PUL 302: CRIMINAL LAW

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THE CRIME OF MURDER

What Is Homicide?

Homicide/murder means the killing of a person in a manner not justified by the law. In the olden days, a man was penalised for murder regardless of whether or not the death that resulted from his action or omission was intentional or not. The offence of homicide is unique due to the fact that it deals with the violation of the sanctity of human life.

This is moreso as the law pursuant to **S.319** of the **Criminal Code** prescribes the death penalty as punishment for homicide. This is based on the principle of fair deserts as a theory of punishment.

To determine unlawful killing, **S.306 of the Criminal Code** provides that a killing is unlawful if it not authorised, justified or excused by law. By implication, this means that there are some killings that can be regarded as lawful. Thus, in a situation in which a hangman hangs a condemned person or a police man shoots a fleeing robber suspect, the killing is lawful.

Murder can also be regarded as the killing of a person with malice afterthought. By the provision of **S.308 CC**, anyone who causes the death of another, whether directly or indirectly, is deemed to have killed such person.

Similarly, anyone who has a person under his care by virtue of the person's age, sickness, unsound mind, detention or any other cause and he doesn't take care of the person to the extent that the omission leads to the death of the dependant or endangers his health, by the provision of **S.300 of the CC** such person would be guilty of the offence.

Once there is an unjustified killing of a human being, it constitutes the actus reus of homicide. The pertinent question then is 'who constitutes a human being capable of being murdered?'. Can an unborn child killed through abortion be regarded as a human being?

The Criminal Code in **S.307** puts this to rest. It provides:

"A child becomes a person capable of being killed when it has completely proceeded in a living state
from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not"
Thus, from the above, in the case of aborting an unborn child, the accused cannot be convicted of murder. See: *R vs Poulton.*

In the case of ***R vs West (1848) vol 2 C & K ER***, while an abortion was being carried out, the baby was delivered prematurely and it was alive. However, due to external circumstances, the baby died. It was held that inasmuch as the baby proceeded alive from its mother's womb, it was a human being capable of being murdered. Thus, the accused was convicted for murder.

It should be noted that where it cannot be proved that the child was born alive, the conviction for murder cannot be secured. See: ***State vs Linus Akpan (1972) UILR***.

Requirements For Proving Murder

By the provision of **S.316 of the Criminal Code**, there are six circumstances under which a person would be held liable for murder:

(1) if the offender intends to cause the death of the person killed, or that of some other person;

(2) if the offender intends to do to the person killed or to some other person some grievous harm;

(3) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;

(4) if the offender intends to do 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 overpowering 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.

For a prosecution to succeed in a case of murder, it has to be established that the consequences were presumed or premeditated by the accused. Any of the following need to be established before *mens rea* can be proved in a murder case:

1. An intention to cause death
2. Intention to inflict grievous bodily harm.
3. Recklessness as to the cause of death.
4. Recklessness as to the infliction of grievous bodily harm.
5. State of mind which may suffice to constitute murder under certain technical rules.

There has been heated debate amongst scholars as to whether or not intention to inflict grievous bodily harm should be taken as an intention to kill. Those who support the proposition are of the view that if both terms are not equated, it would aid dangerous criminals who inflict grievous bodily harm to claim that the infliction of the bodily harm was for another purpose other than to kill.

In the case of ***Hyam vs DPP(Supra),*** the learned Justice stated:

"… *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 probable grevious bodily harm 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 that flowed. Irrespective of whether he wishes it or not*…"
Those in opposition to this proposition are of the view that in a situation in which the accused doesn't know that the bodily harm inflicted is one likely to cause death, the two should not be equated. Thus, they are of the view that if there is practical difficulty in determining if the harm is likely to cause death and if the accused knows it is likely to cause death, then infliction of grievous bodily harm should not be taken as an alternative to intent to kill.

It should be noted that by the provision of **S.221(b) of the PC**, the words "likely" and "probable" are used. It would be best if the distinction between these two terms is stressed. The ambiguity

between these two words is explained by **S.19 of the Penal Code**. It provides that an act is said to be likely to lead to a consequence if the consequence resulting from the act is something that would not surprise a reasonable man. An event is regarded as having a probable consequence if the consequence would be considered by a reasonable man as the normal or natural result of the act.

In the case of ***Maijamaa vs State (1964) vol 1 ANLR,*** the accused and some other people attacked the deceased with sticks and he was beaten to death. The court convicted them for murder under **S.221(b)** and **S.79** of the Penal Code. The reasoning of the court was that the act of a group of people attacking a person with sticks has a probable consequence of causing death. On appeal, the Supreme Court dismissed the appeal and upheld the conviction.

It should be noted that to establish the guilt of the accused person, the prosecution must adduce a link between the act or omission of the accused and the death of the deceased. See: ***Mbang vs The State (2010) Vol 7 NWLR pt 1194, Akinfe vs The State (1988) vol 3 NWLR pt 85, Inulukwe vs The State (2003) vol 14 NWLR pt 840, Okoro vs The State (1988) vol 5 NWLR pt 94, State vs Babawuro Usman (2005) Vol 1 NWLR pt 906***.

In addition the prosecution has to prove the guilt of the accused beyond reasonable doubt. Not beyond all iota of doubt; ***Teggivonor vs State (2008) Vol 1 NWLR pt 1069***.

