man, in full knowledge of the danger involved, and without lawful exercise, deliberately does that which exposes a victim to the risk of the probable grievous bodily harm. (in the sense explained) or death, and the victim dies, the perpetrator of the crime is guilty of murder and not manslaughter to the extent as if he had actually intended the consequences to follow, and irrespective of whether he wishes it”

And lord Diplock:

“ No distinction is to be drawn in English law between the state of mind of one who does an act because he desires it to produce a particular evil consequence, and the state of mind of one who does the act, knowing full well that it is likely to produce that consequence although it may not be the object he was seeking to achieve, by doing the act.

What is common o both of these states of mind is willingness to produce the particular evil consequence.

Grievous Bodily Harm

In the context of murder, grievous bodily harm means some “really serious bodily harm” or “serious bodily harm”.

Statute defines the term as meaning harm which:

- amounts to maim or dangerous harm (i.e harm endangering life)
- seriously or permanently injures health;
- is likely so to injure health;
- extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, member or sense.

A intentionally cuts B’s hand, Death results from bleeding and infection:

X intends to hit ‘Z’ slightly, with the flat surface of a cutlass and by accident inflicts grievous harm .h causing death.

Quare *R v. Vickers* (1957) WLR. 326: if a person does an act, which amounts to the infliction of grievous bodily harm, he cannot say that he only intended to cause a certain degree of harm. See the Criticism of this case at (1958) Criminal Law R. 15

At law, the test of liability for murder is not what the Accused contemplated, but what the ordinary reasonable man or woman in all the circumstance of the case would have contemplated as the natural and probable result. (*DPP v. Smith* (1961))

This approach appears not consistent with section 316 (2) of the Criminal Code, which postulates a subjective rather than objective test. The motive for causing death is not an essential ingredient of mind. It is irrelevant except that it may strengthen one's case if proved.

The motive for causing death is irrelevant. For this reason Euthanasia is murder notwithstanding that, it is mercy killing or some form of murder with love in the heart.

Self Assessment Exercise

Explain the following intention:

- Express malice
- Implied malice
- Constructive malice
- Recklessness
- Negligence
- Motive
- Knowledge

Homicides, motivated by malice are usually committed in secret. It is rarely practicable to substantiate it by direct and positive evidence. Sometimes, the dead body or any trace of it cannot be found and it is not common that any person confesses to any participation in a crime, let alone the capital crime of murder. In rare cases of plea bargaining an offender may admit guilt, but this is hardly possible in murder which carries a mandatory sentence.

In cases of implied malice, the homicide is often committed in the presence of others. Thus, it is possible to prove it through those other persons or by circumstantial evidence.

3.3 Constructive Malice

The term constructive malice takes two forms:

1. Killing in the cause of furtherance of a violent felony (a possibly any felony) coupled with intention to commit that felony.
2. Killing while attempting to prevent lawful arrest or bring about escape from lawful arrest or custody.

In these types of cases, it amounts to murder if:

- the purpose is unlawful
- the nature of the act or omission is likely to endanger human life. See *Criminal Code* sections 306, 315, 316 (3) – (6). Also, *Andrews V DPP (1937) AC 576 at 585*

If X strikes Y with an axe – head, intending to inflict on him mere grievous bodily harm and Y dies in the process, this is killing in the cause or furtherance of that felony. See *Vickers (1957) 2 Q B 664*, and *Cunningham (1981) 2 A ER 863 HL*

In cases of “attack” the judicial attitude seems to be in favour of the principle that the law imposes an obligation on the offender to take responsibility for the unforeseen consequences of his/her actions.

The reason for this may be that:

- the offender was acting ‘wickedly’.
- There is little moral difference between one who intends to kill another who intends to cause grievous harm

On the other hand, it sounds strange that a person can be convicted of murder if death results from, say his intentional breaking of another arm or (where the victim suffered broken nose and cuts or gagged, which an action would in most cases be unlikely to kill.

Activity

In one paragraph each, describe the facts and decisions in Smith v DPP, Andrews v DPP (1932), Vickers (1957) I and Cunningham

3.4 Recklessness

This is more relevant in manslaughter or we shall see in the next unit.

4.0 Conclusion

There must be concurrence of *mens rea* and *actus reus* to amount to murder. It is the duty of the prosecution to prove every element of murder.

5.0 Summary

We have explained the concepts of *actus reus* and *mens rea* in murder. These terms are nowhere defined. The *mens rea* for murder is intention or Recklessness. Intention is foresight coupled with desire. Recklessness is knowledge of certain facts or foresight without desire. Little thought has been given to the question whether intention is foresight or whether foresight is the platform to assume or disprove intention. Certain special murders have not been mentioned. Examples are murders by act of third parties eg medical doctors, and strangers. This is the focus of the next unit.

6.0 Tutor-Marked Assignment

Explain with reference to decided cases, the *mens rea* for murder.

7.0 Reference/Further Reading

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UNIT 5 Murder Cont'

- 1.0 Introduction**
- 2.0 Objectives**
- 3.0 Main Content**
 - 3.1 Who and what causes killing**
 - 3.2 Factual Causation**
 - 3.3 Legal Causation**
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- 4.0 Conclusion**
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1.0 Introduction

In cases of homicide, if as we have seen, killing of a reasonable creature in *rerum* may be inspired by an intention to kill a human being, or to cause any one a grievous bodily harm or do something unlawful to another, foreseeing that death or grievous bodily harm is a natural and probable result. In many cases also, the act or omission of either the victim, an accomplice, co-felon, or innocent agent and/or a complete stranger may be such as to be regarded as his own act or omission and therefore responsible for the consequences - a semblance of vicarious liability. We shall be looking into some of these situations in this unit.

2.0 Objectives

When you have studied this unit, you should be able to:

1. identify situations when a person accused of murder may be held criminally responsible for the conduct of another over whom he/she has no control
2. Distinguish legal causation from factual causation in murder.
3. Explain the term *novus actus interveniens*
4. Determine *nova acta interveniens* that may exculpate or inculpate an aggressor.
5. Critique judicial approach to cases of *nova acta interveniens*

3.0 Main Content

3.1 **What and who causes the killing:**

In many cases of homicide, it may not always be clear what or who has caused the death of the victim.

Illustrations:

1. X shoots at Y with a gun and kills him unknown to X, Y was already suffering from a terminal disease of cancer and would in any event have died any moment. Who is liable for killing or did the act which caused the death of Y?.
- ii. B fatally stabs A with a knife, 'A' broods over the incident takes poison from which he dies.

Who is responsible for the act resulting in the killing of A?

Differences may well lie on the relationship between the act of stabbing and the act of poisoning and whether the latter act was 'daft', abnormal or reasonable.

- iii. An armed gang shoots at the police patrol, one of the Police men, Police Constable M shoots thought back, killing an innocent female undergraduate

by stander whom the constable though was being used as human shield by the armed gang.

You see, death may be self inflicted (suicide), it may arise from the conduct of a second

party assailants or even by an intervening act of a third party stranger.
Killing can arise

from several blows from different people in a way that it may not be discernible which

particular blow resulted in the killing.

There are two approaches to the problem and it is important always to distinguish one from the other. Bear in mind that one can cause death in fact but not in law, just as it is possible for one to be held responsible for killing in both fact and law. Let us distinguish factual causation from the legal causation

3.2 Factual Causation

This is a practical question: what and which act is responsible for causing a certain event to occur? Who and what in actual fact brought about this or that consequence?

It is the answer you get while filling the following gap :

- (i) But for this/that factual act) the killing could not have arisen.
- (b) This or that person is able to prevent the crime, but did not or omitted to do(this or that.

It is the same as answering this question:

Whose and what act or omission is the sine qua non of the killing in question?

3.2.1 *De minimis rule* : The rule in the “*minimis non curat*” short form : *de minimis* is that the law is not concerned with trifles. The cause must contribute more than negligibly to the result. Its contribution must be significant, to the result, not slight or trifling but outside *de minimis* range.

It needs not be the sole cause; or even a substantial or dominant cause. Thus it is an invalid defence

- (i) that the death could not have occurred if other had acted differently.
- (ii) that there is another or other significant contribution: (*R V Armstrong*), compared with *R V Kennedy*.

Self Assessment Exercise

Explain, with illustration, the term “factual Causation”

Activity

- (a) In one paragraph each, summarise the facts and decision in *and*, *R V Kennedy*.
- (b) Distinguish both cases.

Guide to distinguishing:

- which of the cases is alcohol or heroin based?

- Is there any difference in the characteristic or identity of the victim in each case?
- What is the nature and extent of intervention in each case: Can it be described as abnormal or *de minimi*?

3.3 Legal Causation

Legal causation points to the direction of the person to whom the criminal law attributes the cause of the victim's death in the particular circumstances of each case

Where there are more than one cause of a consequence, the person to whom criminal liability can fairly be ascribed is the legal cause of consequences, irrespective of what or who fact actually brought about the consequence.

