COURSE GUIDE

PUL805
COMPARATIVE CRIMINAL LAW I

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INTRODUCTION

Criminal Law is unique due to its inherent ability to sanction failure to abide by the rules. It is the law on which men place the reliance for protection against injuries inflicted on individuals. Every crime is composed of criminal elements and punishments may be imposed in degrees depending on each particular jurisdiction. Criminals ought to be punished in other to ensure safety of the individual and the protection of the society.

Our discussion in this semester will focus on criminal responsibility with particular concern on its concept, contents and basis. It will also address elements of offences such as murder and manslaughter as well as available defences to offences.

COURSE LEARNING OUTCOMES

At the end of the study in this unit, you should be able to:

1) Explain the term 'criminal responsibility'.
2) Explain the various elements of offences such as murder.
3) Discuss the defences to criminal offences.

WORKING THROUGH THIS COURSE

To complete this course, you are advised to read the study units, recommended books, relevant cases and other materials provided by NOUN. Each unit contains a Self-Assessment Exercise, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course there is a final examination. The course should take you about 11 weeks to complete. You will find all the components of the course listed below. You need to make out time for each unit in order to complete the course successfully and on time.

COURSE MATERIALS

The major components of the course are:

a) Course Guide
b) Study Units
c) Textbooks
d) Assignment File/Seminar Paper
e) Presentation Schedule

MODULES AND STUDY UNITS

The discussion in this course is broken down to 21 study units that are broadly dividedinto five modules as follows:

Module 1 **General Principles; The Concept And Basis of Criminal Responsibility; Comparative Sources of Criminal Law**

Unit1 The Meaning Of Criminal Responsibility
Unit 2 The Concept, Content And Basis Of Criminal Responsibility
Unit 3 The Conceptual Problem Of Criminal Responsibility In Perspective
Unit 4 The Sources Of Criminal Laws Comparatively (Nigeria, Ghana, India Jurisdictions)

Module 2 **Murder and Its Elements**

Unit 1 Murder
Unit 2 Actus Reus
Unit 3 Mens Rea
Unit 4 Similarities and Differences in Codes

Module 3 **Distinctions on Murder and Manslaughter**

Unit 1 Manslaughter
Unit-2 The Distinction between Voluntary and Involuntary Manslaughter
Unit 3 Criticism and Distinction on the Offence of Murder and Manslaughter
Unit 4 Provisions on the Punishment of the Offences
Unit 5 Manslaughter

Module 4 **Strict Liability and Other Offences**

Unit 1 Concept of Strict Liability
Unit 2 Rape
Unit 3 Other Sexual Offences

Module 5 **Defences to Various Offences Comparatively and Recommendations**

Unit 1 Insanity
Unit 2 Provocation and Mistake
Unit 3 Intoxication
Unit 4 Other Defences
Unit 5 Similarities and Differences in Defences Comparative

All these Units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for each.

We suggest that the Modules be studied one after the other, since they are linked by a common theme. You will gain more from them if you have first carried out work on the law of sea. You will then have a clearer picture into which to paint these topics. Subsequent units are written on the assumption that you have completed previous units.

Each study unit consists of one week's work and includes specific Learning Outcomes, directions for study, reading materials and Self-Assessment Exercises *(SAE).* Together, these exercises will assist you in achieving the stated Learning Outcomes of the individual units and of the course.

REFERENCES/FURTHER READING

Certain books have been recommended in the course. You should read them where so directed before attempting the exercise.

ASSESSMENT

There are two aspects of the assessment of this course, the Tutor Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge acquired during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. The work that you submit to your tutor for assessment will count for 30% of your total score.

SELF-ASSESSMENT EXERCISES

There is a self-assessment exercise at the end for every unit. You are required to attempt all the assignments. You will be assessed on all of them, but the best three performances will be used for assessment. The assignments carry 10% each. Extensions will not be granted after the due date unless under exceptional circumstances.

FINAL EXAMINATION AND GRADING

The duration of the final examination for this course is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self- assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between

completing the last unit and taking the examination to revise the entire course. You may find it useful to review yourself assessment exercises and tutor marked assignments before the examination.

COURSE SCORE DISTRIBUTION

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

Assessment	**Marks**
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments. Best three marks of the four counts at 30% of course marks.
Final examination	70% of overall course score.
Total	100% of course score.

HOW TO GET THE MOST FROM THIS COURSE

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercise, you study units provide exercises for you to do at appropriate times. Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve yourchances of passing the course.

Self-Assessment Exercises are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self-Assessment Exercise as you come to it in the study unit. Examples are given in the study units. Work through these when you have come to them.

TUTORS AND TUTORIALS

There are 11 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of the tutorials, together with the name and phone number of your tutor, as soon as you are

allocated a tutorial group. Your tutor will mark and comment on your assignments. Keep a close watch on your progress and on any difficulties you might encounter. Your tutor may help and provide assistance to you during the course. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutor and returned to you as soon as possible.

Please do not hesitate to contact your tutor by telephone or e-mail if:

- You do not understand any part of the study units or the assigned readings.
- You have difficulty with the self-assessment exercises.
- You have a question or a problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

SUMMARY

The course focuses on the general principles of criminal law and specific offences but takes a comparative approach. Jurisdictions usually to be compared are Nigeria, Ghana, Sudan, India etc. The Nigerian jurisdiction is compared inter se (that is by examining the legal frameworks of the penal code in the North, the Criminal Code in the South and the Administration of Criminal Justice Act 2015) particularly legal developments may require that the law and other legal materials from other Common Law jurisdictions e.g. Ghana, India as well as the Civil Law jurisdictions are examined. A general history and philosophy of criminal law including the basis of criminalisation and the idea of codification in common law and civil law countries are examined.

MAIN COURSE

CONTENTS

MODULE 1 GENERAL PRINCIPLES; THE CONCEPT AND BASIS OF CRIMINAL RESPONSIBILITY; COMPARATIVE SOURCES OF CRIMINAL LAW

UNIT 1 THE MEANING OF CRIMINAL RESPONSIBILITY

Unit Structure

1.1 Introduction

Jurisdictions across the globe have promulgated legal standards for determining criminal responsibility in criminal proceedings. At the moment, the literature on these contentions yet interesting topical issue is inundated with studies from both common law and civil law jurisdictions. This module broadly focuses on and elucidates the legal standards for establishing criminal responsibility. What is Criminal Responsibility? The idea of criminal responsibility refers to the extent to which an offender can be held responsible for the commission of a crime. Even if the offender violates the law, he will be liable if there is no effective defence offered.

Under the Ghana criminal law, criminal responsibility and the defence of insanity are topical issues confronting the criminal justice system. To ensure due process, uphold judicial integrity and maintain the integrity of

criminal proceedings, courts must determine when a defendant is responsible for alleged criminal acts and omissions.

Under the Nigeria criminal law for one to be criminally responsible for an act he must (a) have the capacity to understand what he is doing unless he is to some extent at fault. Nevertheless, beginning from the middle of the 19th century, a new dimension to the basic principles of criminal responsibility emerged making it possible for a distinct group of offences to be punishable without regard to any mental elements or recourse to the fault-finding process. The concept of strict liability is treated as a basis for criminal responsibility.

It is important to note that the mens rea (MR) is the element that is in dispute when criminal responsibility is raised during any criminal proceeding. In Ghana courts, the position of the law is that of absolving a defendant from criminal responsibility if the MR is found to be deficient. In other words, defendant who commits a serious crime while suffering from mental defect or disease of the mind are deemed not to be responsible for the act. Although prohibited acts, criminal responsibility and culpability are somewhat related. What matters most is the linkage between an antisocial act and criminal responsibility. A relationship that is overly or surreptitiously meditated or moderated by MR.

1.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- discuss the term criminal responsibility
- explain what result is anticipated or expected when a crime is committed
- explain the laws governing the commission of crimes as it varies from jurisdiction to jurisdiction.

1.3 Criminal Responsibility

The idea of criminal responsibility is based on human freewill to make a choice to do or omit to do an act. Section 1 of the Nigerian Criminal Code defines criminal responsibility as liability to punishment for an offence. This is sequel to a conviction by a court of competent jurisdiction. The whole concept of crime refers to the extent to which an offender can be held responsible for the commission of a crime When courts use the term criminal responsibility, they are generally referring to being responsible in law for crime committed. The notion is that for an adult to be able to commit any criminal act, he must understand what he was doing at that point. Thus, when an offender violates a criminal statute, he may not be liable if he can raise an effective defence. For instance, children under a certain age or persons who are legally regarded as insane are not responsible for their actions in criminal law. In as much as criminal

responsibility vary from jurisdiction to jurisdiction, and can be changed by statute, responsibility is a legal and not a medical concept as held in the case of **H.M ADVOCATE v GALBRAITH (2002) J.C 1 APP No C 53/99.**

Therefore, in order to be relieved of criminal responsibility, the offender is required to provide a legal defence to show that he is not personally at fault. The Ghana criminal law has it stated that the insanity defence is relevant to the process of establishing criminal responsibility and guilt. Hence the relationship between criminal responsibility and punishability is influenced by the outcome of the plea of insanity, where a successful plea of the defence exonerates the defendant of the act he/she is accused of. Most jurisdictions have enacted Laws as legal standards for establishing criminal intent and when, where and how defences would be pleaded and raised during criminal proceedings. Under the Indian Penal Code (Article 32) Section 82 1860, no person can be held criminally responsible for an act committed while he/she was under the age of 7, and no person can be held criminally responsible for an act committed while under the age of 12. A child will be considered to be of 'immature understanding' when he/she 'has not attain sufficient maturity of understanding to judge the nature and consequences of his/her conduct on that occasion'. In effect, 15 is the age of criminal majority, the age of which children can be tried under the criminal justice system that applies to adults. Children older than 15 can be subject to the penalties under the Penal code.

What does it mean to be criminally responsible? This is to be held liable for acts or omissions in violation of the law.

Under the Nigeria criminal law, the legal test of criminal responsibility is mainly whether the accused person intends the consequences of his act or whether he truly knows if what he was doing was lawful or unlawful. This is primarily because genetics is not recognised as a legal defence in Nigeria. Section 24 and section 48 of the Nigerian Criminal Code and Penal Code respectively are relevant here. The sections are to the effect that a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will. Hence for one to be criminally responsible for an act, he must; a) have the capacity to understand what he is doing, b) capacity to know that he ought not to do the act or make the omission, c) capacity to control his actions. The Nigerian jurisprudence does not allow a person to be punished for an act or omission of such an act which is not imbedded in any written law operational in Nigeria - "NULLA POENA SINE LEGE", which means there can be no punishment without a written law.

SELF-ASSESSMENT EXERCISE

What are the legal standards relating to criminal responsibility? Discuss comparatively using the relevant sections under the Nigeria Criminal Code.

1.4 Summary

Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be element of the offence. Criminal responsibility applies not only to those who perform criminal acts but also to those who aid and abet a perpetrator by encouraging, or in any way knowingly helping in the commission of such an act. This can take the form of providing information, implements or practical help. It is worthy to note that various defences may be presented to negate criminal responsibility. For instance, a person who engages in a criminal conduct while under the influence of a condition or circumstance without possessing a guilty state of mind cannot be convicted of the crime. But a careful and diligent evaluation of an accused criminal responsibility is an important element of every criminal trial.

The notion is that for an adult to be able to commit any criminal act, he must understand what he was doing at that point. Thus, when an offender violates a criminal statute, he may not be liable if he can raise an effective defence. For instance, children under a certain age or persons who are legally regarded as insane are not responsible for their actions in criminal law.

1.5 References /Further Reading/Web Resources

Criminal Law of Lagos State 2011.

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

INSANITY IN THE AUSTRALIAN CRIMINAL CODE ACT 1995 (Cth) 1997 20.

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Penal Code Act, Cap 53 LFN 2004.

The Indian Penal Code, 1860 Act No. 45 of 1860.

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1.6 Possible Answer to Self-Assessment Exercise

Criminal Responsibility or the state of mind when an offence is committed. Legal standards relating to criminal responsibility presupposes the principles in criminal law to include:

a) the presumption of innocence
b) the burden of prove
c) Right to remain silent
d) double jeopardy.

Criminal responsibility applies not only to those who perform criminal acts but also to those who aid and abet a perpetrator by encouraging, or in any way knowingly helping in the commission of such an act. This can take the form of providing information, implements or practical help. It is worthy to note that various defences may be presented to negate criminal responsibility.

To know if a person is criminally responsible will include the person's competence, defences and whether the prosecution is able to prove all the elements of the crime.

To discuss comparatively, examine section 24, 25, 28 of the Nigerian Criminal Code, section 82 of the Indian Penal Code and the Ghana Criminal Code.

UNIT 2 THE CONCEPT, CONTENT AND BASIS OF CRIMINAL RESPONSIBILITY

Unit Structure

2.1 Introduction

Great debates have ensued in many jurisdictions as to what level of mental state an accused person must possess for him /her to be held criminally responsible for his/her act or omission. Is capability a function of purpose, knowledge, recklessness or negligence? Or would one ever be considered strictly liable for an act or omission? We would be considering the underlining problems of criminal responsibility as treated differently both in common law and civil law jurisdictions and the applicable sections.

There is a broad and longstanding societal consensus that there should be no criminal punishment without moral blameworthiness. What does moral blameworthiness mean? It is a cardinal principle of most, if not all, civilised legal systems that no one should be held criminally guilty unless he is to some extent at fault**.** In all jurisdictions of study, we would see how offences are proven and the punishment for the offences as related to the statutory laws governing each jurisdiction.

2.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- discuss the ways in which criminal responsibility is evaluated
- explain legal defences to criminal responsibility under the jurisdictions under study.

2.3 The Concept and Basis of Criminal Responsibility

In Nigeria jurisdiction, there are legal standards promulgated for determining criminal responsibility as the case may be. This topic would focus on and elucidates on the entirety for establishing criminal responsibility and in the other jurisdictions, the plea of the appropriate defence. Criminal responsibility is a topical issue confronting the criminal justice system. To ensure due process, uphold judicial integrity and

maintain the integrity of criminal proceedings, courts must determine when a defendant is responsible for alleged criminal acts and when any defence is applicable. For example, for every criminal offence, 3 requirements must be exhausted i.e the Actus Reus (AR) (an act in violation of the law), the Mens Rea (a guilty mind) and the concurrence of the both. Defences are relevant also to the process of establishing criminal responsibility and guilt. Thus, the relationship between criminal responsibility and punishability is influenced by the outcome of the defence plea.

The jurisdictions of India and Ghana have enacted legal standards for establishing criminal intent and when, where and how the defence plea can be raised during court proceedings. In Ghana, the legal standard for criminal responsibility and the defence of insanity are outlined in the Criminal and Other Offences Act,1960 (ACT 29). And the Criminal Procedure Act 1960 (ACT 30) respectively. Criminal responsibility is provided for in Section 11 of the ACT 29. Hence in other to be criminally responsible in Ghana there must be an established relationship between the intention and an anti- social event. This appears to be the same position in the Nigeria codes. The Criminal Code of Nigeria provides for not being criminally responsible under Section 24 for an event that occurs by accident while the Penal Code also provides for same under section 48. Concerning the concept and basis for criminal responsibility, in the case of **Nkwuda v The QueenK**, Wali JSC stated thus, 'be it noted that mere absence of motive for a crime however atrocious it maybe in the absence of proof of insanity, or evidence of drunkenness that produces such a degree of madness, even for a time as to render the accused incapable of distinguishing right from wrong cannot avail the appellant of the defence provided in sections 28 and 29 of the Criminal Code'. How is Motive different from Mens rea?
A motive refers to a person's reason for committing a crime. Mens rea refers to the offender's mental state at the time the crime was committed.