It should also be noted that the person last seen with the deceased bears full responsibility. In a situation in which the accused was last seen with the deceased and the circumstantial evidence is overwhelming and leads to no other conclusion than that the accused killed the deceased, it leaves no room for acquittal. See: ***Mbang vs The State (Supra), Idiok vs The State (Supra).***

By virtue of the provision of **S.314** of the **Criminal Code**, a person would not be held to have murdered the deceased if the death occurs a year and a day after the injury is inflicted. The day of the injury is also reckoned with in this calculation.

In the case of ***R vs Dyson (1908) vol 24 KB***, the accused on 13th November 1906, beat his 3 months old child to unconsciousness and fractured its skull. On 29 December 1907, he beat the child again severely on the head and face. On 17th February 1908, after the wounds earlier sustained were healed, the child was admitted to the hospital, held to be suffering from meningitis. On March 1908, the child died.

Due to the fact that from the day of the infliction of the initial injury, 13th November 1906, to the date of death, March 1908, a period of more than a year and a day had elapsed, the accused wasn't held to be guilty of murder. He was however convicted of manslaughter.

THE CRIME OF MANSLAUGHTER

What Is Manslaughter?

Manslaughter can be regarded as the the twin brother of murder. According to the provision of **S.317 of the Criminal Code**, any killing that doesn't amount to murder would be regarded as manslaughter. A lot of scholars, particularly **Clarkson & Keating** are of the view that manslaughter occurs when there is the actus reus of murder but the offender is not entirely blameworthy so as to warrant the offence of murder.

The offence of manslaughter is usually classified into two:

1. Voluntary manslaughter
2. Involuntary manslaughter

Voluntary Manslaughter

This is a situation in which the accused kills the deceased through provocation. Where provocation is successfully pleaded, the charge of murder would be reduced to manslaughter. Thus, the raising of the defence of provocation in murder trials has now become a common plea. Provocation is pleaded due to the fact that if one is convicted for murder, such person would be sentenced to death. See: **S.318 CC, S.283 CC and S.222(1) PC**.

According to **Conklin** in his book **Criminology**, he raised the issue of victim precipitation of a crime by saying that the person who suffers eventual harm from a crime might have played a direct role in causing that crime to be committed. This provides a ground for justifying the defence of provocation which reduces the offence from murder to manslaughter.

This position gained credence by the provision of **S.3** of the **English Homicide Act (1957**) which provides inter-alia that:

"In a charge of murder, where there is evidence on which the jury can find that the person charged was provoked , whether by things done or said or both, by the deceased which warrants the accused to lose his self control. All these shall be taken into account in the defence of provocation."
In the case of ***R vs Doughty (1986) vol 83 C.A.R*** the accused was to take care of his baby and the home at the same time. This was due to the fact that his wife had a caesarean section and could not assist. On a particular night, his 17 day old baby was crying profusely and the accused in an attempt to stop the crying, covered the baby's mouth. Due to his exhaustion and confusion, he pressed too hard and it resulted in the baby's death.

At the trial court, it was held that this could not amount to provocation. On appeal, the court of appeal held that the circumstances of the scenario could end up provoking the man and thus, his sentence was reduced from murder to manslaughter.

In *R vs Bassey (1963) vol 1 ANLR*, the accused was attacked by the deceased and some others while he was in his sitting room. During the course of this attack, the accused defended himself with a pen knife while his assailants were without weapons. The accused delivered four blows to the deceased in quick succession. The trial court held that in this instance the defence of self defence or provocation would not be adequate.

On appeal, the Supreme Court held that while the defence of self defence would not avail, provocation would. This was due to the fact that the four blows delivered were done in a matter of seconds and thus, there was no time for tempers to cool. The sentence was thus reduced to manslaughter.

In the case of ***Mareni vs The State (2010) vol 3 NWLR pt 1181***, the court provided three ingredients that needed to be proved in an offence of manslaughter:

1. The death of a human being took place.
2. Such death was caused by the accused.
3. The accused intended such act to cause death or such bodily injury as is likely to cause death or it was caused by a rash or negligent act.

Lastly in the case of ***Ewo Akang vs The State (1971) vol 1 ANLR***, the court stated:

"***Provocation which reduces what will otherwise amount to murder to manslaughter is a legal concept. It is of paramount importance in the consideration of this concept that the act held out as a natural and justifiable reaction of the provoked person was done not in self revenge, but in ventilation of a natural, sudden and contemporaneous feeling of anger caused by the circumstances of the occasion***."

Involuntary Manslaughter

This is a killing that is done unintentionally and independent of the will of the accused person. See **S.24 CC, S.4 of Federal Highway Act (1971)**, State vs Felix Usifo (1977) Vol 1 NMLR, Moses vs The State (2006) vol 11 NWLR pt 992.

The punishment for manslaughter, as provided for in **S.325 of the Criminal Code**, is life imprisonment.

THE CRIME OF RAPE

According to the provision of **S.357 of the Criminal Code**, rape occurs when a person has unlawful carnal knowledge of woman without her consent, if with her consent, by means of threat or intimidation, by means of fraudulent misrepresentation as to the act or by impersonating her husband.

The meaning of "unlawful carnal knowledge is expressly provided for in **S. 6 of the Criminal Code**. It defines unlawful carnal knowledge as

"***carnal connection which takes place otherwise than between husband and wife***."
The section also further states that an important element of carnal knowledge or carnal connection is penetration.

