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DEFENCE OF INTOXICATION IN CRIMINAL TRIAL: OVERVIEW OF NIGERIAN LEGAL SYSTEM AND SOME FOREIGN JURISDICTIONS

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DECLARATION

I Otu, Otu Akanu with Registration Number GOU/U21/LAW/406 hereby declare that this long essay research titled "Defence of Intoxication in Criminal Trial: Overview of Nigerian Legal System and Some Foreign Jurisdictions" was carried out by me in the faculty of law, Godfrey Okoye University, Thinkers' Corner Enugu. The information used from extant literature has been well acknowledged in the text and in list of references therein. Therefore, the content of this work is original and has not been submitted either in part or full for the award of any degree in Godfrey Okoye University or any other institution of learning.

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APPROVAL

We the undersigned approve that this project was completed by Otu, Otu Akanu with registration number GOU/U21/LAW/406, in partial fulfillment of the requirements for the award of Bachelor of Law (LL.B) Degree. (HONS).

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DEDICATION

This work is dedicated to:

1. God Almighty
2. My Darling Wife - Mrs. Otu Chinenye Emilia
3. My Beloved Daughter - Miss Akanu Precious Otu
4. My Beloved Son – Master Akanu Kingdavid Otu
5. My Beloved Son – Master Akanu Victor Otu
6. My Beloved Daughter - Miss Akanu Favour Otu

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Finally, I thank and glorify Him, the Author and the Finisher of our Destiny 'THE ALMIGHTY GOD' for His care, abundant love, protection, and provision beyond words or imagination in this struggle.

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TABLE OF ABBREVIATIONS

BAC	Blood Alcohol Concentration
BCE	Before Common Era
CCA	Criminal Code Act
DUI	Driving Under the Influence
FRSC	Federal Road Safety Corps
FRS(E)A	Federal Road Safety Corps (Establishment) Act
IEA	Indian Evidence Act
IPC	Indian Penal Code
NDLEA	National Drug Law Enforcement Agency
NDLEAA	National Drug Law Enforcement Agency Act
NGO	Non-governmental Organizations
NPA	Nigerian Police Act
PCA	Penal Code Act
RTC	Road Traffic Crash
WACA	West African Court of Appeal
WHO	World Health Organization

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ABSTRACT

If someone commits an offence he should not have committed under normal brain circumstance, the person is regarded not to be in his correct mind set. Such person will normally experience sudden decline in making good judgement probably after taking alcohol or other inhibiting substances. When such person cannot mentally define implications inherent in what he does, the unfortunate conclusion becomes that he is intoxicated. In several legal systems world over, this situation of the mind as explained above affords a restricted or, in certain circumstances, comprehensive protection from being held responsible for criminal act. To enable the defendant comfortably form an excuse of intoxication, the court shall be convinced that during the commission of the offence, he was influenced with alcohol or drug in such magnitude that he is without necessary awareness needed to underscore criminal liability. Following the fore-going therefore, the objective this study undertook was to find out the effectiveness of Nigerian legislations against intoxication related offences, investigate the challenges facing intoxication as a defence in Nigeria criminal trial etc. To succeed in this aim, the study critically deployed statutes and cases as they apply to prosecution process used to address intoxication liabilities. Engaging the doctrinal methodology, this research reviewed extant literatures on intoxication. Among other things, it was found that both the Penal Code and the Criminal Code sections 52 and 29 respectively failed to envisage a circumstance where someone can mistakenly get intoxicated. For instance, getting intoxicated by drinking red wine thinking it is coca cola, etc. It was recommended that both the Penal Code and the Criminal Code sections 52 and 29 respectively need to undergo legislative amendment as to capture condition in which someone mistakenly become intoxicated under misconception of fact etc. Studies were also carried out in some selected foreign jurisdictions in relation to Nigeria, concerning intoxication laws.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

To associate intoxication with a situation in which an individual's mental faculties are repressed, due to consumed intoxicating things for example, alcohol and drugs is a fact. Undeniably, if someone commits offence when intoxicated, such individual is not sound in mind. Intoxicated persons will normally experience sudden decline in making good judgement.[1] Thus, if 'X' is mentally impaired via alcohol and does not have capacity mentally to define the result of his actions, he is concluded to be intoxicated. Globally, in many legal systems the state of mind explained above provides complete and in some cases incomplete defense against responsibility for offense committed. However, the inkling of letting individuals to escape responsibility for their criminal conduct, just by virtue of their intoxicated state, is bound to create contention within legal and public discourse. In another aspect, legal and academic discourse must be molded by the letter and spirit of the law, by logic, reason and precedents. There should be no public sentiment within this contest. The defenses of intoxication in Nigerian law have always been a debatable subject matter and scholarship among legal scholars and practitioners. In Nigeria, information is limited on the method of adoption of plea of intoxication and the elements connected with its positive usage. This investigation is imperative to close knowledge gap on intoxication. The history of intoxication as a defense for crime dates back to prehistoric periods.

It was in 19th Century, specifically in R v. Doherty (1834)[2] that "the defence of intoxication was first recognized in England. Here, the defendant Doherty had murder charge after killing

[1] Chadran S. 'The Defence of Intoxication and Mental Defect; A Comparative Analysis Between India and The United Kingdom'
(2020) 21 Supremo Amicus, p. 67. https://pure.jgu.edu.in/id/eprint/1977/ accessed 15 December, 2024

[2] R v. Doherty (1834) 172 ER 908

his wife while intoxicated. The prosecution argued that Doherty's intoxication was no defence. It was held by the court that in specific intent crimes like murder, intoxication can be a defence". Lord Denman C.J stated that "if someone, by drunkenness, puts himself in a state, in which he is incapable of forming an intent, he cannot be guilty of a crime which requires an intent. The court emphasized that intoxication must be so severe that it renders the defendant incapable of forming the necessary intent".

Lord Birkenhead put the law on intoxication in these clear words when he decided DPP v. Beard.[3] Therefore, three principles on voluntary intoxication that are now considered a main reference for common law are useful for this context. They are described in this way.

1. It is essential that the accused is judged to lack the intent, not only that his system was full of alcohol, and that made him lose his temper.

2. Having insanity, whether caused by alcohol or something else, is considered a defense against the charge.

3. When the accused is too drunk to make the necessary decision, that fact should be considered with all the other evidence to determine if he had the intention required for the crime.

The instance of *Attorney General for Northern Ireland v. Gallagher* is remarkable in this area. If a person wants to kill and uses alcohol or another substance to help him commit, the fact that he is drunk should not excuse what he did. The fact that he was in the state he was in before drinking makes everything he did afterward unacceptable.[4]

Part two of the testing process was to determine if Gallagher developed a distinct mental disease as a result of drinking to the point that he was temporarily insane under

[3] DPP v Beard [1920] AC 479 (HL).
[4] Attorney General for Northern Ireland v Gallagher [1963] AC 349 (HL).

M'Naughten's Rules (the insanity test) and did not realize what he was doing or that it was wrong, he could claim the defense of insanity.[5]

His condition made him antisocial, but Lord Denning believed it was his decision to kill since he acted while sober, and alcohol just made him less frightened before taking action. The appeal was granted and the defendant was found guilty again of murder.[6]

In 1843, Daniel M'Naghten, a wood turner from Glasgow, carried out a murder when he thought the Tory party was going to persecute him.[7] In England and Wales, the M'Naghten's rules are the standard for saying if a person is insane during a crime, but this rule has impacted many other countries, however, erosion in its impact has occurred as more countries adopted other insanity tests based on M'Naghten's ideas.