SELF-ASSESSMENT EXERCISE

Are you in favour of reducing the age of criminal responsibility in your country? How is the law in your country in relation to the other jurisdiction of study? Examine the basis for criminal responsibility in Nigeria, Ghana and India.

2.4 Summary

In examining the legal standards for establishing criminal responsibility, under the Ghana criminal code, a close association would be between criminal responsibility and the defence of insanity. The criminal

responsibility and insanity standard, or tests comprise the formal legal criteria for adjudicating defendants as criminally responsible or insane. In the criminal jurisdiction of Ghana, the legal standard of criminal responsibility and the defence of insanity was outlined in the Criminal and other Offences Act 1960 (Act 30) and the Criminal Procedure Act 1960 (Act 30) respectively. Thus, in order to behold criminal responsibility, there must be an established relationship between intention (MR or culpable or guilty mind) and an anti-social event.

Section 11 (3) and section 13(2) of the Ghana criminal code when compared, the former suggests that unawareness of the narrower or broader, and near or far ramification of any intention does not exonerate such from criminal responsibility while the latter section is on indirect causation, which states that a man intends the natural and probable consequences of his actions. Under Section 13 of the Ghana criminal code, a defendant is criminally liable for any event if it is assessed that the event was performed voluntary and willingly which implies that criminal responsibility is void under coercion.

2.5 References/Further Reading/Web Resources

Criminal Law of Lagos State 2011

Nigeria Criminal Code Act, Cap C38 LFN 2004

Penal Code Act, Cap 53 LFN 2004

Ghana Criminal Code (Amendment) Act, 2003 (Act 646)

The Indian Penal Code, 1860 Act No. 45 of 1860

Insanity in The Australian Criminal Code Act 1995 (Cth) 1997 20;

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www.nigerianlawguru.com

2.6 Possible Answer to Self-Assessment Exercise

The question should be discussed and the answers will depend on individuals and their various jurisdictions. In discussing the basis, the elements i.e. the act, the mental state and the causation should be examined comparatively.

UNIT 3 THE CONCEPTUAL PROBLEM OF CRIMINAL RESPONSIBILITY AND CODIFICATION IN BOTH COMMON LAW AND CIVIL LAW JURISDICTIONS (NIGERIA, GHANA, INDIA, QUEENSLAND)

Unit Structure

3.1 Introduction

This unit seeks to do an exegesis (critical explanation/interpretation) on the provisions of section 24 of the criminal code with a view to unearthing its implications for criminal liability under the Queensland criminal law, criminal code, sections (23 -25) and under the India penal code. The importance of codification is that it helps to deter the municipal legislature from enacting reluctant or inconsistent new ordinances. What is codification? Codification is a process of reducing the whole body of law, rules, regulation into a code in the form of enacted law. E.g the Criminal code.

3.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- analyse the conceptual problems of criminal responsibility as raised in statutes and case laws and its principles. Are they the same in the jurisdictions under study?

3.3 The Conceptual Problem of Criminal Responsibility and Codification in both Common Law and Civil Law Jurisdictions (NIGERIA, GHANA, INDIA, QUEENSLAND)

In Nigeria, section 24 of the criminal code together with section 25 seem to cover the field of mens rea (MR) requirement and a lot more. It is also discovered that lack of comprehensive study and understanding of the

Criminal code provisions had led to much judicial misapplication. This anomaly has led to many per incuriam decisions in Nigeria.

It seems that section 24 of the Criminal Code in Nigeria was framed to obviate the confusion generated by the interpretation of the criminal law doctrine of MR. Under the Queensland criminal law, according to section 23-25, it is never necessary to have recourse to the old doctrine of MR, the exact meaning of which has been the subject of much discussion. The test now to be applied is whether the prohibited act was or was not done accidentally or independently of the will of the accused person. The words of COOPER C.J and LUKIN J in **THOMAS v MCETHER (1920) ST R QD 166 pg 175**. It was clear then that sections 24 and 25 intend to do to MR what section 4 of the Evidence Act has done to the doctrine of RES GESTAE in Nigeria, that is, consign it to the legal museum. What is RES GESTAE? Means events, remarks things done, which relates to a particular case, especially as constituting admissible evidence in a court of law. A critical look at section 24 the Nigeria criminal code suggest that accident cannot be pleaded where the forbidden conduct is done negligently.

One of the perennial problems of jurisprudence is that of the meaning, how do words mean what they purport to mean? This ambiguity extends to the words used to denote mens rea under the code. This problem of meaning is made most acute because the Nigeria criminal codes unlike the India and Queensland, codes does not give the definition of terms like intent, knowingly, willfully, purposefully, which were freely used in the codes. In the India penal code, the criminal procedure code provides the general procedure for investigation of crime. Though, India as a developing country needs the help of other developed countries technically to investigate some crimes, nevertheless, in this jurisdiction, there is independence of court system, which administers national as well as state laws. The judiciary play a very important role in the interpretation of every enacted law including the various Penal codes. It regulates the crime of the jurisdiction. The problems of the legal system are subject to the suitable development in the legislation, executive and the judicial interpretations.

SELF- ASSESSMENT EXERCISE

Explain the perennial problem of the words used to denote mens rea under two of the jurisdictions under study and how it can be cleared.

3.4 Summary

At the pain of repetition, one wishes to state again that, in spite of the above critique, section 24 of the Nigeria criminal code has the widest exculpatory powers under the Nigeria jurisprudence while in Queensland its sections 23 -25 of the code and in Ghana criminal code its section 2. Once a defence based on section 24 (accident) is allowed, the accused person must go home free. It does not call for a substitution of charge nor does it allow for a reduced sentence like the defence of provocation provided in Section 283 of the criminal code. It is a complete defense, meaning the defendant is innocent of the charge.

The term codification would simply be the collation, collection, organisation and publication of laws in a standardised system. That is been brought within a frame work of a formal and written legal document. Nevertheless, there are advantages of codification which are certainty, simplicity of laws, logical agreement, stability, planned development, unity etc. and the disadvantages of codification, amongst others, are rigidity.

3.5 References/ Further Reading/Web Resources

Criminal Law of Lagos State 2011.

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Justice June 2015 Vol 3 No 1 Pg 124 – 132.

Law of Crime (India Penal Code 1860).

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Penal Code Act, Cap 53 LFN 2004.

Queensland Criminal Code Act 1899.

Ratanjal & Dhirajlah (2003).

The Indian Penal Code, 1860 Act No. 45 of 1860Law Journal & Criminal.

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3.6 Possible Answer to Self-Assessment Exercise

Students should see how the phrase is defined under the jurisdictions chosen and see how the ambiguity is removed.

UNIT 4 THE COMPARATIVE SOURCES OF CRIMINAL LAW IN JURISDICTIONS (NIGERIA, GHANA, INDIA, SUDAN RESPECTIVELY)

Unit Structure

4.1 Introduction

Criminal law refers to a body of laws that apply to criminal acts or wrongs. It is also defined as a body of rules and statutes that define conduct prohibited by the state which threatens and harm the public safety and welfare and which imposes punishment for the commission of such acts. In instances where an individual fail to adhere to a particular criminal statute, he/she commits a criminal act by breaking the law. This body of laws is different from civil law because criminal law penalties involve the forfeiture of one's rights; freedom and it takes various forms. Conversely, civil law relates to the resolution of legal controversies and damages. There are various theories for why we have a criminal system. There would be discussion regarding the theories, development and the sources of criminal law.

The nature of criminal law is both substantive and procedural. The primary function of substantive criminal law is to define crimes including the associated punishment. Example of substantive criminal law is the offence of murder. The procedural criminal law outlines the procedures for arrest, searches and seizures and interrogations. In addition, it establishes the rules for conducting trials. What is a trial? A trial is the process of having representatives for the parties in court arguing their cases. The aim of criminal procedure is to safeguard everyone and to uphold the constitutional rights of suspects in criminal investigation.

4.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- discuss that without criminal law in any jurisdiction, there would be severe threat to the citizens of the nation and unlawful acts or events would be perpetrated without due punishment
- Explain how criminal law is relevant in every jurisdiction for the sanctity of human life, property, the protection of morality and the state.

4.3 The Comparative Sources of Criminal Law in Jurisdictions (NIGERIA, GHANA, INDIA, SUDAN RESPECTIVELY)

The sources of Nigerian law denote where Nigeria laws came from or its origin. The major question is that where did Nigeria get the present laws that we call our own. Did these laws fall from heaven? Nigeria generally has 6 sources of law, which we would briefly mention and not discuss in detail. They are (1) the received English law or Common law which developed from the custom of the English people and decisions of judges in England. (2) Nigeria legislation such as the Constitution, the Penal Code, Criminal Code, the Administration of Criminal Justice Act (ACJA) 2015 which has been domesticated in some states. (3) Case laws, (4) Customary law, (5) Delegated legislations. The Nigeria legislation happens to be the most important source of Nigeria law. It is made by the legislature which consist of the house of assembly, Senate. Legislations can be in form of ordinances, Acts, laws, decrees, or edicts. Nigeria legislations is the most important source of law because it is through Nigeria legislation that other sources of law are validated into the Nigeria jurisdiction. See Section 32 of the Interpretation Act LFN 2004. Also, section 27 (1) of the High Court of Lagos State validates customary law. Case laws or judicial precedent originates from the principle of **STARE DECISIS,** meaning similar cases must be treated alike.

In the Ghana jurisdiction, the sources of the criminal law are the 1992 4th Republican Constitution, legislations and orders, rules and regulation made by any person or authority under the power conferred by the constitution, existing laws and common law. (1992 constitution chapter 4 Act 11). The existing law are those that 'predate the current constitution, as adapted to conform to this constitution', including the 1960 criminal code (Act 29, as amended) and the 1960 Criminal Procedure Act 30 as amended. The latter of which stipulates the procedural rules for arrest, investigation, the types of sanctions that can be imposed by the courts. The criminal code of Ghana forbids detention or imprisonment without trial. But under the India jurisdiction, the criminal law emerged through a) civil law theory, b) social wrong theory c) moral wrong theory d) the group confliction theory. It is clear that India criminal law was never created by any particular theory whether civil or social wrong theory.

Criminal law consistently developed and is frequently subject to change, dependent upon the ethics and qualities of the time.

SELF-ASSESSMENT EXERCISE

What are the legal regulations in your jurisdiction that make up the criminal laws in the regulations of human conducts? Also discuss with respect to other jurisdictions of study (Sudan, India and Ghana).

4.4 Summary

Initially, there were no differences between civil law and criminal law, all laws are based on law of compensation or in other words, laws of wrongs as in India. There were no distinctions between tort and crime. No different branches of laws. Where murder and other homicide offences are regarded as private wrongs and prices are paid as compensations.

Under the Nigeria criminal law, the predominant sources of the criminal law are the various statutory enactments, such as the constitution, Acts of the national assembly, the government councils, and subsidiary legislations of government departments. Nevertheless, under the India jurisdiction penal law was Hindu law and it prevailed. Later the penal law of Hindu became the law of crimes and the law of tort. It recognised various kinds of offences namely assault, adultery, theft, defamation, robbery and violence as crimes. Furthermore, various kinds and degrees of punishment were prescribed and made flexible in the proportion to the enormity of the offence. In order words that is the punishment is measured according to the gravity of the offence committed. No one was exempted from the punishment. The India penal code was drafted by the 1st Indian law commission presided over by LORD MACAULAY in 1837 but finalised in 1850. It was enforced in 1862.

4.5 References/Further Reading/Web Resources

Crime & Punishment in the Republic of Ghana.

Dr. Amin M. Medan, Criminal Law & Justice in Sudan.

Karibi Whyte, A.G Sources of Criminal in Nigeria; (1993). Spectrum Law Publishers.

Laws of the New Sudan the Penal Code 2003.

Okonkwo & Naish, Criminal Law in Nigeria 2nd ed (2002). Spectrum Books Sudan Penal Code 1991.

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4.6 Possible Answer to Self-Assessment Exercise

Some of the regulations include the Constitution, Enactments made by the Legislature, Nigerian case laws, English laws, Customary laws, international law. The students should state and discuss the legal framework of other jurisdiction to do a comparative study. Later the penal law of Hindu became the law of crimes and the law of tort. The students should discuss the advent, importance and development of criminal law in Nigeria.

MODULE 2 HOMICIDE: COMPARATIVE ANALYSIS

UNIT 1 MURDER

Unit Structure

1.1 Introduction

The term murder is provided for in Nigeria Criminal Code in section 315 to the effect that any person who unlawfully kills another is guilty of an offence which is called murder or manslaughter, according to the circumstances of the case. Section 316 provides circumstances that can be referred to as murder in six sub sections. The provisions regulating of the offence of murder would be looked into having regard to the various codes applicable in other jurisdictions therefore the differences in the codes would be a focal point for the students. Note that our jurisdictions of study are Nigeria, Ghana and India. The amendment in the respective codes pertaining to the offence of murder is discussed hereunder.

1.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- identify the act of prosecution of unlawful purpose, the resultant of such an act. The act here must be such as to be likely to endanger human life. endanger human life
- explain the position in other jurisdictions under study.

1.3 Murder

Murder is an unlawful homicide and it is defined in section 315, Chapter 27 of the Nigeria Criminal Code Act, Chapter C39, Laws of the Federal Republic of Nigeria 2004, Section 46 of the Ghana Criminal Code and sections 302 -304 of the India Penal Code. What is murder? Murder is the

unlawful killing of another person with malice aforethought. Hence the statutory elements of the crime of murder are: unlawful killing, of a human being and with malice.

In the Nigeria, Criminal Code, section 316 provides that the offence of intentional Homicide is caused:

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

An accused person is answerable for all the natural and probable consequences for his actions resulting from the above circumstances. Section 319 CC provides that any person who commits the offence of murder shall be sentenced to death. In Igbo v State, (1975) 9 – 11 FSC 121, the accused person hit a little boy of 10 years with an iron bar, threw him on the ground and stepped on his stomach. The Court had no difficulty in inferring that the intent to kill had been established and so convicted the accused for murder.

There is a strong need to know the definition or meaning of some terms /words that would be used in this unit. It is necessary to give meaning to these words even as the codes have provided. What is Homicide? Homicide literally means the killing of a human being by a human being (HOMO- man or human being. CIDE (CAEDERE-To kill) this type of killing would be analyzed and the elements of such killings would be treated in the following units for more emphasis. This type of killing in the early common law is serious and is scarcely excusable**.** This killing may either be lawful or unlawful. Where it is shown that a person has caused the death of a human being, he was (except in few cases) guilty of a crime even where he did not intend or foresee death as a result of his conduct or action. But with the help of the principle of MR, a distinction can be made between lawful and unlawful homicide and thus there exist different degrees of liability for unlawful homicide. For the purpose of this module, unlawful homicide is comprised of murder and manslaughter

or culpable homicide punishable with death as provided in the Nigeria Penal Code.

Before going into a detailed study of the two aspects of homicide, it is necessary to make some preliminary remarks about causation. There are two categories of causation; the factual causation and the legal causation. Under the Nigeria Criminal Code, section 314 provides that a person cannot be held to have caused the death of another person unless such death occurs within a year and a day of the cause of the death. This is usually referred to as A YEAR and A DAY RULE. This rule was based on the belief that prove of causation (i.e the ability to show that actions by the accused were the cause of the victim's death becomes ever more difficult with the passage of time. The rationale for this provision is that a death which occurs after a year and a day, cannot be attributed to the act of the accused person. This period reckoned with is inclusive of the day on which the last unlawful act contributing to the cause of death was done. Some jurisdictions though have extended the time limit.