Also, rape has been defined by **S.282 of the Penal Code**. It provides:

(1) A man is said to commit rape who, except in the case referred to in subsection (2) of this section, has sexual intercourse with a woman in any of the following circumstances-

(a) against her will;

(b) without her consent;

(c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;

(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(e) with or without her consent, when she is under fourteen years of age or of unsound mind.

(2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.

In the case of ***Upahar vs The State (2003) Vol 6 NWLR pt 816*** the court held that to establish the offence of rape, the prosecution has to prove:

1. That the accused had sexual intercourse with the prosecutrix.
2. The sexual intercourse was done in circumstances under the provision of **S.282(1) of the PC**.
3. The prosecutrix wasn't the wife of the accused or if she was the wife, had not attained the age of puberty.
4. The accused had the mens rea to have sexual intercourse with the prosecutrix without her consent, or he was reckless and careless regarding her consent.
5. There was penetration.

In the offence of rape, the testimony of the complainant must be corroborated in order to secure conviction. Also, a person cannot be convicted of raping a child under the age of 13 on the uncorroborated testimony of one witness.

The evidence of the prosecutrix must unequivocally implicate the accused. In the case of ***Sambo vs The State (1993) Vol 6 NWLR pt 300,*** the appellant asked the prosecutrix, a young girl of eleven, to bring water into his room. Upon bringing the water, he played loud music and he alleged that he danced with the prosecutrix. After the prosecutrix left the room, she was crying

and blood was found on her thighs by her sister. She told her sister that she was raped by the accused. Her sister then reported the case to the police for rape.

At the trial court and the court of appeal, the accused was convicted of rape. At the Supreme Court, in allowing the appeal, the court held that the testimony of the prosecutrix alleging rape was not corroborated by other external evidence. Thus, in this situation, a conviction for rape could not be secured.

Queen vs Omishade (1964) NMLR, Njovens vs The State (1973) NMLR, Rabiu vs The State (2005) Vol 7 NWLR pt 925.

In the offence of rape, the actus reus is penetration while the mens rea is the intention to have unlawful carnal knowledge.

The punishment for rape according to **S.358 of the Criminal Code** is life imprisonment with or without caning.

THE CRIME OF CONSPIRACY

What Is Conspiracy?

This simply means a secret plan by a group of people to do something harmful or illegal. For there to be conspiracy, there must be an agreement between two or more persons to prosecute an unlawful purpose through an unlawful means.

According to the provision of **S.516 of the Criminal Code**, anyone who conspires to commit a felony would, except another punishment is provided, be liable to imprisonment of seven years. If the felony to be committed is one that has a punishment that is less than seven years, that would be the punishment for the conspiracy.

If the conspiracy is done regarding an act which is not a felony, **S.517 CC** provides that such persons would be liable for a misdemeanour and would be imprisoned for two years. It should be noted that an offender for the offence of conspiracy cannot be arrested without a warrant.

This was the position in the case of ***Sule vs The State 2009 Vol 17 NWLR pt 1169*** wherein Ogbuagu JSC had this to say on conspiracy:

"… An offence of conspiracy can be committed where persons have acted either by an agreement or in concert. A bare agreement to commit an offence is sufficient. The actual commission of the offence is not necessary.

Thus, conspiracy to commit an offence is a separate and distinct offence and it is independent of the actual commission of the offence to which the conspiracy is related…"

Also, Philip Johnson in his book, **The Unnecessary Crime of Conspiracy**, defines conspiracy as:

"… An inchoate or preparatory crime permitting the punishment of persons who agree to commit a crime even if they never carry out their scheme or are apprehended before their objective…"

See also: ***DPP vs Bhagwan 1972 AC***.

The definition is in *pari materia* with the provision of **S.1** of the **Criminal Attempt Act of 1981**.

In the case of ***R vs Reed (1982) CLR***, it was held that if A and B agree to rob a bank, in arriving at the bank it seems safe to do so, their agreement would necessary involve the commission of the offence of robbery. If it is carried out in accordance with their intentions, accordingly, they are guilty of the statutory offence of conspiracy.

Also in ***R vs Anderson (1986) AC*** where the accused for a fee agreed to supply diamond wire to cut through bar in order to enable another to escape from prison. The accused claimed that he only intended to supply the wire and then go abroad believing that the plan could never succeed. The accused's conviction for conspiring with others was sustained at the appellate court.

See also: ***Oduneye vs The State (2001) vol 2 NWLR pt 697***.

In the case of ***Otegheri vs IGP 1959 WRNLR,*** the court stated that the conspiring between the parties must be to do an act which is illegal. If the conspiring is to do a legal act the charge would hold no water.

In the case of ***Ogugu vs The State 1990 vol 2 NWLR pt 134***, it was held that a person cannot be said to commit conspiracy if others alleged to have conspired with him are acquitted or discharged. To convict one person suggests that the others were equally guilty of conspiracy.

Also, by the decision of the court in the case of ***Suleiman vs The State (2009) vol 15 NWLR pt 1164***, a single person cannot be charged for the offence of conspiracy.

Requirement For Proving Conspiracy

In order to establish the offence of conspiracy, there are some ingredients required to be proved. These ingredients were provided by the court in the case of ***Legi Mohammed vs The State 2014 LPELR 24311 CA.*** In this case, the court per Uwa JCA provided that the prosecution must prove the following for a conviction of conspiracy:

(a) An Agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal, by illegal means;

(b) Individual participation in the act by each of the accused persons.