1. To make an act a crime, the accused must form the necessary intent.
2. but proving only that the defendant's mind was affected by drink
3. For a crime to happen, the accused must form the intent.
4. and as he had been drinking, so his judgment was not clear
5. An intent is necessary on the part of the accused to commit the crime.
6. and it was enough to show that his consciousness was influenced by what he consumed
7. The act can only be described as a crime if the accused is said to have had the intent.
8. And by no more than proving drinks affected his mind.

[5] Gallagher (n 201).
[6] Gallagher (n 201).
[7] M'Naghten's Case (1843) 10 Cl & F 200; 8 ER 718.

9. is necessary that the accused had the required intent before the crime is considered committed.

10. Not to mention that his judgment was affected by alcohol

No common approach has been established for describing what legal intoxication includes or how to express it in legal documents. Likely, no case has shown as many court disagreements or frequent changes in opinion as the question of holding intoxicated people accountable. The contrast is that the question involves what happens to a person who didn't mean to hurt someone and the New Hampshire Supreme Court Justice David Souter discussed the person's duty to avoid drinking too much if he or she might hurt others. Because of many legal changes over that period, courts began extending the outcomes of drunkenness in criminal cases. From the 1980s and 1990s, changes were made to require offenders to respond to crimes committed under intoxication's influence. During this time, lawmakers and judges have taken very different views on the issue. In 1994, the Supreme Court of California and Canada decided that a defendant could use evidence of being drunk while being tried. Thanks to public concern, the new statute in 1995 overturned the earlier decisions. In Montana v Egelhoff[8], the US Supreme Court came to a significant finding concerning intoxication defense. After studying a Montana statute, the court decided that intoxicated (self-induced or voluntary) offenders were legally responsible for any harm caused under the influence. The Montana Rule finds that people who are voluntarily drunk or high are responsible for their actions.

It can be said that Nigerian law has adopted this directive in that although section 28 of Criminal Code and section 45 of the Penal Code does not explicitly mention 'voluntariness' and 'knowledge of wrongfulness', it may be said to be the draftsman's intention from a

[8] Montana v Egelhoff, 518 U.S. 37 (1996)

broader spectrum as the courts have interpreted it to be so, as evident in so many cases such as Ogunbiyi v. State.[9] In this case, the court is of the opinion that voluntary intoxication would not be a valid defense if the act committed while intoxicated was such that the accused knew or reasonably ought to have known was wrong. Another case that illustrates the alienation of the defense on intoxication is Ojukwu v. State.[10] The appellant in this case, committed offence of theft under the influence of alcohol and was convicted. The court held that since the act of theft was wrongful, the defence of intoxication was alienated, and the conviction was upheld.

In conclusion, the Nigerian cases of voluntary intoxication demonstrated that the defense of intoxication may be alienated when the accused person knowingly engages in wrongful conduct when inhibited by alcohol or drugs.

1.2 Statement of the Problem

The defence of intoxication has its origins in the English common law system, which was later adopted in Nigeria. In England, the defence of intoxication was first recognized in the19th century.

Establishing the defence of intoxication in Nigerian law is challenging due to several reasons.

Legal standards: For the accused to comfortably establish a defence of intoxication, he must convince the court that at the time of commission of the offence, he was influenced by alcohol or drug to the extent that he could not form the requisite intent for the crime.

Burden of proof: On the accused lies the burden of proof to establish their intoxication defence.

[9] Ogunbiyi v State [1991] SC 3 NWLR 158
[10] Ojukwu v. State [1992] SC 5 NWLR 319

It might be difficult because the accused is expected to bring evidence of their mental state when the alleged offence was committed, which can meet challenges due to the nature of existing evidence.

Judicial interpretation: Nigerian courts have not provided clear guidance on defences of intoxication. As a result, there is lack of consistency in how these defences are applied, which can lead to uncertainties in their application.

The defenses of intoxication in Nigerian law is a complex issue that required a thorough understanding of the legal principles involved. While the defenses are recognized under Nigerian law, the legal standards, burden of proof, and judicial interpretation create challenges in practical terms. To address these challenges, it is essential for Nigerian court to provide clear guidance on how to apply these defences consistently and fairly.

1.3 Research Questions

In view of the fore-going therefore, the following emerged as research questions to interrogate the problem:

1. How effective are the Nigerian legislation against intoxication?
2. What are the challenges facing intoxication as a defence in Nigeria criminal trial?
3. Is there need for scientific proof of intoxication before conviction in Nigeria?
4. Are there lessons from other jurisdictions in this area of research?

1.4 Objectives of the Study

Leveraging from the above research questions, the objectives of this research are as follows:

1. To examine the effectiveness of Nigerian legislation against intoxication.
2. To investigate the challenges facing intoxication as a defence in Nigeria criminal trial.

3. To find out if there is need for scientific proof of intoxication before conviction in Nigeria.
4. To know if there are lessons from other jurisdictions in this area of research.

1.5 Research Methodology

In this research, we engaged the doctrinal approaches in an attempt to actualize the goal of the study. Data were consequently collected from Statutory provisions, Treaties, Conventions, Case laws, Textbooks, government publications, Peer-reviewed journal articles, Periodical publications (newspapers, magazines, etc), Edited works, Theses and dissertations, and Online resources.

1.6 Scope and Limitation of the Study

In Nigerian law, the scope of intoxication defence involves the understanding of how it influences an individual's legal responsibility. This encompasses assessing the impact of substance or alcohol use on mental capacity, determining the threshold for intoxication, and exploring how it may mitigate culpability.

However, limitations arise due to the complexity of establishing a direct link between intoxication and criminal behavior. Unevenness in individual responses to substances or alcohol, the difficulty in evaluating mental states at the point of commission of the offence, and potential cultural nuances in interpreting these defences can pose challenges.

Likewise, the legal framework and precedents in Nigerian law may be limited, requiring careful consideration of how existing statutes address cases involving intoxication. Also, cultural, social, and ethical aspects must be weighed to ensure the relevance and fairness of such connections within the Nigerian legal system.

1.7 Significance of the Study

This study will help to streamline the way and manner people who are said to commit a crime is processed through criminal justice system, where the defence of intoxication do or do not avail them. It aids in the clarification of the workings of *delirium tremens (DTs)*.

With regards to Nigerian law, the research is significance in several ways. Primarily, it helps to clarify the legal consequences of substance-induced impairment on an individual's mental state, assisting in more accurate legal determination.

Comprehending the legal position and consequences of the defence of intoxication is crucial for fair adjudication, ensuring that individuals are held accountable for actions committed under the influence of intoxicants. This knowledge can contribute to a more nuanced approach in sentencing, rehabilitation, or psychiatric treatment, promoting a just legal system that considers the complexities of mental states and substance abuse.

Furthermore, exploring the study may engender potential legislative reforms, leading to more effective laws and policies that address the defence of intoxication within the unique socio-legal context of Nigeria.

1.8 Literature Review

The defence of intoxication within the framework of Nigerian criminal law has been a subject of considerable legal discourse. This literature review aims to sightsee the varied perspectives offered by furious scholars, legal experts, and practitioners on this enthralling legal subject.