The Latin maxim of **NOVUS ACTUS INTERVIENIENS** states the existence of a third or extraneous factor. **Parker, C.J** in the illustrative case of **R v SMITH (1842) C&M 284** said: 'it seems to the court that if at the time of death, the original wound is still an operating cause and a substantial cause, then the death can properly be said to be the result of wound, albeit that some other cause of death is also operating…. In conclusion, for unlawful homicide, causation would arise in terms of foreseeability of consequences. The foreseeable consequences in causation could in certain cases be in form of mental sufferings or shock and frightening of the deceased to take his own life.

The essence of murder under the code is causing death with intention to kill the person or some other person, (section 316(1)) or with intention to cause grievous harm to the person killed or some other grievous harm to person killed or some other person (section 316(2)). The critical elements here is intention (that is purpose). Thus, the presumption that a man intends the natural consequences of his act is not compatible with the stipulation of Section 316. Hence in **R v NUNGU (1953) 14 WACA 379,** the appellant struck his brother with axe, in striking him he turned away the cutting edge. It was then argued that he did not intend to kill. The West African Court of Appeal held that the appellant could not be believed that he did not intend to cause grievous harm and as such the conviction for murder was upheld. According to the court, the appellant must have intended the natural and probable consequences of his act and by reason of sub-section 2 the person is guilty of murder if he intends to do the person some grievous harm. As stated earlier 'intent' can be proved positively having regard to the declaration of the accused person as to his intent or could be deduced or by proved through evidence of similar facts. In the case of **BAKARA v THE STATE (1987) Vol 1 NWLR Pt 52 pg**

579 SC. The appellant was charged before a Kwara High Court on the offence of culpable homicide punishable with death (under section 221 of the Penal Code). The court held that the intent to kill or to cause grievous bodily harm by stabbing the deceased on the head with a dagger which resulted in his death was sufficient to establish the offence of murder with which the appellant was charged.

Under the India Penal Code, the punishment for murder is life imprisonment or death sentence and the person is also liable to a fine. Guidance on the application of the death sentence was provided by the Supreme Court of India in the case of Jagmohan Singh in August 2016. In sections 302, 303 and 304 of the India Penal Code of 1860, it was provided that whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to a fine as earlier stated. Notably, section 302, provided the punishment for murder. Section 303, provided punishment for murder with life imprisonment. Also, section 304 provided punishment for culpable homicide not resulting to murder. That is if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death. The punishment is imprisonment of either description of term which may extend to 10 years etc. Nevertheless, section 46 of the Ghana Criminal and other Offences Act (1960) provided that 'a person who commits murder is liable to suffer death' Note, that crime means any act punishable by death or imprisonment or fine. Until the recent decision of the Supreme Court in Ghana in the case of **MARTIN KPEBU v A.G OF GHANA,** courts were not granting bail to accused persons charged with the offence of murder. In accordance with Section 96(7) of the CP Act 1960 Act 30. But Under section 96(7) of the Criminal Procedure Act 1960 Act 30 as amended in 2002 granting bail in murder cases become possible. Thus, the Supreme Court granted bail in the case. The term grievous harm is nevertheless the term that all codes have used to define the offence of murder. Section 1 of Nigeria criminal code defines grievous harm as 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 organs, members or sense.' It should be noted that under section 316(2) that as long as intention to hurt is established it does not matter that it was a person other than the person killed that was intended to be hurt. In sub-sections 1 and 2 the most important feature to be looked out for is 'intent'. That is for a conviction for murder proof of an intent to kill or causes grievous harm is sufficient. It would be futile for the accused person to argue that the stabbing of the deceased in the thigh which led to his death through bleeding was meant to demobilize him and not to kill him. Such an act is said to constitute grievous harm as in **R v NUNGU** (supra).

SELF-ASSESSMENT QUESTION

Adamu hit the deceased on the face, causing him to fall to the ground, but Adamu's friend Ali then went through the deceased pocket, finding nothing smashed his head on the concrete. Deceased died from brain damage and the court decided that the most likely cause of death was from the fall from Adamu's punch. As a student of criminal law, prove Adamu's innocence under Section 317 of the Nigeria criminal code. What if this killing was done in the jurisdiction of Ghana, would the decision of the court be the same?

1.4 Summary

At Common law, the provision of the various codes represented the so-called Felony-Murder Rule. That is Constructive murder. In the case of **R v OKONI (1938) 4 WACA 19** a distinction on the law of murder was invariably made between the common law codes. It was held that (1) the killing must be done in the act of committing felony involving violence whereas in some other common law codes, it is sufficient if death is caused by means of an act done in the prosecution of an unlawful purpose. Also, in a jurisdiction like Nigeria, it is necessary that the act should be of such a nature as to likely endanger human life, while this is not necessary in jurisdictions such as Queensland. Hence, the unlawful purpose need not even be a crime. Contrarily, the provisions of Sections 302(1) and 302(2) of the Queensland code is similar to the provisions of Section 316 (2) of the Nigeria Criminal Code respectively.

Though murder is not strictly separate from that contemplated in section 316 (3) of the Nigeria Criminal Code, (the elements of offences such as the actus reus & mens rea would also be discussed in this module and subsequent units). According to the code, it is immaterial that the offender did not know that death was likely to result from his act. For example, if A willfully does grievous harm to B, or willfully stops his breath for the purpose of facilitating the commission of an offence, it does matter whether the offence is one for which he can be arrested with or without a warrant. It is clear that A is guilty even though the offence is one for which he cannot be arrested without a warrant.

1.5 References/Further Reading/Web Resources

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Okonkwo & Naish, (2002) Criminal law in Nigeria 2nd ed spectrum books.

Penal Code Act, Cap 53 LFN 2004.

Prof Ukbuegbe: 5 lectures on homicide offences.

The Indian Penal Code, 1860 Act No. 45 of 1860.

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1.6 Possible Answer to Self-Assessment Exercise

Define murder under the statute, analyse the ingredients of murder and reconcile with the scenario. Then state Adamu's chances and probable consequences of his conduct. State Ali's chances too with the aid of decided cases. State Ghana criminal code section defining murder. State the section providing for the punishment of the offence. State the locus stand case in Ghana law. Also state who amongst Adamu and Ali would be granted bail if they are the within jurisdiction of Ghana.

UNIT 2 ACTUS REUS (AR)

Unit Structure

2.1 Introduction

Actus reus is an important aspect of criminal law that is considered in court to determine the nature of a crime. The presence of this conditions must be considerably established before a criminal charge and the appropriate punishment can be determined. The standard common law test of criminal liability is expressed in the latin phrase **ACTUS REUS NON FACIT REUM NISI MENS SIT REA**, that is 'the act is not culpable unless the mind is guilty'. In common law jurisdictions, Nigeria specifically, there must be both the Actus Reus and the mens rea for the defendant to be guilty of a crime. As a general rule, someone who acted without mental fault is not liable in criminal law. Exceptions are known as strict liability crimes. More so, when a person intends a harm, but because of bad aim or other cause, the intent is transferred from an intended victim to an unintended victim, the case is considered to be a matter of transferred intent. But in the civil law jurisdiction, it is usually not necessary to prove a subjective mental element to establish liability for breach of contract or tort. For example, in some other jurisdictions, the term actus reus has been replaced by alternative terminology.

The meaning of (AR) being an action or conduct which is a constituent element of a crime, as opposed to the mental state of the accused. Hence in law, AR refers to the act or omission that comprise the physical elements of a crime as required by statute. The importance of this element cannot be over emphasized in the various offences as stated by the codes of the various jurisdictions of study.

2.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- explain the different definitions of actus reus in the various jurisdiction.
- explain how the elements of actus reus differ?

2.3 Actus Reus (AR):

Under the India Penal Code, every crime must be considered in two parts- the physical act of the crime which is known as the actus reus and the mental intent to do the crime. The actus reus is criminally defined as a criminal act that was the result of voluntary bodily movement. This describes a physical activity that harms another person or damages property. It would suffice to say that this element is important as it is, not statutorily provided for in any of the codes of the jurisdictions of study. How important is actus reus in criminal law? Typically, there has to be an intent behind the crime, but this is required in every situation. Actus reus is the action the person takes to perform the criminal act. This is the physical action behind the crime. Notably, there are 3(three) types of Actus Reus. Namely; conduct, consequences and circumstances. While the basic elements of actus reus are (1) the prohibited act, omission, consequence or state of affairs, which in other jurisdictions is known as the general intent. (2) Any fault element, such as intent or recklessness, required in respect of it, known as the specific intent. It is very important to note that actus reus and mens rea must occur simultaneously for a crime to be constituted. But different crimes require different degrees of intent. Intent on the part of the defendant is also often lacking in certain vicarious liability offences. Vicarious liability offences occur where a defendant's criminal liability is predicated upon the actions of another, often based upon an employer/employee relationship. Actus Reus requires a voluntary act. In Ghana Criminal Code, for every offence, two requirements must be established, the Actus reus and the Mens rea. While the actus reus denotes an overt or proscribed act, the mens rea on the contrary is concerned with the criminal intent to perform the actus reus. The mens rea is the element that is in dispute when criminal responsibility and the insanity defence are raised during a criminal proceeding. The position of the law is that of absolving a defendant from criminal responsibility if the mens rea is found to be deficient. Nigeria in conjunction with some other jurisdictions have enacted legal standards for establishing criminal intent and when, where and how any defense can be pleaded. Section 11 of the Act 29, Ghana Criminal code makes provisions relating to intent. More so, in order to be held criminally responsible in Ghana, there must be an established relationship between intention and an antisocial event.

Self -Assessment Exercise

Peter, a keen cyclist is travelling along a busy road when Jane pulls out in front of him in her car. Peter is furious because he is sick and tired of inconsiderate car drivers ignoring cyclists. In fact he was knocked off his bicycle two weeks ago on the same stretch of road. Peter shouts and shake his fist at Jane, who despite seeing him, ignores him and drives off. This made Peter very angry and because of the heavy traffic, he drove after Jane and hit her car thereby leaving a large dent on her car. Does Peter satisfy the requirement of the AR of the criminal charges; of reckless driving and unlawful damage?

2.4 Summary

Actus reus and mens rea are important aspect of Criminal law that are considered in court to determine the nature of a crime. The presence of these two conditions must be established before a criminal charge and appropriate punishment determined. Each crime must be looked at individually to determine what must be proved to establish actus reus. In the case of an offence of murder, the defence of its A.R is to be found in the decision of the court. While in a case of a statutory crime such as theft, the defence of A.R is to be found in the statute as interpreted judicially. However, it is necessary to know which element of the defence of an offence comprises of A.R.

In proving A.R, it has already been established that criminal law does not seek to punish anybody for any of their evil thoughts or intentions. Thus, if D has the MR for a particular offence but does not bring about the AR he is not guilty of committing that offence. This is illustrated by the decisions of the court in the case of DELLER (1952)36 Cr App R 184. More so, where the AR of an offence requires conduct on the part of the accused, whether an act or omission, liability will only accrue where the conduct is willed. It is also an offence which is of a guilty mind where one fails to supply the necessaries of life if danger to health is likely to result and where there is a duty to do so. Hence, homicide can only be committed by human beings and the AR of unlawful homicide is causing the death of a human being in circumstance which are not authorized, justified or excusable by law. In **R v CASTLE (1969) QWN 36,** the accused induced an abortion on a female about 22 weeks pregnancy as a result of which the baby was born alive but died about 2 hours later. The accused was charged with manslaughter. On the basis that an aborted child that is burn alive and lived even for some seconds is a victim of Homicide, the Accused was held liable for Manslaughter.

2.5 References /Further Reading/Web Resources

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Penal Code Act, Cap 53 LFN 2004.

SMITH & HOGAN (CRIMINAL LAW 10th ed pg 149.

The Indian Penal Code, 1860 Act No. 45 of 1860.

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2.6 Possible Answer to Self-Assessment Exercise

Define the term AR. Identify the AR of the offence from either statutory or judicial point of view. Which of the elements of AR is present by the conduct of Peter? Discuss and decide whether the defendant will be found liable to the harm that Jane suffered under the jurisdiction of study and state the defenses available to all parties.

UNIT 3 MENS REA (MR)

Unit Structure

3.1 Introduction

Mens rea is used to refer to a general principle of statutory interpretation and of criminal responsibility. Thus, the Latin maxim 'Actus non facit reum nisi sit rea' which literally means that a person will be criminally liable only if the offence with which he is charged is the result of his outward conduct concurring with his morally blame worth mind. The (MR) is in law supposed to be contemporaneous with the actus reus. Under the Nigeria Criminal Law, the MR is a compulsory element. Though, section 50 of the Nigeria criminal code excludes the requirement of MR, the courts must nevertheless, always envisage it before an accused person could be convicted of an offence. The rationale behind the rule is that it is wrong for society to punish those who innocently cause harm. The principle of MR could also be known as guilty mind. MR is used to refer as we have seen, to be the mental element which is required to be proved in respect of a particular crime. The doctrine of mens rea comes in where the court is considering the definition of an offence, the definition requires proof of a guilty mind against the accused person.

3.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- analyse the shift from establishing what an acceptable standard of MR is for any given offence to defining in more details what each fault requirement demands
- explain the test for the existence of MR (intention, knowledge, recklessness) and the objective fault in Nigeria criminal law comparatively.

3.3 The Mens Rea

The test for the existence of MR, in an offence is both subjective and objective. Thus, the term MR is used to donate the morally blame worthy state of mind sometimes known as intention or negligence or recklessness.

In other words, MR either in the form of an intention or recklessness can be found as a fact or inferred from the surrounding circumstances of the case. In the statement of BRIAN C.J in the year book (1477) "the thought of a man is triable for the devil himself knoweth not the thought of a man". To an extent, this statement is true if only the thought that is the intent was given no expression in wish or conduct. There are four different levels of MR, they are purpose (same as intent), knowledge, recklessness and negligence. For a conviction to be seen, the specific intent which forms the vital ingredient of an offence must be proved. When the specific is not proved, the accused must be discharged. The MR of an offence may be negated by a defence of mistake, compulsion, accident, or bona fide claim of right.

MR though refers to criminal intent could also be said to mean a state of mind statutorily required in order to convict a particular defendant of a crime. Under the Ghana criminal law, establishing the MR of an offender is usually necessary to prove guilt in a criminal trial. The prosecution typically must prove beyond reasonable doubt that the defendant committed the offence with a culpable state of mind. The MR requirement is premised upon the idea that one must possess a guilty state of mind and be aware of his/her misconduct. However, a defendant need not know that their conduct is illegal to be guilty of a crime. Rather, the defendant must be conscious of the "facts that make his conduct fit the definition of the offence". Nevertheless, under the India Penal Code, MR was interpreted by the court by the dictum laid down by the Madras High Court in NIDAMARTI NAGABHUSHANAM (1872) 7 Mad. HCR 119, in which Justice Holloway stated "culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happenings. The immutability arises from acting despite the consciousness (luxuria). Culpable negligence is acting without the consciousness that the illegal and mischievous effects will follow, but in circumstances which shows that the actor has not exercised the caution incumbent upon him, and that if he had, he would have had the consciousness. The immutability arises from the neglect of the civic duty of circumspection". The Supreme Court of India declaring in respect of the above case stated that "there is a distinction between a rash act and a negligent act culpable rashness is acting with the consciousness that the mischievous and illegal consequence may follow….". it is pertinent to note that the Supreme court of India got a wonderful occasion to consider the concept of MR and the negligence in the Indian contest. Hence Section 304A of the India Penal Code is more often referred to in proving the MR of an offence. While Section 50 of the Nigeria criminal code excludes the requirement of MR, it is presumed that MR or even intention or knowledge or wrongfulness of an act is an essential ingredient in every offence but that presumption

is liable to be displaced either by the words of the statute creating the offence or by the subject matter with which it deals and both must be considered.

