PARTIES TO AN OFFENCE

Introduction

The parties to an offence are persons who took part in the commission of an offence. The term ‘parties to an offence’ connotes an instance where two or more persons form a common intention to carry out a criminal act. The degree of their participation might vary but the law would hold them jointly and severally liable for the commission of the crime. The law regards all of them as partners in the crime. For the prosecution to be successful, the element of common intention of the parties charged must be established. Section 8 of the Criminal Code provides that if a group of people with a common intention to carry out an unlawful purpose, carry out such purpose, they shall be liable for any offence that results from the carrying out of the unlawful purpose. S.9 of the Criminal Code provides that if a person counsels a crime to another, who by following his counsel commits a crime, they shall both be held liable for the result of the action. In the commission of an offence, a number of persons may be involved and the level of their involvement may not be the same. The law, on that premise, will have to decide the extent of one’s criminal liability. According to the criminal code, two classes of parties have been identified. They are the principal offenders and the accessory after fact (secondary offenders). The provisions of the Code which deals substantially with parties to offences are sections 7, 8, 9 and 10.

Principal Offender

Within the meaning of a principal offender, four categories have been highlighted by section 7 of the criminal code. That section provides thus: "when an offence is committed, each of the following person is deemed to have taken part in committing the offence and to be guilty of an offence, and may be charged with actually committing it, that is to say;

a. every person who actually does the act or makes the omission which constitute an offence;
b. every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
c. every person who aids another person in committing the offence;
d. any person who counsels or procures any other person to commit the offence.

Classes of Principal Offenders

The principal offender is the person who commits the actual offence. For instance, the principal offender is the one who stabs the victim in the wounding offence, penetrates the non-consenting victim in the rape offence, damages a person's property in the case of criminal damage or causes death of the victim in the offence of homicide, the person who slaps another thereby committing a criminal assault. It also has to do with the man who set fire to a house thereby committing the offence of arson. The man, who makes the omission, is for example, the family head who fails to provide the necessaries of life of a child under the age of fourteen contrary to section 301 of the Criminal Code. **Thus, a principal**

offender is the person whose act is the immediate cause of the physical injury suffered by the victim.

In English law, according to the provisions of the Accessories and Abettors Act 1861, all the parties to a crime would be tried, indicted and punished in the same way. This was changed in the English Criminal Act of 1967, where principal parties were known as the "principals in the first degree" and secondary parties were known as "principals in the second degree". It should however be noted that by the provision of Section 7 of the Criminal Code, those that aid, counsel or procure a crime would still be regarded as liable for the commission of such crime. In **BASHAYA VS STATE (1998) 5 NWLR PT 550**, the deceased, while on a journey, was attacked by a group of men, armed with sticks and other weapons, and was killed. The person that delivered the fatal blow was considered inconsequential and they were all convicted for murder. It should be noted that a person might not commit an offence but would still be regarded as a principal offender if he commits such offence through an "Innocent Agent". In the case of **R V STRINGER,** an employer who dictated a fraudulent letter to his secretary was regarded as the principal offender. The secretary who had no idea that the letter was for fraudulent purposes was regarded as an "innocent agent". Also, an innocent agent can also be regarded as a person who doesn't have capacity or is insane. In the case of **R VS MICHAEL (1840) VOL 9 AC,** a mother who intended to kill her baby told her nurse, who had no idea it

was poison, to administer a poisonous substance to her baby. The nurse didn't and kept the drug on a shelf. Subsequently, a child saw the drug and gave the baby, causing its death. It was held that the child was an innocent agent and the mother as the principal agent. The case would not have been different had the nurse administered the poison.

Presence at the Scene of Crime

It is settled law that mere presence at the scene of the crime without more does not make the man a party to an offence. In the cases of **AZUMAH V. R (10, 50) 13 WACA 87**, the court said "mere presence is not enough, a person must be purposely facilitating or aiding the commission of a crime by his presence before he can be regarded as an accomplice". Thus, a man can only be liable as a party if he is present and intentionally does an act which, in law, can be regarded as a facilitation of the crime. An interesting issue which calls for an examination is what will be the situation where all the parties are caught and at the trial, some are acquitted, by the court. In order to properly examine the above, it is suitable to take a look at the case of **R. V. OKAGBUE (1958) 13 FSC 27**,[1] the facts of which is that three accused persons were found not guilty by the court, the third accused person was convicted for aiding them. The Federal Supreme Court allowed the appeal of the third accused person, who was convicted by the court below. The appellate court relied on the earlier English case of **R. V.**

[1] In Iyaro v. The State (1988) 2 SCNJ 102., (supra), it seemed, that the Supreme Court had overruled R. v. Okagbue (1958) 3 FSC for the Supreme Court stated that all that is required is proof that the offence had actually been committed and that it would not be a condition precedent for conviction for, aiding, that the person or persons who did the act must be convicted.

ROWLEY (1948) 1 ALL ER 570. In the said English case (Rowley), the court of Criminal Appeal said that “It would be absurd to say that he (appellant) assisted and comforted persons, who he knew, committed a felony”. The law as expounded above illustrates the fact that the **aider can only be convicted if the named principal is also convicted but if the principal is not named, the aider cannot be convicted on the basis that the principal is not known and is said to be at large.**

Offences Committed in Prosecution of Common Purpose

Section 8 of the Criminal Code provides that when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence. See **ALAGBA & ORG. V. THE KING (1950) 19NLR 124**, and R. v. Atanyi (1955) 15 WACA 34.

AKINKUNMI V. STATE (1987) NWLR (PT. 52)608

In Akinwunmi’s case, the meaning of Section 8 was more poignantly pointed out. Here, some of the appellants formed a common intention to steal goats and indeed did steal goats. At the Police check point, the deceased policeman got into the appellant's vehicle to inspect it, and suddenly, the 2nd appellant drove off with the Policemen still on board. The policeman's pleas to be dropped were ignored. Instead he was later found at the corner with head injuries from which he died. The question

was, **was there a common intention?** There was evidence that the 3rd and 4th appellants actually pleaded with the 2nd appellant to stop the vehicle and drop the policeman. *Eso,* J.S.C., who wrote the lead judgment, identified the ingredients that must be present under section 8 before a conviction is possible. These are:

(1) There must be two or more persons.
(2) They must form a common intention.
(3) The common intention must be towards prosecuting an unlawful purpose in conjunction with one another.
(4) An offence must be committed in the process.
(5) The offence must be of such a nature that its commission was a probable consequence of the prosecution of such purpose.

