

National Open University of Nigeria

COURSE DEVELOPMENT

Comparative Criminal Law 11 - PUL806

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COURSE GUIDE:

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 criminalization and the idea of codification in common law and civil law countries are examined. The aim is to enhance existing practices for greater efficiency and better review.

The comparative study of criminal law can lay the foundations of critical analysis not only of another system or systems, but also of one's own. Thus, Nigeria criminal law teaching and scholarship would benefit from the conscious adoption of a comparative approach that includes both the domestic and foreign materials, rather than maintaining the anachronistic image of a unified body of criminal laws. Comparison is not competition and does not reflect might or weakness, instead it does create an opportunity of having a wider spectrum or prism to see things especially in areas of commonalities and differences.

It is pertinent to note that the government of all jurisdictions have established that criminal law should primarily rest on statute(s). That anytime an offence is committed, such human activities, where the activity was committed would be considered and decided where it is harmful to the society and where it is so criminalized, the source becomes a criminal law. In Nigeria, it is important to note that the two codes (Criminal Code and Penal Code) cover offences committed within the territory to which each applies. Note that these statutes fall essentially into both federal and state. We would in the course of our study look into identical provisions of offences and the punishments as provided for in both statutes in Nigeria and the jurisdictions under comparison.

Learning Outcome

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 order to ensure safety of the individual and the protection of the society.

There are five modules in this semester's outline, which would be split into units. Each unit is sub-topic, of the general topic. These topics are briefly discussed as the students are expected to research further into specific subject matters in order to have detailed knowledge. Nevertheless, references and reading materials would be explicit to help students in their readings and further researches.

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MODULE 1: OFFENCES AGAINST PROPERTY

UNIT 1: STEALING

1.1 Introduction

The Nigerian criminal statutes created the offence of stealing or theft. The terms stealing and theft as used by most criminal statutes to mean the same thing and are therefore, words of convenience or choice. Are the terms Stealing and Theft synonymous? The Nigeria criminal statutes created the offence of stealing under the criminal code Section 383 and thus defines the term. While the Nigerian Penal Code provides that whoever commits theft shall be punished with imprisonment for a term which may extend to 5 years with or without fine. Robbery and armed robbery are species of stealing or theft with violence or without arms or weapons in cases of robbery and with arms or weapons.

1.2 Learning Outcome:

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

- i. Define the term stealing/theft as used by different criminal law jurisdictions.
- ii. Explain the ingredients of stealing as provided for in statutes varying from jurisdictions to jurisdictions.
- iii. Understand why some stolen properties are termed as an offence under some jurisdictions.

1.3 STEALING

Stealing/theft is literally understood as taking someone else's property without such person's permission. According to the provision of section 383 (1) of the Nigeria criminal code, stealing is defined as 'a person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing'. Section 286 of the Nigerian Penal Code defines the offence of theft instead of stealing as used in the Northern part of Nigeria. It is an unlawful offence which is the wrongful taking or conversion of property belonging to another. In the case of **Corcoran v Aderton** (1980) CA Vol. 71, the court held that the grabbing of the bag by the accused person amounted to appropriation (an ingredient of theft). Thus, the accused was found guilty of theft. The ingredients of stealing under the Nigerian perspective are appropriation, property and dishonest taking. Section 4(1) of the Theft Act 1968, defines property as money and all other property real or personal including things in action and other intangible property. Land cannot be regarded as property except when something is severed from the land as in the case of **Ojiko v IGP** (1956) Vol. 1 FSC. What are the ingredients of the offence of stealing in Nigeria?

The offence of robbery is governed by section 402(2) (a) and (b) of the CC and Robbery and Firearm (Special Provisions) Act 2004. Section 403(b) of the CC, defines "firearms" as any cannon, gun, flint-lock gun, revolver, pistol explosive or ammunition or other firearms whether in whole or in detached pieces. In **Akeem Agboola v State**, (2013) 11 NWLR (pt.1366) 619, the two elements of armed robbery were held to include;1, that there was a robbery or series of robberies and 2, that the robber(s) were armed. In **Olayinka v State**, it was held that there is no principle of law which requires the prosecution to tender weapon used in an alleged robbery in order to establish the guilt of the accused person. Must weapons be tendered in an alleged robbery?

Under the Criminal Code section 383 and section 286 of the Penal Code, stealing connotes the act of taking or converting to one's use anything other than immovable property with the intents specified under section 383(a-d). Any person who steals anything capable of being stolen is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for 3 years. In the case of **Ayeni v The State** (2011) SC 477. Where the appellant sometimes in November 1997 at Ikole-Ekiti stole 10 metric tonnes of graded cocoa valued at 1.8million Naira which was property

of the cooperative multipurpose, Ikole Ekiti. He was charged with stealing contrary to section 390 (a) of the criminal code cap 30. The case was dismissed for lack of merit.

Stealing/theft is literally understood as taking someone else's property without such person's permission. According to the provision of section 383 (1) of the Nigeria criminal code, stealing is defined as 'a person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing'. Also, by the provisions of Section 1(1) of the Theft Act 1968 'a person is guilty of theft if he dishonestly appropriate property belonging to another with the intention of permanently depriving the other of it'. In **R v Orizu**, the accused person was convicted of stealing after he collected money from certain persons as deposit for sending them to America on scholarship. He did not send them to America nor did he return their money.

In accordance with the provisions of section 383 (5) of the Nigeria Criminal Code, if a person discovers an abandoned property and subsequently converts it, it will not be held to be theft. However, this would only apply after reasonable steps have been taken to identify the owner of the goods in question.

Nevertheless, stealing in the India criminal law was provided for under section 378 of the India Penal Code. Theft was defined as 'whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft'. There are a number of cases where the statutory provisions of section 378 of the India Penal Code was either upheld or dismissed. In the case of **P.T Rajah Babu v Anitha Chandra Babu**, 2011 Cr LJ 4541 (Ker) the court held that the possession in section 378 means actual physical possession. Section 379 specifies punishment for theft. Thus, the five main ingredients of theft according to India criminal law are; dishonest intention to take property; the property must be moveable as in the case of **Himachal Pradesh v Prem Singh** (1989) 3 Crimes 12 (15) where the prosecution proved that the government is the owner of the forest and the trees were cut down by the accused. The court held that it was theft. Thirdly, the property should be taken out of possession of another person as in the case of **HOSEENEE v RAJKRISHMA** (1873) 20 (Cr) 80. Also, the property should be taken without the consent of that person, if there is consent of the possessor to move the property then it is not a theft as in the case of **K. N Menara v State of Rajasthan**, 1957 SC 369. Lastly, there should be the taking of the

property. Section 379 of the India Penal Code provides for the punishment for the offence of theft which may extend imprisonment for a term to 3 years with fine or both.

Stealing under the Queensland criminal code is provided for in section 398 of the code. In defining the offence, it provides that any person who steals anything capable of being stolen is guilty of a crime and is liable if no other punishment so provided, to imprisonment for 5 years. There are some punishments for special cases under the criminal law too.

Sections 124 & 125 of the Ghana Criminal Code specify the offence of stealing, defining the offence and stating punishment for same. Section 125 defines stealing as 'a person steals if he dishonestly appropriates a thing of which he is not the owner'. While Section 124 gave instances of what constitutes the offence of stealing. Section 127 gave explanations as to stealing of things found, what it would amount to statutorily and before the judiciary. Stealing under the Ghana criminal law is classified as a misdemeanor, offences that are punishable by various terms of imprisonment, increased penalties apply to individuals with prior criminal records.

1.4 Self-Assessment Exercise (SAE)

Is the offence of theft /stealing according to section 383 of the Nigerian Criminal Code an offence against the property or an offence against the person? Discuss with legal authorities.

How does the offence differ in the jurisdictions discussed above?

1.5 CONCLUSION:

One common thread that runs through the offences of stealing, robbery and armed robbery is the mens rea. The ingredients of the offence vary from jurisdictions to jurisdictions but there must be fraudulent or dishonest taking with intention to permanently deprive. Also, it will suffice to note that stealing as a legal concept runs through the concepts of robbery and armed robbery as there cannot be robbery or armed robbery without stealing. Stealing involves no force. From the above cases and statutory provisions, the thing stolen must be

capable of being stolen. It means that it is not every property that is capable of being stolen. For example, land, except something is severed from the land as an immovable property.

SUMMARY: The offence of stealing as defined in the preceding discussion reveals that it is fraudulent taking or conversion of the property of another with the intent to deprive the owner permanently of that thing. In the case of **State v Ajuluchukwu**, the Court of Appeal, held that it is sufficient to establish the offence of stealing where the accused person has fraudulently taken money or has fraudulently converted it to his own use or to the use of another person. The ingredients of the offence must be proven for the offence to avail the victim.

1.6 References and Reading Materials:

www.Austlii.Edu.Au:

www.Researchgate.Net

www.Ijhumas.Com :

www.Casenet.Org:

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

Administration of Criminal Justice Act 2015

1.7 Answer/Guide: Using the Nigeria Criminal Code and Penal Code define the term stealing. Then using any jurisdiction of choice in comparison with Nigeria discuss the ingredients of the offence of stealing. State judicial decisions to buttress the ingredients stated. With the above in mind make the submission if the offence could be against property or against the person.

UNIT 2: HOUSEBREAKING:

2.1 INTRODUCTION:

In this unit, attempt is made to analyse the offence of housebreaking which in essence entails entering into the house of another with the intention of committing a crime. The offence also covers circumstances where someone enters a property and afterwards commits a crime in it and breaks out of it.

2.2 Learning Outcomes

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

- i. Define or describe the act of housebreaking as it varies from jurisdiction to jurisdiction.
- ii. Differentiate the elements of house breaking from stealing.

2.3 HOUSEBREAKING:

The offences of house breaking and burglary have same elements except that one occurs in the night and the other in the day. Night is defined as the period between 6.30 pm and 6.30am. Section 411 of the Nigeria Criminal Code states that it is an offence for anybody to break and enter the dwelling house of another with the intention of committing a crime in it or having entered the dwelling house with the intent to commit an offence in it or having committed a crime in it breaks out of the house is punishable. Mens rea is the intent to commit a felony. The Nigeria Penal Code states the provisions of the offence of house breaking in Section 346. The breaking of a dwelling house may be actual or constructive. It can be implied from the circumstances. The elements of house breaking are

1. The property in question is a dwelling house,
2. There is intent to commit a felony (crime),
3. There is a breaking in and out,
4. There was an entry into the property.

Section 410 of the Nigeria Criminal Code provides the elements that constitute housebreaking. The punishment for the act is 14 years imprisonment as provided for in section 411 of the Nigerian Criminal Code while burglary is life imprisonment.

A person is said to break into any house where the person breaks any part whether external or internal, of a building, or opens by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window shutter, cellar flag or other thing, intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is said to break the building.

Entry on the other hand is where any part of any instrument used by him is within the building. He is also within the building by means of any threat or article used for the purpose, or by collusion with any person in the building or who enters any chimney or other aperture of the building permanently left open for any necessary purpose but not intended to be ordinarily used as a means of entrance is deemed to have broken and entered the building.

A dwelling house is provided in section 1 of the Nig CC to encompass, a dwelling house, such adjacent house is included in the definition of a dwelling house if there is communication between such building or structure and dwelling house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise.

Comparatively, under the Queensland Criminal Code, Section 425 provides for housebreaking as a crime. The prosecution must be able to prove that the accused was found in the night, that is, between the hours of 9pm and 6am, and was in possession of an instrument of housebreaking, without lawful excuse. The maximum penalty for the offence of being possession of house breaking under the QCC is 3 years. But if the offender is previously convicted of a crime relating to property, the maximum sentence is 7 years imprisonment. What does the Queensland Criminal Code state on housebreaking?

Nevertheless, the Ghana Criminal Code makes provisions for unlawful entry in Section 153 of the code, which provides explanation as to unlawful entry. Section 157 states that house breaking is trespass and punishable with a fine not exceeding 500,000 Ghana Cedis.

2.4 Self-Assessment Exercise (SAE)

What are the distinguishing features of the offence of Housebreaking and the punishment for the offence as stated in the Nigerian Criminal Code compared to the Queensland Criminal Code. Discuss with the aid of relevant provisions.

2.5 CONCLUSION:

We have been able to observe the offence of housebreaking differs from burglary, the essential ingredients needed to prove the offence and how these elements are necessary to securing conviction of the accused person. The punishment of housebreaking is not as severe as that of the offence of burglary and the reasons behind the lesser punishment noted. Where breaking is proved, but there is no entry, the offence is not house breaking or burglary. Breaking in and entry simpliciter is House Breaking, while breaking in and entry in the night is burglary. It is important to know that under the Sudanese Criminal Law, the law on housebreaking provisions is in section 384. And it is only in the code that distinction is made between house breaking and house trespass as stated in section 381.