Williams argued that in offence requiring specific intent, voluntary intoxication should be a defence. He emphasized the importance of distinguishing offence requiring specific intent. For example, murder from the ones requiring basic intent. For example, manslaughter. Williams further stressed that intoxication can negate mens rea (guilty mind), a crucial element of criminal liability. Continuing, he argued that an intoxicated person's culpability is reduced, as they lack the mental capacity to form intent.[11]

Jennifer illustrated that, it is on common law that the defence of a person who consumed intoxicant accidentally is based, making him not culpable. She went further to contend that, by the doing of someone else, a defendant might be involuntarily intoxicated accidentally, even as a result of physiological or psychological circumstance he found difficult to deal with. Even as the word intoxication is related with the consumption of alcohol or drugs, the law perceive that it might comprise any substance the effect is adversarial, which of course medications are inclusive.[12]

In what look like a departure from Jennifer's contention, Sruti opine that when someone is intoxicated, he undergoes decline in his capacity to make valid judgement and the reason for permitting individuals to get way with their criminal behaviour as a result of their intoxication, has the potency to create conflict among jurists and public commentators.[13]

In Molan contention, for offenders to be free from culpability by ordinarily saying that drunkenness could not allow them understand their act is clearly not in the best interest of the general public. He described is as exasperating factor instead of alleviating factor, especially where the offender placed himself in such situation.[14]

Aguda and Okagbie historically revealed that in Nigeria, several communities and tribes have their exclusive and peculiar customary laws that rule them. In their contention, intoxication is

[11] G. Williams, QC, A Textbook on Criminal Law, 2nd Edition, 2009, Universal Publishers, p. 464.

[12] Jennifer Piel, "The Defense of Involuntary Intoxication by Prescribed Medications: An Appellate Case Review" 2015. Academic Psychiatry Law, p. 321

[13] Sruti Chandran, "The Defence of Intoxication and Mental Defect: A Comparative Analysis Between India and The United Kingdom" 2020. Supremo Amicus, 21. p. 67.

[14] M. T. Molan, "Source Book on Criminal Law", 2nd Edition, 2001; London, Cavendish, p. 273.

not a crime under common law. This angle of the law is not appreciated by the Maliki scholars of Northern Nigeria prior to independence in 1960 and beyond because to them, ordinary drinking of alcohol is a crime which is banned under the numerous Penal codes of Northern Nigeria.[15]

Adewale contributes to the discourse by examining the disjunction between public perceptions of insanity and intoxication defences and their legal implications. The author argues that societal misconceptions often influence legal outcomes, emphasizing the importance of public education to foster a more informed understanding of these defences.[16]

Manas differentiated legal justification from legal excuse. A person's admittance that his act is wrongful but request not to be liable is excuse while when the person fails to admit liability for his wrong act is justification. He went further to state that a person is believed to know that his capacity to think well can be affected if the person voluntarily gets intoxicated. Manas again believed that when the person willfully gets himself intoxicated having the knowledge of its possible outcome, he is said to intend the natural consequences of his act. He argued that temporary insanity as a result of drunkenness should also be a defence, in so far as insanity itself is a defence. In all, Manas holds the view that when insanity emanates from intoxication, the element of voluntariness or non-voluntariness should be dismissed.[17]

Irrespective of Manas in-depth knowledgeable of the subject matter, I do not wholly agree with everything he has said. He posits that if a state of insanity is reached even from voluntary intoxication, then the defence stands. Rather, I hold the view that voluntary intoxication be accorded no defence at all even though a state of insanity is reached.

[15] A. Aguda and I. Okagbue, "Principles of Criminal Liability in Nigerian Law" 1990. 2nd Edition, Ibadan, Heinemann, p. 341.

[16] F Adewale, 'Public Perceptions and Legal Realities: A Study of Insanity and Intoxication Defences in Nigeria' [2019] 36 (2) *Journal of Law and Society* 154.

[17] Manas Agrawal, 'Voluntary Intoxication Leading to Insanity – A Review' [21 January 2021] https://criminallawstudiesnuluj.wordpress.com/ accessed 15 December, 2024.

Charlotte Carter-Yamauchi suggests no defence when there is criminal offence resulting from voluntary intoxication and that most jurisdictions require evidence to establish the defence of voluntary intoxication. She postulates that although evidence of voluntary intoxication generally does not eliminate culpability entirely, it may be used to mitigate the severity of the offence. He also investigates gnawing question of what constitutes insanity. She suggests that the term 'insanity' is a legal term and goes beyond the medical definition of insanity. Thus, a person may suffer from mental disorders and not be legally insane. She attempts to compare intoxication to insanity and conclusively states that there exists a defence for involuntary intoxication which may stand on the same pedestal as legal insanity if it passes the determinant tests. I agree with the writer's point of view on the issues addressed. [18]

Asokan opines that an offender should be accordingly punished as though he were guilty free of impaired mind if he gets guilty judgement due to intoxication. Then the court should be able to decide the extent he need treatment if found that his mentality requires such. It should also be determined by the court when the offender should serve out his sentence when confirmed medically sound. This is different from one who is freed from psychiatric as soon as he no longer constitutes threat to others. [19]

I do not agree with this position because it is most unlikely especially here in Nigeria that an offender who gets guilty judgement due to intoxication, will really obtain significant treatment while imprisoned or confined.

Duke Dennis teaches that when insanity and intoxication are mixed, it cannot be used as a defence, except if the alcohol leads to alcoholism. So it then becomes a disease of the mind and therefore could possibly fit in the insanity bracket. There is a defence at law where there

[18] Charlotte Carter-Yamauchi, Drugs, Alcohol and the Insanity Defence: The Debate Over "Settled" Insanity (Honolulu H. I. 1998).

[19] Duke Dennis, 'Intoxication and other Defences' [2014] https://youtu.be/W614f8UOCe0?si=3-yDLY27kc8D-yo5 accessed 15 December, 2024

is intoxication and automatism and cannot be used if the alcoholism is self-induced and the reason is because it has been recklessly induced.[20] The literature reveals varied viewpoints, underlining the evolving nature of legal discourse in this subject matter.

conclusively, the literature on the defense of intoxication in Nigerian Criminal Law reveals a rich embroidery of viewpoints. Scholars underscore the need for a holistic understanding of cultural, legal and mental health factors to ensure a just and equitable application of these defences in the Nigerian Legal context. Further research and ongoing discourse are essential for the continuous evolution and refinement of legal frameworks governing intoxication defenses.

[20] TV Asokan, 'The Insanity of Defence: Related Issues' [2016] (58) (2) *Indian Journal of Psychiatry* 119.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Intoxication

The 21st Century Chambers Dictionary says intoxication is when the brain is affected by alcohol or other drugs, gases, heavy metals, or various toxic substances. It features reduced thinking ability and mental confusion amongst other things. According to Mitra's Legal and Commercial Dictionary, intoxication happens when large amounts of alcoholic and hard drugs are used.[21] Intoxication describes a situation where a person's mental and physical function is lowered due to drugs, stimulants, or drinking alcohol. Intoxication is described in Black's Law Dictionary as when a person becomes poisoned; the technical term is "the condition produced by the administration of poison." Although sometimes the term is used more widely, in legal circles it refers only to being drunk or intoxicated by excess drinking of alcoholic liquors.

2.1.2 Voluntary Intoxication

While the courts have seldom delineated the concept of voluntary intoxication, it is generally constructed as occurring when an individual consciously consumes a substance that they are aware, or should be aware, can lead to intoxication, barring instances where the substance is prescribed medication or its ingestion is coerced or deceitful. In dismissing the appellant's appeal, the Supreme Court in Egbe Nkanu v State[22] held that the defendant was liable, being that there was no evidence to support the defence of intoxication. Rather, the defendant voluntarily took palm wine and carried out the action of murder.