THE OFFENCE OF THEFT/STEALING

One of the purposes of law in human society is the protection of property. Thus the law frowns at the taking of a person's property without his real consent. In the Nigerian situation, stealing is also frowned upon, both legally and morally. The society would go on towards lawlessness if the property of members of the society could be unjustly taken by any other person. This explains why theft/stealing has been made a criminal act by the Criminal and Penal Code.

Definition Of The Offence Of Theft

Theft/stealing is literally understood as taking someone else's property without such person's permission. According to the provision of **S.383 (1) of the Criminal Code:**

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 provision of S.1(1) of the Theft Act of 1968:

A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it

From the above, it can be seen that the mens rea for the offence of theft is dishonesty, coupled with the intention to permanently deprive the owner of the property of the use of such property. The actus reus for the offence of theft is the appropriation of the specific property in question.

Ingredients For Proving The Offence Of Theft

In order for the prosecution to secure the conviction of a person accused of the offence of theft, the prosecution has to establish the following ingredients:

1. **Appropriation**
2. **Property**
3. **Dishonest Taking**

The above listed ingredients would be explained below.

Appropriation

Before the advent of the **Theft Act of 1968**, under the English Law of Larceny, appropriation can only occur when the property in question has been carried away from the scene of the crime. However, by the provision of **S.3 (1)** of the **Theft Act 1968**, all that is needed to establish appropriation is the assertion of ownership right.

In the case of *Corcoran vs Aderton[1]*, the court held that the act of the accused in grabbing the handbag of the victim amounted to appropriation. This is regardless of the fact that the accused didn't get away with the bag.

Also, it is provided by S.3 (2) that a person would not be guilty of theft if after purchasing goods in good faith, even though they are stolen goods, he purports to exercise that ownership right.

In the case of *R vs Adams*[2], the accused, who bought stolen goods, was convicted for receiving stolen property. However, this conviction was quashed at the appellate court due to the provision of **S.3 (2) of the Theft Act**.

Theft can still occur evens though the owner consents to the taking of his property. This is especially true in cases of fraud. For example, in the case of *Lawrence vs MPC***,** the victim paid 10,000 pounds to the accused as taxi fare for taking him to his destination, even though the amount charged by the taxi driver was way too exorbitant compared to the normal price. The court held that in this kind of scenario, the accused was guilty of the offence of theft regardless of the fact that the victim consented to the taking. The taking in this instance could be akin to a fraud.

It should also be noted that conversion of goods can be equated with theft. Conversion occurs when goods are dealt with a manner that is inconsistent with the rights of the true owner of the property. In this situation, there must be the proof of the accused's intention to permanently deprive the true owner of his property[3].

Conversion also means to alter, sell, pledge or use the property of another. However, it would not result in theft if the accused person by his action, is deemed to have intended to return the goods back to the victim.

In the case of *Oshinye vs COP*[4], the accused person obtained goods from another person by misrepresenting that the owner authorised him to make use of the property. At this point, the accused intended to return it back, so it wasn't an act of conversion. However, when the accused subsequently appropriated the property for his own personal use, it was held to be a case of stealing by conversion.

Property

Property has been defined by the provision of S.4 (1) of the Theft Act as:

…money and all other property, real or personal, including things in action and other intangible property.

However, by the provision **of S.4 (2) of the Theft Act 1968**, land cannot be regarded as property except when something is severed from the land. In the case of *Ojiko vs IGP*[5], the accused was given money by the victim to buy land and subsequently transfer the title of the land to him. However, the accused bought the land but didn't transfer the title to the victim.

The court held that in this situation, the money cannot be said to be stolen since it was used for what it was meant to be used for. However, for the land, an action for theft cannot be brought about due to the fact that land isn't regarded as property capable of being stolen.

Regarding information, in the case of *R vs Hancock*[6], the court held that information falls under the scope of intangible property which cannot be stolen.

Conversely, the account of a company is within the range of intangible property that can be stolen. In the case of *R vs Kohn*[7], the accused was convicted for theft when he, without appropriate authorisation, signed cheques for the withdrawal of money from the account of the company in which he was an employee.

Finally, according to the provision of **S.383 (5)** of the **Criminal Code**, if a person discovers abandoned property and subsequently converts it, it would 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.

A corpse is also regarded as property that cannot be stolen[8].

Dishonest Taking

Dishonest taking concerns itself mainly with the intention of the accused when he was appropriating the victim's property. According to the provision of **S.383 (2)** of the **Criminal Code**, a person would be regarded as fraudulently taking goods if he does so with the following intention:

1. The intention to permanently deprive the owner of the use of the goods in question.
2. An intention to deprive a person who has a special interest in the property from exercising such interest.
3. Intention to make use of the goods as a pledge or security.
4. An intention to part with the goods on a condition which the accused knows cannot be fulfilled by him.
5. An intention to deal with the goods in a manner in which after its return, the property isn't at its initial state at the time of taking.
6. In the instance of money, an intention to make use of it, even though the accused might intend to return it at a later date.

THE OFFENCE OF RECEIVING STOLEN PROPERTY

The law doesn't just frown on the offence of stealing, it is also clearly against the offering of aid to a person who steals. One of the ways that the law deals with the act of aiding a thief is by the criminalisation of the act of receiving stolen property. The offence of receiving stolen property is contained in **S.427** of the **Criminal Code** and **S.316** of the **Penal Code**.