2.6 References and Reading Materials

Www.Gotocourt.Au
Www.Researchgate.Com
Www.Casenet.Org
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
Administration of Criminal Justice Act 2015

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2.7 Answer/Guide

The offences of house breaking and burglary have same elements except that one occurs in the night and the other in the day. Section 411 of the Nigeria Criminal Code states that it is an offence for anybody to break and enter the dwelling house of another with the intention of committing a crime in it or having entered the dwelling house with the intent to commit an offence in it or having committed a crime in it breaks out of the house within **6.30 am and 6.30pm**. is punishable. Mens rea is the intent to commit this crime. The Nigeria Penal Code states the provisions of the offence of house breaking in Section 346. The punishment for the act is **14 years imprisonment** as provided for in section 411 of the Nigerian Criminal Code while burglary is life imprisonment.

Comparatively, under the Queensland Criminal Code, Section 425 provides for housebreaking as a crime. The prosecution must be able to prove that the accused was found in the night, that is, between the hours of **6am and 9pm**, and was in possession of an instrument of housebreaking, without lawful excuse. The maximum penalty for the offence of being possession of house breaking under the QCC is **3 years**. But if the offender is previously convicted of a crime relating to property, the maximum sentence is **7 years imprisonment**. What does the Queensland Criminal Code state on housebreaking?

UNIT 3: BURGLARY

3.1 INTRODUCTION

It is pertinent to state that the offence of burglary is an offence against property. It is important to note that the offences of housebreaking and burglary are different but are intermittently used. But it is important to note that these offences as would be discussed vary especially when looked into in details.

3.2 Learning Outcome

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

- i. Explain the peculiarities of the offence of burglary as differ from housebreaking.

ii. Explain the distinct punishment for burglary and the severity of the offence as in other jurisdictions.

3.3 BURGLARY

The offence of burglary has the same ingredients with the offence of housebreaking. The only difference between the two offences is the time the offence was committed. The offence of housebreaking is committed during the day while the offence of burglary is committed at night. According to section 347 of the Nigeria Penal Code the offence of burglary is committed between sunrise and sunset. The punishment for the offence is imprisonment for life as stipulated in section 411 Nigeria Criminal Code.

Chapter 17 of the Indian Penal Code has provisions for offences relating to properties. The Indian Penal Code by virtue of section 452 provides that house trespass with the intention to hurt, assault or wrongful restraint to any person shall be punished with imprisonment for a term which may extend to 7 years and shall be liable to a fine.

Under Section 39 of the Queensland Criminal Code, burglary is entering a dwelling with intent to commit an offence. It deals with entry of a dwelling or other premise with intent to steal or commit some other criminal offence. Burglary under the Queensland Criminal Code is a very serious offence which carries a maximum penalty of 14 years or life imprisonment, depending on the circumstance of the offence. Worthy to note that section 419 of the code relates to entry or remaining in a dwelling with intent to commit an indictable offence. The Queensland Criminal Code also makes provisions for other burglary type offences in sections 421, 425 & 427 respectively. What is the guilty intend of the offence of burglary under the Nigerian Criminal Code?

Worthy to note that the Sudanese Criminal Law does not expressly mention the offence of burglary but by virtue of section 385, it provides for house breaking by night as an offence of trespass. What is similar in the jurisdictions under study concerning the offence of housebreaking and burglary?

3.4 Self-Assessment Exercise (SAE)

State the distinguishing elements between the offences of housebreaking and the offence of burglary. Any difference in the jurisdictions under study?

3.5 CONCLUSION:

However, housebreaking and burglary have same elements, except that one is committed by day and the other committed at night. When the acts of breaking in and entry into a dwelling house is carried out, the time frame is taken into consideration and the judiciary place the onus on the prosecution to prove the time. It is also very important to note that the punishment of burglary is severe compare to that of housebreaking.

3.6 Refences and Reading Materials:

Www.Gotocourt.Au

Www.Researchgate.Com

Www.Casenet.Org

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

Administration of Criminal Justice Act 2015

The Queensland Criminal Code

3.7 Guide:

Go through the topic under the different jurisdiction and look out for the differences.

UNIT 4: OBTAINING PROPERTY BY FALSE PRETENCE

4.1 INTRODUCTION

In law, fraud is intentional deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. Fraud can violate civil law (that is a fraud victim may sue the fraud perpetrator to recover monetary compensation) and as a crime (the fraud perpetrator may be prosecuted and imprisoned by governmental authorities) or it may cause no loss of money, property or encroachment on legal right but still be an element of another criminal wrong. The purpose of criminal fraud may be monetary gain or other benefits but majorly fraud is against the individual or state for monetary gain. In common law jurisdictions, fraud as a criminal offence takes many different forms, some general (e.g theft by false pretence) and some specific to particular categories of victims or misconduct (state fraud, bank fraud, corporate fraud etc). The elements of fraud as a crime similarly vary from jurisdiction to jurisdiction.

4.2 Learning Outcome

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

- i. Distinguish the offence of obtaining property by false pretence from stealing.
- ii. Understand the elements of the offence and appreciate why this offence is grievously dealt with under the law in the various jurisdiction

4.3 OBTAINING PROPERTY BY FALSE PRETENCE

Section 311 & 312, Chapter 32 of the **Lagos State Criminal Code** defines false pretense and obtaining false pretense as a representation, whether deliberate or reckless made by word, in writing or by conduct, of a matter of fact or law, either past or present which reputation is false in fact or law, and which the person making it knows to be false or does not believe to be true. Section 312 (1), (2) & (3) of the same code state the meaning of obtaining fraud and the stipulated punishments thereon.

Fraud as an offence against the state is provided for in the **Nigerian Criminal Code, Section 419**, and it states “Any person who by any false pretense, and with intent to defraud, obtains from any

other person to deliver to any person anything capable of being stolen, is guilty of a felony and is liable to punishment and or fine”.

The offence of obtaining property by false pretence is committed where anyone obtains from another, anything capable of being stolen or induces the delivery of any such thing from one person to another. The offence is primarily provided for in section 419 of the Nigerian Criminal Code and section 320 of the Nigerian Penal Code which involves also offences of cheating and cheating by personation as provided in section 321 of the Nigerian Penal Code. The major elements of the offence of obtaining property by false pretence are:

1. There must be false representation,
2. Presentation must relate to a material or existing fact,
3. The accused must know that the representation is false,
4. The victim must have parted away with the title to his property.

In this discussion, for the offence to be proven, there must be a false representation made by someone with the intention to defraud another through which the other person parted with his/her property or delivers such property at the instance of false pretence of someone to another. This offence attracts a punishment of 3 years imprisonment under the Nigerian Criminal Code but by virtue of section 322 of the Nigerian Penal Code, the offence attracts a punishment of 3 years with a fine.

Whereas under the Ghana Criminal Code, section 131 of the code provides that whoever defrauds any person by any false pretence shall be guilty of a second degree felony, the case of *Adobor v The Republic* is a case on obtaining property by false pretence (H2/12/07) 2007 GHACA 5(20 Dec 2007) Section 132 Ghana Criminal Code defines what it means to defraud by false pretence while section 133 of the same code states the provisions relating to false pretence.

Section 179 of the Queensland Criminal Code states the definition in these terms: “whosoever by any false pretence or by any willful false promise obtains from any person any property, with intent to defraud shall be liable to imprisonment for 5years”. Apart from the prison term there is also an option of fine. Distinguish the definition of false pretence under the Nigerian criminal code and the Queensland criminal code

A Nigerian case on obtaining property by false pretence is the case of *Oluwaseun v Federal Republic of Nigeria (CA/J/268C/2014) (2016)*. The appellant was charged and found guilty of obtaining money under false pretence, he then brought an appeal against the ruling of the High Court before the appellate court. The court was faced with two issues, (1) whether the High Court was justified in convicting the appellant on allegations of misrepresentation not covered in the charge. (2) whether the High Court was right to convict the appellant for misrepresentation and seize his property. The appellate court held that the High Court was justified in convicting the appellant. The Court of Appeal further noted that sufficient evidence was led in the High Court which justified the conviction and sentence of the appellant by the lower court.

4.4 Self-Assessment Exercise (SAE 1)

Tolu approached his bank for a loan and offered to pledge his car on account of which he was advanced a loan. It was discovered that the car was in fact not his. What offence has Tolu committed, if any? State the major ingredients of the offence. If Tolu resides in a jurisdiction where the Queensland Criminal Code is in operation what would be his fate?

What kind of felony is fraud? Fraud against a state refers to political & business scandals which arise with the disclosure of malpractices by trusted executives or individuals of large governmental agencies. This includes misusing or misdirecting funds, overstating revenues, understating expenses, overstating the value of state assets or under reporting the existence of liabilities, sometimes with the cooperation of officials in other governmental departments and affiliates. There are notable state frauds e.g money laundering in the cases of **Federal Republic of Nigeria v James Ibori & 5 ors CA/K/81C/2008**, **Tafa Balogun v EFCC**. In the latter case, Tafa was jailed for the offence of fraud where illicit money in 12 bank accounts traced to him were found by the EFCC. Also, in the area of corporation, the case of **Cadbury v Security and Exchange Commission (SEC) (October 19, 2011)** is a notable one where it was found that the company was falsifying its financial and accounting reports by inflating its profits figures by millions of naira. The company was fined for publishing misleading accounts for a number of years in order to boost its profit.

Governmental fraud involves substantive amount of money that are geared towards maintaining or increasing the share price of the perpetrating state agencies. In the most recent case of **Oluwaseun v Federal Republic of Nigeria CA/J/268C/2014(2016)** where the appellant was charged and found guilty of obtaining money under false pretence; he then brought an appeal against the ruling of the High Court before the appellate court. The appeal was unsuccessful and the judgment of the High Court (conviction and sentence) was upheld. The term false pretence denotes the offence of knowingly obtaining someone's property by misrepresenting a fact with the intent to defraud that person. **Section 16** of the **Ghana Criminal Code** makes provision relating to the offence of fraud.

Part III chapter 1 sections 131 -145 of the Ghana Criminal Code states what false pretences are and other fraudulent acts such as dishonesty. More so, it is noteworthy that the criminal law is strictly governed by statutes and the offence of fraud in its different designations as felonies make perpetrators liable to imprisonment and not a fine. A recent case in Ghana, is that of **SIC Insurance Company v Ivory Finance Company LTD & ors (NO I4/48/2017) GHASC 12 (21 FEB 2018)**, where the court held that one year was enough for the FIC to investigate any alleged wrong doing as FIC argued that the investigation of allegation of fraud which was criminal in nature, was not affected by time constraints.

In **India Penal Code, section 420** deals with cheating and dishonestly inducing delivery of property. The maximum punishment which can be awarded is imprisonment for a term of 7 years and fine. Note that under section 420 IPC the offence is cognizable and non bailable. Though there are few essential elements under the section which are cheating, dishonest inducement, MR of the accused at the time of making the inducement is significant.

Self-Assessment Exercise (SAE 2)

Make a clear distinction between the offence of cheating /false pretence and breach of trust, using the definition in Section 420 of the India Penal Code. State the elements of the offence of fraud provided under Section 419 of the Nigerian Criminal Code.

4.5 Conclusion

To establish the offence of fraud, one must prove a conscious act done, as well as intention on the part of the actor that he or she should acquire some gain with a corresponding loss to the victim. That is, the act must be done with intent to defraud. This offence, which is a second-degree felony under the Ghana Criminal Code, attracts a maximum penalty of 25 years when there is conviction. In India, serious fraud investigation office (SFIO) has been set up by the ministry of corporate affairs and has the power to detect, investigate and prosecute white collar crimes and frauds with multi-disciplinary ramifications or involve public interest. The investigations of the office (SFIO) are carried out based on orders received from the central government of India. The major types of fraud are financial statement fraud (advanced fee fraud), Asset misappropriation, theft of intellectual property, consumer fraud, insurance, healthcare fraud. Criminal fraud must be proved beyond a reasonable doubt for a conviction to be upheld. More so, the elements of false pretence could be stated to be false pretence, intent to defraud, obtaining falsely anything capable of being stolen. It is worthy to note that the Nigeria Penal Code has no specific section which provides for the offence of fraud but there are some sections in the code that make some offences fraudulent acts in the course of the person's duty. Cheating which attracts a maximum of 3 years imprisonment as in **section 322** and cheating by personation attracts maximum of 5 years imprisonment as provided for in section 324 Nigeria Penal Code. Section 408C of the Queensland Criminal Code provides for the offence of fraud.

Obtaining property by false pretence is an offence notwithstanding the fact that the property owner parted with his property with his consent because the consent was obtained by fraud. Section 313 of the Kenyan Penal Code provides for severe punishment for the offence of false pretence.

4.6 References and Reading Materials

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
 Administration of Criminal Justice Act 2015
 Www.Gotocourt.Au

Www.Researchgate.Com
Www.Casenet.Org
Royal Attah, Corporate Fraud In Nigeria
Victor Usifo (2017) Money Laundering In Nigeria
Efcc (Establishment) Act 2004
Blacklaw Dictionary, 10th Edition
www.researchgate.net.

4.7 GUIDE to SAE 1 & 2:

State the different definitions of false pretence as stated in the criminal statutes of various jurisdictions. State case laws in Nigeria stating the position of the judiciary in the offence of fraud against the state. Make a distinction in both the definitions and the elements of the fraud as provided for in the various statutes quoted.

MODULE 2: OFFENCES AGAINST THE STATE

UNIT 1: SEDITION

1.1 Introduction

The crime of sedition consists of communication or agreement intended to defame the government or to incite treason. Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable on conviction, for a first- degree offence to imprisonment for 1 year or for a subsequent offence to imprisonment for 2 years and such publication shall be forfeited. Sedition is an offence against the government of the state.