Illustration:

Ladi hits Kunle with a stick on the head, Kunle bleeds, and dies as a result of the injury he has received.

Ladi's act is both the factual and legal cause of Kunle's death.

Saheed is suffering from an incurable ulcer, a terminal disease. During a quarrel Musa violently pushed Saheed who falls into a gutter and is crushed by a car, being driven by Adu. The ulcer, as well as Musa and Adu contributed to the killing of Saheed, as a matter of fact, but criminal liability cannot fairly be ascribed to all of them. Musa and Adu's acts are intervening acts described as *nouvs actus interveniens*.

Self Assessment Exercise:

1. Explain with illustrations, the term “legal causation”
2. Differentiate the following (i) factual causation (ii) Legal causation

3.4 ***Novus actus Interveniens***

This refers to an intervening cause. It is an event that comes between the initial event in the sequence and the end result, thereby altering the material course of events that might have connected a wrongful act to an injury.

Chidi and Gloria are a husband and wife. They had a rawl. Chidi struck Gloria on her jaw, causing her a sink o her knees. While trying to drag Gloria into the house, Chidi dropped her. Gloria later died of a fractured skull. (le Brun (1992)

The intervening event between Chidi’s act of striking Gloria on her jaw and her death is chidi’s act of dropping her, i.e the *novus actus interveniens*

3.4.1 Independent intervening cause

This is an intervening event, which operates on a condition produced by an antecedent cause but in no way resulted from that cause.

When an event occurs and breaks the chain of causation there is a various *actus interveniens* that is to say that the act is so independent of the act of the assailant that it may be regarded, in law, as the cause of the victim’s death.

Activity

Sophia enters a taxi at Tudun Wada, enroute Sabo. She soon becomes apprehensive that she entered a wrong vehicle. Kodje in inmate is the vehicle, moves towards her, sexual advance, tries to take off her skirt . Sophia screened and jumps out of the fast moving vehicle to her death.

If an intervening act is independent of the act of the Kodje, the court may in law regard it as the cause of the Sophia's death to the exclusion of the act of kodje.

What kodje did may well be mere part of history.

If on the other hand, the intervening act is not strong enough to relieve the wrongdoer of liability or it is not, free, deliberate, and informed, the chain of accusation is not broken; the wrongdoer (eg kodje) still remains the cause. See *Dyson V R* (1098) and *R V Adams* (1957).

The problem we face is : How the court determines the following :

1. Independent intervening act, which would relieve the original wrongdoer of liability.
2. Other intervening acts which are connected with the initial wrongdoer act to the consequences.

To this question judicial approach has not been uniform. Different principles of law have also been applied. All these combine to render issues of causation in cases of murder difficult.

3.4.2 Test

The courts appear to have applied four different tests, namely:

1. Operating and substantial test
2. Nominal consequences test
3. Reasonable foresight test

4. *Novus actus interveniens* test.

Sometimes, the nature of the cause may guide the court in the choice of test. For example, the judicial attitude may on whether the case before it involves “escape” or medical malpractice and refusal of treatment. In every case the court is required to determine.

1. Causation in fact, and
2. Causation in law

In doing so, one has to consider:

1. The initial wrong doing
2. The initial intention distinguished from motive)
3. The intervening conduct by
 - (a) the victim.
 - (b) a stranger

Self Assessment Exercise

Distinguish a supervening *novus actus interveniens*. Illustrate with at least two decided cases.

Distinguish situation where the *novus actus interveines* may be regarded as the act of the aggressive party. Illustrate with at least three decided cases

3.4.3 Interveing acts of Omission

An intervening act may break the chain of causation and relieve the original assailant of criminal responsibility if:

- (a) it is an independent act or omission
- (b) the initial act or omission, which set the stage, ceases to be the effective or Operating cause at the moment of the victim's death.
- © it is a free, deliberate and informed intervention
- (d) it is abnormal or unforeseeable

3.4.4 Intervening acts: medical malpractice.

A medical doctor must, at his peril, use proper skill and caution in administering a poisonous drug. But where the doctor's treatment of his patient is lawful, the criminal law will regard the patient's death as exclusively caused by the injury or disease to which the condition is attributable.

If a medical practitioner honestly and bona fide performs an operation or uses a dangerous instrument, which causes the patient's death, he may not be morally liable.

But if he is guilty of criminal misconduct, arising from gross ignorance or criminal inattention and not from mere error of judgment, he may be liable for unlawful homicide.

The same is true of a person who is not a regular medical practitioner. If he has a competent degree of skill and knowledge and makes accidental mistake in the treatment of a patient, through, which mistake, death ensues, he may not thereby be guilty of unlawful killing

However, where proper medical assistance can be had, a practitioner totally ignorant of the science of medicine, takes on himself to and administers a violent and dangerous remedy to one labouring under disease, and death ensues in consequence of that dangerous remedy

having been so administered, then he may be liable not for murder but for manslaughter.

This is somewhat a difficult part of the criminal law. Perhaps a few examples and activities may make it clearer.

Activity

Uba is a medical doctor. He administers to Ijeoma (a patient) certain pain-serving drugs, which would shorten life, seeing that she has severe pains.

Identity the following:

- a. Intervening act
- b. Uba's intervention in fact
- c. Uba's motives in fact
- d. What the law says about (1) intervention (2) Motive i.e (Purpose)
- e. What the literal approach of the criminal Code is
- f. What the judicial approach has been
- g. The effect it would have in your answer if the doctor had administered a large
- h. dose of sedative, causing the patient to lapse into a coma in which he dies instead of the fatal pain killer.
- i. The difference, if any, an unqualified and unauthorized person had done the same thing the licensed medical practitioner did.
- j. Read section 313 of the criminal code concerning injury causing death in consequence of subsequent treatment.

Let us consider some relevant cases.

R. V Smith

Garba inflicts stab wounds and causes his victim some injury. The victim is admitted into the hospital, this good chances of recovery from the stab wounds. At the hospital, the director gives him what experts described as “thoroughly bad treatment’ from which he dies.

These were the facts as found by the court in *R v Smith* and the judgment of the court was that death flowed from the stab wound. To avail a defense, *novus actus interveniens* must be so overwhelming as to make the original wound merely part of history

R v Jordan (1956)

J inflicts stab wound on V, the stab wound is responding to treatment and is largely healing. While still undergoing treatment, V is injected with a drug and large liquid and he dies. Expert evidence is that the treatment is “abnormal, so negligent and palpably wrong” Held” J is not liable. The wound was merely the scene of the cause of death not the cause itself. Legal writers regard this case as exceptional.

F v Cheshire

C stabs V at the chest, and legs. The injury does not threaten life. Without first diagnosing the patient’s ailment, the doctor inserted a tube in his wind pipe to aid breathing and dies from the negligence. Held: C is liable.

In the case above, the factual causations point to the *novus actus interveniens* (the acts of the medical practitioner) but the legal causation indicates the original acts as the effective and operating cause.

The purpose of medical treatment is to restore health and to relieve pain and suffering. It sounds bizarre to argue that a medical practitioner who is doing his or her best to save life is the cause of death.

If a medical malpractice is the immediate cause of death, it could also in certain circumstances be regarded in law as the cause of a victim's death to the exclusion of the accused's acts provided where, for example, where the malpractice is most extra-ordinary or so potent in causing death. In this situation the issue you are to consider is not the degree of fault. It is not also the recklessness of treatment. It is the consequence of treatment, whether the maltreatment is the cause of death to example the exclusion of the original act.

Example :Nuhu and Zakari have a fierce quarrel; Nuhu hits Zakari's head over a TV set and injures him. Zakari needs to be operated but he is diagnosed to have a pre-existing ulcer. This makes the operation risky because he may die under anaesthesia. Nonetheless, the doctor carries out the operation and Zakari dies.

The treatment here is not reckless; nor the potent cause of death. It is Nuhu's act and Nuhu is liable. This was the case of *R v Mckechnie* (1992)

4.0 Conclusion

Every one has a right to freedom of thought; be it good or evil. You can freely have within the realm of thought a desire to kill or to maim and go to sleep. You may express a desire to kill Mr. X and Mr. X dies a few days later of cardiac failure. In either case you incur no criminal liability. The reason is that there is no nexus or causal link (or legal causation) between your evil intention and the proscribed event. Causation may be factual or legal, both of which must correspond in order to establish a legal nexus

5.0 Summary

You have learned about a factual causation as well as a legal causation, It is important to dichotomise both concepts. In appropriate cases, who and what is responsible for killing a victim *in fact* may not stand the legal test of who and what has caused the killing *in law* There may have been a *novus actus interveniens* . In this connection you learned about the *de minimis* rule, the applicable test and judicial attitude towards cases of death arising from medical mistreatment and the Police fire power.

6.0 Tutor Marked Assignment

The criminal law protects medical malpractice and police carelessness. Discuss critically with reference to decided cases.