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[21] Chambers 21st Century Dictionary (Chambers Harrap Publishers 1999); BB Mitra, Mitra's Legal and Commercial Dictionary (5th edn, Kamal Law House 2006).
[22] Egbe Nkanu v. State (2018) LPELR-44134 (SC)

The established legal principles governing voluntary intoxication suggest that, in general, intoxication voluntarily induced does not typically serve as a defence against criminal charges stemming from actions committed while intoxicated. It can be contended that an intoxicated individual might undergo a mental state akin to that of someone who is insane, wherein they either lack awareness of their actions or their understanding of the wrongfulness of their actions, or where their capacity for self-control is significantly impaired. Nonetheless, it is widely accepted that, save for exceptional cases, intoxication does not equate to insanity, as insanity necessitates a "disease of the mind" or a mental disorder, criteria not met by mere drunkenness. Consequently, an intoxicated person is presumed to be of sound mind, and as such, is ineligible for an insanity defence.

The principle dictating that voluntary intoxication during the commission of a criminal offense does not absolve an individual of legal culpability remains steadfast, irrespective of the extent or duration of inebriation. Some legal authorities maintain that this principle holds sway even when an individual is so heavily intoxicated as to be unaware of their actions or beset by hallucinations. Moreover, any transient state or mental impairment resulting from voluntary substance abuse, including alcohol or drug consumption, fails to serve as a valid defense against criminal liability. This assertion holds true even if the defendant's temporary mental state aligns with the criteria for legal insanity as delineated in the M'Naghten's rule or any other standard for assessing criminal accountability applicable within the jurisdiction.[23]
Notwithstanding the preceding discourse, the unequivocal assertion often proclaimed by judicial bodies, asserting that 'voluntary intoxication is never a justification for criminal behavior, is somewhat deceptive. However, as elucidated by one expert: 'the principle of absolute accountability serves as a valuable initial standpoint for comprehending the limited

[23] Evers v State, 31 Tex Crim 318, 20 SW 744 (1892)

scenarios wherein an individual voluntarily under the influence may evade criminal culpability.

Henceforth, voluntary intoxication might serve as a viable defense if the accused is inebriated to an extent where executing a physical action integral to the crime becomes unattainable. While such instances are infrequent, the concern commonly arises when intoxication is purported to nullify a specific mental state essential to the alleged offense. This is because the criminal sanctions lie in the actor's moral culpability or accountability. Consequently, each criminal offense necessitates a mens rear or blameworthy intent.

2.1.3 Involuntary Intoxication

Being intentionally intoxicated is not a valid defense, but when you are not at fault for intoxication, it is not a defense either. According to a legal expert, although this situation is uncommon, the law is established that if intoxication happens without the freedom to reject it, the person is not guilty. A few people in this area have observed that the defense is very uncommon and might not exist. At the same time, the literature suggests that an involuntary intoxication defense usually depends on the defendant proving three particular things.

a) At the time of the crime, the defendant was intoxicated.

b) The circumstances of the intoxication were not controlled by the person.

c) The defendant did not understand their actions when the offense was committed.

Seeing the difference between the two is important since involuntary intoxication gives you the full defense. Under specific circumstances, courts have determined that someone was intoxicated involuntarily.

a) Intoxication happens due to an unintentional mistake about the substance taken or fraud committed upon the defendant.

b) The intoxication occurs because the person was forced or threatened.

c) The person may need the intoxicating substance for medical help or is guided to take it under the doctor's direction.

d) Although the person is aware of the substance they are taking, they are not aware that they are prone to an unusual reaction to the substance they are taking, and the reaction they experience is "grossly excessive in degree." The term "pathological intoxication" or "pathological reaction to alcohol" refers to this.[24]

The pivotal assessment to ascertain the lack of voluntariness in intoxication hinges on the absence of independent discernment and violation exhibited by the accused in their composition of the intoxicating substance.[25] Consequently, judicial bodies have dismissed claims of involuntary intoxication in instances where the defendant as aware or had sufficient grounds to anticipate the potential effects of the substance. Even if a defendant successfully established the involuntary nature of their intoxication, they must still demonstrate that it resulted in temporary insanity, as per the jurisdiction's criteria for insanity. Legal analysts note the formidable challenge inherent in meeting this requirement. Lastly, despite extensive deliberation among legal scholars, courts have consistently maintained that mere alcoholism or addiction does not suffice to establish involuntary intoxication.[26]

A further study introduces another type of intoxication which will be termed pathological intoxication and its effects.

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[24] LP Tiffany, 'Nosologic Objections to the Criminal Defense of Pathological Intoxication. What do he Doubtors Doubt? (1990)
13 (2) Int J. Law Psychiatry https://pubmed.ncbi.nlm.nih.gov/2210931/ accessed 15 December, 2024.
[25] Kane v. United States (1969) 399 F2d 730.
[26] Evans v State (1982) 645 P2d 155.

2.1.4 Historical Foundation and Sources of Intoxication

Neolithic Period (circa 10,000 BCE):

Jared Kelly emphasizes that the first beer was made in the Middle East's Fertile Crescent region at this time. According to Kelly, around 10,000 BCE, Nutufian people in the Levant, who would later become the Sumerians, made beer by accident. He showed that the discovery was possible when wild barley which was stored in jars, came into contact with wild yeast and became moist, resulting in fermentation. The Natufians wanted to gain any effects from alcohol and the value it had in both society and nutrition, so they continued making beer. The main reason the Neolithic revolution and human civilization developed was linked to the desire for beer. People wanted to drink and perform rituals which caused them to form lasting communities. Natufians drank alcohol because it lifted their feelings immediately, though it also affected their perception. Because of this, it was important for both regular ceremonies like weddings and for informal social gatherings alike. Alcohol still plays a role in both celebrations and religious rites which may be why the Neolithic revolution took place. Beer is both valued religiously and socially by the Triki Tribe in Kenya. In Judeo-Christian cultures, alcohol is used frequently for gatherings and counts as an important part of festivals, the metzitzah b'peh ritual, and the Shabbat meal.

Ancient Egypt (circa 3,000 BCE):

Joshua J. Mark[27] accounted that Egyptians consumed beer and wine for medical, spiritual, and social purposes. According to him, intoxication was sometimes seen as a way to connect with the gods. Known as "The Festival of Drunkenness," the Tekh Festival may have originated earlier, although it was originally celebrated in the Middle Kingdom of Egypt between 2040 and 1782 BCE. The narrative of Sekhmet's transformation and rampage was

[27] Joshua J. Mark (2017) Beer in Ancient Egypt; https://www.worldhistory.org/article/1033/beer-in-ancient-egypt/ Accessed 15 December, 2024.

most popular during the New Kingdom, when it was carved into the tombs of Seti 1, Ramesses 11, and other figures. Participants in this Hathor-focused festival would overindulge in alcohol, doze off in a certain hall, and awaken to the sound of drumming.

Ancient Greece and Rome (circa 8th century BCE – 5th century CE):

Dimitri van Limbergen[28] revealed that Wine was a stable beverage in Rome and Greece, and that intoxication was often associated with festivals, rituals, and social gatherings. He said that grape cultivation arrived in Italy at the start of the first millennium BCE and Greece at the end of the third millennium BCE. According to him, organised viticulture grew and wine became ingrained in Greco-Roman society at all levels starting in the eighth century BCE. Both the rich and the poor preferred it as their beverage. An important source of energy in the daily diet and a key intoxicant in the ancient world.