1.2 Learning Outcome:

At the end of the study, you will be able to:

- i. Understand and define the offence of sedition as distinct from treason.
- ii. Explain how the offence amounts to curtailment of freedom of speech under the democratic rule.

1.3 SEDITION

In general parlance, one fundamental limitation to the liberty of a citizen to freely express himself is the law of sedition. By virtue of **Section 51** of the Nigeria Criminal Code, it is an offence to attempt to do an act with a seditious intention, utter any seditious words, prints or publish any seditious publications etc. Sedition is a serious felony punishable by fines and up to 20 years in prison and it also refer to the act of inciting revolt or violence against a lawful authority with the goal of destroying or overthrowing it. The elements of sedition could be classified, as offence that often includes subversion of the constitution and incitement of discontent towards, or resistance against, established authority. Sedition may include any commotion, though not aimed at directly it is not an open violence against the laws. How can you explain the offence of sedition and what does it encompass?

It would suffice to say that the Criminal Code did not define the word sedition but in its section 50(1), it defines “seditious publications” and seditious intentions was defined in section 50(2) of the same code while sections 416 to 421 of the Nigeria Penal Code provides for seditious

publications and intentions respectively. In terms of punishment for the offence a person would be liable upon conviction, to imprisonment for 1 year or to a fine of 100 Naira or to both such imprisonment and/or fine etc.

Comparatively, under the Ghana Criminal Law, the parliament recently unanimously repealed the criminal libel and seditious laws. The repealed law followed the passage of the criminal code by a majorly vote hence the amendment bill act of 2005 provides for the offence of sedition as a grievous offence.

But it is important to note that under the India Penal Code, Section 124A deals with sedition and it states that whoever through words either spoken or written or by signs or by visible representative or otherwise, brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the government established by law in India shall be punishable with imprisonment for life to which fine may be added, or with imprisonment which may extend to 3 years, to which fine may be added. Note that under the IPC, sedition is a non bailable offence.

Under the Queensland Criminal Code, the offence of sedition is an offence with grievous punishment. It states that any person who by words of mouth or in writing, or by any act or deed does something with a seditious intention is liable for the offence of sedition. Note that the QCC was also repealed to introduce permanent measures relating to seditious behavior. The new repealed law will give ample freedom to the citizens of the country to obtain redress of all grievances and to secure by lawful means any reforms which they may deem to be necessary. Note that Sections 24A to 24E of the Crimes Act 1914 was repealed in Appendix A in the QCC.

1.4 Self-Assessment Exercise (SAE)

Sedition is an offence against a government in power whereas treason is violation of one's allegiance to one's country or sovereignty. Sedition threatens a government or individual in power and treason threatens the entire country with all its people. In line with the above, discuss the activities of 20th October 2020, at the Lekki toll gate in Lagos state with reference to statutory provision governing the southern part of Nigeria on the offence of sedition.

1.5 Conclusion

Sedition is created as an offence in the criminal code in order to preserve public order and safety of the state. Even as all crimes are in one way or the other offences against the state, sedition just as treason and treachery is specifically targeted against the state. Yet by its very nature, sedition is probably one offence which most seriously impinges on the liberty of the citizens' to freely express themselves. In summary, media freedom, which is an aspect of the right of freedom of expression, is now generally recognized as an indispensable element of democracy. Hence the mass media promotes the free flow of information which enables citizens to participate in a meaningful and informed manner in the democratic process. With the offence of sedition, the mass media would be careful in the dissemination or printing of information as such information could be termed seditious and the materials for such information treasonable.

1.6 References & Further Readings

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
 Administration of Criminal Justice Act 2015
 The Nigeria criminal code
 The Nigeria penal code
 The Queensland criminal code
 The Ghana criminal code
 The Indian penal code
 The Constitution of Federal Republic of Nigeria 1999.
www.news18.com
www.gotocourt.com.au
www.austilis.ed.au
www.alrc.gov.au
www.journals.edu.ng

1.7 Answer/Guide

You are expected to have a clear understanding of the terms, sedition and treason and be able to relate it if applicable with the facts.

UNIT 2: TREASON

2.1 INTRODUCTION:

Treason is an offence against a sovereign state and its leader. And it is worthy to note that every leader of a state owes his followers the onus to make the state safe for living. Thus, in order to prevent any person or group of persons from waging war against the government or threatening its existence, certain acts of individuals such as instigating or conspiring to wage war against such government have been prohibited by the offence of treason.

2.2 Learning Outcome:

At the end of this study, you will be able to:

- i. Explain the grounds for prosecution for the offence of treason and in each jurisdiction, know the time limitation for such prosecution.

2.3 TREASON

A threat against the stability or safety of a state by acts of levying war against same is with all seriousness condemned by the state and government. Section 37 of the Nigeria Criminal Code states that it is an offence for any person to levy war against the state in order to intimidate or overawe the president or governor of the state. This is an offence also provided for by virtue of Section 410 of the Nigeria Penal Code. In providing the offence of treason, it is not required that the president of the state should be personally intimidated or overawed, as intimidating the state also amounts to intimidating the president and vice versa, because the head of a state is the embodiment of the state. Conspiracy between anyone within a state and another outside the same state to levy war against the said state amounts to treason. The punishment for a treasonable offence in its severity is death both under the NCC AND NPC. It is also an offence for anyone who becomes an accessory after the fact to treason or knowing that treason is to be committed and not giving such information with reasonable dispatch to the president or governor of the state or a peace officer. Why is the punishment for treason death penalty?

Also, under the Ghana Criminal Code, treason is defined as offence against the safety of the state and it is provided for in Section 180 of the code. The punishment for the offence is death penalty. Reference is made to clause (3) Art 3 of the Ghana Constitution, where the full meaning of treason is provided for. But under the India Penal Code, section 124A of the code defines the offence of treason to make it a punishable conduct when a person writes or speaks anti country materials or supports such materials, propagates it or insults national symbols as well as trying to degrade the constitution. Such persons would be liable to life imprisonment or a sentence of 3 years in this crime. Explain the meaning of treason under the India Penal Code. Is there any difference in the punishment between the Indian Penal Code and the Ghana Penal Code?

2.4 Self-Assessment Exercise (SAE)

What are the acts that can constitute the offence of treason and treasonable felony under the Nigerian CC? With the aid of statutory provisions compare the position of Nigeria and India in the treatment of treason and treasonable felony under their criminal Laws.

2.5 Conclusion

It is treason to levy war against the state or government of a state or the president or governor of a state and where the president or governor is personally intimidated by the act of levying war against state. Treasonable felony is regulated by Section 41 of the Nigeria Criminal Code. It is the forming of an intention by any person to levy, instigate or conspire to wage war against the state and/or the head of state and the manifestation of such intention by an overt act. Treasonable felony is punishable by imprisonment for life.

3.6 References & Reading Materials

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

Administration of Criminal Justice Act 2015

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[Www.Austilis.Ed.Au.](http://www.austliis.ed.au)

[Www.Alrc.Gov.Au](http://www.alrc.gov.au)

3.7 Answers /Guide

Treason is an offence provided for under section 410 of the Nigeria Penal Code. Acts of treason include levying war against the government, adhering to their enemies, giving information aid and comfort to the enemies of the government. Conspiracy between anyone within a state and another outside the same state to levy war against the said state amounts to treason. Punishment is death

Treasonable felony is regulated by Section 41 of the Nigeria Criminal Code. It is the forming of an intention by any person to levy, instigate or conspire to wage war against the state and/or the head of state and the manifestation of such intention by an overt act. Treasonable felony is punishable by imprisonment for life.

UNIT 3: RIOT & AFFRAY

3.1 Introduction

An unlawful Assembly is where three or more persons come together with intent to carry out some common unlawful purpose. It is unlawful assembly irrespective of the fact that the original assembly was lawful if, being assembled: they conduct themselves with a common purpose in such a manner as to cause persons in the neighborhood to fear on reasonable grounds that the persons so assembled will tumultuously disturb the peace.

3.2 Learning Outcome

At the end of the study, you will be able to:

- i. Explain the definitions given to each of the offences in this unit by the different statutes in the different jurisdictions of study.
- ii. Explain the differences in the offences, and the punishment allotted by law to these offences. Understand the gravity of these offence as different from jurisdiction to jurisdiction. It is pertinent for students to be able to state the major factors that make these offences different from each other though.

3.3 RIOT & AFFRAY

Section 69 of the Nigeria Criminal Code defines unlawful Assembly. We need to distinguish between an assembly for the purpose of protecting a property against a break in from other unlawful assembly. By virtue of section 70 of the NCC the punishment for taking part in an unlawful assembly is imprisonment for 1 year and in the Nigeria Penal Code, with fine or both. For an assembly to be unlawful, the conduct of the persons must be a determinant factor. The common purpose of the meeting or assembly either makes the assembly lawful or unlawful. Another possibility that makes it unlawful is the probability of violence or tumult in the state.

Another factor that needs to be considered is the intent of the assembly. The presence of a person at a meeting is not in all cases illegal. In order to show that persons unlawfully assembled, it must be proved that the person intends to use or abet the use of violence or that the persons do or abet acts which to their knowledge is likely to result in the disturbance of public peace. See the case of *OGONYI v IGP (1957) NRNLR 140*. Note that the *PUBLIC ORDER DECREE No 5 of 1979* as

repealed and codified by an Act of the National Assembly is now PUBLIC ORDER ACT CAP 382 LFN 1990 which regulates the assemblies, meetings and processions in Nigeria. Some sections of the Act infringe on the Fundamental Human Rights (FHR) of citizens hence in the case of IGP v ANPP (2007) 18 NWLR Pt 1066 457, the Court of Appeal in Abuja struck down the PUBLIC ORDER Act as it impinges on the FHR of the citizens as guaranteed by the Constitution.

Section 71 of the NCC creates the offence of riot the offender is guilty of a felony and is liable to imprisonment for 3 years while in the NPC section 106 has an imposition of a punishment of up to 3 years or with a fine or both. Section 70 of the NCC and section 105 of the NPC in defining the offence of riot when an unlawful assembly has begun to act in so tumultuous manner as to disturb the peace of the people, the offence of riot is completed. While affray is an offence under Section 83 of the NCC. Thus, it is an offence of affray for any person to take part in a fight in a public place Such a person is liable to imprisonment for 1 year.

Under the Queensland Criminal Code, Section 61 of the code 1899, states that a riot occurs when 12 or more persons are present together and use or threaten to use violence to a person or property for a common purpose and the conduct is of a nature that would cause a reasonable person in the vicinity fear for their personal safety. What are the differences in the definition of riot between section 61 of the Queensland Code and section 70 of the NCC?

The proof of riot and unlawful assembly are that a tumult occurs where people are, a disturbance of peace occurs and that the accused was the person who committed the offence. The maximum penalty for the offence of riot and unlawful assembly under the Queensland Criminal Code is 1 year imprisonment while affray is a charge which attracts a maximum penalty of 1 year imprisonment unless the person who is convicted is a member of a criminal organization in which case the punishment rises to 7 years imprisonment with a component of mandatory custody. Affray is a misdemeanor offence, but it can still result in sentences of imprisonment if the circumstances are grave enough. Section 72(1) of the Queensland Criminal Code defines the offence of affray.

3.4 Self- Assessment Exercise (SAE)

Kobina led about 80 members of his social group in a march through the streets of Calabar without any offensive weapon causing those in the neighborhood to fear. The police arrested them and charged about 40 of them for the offence of riot. Is this charge proper or not? (a) if this march was led in Kano, what would have been the charge and what statute would have covered the offence, if any? (b) what would have been the position of the law if Kobina, had led his group in Ghana?

3.5 Conclusion

Chapter 3 of the Ghana Criminal Code regulates offences against the peace of the state. Section 196 states the offence of riot, while Section 198 states what comprises riot. Sections 201 and 202 define what unlawful assembly is and the punishment thereof. While under the Sudan Penal Code, Sections 120,121 and 122 make provisions for unrest, unlawful assembly and what constitutes unlawful assembly and how it amounts to unrest. It is worthy to note that an assembly need not be in a public place for it to be unlawful. It suffices if the assembly in a private house is with an intent to go out and commit acts that endangers public peace.

The offence of riot is whether there is the use of force or violence in an unlawful assembly.

It is worthy to note that there is distinction between the offence of unlawful assembly and riot. The essential factor is that in the former there need not be the actual use of violence but the causing of persons in the neighborhood to fear on reasonable grounds that the assembly will tumultuously disturb the peace while the latter offence is the actual disturbance of peace in the state usually by violence or use of force.

4.6 References & Further Readings

The Constitution of Federal Republic Of Nigeria 1999

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

Administration of Criminal Justice Act 2015

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4.7 Answers/Guide

For an assembly to be unlawful, the conduct of the persons must be a determinant factor. The common purpose of the meeting or assembly either makes the assembly lawful or unlawful. Another possibility that makes it unlawful is the probability of violence or tumult in the state.

The essential factor is that in unlawful assembly is that there need not be the actual use of violence but the causing of persons in the neighborhood to fear on reasonable grounds that the assembly will tumultuously disturb the peace. To this extent, the arrest by the Police is in order.