In proving the offence receiving stolen property, it is sufficient to prove that the accused received the goods in question knowing them to be stolen. Also, even if the accused is not in actual possession of the goods, if he has control over those in possession or he helps in concealing the goods, he is liable for the offence of receiving stolen property.

In *R vs. Osakwe**[1]* A, B and C stole a car. X agreed to get them a dealer if the car was in good condition. One of the thieves went to bring the car. As at the time the car arrived, the police got to the scene. The car was in X's compound while the thieves were also there. The court held that X was not guilty of receiving stolen property because the goods were neither in his possession nor had he **already** aided in its concealment.

In order to prove the knowledge of the accused, the circumstances of the case and a reasonable man's test would be used. If according to the circumstances of the case, a reasonable man ought to have suspected that the goods have been stolen, it is enough to prove the knowledge of the accused.

In the case of *R vs. Adebowale**[2]* stolen gin was sold at 10 percent below its market value. Also, they were delivered in kerosene containers instead of the normal gin container. It was held that the above situations could be considered as unreasonable circumstances to warrant suspicion of stolen property. See also: *R vs. Braimah**[3]*

Also, according to the provision of **S.36** of the **Evidence Act**(()) the following are adequate in order to prove the knowledge of the accused in the offence of receiving stolen property:

- If any other property, stolen within a period of 12 months before he was charged, was found in his possession.
- If he has been convicted for fraud or dishonesty within a period of five years prior to his present case.

There is also something called the doctrine of recent possession in proving the offence of receiving stolen property. This is contained in **S.167 (a)** of the Evidence Act. According to this provision, if soon after a particular property has been stolen, they were found in another person's possession, such person would either be assumed to be the thief or to have received stolen property. However, this would not apply if the person involved can give a reasonable explanation for the state of affairs.

Thus, in the case of *R vs. Iyakwe**[4]*, it was held that being in possession of shoes stolen five months previously was enough to establish that the accused received stolen property. See also: ***Martins vs. The State**[5]*.

Finally, it should be noted that where the stolen property was converted to another state, the person who receives the converted goods would not be held to have received stolen property[6].

HOUSE BREAKING AND BURGLARY

The law provides protection for the property of members of the society. This is achieved through the criminalisation of certain acts like house breaking and burglary.

It should be noted that these offences cover situations where the offender breaks into the house to commit a crime and then subsequently breaks out.

These two offences would be considered below.

Meaning And Ingredients Of House Breaking

House breaking can be defined as the act of breaking and entering into a dwelling house in order to commit a felony. The following are the essential ingredients required to prove the offence of house breaking:

- Breaking
- Entering
- It must be a dwelling house
- Intent to Commit a felony

Breaking

Breaking can either be actual or constructive. It is actual breaking if the suspect breaks in the external or external part of a building by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window 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[1].

The breaking is considered constructive if it is done through the means of trickery, threats or collusion with someone already in the building, or the entrance is through a chimney or other openings in the building which are permanently open but are not normally used for entrance into the building[2].

In the case of *R vs. Boyle**[3]* it was held that the act of a person, intending to commit a felony, in gaining entrance into the house by posing as a sanitary inspector amounted to breaking.

In the case of *State vs. Onwemunlo**[4]*, it was held that the act of a thief entering into a house through a door that was already open would not be considered as breaking. Also, if the door is partially open and the thief opens it fully, it cannot be fully regarded to be a breaking[5].

It should also be noted that the breaking is not only of the external part of a building, it can also be of an internal part. For example, if a house help who is allowed into the house breaks into a locked room in the building, it would be regarded as a breaking[6].

Entering

According to S.410 of the Criminal Code, a person is regarded as having entered a building when any part of his body or any instrument used by him in breaking is within the building. In the case of *Collins vs. State* it was held that the act of the accused in allowing just his leg into the building was sufficient to establish entering.

A Dwelling House

According to the provision of S.1 of the Criminal Code, a dwelling house is:

…any building or structure, or part of a building or structure, which is for the time being kept by the owner or occupier for the residence therein of himself, his family, or servants, or any of them: it is immaterial that it is from time to time uninhabited.

A building that is adjacent to and connected with a dwelling house by means of a passage is also deemed to be a dwelling house.

A structure would be regarded as a dwelling house if the owner lives in it, regardless of what the structure was originally built for. In the case of *R vs. Rose*[7], it was held that a caravan which was used by the owner as a place of residence qualified to be regarded to as a dwelling house.

Intent to Commit a Felony

Breaking into a house is not only to commit the offence of theft. It could be for the commission of other felony like murder, arson and so on. It should be noted that at the time of the breaking in, the suspect must have the intent of committing the felony. If for example, A enters a building which he believes is on fire but when he enters he carries valuables, it would not be regarded as house breaking[8] [9].

Burglary

The ingredients for proving the offence of burglary are the same as ingredients required for proving house breaking. The differentiating factor is that while house breaking occurs in the daytime, burglary occurs during night time.

In the case of *Akosa vs. Commissioner of Police*[10], it was established that the period for determination of night time for burglary was from 6.30 pm to 6.30 am. If the breaking occurs by 4 pm and the entering occurs by 7 pm it would not be regarded as burglary. So also, if the breaking occurs by 6.30 pm and it is concluded by 7 am, it would also not be qualified to be referred to as burglary.

It should be noted that the breaking and entering must not necessarily be in the same night. In the case of *R vs. Smith*[11] the breaking was on Friday night and the entering was on Saturday night, it was regarded as burglary.