7.0 References

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Unit 7 Intervening acts of self preservation or prevention of crime.

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1.0 Introductions

When an innocent person or persons get caught in a crossfire between the Police and an armed gang, and death arises, who is has caused the death – the Police or the bandits? If the victims of the crossfire did not die but were wounded and taken to the hospital where they eventually died from wrong treatment, who is to be held liable – the Police, the initial criminal gang or the medical practitioner ?. The answer may well

depend on the interpretation given to the intervening acts, and such acts in the process of self preservation, and prevention of crimes. This is the focus of this unit.

2.0 Objectives

When you have studied this unit, you should be able to:

1. determine when an event can be said to break the chain of causation.
2. explain the concept of foreseeability and the objective test
3. Illustrate these concepts through cases

3.0 Main Content

Necessity as an excuse for taking the life of another person to preserve one's own life is an invalid defence: *R v Dudley and Stephens*. It was accepted in the case of the Conjoined Twins. Sir James Stephen Broke, LJ laid down three preconditions for the application of necessity:

The act is needed to avoid inevitable and irreparable evil

No more should be done than is reasonably necessary for the purpose to be achieved

The evil inflicted must not be disproportionate to the evil avoided

Activity:

A member of a gang of armed robbers shoots at the police patrol van. One of the policemen in the van shoots back. He kills a girl, innocent bystander mistaken for him as being used as a human shield by the robbers.

1. Analyse the role of (a) the criminal gang (b) the police.

2. Who and what, in fact, killed the deceased girl (i.e the factual causation)
3. Who, in law, killed the deceased girl (i.e the legal causation) to come to this conclusion, consider further the police action was:
 - (a) free, deliberate and informed or
 - (b) abnormal break in the chain of causation or
 - (c) instinctive?
- (b) Very importantly, the crux of the matter before you, which you must answer is not whether or not there is any other significant contribution. Rather; the question is whether the accused person, whose conduct is in issue has contributed more than negligibly to the result, (*de minim's rule*)

3.1. Breaking the chain of causation

Jefferson explains that when some event breaks the chain of causation, that is *novus actus intervenens*, the accused's conduct becomes part of history, it is no longer the operating cause of death. It is when the intervening act is so over whelming as to make the original act of injury merely a part of history, can it be said that the killing does not flow from the original act or omission.

3.2. The basic rule

The basic rule is that the accused escapes criminal liability only if the supervening event is highly abnormal or put differently, unforeseeable, or if there has occurred what may be described as 'free, deliberate and informed intervention'.

Much of the argument is about the concept of foreseeability and in this regard, the test is an objective one.

Criminal law is a matter of hard facts and hard law. It is not a matter of sentiments. In the present context, it is not a matter of choice between which cause is dominant or which is not. The test is whether the accused's act has contributed significantly to the killing in question.

3.3. Judicial attitude

In the instant case, the judicial attitude is that police act of intervention is not "free, deliberate and informed". Rather, it is instinctive. Also it is foreseeable that if you fire at the police, they are likely to return fire. Their intervening act is therefore a;

- A reasonable act of self-preservation and crime prevention;
- An acts done in the interest of self preservation in the face of violence in the part of another, which results in death of the first person is a reasonable act performed to escape.

Read the case of *R v Pagett*

Let us see another category of homicide, where the act or omission of the deceased himself, or some body in *locus parentis* like a parent, guardian, master etc is the cause of death. The problem arises:

- (a) where death is caused because:
 - i. The deceased refused medical treatment, or transfusion of blood or his parent or one who in custody of him or her refuses such.
 - ii. the deceased jumps to his/her death in a bid to escape.
- (a) Death from refusal of medical treatment

Often, the reasons for refusing medical treatment is either

1. Religious belief, or
2. Spite

(a) *R V Holland (1841)* is an example of

Victims rejection of medical treatment

The deceased in this case requires medical treatment for a wound to his finger and dies of tetanus.

Held: the ultimate cause of death is the wound.

In matters little that the victim declines treatment of blood transfusion for religious or psychological reasons. It will be otherwise, where medical treatment or blood transfusion is refused out of spite provided that such refusal is “free, deliberate and informed”.

Self Assessment Exercise

1. Adeola threatens violence against his neighbour’s child. The child, in fright, scales over the stair case and is badly injured. The medical doctor prescribes blood transfusion. The child’s parents are member of the Jehovah witness and they do not, only withhold their consent but expressly refuse blood transfusion. The child dies.

Discuss the criminal liability of Adeola and the child’s parents?

2. It is a principle of law that an accused person shall take his/her their victim as they find him/her. Discuss this principles of law as it applies to *novus actus interveniens*

(b). Death resulting from deceased’s own act or omission.

The last group of intervening act you need to know about is the conduct of the victim. That is to consider, in the light of the facts before us, whether or not -the deceased committed suicide

- Was the fatal injury was self inflicted or inflicted by another ?
- Who killed the deceased in fact and in law.?

Activity:

Consider these cases: Duru has sexually abused Martha, a young child. Martha’s father goes to Duru’s house and slashes him twice with a knife. Duru bleeds profusely. The doctor stops the bleeding and treats the

wound. Duru re-opens the wounds; he bleeds again and dies two days later.

To resolve the matter consider the following:

- (i) the intervening acts
- (i) re-opening the wound
- (ii) omission to stop bleeding
- (iii) both conditions
- (iv) point to the direction of suicide
- (v) the significance of each of the parties contribution
- (vi) probability that Duru was a “**daft**” for re-opening his wound.
- (vii) if the assumption in is right, then the rule: “The accused must take his victim as he finds him” (including his mental state).

Self Assessment Exercise

Discuss the concepts of *Novus actus interveniens* and foreseeability as they apply in criminal law.

Let us look at more to the cases on the subject matter.

In *R v Dalby (1982)* the accused supplied a dangerous drug with which he and the deceased injected themselves.

The question for determination by the court was whether or not there was an intervening act. Held, there was, the deceased self injection is unlawful and it broke the chain of causation; and the deceased was responsible for his own death.

R v Kenedy

Accused supplied a heroin based drug mixed in a syringe and gave to the deceased. The deceased knew of the content, injected herself and died. The court was asked to decide.

1. Whether the accused caused the death
2. Whether the conduct of the accused merely set the stage.

Held: The mixing of the drug for “immediate use” was an act of encouragement and operative cause of death.

Following this case, if Agatha drops some chips on the floor, Bosso steps on it, slips on them and falls to the ground, banging his head against on an object and dies. Agatha may have caused the killing of Bosso.

Let us subsume by considering two controversial cases.

Case 1 :

Damola makes sexual advances to Amina, and interferes with her. Amina complains to her father, Alh. Mustapha. In fury, Mustapha goes to Damola, slashes him with a knife. Damola is rushed to the hospital and treated. At home, Damola reopens his wound. He begins to bleed, and does nothing to stop it, and dies, as a result Alh. Mustapha is arrested and charged.

Case II

Haruna and Shakoor drive out one evening in Haruna’s car. They stopped and pick Sophia some distance away, Haruna begins to drive slowly, Shakoor takes on Sophia, begins to remove her coat and shirt

forcefully. Sophia is frightened, jumps out of the moving car , hits her head on the gutter and dies. Shakoor is arrested and charged..

3.4 Issues of Factual and Legal Causation

Attempt to determine the following issues in each case:

1. the factual causation
2. The legal causation

The following considerations may guide you in the right path.

- who and what killed Damola (case 1) or Sophia (case II)?
- Is there a free, deliberate and informed *novus actus interveniens*
- Can you say Damola (case 1) and Sophia (case II) committed suicide?.

Related to these issues are further questions namely:

- whether the conduct of Damola in reopening his wound and failing to stop the bleeding is “draft” abnormal or extra-ordinary and potent.
 - Whether the conduct of Sophia in jumping out of a vehicle that was moving at a slow speed was “draft” abnormal, extra-ordinary and potent.
- If your answer is yes, the inference may be that each of them has caused his or her own death.

Lets move a little further.

Is the conduct of Damola (case I) and Sophia (case II) reasonable?

If your answer is yes, then the inference may be that Alh. Mustapha (case I) and Shakoor (case II) may be criminally responsible for the killing.

3.5 The test in escape cases

The test in escape cases is one of reasonable foreseeability

Let us look at the case of *R V Royall (1991)*.

T was found dead in a pool of blood on the ground below her bathroom. There was evidence of a struggle around. R and T have lived there for four months as husband and wife. R said he was present when T voluntarily jumped down to her death, and that he had no intention to kill or harm her. In finding R criminally responsible for killing T, his wife, the court expressed the opinion that in escape cases, an act done by a person in the interest of self preservation, in the face of violence or threats of violence on the part of another, which results in the death of the first person, does not negate the causal connection between the violence or threats of violence and the death.

In essence, any reasonable intervening act performed for the purpose of escape does not break the causal chain.