If the act was in Kano state, the section 105 Of the Penal Code will be applicable.

Sections 201 and 202 of the Ghana CC defines what unlawful assembly is and the punishment thereof.

MODULE 3: OFFENCES OF CORRUPTION

UNIT 1: DEFINITION OF CORRUPTION AND ITS COMPONENTS

1.1 INTRODUCTION:

Corruption is a form of dishonesty or criminal offence undertaken by a person or organization entrusted with a position of authority, to acquire illicit benefit or abuse power for one's private gain. It could be stated also that corruption is dishonest behavior by those in position of power such as managers or government officials. Corruption can also include giving or accepting bribes or inappropriate gifts, double dealing, under the table transactions, manipulating elections, diverting funds, laundering money and defrauding investors.

1.2 Learning Outcome:

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

- i. Explain the offence of corruption and state how the different jurisdictions of study regulate the offence and the different levels of punishment prescribed by the different laws.
- ii. Understand the laws enacted by the different jurisdictions to combat the offence of corruption in the respective jurisdictions.

1.3 DEFINITION OF CORRUPTION AND ITS COMPONENTS

The Fifth (5th) Schedule of the 1999 constitution prohibits public officers from accepting property or benefits of any kind from him/herself or any other person on account of anything done or omitted to be done by him/her in the discharge of his duties. Section 46 of the EFCC Act defines economic crimes as a non-violent criminal activity committed. Corruption is a national problem in Nigeria, and bribery is one of the major manifestations of the offence of corruption. Section 46 of the EFCC Act states that the objectives of earning wealth illegally is an act of corruption. The Act mandates the EFCC to combat financial and economic crimes, while the Corrupt Practices and Other Related Offences Act 2000, also an anti-corruption law, seeks to prohibit and prescribe punishment for corrupt practices and other related offences. It established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) vesting it with the responsibility for

investigating and prosecuting of offenders thereof. Question: State three manifestation of corruption.

A public officer who, under the guise of office or official capacity, acts in such a way as to exceed the bounds of his or her office may be guilty of corruption or misconduct in office. Such acts include those the officer had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. Doing that which the office holder has no right to do is called malfeasance. Misfeasance refers to official acts performed improperly, and non-feasance describes failing to do that which should be done.

Different jurisdictions allocate domestic resources for the control and regulation of corruption and crimes in their jurisdictions. Corruption erodes the trust we have in the public sector to act in our best interest. It also wastes our taxes or rates that have been earmarked for important community projects meaning we have to put up with poor quality services or infrastructure, or we miss out altogether. Under the Queensland Criminal Code, section 87 of the code defines the crime of official corruption and provides for punishment for 7 years. It also provides for fine which is at the discretion of the court. It would suffice to state that the years of imprisonment vary according to public office in Queensland. A convicted minister is liable to serve 14 years imprisonment for the offence of corruption as stated in section 87(1)(A) while under Section 120 which provides for judicial corruption, a convicted person is liable for imprisonment for 14 years.

Under the Nigeria Criminal Code, Section 98 deals with the offence of corruption by defining what it is and prescribing for related offences of corruption. Sections 98A, 98B all deal with corruption of public officers and their liabilities. Section 114 deals with corruption by a judicial officer in the discharge of his duties and he is liable to 14 years imprisonment. Sections 115 to 122 also state the different acts of corruption and punishments attached. The provisions of the Nigeria Penal Code on corruption are more lucid, wider and less technical than the Nigeria Criminal Code provisions.

Another anti-corruption Act enacted in Nigeria is the Money Laundering (Prohibition) Act, which states that when 'any person in or outside Nigeria directly or indirectly conceals or disguises the origin of; converts or transfers, removes from the jurisdiction; acquires, uses retains or takes possession or control of, any fund or property knowingly or which he/she should reasonably have known.....' would amount to corruption, such a person would be liable under the Act.

It is important to note that corruption as an offence under the Ghana Criminal Code is also grievous, even though it is classified as a misdemeanor under Section 239 of the Ghana Criminal Code. Also, section 252 of the Criminal Offences Act 1960 (Act 29) makes it an offence for a public officer or juror to accept a bribe in the discharge of his/her duties. What do you understand of corruption of a public officer?

Chapter 13, sections 128 to 135 of the Sudan Penal Code make provisions for the offences relating to corruption with public servants and it is worthy to note that the word gratification was used. There are also other anti-corruption Acts enacted in the Sudan to battle the offence of corruption.

Self-Assessment Exercise (SAE)

Discuss the offence of corruption under the Nigeria Criminal Code and Penal Code and reconcile them with the Sudanese Criminal Code treatment of the offence of corruption with the aid of statutory provisions.

1.4 Conclusion

It is difficult to provide a universal and precise definition of corruption acceptable to all jurisdictions. Nevertheless, it has been defined as an act done with intent to give some advantages inconsistent with one's official duty over the rights of others. It is also the act of an official or fiduciary person who unlawfully and wrongfully uses his status or position to procure some benefits for him/herself from another person contrary to duty and the rights of others.

1.5 Summary:

It is very important to note that the offence of corruption can also be viewed as the misuse of public office for private gain. The causes of corruption majorly can be classified as

1. a fundamentally flawed structure of the jurisdiction,
2. the absence of functioning government system in the federation
3. the federal government monopoly of the economy, and over concentration of the resources at the federal/central level
4. Excessive federal involvement in corporate business enterprises

5. Inefficient contract awards, standards and procedures amongst many.

1.6 References & Reading Materials

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

Administration of Criminal Justice Act 2015

Black Law Dictionary 6th Edition 1990

www.Nigerialawguru.Com

www.Ajol.Info

www.Journals.Unv.Danubus.Ro

www.Lawpadi.Com

www.En.Wikipedia.Org

www.Ibac.Vic.Gov.Au

www.Unodc.Org

The EFCC Prohibition Act

The ICPC Act

The Money Laundering Act

The Nigeria Constitution 1999

1.7 Guide

With the aid of authorities, examine the definition of corruption in the jurisdiction and reconcile any differences and similarities.

UNIT 2: ABUSE OF OFFICE BY PUBLIC OFFICERS (official corruption and abuse of office- Bribery & Extortion)

2.1 INTRODUCTION:

In Nigeria and some jurisdiction of study, the offence of corruption is more serious and pervasive than maybe envisaged, posing serious threat to the political stability and security of the societies, undermining democratic institution, socio-economic development, ethical values and justice and jeopardizing sustainable development and the rule of law. It is worthy to note that the offences of corruption that deals with public officers are geared towards ensuring accountability and transparency in the management of public affairs.

2.2 Learning Outcome:

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

-Understand the offences that make up corruption in the jurisdictions under study

2.3 ABUSE OF OFFICE BY PUBLIC OFFICERS (official corruption and abuse of office- Bribery & Extortion)

The acts of bribery and extortion are majorly known as the elements that define corruption, though the two terms are notably different in their elements. While extortion injures the individual, who is made to yield to it, bribery injures the common weal, not the giver of the bribe. It is then seen as an offence for the protection of the society, not for the protection of persons who pay bribes. Under the Queensland Criminal Law, in the case of **R v PANGALIO {1991} 56 A Crim R 441** for instance, the court stressed the deterrence purpose of the offence of bribery as an act of corruption. Under the Nigeria Criminal Code, sections 98, 98A, 98B & 98C state all cases of official corruption and abuse of office while section 98 concerns cases where a public officer invites bribe. Under the Nigeria Penal Code, the term gratification was made use of. Thus sections 115, 116, 118 & 119 state the offence of corruption by public servants, the word servant was used as against officer by other codes.

Thus, it is an offence for any public officer to corruptly ask for or agree to or attempt to receive or obtain any property or benefit of any kind for himself or any other person. Such a public officer is

guilty of official corruption and is liable to imprisonment for 7 years both under the Nigeria Criminal Code section 98 (1) (a)(b) and the Nigeria Penal Code Section 115 (c) (1) with fine or both. Note that under the Nigeria Criminal Code i.e. Sections 98,98A & 98B, the offering and or giving, receiving of the bribe must have been corruptly done. However, section 99 of the Nigeria Criminal Code provides for the offence of extortion by public officers, where the officer takes or accepts a bribe for the performance of his official duties, any reward beyond his proper pay and emoluments, or any promise of reward. The punishment is imprisonment for 3 years. Section 291 of the Nigeria Penal Code defines extortion as intentionally putting another in fear of any injury to that person or any other and thereby dishonestly induces the person put in fear to deliver to any person any property or document of title or anything convertible to valuable property. The punishment is up to 5 years imprisonment or with fine or both. See section 292 Nigeria Penal Code.

Under the Ghana Criminal Law, chapter 5 of the Ghana Criminal Code 1960 Act provide for offences relating to public offences and dishonesty, abuse of office for private profit or benefits. In Ghana, it is noted that, anti -corruption laws are not found in one piece of legislation like Nigeria. Section 24 of the India Penal Code defines who a public servant is, while section 10 of the same code states offences by or relating to public servants whether man or woman. The offences stated in chapter 5 of the Ghana Criminal Code range from official corruption to extortion by public officers, to abuse of office, personation of public officer amongst other see sections 85 – 93 of the Ghana Criminal Code. What section of the Ghana Criminal Code relates to corruption?

2.4 Self-Assessment Exercise (SAE)

Mention and discuss 2 essential elements of the offence of corruptly receiving a bribe by a public officer in any two jurisdictions under study with the aid of statutory provisions.

2.5 Conclusion:

The offence of bribery and corruption covers all cases of corruptly asking for, giving or receiving a property or benefit or any attempt of these by a public officer in discharge of his duties or any other person on account of the public officer's act or omission. Note that it is not a defence that the public officer received the bribe and did not subsequently carry out the act or omission.

Abuse of office by public officer is also provided for in section 104 Nigeria Criminal Code and acts done by such public officer being for the purpose of gain would be amount to a felony, and the liability is imprisonment for 3 years. Under the Queensland Criminal Law, any person who, being employed in the public service, does or direct to be done, in abuse of the authority of the person's office, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanor, and is liable to imprisonment for 2 years. Section 92 of the code provides for what amounts to offence in the acts of a public servant, while section 92{2} states that if the act is done or directed to be done for the purposes of gain, the person is liable to imprisonment for 3years. The offences range from misconduct to extortion/bribery.

2.6 References and Reading Materials

Black Law Dictionary 6th Edition 1990

www.nigerialawguru.com

www.ajol.info

www.journals.unv.danubus.ro

www.lawpadi.com

www.en.wikipedia.org

www.ilo.org

www.ccc.gld.gov.au

www.austili.edu.au

www.ibac.vic.gov.au

www.unodc.org

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
Administration of Criminal Justice Act 2015
The EFCC Prohibition Act
The ICPC Act
The Money Laundering Act
The Nigeria Constitution 1999

UNIT 3: CORRUPTION RELATING TO ADMINISTRATION OF JUSTICE (Perjury, corruption of witnesses, perverting the course of justice, fabricating evidence.)

3.1 INTRODUCTION:

Offences relating to the administration of justice are to preserve the integrity of the judicial system (court) and the general administration of justice as a whole. Worthy to note that the offences referred to under this unit, in relation to the administration of justice have a way of tilting the scale of justice wrongfully thus affecting either party/parties negatively or positively. The punishment meted out on these offences are thereby severe.

3.1 Learning Outcome:

At the end of this study, you will be able to:

- i. Define terms such as administration of justice, perversion of justice, perjury, corruption of witnesses, fabricating evidence and so on.
- ii. Understand what the different codes in relation to corruption in administration of justice.

3.3CORRUPTION RELATING TO ADMINISTRATION OF JUSTICE (Perjury, corruption of witnesses, perverting the course of justice, fabricating evidence.)

Corrupt offences under this unit would be mainly by those within the context of administration of justice. These offences as provided for by the NCC and NPC would only be sparingly discussed. Section 113 of the NCC states the offences of perjury. It provides that any person who knowingly gives false testimony touching any matter which is material to any question pending before the court or intended to be raised before the court is guilty of the offence and liable to imprisonment for 14 years. See Section 118 of the criminal and code, Section 156 of the NPC which though has option of fine in its punishment. What are the ingredients of the offence of perjury?

It is important to note that for an offence of perjury to be established, the accused must have given a testimony which is not only false but was deliberately given knowing it to be false. Otherwise the offence is not committed. It is very important to note that testimonies which impugn the credibility of witnesses or those made on oath after an accused has pleaded guilty in order to mitigate punishment are material facts as held in **R V ONWARD 1955 WNLR 28**. Also see the case of *Omoregie v IGP*

Section 120 NCC & SECTION 157 NPC provide for the definition of fabricating evidence as another element of corruption under the administration of justice. The criminal code states that such an offender cannot be arrested without a warrant. Another specie of this offence is corruption of witnesses. Under the NCC, Section 121 states that this offence where committed, shall be tried as a felony and the accused shall be liable to imprisonment for 7years. Destroying evidence is provided for in section 123 NCC and section 166 NPC state that the offence of destruction of evidence is punishable as a felony and accused shall be liable to 3 years imprisonment. Section 126(1) NCC also makes provision for perverting the course of justice and states that any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a felony and is liable to imprisonment for 7years. This offence is also provided for in section 182 of the NPC and illustrated in the case of **R v DURUIBE (1989) 4 WACA 124**, which concerns a situation where a judicial officer corruptly asked and obtained. Where another person corruptly gives, the court held that the offence of perversion had occurred. The decision was premised on the old section 114 of the NCC.