2.1.5 Defence

In simplified form, a "defense" legally refers to the explanations or opinions that a person (the defendant) uses to protect themselves against claims made by another party (the plaintiff or prosecutor). For instance, one is accused of something he didn't do; the person would want to project reasons that show he is not accountable. This is exactly what a defense does. It seeks to convince the court that the defendant should not be held liable for what he was accused of. It is generally used, at least in a loose manner, to mean any set of recognizable situations or conditions which may avert a conviction for a wrongdoing. The accused person can raise any of the catalogues of defences that exist under the law as may exculpate or

[28] Dimitri van Limbergen (2016) Wine, Greek and Roman, https://oxfordre.com/classics/classics/view/10.1093/acrefore/9780199381135.001.0001/acrefore 97801993811356888?product=orecla#:~:text=From%20the%208th%20century%20bce%20onward%2C%20systematic%20viticulture,essential%20source%20of%20energy%20in%20the%20daily%20diet. Accessed 15 December, 2024.

absorb him of the offense charged, the trial court also has a duty, where the charge is murder, to carefully consider such defences whether or not the accused person raises them[29]

On a general note therefore, a defence is a legal argument or evidence presented by a defendant to challenge or refute the charges brought against them, the purpose of which are:

a) To disprove the allegation and show that the prosecution's case is flawed or that the defendant did not commit the alleged offense.
b) Justify or excuse the action by providing a valid reason or explanation for the defendant's actions, which may mitigate or eliminate their liability.
c) Raise doubts about the defendant's guilty, making it difficult for the prosecution to prove their case beyond a reasonable doubt.

2.1.6 Classifications of Defences

Aside the general classification of defences, Nnamani graphically captured that some defences enjoy a surreptitious existence under the law. These are the defence of denial of constitutional right to fair hearing and uninvestigated alibi. This is, *prima facie*, a matter of procedural law. It will, nevertheless, be seen to enjoy a substantive character when cognizance is taken of the fact that denial of fair hearing nullifies investigation, prosecution, proceedings and even conviction when established, the same way failure to investigate and debunk or give a lie to properly raise alibi operates to let the accused person off the hook. To that extent, they stand as veritable defences under the law.[30]

Other classifications or types of defences to criminal liability includes:

[29] Bamidele Simeon v. The State (2018) JSCNLR Vol. 17, 1 at 34
[30] George Nnamani "Criminal Law in Nigeria: Offences and Defences", (Enugu, Chenglo Limited, 2024) 415

(a) Insanity:

Insanity is how Black's Law Dictionary defines it.[31] Any mental disorder so serious that a person is not seen as responsible either in civil or criminal matters. This is how the Nigerian criminal code explains insanity

An individual is not legally responsible for doing or failing to do something when, at the time, they are in a state of mental disease or infirmity that prevents them from understanding, controlling, or knowing it is wrong. A person who acts or fails to act due to delusions in certain matters and has no other reason for the defense remains responsible for such acts as if the truth of the matter had been known.

That same section of the Criminal Code also states that:

A person is exempted from criminal acts or omissions when a mental disease or natural mental infirmity leaves him unable to understand what happens, unable to control his conduct, or unable to see the incorrectness of doing or not doing something. An act done or omission made under duress is excusable as long as at the time of committing the act or making the omission the person acted under a reasonable belief in a state of facts, and would not have otherwise committed, and would not have omitted to commit, the act or made the omission under duress and in the state and condition in which he then was.

A close examination of Section 28 of the Criminal Code clearly reveals the defence of insanity if the defendant was suffering from a mental illness or natural mental infirmity at the time of the offence that prevented him from understanding what he was doing, controlling his actions, or recognising that he shouldn't have done the act or omitted the omission.

(b). Alibi:

Alibi is a plea or mode of defence under which a person accused of a crime or under trial proves or attempts to prove that he was in another place when the alleged act constituting the

[31] Bryan A Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019).

offence was committed. The defence is fueled by the physical incapability of man for bilocation. It is, etymologically, a word of Latin origin meaning 'elsewhere'[32]

The Supreme Court ruled in Okosi v. State that alibi is the most prevalent defence. Importantly, this does not require ingenuity or wit. The accused argument that he was not present at the crime scene when the offence was committed is only based on common sense. The prosecution still has the burden of demonstrating that the accused was present and that he is the one who committed the crime. The alibi will collapse if the accused is unable to persuade the court that he was not present at the site of the crime.

An accused individual must bring up the defence of alibi as soon as possible in order to be eligible for its positive effects. His extrajudicial declaration should ideally be the first opportunity. This is to give the police the chance to verify or deny the accused person's availability. Additionally, it prevents the accused from creating a bogus alibi and setting up phony witnesses to support it.

(c). Necessity and Extra Ordinary Emergency

Necessity, according to Black's Law Dictionary, refers to something that controls and moves you so much that you have no other choice.

According to Section 26[33] of the Nigerian Criminal Code Act,

In situations described by the Code as being under duress, forced, or done out of necessity, a person is let off from the charge if the act or omission was beyond what a normally strong-willed person could handle.

Preventing bigger harm is a legitimate reason to escape responsibility for both criminal and civil cases. If there is a risk of greater harm against people's rights or property, then causing damage to them can be understood when justified. In Cope v., Sharpe went onto the

[32] George Nnamani "Criminal Law in Nigeria: Offences and Defences", (Enugu, Chenglo Limited, 2024) 423

[33] Nigerian Criminal Code Act, s.26

plaintiff's land without being asked to put out a fire dangerously close to a nearby plantation. The court said that because it was an emergency, Cope was not guilty of trespass because he acted to prevent the plantation from being destroyed.

(d). Mistake:

Any act or omission resulting from a wrong conviction concerning law or fact is called a mistake. Sometimes, it happens because a person is not aware, accidents due to forgetfulness, is forced to or has excess confidence or is plain ignorant. When a mistake keeps the defendant from having the necessary mens rea for the offence for which he is charged, it is a defence. To support the defence, the defendant must demonstrate that his error:

Relates to the facts and not law

i. Is honest and reasonable

ii. Is such that the state of things believed to exist would if true have justified his act or omission complained of[34]

The defendant in R v. Ubierro had sex with a girl he thought was his wife. However, the girl was actually someone else's because of a case of mistaken identity. The court determined that Ubierro's factual error disproved the mens rea, or guilty mentality, necessary for the commission of rape. His conviction was thus reversed.

(e). De Minimis Non Curat Lex

De Minimis Non Curat Lex is Latin Maxim which essentially establishes that "the court doesn't sit on frivolous matters" which thus denotes that frivolities are not entertained in the court.

It also means that the court does not concern itself with trifles.

Triviality is a keyword which the court in its power pays vast attention to in the determination of a case in relation to this Latin maxim. It is an equitable remedy wherein the trial judge has

[34] Aiguokhan v. The State (2004) 7 NWLR (Pt 873) 565.

the absolute and complete control, as well as the discretion of its use and application. The justifications for the de minimis´rule" according to Mosanya A. Oluwatosin[35] are:

i. It protects an accused person from the stigma of a criminal conviction and from the imposition of harsh penalties for comparatively trivial conduct;

ii. It keeps courts from being overloaded with a vast number of pointless cases; and

iii. It reserves the application of the criminal law to serious misconduct. The hypothesis is partially predicated on the idea that the evil that the offence section is meant to avert hasn't really happened. This is in line with the dual core tenet of criminal justice, which states that innocent and blameless behaviour is not punishable.

Generally, the use of Latin Maxims in Nigerian Courts today are of minimal importance as they are as good as being non-existent.

(f). Self Defence

Self-defense is often called private defense as well. There is no legal definition in Nigeria, but there are two elements it covers under the common law. As follows:

i. To defend something, a man may use any force necessary without inflicting more harm than that which would be avoided.

ii. A man may act with the strength required to defend himself from attack, but he may not take someone's life or cause serious injury unless this is needed to save life, liberty, or limb.

Section 33 (2)[36] of the Constitution of the Federal Republic of Nigeria 1999 (as amended) states:

A person should not be seen as having had his life taken unlawfully if death results from the authorized use of such force as is reasonably required by law.