Remember that legal issues find answers in law. In the search for such an answer, you are not to jump to conclusions. Move logically from one level of reasoning to another level and ultimately to a logical conclusion.

It is important that in your analysis, you should bear the following principles of law in mind.

1. If an escape is a natural result of what the assailant says or does in the sense that it is something that can reasonably be foreseen as the consequences of what he/she is doing or saying, the assailant is liable.

2. Escape must be in the range of foreseeable action or omission. That is to say that the escape must be a natural consequence of the Assailant's behaviour.
3. An escape will break the chain only when it is free, deliberate and informed on draft.
4. The law is not concerned whether the victim (the deceased) is deaf, drunk, careless, or whether he/she has a strong or egg-shell head. You take him/her as you find.
5. It is irrelevant that the deceased's act or omission has contributed to his/her death.
6. Once a person embarks on a dangerous course of conduct, which may foreseeably injure another or others, that person must take responsibilities for the

Consequence that ensues

Where another conduct induces in the victim, a well founded apprehension of physical harm such as to make it a natural consequence (or reasonable) that the victim would seek to escape and the victim is injured in the cause of escaping, that other is damnified.

Activity

A number of phrases have arisen from judicial interpretation which nowhere defined or used in the statute Examples are:

- Well founded apprehension of the victim-nature and extent.
- Reasonableness or proportionate act of self preservation
- Foresight as to consequence of the fatal act by the victim or third party

Meditate on each of the above expression and ensure you know what each of them means.

4.0 Conclusion

The mens rea and actus reus for murder must be contemporaneous. The cases of intervening injuries inflicted by the victim or third parties arise in (a) medical treatment or refusal of medical, (b) police actions of self preservation and prevention of crime and (c) escape arising from a well founded apprehension of harm by the victim .

By and large, the rationality (or irrationality) or the reasonableness (or unreasonableness) of the victims responses are variable practices and the courts will weigh them according to all the circumstances of each particular case. You must also bear in mind that in an agony of the moment, one may act without thought and deliberation. Hence, a person, who is fearful for their own safety, may be forced to react on the spur of the moment, and may not always make a sound or sensible judgment and may even act irrationally.

5.0 Summary

The criminal law distinguishes between legal causation and factual causation and may in appropriate, cases legally ascribe killing of some one to an assailant other than the very person, who in fact killed.

You have learned also a number of legal principles and rules. Examples are

- (i) *De minimis non curat lex;*
- (ii) Natural consequences test
- (iii) Reasonable foresight test

(iv) *Novus actus intervenies*

You should be able to explain and contribute meaningfully to any discussion on the above concepts and justify your stand by reference to decided cases or statutes.

6.0 Tutor-marked Assignment

1. The criminal law has been criticised for its unfairness in that an accused can be held to be the cause of consequences even though the victim himself is a third party is the immediate cause. Discuss this critically with reference to decided cases.

7.0 References

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Module 4

UNIT 1: Homicides: Manslaughter

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- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Definition
 - 3.2 Classification
 - 3.3 Unlawful at manslaughter
 - 3.4 Standard of dangerousness
 - 3.5 Act Of Omission
 - 3.6 *Mens rea* of manslaughter
 - 3.7 Killing based on recklessness
 - 3.8 Civil and criminal negligence
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
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1.0 Introduction

Unlawful homicides includes murder, manslaughter and infanticide. In the last unit, you learned about murder. In this unit, you will learn another kind of unlawful homicides-manslaughter (voluntary and involuntary).

2.0 Objectives

When you have studied this unit, you should be able to

1. Define or describe manslaughter.
2. Distinguish between murder and manslaughter.
3. Identify the *actus reus* in manslaughter
- 4, identify the *mens rea* in manslaughter
5. Critique the law on the crime of manslaughter

3.0 Main Content

There may be need for you to read over the preceding unit. The reason is that the acts that constitute murder may also constitute manslaughter. For example, both crimes have the following common features:

- The fact of death
- Period of one year and a day between the cause of death and death
- The act or omission on the part of the assailant, which results in the killing.

Differences lie between murder and manslaughter in the degree of blame worthiness. For murder, there must be intention to:

1. Kill;
2. do grievous bodily harm;
3. do an act and make an omission likely to endanger human life in the pursuit of an unlawful purpose.

A wicked intention which falls short of the above murderous malice would suffice for voluntary manslaughter. Involuntary manslaughter need not have any intention to kill or do grievous harm. In fact, the accused will probably not have contemplated the killing of the deceased.

3.1 Definition of manslaughter:

Manslaughter can be defined as an unlawful killing of a human being without malice aforethought (Black's Law Dictionary) or an unlawful killing of another in such circumstances as not to constitute murder.

You already know that any killing is unlawful which is not authorized (i.e. excusable or justified). As any unlawful killing which does not amount to murder is manslaughter, you have first to know murder before you can know what is not murder or what is manslaughter. It is wise that you revise your manual on murder.

3.2 Classification of manslaughter:

- Manslaughter may be voluntary or involuntary

3.2.1 Involuntary Manslaughter:

Involuntary manslaughter means: an unlawful killing in which death is unintentionally caused.

Unlawful killing of another without any intention to kill or do grievous bodily harm, but that is committed with criminal negligence or during the commission of a crime not within the felony – murder range.

The terms “involuntary manslaughter” and “negligence manslaughter” are used sometimes interchangeably.

Perkins and Bryce have described ‘involuntary manslaughter’ as a ‘catch all’ concept, covering all manslaughter not characterized as ‘voluntary’

Alan White (1985) writes:

'The only difference between the legal use and the everyday use of 'voluntary' not voluntary' and 'involuntary' seem to be:

1. a more frequent use of 'involuntary' as a synonym of 'not voluntary' and
2. a technological use of 'involuntary' in the crime of 'involuntary manslaughter' that it seems to have the meaning of 'unintentional'.

In contrast with 'voluntary manslaughter' there is no suggestion here that death, as contrasted with harm, was intended or foreseen.

It is often confined to cases of assault and battery where death results.

Example Death arising either from the withholding of food or from excessive chastisement of a child,

Some jurists maintain that it can also be due to any unlawful and dangerous action causing death.

Thus, as unlawful killing without murderous malice, involuntary manslaughter may be caused as follows:

- By an unlawful act, not involving an obvious risk of some bodily harm eg criminal abortion, excessive chastisement of a child.
B is a guest who would not go. 'A' kicks him out, which kick result in B's death.

R v. Wild kicking B is an unlawful act with no intention to kill or cause bodily harm,

- By the failure to perform some legal duty, such failure involving an obvious risk of some bodily harm e.g neglect to provide food or other necessities for a child or infirm person .

Thus a *In R v. Bonnyman*, A doctor whose wife died in consequence of omission to treat her is responsible for killing her, should she die.

- Course of doing a lawful act with wicked negligence.
A man drives a motor car recklessly and thereby kills a pedestrian. or
Another pointing a firearm at someone in gest, with utter recklessness. See *Andrew v. DPP*.

3.3 Unlawful Act Manslaughter.

It is instructive to identify three forms of involuntary manslaughter.

- Those based on unlawful act (re constructive manslaughter)
- Those based on recklessness
- Those based on gross negligence

The term “unlawful act” has been subject of judicial interpretations for the purpose of manslaughter. Let us consider some of them and see if we can find answers to the following troublesome questions that do arise.

- What is an unlawful Act ?
- Is the unlawful act confined to offences against person or does It embrace all offences ?
- Must the unlawful act be “aimed” or “directed” at the deceased or any other person or object?

- Must it always cause death?
- If it also can result in harm, what type of harm will the law accept – physical or emotional or both?
- Is there any suggestion of foreseeability Test. If yes, it is subjective or objective?

Go over the questions once again, remember them as we proceed with the unit or review cases.

R V Fenton (1830)

F threw stones down a mine shaft causing a cart carrying miners to overturn, killing them. The unlawful act was a tort of trespass to property. F was convicted of manslaughter, signifying that the unlawful act may either be civil (tort) or criminal.

R V Franklin (1993)

Expressing great abhorrence of constructive manslaughter, the court held that there can be no liability for unlawful act manslaughter unless the prosecution can establish a criminal act on the part of the accused.

Do you observe any difference in the decisions of the court in these two cases just cited?

Molan has asked:

As unlawful act manslaughter is a serious offence against the person, must the criminal act upon which it is based also be an offence against the person, or will any criminal offence suffice so long as it is provided it is the cause of death?

R V Cato (1976)

D and V agreed to inject each other with heroin. The next morning V was found dead from the effect of drug taking. D was convicted of manslaughter either on the basis that his unlawful act had caused V's death or on the basis that he had recklessly caused V's death. D appealed on the ground that there was no unlawful act and that V had consented to the injection of heroin.

Dismissing the appeal, Lord Widgery C.J., expressed the following views;

1. that heroin was a noxious substance and was likely to injure in common use.
2. that D had administered it knowing of its noxious qualities.
3. that V's consent to suffer harm of the nature caused never relieves D of his liability or destroy the unlawfulness of D's act.