Chapter 4 provides for the offences concerning the administration of justice under the Ghana Criminal Law. Section 210 provides for perjury; section 211 defines the act of perjury, section 213 and section 214 defines the offence of fabrication of evidence, while section 215 provides for corrupt court offences of the Ghana Criminal Code. Nevertheless, under the Queensland Criminal Code, section 87 provides for official corruption and section 87 (1) states the punishment for such official corruption as 7 years imprisonment and fine. It is worthy to note that the Crime and Corruption Act 2001 in the QCL created a body known as the Crime and Corruption Commission, whose task is to combat and reduce the incidence of major crimes and to reduce the incidence of corruption in the public sector in the country.

3.4 Self -Assessment Exercise

Ranti, a court Registrar received a sum of fifty thousand Naira from the family of Wolu who is standing trial for the offence of stealing and burglary. The Court Registrar promised to influence the discharge and acquittal of Wolu for the offence he was charged with. What offence if any, has Ranti committed and under what section of the Nigeria Criminal Code & Nigeria Penal Code can he be properly charged? If the offence committed by Ranti was in Ghana, what section of the code would be relevant and what would be his likely punishment?

3.5 Conclusion:

A broad range of offences relating to the administration of justice have been provided for by the Criminal Code of the southern and the Penal Code in the northern part of Nigeria. It would suffice to note that related jurisdictions have codes punishing these offences relating to administration of justice such as discussed above. Perverting the course of justice is an offence committed when a person prevents justice from being served on him/herself or on another party. While it is true that corruption is classified as a misdemeanor under section 239 of the Ghana Criminal Code, section 296 of the Criminal Procedure Code notes specifically that a public officer convicted of a criminal offence under section 239 is liable to a term of imprisonment not exceeding 25years.

3.6 References and Reading Materials

Black Law Dictionary 6th Edition 1990

www.jstor.org

www.ajol.info

www.wipo.int

www.lawpadi.com

www.refworld.org

www.ilo.org

www.commonlii.org

www.austlii.edu.au

www.unodc.org

The Nigerian Constitution (as Amended) 1999

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

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Ranti will be guilty of the offence of perverting justice. Section 126(1) NCC makes provision for perverting the course of justice and states that any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a felony and is liable to imprisonment for 7 years. This offence is also provided for in section 182 of the NPC and illustrated in the case of **R v DURUIBE (1989) 4 WACA 124**, which concerns a situation where a judicial officer corruptly asked and obtained. Where another person corruptly gives, the court held that the offence of perversion had occurred.

If the offence had been committed in Ghana, section 239 of the Criminal Code is applicable and punishment will be to a term not exceeding 25 years.

UNIT 4: OFFENCES OF CORRUPTION UNDER THE ICPC AND EFCC IN NIGERIA AND RELATED AGENCIES IN OTHER JURISDICTIONS

4.1 INTRODUCTION:

Corruption has been linked with other forms of crime such as organized and economic crime, including money laundering. Although the Nigeria Criminal Code & Nigeria Penal Code contained offences against corruption, they have not been able to effectively combat the scourge. For instance, both the Nigeria Criminal Code & Nigeria Penal Code and some jurisdictions of study have codes that made provisions dealing with the forfeiture of proceeds of crime, they are however insufficient to deal with the full range of economic and financial crimes. New laws became necessary to deal with these new crimes hence the enactment of the Corrupt Practices & Other Crimes Related Offences Act 2000 and the Economic & Financial Crimes Commission (Establishment Act) 2004 amongst others.

4.2 Learning Outcome:

At the end of this unit you will be able to:

- i. Explain the scope of the offences that are provided for in the other statutes outside the NCC AND THE NPC.
- ii. Identify more corruption practices in the Nigeria anti-corruption Acts as differ from other jurisdictions of study.

4.3 OFFENCES OF CORRUPTION UNDER THE ICPC AND EFCC IN NIGERIA AND RELATED AGENCIES IN OTHER JURISDICTIONS

The ICPC is a specialized anti- graft agency with mandates to investigate and prosecute corruption cases. Under the ICPC Act 2000, a wide range of offences are created which cover acts of corruption that can be committed by both public and non- public officers including politicians and state governors. The acts include (a) accepting or giving gratification. Section 8 of the ICPC Act defines the corrupt offence. Section 9, covers acts of my person giving or accepting gratification through agent, by corrupting giving or procuring any property or benefit. This provision is also contained in section 98A of the NCC. Section 17 of the ICPC Act is on the offence of receiving

gratification through agent. (b) acceptor or giver of gratification to be guilty irrespective of purpose not carried out. Section 10 ICPC deals with the offence. (c) Fraudulent acquisition or receipt of properties is provided for in section 12 of the Act.

Note that the clause that the offender cannot be arrested without warrant contained in section 101 of the NCC is not included in the provisions of section 12 of the ICPC Act. Sections 13 & 14 of the ICPC Act deal with the penalty for the offences committed. (d) deliberate frustration of investigation by the commission is an offence under the ICPC. Section 15 deal with it while section 16 of the same Act prohibits a public officer from making false statement or returns. (e) forfeiture of gratification is provided for under section 20 of the ICPC Act. (f) Bribery in respect of auctions or contracts is provided for under section 21 and 22 of the Act. (g) Duty to report bribery; it is now mandatory under section 23 of the ICPC for a public officer to who gratification has been given, offered or promised, and any person from whom gratification has been solicited or obtained or from whom an attempt has been made to obtain from to report same to either the nearest office of the ICPC or a police officer.

Under the EFCC Act, there are offences of corruption and related offences. Section 46 defines the economic and financial crimes offences as any form of fraud, money laundering, embezzlement, bribery, tax evasion, looting and any form of corrupt malpractices etc. (a) securing compliance with the Act: section 14 of the EFCC makes it an offence for any person who being an officer of a bank or other financial or non- designated financial institution, to fail or neglect to secure compliance with the provisions of the Act. The punishment is a term of imprisonment not exceeding 5 years or to a fine of 500,000 or both. (b) giving false information is provided for in section 16 of the EFCC Act, and the punishment is very stiff and ranges from 3-5 years imprisonment. Another corrupt offence is concealment of proceeds of crime, as provided for in section 12 of the Act. And its punishment ranges from 2-3 years imprisonment. Forfeiture of assets is where a person convicted of an offence under the EFCC Act shall have his passport, assets and properties, shown to be derived or acquired from economic or financial crime forfeited to the federal government. This is provided for in sections 20, 21, 22 and 23 of the Act. More so, section 6 of the EFCC Act gives powers to the EFCC to examine and investigate all cases of economic and financial crimes within the Nigeria jurisdiction.

Under the Sudanese Penal Code, 2008, Chapter viii, provision is made for different offences of corruption relating to public servants from sections 87 -107. Suffice to know that there was no law in place as guidance. The Commission in charge of corruption in Sudan embarked on developing legislations to address issues of corruption offences and sanctions as well. In Ghana, anti - corruption laws are not found in one piece of legislation. Nevertheless, an analysis of the anti – corruption legislations of Ghana reveals that, and to a large extent the laws meet the international standard. Most of the gaps in the laws are being filled after the enactment of anti – corruption Bills which are at different stages in the legislative drafting process. Ghana has made significant strides in the fight against corruption. Section 239 of the Ghana Criminal Code deals specifically on corruption amongst public servants. What are some of the efforts being made by the Ghanaian government to combat corruption?

Worthy to note that there is no express offence of private corruption in Australia. The Criminal Code creates offences for the offering, giving or receipt of a bribe to or by a commonwealth public official where the benefit is intended to influence the public official in exercise of his or her duties as a public official

4.4 Self-Assessment Exercise (SAE)

What is the duty imposed by the Nigeria ICPC Act on a public officer to whom bribe has been given, promised or offered or any person from whom bribe has been solicited obtained or attempted made to obtain from? What legislation regulates such act in Ghana? State relevant statutory provisions where necessary.

4.5 Conclusion

A public officer is anyone employed in the service or judicial officer as labelled as such by the constitution. Acts of corruption include offering gratification to a public official, acceptance

of gift by agent fronting for someone, unlawful enrichment, extortion and other acts deemed to be so by law.

4.6 References and Reading Materials

www.wipo.int

www.mondaq.com.australia

www.legal.un.org

www.ilo.org

www.ecod.net

www.unafec.or.jp

www.u4.no

www.transparency.org

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

Administration of Criminal Justice Act 2015

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it is now mandatory under section 23 of the ICPC for a public officer to who gratification has been given, offered or promised, and any person from whom gratification has been solicited or obtained or from whom an attempt has been made to obtain from to report same to either the nearest office of the ICPC or a police officer.

Section 239 of the Ghana Criminal Code deals specifically on corruption amongst public servants

MODULE 4: ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM

UNIT 1: THE PERSONNEL OF CRIMINAL JUSTICE SYSTEM

1.1 INTRODUCTION: I

In this unit the point to be noted is the personnel of the criminal justice system in Nigeria and related jurisdictions. The unit is devoted to judicial office holders and other court officials without whom the machinery of administration of criminal justice may not function properly.

1.2 Learning Outcome:

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

- i. Identify and understand the judicial officers and their related functions in the jurisdictions.

1.3 THE PERSONNEL OF CRIMINAL JUSTICE SYSTEM

Under the Nigeria legal system, judicial officers have the ultimate responsibility to interpret and apply the provisions of the constitution and other statutes. The personnel of the criminal justice system in Nigeria would be divided into; 1) superior courts and 2) inferior courts. Under the superior courts, we have the judges comprising of the chief justice of the federation (CJN), judges of the Supreme Court, president of the court of appeal, justices of the court of appeal, CJ of the states, judges of the high courts, Grand Kadi of the sharia court of appeal, judges of the customary court of appeal. There are other judges but they have either a severely limited or no criminal jurisdiction while the officials of the magistrate courts include the magistrates. They are the ones who preside over the following courts; a) the juvenile welfare courts, b) the area courts, c) court martials, d) national industrial courts, e) the judicial tribunals, f) magistrate courts etc.

Section 6 of the 1999 Constitution is explicit on the role of the judiciary. The role appears technical, considering the objective nature of the legal analysis and the expertise required of the judicial officer and legal practitioners. The magistrate courts handle nearly 85% of criminal cases. Worthy to note that the law of each state, which create the magistrate courts also determine their grades, powers and jurisdiction, and these may vary from state to state, from jurisdiction to jurisdiction. The jurisdiction of a magistrate court is of summary nature. Thus, the laws creating

certain crimes permit the magistrate to try some indictable offences but there are limitations which vary according to the grades or rank of the magistrate.

Under the Ghana justice criminal system, the court structure and general legal procedures reflect the English method of law. The independent constitution provides for writs of habeas corpus and the independence of the judiciary. Ghana has an adversarial system of criminal justice in which the offender is presumed innocent until proven guilty. The informal criminal justice system of Ghana that has existed in rural towns and villages have survived both colonial administration and post -independence administration, hence today traditional chiefs and elders are allowed to try criminal matters in the rural villages. These village courts may be used by a chief or elder to dispose of felony crimes e.g. robbery, burglary, stealing etc. without drawing a penalty from the government in Accra. The personnel of the criminal justice system are the police, judges and magistrates of the courts of law, the prison guards or officials. What are the functions of the personnel of the criminal justice system in Ghana?

Nevertheless, under the Australia criminal system, in addition to the services provided by the federal government, each state and territory has a constitutional responsibility to administer the criminal justice system. In Australia, the police services, the courts and correctional services make up the criminal justice system. Thus, under this jurisdiction, cases progress in 3 stages- the investigative (police), the adjudicative (courts), and the penal or correctional system and these are the prisons. In India, the criminal justice system, is a legacy of the British system. It has 4 sub-systems, they being the parliament, enforcement, adjudication, and correctional.

The India legal system is a mix of adversarial and accusatorial. The implementation of the criminal justice system in India rests with three institutions – the police, the courts and the prisons. But under the Australian criminal justice system, four major pillars form the system, the community, the law enforcement, the court and the corrections all function like a chain of links unlike the Nigeria criminal justice system that has no chain like structure.

1.4 Self-Assessment Exercise (SAE)

Explain the immunity enjoyed by personnel in the criminal justice system of the various jurisdictions.

1.5 Conclusion:

The criminal justice system includes the agencies and process established by a government to control crime in the country. This include components like the police, courts and the correctional centres.. The criminal justice system can impose penalties on those who violate the established laws. It is hardly recognized that the prisons form part of the Nigeria criminal justice system. The correctional service is a federal agency responsible for the convicted offenders during the period they are incarcerated. The correctional service also hold temporarily suspects who are undergoing prosecution in court. The prisons strike to reform and rehabilitate the offenders/inmates.