After reviewing the evidence, the learned Justice concluded that in the instant case, **there was a common intention to prosecute with one another an act of stealing goats.** That satisfied (1) to (3) of the analysis. The offence that was committed, that of murder was not in prosecution of the common intention to steal a goat but to escape lawful arrest. What then was the common intention to escape in the manner of the action of the 2nd appellant. There has been no suggestion that either of the 3rd or 4th appellant knew the 2nd appellant would speed off with a police investigator in the vehicle. **There is no evidence to show that either appellant sanctioned the act of the 2nd appellant before, during or after the act. There is no suggestion that the common intention to steal a goat must necessarily include escaping in the manner of the action of the 2nd appellant that resulted in the deceased being found with broken skull.** The court therefore held, “I

am not satisfied that the murder of the deceased was a probable consequence of stealing a goat. The fifth ingredient has not been met …”

Proof of Common Intention

Common intention is to be distinguished from common object: it may be inferred from circumstance disclosed in the evidence, and need not be express agreement, but a presumption of a common intention should not be too readily applied see **R. V. OFFOR AND OFFOR (1955) 15 WACA 4; MOHAN V. R [1967] 2 AC 187**. In the case above two persons were charged jointly with murder, it was established that each had struck the deceased a violent blow with intent, at least to cause grievous bodily harm and also established which blow had, infact, caused death, but the evidence was open to the construction that the intention of each accused was suddenly formed and formed independently of each other, it was held that the judge’s failure to give himself a proper direction expressly as to the common intention invalidated the conviction of the appellant who struck the blow which did not cause death and a conviction against that appellant of attempted murder was substituted for one of murder.

Section 7(d) of the Criminal Code provides for any person who counsels or procures any other person to commit the offence. Here, apart from

proof of intention on the part of the procurer and counsellor, words alone will be adequate for criminal liability. The words of counselling or procuring must involve some positive act of encouragement to those who actually committed the offence. The law is that, tacit acquiescence or ordinary words amounting to a mere permission, are not enough to amount to counselling. See **IDIKA V. R (1959) 4 FSC 106.** Again if an accused person has counselled or procured the commission of an offence, it does not matter if he was not physically present at the commission of the offence by his confederates and that it was committed on a day different from the one he contemplated. The question to be asked and answered here is what happens where the police set a trap for animals. The court however accepts the strategy, whereby the police set a trap for criminals as a way of arresting them and facilitating the administration of criminal law. Under the circumstance, the initiative to commit the crime must come from the criminal and the police following that initiative, sets up the trap in order to ensnare the criminal and then tame the tide of crime to the society.

Secondary Offender (Accessory after the Fact)

Section 10 of the Criminal code provides for the above and states that any person who receives or assists another, who is to, his knowledge guilty of an offence, in order to enable him to escape punishment is said to become an accessory after the fact to that offence. The punishment attached to an accessory is less in terms of gravity to that attached to the actual offender. For example, while the principal offender is liable to full

punishment for the actual or real offences, the punishment of an accessory after the fact is normally lesser, also in terms of gravity. The distinction is that if the substantive offence committed is a felony, two years maximum imprisonment will be imposed on the accessory but if the substantive offence is a misdemeanour or a simple offence, the punishment attached to an accessory is one half (1½) of the punishment for the substantive offence. The actus reus for the offence of an accessory is the receipt or the assistance given to the suspect after he has allegedly committed an offence and the offender now runs away for protection. A monetary reception of the suspect by the accessory will be enough in the eyes of the law provided by accessory knows that; the person received or assisted committed the offence. Different people might be involved in the commission of an offence. Those who aid, counsel or procure the offence are regarded as secondary offenders. In the case of **R V BRYCE (2004) VOL 2 CACD**, the court held that in charging secondary offenders, phrases like aid, abet and procure should be used. If the law says “aid or abet” it means to assist or facilitate in the commission of a crime; **UBAHAR VS STATE (2003) 6 NWLR PT 1000**. According to the case of **AMOO VS THE STATE (1954) 4 SC** if a statute uses the term “counsel” in relation to a secondary offence, it means to advise in the commission of the crime. In the case of **IDIKA VS STATE (1975) Q.B**, it was stated that if the statute uses the word “procure” it means to invite or persuade.

It should be noted that the mere presence of the accused at the scene of the crime does not state a case for him having aided or encouraged the commission of the crime. The prosecution has to prove that the accused intended to give encouragement or encouraged the commission of the crime. In the case of **AKANNI AND ORS V THE STATE** the accused stood and watched as a woman burnt to death in a house. In absence of evidence of them aiding or committing the crime, it was held that they were not guilty. Also, in the case of **R VS CLARKSON (1971) VOL 55 CA REPORTS,** two of the defendant stumbled into a room in which a girl was being raped. They neither joined in the act nor attempt to stop it. The court held that inasmuch as they didn't join in the act, they were not liable for any offence.

Limitation to Liability as an Accessory

Section 10 of the Criminal Code applies, to all manner of offences however criminalized and whether contained in the code or any other enactments. A closer look at the second limb of section 10 of the criminal code shows that a wife is not an accessory if she assists her husband to escape punishment and the husband is not similarly liable for assisting his wife because of emotions such as love, fear or compassion may galvanize or rouse either of them into such help or assistance. In institutionalizing this limitation, the code therein in section singled out a husband and wife of a Christian marriage for favour or protection and discriminates against other forms of marriages however well contracted and well intentioned.

OFFENCES AGAINST THE PERSON

Introduction

The term ‘offences against the person’ refers to a broad array of criminal offenses which usually involve bodily harm, the threat of bodily harm, or other actions committed against the will of an individual. Usually, these crimes are committed by direct physical harm or force being applied to another person. The subject of offences against the person are usually discussed under three headings, (a) fatal offences, (b) sexual offences, (c) non-fatal non-sexual offences. Generally offence against the person include, homicide (murder, manslaughter, other statutory homicide offences); assault and battery, deprivation of liberty, sexual offences (rape), domestic violence, and other offences against persons.