SELF-ASSESSMENTS EXERCISE

The development of the principle of MR has shown that it is difficult to ascertain what precisely constitute the concept of MR, on this premise analysis the element of intention embedded in the meaning of MR and as envisaged in two of the jurisdictions under study

Upon a strict legal construction of the codes in force in Nigeria that is the criminal code and the penal code, criminal law in Nigeria has no business with the English doctrine of MR as developed at common law considering that the codes have extensive provisions dealing with the mental elements of a crime. Chapter V of the Criminal Code and chapter II of the Penal Code both provide exclusively for criminal responsibility and the concept of blameworthiness crimes. Hence, there was no need to import the doctrine of MR into the criminal law in Nigeria at all.

3.4 Summary

It is worthy to note that strict responsibility is an exception to the doctrine of MR. Under the Australian criminal code, strict responsibility has largely been restricted to mainly statutory offences that are in the nature of creating some form of public welfare protection for society safety. The cases on strict responsibility under the Australian criminal law have largely been justified on the ground of lack of care and caution which amounts to negligence simpliciter.

3.5 References/Further Reading/Web Resource

ALLEN, M.J & EDWARDS, I. Criminal Law 15th edition (Oxford University Press 2019) page 81 https//www.lawshelf.com.

DUBBER (2002) PG 55.

DUFF, R.A & GREEN, S. Philosophical Foundations of Criminal Law (Oxford University Press 2011) page 257.

HALL, Dr. E, Criminal Law & Procedure (Cengage Learning, 2015) pages 63-64.

3.6 Possible Answer to Self-Assessment Exercise

Using the Ghana criminal law and the decision of the India Supreme court in the case of **NIDAMART NAGABHUSHANAM**, write out what the laws state on the term Intention in reconciliation with other terms and conclude with the definition of the term in the Nigeria Criminal law and using the case of **HYAM v DPP (1975) AC 55** as a classic.

MODULE 3 DISTINCTIONS ON MURDER AND MANSLAUTHER

UNIT 1 MANSLAUGHTER

Unit Structure

1.1 Introduction

As earlier stated, homicide is either lawful or unlawful. It is lawful if it is authorised or justified by the law. It is pertinent to note that the provisions of manslaughter in the various jurisdictions of study (common law and civil law) would be analysed and the elements of the offence critically emphasised as it pertains to jurisdictions. For example, the occasions of lawful homicide under the Nigeria Criminal Code may be brought under nine categories. Sections 254, killing in the execution of the sentence of a court, Section 261, killing by a person engaged in the lawful execution of a sentence, process or warrant or in making an arrest in order to overcome resistance, under Sections 271,73,276 -280, Section 24 is killing by accident and without criminal negligence. Other offences that are under homicide are suicide, infanticide, but for the purpose of this module research we would be looking in depth on manslaughter but briefly mention the others.What are the occasions that justify lawful homicide?.

Manslaughter is a less serious form of homicide than murder. There are killings that have the AR & MR of murder, but due to existing

circumstances, should not be called murder. This is known as voluntary manslaughter and the killing where the MR of murder which is intent to kill or cause grievous bodily harm does not exist, but there is sufficient fault to justify criminal liability, it is known as involuntary manslaughter. A detailed study would be done to this topic in this module. The definition of manslaughter statutorily, and in case laws, the different types of the offence and major distinctions between the voluntary and involuntary manslaughter.

1.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- differentiate the types of manslaughter as in voluntary and involuntary
- discuss the punishment provided for the offence as it differs from jurisdictions to jurisdictions.

1.4 Manslaughter

This is another form of unlawful homicide and has no specific definition. But by virtue of Section 317 of the Nigeria criminal code, Section 222 of the Nigeria Penal code, a definition has been construed for the term manslaughter to be "A person who unlawfully kills another in such circumstance as not to constitute murder is guilty of manslaughter". The implication of this provision is that any of the situation not covered by Section 316 of the NCC which deals with murder will amount to manslaughter. Manslaughter is statutory provided for in Section 46 and defined in Section 47 of the Ghana Criminal Code. Hence the offence is generally divided into 2(two) categories, namely (a) The Voluntary manslaughter and (b) The Involuntary manslaughter. It is important to note that the common law doctrine has been received into Nigeria criminal law under the rubric of **section 317** which states that any unlawful killing which is not murder is manslaughter. However, at common law 'unlawful act' is limited to acts which are criminal offences. Thus, the death of a child as a result of willful neglect was held to be manslaughter as held in the case **of R v SENIOR (1899)1 QB 238.**

The law recognises that human beings are prone to losing their self-control under extreme rage and should they react violently, justice demands that account be taken of this natural tendency of theirs. In inflicting punishment, it is observed that some defences could be raised, such as the defence of provocation, to reduce the gravity of the punishment to be melted out. It is thus, said that though an accused lost self-control while doing an act or an unlawful act but this will not be enough to avail him of the offence he had committed. When dealing with

voluntary manslaughter, the intention of the accused person is involved, that is, this type of killing involves the accused person knowing the consequences of his act which is unlawful. He has the intention of committing an unlawful act in which grievous harm or death will be resultant. It will suffice to know that no amount of defence can justify or avail a killing but rather it reduces the offence of murder to manslaughter.

Nevertheless, involuntary manslaughter deals with cases in which there is no intention to kill or do grievous harm or some killing that do not fall under the provisions of Section 316 of the Nigeria Criminal Code and Section 47 of the Ghana Criminal Code. Involuntary manslaughter takes place where a person is doing an unlawful act without intention to kill or do grievous harm, thus causing the death of another or through criminal negligence, a person causes the death of another. As we have seen, involuntary manslaughter is unintentional homicide of which there are 2 forms; (a) Manslaughter by gross or criminal negligence and (b) Manslaughter by unlawful (and dangerous) act and it will suffice to know that the latter is based on constructive liability. But under section 23, Queensland Criminal Code, a limited doctrine of accidental homicide has judicially evolved under which "accident" killing is manslaughter only where death was the direct and immediate result of the offender's intentional act. In the case of R v MARTYRE (1962) QD 398, D struck Y in the chin killing him. The blow was fatal only because of the unusual weakness of Y skull. It was held by the court that D was guilty of the offence of manslaughter. Also, causing death unintentionally by dangerous driving is perhaps the commonest form of manslaughter by gross negligence. Section 343 of the Nigeria criminal code deals with the special case of reckless and negligent acts resulting to manslaughter. Give examples of reckless and negligent acts resulting in manslaughter.

SELF-ASSESSMENT EXERCISE

Simon fired a shot at Jack with the intention to kill but missed completely. However, several years later Simon 'accidentally' ran over Jack who died as a result. In the above scenario, discuss in details, if Simon will be guilty of murder or manslaughter, using the provisions of the statute, discuss comparatively using the statute of a jurisdiction of choice.

1.4 Summary

At this point, it is important to state that accidental homicide is different from manslaughter. A very similar Nigerian case is **R v NTAH (1961) ANLR 590** where D in the course of a scuffle struck the deceased twice in the abdomen with a stick and was convicted based on the Australian doctrine where homicide is non-culpable if the action of D was

unintended, unforeseen and unforeseeable irrespective of whether it was an unlawful act or not as in the case of **TIMBUKOLIAN v R (1968)42 ALJR 295.** This important distinction that is noted here is where under constructive manslaughter, the offender need not for see the risk of harm resulting in constructive murder as opined by Prof Okonkwo, that he should fore see the likelihood of harm occurring.

In summary, Section 343 of the Nigeria Criminal Code deals with special cases of reckless and negligence acts. Thus, involuntary manslaughter being an unintentional manslaughter follows that there can be no attempt or conspiracy to committing this kind of manslaughter. This is similar to the offence of culpable homicide not punishable with death Under Section 222 of the Penal code. Also, on a charge of manslaughter, the court may convict the accused of dangerous driving under the Road Traffic Act. Section 18(1) makes it an offence for any person to drive a motor vehicle on a highway recklessly or negligently or in a manner dangerous to the public. Though the offence created under the section of the Act is only a misdemeanor, there can be little doubt that the degree of negligence necessary for a conviction is not as high as in the prosecution of manslaughter.

1.5 References/Further Reading/Web Resources

Federal Highway Act Cap 135 LFN1990.

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Okonkwo “Accidental Manslaughter” 1965 1 NIJ 253.

Penal Code Act, Cap 53 LFN 2004.

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www.Https//Lawjustor.Com;

www.Lawteacher.Net

1.6 Possible Answer to Self-Assessment Exercise

With the aid of decided cases, discuss manslaughter extensively, the different types of manslaughter. The decisions of the courts in two jurisdictions of your choice.

UNIT 2 THE DISTINCTION BETWEEN VOLUNTARY AND INVOLUNTARY MANSLAUGHTER.

Unit Structure

2.1 Introduction

This unit would provide emphasis on the distinction between involuntary and voluntary manslaughter. Involuntary manslaughter cases are usually unintentional, and as such the courts frequently see them as a moment of bad judgement rather than some evil doing. As a result, a defendant with no criminal record may receive a sentence of no jail and probationary conditions that are relatively easy for them to comply with as they move forward with their life. However, a person found guilty of first- degree murder is treated much more harshly in most cases. Section 325 of the Nigeria Criminal Code provides for the punishment of manslaughter as life imprisonment. As discussed earlier, involuntary manslaughter is unintentional homicide of which there are two forms -a) manslaughter by gross or criminal negligence and b) manslaughter by unlawful (dangerous) act. It will suffice to know that the latter is based on constructive liability. This negligence negates the defence of accident provided for in Section 24 of the Nigeria Criminal Code. Thus, the killing of a person by negligence act would constitute manslaughter.

2.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- identify when a killing constitute manslaughter, when is such a killing a voluntary manslaughter and when is it an involuntary manslaughter
- compare other jurisdiction of choice in the distinction between the two types/forms of manslaughter.

2.3 Distinction Between Voluntary and Involuntary Manslaughter

In involuntary manslaughter, the offender had intent to kill or seriously harm, but acted ‘in the moment’ under circumstance that could cause a

reasonable person to become emotionally or mentally disturbed. There are mitigating circumstances that reduces culpable manslaughter such as when the defendant kills only with an intent to cause serious bodily harm. Voluntary manslaughter in some jurisdictions such as Nigeria is a lesser induced offence of murder. The traditional mitigating factor is provocation. However, other defences have been added in various jurisdictions. The most common type of voluntary manslaughter occurs when a defendant is provoked to commit homicide. This is sometimes described as a crime of passion. It is worthy to note that assisted suicide in some jurisdictions are punishable as manslaughter.

Involuntary manslaughter is the killing of a human being without intent of doing so, either expressed or implied. It is distinguished from voluntary manslaughter by the absence of intention. It is normally divided into two categories, constructive manslaughter and criminal liability. Under the constructive manslaughter, which is also referred to as 'unlawful act' manslaughter, it is based on the doctrine of constructive malice whereby the malicious intent inherent in the commission of a crime is considered to apply to the consequence of such crime. It occurs when someone kills without the intent of the commission of the act, In the course of committing the unlawful act. The malice involved in the crime is transferred to the killing, resulting in the charge of manslaughter. Involuntary manslaughter may be distinguished from accidental death. A person who is driving carefully, but whose car nevertheless hits a child darting out into the street, has committed manslaughter. How do differentiate voluntary from involuntary manslaughter?

Notably, manslaughter is not defined by legislation in Queensland Criminal Code as well. But Nigeria criminal law, in judicial decisions provide the basis for determining whether an act resulting in death amounts to manslaughter by unlawful and dangerous act as in the case of **ABASS v PEOPLE OF LAGOS STATE (CA/L/522/2012) (2016) NGCA 65 (25TH FEB 2016),** where the decision in the case of **STEPHEN v STATE (1986) 12 SC 450 at 504** was upheld. To be found guilty of manslaughter by an unlawful and dangerous act, the accused must be shown to have committed an unlawful act which is contrary to criminal law. In the case of **R v BASSEY (1963**) **Vol 1 ANLR** the accused was attacked by the deceased and some others while he was in his sitting room. During the course of the attack, the accused defended himself with a pen knife. The accused person delivered four blows on the head of the deceased in quick succession. The trial court held that the defence of self defence or provocation would not be adequate. On appeal, the Supreme Court of Nigeria held that while the defence of self defence would not avail the accused, provocation would, the sentence was reduced to manslaughter. See also the cases of **STATE v FELIX USIFO (1977) Vol 1 NMLR**, and **MOSES v STATE (2006) Vol 11 NWLR Pt 992.**

The manner in which death results in involuntary manslaughter could either be as a result of the accident. Nevertheless, the offence of murder could still be reduced to manslaughter. In addition to the above, involuntary manslaughter could also be caused by negligence by professionals and this is criminal. In the case of **R v BATEMAN (1925) 94 LJ KB 791**. The appellant who is practicing medicine delivered a woman of her baby which died and later the woman died. He was charged for manslaughter through criminal negligence by causing internal ruptures in performing surgery, removing part of the uterus alongside the placenta and delay in sending the patient to the infirmary. The conviction was however quashed as the evidence did not reveal all the above.

SELF-ASSESSMENT EXERCISE

With the aid of judicial decisions compare the various classes of manslaughter in Nigeria and the Queensland Criminal Code, Stating the different types of manslaughter.

2.4 Summary

Under the Queensland criminal law, manslaughter though not defined in the Crimes Act 1900 (NSW), there are 2 categories of Involuntary manslaughter under the Act which are manslaughter by unlawful and dangerous act and manslaughter by criminal negligence. The high court of Australia in the case of **WILSON v R** and **R v LAVENDER** gave recognition to the offence. But under the Queensland code, section 23 a limited doctrine of accidental homicide has statutorily evolved under which accidental killing is involuntary manslaughter. Succinctly stated by **PROFESSOR OWOADE** in his book, **LAWS OF HOMICIDE IN NIGERIA**, "There is an obvious difference in the law of manslaughter between doing an unlawful act and doing a lawful act with a degree of carelessness. In the latter there must be 'gross negligence" to sustain a conviction of manslaughter, whereas in the former, the offence may be proved even where death occurred accidentally."

As earlier stated, voluntary manslaughter is killing another with an intent but which as result of successful defence of provocation, is reduced from murder to manslaughter. But on the other hand, involuntary manslaughter covers all other cases in which intention is not proved either to kill or do grievous harm and neither falls within the provisions of section 316 of the Nigeria Criminal code.

2.5 References/Further Reading/Web Resources

Federal Highway Act Cap 135 LFN1990.

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Okonkwo "Accidental Manslaughter" 1965 1 NIJ 253.

Penal Code Act, Cap 53 LFN 2004.

Queensland Criminal Code Act 1899.

Smith & Hogan Criminal Law Page 263.

The Indian Penal Code, 1860 Act No. 45 of 1860.

www.researchgate.net

2.6 Possible Answer to Self-Assessment Exercise

You are expected to define manslaughter as detailed as possible using Nigeria's statutory provisions. He/she is expected to discuss each of the distinctions in the jurisdiction of choice. He/she is also to mention at least a case each in the jurisdiction of choice and give detail on the case and the judicial decision, making comparisons and distinctions. Conclude by analyzing the essence of provisions of sections 317 of the criminal code and section 222 of the penal code.

UNIT 3 THE CRITICISMS ON THE OFFENCES OF MURDER AND MANSLAUGHTER

Unit Structure

3.1 Introduction

Both murder and manslaughter involve the unlawful death of another person. Thus, if a person has been charged with murder and /or manslaughter the state believes they have evidence to show the killing was not natural and possibly due to at least negligence behavior or even an intentional killing by the defendant. In addition to the killing of another person, murder also requires that the defendant either intended to cause serious bodily harm or death or behaved in a way that was reckless and with extreme disregard to human life. Manslaughter on the other hand, does not require such an intent instead manslaughter only requires that the defendant was negligent in their actions that resulted in the killing of another person. What kind of intent is required in establishing the pffence of manslaughter?