Their Lordship also expressed their willingness to convict on the basis of V's unlawful

possession of heroin at the time D injected V.

Should the unlawful act be aimed or be directed at the deceased?

One of the criticisms levied against the decision in *R V Cato* was that, the unlawful possession of heroin was "not directed" at the deceased, and illegal possession of heroin was no more grievous than illegal possession of firearm.

R V Dalby (1982).

D supplied controlled drug to V who died from overdose, having consumed a large quantity of the drug. D was convicted for manslaughter and he appealed on the ground that :

- His supply of controlled drug was not dangerous
- V's death was due to his act in consuming a large dose of the drugs.

Allowing the appeal, the appellate court held:

D's act was not the direct cause of death, but merely made it possible for V to kill himself.

The court affirmed that where manslaughter was based on an unlawful and dangerous act, it had to be an act directed at the victim which was likely to cause immediate injury, albeit slight.

R V Goodfellow (1986)

G Deliberately bombed his own Council house in the hope that the Council would rehouse him. His wife and children who were in the house died in the ensuing fire. His defence was that the arson was not **directed** at the deceased was rejected. His conviction was confirmed.

- Attorney – General's Reference (No 3) 1994.

Lord Hope confirmed that it is not a requirement of the criminal law that the unlawful and dangerous act should be directed at the deceased.

R V Mitchell (1983)

M pushed an elderly man on a queue following an altercation. From this push, the elderly man fell on an elderly woman who subsequently died at the hospital from the injury she sustained. Held. M's intentional act caused the deceased's death and the act of the elderly man did not break the chain of causation.

3.3.1 The test of dangerousness of the unlawful act .

The unlawful act upon which manslaughter is based must be dangerous. That is to say:

- one which is likely to injure another : *R V Larkin (1943)*.
- Such as all sober and reasonable people would inevitably recognise must subject the other person to, at least, the risk of some harm resulting therefrom, albeit not serious harm: *R V Church (1966)*.
- Possibility of physical harm as opposed to merely emotional disturbance *R V Dawson (1985)*

3.3.2 Test:

That test is objective and "can only be undertaken upon the basis of the knowledge gained by a sober and reasonable man as though he were present at the scene of the crime and watched the unlawful act being performed"

Activity

Examine these cause cited by Molan:

- 1 D dressed as a ghost, jumps out in front of P who suffers heart attack and dies
- 2 B loads a sawn-off shot gun, aims at P's head, crooks his finger around the trigger; P dies of heart attack flowing from his fear of dying

3. W burgled a house occupied by K an Octogenarian, who suffers from heart condition. W disturbed K, abused him verbally, and left. He did not steal. Police were drawn in; a local Council workman came in and repaired the window, broken by W to gain ingress. For hours later, K suffered heart attack and died.

Write a judgment on each of the cases:

3.3.3 Assessment of dangerousness of an act or omission.

This is by looking at the whole of the defendants' actions

Test of dangerousness is satisfied, even though the eventual victim was not a being in *rerum* at the time the unlawful act taken place.

Let us consider the case of *R V Ball (1989)* B and G are neighbours. Between them is a long running dispute over a car park, B, accompanied by K and J called on G to investigate the disappearance of her car. There was an altercation, culminating in B grabbing a handful of cartridges, loading his short gun and firing at some 12 yards away. G was killed in the attack. In his statement to the police, B said he acted under a reasonable and honest but mistaken belief that the cartridges were blanks.

3.4 Standard of proof of dangerousness

This is best explained in the words of Lord Hope.

“It is sufficient that at the time of the stabbing, the defendant had the *mens rea*, which was needed to convict him of an assault. That was an unlawful act, and It was also an act which was dangerous.

“Dangerousness in this context is not a high standard. All it requires is that it is an act, which was likely to injure another person. As “injury” in this sense means “harm”, the other person must also be a living person.

It is enough that the original unlawful and dangerous part, to which the required mental state is related, and the eventual death of the victim are both part of the same sequence of events' (Att. Gen's Reference) (No 3 of 1944)

Self Assessment Exercise

X stabs a pregnant woman, injures the foetus, and dies as a result of the attack after being born. Discuss X's criminal liability.

3.5 Act of Omission

Some doubt has been expressed as to whether or not unlawful act manslaughter can be based on omission.

R V Arobieke (1988)

A was convicted of manslaughter on the ground that his presence at the railway station had caused the victim, whom he knew to be terrified of him, to attempt an escape by crossing the railway tracks with the result that he was electrocuted.

Quashing the conviction, the appellate court held that there had been no criminal act by the defendant, as the evidence did not show that the defendant had physically threatened or chased the deceased.

See also *RVRvans(1992)*, *RVLowe (1973)*

Perhaps manslaughter arising from acts of omission may be more appropriately considered as killing by gross negligence as we shall see later.

3. 6 Mens rea of Unlawful Act Manslaughter

The criminal code in sections 24 and 316 defines the *mens rea* required for murder. In manslaughter, ‘ the accuse must be proved to have intended to do what he did, it is not necessary to prove that he know that this act was unlawful or dangerous. So it must follow that it is unnecessary to prove that he knew that his act was likely to injure the person who died as a result of it. All that needs to be proved is that he intentionally did what he did”

(Attorney Generals Reference No 3 of 1994.

As Lord Salmond put it, manslaughter is one of those crimes in which only what is called a basic intention need to be proved – that is, an intention to do the act which constitutes the crime “ *DPP v. Newbury (1976).*”

3.7 Killing based on Recklessness:

Recklessness means :

1. Gross negligence
- 2 Not mere inadvertence

Recklessness is the degree of fault required in killing by gross negligence

Lord Hewart CJ in *R. v. Bateman (1925)* held that, to secure a conviction for killing by gross negligence, it must be proved that:

1. Accused owed the deceased a duty of care;
- 2 Accused breached that duty of care;
3. The breach had caused the killing;

4. The Accused negligence was gross in that it went beyond a mere matter of compensation between subjects.

Civil and criminal negligence

The degree of negligence required for civil liability and that required for manslaughter are different and must be distinguished. Recognising that a very high degree of negligence is necessary to secure a conviction, Lord Atkin said:

“ of all the epithets that can be applied “reckless” most nearly covers the casebut it is probably not all embracing for “reckless” suggests an indifference to risk, whereas the accused may have appreciated the risk, and intended to avoid the risk , and yet shown in the means adopted to avoid the risk, such a degree of negligence as would justify a conviction” *Andrew v. DPP(1937)*.

One is liable for reckless manslaughter if one by his/her conduct creates obvious and serious risks of physical harm, and either gives no thought to it or is aware of it and determines to take it.

4.0. CONCLUSION

manslaughter has been described as an unlawful homicide in circumstances short of murder, whatever that might mean. there are a number of defences to criminal liability which have the effect of reducing a murder to manslaughter. An example is provocation

5.0. SUMMARY

You have learned about manslaughter – voluntary and involuntary, its mens rea and actus reus. You also have attempted to distinguish murder and manslaughter

6.0 TUTOR MARKED ASSIGNMENT

Define murder and manslaughter and distinguish the two

Name the requirements for a conviction of manslaughter

7.0 REFERENCES/FURTHER READINGS

Jefferson , M G (2003), Criminal law 6th Ed. Longman, London

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UNIT 2: OFFENCES AGAINST THE PERSON: INFANTICIDE AND SUICIDE

CONTENT

1. Introduction

2. Objectives

3. Main Content

3.1 Infanticide

- 3.2 Killing an Unborn child**
- 3.3 Concealing the birth of a Child**
- 3.4 Suicide**
- 3.5 Duells**
- 3.6 Abortion**
- 1. Conclusion**
- 2. Summary**
- 3. Tutor Marked Assignment**
- 4. References/Further Readings**

1.0 INTRODUCTION

We have been learning about homicide which we defined as killing of a human being by another human being. We have distinguished unlawful homicide from those that are lawful. In the last unit, we looked into unlawful homicide which fall short of the elements of murder. Among this category and in conclusion of homicide are infanticide and suicide pact to which we shall now turn.

2.0 OBJECTIVES

When you have read this unit, you should be able to:

1. Define or explain infanticide.
2. Define or explain suicide, suicide pact.
3. Identify the elements constituting the crimes.
4. Critique the criminalization of conduct leading to infanticide or suicide.

3.0 MAIN CONTENT

3.1 Infanticide

(a) Literal Meaning:

- i. the killing of a newborn child especially by the parents or with their consent.
- ii. the practice of killing newborn children
- iii. one who kills a newborn child. Also called destruction, neonaticide.