Homicide

Homicide, generally refers to the killing of one human being by another human being. The Black’s Law Dictionary defines homicide as the killing of one person by another and criminal homicide as the act of purposely, knowingly, recklessly or negligently causing the death of another human being.[2]

Classification of Homicide

[2] Brayan A. Garner, *Black’s Law Dictionary*, 8th ed., West Publishing co., St. Paul Minesota, 2004, p.751

There is lawful homicide and criminal homicide. Lawful homicide occurs where the life of a human being is taken, but no crime is committed. Criminal homicide, which is the focus of this segment, occurs where the life of a human being is taken unlawfully. Thus, generally, the classifications of homicide fall into two general categories: Criminal homicide (murder and manslaughter) and lawful homicide.

Murder

The offence of murder is the most grievous kind of homicide. It is simply defined as the unlawful premeditated killing of one human being by another. Murder, according to Sir Edward Coke, "is when a man of sound memory, and of the age of discretion, unlawfully killeth within any country of the realm any reasonable creature *in rerum natura* under the kings peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded, or hurt, etc. die of the wound or hurt, etc. within a year and a day of the same." The Criminal Code also gives an all-encompassing definition in *Section 316* which defines murder as follows:

> *Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say-*
> *(1) if the offender intends to cause the death of the person killed, or that of someother person;*
> *(2) if the offender intends to do to the person killed or to some other person some grievous harm;*
> *(3) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of*

such a nature as to be likely to endanger human life;
(4) if the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;
(5) if death is caused by administering any stupefying or over powering things for either of the purposes last aforesaid;
(6) if death is caused by wilfully stopping the breath of any person for either of such purposes, is guilty of murder. In the second case it is immaterial that the offender did not intend to hurt the particular person who is killed. In the third case it is immaterial that the offender did not intend to hurt any person. In the three last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

Ingredients of Murder

In order to establish that unlawful homicide amount to murder the following ingredients need to be present as pointed out in section 316 of the Criminal Code.

Intent to kill

In murder charges, the prosecutor is required to prove an intent to kill i.e. a specific intent to end a human life. 'The term intent to kill', in many jurisdiction is referred to as malice aforethought, and it does not have to be actually expressed by the killer. It can be implied by his or her actions. Hence in the English case of **HYAM V. *D.P.P*,** where the

accused jilted by her lover, out of jealousy set her new lover's house on fire burning her two children to death, and pleading that her only intention was to frighten her out of the neighbourhood, it was held that an intention to cause death or grievous bodily harm is established if it is proved that the accused deliberately and intentionally did an act knowing that it was probable that it would result in the death of or grievous bodily harm to the victim, even though he did not desire the result. In this case a question was raised as to the nature of the intention which must be proved in order to establish the crime of murder. Lord Hailson thought that

> ….if a man, in full knowledge of the danger involved, and without lawful excuse, deliberately does that which exposes a victim to the risk of the probable grievous bodily harm (in the sense explained) or death, and the victim dies, the perpetrator of the crime is guilty of murder and not manslaughter to the same extent as if he had actually intended the consequences to follow, and irrespective of whether he wishes it.

Intension to cause grievous bodily harm

Grievous harm as mentioned under the first ingredient means any harm which amounts to a maim or dangerous harm endangering life or which

permanently injures health or which is likely so to injure health or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, member, or sense. In R. V. NTAH, it was made clear that if the intention of the accused is not to cause grievous harm but so results to it, such an accused should not be convicted of murder under S. 316 (2) of the Criminal Code. That is if A intentionally cuts off B's hand, he has done grievious harm to B and if death results e.g. from loss of blood or infection, this is murder. However where A merely intends to hit B slightly with the flat surface of his matchet and by accident he inflicts some grievious harm which causes B's death, this is not murder but may be manslaughter.

Death caused by act done in the prosecution of an unlawful purpose.

Section 316 (3) says that:

If death is caused by means of an act done in the prosecution of an unlawful purpose which act is of such nature as to be likely to endanger human life, the person who caused the act is similarly guilty of murder. In order to answer the question whether "the act" and "the unlawful purpose" as contained above are the same thing, the case of R. v. Nichols is instructive. Here the Circuit Court held that since the act which caused death, i.e. setting fire to the hotel, was also the unlawful purpose, section 302 (2) of Queensland Criminal Code, which is similar to S. 316 of our Criminal Code, was inapplicable. E.g. supposing A intending to rape B unknowingly administers an overdose of a sleeping

drug which results in B not waking up again. You find out that A never had the intention of killing B with an overdose. What caused the death was the act of A with the unlawful purpose of raping through the act of drugging B to rape B and drugging someone endangers life. So for one to be guilty of murder what should be proved is that the act not the purpose caused the death of the deceased. In R v. Gould, some persons intending to procure an abortion introduced a mixture of glycerin dettol and surf into the private part of the lady. In convicting the appellant, court held that the unlawful purpose was, having abortion, then the dangerous act was the insertion of the noxious substance to achieve abortion. The difference between subsection (3) and the other subsection (1) and (2) is that in subsection (3), there is no intention to cause death or grievous harm but to prosecute an unlawful purpose.

Causation of Death

The Criminal Code provides that any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that person, except in the cases explicitly provided. Hence, where John shoots Anthony and kills him, John has caused Anthony's death directly, but where John procures Cletus as an agent to kill Anthony for him, he has caused Anthony's death indirectly. A person is equally deemed to have killed another if by threats or intimidation or by deceit he causes that other person to do an act or make an omission which results in his death. For instance, where Tony pointing a loaded gun at Ginus orders Ginus to jump out of the window and he so does breaking

his neck and resulting in his death, Tony is deemed to have caused the death of Ginus by threat. However, where Tony merely threatens or intimidates Ginus without requiring him to do any particular act or omission which result in his death, such as informing him on telephone that he sent four gunmen to kill him and Ginus drinks deadly posing to avoid death by them, some authors argue that such an action or omission by the Ginus must be a reasonably foreseeable consequence of the threat or intimidation offered by Tony before he can be held to have caused Ginus' death.