Punishment For The Offence

According to the provision of S.411 of the Criminal Code, the punishment for house breaking is 14 years while the punishment for burglary is life imprisonment.

OBTAINING BY FALSE PRETENCE (FRAUD)

The Offence Of Fraud

The crime of fraud is popularly known in casual parlance as "419". This is due to the fact that this offence is located in **S.419** of the Criminal Code. Fraud occurs everywhere in the world. It is however very common in Nigeria. Most people have encountered this vice in one form or the other over the course of their lifetime. It is due to this that this act has been criminalized by S. 419 of the Criminal Code.

According to this section, the offence occurs when the offender — with an intent to defraud — induces another person to deliver to any person a property regarded as capable of being stolen (See: The offence of Theft). This kind of property includes money, valuables and other general chattel, excluding land.

This offence is a felony and thus bags an imprisonment term of three years. If the value of the obtained property is more one thousand naira, it bags an offence of seven years imprisonment.

It should be noted that before a person is arrested for the offence of fraud, there has to be an arrest warrant. The only time a warrant would not be necessary is if the fraud is committed right in the presence of the arresting officer.

ROBBERY AND ARMED ROBBERY

The Offence Of Robbery

The vice of robbery is something that has plagued humanity for as long as can be remembered. As a result, different societies over the years have criminalised this vice. The Nigerian society is not left out. This vice has been criminalised by S.401 of the Criminal Code and by the provisions of the Robbery and Firearms and Act.

According to S.401 of the Criminal Code:

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is said to be guilty of robbery

It should be noted that the accused would not be guilty of the offence of this offence if at the time he took the property, he believed that he had a legal right to deprive the victim of the property[1].

Also, for an act to be robbery, the use of violence has to be immediately before/during the taking of the property or immediately after the taking of the property. In the case of *R vs. Bekum**[2]* A and his companions left some valuable property in the possession of the accused and went out to buy some meat. On their way back, they were attacked by the accused, who then subsequently possessed the valuables. It was held that this was robbery since the use of violence in this instance was immediately before the taking of the property.

Conversely, in the case of *Njuguna vs. Republic**[3]*, the accused burgled a house and carted away some valuables. Later on, he was discovered −without chase− with the goods at a distance of about 500 yards away from the scene of the crime. He resisted −with violence− attempts at repossession of the goods. It was held that this wasn't a case of robbery considering the fact that the act of violence did not occur immediately after he stole the goods.

According to the provision of S.1 (1) of the Robbery and Firearms Act the punishment for this offence is imprisonment for not less than 21 years.

The Offence Of Armed Robbery

There is a discrepancy between the offence of robbery and the offence of armed robbery. In the offence of robbery, the accused uses violence or threatens to use violence. This violence could be without the use of weapons of any kind. On the other hand, armed robbery involves the use of some specific weapons as provided by the law.

According to S. 1 (2) of the Robbery and Firearms Act, armed robbery would occur if the accused, while carrying out robbery, was armed with a firearm or any other offensive weapon or was in company with a person so armed. If a person is found guilty of armed robbery, such person would be sentenced to death. This punishment would also apply if the accused wounds any person immediately before, during or after the robbery.

According to the provision of S. 1 (3) of the Act, the execution of a convicted armed robber is either by death or firing squad. The choice between these two modes of execution is to be made by the governor[4].

An important ingredient in securing conviction for this offence is the use firearms and offensive weapons as provided for in S. 1 (2) (a).

Firearms has been defined in S. 11 of the Robbery and Firearms Act as:

…any canon, gun, rifle, carbine, machine-gun, cap-gun, flint-lock gun, revolver, pistol, explosive or ammunition or other firearm, whether whole or in detached pieces

Offensive weapon has been defined as

any article (apart from a firearm) made or adapted for use for causing injury to the person or intended by the person having it for such use by him and it includes an air gun, air pistol, bow and arrow, spear, cutlass, machete, dagger, cudgel, or any piece of wood, metal, glass or stone capable of being used as an offensive weapon.

In the case of *John Nwachuckwu vs. The State*[5], the accused carried out robbery with the use of a toy gun. The court held that although the threat of violence was present at the performance of the act, it would only amount to robbery. This is due to the fact that a toy gun does not fall under the category of firearms or offensive weapons as provided by the Robbery and Firearms Act[6].

It should be noted that according to the provision of S. 4 of the Act, any person or hospital who treats a person suspected of having sustained gunshot wounds must immediately report the incident to the police. Failure to do this would amount to:

- For an individual, imprisonment for not more than five years.
- For a hospital/clinic, a fine of ten thousand naira and in addition, the hospital shall be closed down.

GENERAL 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. There are a number of these defences. However, due to constraints of space and time only a handful of them would be discussed. The defences to criminal liability which would be discussed include the following:

- De minimis non curat lex:
- Accident
- Mistake
- Bona fide claim of right
- Necessity and extra ordinary emergency
- Judicial
- Alibi
- Self defence

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 be used 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 Accident

According to the provisions of **S. 24** of the **Criminal Code**, a person is not criminally responsible for an act that occurs independently of the exercise of his will or if it occurs by accident. However, this is subject to the provisions of the Criminal Code in relation to negligent acts and omissions.

In the case of ***Iromantu vs State (1964) 1 All NLR 311,*** the deceased grabbed a gun from the accused. In the struggle to collect back the gun, the accused mistakenly touched the trigger and the gun went off, killing the deceased. The court held that the accused was not criminally liable since the act occurred independently of the exercise of his will.