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[35] Mosanya A. Oluwatosin (2019) https://www.academia.edu/40195701/CRITICAL_ANALYSIS_OF_THE_LATIN_MAXIM_DE_MINIMIS_NON_CURAT_LEX_in_relation_to_the_practice_of_the_Law_of_Tort_in_Nigerian_Courts_in_recent_times_Presented_by_Mosanya_Adebimpe_Oluwatosin Accessed 15 December, 2024.

[36] CFRN, 1999 (as amended) s. 33 (2)

i) For keeping any person safe from illegal violence or for keeping property protected.

ii) to capture a person being lawfully arrested or to block their attempted escape.

iii) for the aim of dealing with riots, insurrections, or mutinies.

Self-defense is when a person shields themselves against the threat of being attacked by someone else.

(g). Provocation

A lot of criticism is directed at provocation, with many countries that use common Law and those with abolished capital punishment being particularly vocal. There has been disagreement in these places over whether provocation should still be part of the defense.

This is the case because it is unclear as to what the concept of objectivity in the defence of provocation means and there are some difficulties with the reasonable relation test.

Provoke was defined in Black's Law Dictionary as something, such as words or actions, that incites anger or animosity in another, causing the other person to act in the heat of passion.[37]

The Shorter Oxford English Dictionary explains provocation to be as follows:

(i) The call, invitation, Summons. ii) the process of provocation, motive, provocation, motive. (iii) A means of causing anger, resentment, or irritation ((iii) An act of riling up; disturbance). (iv) Thing that causes anger, resentment , or irritation.

The Supreme Court ruled in Uwagboe v. Provocation that the following conditions must be met for the defence to be successful. The accused was deprived of self-control by the State

i. the provocative deed.

ii. The deceased committed the offensive deed.

iii. There was no time for passion to subside during the abrupt altercation between the dead and the accused, and the accused use of force to thwart the provocation was appropriate given the circumstances.

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[37] Garner (n 206); Shorter Oxford English Dictionary (6th edn, Oxford University Press 2007).

(h). Duress

Duress refers to a situation where a person is forced to commit a crime due to threats, intimidation, or coercion from another person. A person is not criminally responsible for a crime if they were forced to commit it under duress.

This defence applies when:

1. the person believed that they or someone close to them would be harmed or killed if they did not commit the crime
2. there was no other reasonable way to prevent the threat
3. the person's actions were a reasonable response to the threat.

The defence of duress cannot be used in the following circumstances:

1. if the threat was made by someone the accused was voluntarily associating with to commit crime.
2. if the crime was murder or attempted murder.
3. if the person participated in killing.

The defence of duress absolves the defendant of liability because they acted under compulsion and not through choice. It differs from other defences such as intoxication or mistake, which negate the mens rea. It also differs from justificatory defence, such as defence, which justify the crime. The defence of duress is not available for certain crimes, such as murder, treason, and piracy.

(i) Automatism

Behaviour carried out in a state of dissociation or mental oblivion without complete awareness is known as automatism. It can be used as a criminal defence to refute the necessary mental state of voluntariness for committing a crime and refers to an individual's actions or conduct that appear to have occurred without their will. Ogundana, the appellant in

Ogundiyan v. The State[38], was accused of murder for the death of his wife. He asserted that he was mentally sick at the time and that he had no memory of the incident. The Nigerian Supreme Court ruled that the automatism argument applied because the appellant's actions were beyond of his control and involuntary because of his mental state.

(j). Bona Fide Claim of Right

The Latin term "bona fide" means "in good faith" or "genuine." It can also refer to sincere, truthful, and devoid of fraud or deceitful comments, acts, or intentions. According to Section 23 of the Criminal Code, an individual who acts or fails to act with regard to any property in the exercise of an honest claim of right and without intent to defraud is not legally accountable, as for an infraction pertaining to property. In cases of theft, property damage, and robbery, a bona fide claim of right is used to disprove mens rea. The West African Court of Appeal examined the defence of a bona fide claim of right in the context of a trespass allegation in Ilorin Native Authority v. Alabi. According to the court, if the defendant honestly thought they had the right to access the land, a legitimate claim of right can serve as a defence against trespassing. As long as the defendant really thought he had a legitimate claim of rights, he can defend a bona fide claim of rights even if it is legally and practically baseless.

2.2 Theoretical Framework

For the purposes of this research, we adopted the Mens Rea theory. Although the theory cannot be attributed to one author as the developer in any specific year but it evolved gradually through English Common Law over several centuries. The theory dates back medieval English law, with roots in the writings of legal scholars such as Henry de Bracton in the 13th century. Bracton expressed the principle that "an act does not make a person guilty

[38] Ogundiyan v. The State(1991) 3 NWLR (Pt. 181) 519

unless the mind is also guilty" (actus non facit reum nisi mens sit rea)[39]. This theory were further developed by later English jurist, including Sir Edward Coke (17th century) and Sir William Blackstone (18th century) who helped establish mens rea as a fundamental principle of criminal law.

Mens rea is one of the fundamental principles of criminal law. The Latin phrase means **"guilty mind"** and refers to the mental element or criminal intent accompanying the commission of a crime. In most criminal offences, liability arises only when both the **actus reus** (the guilty act) and the **mens rea** (the guilty mind) are present. The law of intoxication is closely linked to the theory of *mens rea* because intoxication may affect a person's ability to form the intention, knowledge, recklessness, or negligence required for criminal liability[40].

The relevance of *mens rea* to intoxication lies in determining whether an intoxicated offender possessed the mental state required for the commission of a particular offence and whether intoxication should excuse or reduce criminal responsibility. The primary relevance of *mens rea* in intoxication cases is that it determines whether the accused had the necessary criminal intention when the offence was committed[41].

Where intoxication is so severe that the accused could not form the required intent, the prosecution may fail to establish *mens rea*. Without proof of the necessary mental element, conviction for offences requiring specific intent may not be possible. For example, if a person becomes involuntarily intoxicated after consuming a drug without his knowledge and thereafter commits an offence while incapable of understanding his actions, the absence of *mens rea* may provide a complete defence.

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[39] Bracton, H. de. (c. 1235–1260/1968). On the Laws and Customs of England (De Legibus et Consuetudinibus Angliae) (S. E. Thorne, Trans.). Harvard University Press.
[40] Coke, E. (1644). The Third Part of the Institutes of the Laws of England.
[41] Blackstone, W. (1769). Commentaries on the Laws of England (Vol. 4).

The theory of *mens rea* explains why the law treats voluntary and involuntary intoxication differently.

- **Voluntary intoxication** occurs where the accused knowingly consumes alcohol or drugs. The law generally presumes that a person who voluntarily intoxicates himself accepts the risk of his conduct. Consequently, voluntary intoxication rarely negates criminal responsibility.

- **Involuntary intoxication** occurs where intoxication is induced without the accused's knowledge or consent. Since the accused did not voluntarily impair his mental faculties, the absence of *mens rea* may excuse criminal liability if the required intent cannot be proved.

Thus, *mens rea* provides the legal justification for distinguishing these two categories.

One of the greatest contributions of *mens rea* theory is the distinction between **specific intent offences** and **basic intent offences**.

Specific intent crimes require proof of a particular mental purpose beyond merely performing the prohibited act. Examples include:

- Murder (intent to kill or cause grievous bodily harm)

- Theft (intent permanently to deprive)

- Robbery

- Burglary

Where intoxication prevents the accused from forming this special intent, liability may be reduced or avoided.

Basic intent offences require only recklessness or negligence. Examples include:

- Assault
- Battery
- Manslaughter (in some circumstances)

In these offences, voluntary intoxication is generally not a defence because becoming intoxicated is itself regarded as reckless conduct.