(b) Statutory Definition

- i. where a woman by any willful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation, consequent upon the birth of the child, then, notwithstanding, that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.
- ii. A woman commits infanticide if she causes the death of her child, being a child under the age of twelve months, by a willful act (e.g. stabbing it with a knife) but at the time of such act, she had not fully recovered from the effects of giving birth to such a child, (or from the effect of lactation consequent upon the birth of the child), and by reason thereof the balance of her mind was then disturbed.

c). Three important elements required emphasis

1. The age of the child killed: the child killed must be under 12 months. If it is 12 months or over, consider other possible offences eg. Murder, manslaughter, wounding, causing grievous harm or other

2. Killer: the child must be killed by its mother

3. Circumstances of killing: the mother has not fully recovered from the effect of the child birth or effects of lactation

1.1 Killing an unborn Child

- a) any person who when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of felony and liable to imprisonment for life. (section 328 CC.)

Refer to Section 307 once again. Once a child has a separate existence, it becomes a person capable of being killed. If it is killed, death occurring within 366 days, it is either murder or manslaughter, depending on the circumstances. If the killing is by its mother, consider other elements to see if the crime is infanticide. If death arises in the course of surgical operation performed in good faith and with reasonable care and skill, for purpose of preserving its mother's life the killing may be excusable.

What conform, the medical partition or to sacrifice the life of the infant for the life of its mother is beyond our enquiry. But see *R. v Bourne* (1939).

Killing an unborn child covers cases where a person kills or destroys a child before it has a separate existence of its mother.

In this context, the fact that a woman has at any material time been pregnant for a period of twenty-eight weeks or more, shall be *prima facie* proof that she was at that time pregnant of a child capable of being born alive.

If Okon, with intent to destroy the life of a child capable of being borne alive, willfully inserts an instruments into the womb of Martha and causes the death of her child before it had an existence independent of her, Okon may be indicted for killing unborn child. Some question you need to ask and answer for purpose of establishing criminality are:

- a. Is the pregnancy 28 weeks or more?
- b. Is the child capable of being born alive?
- c. Is the act of destruction willful?
- d. Is the child dead?
- e. Is there an intent to destroy the life of the child?

3.2 Concealing the Birth of a Child

3.2.1 Definition

Any person, who, when a woman is delivered of a child, endeavours, by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at or after its birth, is guilty of concealing the birth of the child.

The offence is a misdemeanour punishable with imprisonment.

3.3 What then may be evidence of concealment? Let us look at few cases where the accused had been convicted of concealment/secret disposition for a guide.

R. v Brown.

W put the dead body of her child over a wall, which was four and a half high and divided a yard from a field. The yard was at the back of a public house, and entered from the street by a narrow passage. W did not live at the public house and must have carried the body from the street up the passage to the yard. The field was grazed by the cattle of a butcher, and the only entrance to it was through a gate leading from the butcher's own yard. There was no path through the field and a person in the field could see through the field and a person in the field could see the body only in case he went up to the wall, close against which the body lay. There was nothing on or over the body to conceal it.

R. v Hughes

W placed a living child in a place of concealment. On her return, the child had died. W left the body where it lay, replacing the materials by which the concealment was affected.

What we may deduce from these illustrations are:

1. The accused must be delivered of a child. It is enough that the foetus has the shape of a child.
2. The child must be dead at the time of secret disposition of the body.
3. The dead body must be found and identified.
4. These must be a positive act of concealment or secret disposal of the body after the child was born two years imprisonment.

A person charged with murder, or infanticide, may be convicted of concealing the birth of a child.

Any person who assists in concealing a birth is also liable.

The child would have spent such a time in the mother's womb that it would in the ordinary course of things when born, have had a fair chance of live, and that under seven months, it might fairly be presented it would not be born alive.

1.1.1 what may not be an act of concealment or secret disposition;

- a. W was delivered of a child: its dead body was found in a bed among the feathers. There was evidence that its mother had sent for a

- surgeon at the time of her confinement and had prepared the child's clothes. There was no evidence of who killed it. R v Higley
- b. W had previously allowed the birth to be known to some persons: R v Douglas
 - c. Denial of birth without more: R v Turner
 - d. W put the dead body of her child upon her bed, covered it with a petticoat, where it was subsequently found by a policeman who entered the room: R v. Rosenberg
 - e. W placed the body of the child in an open box in her bedroom. Or put this box in a larger box, closed but not locked or fastened and placed the box in such a position as to attract.

1.2 Suicide

Suicide is the act of taking one's own life it is also called self-killing, self destruction, self-slaughter, self-murder, felony de se. it is an offence to aid suicide or attempt to commit suicide.

1.2.1 Aiding Suicide

A person is guilty of a felony of Aiding suicide and liable to imprisonment for life if he/she:-

- a. procures another to kill himself/herself;
- b. counsels another to kill himself and thereby induces him/her to do so,
or
- c. aids another in killing himself/herself.

When a person successfully commits suicide, the matter ends as far as the principal offender is concerned.

But any person who aided, abetted, counseled or procured the suicide of the person in question is criminally liable.

1.3 Duels

A duel is trial by combat. A pre-arranged combat with deadly weapons fought between two or more persons under prescribed rules usually in the presence of at least two witnesses to resolve a previous quarrel or avenge a dead.

A duel is carried out with some formality; it is:

a.) feature of a duel.

It is a result of a design. It is carried out with some formality. It has none of the elements of sudden heat and passion.

The survivor of the fighters is a principal offender who did the act or made the omission. (see 7 (a)).

The seconds did aid and assist the commission of the offence by their presence, countenance and encouragement (in this regard, there are divided opinion)

1.4 Abortion

1.4.1 Internal Meaning

Abortion is the spontaneous or artificially induced expulsions, of an embryo or foetus, before it is capable of living

It is an intentionally induced miscarriage as distinguished from one resulting naturally or by accident

1.4.2 Common Law

At Law, it is the misdemeanour of causing a miscarriage or premature delivery of a foetus by means of an instrument, medicine, doing or other means.

1.4.3 Statute

A person commits a felony of ‘Attempt to procure abortion’ punishable with 14 years imprisonment if “with intent to procure miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever.”

Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her is guilty of a felony and liable to imprisonment for 8 years.

illustration

- a.) JAtto administers poison to Doris, whether she be with child or not with intent to procure miscarriage, Jatto may be indicted for an attempt to procure abortion punishable with a maximum punishment of 14 years imprisonment.
- b.) Jumoke administers poison to herself, whether she is with child or not with intent to procure her own miscarriage. Doris is to be charged with attempt to procure abortion and may be liable to imprisonment for seven years.

In some jurisdictions, Jumoke can only commit the offence if she is with child. Under the Nigerian Law, Doris may be with or without child.

At that is required to be shown are:

1. That the woman takes or the accused administers to or causes to be taken, poison etc mentioned or any other substance or thing *ejusdem generis*.
2. that the substance in question was administered unlawfully and with intent to procure miscarriage of Doris.

It does not matter that the substance in fact is likely or calculated to procure a miscarriage. It suffices that there was an intent and the substance was in fact a poison or other noxious thing;

Medical Termination of Pregnancy

In relation to abortion, a pregnancy may be terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in goodfaith:

- i. that the countenance of the pregnancy would involve risk to the life of the pregnant woman or injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or
- ii. that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Where a woman in respect of whom this offence is alleged to have been committed is a witness, corroboration of her evidence, though not essential in law is, in practice required.

If the woman dies in consequence of the attempted abortion, the person who committed or may be indicted for murder or manslaughter depending on the facts of the particular case.

4.0 CONCLUSION

Infanticide is essentially murder. It is reduced to manslaughter where a woman kills her child before ti reaches 12 months of age by reason of her being seriously affected by post-natal depression. However, you need to note that the offence may be murder if the victim were an older child. But Why? In such circumstance, you may consider the partial defence of

diminished responsibility. Also note an overlap between infanticide and child destruction. It is a defence to the latter that the act causing death was done in good faith and to preserve the life of its mother. The complicity in suicide is a criminal act if it consist of procuring, assisting, and encouraging one to take him or her own life. It is murder if a party to a suicide pact kills another party to the pact or procures, assists or encourages a third person to kill a party to that pact. In a situation of duel, the criminal responsibility of seconds is unsettled unlawful administration of any poison, or drugs ejusdem generic or unlawful use of instrument to cause a miscarriage of a woman with or without child is abortion. It involves three culprits: the woman, one who administer the drug and the supplier of the drug and they are liable to imprisonment for 7, 14, and 3 years respectively.

5.0SUMMARY

Infanticide is killing by a mother of its child under 12 months in certain circumstances. Suicide is a crime but no one has ever nor will ever be tried for the offence. At common law, victim of abortion must be with child. Under the Nigeria Law, she may or may not be with child. Medical termination of pregnancy is lawful under restrictive guidelines. In this regard there is a noticeable conflicts between the rights of a child and of its mother. You may also wonder why the killing by a mother of her child of 12 months of age is infanticide and one of 13 months of age is murder.

6.0 TUTOR MARKED ASSIGNMENT

What are the requirements for a conviction of infanticide?