Homicide is committed in a wide range of circumstances morally, and as a matter of proper labelling, the category of murder should be reserved for the most heinous or culpable killings. Murder has been recommended to encapsulate both the intention to kill or cause serious injury. It is therefore submitted that a person who is as bad as an intentional killer should be treated as such.

3.2 Intended Learning Outcomess

By the end of this unit, you will be able to:

- explain the distinction and relationship between murder and manslaughter.
- prove that the punishment or sentence in any case depends not only on the jurisdictions' laws but also on the courts' evaluations of the circumstances and the defendant.

3.3 The Criticisms on the Offences of Murder and Manslaughter

Murder and manslaughter are related, but morally distinct in categories of killing and this difference should continue to be recognised. The legal distinction between murder and manslaughter is of great importance concerning the 'appropriate labelling' of criminal offences. The distinction between murder and manslaughter cannot be abolished nor neglected as an aspect of homicide law reform, though it is noted that murder is generally understood as being a more serious offence than manslaughter. People who are convicted of manslaughter are considered by member of the society to be less culpable and therefore less blameworthy than those convicted of murder. Under the Ghana criminal code, it is completely opposed to the idea of abolishing the distinction between murder and manslaughter. There is a moral principle at stake. Most intentional killings are in a class of their own and are more heinous than unintentional killings. First, murder and manslaughter distinction are rooted in the historic principle that criminal liability presupposes an intention to commit the relevant AR.

What distinguishes murder from manslaughter is the criminal intent element. Manslaughter involves the killing of another person but its distinct from the crimes of murder. Sometimes, the line between the homicide offences- murder and manslaughter is not too clear. Hence, the distinction between the offences is invariably very important. The student of this class needs to be able to draw the line between the two offences with the aid of case laws.

Secondly, the law should differentiate between particularly heinous killings and those which are less serious, such as those caused during the commission of lawful acts due to gross negligence. Even within involuntary manslaughter where the accused unintentionally kills the deceased, there are great divulgences in culpability. Arguably, it is inappropriate to label an accused who was 'unlucky' in the sense that a single punch led to the death of a man with the same crime as someone who repeatedly kicked his victim on the head or stabbed him in the chest. Also, if there were a single offence of unlawful homicide the focus of homicide trials would shift to the sentencing stage. If the murder and manslaughter distinction were abolished and replaced by a single offence of unlawful homicide, the court would decide the impact of provocation or self defence or the defendant's culpability at the sentencing stage. Abolition of the murder and manslaughter distinction would mean an aid to a legal distinction which has existed for hundreds of years, and which is 'deeply imbedded in our social and legal culture'. The public would likely be hostile to any move to abolish the distinction. Do you agree to the abolition of the distinction between murder and manslaughter?

Under the Ghana Criminal Code, until the recent decision of the Supreme Court of Ghana in the case of **MARTINS KPEBU v A.G of GHANA**, Ghanaian courts were not granting bails to accused person charged with the offence of murder in trial. The statutory provisions which the Supreme court of Ghana had to determine its validity is section 96 C.39 of the CPA 1960 ACT 30 as amended in 2002 that provided that a court shall refuse to grant bail in case of murder amongst other offences. But in a majority decision of 5-2 of the Supreme court of Ghana on the 5th May 2016 held that the laws were unconstitutional because it was inconsistent with Act 14(3) and (4) of the Ghanaian 1992 Constitution and to that extent are null, void and of no effect.

Under section 299 of the Indian Penal Code that provides for culpable homicide as whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such an act to cause death, commits the offence of culpable homicide not amounting to murder is punishable under section 304 of the Indian Penal Code. It is non bailable charge with imprisonment up to 10 years with or without fine. Notably, maximum penalty for murder in India is death by hanging or shooting, whereas minimum penalty is imprisonment for life. In the area of punishment, different jurisdictions have different minimum and maximum jail sentences depending on their statutes. Under section 307 of the Indian Penal Code, the offence is non bailable and cognisable offence. Bail depends upon the facts of the case hence the courts decide when to grant bail or not. Depending on the state, there may also be different probationary conditions and timelines. However, manslaughter cases usually carry less jail term than murder cases and it is not uncommon for involuntary manslaughter cases. Though these punishments (life imprisonment and death penalty) have been advocated upon, that the latter be abolished and this was rested upon the premise of three main arguments. First, the sanctity of human life, secondly, that even if it were defensible, it would not be merely on account of its deterrent effect and thirdly, that having regard to the fallibility of human evidence. It is wrong to pass an irreversible sentence and thus risk the lawful responsibility of executing the innocent person. Because first degree murder involves some level of planning and certainly, an intent to kill the victim, defendant can face lifetime jail sentence. Nevertheless, the second-degree murder and involuntary manslaughter sentences vary from jurisdiction to jurisdiction but some jail terms are common along with lengthy probation (times after release). What are some of the arguments against dealth penalty?

SELF-ASSESSMENT EXERCISE

Give a detailed analysis using legal principles and case laws on the distinction between the homicide offences of murder and manslaughter.

3.4 Summary

Indeed, in murder, many states have different degrees; first degree murder is generally the worse crime and it requires proof that the defendant planned and intended to kill the victim. While the 2nd degree usually requires the intent to kill or the intent to inflict serious bodily harm. It also covers situations where the defendant while engaging in an act displays extreme reckless disregard to human life. In determining manslaughter, states usually have varying degrees but often have a voluntary and an involuntary penal statute. Voluntary manslaughter is similar to murder. The intent to kill or seriously harm the victim is absent in deciding whether the crime alleged meets the defence of manslaughter and murder. The deciding factor is usually the defendant state of mind.

What distinguishes murder from manslaughter is the criminal intent element. Manslaughter involves the killing of another person but its distinct from the crimes of murder. Sometimes, the line between the homicide offences- murder and manslaughter is not too clear. Hence, the distinction between the offences is invariably very important. The student of this class needs to be able to draw the line between the two offences with the aid of case laws.

3.5 References and Further Reading

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Law & Criminality in Nigeria pg. 125 -142.

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Penal Code Act, Cap 53 LFN 2004.

Queensland Criminal Code Act 1899.

Smith & Hogan Criminal Law Page 263.

The Indian Penal Code, 1860 Act No. 45 of 1860.

www.legalmatch.com.

www.lawnn.com

www.loc.gov

www.indianicanoon.org

www.aljazeera.com

3.6 Possible Answer to Self-Assessment Exercise

Define homicide offences. Give the two categories of offences amongst others using statutory provisions. Using case laws comparatively, discuss the distinctions and major criticisms of both offences. Evaluate the legal principles and case laws relevant to the defences available to both offences too.

UNIT 4 PROVISIONS ON THE PUNISHMENT OF THE OFFENCE

Unit Structure

4.1 Introduction

The death penalty is the statutory punishment for the offence of intentional killing under the penal codes and it is authorised by section 33 of the Constitution of Nigeria. Exceptions include where a defendant who is less than eighteen years is found guilty of a capital offence and convicted, and where the defendant is a pregnant woman. In these situations, she shall not be sentenced to death but sentenced to life imprisonment. What are the exceptions to death penal under the Nigerian Constitution?

A defendant who is found guilty of a capital offence and so convicted; but was at the time of the commission of the offence less than eighteen years old cannot be sentenced to death but sentenced to life imprisonment. The Indian Penal Code prescribed offences and punishments for the same. For many offences, only the maximum punishment is prescribed and for some offences, the minimum may be prescribed.

4.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- discuss the punishment for the offences of murder and manslaughter under the different jurisdiction.

4.3 Provisions on the Punishment of the Offence

Homicide is committed in a wide range of circumstances. Morally, and as a matter of labelling, the category of murder should be reserved for the most heinous or culpable killings. The mental element in murder, should encapsulate both the intention to kill or cause serious injury. Murder and manslaughter are related, but morally distinct, categories of killing and this difference should continue to be recognised. The legal distinction between murder and manslaughter is of great importance in relation to criminal offences. Those who advocate abolition of the

murder/manslaughter distinction neglect the labelling aspect of homicide law reform. Murder is generally understood as being a more serious offence than manslaughter. People who are convicted of manslaughter are considered by members of society to be less culpable and therefore less blameworthy than those convicted of murder.

Section 221 provides that: "except in the circumstances mention in section 222 culpable homicide shall be punished with death….". Death penalty is the prescribed punishment for persons convicted of capital offences and is also provided for in section 317 of the criminal code. Offences such as murder, culpable homicide punishable with death, are punishable with the death sentence." **In Kalu v State,** the Supreme Court decided that capital punishment is lawful in Nigeria and cannot be regarded as a degrading or an inhuman treatment. The sentence is mandatory; therefore, the court does not have the discretion to impose any other penalty upon conviction. Also, because the death penalty is mandatory, the plea of allocutus is of no effect once a person is convicted for an offence punishable with death penalty. What is an allocutus? An allocutus is an opportunity given to a convict pleading for mitigation before sentence is passed.

The punishment for murder under India's Penal Code is life imprisonment or death sentence and the person is also liable to a fine. Guidance on the application of the death sentence was provided by the Supreme Court of India in **Jagmohan Singh v. State of Uttar Pradesh**, where the Court enunciated an approach of balancing mitigating and aggravating factors of the crime when deciding on the imposition of capital punishment. However, this approach was called into question first in **Bachan Singh v. State of Punjab** where the Court emphasised that since an amendment was made to India's Code of Criminal Procedure, the rule has changed so that "the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so."

Causing death by negligence is punishable by imprisonment of up to two years, a fine, or both. Other crimes similar to manslaughter include punishment for culpable homicide not amounting to murder, addressed in section 304 of the Penal Code of Nigeria. The section states that:
Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with [a] fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any

intention to cause death, or to cause such bodily injury as is likely to cause death.

Self-Assessment Exercise

Comparatively differentiate the punishment for murder under Nigeria and Indian Penal Codes.

4.4 Summary

Capital punishment for homicides is legal in Nigeria, as the criminal laws of virtually all the states provides for the death penalty for certain offences such as murder as it is known in the southern states and culpable homicide as it is described in the northern states. Furthermore section 30(1) of the Constitution of the Federal Republic of Nigeria which guarantees every individual the right to life makes the right subject to the execution of the sentence of a court recognised by law. The Section provides that:
"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."

The Supreme Court of Nigeria in **Kalu v State** 1998 13 NWLR PT 583 531 upheld the legality of capital punishment. In the said case, the Court was asked to consider whether the punishment was not a violation of the rights of the individual of life and protection from cruel and inhuman treatment as guaranteed by the Constitution. The Court in a judgement delivered by the full complement of the court upheld the legality and constitutionality of capital punishment in Nigeria.

The position in Nigeria is very clear. Capital punishment is a reality and is the punishment for homicides. Our Constitution also recognises the death sentence – evidentially in sections 31(1)213(1)(d) and 220(1)(e) thereof. Therefore, the sentence of death in itself cannot be degrading and inhuman as envisaged by section 31 subsection (1)(a) of the Constitution. The Constitution is not intended to approbate and reprobate.

4.5 References/Further Reading/Web Resources

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Law & Criminality in Nigeria pg 125 -142.

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Penal Code Act, Cap 53 LFN 2004.

Queensland Criminal Code Act 1899.

Smith & Hogan Criminal Law Page 263.

The Indian Penal Code, 1860 Act No. 45 of 1860.

www.legalmatch.com.

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www.loc.gov.

www.indianicanoon.org.

www.aljazeera.com.

Possible Answer to SAE

Homicide is committed in a wide range of circumstances. Morally, and as a matter of labelling, the category of murder should be reserved for the most heinous or culpable killings. The mental element in murder, should encapsulate both the intention to kill or cause serious injury.

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imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so."

MODULE 4 STRICT LIABILITY OFFENCES COMPARATIVELY

UNIT 1 CONCEPT OF STRICT LIABILITY

Unit Structure

1.1 Introduction

Crimes which do not require intention, recklessness or even negligence as to one or more elements of the AR are known as offences of strict liability. In strict liability offences, the prosecution is required to prove the AR, but 'in relation to one or more elements of the AR there is no MR element to prove'. Strict liability entails conviction on proof merely that the defendant committed the prohibited act constituting the AR of the offence. Strict liability offences are sometimes referred to as offences of 'absolute prohibition', 'regulatory offences' or 'public welfare offences.'

There is a broad and longstanding societal consensus that there should be no criminal punishment without moral blameworthiness. It is therefore a cardinal principle of most, if not all civilised legal systems that no one should be held criminally guilty unless he is to some extent at fault. Liability is expressed in terms of blame and harm calculation. The mere commission of a criminal act is not enough to constitute a crime. The theory of law is that a criminal intent is a necessary ingredient of every indictable offence expressed in the maxim "actus non facit reum nissi mens sit rea". This module seeks to highlight the different offences, the problems inherent in the continued application of the concept of strict liability as a basis for criminal responsibility and to proffer alternatives to ameliorate the unjust trend. In other to achieve the objective, we would discuss the evolution of strict liability offences, and an elucidation of the meaning, nature and content of the strict liability offences. This would be discussed in some other criminal jurisdictions as well as applicable

statutes under the Nigeria criminal law. There would be need to have a conclusion drawn on alternatives to strict liability.

Crimes such as traffic offences and other kindred offences as crimes of strict liability are statutorily created. That is to say, strict liability offences are chiefly statutory. Under the Queensland Criminal Law, the sections of the criminal code for strict liability are Sections 23 and 24 which are in pari materia with Sections 24 and 25 of the Nigeria criminal code. The arguments for and against strict liability would be analyzed as it pertains to some jurisdictions criminal law.

1.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- explain an in-depth knowledge about the concept of strict liability as a basis for criminal responsibility and understand that strict liability is absolute liability
- discuss that strict liability is not only applicable to tort (civil matters) but also to criminal cases too.

1.3 Concept of Strict Liability

In criminal law, strict liability is liability for which MR does not have to be proven in relation to one or more elements comprising the AR. The liability is said to be strict because defendants could be convicted even though they were genuinely ignorant of one or more factors that made their acts or omission criminal. The defendants may therefore not be culpable in any real way. That is, there is not even criminal negligence, the least blameworthy level of MR. Strict liability laws was created in the 19th century to improve working and safety standards in jurisdictions. The creation of strict liability offences meant that convictions were increased. Common strict liability offences today include the selling of alcohol to under age persons and statutory rape.

Under the Queensland Criminal Law, the imposition of strict liability may operate very unfairly in individual cases. Strict liability is then defined as absolute liability. Most air safety regulations in regard to operators of aircrafts and unmanned rockets are enacted as strict liability offences. While in the Nigerian Criminal Law, the law would seem not to have the common law presumption of MR in offences generally as applicable in **section 24 CC AND 48 PC**. Section 2(4) of the Nigerian criminal code actually makes chapters 2,3,4 & 5 of the code deal with strict liability, punishments and parties to a crime applicable to all offences in or outside the codes. It is however not certain that a similar position is in the Penal Code. Nigeria having a codified system of law generally has provisions

in the criminal code and in the penal code. It is worthy to note that the Nigeria legislature has equally been quite vague as to whether or not offences outside the code require any mental element.