Accordingly, *mens rea* helps courts determine the extent to which intoxication affects criminal responsibility.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORKS ON INTOXICATION

3.1 Legal Frameworks

Legal Framework is a set laws, regulations, and rules that govern a particular area of activity, country, organization or social issues, providing a structure for legal conduct and defining the rights and obligations of individuals and entities. In this section, laws, regulations, and rules on intoxication in relation to criminal liability, capacity and responsibility are discussed using Criminal Code Act, Penal Code Act and Sharia Law.

3.1.1 Criminal Code Act.

According to section 29 (5) of the Criminal Code, the term intoxication also refers to states caused by narcotic or drug substances.[42] The Code does not say a person can be intoxicated if he consumes alcohol or drugs other than hard drugs or narcotics. One may notice that in the drafts, alcoholic beverages were not mentioned as causing intoxication when consumed. It seems to the authors that, since alcohol makes people intoxicated, it should be regarded as an intoxicating substance.

In Theophilus v State[43], the court pointed out that usually, if being drunk is self–inflicted, it is not considered a defense. The appellate court tossed out Egbe Nkanu's appeal in the Supreme Court, as it found that acting intoxicated of your own accord cannot be an excuse. The defendant in this case did not give evidence about intoxication; he proved to the court that he acted strangely on occasion. Before killing the deceased, he drank palm wine freely; and he stated that he used a machete to take the life of the deceased because he was drunk. The defendant said he did not realize that what he did was against the law.

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[42] Criminal Code Act, Cap C38, LFN 2004, s 29(5).
[43] Theophilus v. State (1996) 1 NWLR (Pt 423) 139

A defendant must have been so drunk that it would rob them of the ability to create a plan for committing a crime. Since he does not have complete control over his mind, he may not be able to decide to commit something unlawful. Drinking, using drugs or intoxication is important to the discussion only because it might prove that the person lacked essential mental capacity.

According to the Criminal Code being drunk is not a legal excuse for breaking the law. The idea is that it is not, without qualification, accepted by law, unless some conditions allow the culprit to argue in their favor. Section 29 (1)[44] says the following:

a) Unless this section states otherwise, intoxication is a defense in criminal law if, because of intoxication, the accused was unaware that such actions were wrong. The intoxication arose because another person, acting maliciously or carelessly, forced it on him without his consent.

b) The person accused was, because of intoxication, temporarily or permanently insane, at the time of their act or omission".

When the facts show, with the highest degree of certainty, that a defendant was drunk as provided for in section 29 (2) (a) of the Criminal Code[45], he is discharged from the charge against him. A defendant might rely on section 29 (2) (b) (i)[46] if, because of that reason, he did not know his act was wrong or he did not know what he was doing when he allegedly committed the wrongful action.

When intoxication reduces a defendant to an insane state under section 29 (2) (b) (ii)[47] of the Code and proper tests confirm he is insane to the court, it can decide to place him in a lunatic

[44] Criminal Code Act 29 (2) (a)
[45] Criminal Code Act, Cap C38, LFN 2004, s 29(2).
[46] Criminal Code Act, Cap C38, LFN 2004, s 29(2) (b) (i)
[47] Criminal Code Act, Cap C38, LFN 2004, s 29(2) (b) (ii)

asylum at the Governor's discretion. It is the defendant's job to establish intoxication and to succeed, they must meet two bifurcated onuses. He might prove that at the crime, he lacked awareness of what he was doing and the reason was not because he chose to be intoxicated. But at the moment the act/omission or wrong mentioned above occurred, the defendant was temporarily insane.

The Criminal Code accepts the form of intoxication outlined in section 29 (2) (a)[48] as possible without the person's consent. If a person is entirely unable to act intentionally, the defense of intoxication will lead to a not guilty decision. The question is how someone can decide if the intoxication was voluntary or not, considering what happened that led to the defendant's criminal act. Furthermore, if someone willingly agreed to drink, knowing all the facts, their defense of intoxication probably would not succeed. The Federal Supreme Court in Nkwulebe v. The Queen ruled that not having a motive for committing a terrible crime, so long as proof of either crazy or extremely drunk behavior at the time of the act is absent, does not justify avoiding the intoxication defense in sections 28 and 29 of the Criminal Code.

It should be understood that section 29(4) of the CCA 2004[49] was clear that intoxication can affect all types of intent, not just basic intent crimes. Courts in Nigeria have made only criminal intent offenses subject to the defense. As a result, in (Nkanu v State), intoxication on its own will not exonerate a person charged with crimes of basic intent like assault or manslaughter. Still, when a crime demands a specific mental state, a defendant may not be convicted since self-intoxication can avoid proving such a mental element. The Criminal Code states in section 29 (5): "Using this section, 'intoxication' includes a state caused by na

rcotics or drugs."

[48] S. 29 (2) (a)
[49] S. 29(4)

3.1.2 Penal Code Act

Voluntary actions are described in the Code as those that occur by means someone intends to use or by means where they are aware those means can cause the effect. Therefore, when A does something with purpose, his intentions are not considered in deciding whether he should be held responsible for what happened. Because he did it willingly, he would not be able to claim that he did not intend it.

By section 43, if a fact is a matter of common knowledge, a person is deemed to be aware of it unless there is evidence to the contrary in court.[50] For this reason, being drunk generally leads to poor judgment. For this reason, if A drinks even knowing the impaired effect on mental thinking, he would be entirely responsible for any outcome of his actions. According to section 44, "a person who acts under the influence of intoxication is held to be as aware as if she had not been intoxicated".

According to R. vs Owarey, both the accused and the deceased worked for the same company in Sokoto. A disagreement led the accused to head home, get intoxicated, and grab a gun. Soon afterward he returned and, looking after the dead, made a comment predicting a death that day. Not long after, he pulled the trigger and the deceased died a few hours afterwards. The West African Court of Appeal rejected his claim of drinking a potion while arguing his case. Certainly, his conviction was right because he showed that he was able to plan the killing purposefully.

Nothing is considered a crime when it is done by someone who cannot know that their actions are illegal or improper, owing to being intoxicated without their knowledge against their will by another person. All this leads us to conclude that voluntary intoxication is not an acceptable defense in criminal law.

[50] Penal Code Act, Cap s 43.

3.1.3 Sharia Law

Roaa said that Sharia (in English, Shari'ah) means the set of moral and legal guidelines taken from Islamic teachings. Sharia means "the path" or "the way," showing Muslims the proper actions to take in their personal, community, and religious life. As well as controlling Islamic worship, Sharia is involved in family matters, the courthouse, how companies are run, and justice. Sharia law covers the legal section of Sharia. The term "Sharia law" is heard a lot in the news, but people must realize that Sharia covers Islamic values and has varied legal uses depending on various cultures.

Qur'an 5:90[51] says to believers: that Satan's influence is obvious through intoxicants, games of chance, and divining with arrows. Don't worry about achieving success" The Sharia Penal Code Section 136 of Nigerian Sharia law states that anyone caught intoxicated should be flogged, with between 40 and 80 lashes. Kanon Sule of Zamfara state was sentenced to 80 lashes in 2000 after the Sharia court found him guilty under Penal Code Section 136. "Alcoholic to receive 80 floggings according to Sharia,". Sentenced in November 2004 to receive 80 strokes of the cane, Ibrahim Musa (Bau.). - "Man to Receive 80 Lashes by Sharia Court for Having Alcohol."

3.2 Institutional Framework

The place of rationality and coherency of individuals as a prerequisite for social order cannot be over emphasized in any given society. The system of government ensures the running of the affairs

of the society by making laws that guide the citizens and promote sustainability.