7.0 REFERENCES/FURTHER READINGS

Jefferson , M G (2003), Criminal law 6th Ed. Longman, London

Butler T. and Garsia M: (1969), Archbold, Pleading, Evidence and Practice, Sweet and Maxwell, London.

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Unit 3: Offences against Persons: Offences endangering Life or Health

CONTENT

- 1 Introduction**
- 2. Objectives**
- 3. Main Content**

Definition**Actus intended to cause harm****Wounding act****Grievous Harm****4. Conclusion****5. Summary****6 Tutor-Marked Assignment****7. References****1.0 Introduction**

Offences endangering life and health are offence against persons. They include:

- Disabling in order to commit a felony or misdemeanour
- Stupefying in order to commit a felony or misdemeanour
- Actus intended to cause grievous harm or prevent cause
- Grievous harm
 - Attempts to injure by explosive substance and maliciously administering poison with intent to harm.
- Wounding and similar actus
- Failure to supply nurseries
- Endangering life or health of apprentices or security
- Abandoning or exposing child
- Reckless and negligence Acts

The list is not exhaustive of these offences. Grievous and wounding and similar acts are common and require more discussion. Others are of low reportability and need be mentioned in outline.

2.0 Objectives

When you have studied this unit, you should be able to:

1. articulate a number of acts or omissions likely to endanger life or health more particularly those relating to : infants or words.
2. Describe the ambit of Grievous harm
3. Discriminate the grievous harm for homicide and for non-homicide
4. distinguish Wounding from Grievous harm
5. Identify the category of Reckless and Negligent Acts or omissions.

3.0 Main Content

This unit may be described as 'catch all' as it tends to cover miscellaneous offences against the persons which have not been covered in the earlier units. As it is possible to cover all offences against persons. We shall concentrate on the personal offences that are common or atrocious which have not already been learned.

3.1 Definition

Let us learn the definition of words that are frequently used in the unit.

Grievous Bodily Harm:

- Literal meaning:
 - Ordinary and material meaning of really serious bodily harm.
- Statutory Definitions
 - Any harm which amounts to a main or dangerous harm
 - Any harm which seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement or to any permanent or serious

injury to any external or internal organ , number of sense harm

- Any bodily hurt, disease, or disorder whether permanent or temporary.

- Wound:
 Any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior, for the purpose of this definition, which can be touched without dividing or piercing any other membrane

3.2 Acts intended to cause grievous harm or prevent arrest (Criminal Code section 332)

Any person, who, with intent to maim, disfigure or disable, any person or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person:-

1. unlawfully wounds or does any grievous harm to any person by any means whatever.
2. unlawfully attempts in any manner to strike any person with any kind of projective or with a spear, sword, knife, or other dangerous or offensive weapons.
3. unlawfully causes any explosive substance to explode or
4. sends or delivers any explosive substance or other dangerous or noxious thing to any person , or
5. cause any such substance or thin to be taken or received by any person ; or
6. put any corrosive fluid or any destructive or explosive substance in any place, or
7. unlawfully casts or throws any such fluids or substance at or upon any person, or otherwise apply any such fluid or substance to the

person of any person is guilty of felony and is liable for imprisonment for life.

3.3 Wounding and similar Acts (Criminal Code Section 338)

Any person who:

- (i) unlawfully wounds another or
- (ii) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to or taken by, any person; is guilty of a felony and is liable to imprisonment for three years.

Note the absence of “intent to.....” in sub-section (1) and its presence in sub-section (2) above.

Wound

Includes punctured wounds, lacerated wounds, contused wounds, and gun shot wounds.

To constitute a wound, the continuity of the skin must be broken ie the outer covering of the body – the whole skin, not just mere cuticle or upper skin.

A decision of the internal skin eg within the cheek or lip has been held sufficient to constitute a wound.

The instrument by which the skin is broken is not relevant . It may be from a kick, a hammer thrown at a person or from any means whatever provided the wound is given by the act of the accused person.

Types of wounding.

There are two types of wounding as you would have observed from the statutory definition above.

1. Unlawful wounding:

Wounding is unlawful unless executable of justifiable. A malicious kind.

The accused need not nurse any spite or ill-feeling against the victim

2. Felonies wounding. This is wounding with intent to murder, or to maim, disable or cause grievous bodily harm.

The accused have been acclimated by spite or ill-feeling against the victim.

The motive may be:

5. To cause grievous bodily harm
6. To resist or prevent the careful apprehension or detainer of any person.

To maim is to injure a person in any manner which hinders him less capable of fighting.

To disable is to cause a permanent injury.

To constitute a grievous bodily harm, the injury need not be permanent or dangerous

provided it is such as to interfere seriously with health or comfort.

On a charge of unlawful wounding or inflicting grievous bodily harm, it must be proved

that when the accused did the act which caused the injury

- (b) he was acting consciously
- (c) he knew what he was doing
- (d) he had no belief that he had any law justification for the act.

3.3 Grievous Harm (Criminal Code section 335)

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for 7 years.

Grievous bodily harm requires:

- Some awareness that the act may have the consequences of causing some physical harm (albeit of a minor character) to some other person.
- Example is where by direct act, the accused causes some physical harm to the victim where ordinary person would be bound to realize it would cause such physical harm.
- Ezechi fires a shot in the direction of Osua with the intention of frightening him from coming to Esther, but not with the intention of doing him bodily harm. Osua heard a gun shot and found himself shot and seriously wounded 332(b)
- H and W are husband and wife. They had quarreled and fought for hours. W seeks to escape from his violence who had threatened to take her life W jumps out of the window and in doing so, she fell and broke her leg.

During the local government election at Wazobia, Martins sought to damage ballot papers with chemicals. In doing so, he caused injuries to the presiding officer at the polling station section 332(a) cc.

Ike, a married man, contracted gonorrhoea. He knew it, but his wife did not. Ike has carnal knowledge of his wife. The disease is communicated to her.

A aims a blow at C, misses and strikes and wounds B.

4.0 CONCLUSION

Wound means any incision or puncture which divides or pierces any exterior membrane of the body and any membrane is exterior for the purposes of this definition which can be touched without dividing or piercing any other membrane, Grievous harm is any harm which amounts to a maim or dangerous harm or which seriously or permanently injures health or which is likely so to injure health or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, member or sense. In this context, harm means any bodily hurt, disease, or disorder, whether permanent or temporary injury

5.0. SUMMARY

In this unit, you learned about wounding, and acts causing grievous bodily harm. You also learned about negligent acts or omissions such as failure to supply necessities to one's dependants or wards to whom is owe a duty of care.

6.0 TUTOR MARKED ASSIGNMENT

Define the offence of wounding. What are the grounds of justification, which may possibly be raised on a charge of wounding and grievous bodily harm?

7.0 REFERENCES/FURTHER READING

1. Jefferson , M G (2003), Criminal law 6th Ed. Longman, London
2. Butler T. and Garsia M: (1969), Archbold, Pleading, Evidence and Practice, Sweet and Maxwell, London.
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UNIT 4: ASSAULT

CONTENT

- 1. Introduction**
- 2. Objectives**
- 3. Main Content**

Definition

Type of Assault

Elements of Assault

Consent

- 1. Conclusion**
- 2. Summary**
- 3. Tutor Marked Assignment**
- 4. References/Further Readings**

1.0 INTRODUCTION

Assault is about the second most prevalent offence in the crime statistics in Nigeria. It enjoys high reportability. Its dark figure also can be phenomenal especially domestic assault; and common assault. Because of its high toleration level only the aggravated form of assault are likely to be reported. It is somewhat strange that a crime of such magnitude and reportability has not been legally defined. But it is well known. In this unit we conclude the discourse of offences against person by attempting to explain the term assault and identify its elements and different forms.

2.0 OBJECTIVES

When you have studied this unit, you should be able to

1. explain the term “assault” aggravated assault
2. identify the elements of assault
3. different categories of assault
4. articulate the right to sanctity and the person and the extent of its violation
5. critique the crime of assault

3.0 MAIN CONTENT

Statutory provision for assault generally and assault on females in particular can be found in sections 24-30 of the Criminal Code. Assault is derived from Latin ‘ad saltare’ meaning ‘to jump at’.

3.1 Definition

1. Etymologically, assault derives from latin word 'ad saltare' meaning 'to jump at'
2. Meaning
 - a. physical attack: when we say Njoku assaults Tagbo, we have a mental picture of Njoku attacking Tagbo by striking, pushing, stabbing etc.
 - b. technical meaning: in technical terms, this offence is 'assault and battery' connoting both physical contact and apprehension in the mind of the victim. Battery is the use of an degree of force against the body. It is battery for Emmanuel to kiss Chikama against her wish or without her consent.
 - c. In generic terms assault may be either assault (intentionally injuring another) or battery (other species of assault)
 - d. Blacks Law Dictionary explain Assault as follows:
 - i. the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful offensive contact.
 - ii. the act of putting another person in reasonable fears or apprehension of an immediate battery by means of an act amounting to an attempt or threat to commit a battery.
 - iii. an attempt to commit battery, requiring the specific intent to cause physical injury.