Though there are defenses to strict liability crimes, like contributory negligence; assumption of risk; abuse/misuse; comparative fault amongst others. In Indian Criminal Law, in the year 1987, the Supreme Court of India in the famous case of **MC MEHTA v UNION OF INDIA(1987) SCR (1) 819 ; AIR (1987) 965** looking to the development of modern industrial society, scientific knowledge scaled one step further from the British locus classicus case of **RYLANDS v FLETCHER (1868) UKHL 1** and thus propounded the principle that if a person engaged in hazardous or inherently dangerous activity causing harm to others irrespective of willful or negligent act is not even strictly but 'absolutely' liable for his act. An action was brought against the **M.P ELECTRICITY BOARD of INDIA 10 NOV 1987** in the Supreme Court by the widow and minor son of a deceased. The rule of strict liability was applied and it was held that the Board hold the statutory duty to supply electricity to the area. If energy transmitted by the board caused injury or death of a human being, the electricity supplier shall be liable for the same. Also, the case of Oleum Gas Leakage was re-examined by the Delhi High Court in the case of **JAIPUR GOLDEN GAS VICTIMS ASSOCIATION v UNION OF INDIA, 23 OCT 2009,** in upholding the rule of strict liability and proving its elements. The fact that the defendant can be convicted without proof of his MR does not infringe the right to a fair trial. As strict liability has the potential to create injustice and operate harshly, it is rightly said that the doctrine of strict liability is a dangerous instrumentality that should be handled with utmost care.

SELF-ASSESSMENT EXERCISE

Discuss the structure of strict liability as an intermediate area of liability – from the Indian criminal law perspective, stating the arguments for and against the term strict liability.

1.4 Summary

While it is said that the imposition of strict liability as a basis for criminal responsibility induces organisations to aim at higher standards, thus protecting the interest of the public, health or safety. Strict liability is unjust and violates the fundamental principles of criminal liability. A man who is innocent may yet be convicted for an offence as in many criminal jurisdictions. Though there are alternatives to the concept of strict liability which was first adopted by the Queensland criminal law, which requires

that the onus of proving lack of MR be placed on the defendant. There are many and other alternatives, which most civilised legal systems have adopted, and should be adopted too in the Nigerian criminal system.

It is hereby postulated that the term 'absolute prohibition' could be misleading in at least two fundamental aspects; 1) it suggests that strict liability is absolute, that is no defence whatsoever is open to an accused charged with such offence, which is not so. Secondly, it suggests that strict liability is one for which MR need not be proved with respect to all aspect of the AR. There are nevertheless, arguments for strict liability which are protection of the public, promoting enforcement of the law and that it is very easy to administer. While the arguments against the concept of strict liability are injustice, strict liability does not necessarily act as a deterrent, and stigma. Thus, the major element of strict liability is negligence amongst others. The truth however is that a defence based on absence of mens rea is often a fruitless exercise.

1.5 References/Further Reading/Web Resources

Ghana Criminal Code (Amendment) Act, 2003 (Act 646)

Nigeria Criminal Code Act, Cap C38 LFN 2004

Penal Code Act, Cap 53 LFN 2004

Queensland Criminal Code Act 1899

Smith & Hogan Criminal Law Page 263;

Smith & Hogan, Criminal Law 10th Edition Op. Cit Page 119

The Indian Penal Code, 1860 Act No. 45 of 1860

www. Lawcornel.edu
www.lawteacher.net
www.legalmatch.com
www.justia.com
www.wipo.int

1.6 Possible Answer to Self-Assessment Exercise

Discuss the definition of strict liability, the elements and concept of strict liability, that is, the advantages and disadvantages. Discuss the law of strict liability in Nigeria, compared to the law in India, then make a detailed comparison and justify the basis for the adoption of the law.

UNIT 2 RAPE

Unit Structure

2.1 Introduction

Rape is non-**c**onsensual sexual intercourse between a man and a woman without her consent. It is worthy to note that sexual assault is similar to rape but it is not rape. Sexual assault is any form of sexual contact or behavior that occurs without the explicit consent of the recipient. While the offence is a severe one in some jurisdictions, it is taken with levity is some jurisdictions. An in-depth study would show the students the gravity of the offence of rape.

2.2 Intended Learning Outcomes

By the end of this unit, you will be able:

- to define the term rape as distinct from other forms of indecent assault
- state the various jurisdictions' views and position of their laws on the offence of rape. An in-depth study would show the students the gravity of the offence of rape.

2.3 Rape

Section 357 of the Nigeria criminal code defines the offence of rape as when any person has sexual intercourse with a girl or woman without her consent or incorrectly obtained consent, hence incorrectly obtained consent could be by force or threat, or by means of false or fraudulent representation or impersonation while **section 282** of the Nigerian penal code defines the offence of rape as sexual intercourse with a woman against her will, without her consent. Consent can be incorrectly obtained where it is obtained, by putting fear of death or hurt in her, a person impersonating a married woman's husband in order to have sex with her. Under the penal code, there is no rape where sexual intercourse is between a man and his wife. The punishment for rape under section 283 the Nigerian Penal Code is imprisonment for life or for any less term and/or a fine. Under the Nigeria Criminal Code, the offence of rape is stated as only occurring when the vagina of a woman is penetrated. The penalty for

rape across all the laws is life imprisonment. An attempt to commit rape is also an offence punishable under section 359 NCC.

Under the Nigeria criminal law, from 2015, the exclusive definition and punishment of rape has changed owing to a new law enacted by the National Assembly, titled VIOLENCE AGAINST PERSONS (PROHIBITION) ACT 2015. Suffice to know that the Act is in operation in the Federal Capital Territory, Abuja though some states of the Federation have adopted similar provisions on the offence of rape. A recent case on the offence of rape as decided by the Supreme Court is in **NDEWENU POSU & ANOR v THE STATE (2011) LPELR** 1969 SC where the ingredients of rape were proven.

Under the Ghana Criminal Code, with the advent of the Criminal Code Amendment (Act 554) the offence of rape is now a first- degree felony carrying a sentence of not less than 5 years and not more than 25 years. See section 97. In Ghana, the offence of rape is gender specific.

In the case of **BANOUSIN v REPULBIC (2015) 1 GHSCLR** 439 SC, the Supreme Court highlighted the essential ingredients of rape as 1. Carnally knowledge, 2. Accused person had carnal knowledge of the victim, 3. Victim did not give her consent and 4. Victim was a woman and at the time of crime she was aged 16 or more.

While under the Sudan Penal Code, section 316 defines the offence of rape and referred to as Zina. It would suffice to say that Sudan's legislative response to the offence of rape has been characterised unfortunate as they do nothing to combat the act of violence of this offence knowing fully well that the offence is gender based. However note that the New Sudan Act 2003 stated the punishment for the offence in section 317 while the Southern Sudan has it in section 247.

The offence of rape under the Indian Penal Code is expressly provided for in section 375 of the code, and also made punishable the act of sex by a man with a woman if it was done against her will or without her consent. The definition of rape also include sex when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. The law on the definition of the offence of rape has been widened by the passing of the Criminal Law AMENDMENT Act 2013 in India, and has made the punishment more stringent, as it is now death penalty in rapes cases where the victim died or is left in a vegetarian state.

SELF-ASSESSMENT EXERCISE

Discuss the offence of Rape having regard to the provisions of **section 357 of the Nigeria Criminal Code** and section 282 Nigerian Penal Code. Do a contrast with the provisions stated in the **VIOLENCE AGAINST PERSONS (PROHIBITION) ACT 2015** on the offence of rape.

2.4 Summary

It is worthy to say that going by the above definition of rape by law courts and legislations, there cannot be rape between couples. At worse, husbands that raped wives get charged with lesser offences, inclusive of the offence of indecent assault with a maximum punishment of 3 years imprisonment.

The offence of rape is a serious crime in Nigeria as well as some other jurisdictions. It is a criminal offence and if found guilty carries a life imprisonment sentence or even death sentence in some jurisdiction like India. In Nigeria, there is now a new dimension to rape as a sexual offence as its scope and tentacles has now been enlarged under the VIOLENCE AGAINST PERSONS (PROHIBITION) ACT.

2.5 References/Further Reading/Web Resources

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Penal Code Act, Cap 53 LFN 2004.

Queensland Criminal Code Act 1899.

Smith & Hogan Criminal Law Page 263.

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www.lawpadi.com

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www.cable.ng : www.thehindu.com

Possible Answer to SAE
Rape

Section 357 of the Nigeria criminal code defines the offence of rape as when any person has sexual intercourse with a girl or woman without her consent or incorrectly obtained consent, hence incorrectly obtained consent could be by force or threat, or by means of false or fraudulent representation or impersonation while **section 282** of the Nigerian penal code defines the offence of rape as sexual intercourse with a woman against her will, without her consent. Consent can be incorrectly obtained where it is obtained, by putting fear of death or hurt in her, a person impersonating a married woman's husband in order to have sex with her. Under the penal code, there is no rape where sexual intercourse is between a man and his wife. The punishment for rape under section 283 the Nigerian Penal Code is imprisonment for life or for any less term and/or a fine. Under the Nigeria Criminal Code, the offence of rape is stated as only occurring when the vagina of a woman is penetrated. The penalty for rape across all the laws is life imprisonment. An attempt to commit rape is also an offence punishable under section 359 NCC.

In contrast, under the Nigeria criminal law, from 2015, the exclusive definition and punishment of rape has changed owing to a new law enacted by the National Assembly, titled VIOLENCE AGAINST PERSONS (PROHIBITION) ACT (VAPPA) 2015.
Under the VAPPA, the offence of rape was extended to when a person intentionally penetrates the vagina, anus or mouth of another person with any part of his body without consent, using addictive or substance.

Suffice to know that the Act is in operation in the Federal Capital Territory, Abuja though some states of the Federation have adopted similar provisions on the offence of rape. A recent case on the offence of rape as decided by the Supreme Court is in **NDEWENU POSU & ANOR v THE STATE (2011) LPELR** 1969 SC where the ingredients of rape were proven.

UNIT 3 OTHER SEXUAL OFFENCES

Unit Structure

3.1 Introduction

The law makes it a special crime to use force against a woman, or even threaten to use force if the intention is to "outrage her modesty". It treats it more than normal and criminal force by allowing the police to make arrest for such sexual crimes without a warrant. The India Penal Code in India, the Ghana Criminal Code and both Criminal Codes governing the criminal laws in Nigeria frown at all sexual offences. The India Penal Code does not explain what the term outrages the modesty means as stated in the code, thus the courts usually decide of what it means by looking at all the circumstances surrounding the incident. The Supreme Court however refers to the term as feminine decency and virtue of the woman. The punishment of the offence of rape and other sexual offences is jail term and the years vary from jurisdiction to jurisdiction.

Sexual assault covers physical or sexual violence against a person, whether male or female, which violates the person's bodily integrity and sexual autonomy. Although sexual assault can be committed by and against both sexes, woman and girls tend to suffer the most from such offences.

3.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- state the various laws regulating the offences in various jurisdictions
- describe the ingredients of assault, what a prosecution would prove for the action to be sustained. To understand the gravity of the offence in the various jurisdictions.

3.3 Other Sexual Offences

The Sexual Offences Act regulates all forms of sexual offences committed within the southern part of Nigeria jurisdiction. It ranges from rape, grievous sexual assault, and marital rape to sexual offences against children and indecent assault. While the Penal Code (amendment) Sexual Offences Act 2016 makes provisions for sexual offences crimes in the northern part of Nigeria. Other forms of sexual assault are similar to rape but it is not rape. Sexual assault is any form of sexual contact or behavior that occurs without the explicit consent of the recipient. Apart from the offence of rape, other sexual offences in Nigeria include:

- the unlawful carnal knowledge of a girl under thirteen years or sixteen years, or a female imbecile or idiot even with their consent– Iko v State (2001) 7SCNJ 135
- defilement or procuring the defilement of women or girls by threat, intimidation, drugs or false pretences;
- detaining a female against her will for the purpose of marriage or sex. Punishment is seven years imprisonment;
- Operating a brothel and the act of prostitution are sexual offences under section 222 of the Criminal Code
- sexual intercourse against the order of nature is an offence.

Under the India Penal Code, section 354 states that whoever assaults or uses criminal force on any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with a fine, or with both. Define sexual assault under the Indian Penal Code. Section 354D also states the offence of stalking where any man who follows a woman and contacts or attempts to contact such woman to foster personal attraction repeatedly despite a clear indication of disinterest by such woman, or monitor the woman by the internet commits the offence of stalking and is punishable on first conviction with imprisonment of either description for a term which may extend to 3 years and shall also be liable to fine. Section 354 of the IPC make the offence non bailable and it is a crime by using force to outrage the modesty of any woman and so it is regarded as a cognisable offence of crime. While Section 354A deals with sexual harassment and its stipulated punishment, which is bailable and triable by a magistrate. In sexual offences, the issue of consent would be raised to prove conviction. Chapter 6 of the Ghana Criminal Code covers the provisions of sexual offences, stating thus 'any unlawful dealing with a female by way of rape, defilement and in case of unnatural carnal knowledge, such as indecent assault and incest, the victim could either be a man or woman. Ghana Criminal Offences Act 1960 does not specifically define consent but it contains provisions that explain consent. Thus, Section 14 which is headed consent provide for circumstances under which consent is void. Under the Ghanaian criminal

law, only females can be assaulted. In the case of **STATE v GYIMAH (1963) 2 GLR 446, High court, Kumasi**, where a school girl was raped by the accused when she was sent on errand, the court held that though there was full penetration but the issue was that whether or not there was consent. The court held that the case for the prosecution had not been proved beyond reasonable doubt, so the accused could not be held guilty of rape but for sexual assault.

Self-Assessment Exercise

John and Juliet's son Chris 17 years old has been seeing his girlfriend Amanda, 15 years old for 2 months. Amanda is in college. One evening after a date, Amanda invited Chris to her house because her parents were out. Whilst at her house Chris and Amanda kissed, and because Chris thinks Amanda likes it, he pushed his hand and touched Amanda private part. She jumped up and threw Chris out of her house. The next morning Chris was arrested by Amanda's parents for rape and sexual assault. Discuss Chris liability for sexual assault if all parties were in Nigeria, and Amada was 15years old. Would it be different if the scene happened in India?

3.4 Summary

As consent is a major element of sexual offences has been discussed, it is pertinent highlighting how the court tends to handle the issue of consent and the impact on women and girls in most jurisdictions. Under the criminal law the requirement of proof of the absence of consent in sexual offences such as indecent assault tend to present challenges for the woman who experienced such sexual violations. Section 97 of the Ghana Criminal Code as amended makes the offence of rape a first- degree felony carrying a sentence of not less than 5 years and not more than 25 years.

Overcoming challenges with the treatment of consent in sexual offences requires a multi-pronged approach. Thus, developing a definition of consent in sexual offences, law should be explained as not aimed at promoting the prosecution of men but rather symbolising the recognition of woman as autonomous persons who can make decisions on every aspect of their lives and the need for such decisions to be respected by all.

3.5 References/Further Reading/Web Resources

Criminal Law of Lagos State 2011.

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Penal Code Act, Cap 53 LFN 2004.

The Indian Penal Code, 1860 Act No. 45 of 1860.

www.researchgate.net

www.ghanalawhub.com

3.6 Possible Answer to Self-Assessment Exercise

Discuss the offence of sexual assault as provided in the various jurisdictions of study. Define indecent assault as provided in the Nigeria Sexual Offences Act, the Criminal Code and the Penal Code. State the liability of Chris in the context of the law on indecent assault, from the Indian Penal Code perspective.