It should however be noted that accident would not apply if it is reasonably foreseeable that the criminal event would occur.

In the case of ***State vs Appoh (1970) 2 All NLR 218***, two boys were pushing themselves near the river. While doing this, they were warned by another boy that the two boys were playing a dangerous game. As they continued, one of the boys pushed the other into the river and he drowned. The court held that the defence of accident would not apply since it is reasonably foreseeable that pushing near a river could lead to drowning.

In the case of ***Ukot vs State (1992) 5 NWLR pt 240***, the accused swung a pen knife in a crowd in order to escape. While swinging the knife, it hit someone and killed him. The accused pleaded accident but the court did not grant his plea because it was reasonably foreseeable that by swinging a pen knife in a crowd, the knife could hit anyone.

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 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**[1]* 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.

The Mistake must be Honest and Reasonable

For the defence of mistake to apply, the mistake must be one that is honest and reasonable. In the case of ***R vs Gaddam(1954) 14 WACA 442*** the accused killed an old woman who he believed was a witch. The West African Court of Appeal held that this belief was unreasonable and thus a mistake of fact would not be applicable.

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

For the defence of mistake to hold, if the mistaken facts were actually true, there wouldn't be liability. For instance in the case of ***R vs Gaddam*** as stated above, even if the deceased was actually a witch, killing her extrajudicially was still a crime, thus the defence of mistake would not apply.

It should be noted that there are instances in which the law states that the defence of mistake would not apply. For example, according to **S. 233 of the Criminal Code**, if a person has sex with a girl under a specific age, it is not an excuse that he didn't know or he believed that she was under such age.

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.

The Defence Of Necessity And Extraordinary Emergency

This defence is contained under the provisions of **S. 26 of the Criminal Code**. This sections provides that except in the case of compulsion, provocation or self-defence, a person would not be liable for acts or omissions which would result in an offence if such acts or omissions were done in sudden circumstances of extraordinary emergency that a normal person would not have acted otherwise.

It should be noted that this defence has limitations. In the case of ***R vs Dudley Stephens***[2], two shipmen were stranded at sea with a cabin boy. In order to sustain their life, they killed and ate the cabin boy. They court convicted them but their imprisonment was reduced to six months because of the necessary nature of situation.

Generally, judicial opinion doesn't favour the taking of a person's life for the satisfaction of necessity. In the case of ***Buckcoke vs Greater London Council***[3] a fire truck driver, in an attempt to rescue a man from a burning building, disobeyed the traffic light, causing injury to another person. Lord Denning held that the fire truck driver was liable for the injury. It should be noted that in this case of the fire truck, the situation was not to the extent that the driver had no other choice to make as provided for in **S. 26 of the Criminal Code**. This is probably the reason why his defence of necessity could not hold sway.

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.

In the case of ***Anderson vs 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.

CORRUPTION

Causes of Corruption

A number of things cause corruption, and among them are:

- Greed
- Poor youth empowerment
- Poverty
- Unemployment

Greed

Greed has caused a lot of crises in the world, including in Nigeria. It is because of greed that political leaders embezzle from the funds they are supposed to use for national development for their own selfish needs.

Poor Youth Empowerment

Poor moral youth empowerment is a contributor to corruption. Internet fraud, sexual harassment by male CEOs, and other bad acts are because Nigerians lack understanding on the importance of youth empowerment. When parents and governments empower youths both financially and morally, the level of corruption among them will diminish.

Poverty

According to international standards of poverty, a person is said to be poor when he lives under $1.25 (₦210, though it varies) per day. There are many poor people in Nigeria, and poverty pushes them into corruption. According to World Bank Group, in 2004, 63.1% of Nigerians were poor. The poverty level increased in 2010. In 2010, 68% of the Nigerian population were estimated to be poor. A person can take bribes to commit crime because he is poor. It is one of the reasons why the poor youths in the country collect bribes to work as thugs for Nigerian politicians.

Unemployment

Unemployment is one of the major challenges in Nigeria and does not need much explanation because it has broken the hearts of many citizens. People are pushed into corrupt practice because of high unemployment. An unemployed citizen can indulge in corruption to make money and live better.

The youths, fathers and mothers are seriously lamenting on the negative impact of unemployment in their lives. Some said that it is better for death to come and take their lives than suffering under the torment of unemployment challenge in the country. Words cannot explain the level of punishment the citizens of this country are as a result of this menace.

Effects of Corruption

The negative consequences of corruption are many, and among them are:

- Poor investment

- Rise in poverty
- Poor national development
- National crises

Poor Investment

Unemployment in Nigeria would have been eradicated to some extent if only investors were attracted to it. Companies that would have invested in Nigeria are afraid because they do not know if the corrupt practice will ruin their industries in time. Because of this, they refuse to invest in Nigeria.

Rise in Poverty

When the heads of public service are busy laundering the money that is supposed to be used to create employment for the masses and reduce poverty, what happens is that there will be a rise in the poverty level of the country. Just like the rise in poverty as statistically shown between 2004 and 2008. Since the government is selfish and does not want to help the poor, poverty continues to rise in Nigeria.

Poor National Development

Any country with high corruption is likely to experience developmental bankruptcy. A situation where some CEOs indulge in corrupt practices to make their money means that economic development will suffer. When Nigerians keep on shifting the country's currency to foreign countries, there will be less economic development in Nigeria.