In additional to all that have been written, it is important to add that the personnel of the criminal justice system have judicial immunity. When they are acting within their jurisdictions both the judges and the magistrates enjoy complete immunity in respect of acts done, statements made in courts, wrong decisions upon point of law etc. It is worthy to note that a counsel is not liable to his client for negligence in and about the conduct of his/her clients' case save in exceptional circumstances. The administration of criminal justice is by both superior and inferior courts. The Judicial powers of officers of superior are provided in the constitution while those of the officers in the inferior courts are state created by statute.

1.6 References and Reading Materials

www.najrs.gov

www.abs.gov.au

www.bjs.gov

www.justice.gov

www.summit.sfu.ca

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

Administration of Criminal Justice Act 2015

The Constitution of Federal Republic Of Nigeria 1999.

The Constitution of The Republic Of Ghana, 1992.

Kasumu .A. (1997) The Supreme Court Of Nigeria Heinemann, Ibadan

Tumasi .K. Criminal Law In Ghana (Accra) Ghana Publishing Corporation (1985)

1.7 Guide

The personnel of the criminal justice system have judicial immunity. When they are acting within their jurisdictions both the judges and the magistrates enjoy complete immunity in respect of acts done, statements made in courts, wrong decisions upon point of law etc. It is worthy to note that a counsel is not liable to his client for negligence in and about the conduct of his/her clients' case save in exceptional circumstances. State statutory provisions to support your answers.

UNIT 2: THE COURT SYSTEM

2.1 INTRODUCTION:

Justice is the pillar on which the society rests and how the courts and the law enforcement agents dispense it is fundamental. The administration of criminal justice is by both superior and inferior courts. The powers of the judicial officers of the superior courts can be found in the constitution, which also prescribes their qualification, tenure and removal from office. The inferior courts are state created, and the law setting them up also prescribes their powers.

2.2 Learning Outcome:

At the end of the unit, you will be able to:

- i. Enumerate the different levels of court system in the related jurisdictions of study.
- ii. State the powers of the various courts as they function in their respective levels.

2.3 THE COURT SYSTEM

The trial in the Magistrate court is summary. The law creating certain crimes permit the magistrate to try some indictable offences but there are limitations which vary according to the grades or rank of the magistrates as there are different grades of magistrate courts. The grades also vary from one state to another, generally but the procedural rules are largely similar. The grades determine the substantive jurisdiction and powers of individual magistrate courts. The magistrate courts in the 17 Southern States in Nigeria exercise summary jurisdiction in both civil and criminal matters while the 19 States in the Northern Nigeria under the Penal Code only exercise criminal jurisdiction. It is only in the north that the District Court hears civil matters only. In addition to the powers of the magistrate courts, in the southern states, the courts do not refer cases to a higher court for enhanced punishment but the northern states magistrate courts do.

Justice is a three- way traffic. Therefore, in recognition of this, in criminal justice administration, the court or judge ensures justice to the state, justice to the accused and justice to the larger society. What all this amounts to, says Hon. Justice Nnamani JSC “is a general recognition of the role of the judiciary as:

- (a) Defender of the rights which the constitution has guaranteed the citizen (b) an insurance against arbitrariness in the exercise of power
- (c) A vehicle for settlement of disputes whether person to person or/ person and state
- (d) A democratic society
- (e) a guarantee for the maintenance of law and order.

Under the Ghana criminal justice administration, the 1992 constitution classifies the courts into 2 broad categories; the superior courts and lower courts. The superior courts consist of the High courts, the Court of Appeal, and the Supreme Court. Whereas the lower courts comprise the District and the Circuit courts. In India, the judicial system is mainly consisting of 3 types of courts, the Supreme court, the High court and the Subordinate courts.

Worthy to note that the magistrate courts in Ghana assist the circuit courts in disposing of misdemeanor criminal cases and minor civil actions. These courts have limited jurisdictions but

make the judicial system more accessible to the public by providing a means of direct court contact for the average citizen.

Under the Sudanese judicial system, civil justice is administered by the Supreme Court, Court of Appeal and lower courts, while criminal justice is administered by major courts, magistrate courts and local peoples' courts. Before 1983, the Sudanese legal system was based on English Common Law but after 1983, the judicial system is being influenced greatly by Islamic law (sharia). Hence, the judges interpret the law in conformity with Islamic law.

The judiciary of Australia comprises of judges who sit in federal courts and courts of the states and territories of Australia. These courts include the federal court of Australia, the federal Circuit court of Australia, and the Family court of Australia. Federal jurisdiction can also be vested in state courts on some matters within the jurisdiction. In Nigeria, there are regular courts which are also special courts established for particular purposes. Examples are the Coroner courts and the Court Martial. Their powers and functions are contained in the law that established them.

2.4 Self-Assessment Exercise (SAE)

Differentiate the court system in Nigeria from the court system in the following jurisdictions; a) Sudan b) Ghana c) India.

2.5 Conclusion:

We need the courts to interpret and apply the law when parties are involved in dispute. In that way, courts take laws out of dry and dusty law books and make it part of the living fabric of our lives. Courts apply the law to specific controversies brought before them. They resolve disputes between people, companies and units of government. Often, courts are called upon to make pronouncements on the Limitations of government. They protect against abuses by all branches of government. They protect minorities of all types from the majority and protect the rights of the

people who cannot protect themselves. The courts and the protection of the law are open to everybody.

2.6 References and Reading Materials

www.judicial.gov.gh

www.justor.org

www.justice.gov

www.icj.org

www.unodc.org

www.un.org

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

Administration of Criminal Justice Act 2015

The Sudanese Penal Code

The Constitution of Ghana, 1992

The Nigerian Constitution, (as Amended) 1999

The Australian Federal Constitution

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Go through the court system and make the differentiation.

UNIT 3: THE JUDICIARY; THE JUDGES AND MAGISTRATES (the role of the judiciary)

3.1 INTRODUCTION: The judiciary is the branch of governance invested with judicial powers, the system of courts in a country, the body of judges (the bench). It is that branch of government which is intended to interpret, construe and apply the law. Its role is summarized in the study of the unit. In order to eliminate congestion or slow the judicial process, the judiciary ensures that various disputes are solved in relation to their complex nature.

3.2 Learning Outcome:

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

- i State the roles of the judiciary as it applies from jurisdiction to jurisdiction.
- ii Explain other additional roles the judiciary could take up in some jurisdictions other than Nigeria.

3.3 THE JUDICIARY; THE JUDGES AND MAGISTRATES (the role of the judiciary)

Section 6 of the Constitution of the Federal Republic of Nigeria, is explicit on the role of the judiciary. The role appears technical considering the objective nature of the legal analysis and the expectations required of judicial officers and legal practitioners. The major role would be enumerated and compared with the judiciary of other jurisdictions of study. What are the main roles of the judiciary under the Nigerian Constitution? The roles would be summarized as:

- a) Interpretation of statutes; the courts interpret and apply the laws. In that way they serve as a check on the exercise of legislature and executive powers. Hence the judiciary is described as the guardian of the Constitution. In- fact the constitution is what the court says it is. It is worthy to note that in determining and interpreting the statute, the court adopts the passive operation of judicial procedure.
- b) Enforcement of individual fundamental rights; any person who alleges that any of his/her rights has been or likely to be violated is at liberty to apply to any court of law for redress.
- c) Defence and maintenance of the rule of law; the enforcement of the limitation of the constitution and other laws is the peculiar province of the court. Nwabueze in his book described the judiciary...’ as the backbone of constitutionalism’.

- d) Sustaining peace and order; the dispensation of justice which is the task of the courts is the heart and soul of all good governance. Indeed, there is hardly any human society known to recorded history, which does not make justice the absolutely essential condition of order, survival, happiness and good relation among man.
- e) To uphold fundamental human rights; it is for the judiciary not only to maintain the rule of law but to also protect the individual fundamental freedom to do whatever is not forbidden by law.
- f) To determine justice; in the criminal justice administration, the court or judges determine justice to the state, justice to the accused and justice to the larger society. What all these amounts to is a general recognition of the role of the judiciary as defender of rights, insurance against arbitrariness, guarantee for the maintenance of law and order, a vehicle for settlement of disputes and a democratic society.

In Ghana, executive, legislative and judicial powers ultimately resided in the hands of the governor at a time before the separation of legal institutions was first mentioned in the interim constitution promulgated 3 years before independence, in the 1957 constitution. Hence the Ghanaian government therefore seem to prefer the simple colonial solution, whereby the role of the courts is to strengthen state powers, enforce laws and provide social stability, but not to protect the individual from abuses. The courts have official powers where the other branches of government must be reassured that the judges are not trying to embarrass them.

Under the Queensland law, the judiciary is independent from the other 2 branches of government. The independence of the judiciary is seen as a vital safeguard against corruption. The roles of the judiciary could be stated as; conducting admission ceremonies for new legal practitioners, swearing in ceremonies for new judges, valedictory ceremonies for retiring judges, conduct programs of continuing judicial development, assume educative role for law students, ensure that birth, death, and marriage certificates are registered. They also serve as agency for other government services, probate matters etc.

The Indian judiciary administers a common law system in which customs, securities and legislation all codify the law of the land. The role of the judiciary in India as in many other jurisdictions are to decide cases by determining the relevant facts and the relevant laws,

and applying the relevant facts to the relevant law. The Indian judicial system is totally managed and administered by officials of the judicial service unlike in the past when civil service officers were part of the judicial system.

Under the Sudanese judicial system, the Supreme Council of the Judiciary (SCJ) consists of the C.J, as ex-officio, the deputy C.J, the A.G, the President of the Bar Association and the Dean of the faculty of law of Khartoum University. The SCJ is responsible for the planning and general supervision of the judiciary, hence the role of the judiciary is solely played by the SCJ in Sudan.

3.4 Self -Assessment Exercise (SAE)

Discuss in details the role of the judiciary in Nigeria. In comparison with the roles played by the judiciary in Queensland (if any), and that of India judiciary, what do you consider to be the similarities and differences?

3.5 Conclusion:

For the purpose of carrying out its duties and responsibilities, the judiciary also exercises not only constitutional and statutory powers but also the inherent powers and sanction of the court of law, notwithstanding anything to the contrary. In so doing the court is able to conform to the role, profiles into which it had been socialized under the colonial rule. Section 46 of the 1999 CFR of Nigeria seeks to make the attainment of ideal standard of justice a reality.

The judiciary as the branch of government administers justice in accordance to the law. The courts apply the law, and settle disputes and punish law breakers according to the law. Our judicial system is a key aspect of our democratic way of life. It upholds peace, order and good governance.

3.6 References & Further Readings

www.aph.gov.au

www.judicial.gov.gh

www.parliament.gld.gov.au

www.austbar.asn.au

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

Administration of Criminal Justice Act 2015

Constitution of Federal Republic of Nigeria

Republic of Ghana constitution

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Go through the criminal justice system of these jurisdictions particularly their judiciary, pointing out their similarities and differences.

UNIT 4: LEGAL OFFICERS OTHER THAN THE JUDGES AND MAGISTRATES

4.1 INTRODUCTION:

These are the personnel of courts who are not judicial officers. Without them courts may not function. The magistrates, judges of the area courts and other judicial officers are public officers. The statutes or instruments under which the particular courts are established also prescribe the condition of appointment and of removal from office of the judicial /legal officers.

4.2 Learning Outcome:

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

- i Understand those that constitute non- judicial personnel of the court.
- ii State the role of the legal practitioners, the police as they are part of the judicial system in some jurisdictions. The role of the attorney general should be well defined as judicial personnel in some jurisdictions.

4.3 LEGAL OFFICERS OTHER THAN THE JUDGES AND MAGISTRATES

What is the constitutional position on the legal personnel other than the judges and the magistrates of the courts? The constitution of the Federal Republic of Nigeria, 1999 provides that the president may in his discretion, assign to any minister of the government of the federation, responsibility for any business of the government of the federation, including the administration of any department of government as stated in section 148(1). Similarly, a government of a state has powers as provided for in section 193(1) of the constitution of the federation, 1999. The A.G is accordingly assigned in practice the portfolio of the minister or commissioner responsible for the ministry of justice for the federal or of the state. Note that the A.G is a political appointee. Each government appoints its own A.G as the chief law officer of the federation or of the state. He represents the federal government or state in proceedings in which it is specifically mentioned. He is the legal adviser to the government. Section 174 of the constitution of Nigeria, specifies some other duties of the A.G. The AG also enjoys the sole right to prosecute in certain circumstances. He also exercises the powers of nolle- prosequi for purposes of protecting public interest; protect the interest of justice and prevent abuse of legal process. He is expected to exercise the powers objectively. Question: Constitutionally examine the duties of the Attorney General in Nigeria.

The solicitor general is a public officer and subordinate to the A.G, hence their duties are similar.

The director of public prosecution (DPP). He oversees the prosecution of criminal cases on behalf of the federal/state government. He is directly responsible to the A.G. He advises government departments, the police and other legal personnel on important or difficult cases either on application as a matter of law.

The registrar, is responsible for the administrative works of the courts. He can either be a lawyer or a layman.

The chief registrar, who is a lawyer, in some cases may hear and determine interlocutory applications. The registrars are the communication link between the judges, the parties or their counsel. The sheriff and the bailiffs are couriers. They serve court processes and are responsible to the sheriff through the deputy sheriff.