Again, one whose conduct accelerates the death of another person, who at the time of such conduct is laboring under some disorder or disease arising from another cause, is deemed to have killed that other person. Hence, where Olivia administers poison to Augustine who becomes ill and would have died in two hours' time but before the two hours expire, Joseph cuts off Augustine's head, it would be Joseph and not Olivia who is responsible for causing Augustine's death. However, a person who inflicts a grievous wound on another person is not liable for the subsequent death of that other person where such death results neither from the wound nor from medical treatment but the cause of death is only accidentally or remotely connected with the wound. Hence if John shoots Peter and he was rushed to the hospital for an operation and while Peter was waiting in the hospital for the operation, fire breaks out and Peter is burnt to death in the fire, John would not be responsible for causing his death because the fire did not result from anything done by John.

NOTE THE FOLLOWING:

a. Whenever an offender intends to do to the person killed or to some other person some grievous harm, it is immaterial that the offender did not intend to hurt the particular person who is killed, for the killing amounts to murder all the same.
b. Also where death is caused by means of an act done in the prosecution of an unlawful purpose and which is of such nature as to be likely to endanger human life, it is immaterial that the offender did not intend to hurt any person.
c. In the same way, once death is caused by an offender who intends to do grievous harm, by an offender administering any stupefying or over-powering things or by wilfully stopping the breath of any person, all for the purpose of facilitating the commission of an offence or for the purpose of facilitating the flight of the offender who has committed or attempted to commit such offence, then it is immaterial that the offender did not intend to cause death or did not know that death was likely to result. The offence of murder is complete and the offender guilty.

In the English case of Hyam v. D.P.P, where the accused jilted by her lover, out of jealousy set her new lover's house on fire burning her two children to death, and pleading that her only intention was to frighten her out of the neighbourhood, it was held that an intention to cause death or grievous bodily harm is established if it is proved that the accused deliberately and intentionally did an act knowing that it was

probable that it would result in the death of or grievous bodily harm to the victim, even though he did not desire the result.

The Burden of Proving the Cause of Death

The burden of proving the cause of death is always on the prosecution. By virtue of section 221 of the Penal Code, the ingredients of the offence of culpable homicide punishable with death are:

(a) That the deceased had died;

(b) That the death of the deceased was caused by the accused; and

(c) That the act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence.

The proof of the above ingredients is proof beyond reasonable doubt, which does not mean proof beyond the shadow of doubt

TAKE NOTE OF THE FOLLOWING:

a. On a charge of murder, the fact that the corpse is not found is immaterial because death is a fact which can be proved by circumstantial evidence. Hence, in the case of **JUA V. THE STATE,** where the deceased body was not found, the court held that it may still convict an accused person of murder even though the deceased's body cannot be found, provided there is sufficient compelling circumstantial evidence to lead to the inference that the man had been killed. In the instant case, the circumstantial

evidence of death as born out of the records was enough for the conviction of the appellant, for it was the appellant who led the police to the scene of the crime where the cloth the deceased wore on the fateful day was recovered, together with four human teeth and strands of human hair, and the appellant did not assert or prove that the deceased was alive. In other words, it is not compulsory that there must be *corpus delicti* before an accused can be convicted, for where there is strong circumstantial evidence and where the prosecution succeeded in fixing the accused as the killer of the deceased, the only thing to consider is whether there is positive evidence that the victim is dead.

b. To show that the accused did an act or made an omission which could have caused the death alone is not a sufficient evidence. Hence, in the case of R. v. Oledima, where the accused administered an injection to the deceased who later died as a result of an infection, the court held that because it was not shown how the infection was caused, the cause of death equally was not proved, as the death could have been caused by the injection or by germs on the body of the deceased.

Manslaughter

Manslaughter is defined as any unlawful killing which does not amount to murder, and is usually classified as either voluntary or involuntary.

Manslaughter is voluntary when a person intentionally kills another but the offence is reduced to manslaughter because of provocation or some other statutory grounds. For provocation to reduce murder to manslaughter, it must be such as to cause a reasonable person to lose his self-control, and that the accused did in fact lose his self-control; again, the act which causes death must be done in the heat of passion caused by sudden provocation and before there is time for passion to cool.

On the other hand, involuntary manslaughter covers all other cases in which there is no intention to kill or do grievous harm, or where death is caused as a result of unlawful conduct likely to cause harm but not grievous harm or death, and where death results from gross negligence in the cause of doing a lawful or unlawful act. In other words, involuntary manslaughter occurs where death is caused under such circumstances that the accused did not intend to kill and did not foresee death as a probable consequence of his conduct but there is at the same time some blameworthiness in his conduct, or where death is the result of an unlawful act that involves the risk of harm to another.

a. Negligence by members of the medical profession is an important aspect of manslaughter by negligence, for the law imposes a duty upon any person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, to have reasonable skill and to use reasonable care in doing so. Hence, a medical doctor who causes the death of a patient due to gross

negligence and incompetence amounting to a disregard for life and safety will be guilty of manslaughter.

b. The driver of a car who caused death of a child when his car without any apparent reason mounted a pavement while driving with a defective steering and useless brakes was held to be guilty of manslaughter for he showed a reckless disregard for life and safety of others.

Other Statutory Criminal Homicide Offences

Infanticide

Infanticide (or infant homicide) is the intentional killing of infants. This is contained under Section 327 (a) of the Criminal Code Act. Infanticide is both an offence in its own right and a partial defence to the charge of murder. Only a biological mother who kills her own child within 12 months of the birth can be charged with infanticide or rely on it as a defence. The death can be by either act or omission. Thus infanticide can apply where a woman:

- by any wilful act or omission;
- causes the death of her child who is aged under 12 months;
- but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child;
- or by reason of the effect of lactation caused by the birth of the child then;

- notwithstanding that the circumstances were such that, but for this Act, the offence would have amounted to murder;
- she shall be guilty of an offence of infanticide; and
- may for such an offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.
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Killing Unborn Child

Under section 328, any person who, when a woman is about to be delivered of a child prevent the child from being alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a felony, and is liable to imprisonment for life.