National Crises

So many crises in Nigeria today are as a result of corruption. The insecurity in Nigeria brought about by Boko Haram is a consequence of corruption. Corrupt politicians are fighting the government of President Goodluck Jonathan using Boko Haram as their agent because they do not want him to succeed. The attacks by Boko Haram have caused disorderliness in Nigeria and seriously affected the economy of the country.

Eradicating Corruption

Corrupt Nigerians do not truly understand the harm they are causing to other citizens. Corruption can be reduced by these possible remedies:

- Self-Satisfaction
- Institution of strong anti-corruption groups
- Employment generation
- Proper government funding of schools
- Treating all citizens equally

Self-Satisfaction

Self-Satisfaction in this context implies being content with what one has. When the leaders of Nigeria are satisfied with the salary they are paid and use them in the right way, the issue of embezzlement and money laundering will be history. Managers who are satisfied with what they are paid will not have time to indulge in corruption to make more money.

Institution of Strong Anti-Corruption Groups

Creating strong anti-corruption institutions is another arsenal to win the fight against corruption. This group is to work independently with the government to ensure transparency. Anyone who is caught in corrupt practice by the group should experience the consequences decided by the anti-corruption agency. That he is a minister or governor of a state should not be an excuse from facing the punishment he is to receive according to the Constitution of Nigeria.

Employment Generation

The unemployed in the country find themselves involved in corruption mainly because they want to make money to meet the demand of the day. Governments and capable hands should endeavour to generate more jobs for citizens to get employed and paid in return. A busy mind may find it difficult to indulge in corruption because he is being paid adequately.

Proper Government Funding of Schools

Understanding the importance of skill acquisition will go a long way to propel them to develop all the schools in Nigeria. When more attention is paid to the tertiary institutions in the country, it will produce graduates who are employable. Installation of the necessary machines needed in universities will help Nigerian graduates acquire skills and use them to generate income, even if no company employs them after graduation.

Self-employment will make graduates more determined in the work they do and will prevent them from corruption like Internet scams, kidnapping and the rest.

Treating All Citizens Equally

Treating any offender in the country equally will help reduce corruption. Nobody is above the law and any who acts contrary to it should be given the punishment that he or she deserves. That she is the Minister of Aviation or Governor of the Central Bank of Nigeria should not count in this case. If any minister or head of state is given the punishment he deserves for corruption, others will learn and separate themselves from any corrupt practice.

CORRUPTION IS A CANKERWORM THAT HAS EATEN DEEP INTO THE FABRIC OF NIGERIA.

Consequences of Corruption in Nigeria

The consequences of corruption are universal even if there could be variations in the level of state and non-state responses to these consequences. Simply put: massive corruption in the Nigeria has reduced the amount of money needed for development just as it does in any other political economy.

First, corruption promotes poverty. A simple example could be made with the corruption in the management of pension funds in Nigeria. The theft of pensions means that retired Nigerians would not have access to their pensions as at when due. This means that those that have dependants to care for would be deprived of the needed funds. Some pensioners eventually died because of the rising expectations that often end in frustrations sometimes occasioned by standing for hours on long queues. What happens to the dependants of a pensioner when he or she is deprived of his pensions? Will such dependants be able to attend qualitative schools or will they be forced out of schools to fend for themselves? If education remains one of the main routes leading to a good life and national development, without education, what would be the future of these dependants and the country?

Another consequence of corruption is that it creates the condition for political instability. This is because unrestricted corruption makes the state an unlimited allocator of wealth to individuals and groups. This character of the state makes it possible for the politics of do-or-die to take root, with politicians struggling to out-compete one another sometimes in violent manner. It must be recalled that the various military regimes that took over power from democratically elected representatives of the people had always justified their intervention on the ground of grand corruption and looting of state treasury by political state actors

Third, corruption contributes to the blanket criminalisation of Nigerians, especially the youths. With its capacity to generate poverty and instability, the youth have been systematically hijacked for selfish ends by unscrupulous politicians and ideologues. Some of those that were not 'hijacked' have found interest in advanced fee fraud popularly referred to as Yahoo-yahoo or 419 in local parlance. While corruption cannot, and should not, be the singular cause of this systematic criminalisation, it contributes to it.

Four, corruption promotes the existence of underground/illegal economy. The possibility of bribes infiltrating the security systems have made it easy for underground economies in counterfeit, adulterated and substandard products, especially drugs. Though these underground economies worth billions of dollars, the government do not benefit from taxes nor are the people benefiting from the dangerous effects of adulterated drugs.

Five, corruption also has other social costs apart from poverty. As rightly noted by Myint (2000: 50), in "any society, there are laws and regulations to serve social objectives and to protect the public interest, such as building codes, environmental controls, traffic laws and prudential banking regulations. Violating these laws for economic gain through corrupt means can cause serious social harm." The frequent use of substandard materials and violation of building regulations have led to several buildings collapsing and killing innocent occupiers have become a recurrent decimal in Nigeria while large scale oil spills with catastrophic effects have continued in some part of the country.

Lastly, and consequent upon the aforementioned is that corruption is antidevelopment to the extent that it reduces the amount of funds available to be used for developmental purposes. Monies that should have been used to better education, health, infrastructure and other items needed to encourage a good life of Nigerians are stolen by a microscopic few. But how has the EFCC responded? What has been done so far?