MODULE 5 DEFENCES TO VARIOUS OFFENCES COMPARATIVELY AND RECOMMENDATIONS

UNIT 1 INSANITY

Unit Structure

1.2 Introduction

Criminal law covers various punishments for offences which vary from case to case. But it is not always necessary that a person gets punished for a crime which he/she had committed. The Nigeria criminal code makes provisions for defences that can be raised in any criminal trial and these are expressly stated in Chapter IV of the Criminal Code. The defences of insanity, intoxication and provocation are defences applicable to murder. There are other defences like mistake or accident, self defence etc. insanity whether produced by drunkenness or otherwise is a defence to a criminal charge. The defence of insanity is a complete defence in a criminal charge in that where the defence is properly presented, the accused will be completely exonerated from the offence charged. But unlike the defence of self or private defence where the accused person is allowed to go home, under insanity the accused person is to be kept in the psychiatric home/hospital until he is certified cured by a physician of his insanity before he can be released and allowed to go home. Distinguish private from the defence of insanity

1.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- discuss the meaning of the defence of insanity as it varies from jurisdiction to jurisdiction
- discuss the interdependence of all laws on each other, i.e. the Nigeria Penal Code was influenced by the Sudanese Penal Code which is also relied on the Indian Penal Code.

1.3 Insanity

Section 76, of the India Penal Code 1860 recognised certain defences in **chapter IV** under general exceptions, Section 106 cover these defences which are based on the presumption that a person is not liable for the crime committed. Some common defences of criminal law are insanity, infancy and intoxication. The foundation of the defence of insanity was first laid in the M'NAUGHTON's case by the House of Lords in 1843. The basis of the case is the inability to distinguish right from wrong. The defence of insanity was explained under Section 84 of the **INDIA PENAL CODE** in the terms that's "nothing is an offence which is done by a person who at the time of doing it by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law". So, it falls upon the accused to prove his insanity at the time of the offence.

The defences are provided for in the various codes of different jurisdiction. They include defences like insanity, provocation, self-defence, intoxication, mistake of facts etc. However, for this unit, we shall be looking at the defence of insanity. This defence is expressly provided for in the Nigeria Criminal Code, and the Penal Code i.e. sections 28 and 51 respectively. This Criminal Code section is divided into 2 ambits. While the 1st ambit is insanity proper, the 2nd ambit makes provision for delusion. As earlier stated, a successful plea of the 1st ambit will exonerate the accused but the 2nd ambit will not, depending on the prevailing circumstances. For Section 28 to be properly understood reference will be made to section 27 of the Criminal Code which states that "a person is not criminally responsible for an act or omission if in such a state of mental disease or natural mental infirmity as to deprive him of the capacity to understand what he is doing or of capacity to control his actions or make the omission". In the Nigerian case of **ISHOLA KARIMU v STATE (1989) Vol 1 NWLR Pt 96 pg. 124 SC** where the Supreme Court held that the general rule which places the onus of proof of the guilt of an accused person of the offence charged on the prosecution is subject to statutory exceptions and one of such is that created by Section 27(4). The 2nd ambit of Section 28 of the Nigeria Criminal Code deals with delusion.

This is a defence which an accused person can also raise in a criminal trial.

In a strict sense, the accused person who relies on this defence alleges that at the time he committed the offence, he was suffering from a mental disease or natural mental infirmity to the extend as to deprive him of any of the capacities stated in the 1st ambit of section 28 NCC. Importantly, it is impossible for an insane person to know what he was doing without actually understanding or appreciating the significance. For example, an insane man may be shooting someone knowingly but without understanding or appreciating that to shoot someone may probably lead the victim to death. This was upheld in the case of **STAPLETON v R (1952) COMMONWEALTH LR Pg. 358** where it was held that the correct test for insanity is whether the accused could differentiate good from evil and not merely whether he could distinguish between legality and illegality.

Over the years, with the growth of medical knowledge the rule stated in some cases became objects of criticisms especially from psychiatrists who pointed out that there were many mentally ill people who though able to appreciate intellectually that an action might be wrong, nevertheless, were under intolerable emotional pressure to commit it. Nevertheless, a finding of insanity relieves of criminal responsible in just the same way as a finding of mistake and since **Section 229** of the Nigeria Criminal Procedure Act describes an insane person as being acquitted, the correct verdict is "not guilty by reason of insanity as was stated in the case of **R v ASHIGIFINWO (1945) 12 WACA 389, Ishola Karimu etc.**

In Sudan, it is stated that "no act is an offence which is done by a person who at the time of doing it did not possess the power of appreciating the nature of his acts or of controlling them by reason of a permanent or temporary insanity or mental infirmity". It would suffice to state that the Nigeria Penal Code is based on the Sudanese Penal Code in upholding the defence of insanity.

Section 27 has no equivalence in the Nigeria Penal Code hence it is worthy to note that the Sudanese Penal Code is also based on the Indian Penal Code. The courts in Northern Nigeria have always been guided by the interpretation of the courts in India on similar provisions in the Nigeria Penal Code. Section 28 of the Nigeria Criminal Code states the essential elements of insanity as a defence as (1) that at the time of committing the crime he was in a state of mental disease or natural mental infirmity. (2) That the disease or infirmity was such as to deprive him either of (a) his capacity to understand what he was doing (b) his capacity to know that he ought not to do the act or make the omission (c) his capacity to control his actions. In determining whether the accused suffers from any of the

three incapacities, the court must critically look at the evidence upon the whole fact including the nature of the killing, and after the act and of course, any history of mental abnormality. These essential requirements were pointed out in the case of **OLADELE v STATE (1993) Vol 1 NWLR Pt 269 Pg. 294 SC.** What are the essential elements that must be established in the offence of insanity?

SELF-ASSESSMENT EXERCISE

The defence of insanity is rarely invoked in criminal trials, hence it is a controversial issue. Discuss with the aid of both statutory and case laws in the position Nigeria and India jurisdiction.

1.4 Summary

It would suffice to state that the Nigeria Penal Code is based on the Sudanese Penal Code in upholding the defence of insanity. Section 27 has no equivalence in the Nigeria Penal Code hence it is worthy to note that the Sudanese Penal Code is also based on the Indian Penal Code.

Section 28 of the Nigeria Criminal Code states the essential elements of insanity as a defence as (1) that at the time of committing the crime he was in a state of mental disease or natural mental infirmity. (2) That the disease or infirmity was such as to deprive him either of (a) his capacity to understand what he was doing (b) his capacity to know that he ought not to do the act or make the omission (c) his capacity to control his actions. In determining whether the accused suffers from any of the three incapacities, the court must critically look at the evidence upon the whole fact including the nature of the killing, and after the act and of course, any history of mental abnormality. These essential requirements were pointed out in the case of **OLADELE v STATE (1993) Vol 1 NWLR Pt 269 Pg. 294 SC** and are virtually the same in other jurisdiction

1.5 References/Further Reading/Web Resources

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Nigeria Criminal Code Act, Cap C38 LFN 2004.

Okonkwo and Naish; Criminal Law in Nigeria; 1980, 2nd Edition London, Sweet and Maxwell.

Penal Code Act, Cap 53 LFN 2004.

The Indian Penal Code, 1860 Act No. 45 of 1860.

1.6 Possible Answer to Self-Assessment Exercise

Define with the aid of statutes the term insanity. State the elements/ingredients of the defence of insanity. With the aid of case laws state where the defence of insanity was upheld and/or dismissed and do a comparison with stated jurisdictions.

UNIT 2 PROVOCATION & MISTAKE

Unit Structure

2.1 Introduction

In ordinary speech, the most common meaning of the term provocation could be said to be incitement to anger or irritation. At common law, it has a meaning based on anger but it is a word used to denote much more than ordinary anger. While the defence of mistake is rather subjective than objective depending on the circumstances of the case hence, being subjective to the very important intent that an accused is liable on the facts as he mistook them to be, so that the accused would still have been guilty of murder even if his belief had been held to be reasonable. The defence of mistake of facts stands on the same footing as the absence of the reasoning faculty as in infants, or the perversion of that faculty as in lunacy.

For centuries provocation has been regarded and accepted in the common law as a defence to a charge of murder. The common law is distilled from the decisions of courts and judges, formulated and re-formulated from time to time as cases and circumstances which call for its authoritative statement in the area of law under review. It is to be borne in mind that provocation is a defence of a special kind in that if successful, it does not lead to an acquittal of the charge but to a reduction from a conviction of murder to one of manslaughter.

2.1 Intended Learning Outcomes

By the end of this unit, you will be able to:

- explain defences of provocation and mistake separately.
- explain that the defence of provocation raises controversy when pleaded and the status of the jurisdictions of study as to amending the statutes on provocation or having reforms carried out on same.

2.3 Provocation & Mistake

Section 283, 284 & 318 of the Nigeria Criminal Code make provisions for the defence of provocation. This defence of provocation when pleaded only reduces the gravity of the punishment to be melted out and this was noted in the case of **JIDEOWO v STATE (1997) Vol. 1 NWLR Pt 480 Pg. 209 SC**. The defence of the plea of provocation/mistake merely go with the issue of punishment. It does not absolve an accused of all guilt nor does it establish its innocence of the offence charged. In most jurisdiction of study, a defence of provocation is only applicable to a charge of murder as earlier stated. Provocation is pleaded for murder cases for punishment to be reduced, while mistake also is a defence in homicide cases for total acquittal as the case may be.

Under the **Sudanese Penal Code, 2008 section 231** is on provocation and **Section 236** on voluntary provocation causing grievous hurt. The defence of provocation can be pleaded in murder cases and where it succeeds, it reduces the charge of murder to manslaughter. Section 318 of the Nigeria Criminal Code provides that while a person kills another in the heat of passion caused by sudden provocation and before there is time for his passion to cool, he is guilty not of murder but manslaughter. Provocation was defined in the case of **R v DOLHI (1949) VOL 1 AER 93**. As "a sudden and temporary loss of self-control rendering the accused to subject to passion as to make him/her for a moment not master of his/her own mind".

Treating the defence of mistake as in homicide especially murder, the law under the common law is premised on the Latin maxim of **IGNORATIA LEGIS NON EXCUSAT** which is mistake or ignorance of the law is not an excuse. From the above provision, it is clear that mistake of fact and not of law may absolute one from criminal liability. However, the provisions have conveniently reiterated the rule that only a mistake of fact and not of law could furnish an excuse to criminal liability.

The defence of accident is provided for in **Section 24** of the Nigeria Criminal Code states "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". There are cases where the courts have held that a proximate and direct result of an act or omission cannot be held to be a mistake/accident.

Under the Queensland Criminal Law, there are cases where the courts have held that an unforeseeable result or consequence of an act or omission is an event occurring by accident though there are different views expressed. The India Criminal Law contains the provisions of mistake of fact in **sections 76** and **79** of the India Penal Code. A common

denominator however is, such mistake must be reasonable and must be of fact and not of law.

Under the Ghana Criminal Law, the defence of provocation is statutorily provided for in **section 56**, while **sections 53** and **54** state provisions for the defence of Mistake. **Section 52** of the **Criminal Offences Act 1960 Act 29** also provides for the defence of provocation, so also a recent case in the Nigerian Criminal Law, **SHANDE v STATE (2005) 12 NWLR Pt 939 301,** where provocation was distinguished from self defence in that self defence is a legal defence, and refers to a justifiable action to protect oneself from imminent violence. Meanwhile, the following conditions would need to be satisfied by an accused person for the defence of mistake to avail him in a criminal trial; a) that he was mistaken as to the existence of any state of things, b) that the mistaken belief was honest and reasonable. If he succeeds in satisfying the above conditions, then he is liable to no greater extent than if the mistaken facts were true. What are the statutory provisions for the defence of provocation and mistake under the Ghana Criminal Law?

Self-Assessment Exercise

Analyse the defence of provocation with special consideration given to the changes provided by the recent Nigerian case **of Shande v State (2005) 12 NWLR Pt 939, 301.** State the conditions for the availability of the defence of provocation and mistake under Nigerian criminal law. Are they the same in other jurisdictions under study?

2.4 Summary

The elements of provocation are in three forms and before the plea of provocation will avail any person, the three conditions of provocation must be satisfied. The conditions are 1) the act of provocation. 2) The loss of self-control (both actual and unreasonable) and 3) the retaliation must satisfy the rule of proportionality. The Courts would normally consider the effect of the provocation on the reasonable man and not the accused person.

The relationship between law and public policy in criminal law is one of mutual influence. Some recent cases highlight the strain between the two. There has been debate about whether the defence of provocation should be changed or abolished as well as consideration of changes to self-defense. Over the years both defences have undergone changes through interpretation in cases and through legislative amendments. The Queensland law are considering to have reforms in their legislations**.**

2.5 References /Further Reading/Web Resources

www.wipo.int.

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Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Okonkwo and Naish; Criminal Law in Nigeria; 1980, 2nd Edition London, Sweet and Maxwell.

Penal Code Act, Cap 53 LFN 2004.

The Indian Penal Code, 1860 Act No. 45 of 1860.

2.6 Possible Answer to Self-Assessment Exercise

Use the different statutory provisions to define what the defence of provocation is. Also state the facts in the above case and reconcile the leading judgment with the provisions of the statutes. Critically state, the positions of the India penal Code, with Queensland Criminal code and what the criminal law on this defence of mistake would be in the reforms.

UNIT 3 INTOXICATION

Unit Structure

3.1 Introduction

The crux of criminal law is guilty mind. The courts have to look critically at the circumstances and facts of each case to decide whether a particular defence is available to the accused or not. The basic elements of MR have to do with determining the quilt of a person. These general defences provided under the criminal codes/laws basically depend upon the facts and circumstances of the case.

The Nigeria Criminal Code makes provisions for the defence of intoxication in **section 29(2)** Criminal Code. Though, this defence is generally not regarded in Courts as a defence in all jurisdictions except proven beyond all doubts. Thus, by virtue of the above-mentioned section, the criminal code provides for Intoxication as a defence to criminal liability in Nigeria.

3.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- draw a line between the criminal code and penal code provisions on this particular defence and legislations of other jurisdictions
- prove that this particular defence could be voluntary or involuntary as different from what some common law and civil law jurisdictions would uphold.

3.3 Intoxication

Section 29(2) Criminal Code of Nigeria, states " Intoxication shall be a defence to criminal charge if by reason there of the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or (b) the person charged was by reason of intoxication insane temporarily or otherwise at the time of such act or omission" Thus where the accused person's state of intoxication was

without his consent, the defence will avail him but where he consents then the defence is defeated.

Lord Birkenhead in the case of **DPP v BEARD (1920) AC 479 @ 500,** stated that "Insanity whether produced by drunkenness or otherwise is a defence to the crime charged" that simply explains that intoxication gives rise to temporary insanity and this is when intoxication can be relied on as a defence. Note that **section 52** of the Penal Code has the relevant provisions which accepts intoxication as a defence to criminal liability. **Section 140(3) EVIDENCE ACT cap 42** clearly states that the burden of proof of the defence of intoxication (as also insanity) is on the accused. But where the intent was formed where the accused was intoxicated, then the defence will not avail him.

Comparatively, in India and most other common law jurisdictions, the role of the defence of intoxication in proof of the mental element is provided for in Section 85 and 86 of the Indian Penal Code. The availability of the defence of intoxication typically depends on whether the intoxication was voluntary or involuntary and what level of intent is required by the criminal charge. What levels of intent is required by the statue under section 29(4) criminal code. Voluntary intoxication is a defence to a criminal charge if the offence committed requires the proof of specific intent. This has no counterpart under the penal code. Therefore, the defence of intoxication may cast doubt on the mental element for offences known as 'specific' intent but not for these known as 'general' intent offence.