Concealing the Birth of Children

Under section 329, any person who, when a woman is delivered of a child, endeavours, by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at or after, its birth is guilty of a misdemeanor, and is liable to imprisonment for two years.

Suicide

Section 326 and 327 prohibits attempt to commit suicide and the act of aiding it. Thus it is unlawful for one to attempt to kill himself or aid another person to kill himself. Hence, the Criminal Code provides that any person who procures another to kill himself, or counsels another to kill himself and thereby induces him to do so, or aids another in killing himself, is guilty of a felony and is liable to imprisonment for life. It is

equally a misdemeanour punishable with imprisonment for one year for any person to attempt to commit suicide.

Assault and Battery

Assault is causing a person reasonable apprehension of the infliction of force or immediate harm upon him, battery is the intentional and direct application of force to another person. For instance, if Mr. A hits Mr. B with a stick, Mr. A has committed Battery but if Mr. A threatens to hit Mr. B with a stick and Mr. B believes that Mr. A will carry out his threat that will be an Assault. Though assault and battery are used hand in hand, they are different e.g. to throw water at a person is an assault but if any drops fall upon him it is battery; throwing a stone at someone is an assault, because the person expects the stone will cause him harm but when the stone touches the person, it becomes battery. It does not matter if any harm is done to the person per se. For battery to exist, there must be a voluntary act by the person applying the force intended to bring about the contact. Therefore I do not commit battery against you if X seizes my hand and uses it like a club – here X alone is liable because I did not intend to hit you with my hand in the first place. It is immaterial if the person accused of battery did not intend to cause serious harm as there will be liability for the injury even though it was neither desired nor even foreseen. However, where there is consent, there is no battery. Assault requires no contact because its essence is conduct which leads a person to expect the application of force. In majority of cases, an assault precedes a battery. Though, there can be battery without an assault, for

instance when a person is hit from behind. It should however be noted that under Nigerian law, assault and battery are treated as one and the same. Section 252 of the Criminal Code Act defines an assault as:

> " a person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent, if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, in such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault".

It is also worthy to note that by virtue of Section 351 of the Criminal Code Act, any person who unlawfully assaults another is guilty of a misdemeanor, and is liable, if no greater punishment is provided, to imprisonment for one year. Section 351 of the Criminal Code Act prescribe punishment for assault thus, "Any person who unlawfully assaults another is guilty of a misdemeanor, and is liable to ,if no greater punishment is provided ,to imprisonment for one year. Section 352 pronounces any assault with intent to commit unnatural offence a felony and punishes it with fourteen years imprisonment. Section 353 pronounces any unlawful and indecent assault on males a felony and punishes it with three years. Section 354 criminalizes any assault on persons protecting the wrecks of a ship and stipulates an imprisonment

of up to seven years for them. Section 355 criminalizes any assault occasioning harm and punishes it with a three- year jail term.

Deprivation of Liberty

Under section 365 of the Criminal Code Act, deprivation of liberty occurs where any person unlawfully confines or detains another in any place against his will, or otherwise unlawfully deprives another of his personal liberty. Such offender is guilty of a misdemeanor, and is liable to imprisonment for two years. Section 364 specifically prohibits kidnapping, stating that any person who unlawfully imprisons any person, and takes him out of Nigeria, without his consent; or unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release of from discovering to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned, is guilty of a felony, and is liable to imprisonment for ten years.

Elements of Deprivation of Liberty

There are three elements of deprivation of liberty which the Nigerian courts have upheld over time and which a person claiming deprivation must prove by credible evidence:

a. A total restraint on the movement of a person. This is usually not difficult to prove unless where the restraint is not a total restraint but a partial one.

b. The restraint must have been without consent or justification. Where the plaintiff consents to being restrained, he cannot longer complain about being restrained. However, care should be exercised in knowing when consent to be restrained is revoked so that any further restraint after revocation of consent will be unlawful and therefore an unlawful detention.

c. There was no way out of the restraint or restrained area. Please note that where an alternative way out of the restrained area exists, the claim for unlawful detention cannot be sustained if the plaintiff fails to take it. However, the plaintiff will be justified for not taking the alternative way out of the restraint if doing so will endanger him life or limb.

The above elements are co-extensive and all must be proved. Where the plaintiff fails in any of them, the action for unlawful detention will fail.

Sexual Offences

Sexual Offences encompasses a variety of crimes that include, but are not limited to, rape, sexual offences against children, sodomy, abduction of a woman or girl with intent to rape, assault with intent to rape etc. Under Section 357 and 358 of the Criminal Code Act, Cap “C38”, Laws of

the Federation, 2004, **r**ape is defined, as having unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false act, or, in case of a married woman, be personating her husband. This offence is punishable by imprisonment for life, with or without caning. Section 224 of the Criminal Code Act also provides that: any person who –

> 1) By threats or intimidation of any kind procures a woman or girl to have unlawful carnal connection with a man, either in Nigeria or elsewhere; or
> 2) By any false pretence procures a woman or girl to have unlawful carnal connection with a man either in Nigeria or elsewhere; or
> 3) Administer to a woman or girl, or causes a woman or girl to take, any drug or other thing with intent to stupefy or overpower her in order to enable any man, whether a particular man or not, to have unlawful carnal knowledge of her; Is guilty of a misdemeanor, and is liable to imprisonment for two years.

Rape is so despicable such that it warranted a notable pronouncement in the recently decided case of Edwin Ezigbo v. The State (2012) 16 NWLR Pt 1326 where My Lord Justice Muhammed J.S.C had this to say;

> The facts revealed in this appeal are sordid and can lead to a conclusion that a man can turn into a barbaric animal. When the “criminal” was alleged to have committed the offence of rape, he was 32years. His two young victims: Ogechi Kelechi, 8 years old and Chioma, 6 years, were, by all standard underage. What did the appellant want to get out of these underage girls. Perhaps, the appellant forgot that by nature, children, generally, are like animals. They follow anyone who offers them food. That was why the appellant, tactfully, induced the young girls with ice cream and zobo drinks in order to translate

> his hidden criminal intention to reality, damning the consequences. Honestly, for an adult man like the appellant to have carnal knowledge of underage girls such as the appellant's victims is very callous and animalistic. It is against the laws of all human beings and it is against God and the State. Such small girls and indeed all females of whatever age need to be protected against callous acts of criminally likeminded people of the appellant's class. I wish the punishment was heavy so as to serve as deterrent

Note that rape can be categorized as, acquaintance rape, command rape, date rape, incestuous rape, fraud rape, underage rape, statutory rape, gang rape etc.

GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

Introduction

The idea of criminal responsibility is based on human free will to make a choice to do or omit to do an act. Section 1 of the Nigerian Criminal Code defines criminal responsibility as liability to punishment for an offence. This is sequel to a conviction by a court of competent jurisdiction. When courts use the term “responsibility”, they are generally referring to responsibility in law. For instance, children under a certain age or persons who are legally regarded as insane are not responsible for their actions in criminal law. In as much as criminal responsibility varies in different jurisdictions and can be changed by statute, responsibility is a legal and not a medical or psychological concept. Therefore, in order to be relieved of criminal responsibility, the offender is required to provide a legal defence to show that he is not personally at fault. In Nigeria Responsibility is the essence of criminal law. That is why at the foundation of every criminal liability lies the principle of individual autonomy which means that each human being should be treated as responsible for his own behaviour. Therefore, for a suspect to be criminally responsible for his act or omission, he must have a mental knowledge of his actions. That is, the intent (mens rea) must correspond with the physical act (actus reus). At the same time, every person is presumed to be sane until the contrary is proved68 and so the law deems it unfair to blame a person for action if he could not control it or if he

lacked substantial capacity which affected his responsibility. In H.M Advocate v Ritchie[3] , Lord Murray attempted a brief catalogue of conditions that affect a person's responsibility:

> The abnormal condition may be permanent or passing. It may be induced by various causes. It may be congenital; it may be induced by illness, fever, palsy, accident, injury or shock; all these may induce a condition in which, in popular language, a man is not fully responsible for his action.

In Nigerian criminal law, the popular defence available to persons afflicted with mental disease which puts them in a condition that totally deprives them of effective control of their actions is the defence of insanity. This is provided for in Section 28 of the Criminal Code as follows:

> A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission, he is in such a state of mental disease or natural mental infirmity as to deprive him of the

[3] 69 (1926) JC 45 at p.49

> capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission.

It should be noted that this provision originated from the M’naughten Rules governing insanity worldwide. The rules state that: in order to acquit an insane person, it must be clearly proved that at the time the act occurred, the accused person was labouring under such a defect of reason caused by a disease of the mind that he did not know the nature and quality of the act he committed or even if he knows, he did not know it was wrong. Definitely, it makes sense to differentiate insanity from a genetic disorder. Insanity is synonymous with mental illness or psychosis which excuses a person from criminal responsibility and that is why such person is kept in an asylum after acquittal. Literarily. Criminal responsibility means: Liability to suffer or pay compensation in certain eventualities. Statutorily, the Criminal code defines the term to mean liability to punishment. The Criminal Code has laid down certain circumstances in which a person who breaks the law and ordinarily ought to be punished should not legally be held accountable. The reason may be that the person lack the mental capacity, he is excused by law, his conduct constituting the offence is justifiable or by reason of his status, position or office or other grounds. Following defences are open to any person charged with an offence; legal accountability.

Defences to Criminal Liability

In criminal law, all acts or omissions which amount to crimes are not punished at all times. There are situations in which due to the circumstances of the case, some defences can be raised to free the accused from criminal liability.

The Defence of De Minimis Non Curat Lex

The latin maxim *de minimis non curat lex* literally interprets to mean that the law does not concern itself with trifles. As a defence in criminal law, where an offence is so trivial, it can beused as a defence. The statutory backing for this defence is not in the Criminal Code. It is however in S. 58 of the Penal Code which provides: Nothing is an offence by reason that it causes or that it is intended to cause or that it is likely to cause an injury if that injury is so slight that no person of ordinary sense and temper would complain of the injury. As a result, if someone is charged to court for stealing a pen worth 20 Naira, this defence can be utilised to escape liability.

The Defence of Mistake

The defence of mistake applies to a mistake of fact. This is embodied under S.25 of the Criminal Code. It provides that a person who acts or refuses to do an act under a reasonable but mistaken belief in a state of affairs, is not criminally responsible. However this would apply if had the mistaken facts being true, the act would not be criminal. Before the

defence of mistake can be successful, the following must be fulfilled: It must be a mistake of fact and not of law. The mistake must be honest and reasonable. There would be no greater liability if the mistaken facts were found to be true.

Mistake of Fact not of Law

According to the provision of S. 22 of the Criminal Code, Ignorance of the law is not an excuse to criminal liability unless the law creating the offence states knowledge of the law to be an element of the offence. This is encapsulated in the maxim ignoratia juris non excusat .In the case of Sherras vs De. Rutzen the accused was held not to be liable under S. 16(1) of the Licensing Act when he served beer to a police officer who he thought was off duty since he wasn't wearing his uniform. The above case is a mistake of fact not of law since he thought the officer was off duty.

There would be no Greater Liability if the Mistaken Facts were True

The Defence of a Bonafide Claim of Right

This defence is contained under the provision of S. 23 of the Criminal Code. This section provides that a person would not be criminally liable for an act or omission done in relation to property in the exercise of an honest claim of right over the property and without an intention to defraud. The scope of property in this provision has been defined by the provision of S. 1 of the Criminal Code which defines a property as everything animate or inanimate capable of being the subject of ownership. This covers all kinds of property, including land. In the case

of R vs Vega (1938) 40 WACA , the accused was prosecuted for stealing some corrugated iron sheets which were lying around. The accused raised the defence that he took the sheets on the honest belief that they had been abandoned since they were lying there for a long time. The court acceded to this defence.