The legal practitioners, are the solicitors, advocates. Under the Nigeria system, solicitor ship and advocacy are combined in some jurisdictions while in others they are separate. We also have the

police. There is a police force in Nigeria. The constitution provides that no other police force may, in law be established for the federation or any state in the federation or state. Section 4 of the police Act, defines the duties of the police.

In Ghana, by virtue of the recent case of **JUDICIAL SERVICE STAFF ASSOCIATION OF GHANA (JUSAG) v A.G & Ors (J1/5/2015) GHASC 63 (23 June 2016)** the court had to determine whether the phrase “all persons serving in the judiciary appearing in the Act 127 (4) of the 1992 Constitution of Ghana applies only to the justices. The court held that it applies to the judges and magistrates to the exclusion of all other judicial service employees.

The Sudanese judiciary remains under control of the government and lawyers and other legal personnel face routine interference in the performance of their professional duties. The new constitution of Sudan states that the judiciary shall be independent but it largely acts in accordance with the government wishes. Lawyers are frequently subject to harassment in advocacy of Fundamental Human Rights and Rule of Law. Judicial personnel are the government security and armed forces that carryout extra judicial duties. Meanwhile, under the Queensland judicial system, the personnel of all the other courts outside the Supreme Court and High Courts are regarded as judicial personnel other than judges and magistrates.

4.4 Self -Assessment Exercise (SAE)

State the legal personnel other than judges and magistrates in the judiciary system in Nigeria and their duties. Differentiate the personnel and their duties from the personnel in Sudan judiciary system.

4.5 Conclusion:

The A.G is the Chief Law Officer of the government. As a minister of the federal government or commissioner of a state; he may be assigned responsibility for any business of government. He heads the ministry of justice, prosecutes and appears for the federal or state as appropriate. But worthy to note is that the police prosecute majority of criminal cases.

The A.G, the DPP, the Legal Practitioner, the Registrar, the police and the correctional services are part of the personnel of the Nigeria criminal justice system apart from the judges and magistrates. They all play important statutory and complementary roles in the administration of criminal justice.

4.6 References and Reading Material

www.researchnet.net

www.ghali.org

www.zimlil.org, www.judicial.or.gh.

www.glc.gov.gh.

www.icj.org.

www.seekvision.com.au

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

Administration of Criminal Justice Act 2015

THE POLICE ACT

THE NIGERIA CONSTITUTION 1999 (as amended)

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Other personnel in the judiciary include;

- the Attorney General; Section 174 of the constitution of Nigeria, specifies some other duties of the A.G. The AG also enjoys the sole right to prosecute in certain circumstances. He also exercises the powers of nolle- prosequi for purposes of protecting public interest; protect the interest of justice and prevent abuse of legal process. He is expected to exercise the powers

objectively. The solicitor general is a public officer and subordinate to the A.G, hence their duties are similar.

-The director of public prosecution (DPP). He oversees the prosecution of criminal cases on behalf of the federal/state government. He is directly responsible to the A.G. He advises government departments, the police and other legal personnel on important or difficult cases either on application as a matter of law.

-The registrar, is responsible for the administrative works of the courts. He can either be a lawyer or a layman.

-The chief registrar, who is a lawyer, in some cases may hear and determine interlocutory applications. The registrars are the communication link between the judges, the parties or their counsel. The sheriff and the bailiffs are couriers. They serve court processes and are responsible to the sheriff through the deputy sheriff.

-The legal practitioners, are the solicitors, advocates. Under the Nigeria system, solicitor ship and advocacy are combined in some jurisdictions while in others they are separate. We also have the police. There is a police force in Nigeria. The constitution provides that no other police force may, in law be established for the federation or any state in the federation or state. Section 4 of the police Act, defines the duties of the police.

The Sudanese judiciary remains under control of the government and lawyers and other legal personnel face routine interference in the performance of their professional duties. The new constitution of Sudan states that the judiciary shall be independent but it largely acts in accordance with the government wishes. Lawyers are frequently subject to harassment in advocacy of Fundamental Human Rights and Rule of Law. Judicial personnel are the government security and armed forces that carryout extra judicial duties.

MODULE 5: JUVENILE JUSTICE ADMINISTRATION

UNIT 1: ADMINISTRATION OF JUVENILE CRIMINAL JUSTICE

1.1 INTRODUCTION:

In the determination of criminal justice, adult offenders are treated differently from offending children and young person. In our study of the administration of juvenile criminal cases, we would look at the position of the law on how the young adults and children should be treated in criminal cases.

1.2 Learning Outcome:

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

- i. Identify who the law refers to as juveniles under the jurisdiction under study.
- ii. Discuss in details the administration of the juvenile criminal justices in reference to all applicable legislations as they vary from jurisdiction to jurisdiction.

1.3 ADMINISTRATION OF JUVENILE CRIMINAL JUSTICE

Defining the term, a child, we would say he/she is a person under the age of 14 years. While a young person/adult means a person, who has attained the age of 14 years and is under the age of 17 years. Under the Street Trading Offences Act, a young female is a girl between the ages of 14 and 16 years. The Child Right Act defines a young person as a person who has attained the age of 14 years but has not attained the age of 18. See also section 465 of the ACJA. The term juvenile is a generic term embracing a child and a young person. The court may presume the age of a person brought before it from the evidence available at the time when the issue of age is at stake. Hence, where a statute demands that the age of a person must be strictly proved, no presumption by court will avail. It must be strictly proved. Examples of cases requiring a strict proof of the age of the juvenile are; -

- a) Age of victims of sexual offences
- b) A child whose written statement is tendered in evidence.

Worthy to note that criminal responsibility means liability to punishment. But a person under the age of 7 years is not criminally responsible for any act or omission. (See section 30 of the NCC) Also a person under the age of 12 years is not criminally responsible for an act or omission. Unless it is proved that at the time of doing the act or making the omission, he had capacity to know that he ought not to do the act or make the omission.

A male person under the age of 12 years is presumed to be incapable of having carnal knowledge. The younger the child is, the stronger must be the evidence of capacity to know that he ought not to do the act or make the omission. This can be proved by strong evidence of mischievous discretion. Meanwhile when an adult is been prosecuted for an offence and previous conviction was raised, whether he/she was under 12, would be disregarded.

The Juvenile Justice Act in Ghana was enacted in 2003. It outlines most aspects of the juvenile justice system of Ghana and also establishes the Junior and Senior Correctional Centres. Though many aspects of the Act have gaps, for the purpose of the Act, a juvenile is a person under the age of 18 who is in conflict with the law. Secondly, a juvenile shall be dealt with in a manner which is different from an adult, except under exceptional circumstances under section 17 of the Act. According to Ghana Constitution section 29 was consolidated under the Children's Act 1918, by virtue of which a child is defined as a human being below the age of 18 making it compliant with the Convention of the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Are there any difference between the Child Right Act of Nigeria and the Juvenile Justice Act of Ghana?

Under the Queensland, the criminal law relating to children is governed by an Act of Parliament called the Juvenile Justice Act 1992. According to the law, a child is a person who has not yet attained 17 years of age. The Act commenced operation in 1993 and it also provides for young persons aged 10-17 years who commit or who are alleged to have committed offences. Other legislations that interfere with the law are the Criminal Code 1893, Children Court Act 1992, Young Offenders Act 1987.

Under the India Juvenile Justice Act, a juvenile means a person who is a young teenager, adolescent or underage. In other words, juvenile means children who have not reached the age of adults in the sense that they are still childish or immature. The word child or juvenile are interchangeably used. Note that the India legislation came up with a new Act which is The Juvenile

Justice (CARE & PROTECTION of CHILDREN) Act 2000. This Act sets out the basic provisions for the proper and fair

1.4 Self-Assessment Exercise (SAE)

As a student of Comparative criminal law, Critique the juvenile criminal justice administration in Nigeria in comparison to another jurisdiction studied.

1,5 Conclusion:

The Children and Young Persons Act has provided guidelines and procedures for treating the delinquency of children and young persons. Different laws define child or young person differently. It is an irrebuttable presumption of law that a person under the age of 7 in Nigeria cannot be criminally liable. One who is 7 but under 12 is not liable for crimes he/she commits unless there is evidence of mischievous discretion. But a child or young person maybe arrested in exceptional circumstances. Those circumstances and the power to detain can be found in the Child Right Act 2015.

1.6 References & Further Readings:

[www.plment qld.gov.au](http://www.plment.qld.gov.au) ,

www.ccc.qld.gov.au ,

www.law.jrank.org ,

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

Administration of Criminal Justice Act 2015

Child Right Act 2015

Mame Akikra Nyantakyn, 12 November 2014, Rethinking Juvenile Justice in Ghana. (Research Paper)

United Nations Organization, 1979, Right of a Child.

Ghana Juvenile Justice Act 2003

UNIT 2: JUVENILE JUSTICE COURT SYSTEM/WELFARE COURTS PROCEDURES

2.1 INTRODUCTION:

The children court may be an existing court of session, that is dealing with child specific laws or special court which is set up for the purpose of dealing with crimes under the Juvenile Justice Act. The act of necessity mandates the setting up of Juvenile Justice Courts and the Welfare Courts/Committees in different jurisdictions.

2.2 Learning Outcome:

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

- i. Get an in-depth knowledge and ability in identifying the special group of children and young person.
- ii. Discuss the court procedures in juvenile criminal matters and the welfare courts, their duties and roles in juvenile matters.
- iii. Compare adult and juvenile justice court procedures in Nigeria and other jurisdictions of study.

2.3 JUVENILE JUSTICE COURT SYSTEM/WELFARE COURTS PROCEDURES

The term juvenile is a generic term embracing a child and young person. Where juvenile is arrested with or without a warrant, he must be brought immediately before a magistrate court. If the juvenile cannot be brought before a magistrate court, the police officer in immediate charge for the time being, of the police station to which the juvenile is brought shall enquire into the case forthwith and shall release the juvenile unless the charge is homicide, or the police officer has reason to believe that the release of the juvenile would defeat the ends of justice, etc. The juvenile court is a court of summary jurisdiction. It shall not sit in a room where a court other than a juvenile court is held.

Note that if a juvenile court and any other court are to be held in one room, the juvenile court session shall not sit within one hour before or after the sitting of the other court. Persons allowed to be present in a juvenile court proceeding are- the officers of the court, parties to the case and persons who are directly involved, persons specially authorized, newspaper reporters, court messenger/clerk. More so, in a juvenile court proceeding, where a no prima facie case has been made out, the matter ends. Conversely, where a prima facie case has been established, the delinquent and his/her witnesses are heard. The juvenile may give evidence or make a statement, which may be an unsworn statement. In addition, a juvenile offender may be committed to trial for an indictable offence if;

- a) the court considers that the juvenile is charged jointly with an adult
- b) in the interest of justice and
- c) the court considers it necessary to commit both to trial.

The Juvenile Welfare Court are also magistrate courts, as one of the functions of the magistrate courts is to sit as juvenile welfare court. The juvenile welfare courts are of summary jurisdiction; also, they are established under the Children & Young Persons Act 1913 -1943.

The juvenile court is constituted by a Magistrate and two Assessors, one of whom must be a woman. In some states in Nigeria, the Chief Judge appoints the Assessors. The function of the juvenile welfare court includes a) the treatment of juvenile delinquents other than those charged with homicide,

- b) application in respect of children and young person/adults who need care or protection, c) beyond parental control,
- d) facing complaints of trauma and
- e) lastly dealing with application of adoption of children where the law so provides.

In Ghana, the criminal code does not have a particular focus on juvenile. As a result, the Juvenile Justice Act 2003, was created to better reflect the different needs of young offenders. In the court procedures in juvenile courts in Ghana, the Act have gaps and there are certain areas which are not currently been followed by the courts and police officials in the justice of juveniles. The Department of State Welfare (DSW) is statutorily mandated by the Children's Act to oversee the administration of Juvenile Justice and the protection of children in general. The DSW also manages the remand homes and junior correctional centres.

Prior to the India Juvenile Criminal Justice Act 2015, there existed the Children Act of 1960 that aimed to give effects to the international responses towards the issue of juvenile justice by which they provided a uniform policy and protected the interest of the juvenile. The Juvenile Justice Act 1986 which repealed the earlier Children Act 1960 aim at giving effect to the guidelines contained in the standard minimum rules for the administration of Juvenile Justice adopted by the United Nations Countries in November 1985. The 2000 Juvenile Justice Act has been repealed twice - 2006 & 2011. The case of DELHI GANG RAPE forced the law to be stringent. Hence cases and procedures of a juvenile are to be handled tightly. The Act was replaced by the Juvenile Justice (CARE & PROTECTION) Act 2015. Young offenders are to be tried in courts but corrected in all the best possible ways. They should not be punished by the courts. Trials for children in conflict with law should be based on non-penal treatment, hence the 2015 Act focused in a juvenile friendly approach of adjudication and disposition of matters. (Sections 2(12) (13). What is the current Act in place catering for the need of children I n India?