In India Penal Code, intoxication does not excuse a criminal act where the accused has the requisite intent. Its position is that a 'drunken intent is nonetheless an intent. It does not matter whether mild intoxication, advanced intoxication and extreme intoxication- **R v DALEY (2007) SCC 53; 3 SCR (2007) 523 PARA 41**. It is worthy to note that in some other jurisprudence, a critique of the current state of the defence of intoxication argues that, while it may be permissible in terms of culpability theory to restrict excuses and justification where the defendant has caused the conditions of the defence, it is problematic not to consider objectively the essential elements that validate the availability of the defence of intoxication. A contrary position can only be possible by a new legislation, to rebrand the defence of intoxication.

Self -Assessment Exercise

With reference to the case of **DPP v Beard**, critically expound the elements judicially enumerated as the defence of intoxication and the accompanying criticisms. Also distinguish between DPP V Bead and the case of **DPP v MAJEWSKI** and the final judgement of the court in both cases. Would your submission be different if the defence of intoxication was raised in India jurisdiction?

3.4 Summary

It is important then, to know that at the defence of intoxication, the law court requires the proof of the mental state at the commission of the act or omission which is a subjective step. It would be conclusively stated here that insanity whether induced by drunkenness or otherwise is a defence to a crime charged. While section 85 Indian Penal Code deals with offences committed under the influence of drugs or alcohol which is caused by fraud or coercion, Section 86 Indian Penal Code deals with intoxication which is self- induced. In relation to the defence of intoxication though constitutionally, Ghana criminal code has some differences. Section 29(4) of the Nigerian criminal code has also revealed that self-individual intoxication is allowed as a defence to criminal liability if the offence committed requires the proof of specific intent, a situation that is absent under the penal code counterpart.

With reference to the Criminal Code and the Penal Code of Nigeria and the applicable criminal laws of other jurisdictions (both Common law and Civil law), it would suffice to know that the defence of intoxication is provided for as a defence to any criminal charge as long as the provisions of the governing statutes are complied with in such jurisdiction. And the effect is to reduce the punishment.

3.5 References/ Further Reading/Web Resources

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

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http//www.austlii.edu.au

http//www.justia.com

UNIT 4 OTHER DEFENCES (Self-Defence)

Unit Structure

4.1 Introduction

The defence that will be treated in this unit is the defence popularly known as self- defence. But it will suffice to say that this right is not unqualified because an unrestrained exercise of this right would only engender anarchy, chaos and private warfare. So, a lot of restrictions has been imposed by the law in the exercise of the right. In most cases the right to this defence has been exercised in taking of lives, and therefore there is the need for an examination of the defence as it affects the offences of murder and manslaughter. Section 32(2) of the Nigeria Criminal Code makes provisions that a person is not criminally liable for an act or omission if he does or omits to do the act… when the act is reasonably necessary in order to resist actual unlawful violence threatened to him or to another person in his presence.

The defence that will be treated in this unit is the defence popularly known as self defence. But it will suffice to say that this right is not unqualified because an unrestrained exercise of this right would only engender anarchy, chaos and private warfare. So, a lot of restrictions has been imposed by the law in the exercise of the right. In most cases the right to this defence has been exercised in taking of lives, and therefore there is the need for an examination of the defence as it affects the offences of murder and manslaughter. Section 32(2) of the Nigeria Criminal Code makes provisions that a person is not criminally liable for an act or omission if he does or omits to do the act… when the act is reasonably necessary in order to resist actual unlawful violence threatened to him or to another person in his presence.

There are further provisions in sections 282, 286 & 287 of the Nigeria criminal code providing for the availability and limitations of the right of self defence. Unlike the defence of provocation, self defence is completely exculpatory if established. Why do you think self-defence is completely exculpatory?

4.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- explain the concept of this particular defence of self-defence.
- explain when self defence would avail a defendant and when the courts would not uphold it as a defence.
- discuss the various positions of the statutes especially the exceptions/restrictions in the different jurisdiction.

4.3 Other Defences

In Nigeria, the right of defending one's body or the body of any other person is codified in **section 32(3)** of the criminal code applicable in the southern states and **section 59** of the penal code applicable in the northern states of Nigeria. **Section 59** states that "nothing is an offence of which is done in the lawful exercise of the right of private defence". Notwithstanding the fact that the law recognises the natural instinct of self- preservation, it lays down certain limitations on the exercise of the right of self defence. This is necessary if society is not to degenerate into anarchy with everybody taking laws into his hands. These limitations are contained in **sections 286-288** of the Nigeria Criminal Code while **sections 62 - 66** of the Nigeria Penal Code make provision for the limitations to private self defence. Hence the right to self defence is given constitutional backing by the provisions of **section 33 (2)** of the 1999 constitution of the Federal Republic of Nigeria. It is worthy to note that self defence is recognised in both common and civil law criminal law jurisdictions though the defence does not seems to be opened to the offender in the criminal code where the deceased did not assault the accused or anyone else.

In retaliation against unlawful assault which is provided for in statutes, it is important to note that the West African Court of Appeal (WACA) had called it the "the all -important fact" which distinguishes responses in self defence to unprovoked and provoked assault. The rationale according to the court is that the accused in the heat of the moment may well have thought and indeed not without reason that he was engaged in a life and death fight with the deceased if he could not kill the deceased, he would certainly be killed by the deceased. In addition to this, the Nigeria Penal Code's approach is different from that of the Nigeria Criminal Code. In upholding the defence of self defence. **Section 222(2)** of the Nigeria Penal Code provides that "culpable homicide is not punishable with death if the offender in the exercise (in good faith) of the right of private defence exceeds the power given to him and causes death".

Under the Ghana Criminal Code, **section 37** of the ACT 29, provides for the defence hence it is a trite law that whenever the defence of self is put up, the harm used in defending oneself must have been reasonably necessary in the circumstance. It is worthy to note that self defence is a counter measure that involves defending the health and well- being of oneself from harm. The use of the right of self defence as a legal justification for the use of force in times of danger is available in many jurisdictions.

In the Sudanese Penal Code, the right to self defence is provided for in **Art. 40** of the Penal Code Act 2008. Not only does the Article give right to self defence to individual under attack, it also extends it to the defence of another person under threat. Meanwhile, **Article 42** of the Penal Code of Sudan states that the right to private defence shall in no case, extend to the inflicting for more harm than it is necessary to inflict for the purpose of defence. Explain the provision of section 42 of the Sudanese Penal Code.

The Queensland criminal code permits a person to use reasonable force to physically defend themselves, another person or their property. The defence of self defence requires the person to have acted in a way that was reasonable in the circumstances and for the defensive conduct to have been proportionate to the threat faced.

Section 271 of the Queensland Criminal Code makes it legal for a person to use such force as is reasonably necessary to defend them against an unprovoked assault. Thus, in a case where self defence or the prevention of crime is concerned, if the court concluded that the defendant believed, or may have believed that he was being attacked or that a crime was being committed, and that force was necessary to protect himself or to prevent the crime then the prosecution would have to prove the case beyond all doubts. In the Nigerian case of **ALABI SHITTU v STATE (SC 227/1969) 10 (22 MAY 1970)** the accused was found guilty of the murder of one Alfa Buari at Agege on the 15th September 1968 and he was sentenced to death. Also, in a recent case of **NNAMAN v STATE (2005) 9 NWLR Pt 929 at 147**, the defence of self-did not avail the accused.

Under the India Penal Code**, sections 96-106**, the right of private defence of the body and of the property is exclusively a right to every person to defend his own body or that of any other person or against any offence affecting the human body. The right to self defence extends to the protection of another person's life and property as stated by the Supreme Court when the court interpreted the provisions of the IPC in a case of **TAMUL NADU FORST RANGER** who was jailed for shooting an alleged sandal wood smuggler in 1988. The verdict was overturned in March 2019. Nevertheless, the major elements of the defence of self

defence are thus stated; (1) an unprovoked attack, (2) which threatens imminent injury or death, (3) an objectively reasonable degree of force, used in response to, and lastly an objectively reasonable fear of injury or death. Note that **section 96 IPC** states that "nothing is an offence, which is done in exercise of the right of private defence". While **section 97** of the same code states every person has a right to defend his own body and property. Thus **section 96** of the IPC is not absolute as it is restricted by the provisions of **Section 99,** which states acts against which there is no right of private defence**,** for example acts done by public servants**.** See the case of **THANGAVEL v STATE (1981) Crim. L.J 210.**

Self-Assessment Exercise

When a person defends him or herself against the threat of harm, his or her actions must be proportionate to the harm threatened. Reconcile the position of the statute of the Nigeria Penal Code with the Nigeria Criminal Code. State also the position of the Sudanese Penal Code if the case **of ALABI SHITTU v STATE** was decided in the jurisdiction. Enumerate the elements and limitations to the right to self defence.

4.4 Summary

It is worthy to note that self defence is a counter measure that involves defending the health and well- being of oneself from harm. The use of the right of self defence as a legal justification for the use of force in times of danger is available in many jurisdictions.

It is worthy to note that self defence is a counter measure that involves defending the health and well- being of oneself from harm. The use of the right of self defence as a legal justification for the use of force in times of danger is available in many jurisdictions.

4.5 References/Further Reading/Web Resources

Administration of Criminal Justice Act 2015.

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Penal Code Act, Cap 53 LFN 2004.

Sudanese Penal Code.

The Indian Penal Code, 1860 Act No. 45 of 1860.

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4.6 Possible Answer to Self-Assessment Exercise

State the definition of self-defence and the statutes that regulate such. Using case laws state when the defence of self would avail an accused person. Analyse the decision of the Court in Alaba Shittu v State. Also State what statute makes provision for the defence in Sudan Criminal law and how it would have had a different perception (if possible) on the judgement of the case.

UNIT 5 SIMILARITIES & DIFFERENCES IN DEFENCES COMPARATIVELY

Unit Structure

5.1 Introduction

In the field of criminal law, there are a variety of conditions that will tend to negate elements of a crime (particularly the intent element) known as defences. The label may be apt in jurisdictions where the accused may be assigned some burden before a tribunal. However, in many jurisdictions, the entire burden to prove of a crime is on the prosecution. It is his duty to prove the absence of these defences, when raised. The so called defences may provide partial or total refuge from punishment. What are defences under criminal law?

This unit presents an overview of reasonable state of defences, with particular emphasis on the distinction between the reasonableness of the offence and that of the defence in some jurisdictions. This unit will present the statutory and judicial disposition towards the defences, it will also discuss the circumstances when the defences are either available or discountenanced by the courts. The unit also takes cognisance of the sentencing arrangements and how they are commensurate to the various offences.

5.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- distinguish between a denial or failure of proof of defence and an affirmative defence
- give examples of legal defences and how their proof is undertaken in the various jurisdictions of study
- discuss the similarities in the burden of proof of any defence in the various jurisdictions of study.

5.3 Similarities & Differences in Defences Comparatively

In some jurisdictions, intoxication may negate specific intent, a particular kind of MR applicable only to some crimes. For example, lack of proof of specific intent might reduce murder to manslaughter. Voluntary intoxication may nevertheless provide basic intent as the intent required for manslaughter. In some jurisdictions, strictly speaking, it could be argued that intoxication is not a defence but a denial of MR, the main difference being that a defence accepts the MR and AR of the offence present. Thus, with intoxication there is no acceptance of the MR of the offence. Therefore, whilst it is tempting to think of intoxication as a defence, it is more accurate to see it as a denial of the MR of an offence-where the AR or MR is not proven, there is no need for defence. Under Section 85, Indian Penal Code intoxication is dependent on whether it is voluntary or involuntary for the defence to avail the defendant. This may be true of the penal code under section 57 and different under section 29(4) criminal code of Nigeria where absence of intent sustains the defence. What difference is there between the Indian Penal Code and the Nigerian Criminal Code?

The defence of mistake in some jurisdictions is available, if the mistake is about a fact and is genuine. The defence is most often used in conjunction with another defence. To qualify, any defensive force must be proportionate to the threat. This is a control device aimed at preserving the life of others and eliminating human ferocity or wickedness.

Under the Queensland Criminal Law, self defence will not be available as a defence when the person who first assaults or provokes an assault does so with intent to kill or do grievous bodily harm and when the person uses the force which causes death or grievous bodily harm before the necessity to do so arose see Section 272 of the criminal code. It is important to note that the Penal Code of the Northern Nigeria and the Sudan Penal Code are both based on the India Penal Code. Thus, it is not surprising to find that the Sudan Penal Code & Nigeria Penal Code are very similar. Some of the sections are identical to the India Penal Code. Under the defence of insanity, defendants who are found to have been insane at the time they committed a crime are entitled to the criminal defence of not guilty by reason of insanity. This defence has been controversially applied over the years, for it has resulted in not guilty verdicts in several high-profile cases. As a result, there is often a general public sentiment that the defence of insanity is too frequently applied to criminal defendants. In reality, however, various criminal studies have established that only about one percent of all felony cases in criminal law jurisdictions involve the use of the defence of insanity. Thus, we can concur that insanity as a defence has become a loophole for the criminals as the most popular defence providing escape route for criminals to escape from any crime. But under

the QCL, the defence of insanity may negate the intent of any crime, although it pertains only to those crimes having an intent element. If an accused succeeds in being declared "not guilty by reason of insanity", then the result frequently is treatment in a mental hospital, although some other jurisdictions provide the sentencing authority with flexibility.

Self-Assessment Exercise

In Osun State, Oni was convicted of a three counts charge for murder. The defendant claimed he acted in self defence. The court gave instruction that the prosecution had the burden to proof or disprove self defence, however, the prosecution was not instructed of the burden to prove or disprove the defence of self beyond reasonable doubt. If the crime was committed in India, what would be the judicial status? If the same crime was committed in Lagos State of Nigeria, what would be the instruction to the prosecution? State also relevant and applicable statutory provision. Also state the differences and similarities of the offence in details.

5.4 Summary

Looking at a larger picture and practicality, these defences do not have a major significance in the way of deciding the cases under the criminal laws. The crux of criminal law is guilty mind. In most of the jurisdictions of study, the elements of MR are the basic element in determining the guilt of a person and these defences depend on facts and circumstances. In some jurisdictions as well, provocation as a defence is also not a defence as well. But provocation if established by evidence, reduces the offence of murder to manslaughter. But under the India Penal Code, the offence remains as murder as in Sections 76-106 Indian Penal Code, while under the Queensland Criminal Law, provocation is a complex defence to the following charges; common assault, assault occasioning bodily harm, manslaughter, grievous bodily harm. The defence of insanity in the Queensland Criminal Law is determined by the mental health court and the issue is whether the person was of unsound mind at the time of the commission of the offence or if they are fit for trial. The prosecution could be discontinued if the mental health court makes a finding of unsoundness of mind or permanent unfitness as in Sections 26 & 27 of the Code.

Defences can be categorised into denial or failure of proof, perfect or imperfect. Defences are a matter of statutory regulation. If a defence reduces the severity of the offence, it is called an imperfect defence but where the result is an acquittal, it is a perfect defence. A defence based on justification focuses on the offence. A justification defence claims that the defendant's conduct should be legal rather than criminal because it

supports a principle valued by society. A defence based on excuse claims that even though the defendant committed the criminal act with criminal intent, the defendant should not be responsible for his/her behavior.

5.5 References/Further Reading/Web Resources

Criminal Law of Lagos State 2011.

Ghana Criminal Code (Amendment) Act, 2003 (Act 646).

Nigeria Criminal Code Act, Cap C38 LFN 2004.

Penal Code Act, Cap 53 LFN 2004.

Sudanese Penal Code.

The Indian Penal Code, 1860 Act No. 45 of 1860.

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5.6 Possible Answer to Self-Assessment Exercise

State the statutory provisions of the offence charged. State the statutory provisions of the defence raised. What part of Nigeria is Osun state (North or South) to enable the student know what code is applicable. State the statutory provision of both offence and defence in the IPC state the differences and similarities between the state and Indian Penal Code if any. Then state the position of the law of Lagos state.