Judicial Officers and the Execution of the Law

A judicial officer has been defined in S. 1 of the Criminal Code to include the Justices of the Supreme Court, Court of Appeal, Federal High Court, State High Court and an administrative officer engaged in a judicial act, proceeding or inquiry. According to the provision of S. 31 of the Criminal Code , except as provided by the Criminal Code, a judicial officer is not criminally responsible for acts done or omitted to be done by him in exercise of judicial functions. I n the case of Anderson v. Gorrie (1894) 1 QB 668 it was held that no criminal action could be brought against a judge of a superior court in respect of an act done by him in his judicial capacity even if there is evidence that he acted maliciously. Also, S. 32 (1) provides that a person would not be criminally liable for any act or omission that is done in execution of the provisions of the law. However, according to the provision of S. 32 (4) of the Criminal Code, this would not apply to acts or omission which would result in death or grievous bodily harm.

Defence of Insanity

Insanity under the Nigerian Law Nigerian law presumes every person to be sane until the contrary is proved. This assertion is contained under Sections 27 and 43 of the criminal and Penal Codes respectively. Since the two codes serve the Nigerian criminal justice system, we shall discuss them separately. See section 28. It is obvious from the above passage that Section 28 of the Criminal Code provides for the defence of insanity if at the time of doing the act or omission a person is in such a state of mental disease or natural mental infirmity21 as to deprive him of his capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission. See Ezediufu v the State (2001)17 NWLR (Pt.741) 82.

The second arm of Section 28 addresses situations of insane delusion. The section states that a person whose mind, at the time of his doing or omitting to do the act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the first arm of the section, is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusion to believe to exist. The effect of this section is that an accused person affected by delusion can only be relieved of criminal responsibility. Section 28 of the Criminal Code was given judicial recognition by the Supreme Court of Nigeria in the case of Edoho V. State24. In this case, the Appellant was charged with murder of one Akanimo Jacob Edoho contrary to the provision of Section 319(1) of the Criminal Code. At the trial, the Appellant relied on the defence of

insanity and alleged that he stabbed the deceased with a dagger because he suffered temporary insanity through witchcraft. He stated that the incident was beyond his control as he was then under the spell of witchcraft. At the end of the trial, the trial Judge rejected the Appellant`s plea of insanity and convicted him as charged. Aggrieved by his conviction, the Appellant appealed to the Court of Appeal which affirmed his conviction. He further appealed to the Supreme Court which Court said the onus of proving insanity is on the accused person who should make available evidence to satisfy the Court that he was insane at the time he committed the offence because by Section 27 of the Criminal Code there is a presumption that every person is of sound mind, at any time which covers the period in question, until the contrary is proved and that in the absence of such proof the Supreme Court affirmed the decision of the Court of Appeal.

Defence of Provocation

One of the defences open to an accused which may exculpate or mitigate him from criminal liability is provocation. The law recognizes that human beings are prone to losing their control under extreme rage and should they react violently, justice demands that account be taken of this natural tendency of theirs in inflicting punishment. The defence of provocation is available to an accused as a mitigating defence rather than an absolute one because much as the law recognizes human weakness, it does not condone human ferocity. In law, provocation is when a person is considered to have committed a criminal act partly because of a

preceding set of events that might cause a reasonable person to lose self-control. This makes them less morally culpable than if the act was premeditated (pre-planned) and done out of pure malice (malice aforethought). It "affects the quality of the actor's state of mind as an indicator of moral blameworthiness". Provocation is often a mitigating factor in sentencing. It rarely serves as a legal defense, meaning it does not stop the defendant from being guilty of the crime. It may however, lead to a lesser punishment. In some common law legal systems, provocation is a "partial defence" for murder charges, which can result in the offense being classified as the lesser offense of manslaughter, specifically voluntary manslaughter. Provocation is distinct from self-defense in that self-defense is a legal defense, and refers to a justifiable action to protect oneself from imminent violence.

CORPORATE CRIMINAL LIABILITY IN NIGERIA

Introduction

The increasingly relevant role that corporations assume in all aspects of modern life is correspondingly attended by their increased participation in criminal activities that result in loss of lives and properties. However, there is a conundrum created by the artificiality of corporations as they

do not easily lend themselves to existing criminal laws designed with human actors in mind. The current Nigerian law on corporate criminal liability is disquietingly deficient. The extant law only provides room for civil recompense in the event of tragedies such as the recent petrol tankers explosions in different parts of Nigeria which claimed hundreds of lives.

The Nigerian criminal jurisprudence recognizes the offence of involuntary manslaughter which may result from an unlawful act (constructive) manslaughter, or gross negligence, manslaughter which results from a breach of a duty of care. Criminal liability for the former involves an unlawful act in itself which results in death, while liability for the latter arises where the defendant's conduct though lawful, is carried out in such a way that it is regarded as grossly negligent and therefore a crime. **It is this second aspect of involuntary manslaughter that companies are often liable for, that raises concerns. In circumstances where a company's conduct could be regarded as grossly negligent and therefore a crime, the present law in Nigeria requires the invocation of the provisions of the general criminal law so as to prove either the offence of manslaughter (under the Criminal Procedure Act) or homicide (under the Criminal Procedure Code).**

However, corporate criminal liability intersects both company law and criminal law, and problems have traditionally arisen in imposing liability

on an artificial legal construct such as a company. Mainly, the challenge is that legal concepts such as *actus reus*, *mens rea* and causation, designed with natural actors in mind, do not easily lend themselves to inanimate entities such as companies which are distinct and separate from their owners. As a former British Colony, the Nigerian legal system is modeled after the English legal system; hence the foregoing common law position represents the law in Nigeria. Apart from the criminal code and penal code, there are other enacted statutes that have made provisions for corporate criminal liability in Nigeria. Some include Food and Drug Act Cap 150 LFN 1990; Standard Organization of Nigerian Act Cap S9 LFN 2004; Federal Environmental Protection Agency Act Cap 131 LFN 1990; Oil in Navigable Waters Act Cap O6 LFN 2004, etc. Accordingly, corporations could be held criminally liable in Nigeria. Thus in R v Zik Press (1947) a corporation was found guilty of an offence of contravening Section 51(1) (c) of the Nigeria's Criminal Code. Similarly, in Mandilas & Karaberis v. COP (1958) a corporation was convicted of the offence of stealing by conversion under sections 390 and 383 of the Nigerian Criminal Code. While in A.G Eastern Region v. Amalgamated Press of Nigeria Ltd (1956-57) the preliminary objection raised by the defense counsel on the ground that an offence could not be committed by a corporation in the absence of *men rea* was overruled by the court. However, there are certain 'human crimes' to which a corporation has not been held criminally liable in Nigeria. For example, a corporation could not be charged with the offences of personal violence or with offences for which the only punishment is imprisonment. See F.R.N. V.