3.1.3 Aggravated Assault

There is no separate offence of aggravated assault. Whenever it is used. It refers to assault accompanied by circumstances that make it more severe. Examples:

Assault occasioned by use of a deadly weapon,

Assault coupled with intent to commit another crime.

Assault arising from unsuccessful murder, mayhem, rape, robbery, etc.

Statute

No statute defines or explains the term assault. The Criminal Code supply provides that any person who unlawfully assaults another is guilty of misdemeanour and is liable, if no greater punishment is provided to imprisonment for one year.

Assault is a wide term. It may be an unlawful attempt or offer to do with violence, any corporal hurt to the body of another. Setting a dog at a person; spitting at the face of another, merely pointing a gun at or trying to strike another or actually striking another are examples of assault.

Battery is a part of assault, being an injury or wrong done to the body of another in an angry, revengeful, rude or insolvent manner.

Types of Assault

Assault includes

1. Common Assault
2. Serious Assault
3. Assault Occasioning Harm
4. indecent Assault on Females
5. Indecent Assault on Males
6. Assault with intent to commit unnatural offences
7. Assault with intent to steal
8. Assault with intent to conjoin action
9. Assault on persons protecting wrecks

- a.) **Common Assault:** A misdemeanour, punishment imprisonment for one year. To give a conviction for it must be proved beyond reasonable doubt that
 - b. it is unlawful and without the consent of the person assaulted
 - b. there was:
 - (i) movement (or words coupled with movement);
 - (ii) alarm
 - (iii) force (some force, not necessarily resulting in any wound or serious injury).

- a.) **Assault Occasioning harm:** in this category of assault there is hurt or injury calculated to interfere with the health or comfort of the victim. The injury or hurt may not be of permanent nature, or grievous, but it must be presented.

Assault, assault occasioning harm grievous bodily harm and wounding. All these are species of assault. What degree and seriousness of harm or injury to the body.

Assault	Character of harm
Common assault	no injury
Accasioning harm	this hurt or injury (eg. more abrasion).
Grievous harm/Woundig	more serious harm or injury: the skin must be broken, beyond more abrasion and capable of interfering seriously with the victim health or comfort.

Assault on Female/Male unlawful and indecent

assault is a felony (if the victim is a male) and a misdemeanour (if the victim is a female). Punishment is imprisonment for 3 years if it is committed against a male and 2 years if it committed on a female. Example is touching another's private part.

Consent is defence unless the female victim is under 16 years in age.

(iv) **Element of Assault**

You may run into trouble when you attempt to define "table" or an "Elephant". But there is no doubt you can identify them at sight. So we

shall do with assault which also defies statutory definition. What are the features or elements of assault? Simply they are:

- c. movement (not just mere words)
- d. alarm
- e. force

a.) Lawful Assault

As you already have seen certain assaults are not actionable because they are lawful, authorized justified or excusable. Examples are assault

Self defence or in defence of property

The authority of the law eg. In the course of executing a sentence, court process warrant of court;

Accident;

Lawful game (eg. Football) except where one deliberately disregards the rules by reason of which assault results;

Surgical operation for patients benefits or in the case of an unborn child, for the preservation of its mother's life;

Moderate chastisement for misconduct or disobedient or default in his duty;

A parent or guardian may reasonably chastise or counsel his child;

A master may correct his servant or apprentice;

A master of a ship may correct any person on board his ship;

A school master may exercise parental corrective power;

A person authorized to inflict correction (eg. Proper and fit person so appointed).

It is not moderate if a correction extends to wounding or grievous harm

It is not justifiable if it is unreasonably in kind or in degree having regard to the victims age, physical and mental condition

Husbands chastisement of his wife

Custom: Custom allows a husband to chastise his wife by way of moderate correction.

Statute: the Penal Code section 55 provides for correction of a child, pupil, servant or wife in relation to a wife, it states

“Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done (a) by husband for the purpose of correcting his wife such husband and wife being subject of any native law or custom in which such correction is recognized lawful. See Criminal Code section 257-297.

Compare the following which are not assaultive:

Making a loud noise to the discomfort of another;

Words, however harsh and provocative unaccompanied with any bodily gesture;

Consent with the body of person in a crowd or in the rush to catch a bus;

Touching of each other in a narrow passage without violence or design to harm;

Patting one to draw his attention to lost and found article;

A person who consents to assault cannot complain that he/she is assaulted. Assault is unlawful only if it is without consent. Hence a person who goes to a barbing saloon to cut his/her hair cannot complain more so if the barber used reasonable skill.

b.) Actus Reus

The actus reus in assault is the expectation an unlawful created in the victim.

For battery, it is the force that has actually been applied.

c.) Mens rea.

Intention to apply force or course reasonable apprehension of immediate fear.

Intention may be direct or indirect (*dolus eventualis*). It connotes knowledge of unlawfulness where the charge is one of causing reasonable apprehension of fear, mens rea is knowledge that the conduct of the accused would inspire such fear.

Causal link

The person who attempt to threatens to apply force must have actually or apparently a present ability to carry his attempt or threat into effect.

If Osita points a gun at Nkem, there appears to be a present ability to effect the purpose depending on the distance. That present ability is actual if the gun were loaded. It is apparent if it were unloaded and Nkem does not know it was unloaded.

Activity

Consider the following situation

- d.) Onyeka points a gun at Chukwu from behind
- e.) Oforji applies unlawful force on Esther who was deep in sleep.

Question:

Can you say that Chukwu or Esther suffered any fear, or alarm?

But remember, fear or alarm may not always be present

Fear may be heat, light, electric gas, colour or any other thing whatever, applied to such a degree as to cause injury or personal discomfort. What must be present is the expectation of application of unlawful force. Remember that assault comprises any bodily act or gesture coupled with threat or attempt of force.

Question

Whose expectation is the test of liability? Is it that of Chukwu or Esther. Which is subjective or that of a reasonable man which is objective?

Brady v Schatzel (1911)

S pointed a loaded gun at **B**, threatened to shoot him. In his evidence B said “I was not a bit scared”. The court found him guilty, adding that “if it was material that the person assaulted should be put in fear. It would make an assault not dependent upon the intention of the assailant but upon the question whether the party assaulted was courageous or timid person”.

Consider further examples of assault

Smoking and putting the smoke on another's face

Fouling the air in the presence of another, causing that other personal discomfort

K frightens J who in trying to escape, injures himself. Notice, there was no direct force or battery. Rather the force was indirect. The basis of conviction is that J's reaction is reasonably foreseeable.

3.4 Consent

The application of force by one person to another may be unlawful although it is done with the consent of the other person.

A person who consents to assault can not be heard to complain, if he/she genuinely consents, but not otherwise. A consent may be invalid in the following cases;

consent by a child

consent by a person of weak intellect who is incapable of understanding the nature of act to be done

consent to assault of a nature likely to endanger human life or to amount to a breach of the peace

consent by use of threats, intimidation, fraud (see R v. Clarence (1888)). Here fraud must relate to the nature and quality of the act or identity of the esculent or to some other matter.

B's consent to intercourse with A who misleads her to believing that he was single or free from disease is an invalid consent.

As a rule, consent would vitiate assault if Romeo kisses Juliet with her consent she cannot complain that the kiss was aggressive. One who goes to the barber's saloon for a shave cannot complain that his/her chair has been cut where it was done with reasonable skill.

Conversely consent of one or other to prize-fight tantamount to no consent.

4.0 CONCLUSION

Assault and battery are actionable both in civil and criminal law. They are both torts and crimes. They range from intentionally or recklessly causing another to apprehend immediate and unlawful personal violence – to actually causing physical contact or harm. Depending on the degree or nature of harm. Assault may be common, or it may be occasion harm or wound. The view has been expressed that the presence or absence of consent may be relevant where the definition of the offence charged is "assault" but not where it refers to the application of force without describing it as an assault. A genuine consent is a valid defence to a charge of assault.

5.0 SUMMARY

Assault is an unlawful and intentional application of force directly or indirectly to the person of another or expectation that force is

immediately to be applied to him/her. The elements of the offence are application of force or apprehension unlawfulness of such act and the intention to do the act common assault, assault occasioning harm to wounding. Ideally assault is an injury against the physical integrity of another. The injury may be direct (as where Chike throws a pebble at Kenedy hitting him) or indirect (as where Deji sets vicious Alsatian dog on Abdullahi).

6.0 TUTOR MARKED ASSIGNMENT

Discuss the criminal liability of parties in the following cases:

Duru threatens to shoot Kufo. He is armed with an object which turns out to be toy pistol. Kufo knows that what Duru brandished was a toy pistol.

7.0 REFERENCES/FURTHER READING

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