See the India case of **DEOK, NANDAN DAYMA v STATE OF UTTAR PRADESH (1997) 10 SCC 525**, were the court held that entry in the school register, mentioning the date of birth of student is admissible evidence in determining the age of juvenile at the commission of offence or to show that the offender was not a juvenile after all. So also, is the case of **BHANGWAN v STATE OF BLHAR (2000) AIR SC 748** pertaining to court procedures of juveniles. Note also

that the Nigerian Child Right Act makes it mandatory that the courts must first consider the antecedent of the delinquent. This includes reports of his/her history, home life, school and associates etc. the order which the court may make include; a) dismissal, b) fine, c) probation or supervision, d) discharge, e) caning, f) imprisonment, g) admonition, h) binding over, i) repatriation, j) committal (or corrective) orders (or mandate). Some states qualify these court orders as “corrective”, “committal” or “mandate”.

2.4 Self-Assessment Exercise (SAE)

Distinguish between the treatment of an adult offender and a juvenile from the point of contact with the police to the disposal of the case under the Nigerian and India juvenile system (using both statutory and case law provisions)

2.5 Conclusion:

Children & young person/adults are a special group of people who need care and protection. Children are different from young persons by definition. In both cases, their delinquencies are subject to the Child Right Act and the ACJA, unlike the adults who are subject to the Criminal Code or Penal Code amongst others. The juvenile faces two (2) classes of court treatment; 1) For care and protection, 2) For juvenile delinquencies.

Different laws from different jurisdictions define the procedures for the court proceedings for juvenile matters. Thus, it is an irrebuttable presumption of law that a person under the age of 7 in Nigeria cannot be criminally liable since he or she is seen as an immature person under the Nigerian law. There is a special procedure for dealing with delinquents as their court procedure does not follow the normal order of court procedures.

2.6 References and Reading Materials

www.researchgate.net,

www.jtighana.org

www.ajol.info

www.qld.gov.au

www.districts.ecourts.gov

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

Administration of Criminal Justice Act 2015

UNIT 3: JUVENILE JUSTICE AND STANDARDS (Procedure: Arrest to custody of Juvenile)

3.1 INTRODUCTION:

Early intervention prevents the onset of delinquent behavior and supports the development of a youth's assets and resilience. While many past approaches focus on remediating visible and/or longstanding disruptive behavior, research has shown that prevention and early intervention are more effective. This unit shows steps from arrest to the custody of a juvenile delinquent in various jurisdictions and the applicable legislations.

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

- i. Explain through the laws when an offender is a juvenile

ii. Explain the role of the police and the several steps that follows the arrest of the juvenile.

3.3 JUVENILE JUSTICE AND STANDARDS

When a juvenile is arrested with or without a warrant, such a juvenile must be brought before a magistrate court immediately. If the juvenile cannot be brought before the magistrate court, the police officer in charge, for the time being, the police station which the juvenile is brought, shall inquire into the case forthwith and shall release the juvenile unless the charge is a homicide case or other grave crimes, in which case the juvenile in his/her on interest has to be further detained, pending when he would be removed from association of reputed criminals. Other reasons are where the police officer has reason to believe that the release of the juvenile would defeat the cause of justice and especially where there is the likelihood that he/she would fail to appear. However, if the juvenile has been arrested with a warrant, his/her parent or guardian must enter into recognizance (with or without surety) to secure the appearance at the hearing of both the juvenile and the parent/guardian.

Where the juvenile is not released, arrangement must be made for such a juvenile to be taken into the care of the local authority. The officer to whom the juvenile is brought shall thus detain him/her in a place of detention as provided by the law. But a juvenile would not be detained where (a) It is impracticable to do so, (b) The juvenile is of unruly or depraved character, (c) By reason of his/her state of health and mental or bodily condition. The police officer has the power to detain a child/young person whom he reasonably believes need care or protection or if such detention would prevent the child or young person from receiving education the option of detention would not be used.

Where the juvenile is taken to the magistrate court for adjudication and the delinquency preferred against the child or young person has been proved or admitted, and the reports of his antecedents, allocutus or plea for leniency have been given due weight, the court shall make an order, such as supervisory order, care order, hospital, guardianship order or passing a sentence. The court considers a number of factors as earlier stated. Note that there are exceptional cases where juvenile may appear before adult court in such extreme cases;

1. When he/she is charged jointly with an adult.
2. He/she is a principal offender aided and abetted by an adult.

3. He/she is found to be juvenile during proceedings.
4. When an application for remand or bail is made.
5. When he/she aids and abets an adult.
6. When he/she and the adult are charged at the same time with different offences arising out of the same or connected facts.

Under the Ghana Law, when a juvenile is arrested, the first step for the police is to try to determine his/her age. If there is reason to believe that the accused is under age of 18, then the accused must be dealt with differently than adult offenders. The juvenile is not to be kept in the same cell with an adult offender and must be taken to a remand home within 48 hours. A remand custody order is written by the police and given to the social workers at the remand home. This remand warrant can only be valid for 48 hours. The juvenile must be brought to court within that time and a new warrant must be issued. The Juvenile Justice Act mandates that a juvenile can only stay at the police station for a maximum of 48 hours after which they must be charged to court.

According to Section 21 of the Juvenile Justice Act, bail should be granted to juvenile as much as possible. Such bail request should be made to the court at first appearance and where it is declined, the juvenile or his guardian may apply to the High Court. Meanwhile, under the Queensland Law, the Youth Justice Act 1992 took effect, 1st sept 1993 as the Juvenile Justice Act 1992 but had major changes in 1996, 2002, 2010 and 2014. The Act provides a framework for dealing with the Young person in contact with the Youth Justice System. It outlined procedures and manners of dealing with specific issues e.g. procedures for police to respond to the young person, the powers of the police with respect to bail, arrest, questioning, removal orders etc., diversionary options such as caution, youth justice conferencing, how courts deal with youth persons, range of sentencing options, how to manage the young person on such orders- reprimand, fine, probation, detention, etc. All these are enumerated in the Act. Notably, from February 2018, all 17 years old in the Queensland law would be treated as an adult in offences. These changes were effected at the passing of the Youth Justice & Other Legislation (inclusion of 17 years old person) Amendment Act of the Queensland Parliament 2016.

Under the Juvenile Justice Act in India, the maximum tenure of punishment that can be given to the juvenile offender is 3 years and this punishment is valid for heinous crimes only. The

procedures for justice for juvenile are in Nine major decision points, 1. Arrest, 2. Referral to court, 3. Diversion, 4. Secure detention, 5. Judicial waiver to adult criminal court, 6. Case petitioning, 7. Delinquency finding/adjudication, 8. Probation, 9. Residential placement including confinement in a secure correctional facility. The maxim 'DOLI INCAPAX' is taken into consideration in India as a provision of the Juvenile Justice Act in line with Article 40(3) of the United Nations (Convention on Rights of Child).

3.4 Self-Assessment Exercise (SAE)

Do a comparative analysis of the steps involved from the point of arrest, questioning, to the custody level of a juvenile offender in Nigerian and Ghanaian juvenile system. Also state the various orders which a court could make in a juvenile trial.

3.5 Conclusion:

The Juvenile Justice Administration in Nigeria is characterized by minimum use of detention ranging from a period of not more than 3months of pre-trial detention, to a maximum of 3years post trial detention. The Nigeria Police Force bears the burden of ensuring that delinquent children do not associate with adults charged with or convicted of any offence other than an offence with which the child or Young Person is jointly charged. This should be the order while the delinquent is in custody and is being conveyed to or from court. It is important to note that the police have a Juvenile Welfare Branch for prevention of youthful offences and treatment of juvenile delinquents. This branch is made up mostly of women police officers.

3.6 References and Reading Materials

www.courts.qld.gov.au,

www.qld.gov.au,

www.youthjustice.qld.gov.au,

www.legalaid.qld.gov.au,

www.mondaq.com,

Youth Justice Bench Book-Queensland Courts,2020.

Sickmund,M. & Puzzanchera, C. (2014) Juvenile Offenders & Victims 2014, National Report.

Juvenile Justice Act Ghana

Child Right Act 2015

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

Administration of Criminal Justice Act 2015

UNIT 4: PENAL THEORIES AND DISPOSITIONAL METHODS.

4.1 Introduction:

This unit is a continuation of the criminal justice administration. With what we have learnt in other units, about the arrest, detention, the juvenile welfare courts system and procedures in courts till when orders are made, we would be looking into what penal theories are, and the different dispositional methods of juvenile offences/charges. Thus, in this unit we shall also learn what orders the juvenile welfare courts could make and how the justice is administered in conclusion of a juvenile case.

4.2 Learning Outcome:

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

- i. Explain what penal theories are.
- ii. Explain the different penal theories of the various jurisdictions of study in comparison to the Nigerian jurisdiction.

4.3 PENAL THEORIES AND DISPOSITIONAL METHODS

Penal theory and dispositional methods could be described as attitudes and ways towards the various purposes and functions of punishments. Some of these theories are;

- a) Justice – this theory argues that the purpose of punishment is to ensure that justice is done and seen to be done in all circumstance. The problem with this theory is that it is nearly impossible to find that any two offenders, offences and /or circumstances are in all points the same.
- b) Protection of the society – the exponent of this principle has argued that the aim of punishment is to protect the society from social disintegration and disorganization. Such protection of juveniles is attained through prevention or reduction of crimes and criminality among the juveniles.
- c) Retribution – this penal theory is that of an eye for an eye, a tooth for a tooth. A juvenile offence is punished by an imprisonment for less than 6months, misdemeanor may attract 2 years while a felony may earn three or more years of imprisonment. Offences are punished according to its seriousness or gravity.

d) Deterrence – this theory argues that the purpose of punishment is to deter; 1) the offender (specific deterrence) 2) the general public (general deterrence). Capital punishment for example, completely deters the offender. He/she will not be available to commit further crimes.

e) Rehabilitation, Reformation and Restoration. More so, in dispositional methods, the courts consider a number of factors before making any order or passing a sentence. The juvenile welfare court make such orders as; dismissal, fine, probation, or supervision, discharge, caning, imprisonment, admonition, binding over, repatriation, committal (or corrective orders (or mandate). The court can make orders committing the delinquent to 1) the care of a fit person, 2) an approved school, 3) the custody of a place of detention provided by the Child Right Act. 4) and any other method.

Under the Queensland juvenile criminal justice system, there is an adoption of a justice model which is not to rule out or diminish the importance of rehabilitative measures employed by the juvenile courts. Disapproval of, and punishment for the wrongful act is probably the single – most important rehabilitative measure available to the court. Additional counseling, education and the like are easily incorporated into an accountability punishment disposition for delinquents. In this jurisdiction, the juvenile justice models are more.

Meanwhile under Ghana Act, child's punishment is mandated by the Children's Act 1998 (sections 27 - 32). Though they are supposed to handle cases of all types relating to juveniles, they have a specific mandate to assist in criminal matters. Child penal methods are meant to exist in each country's district and are financed by the District Assembly. Nevertheless, under the Juvenile Justice Act, the entire case cannot go beyond 6 months before a dispositional method is adopted.

Under the Indian Act, the penal provisions and related judgement are provided for in section 82 & 83 of the Indian Penal Code 1860. It states specifically about the exemption from prosecution of juveniles. The Supreme Court in the case of **KAKOO v STATE OF HIMACHAL PRADESH (1999)77DLT 181** reduced the punishment of a 13 years old boy who raped a 2 years old girl. The court took into consideration section 83 & 84 of the IPC that juvenile offences cannot be treated as that of adults. Thus, it is very well settled law that while dealing with juveniles the courts should consider reformatory and humanitarian approaches. But in the case of **HEERALAL v STATE OF BIHAR (1998) SCC, DEL 879**, a child threatened an adult that he will chop him to pieces and

subsequently the child stabbed a person till his death. He was sentenced by the trial court with a reasoning that the child was matured to know what he was doing.

4.4 Self-Assessment Exercise (SAE)

Discuss some of the considerations the court takes into consideration when dealing with juveniles under the India Penal Code.

4.5 Conclusion:

The increasing rates of juvenile crimes are a very worrisome issue and need to be focused upon. Although governments have brought out various legislations and rules to stop the incidents of juvenile crimes the laws on juvenile in various jurisdictions are not creating a deterrent effect on the juveniles and thus, the results are not fruitful and legislative intent is not being accomplished. Imprisonment is the most serious penal sanction that is frequently imposed in the modern state and a critical example of the conflict and complexity involved in the protection of the individual dignity during punishment. The correctional service administers an institution where the totality of the offenders' life is under its control and restraint. A rational penal theory rests upon the answer to the question what should be the ultimate end of corrections. Whatever end or ends the criminal law/charge should serve and determine also the character of the treatment process (whether in juvenile charges or adult cases).

4.6 References & Reading Materials:

www.nap.edu ,

www.jstor.org ,

www.ojp.gov ,

www.study.com ,

www.youthjustice.qld.gov.au ,

www.researchgate.net ,

www.ojp.gov.

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

Administration of Criminal Justice Act 2015

4.7 Guide

The Supreme Court in the case of **KAKOO v STATE OF HMACHAL PRADESH (1999)77DLT 181** reduced the punishment of a 13 years old boy who raped a 2 years old girl. The court took into consideration section 83 & 84 of the IPC that juvenile offences cannot be treated as that of adults. Thus, it is very well settled law that while dealing with juveniles the courts should consider reformative and humanitarian approaches.

A perusal of sections 83 & 84 of the Indian Penal Code will give more details.