Thompson & Ors, 1984). Nevertheless, the cases of R v. Corry Bros Ltd (1927) and Granite Construction Company v. Superior Court (1927) have both established the fact that corporations could be held liable of manslaughter.

Corporate Crime and Liability

The primary function and object of a company incorporated for the purposes of business is to make profit for the shareholders. In a bid to maximize profit, companies often commit all kinds of crime, murder inclusive. Unfortunately, although the company is an independent entity, it functions through the instrumentality of human beings. The usual question that arises when a crime is committed is, who takes the responsibility and how? The question that is even more crucial is, how and when can it be said that the company is criminally liable? The current approach in our jurisdiction is to hold the company vicariously liable. In other words, the company can only be liable if it can be shown that an alter ego or a principal officer who can bind the company committed the offence in the ordinary course of its business. The interesting postulations of Lord Denning LJ also capture this position very vividly thus:

> A company may in many ways be likened to a human body; it has a brain and nerve center which controls what it does. It also has hands which hold the tools and act in accordance with directions from

> the center. Some of the people in the company are mere servants and agents who are nothing more than hands to work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does.[4]

This undoubted legal position, which is that the law clothes a company with personality such that its rights and duties are distinct from that of its members, was judicially applied for the first time by the House of Lord in the case of Salomon v Salomon and Co Ltd.[5] This principle of law has also been applied in the case of Macaura v Northern Assurance Co. Ltd., as well as the Nigerian case of Banque De L'Afrique Occidentale v HabuIliasu and Savage.[6] In this case, the defendant was a buying agent of a groundnut marketing board in the Northern Region of Nigeria until the business was sold to "Iliasu & Co. Ltd" which he formed for that very purpose. It however happened that the new company became indebted to the plaintiff and an action was brought against the incorporator, Iliasu and not the company. The trial court held that the company and the company owner were two different persons and as a result, the plaintiff's action failed. By implication, it is right to assert that the separate identity and personality of a company duly incorporated is now settled law both statutorily and judicially.

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[4] *Bolton (Engineering) Co Ltd v Graham and Sons* (1957) I QB 159.
[5] [1897] AC 22 at 51.
[6] Cited in *Re Northern Nigerian Marketing Board* (Garnishee) (1964) NMLR 30.

Nigeria's Approach to Corporate Criminal Liability.

In Nigeria, for an act to be a crime, it must be stipulated under a written Law. There are thus no such things as Common Law crimes under Nigerian law. This position finds credence in the 1999 Constitution of the Federal Republic of Nigeria which provides that:

> Subject to the provisions of this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined in a written Law, and the penalty therefore is prescribed in the written Law; and in this subsection, a written Law refers to an Act of the National Assembly or the Law of a State, or any subsidiary Legislation, or instrument under the provision of a law.[7]

It follows that the issue of corporate crime and liability in Nigeria must be looked at from the perspective of statutes. To this end, it should be noted that the principal criminal law legislation, viz, the Criminal and Penal Codes define 'person' in words that make corporations also liable for the offences provided therein. The Criminal Code Act,[8] as well as the Penal Code, has no definition for person but the Interpretation Act

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[7] 17 Section 36(12) Constitution of Federal Republic of Nigeria, 1999 Cap C.23 LFN, 2004.

[8] Criminal Code Act Cap. C38, LFN, 2004

defines it to include any body of persons corporate or unincorporated. It can conveniently be said that corporations, like natural persons, are generally capable of liability for all the offences contained in these criminal law legislation.

Unfortunately, these legislation do not make any provisions on how corporations are to be held liable for these offences. It is here that the problem of corporate criminal liability in Nigeria actually lies. The center thrust of the problem is that mensrea is a relevant and very important element of most offences provided for in the said legislation. The Criminal Code for instance provides that:

> Subject to the express provision of this code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission, which occurs independently of the exercise of his will or for an event which occurs by accident.[9]

Although the Penal Code does not have a similar provision, a look at Part II of the Code which deals generally with criminal responsibility makes it clear that the Code does not generally allow criminal responsibility without the mind being at fault. This is achieved by the use of such words like, “intention”, “knowledge”, “accident”, “dishonestly”, “fraudulently” et cetera. **It follows that for a company to be held liable for most of**

[9] Section 24 Criminal Code Act, Cap. C38, LFN, 2004.

the offences contained in the two principal criminal law legislation in Nigeria, there is the need for the establishment of the guilty mind of the accused company. As stated before, both Codes failed to state or give an idea of how this very crucial task is to be done. Hence, establishing the basis for the liability of companies for offences requiring the establishment of mens rea in Nigeria has been very chaotic.

It seems that it has been more convenient or easier to hold companies liable for violation of statutory liabilities as created by varied legislation in Nigeria than holding them liable for basic offences as contained in the Code like stealing, manslaughter, and many others. In the first class of offences above, mens rea need not be attributed to the company while in the later class of offences, mens rea has to be established. It is submitted that the process of doing so remains inconsistent and evasive. It is for this reason that Vukor-Quarshi observed that; ‘‘...the law governing the criminal liability of corporations for crime is a veritable jungle for conjecture, uncertainty and conflict.”[10] Okonkwo and Naish are of the view that “the limit of corporate criminal liability under Nigerian Law awaits clear definition.”[11]

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[10] G.N Vukor-Quarshi: “*Corporate Criminal Liability:* An Additional Chapter to the Criminal and Penal Code of Nigeria” *The Calabar Law Journal* (TCL), Vol. 5, pp. 72, 73 (1988).

[11] Okonkwo & Naish; *Criminal Law in Nigeria*, 2nd ed (Ibadan: Spectrum Books Limited, 1983), p. 127.