In this subsection, the utility of the duties and responsibilities of government institutions via Legislative, Executive and the Judiciary are discussed. As a result, the activities of the Police,

[51] Qur'an 5:90

Court, National Drug Law Enforcement Agency (NDLEA), and the Federal Road Safety Corps (FRSC) are interrogated. These are government organizations whose responsibilities is, though not limited to working together to prevent, control, and treat intoxication-related problems in Nigeria.

3.2.1 The Nigerian Police

The Nigerian Police Act, 2020 provided for intoxication offences against police officers and the general public. For instance, Section 100(I) provides that, "A police officer is not allowed to use intoxicating alcohol, psychotropic substances, or stimulants while on duty; if they do, they will be disciplined in line with the police disciplinary procedures."[52]

"A person who knowingly harbours or entertains, or either directly or indirectly gives any intoxicating liquor, psychotropic substance, or stimulant to any police officer while on duty, or permits any such police officer to abide or remain in his house unlawfully; except in cases of extreme urgency," states Section 100(2)[53].

When a police officer is threatened or offered money, gifts, spirits, liquors, psychotropic substances, or stimulants in an attempt to persuade him to violate his duties or to omit any portion of them, he or she is guilty of an offence and faces a minimum fine of N50,000. The Nigerian police are essential in upholding the following laws pertaining to intoxication offenses:

Primary Responsibilities:

1. Enforcement of Laws: Police officers are responsible for enforcing laws related to intoxication, such as the prohibition of driving under the influence (DUI) and public intoxication.

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[52] Nigerian Police Act 2020, s 100(1).
[53] Nigerian Police Act 2020, s 100(2).

2. Arrest and Detention: Police officers have the authority to arrest and detain individuals suspected of intoxication-related offenses.

3. Investigation: Police officers investigate intoxication-related incidents, gathering evidence and interviewing witnesses.

Specific Duties:

1. Conducting Breathalyzer Tests: Police officers may conduct breathalyzer tests to determine an individual's blood alcohol concentration (BAC).

2. Issuing Tickets and Fines: Police officers may issue tickets and fines to individuals found guilty of intoxication-related offenses.

3. Providing Support and Referrals: Police officers may provide support and referrals to individuals struggling with addiction or substance abuse.

3.2.2 The Nigerian Courts

In Nigeria, the courts play a crucial role in intoxication-related cases, particularly in cases involving criminal liability, negligence, and personal injury. Here are some key aspects of the role of Nigerian courts in intoxication-related cases:

1. Determining Criminal Liability:

Intoxication as a Defense: The courts consider whether the defendant was intoxicated at the time of the alleged offense and whether this intoxication affected their ability to form the necessary intent.

Voluntary Intoxication: If the defendant's intoxication was voluntary, the courts may not consider it a valid defense.

Involuntary Intoxication: If the defendant's intoxication was involuntary (e.g., due to duress or medical treatment), the courts may consider it a valid defense.

2. Assessing Negligence:

Duty of Care: The courts evaluate whether the defendant owed a duty of care to the plaintiff and whether they breached this duty due to intoxication.

Causation: The courts determine whether the defendant's intoxication caused the harm or injury to the plaintiff.

Contributory Negligence: The courts assess whether the plaintiff contributed to the harm or injury by their own actions or negligence.

3. Personal Injury Cases:

Compensation: The courts award compensation to plaintiffs who have suffered harm or injury due to the defendant's intoxication.

Damages: The courts assess the extent of the damages and award appropriate compensation.

4. Sentencing and Rehabilitation:

Sentencing: The courts impose sentences on defendants found guilty of intoxication-related offenses, taking into account the severity of the offense and the defendant's level of intoxication.

Rehabilitation: The courts may order defendants to undergo rehabilitation or treatment programs for substance abuse or addiction.

Relevant Laws and Precedents:

Criminal Code: The Nigerian Criminal Code provides guidance on intoxication-related offenses, such as drunk driving and public intoxication.

Evidence Act: The Nigerian Evidence Act governs the admissibility of evidence in intoxication-related cases.

Case Law: In situations involving intoxication, Nigerian courts have set precedents and offered advice on matters such as personal harm, criminal culpability, and carelessness. The following is stated in Section 20(3) of the National Drug Law Enforcement Agency Act, 2004: "The Federal High Court, which hears a conviction, may, in addition to the penalty specified in subsection (2) of this section, order an offender to undergo measures such as treatment, education, aftercare, rehabilitation, or social reintegration."

"Notwithstanding subsections (2) and (3) of this section, the Federal High court before which a minor is being convicted may, in an appropriate case, make an order as the circumstances may determine," reads Section 20(4) of the National Drug Law Enforcement Agency Act, 2004. a. As an alternative to punishment or conviction; or b. For the offender's treatment, education, aftercare, rehabilitation, and social integration.

3.2.3 National Drug Law Enforcement Agency (NDLEA)

This is what Section 20[54] of the National Drug Law Enforcement Agency Act, 2004 says :

“1. Someone who isn’t lawfully present for such purpose and commits any of these offenses

a. Includes: manufacturing, procuring, processing, offering for sale, distributing, selling, providing delivery, brokerage, shipping in transit, transport, importing or exporting any narcotic drug or psychotropic substance as forbidden by the 1961 Convention and its Protocols or the 1971 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic substances of 1989.

b. Seeds or grows opium, poppy, coca bush, or cannabis for manufacturing of narcotic drugs against the 1961 convention.

c. Possesses, engages in, or purchases any narcotic drug or psychotropic substance for one of the purposes mentioned in paragraph (a) here.

[54] National Drug Law Enforcement Agency Act, 2004. s.20

d. Takes part in acquiring, having, or using property, when aware at the time that it was earned through any of the offenses in this section.

e. Possesses equipment, materials, or substances from the second schedule of this Act, realizing those items will be used for illicit narcotic drug or psychotropic substance processing.

f. Manufactures, distributes, or ships equipment, material, or substances designed for illicit narcotic drug or psychotropic substance production, without knowing about the intended use.

g. Responsible for the administration, organization, or financing of any of the crimes under paragraphs (a) to (f)

h. Converts property or transfers property knowing that it is the result of an infraction under this subsection.

i. Anyone who conceals or disguises the true nature, source, location, disposition, movement, rights with regard to, or ownership of property knowing that it is derived from any of the offences mentioned in this section is guilty of an offence under this Act and, upon conviction, is subject to the penalties outlined in subsection (2) of this section.

2. The punishments for violations of this section's subsection (1) are as follows:

a. Life in prison for violations of paragraphs (a), (b), (d), (e), (f), and (h).

b. Be imprisoned for a minimum of fifteen years and a maximum of twenty-five years for violations under paragraphs (c), (g), and (i).

In relation to this study therefore, we are concerned with Section 1(d) which expressly stated that the use of narcotic drug or any psychotropic substance is a punishable offence under sub section 2 as stated above. It is worthy of note that alcohol which of course is an intoxicant has the capacity to produce psychotropic effect.

3.2.4 Federal Road Safety Corps (FRSC)

In almost every country, road traffic crashes (RTCs) are a significant public health pandemic, resulting in more than 1.3 million deaths and wounds to tens of millions every year according to WHO. Drunk drivers and passengers are responsible for many RTCs in developing countries (Ehikhamenor and Agwubike 2004).

FRSC which stands for Federal Road Safety Corps, has been designated by the government to look after road safety issues in Nigeria. The foundation of the organization in 1988 was supported by Decree No. 45 of 1988 and Decree 35 of 1992 added subsequent amendments. The FRSC works across Nigeria in every state and the Federal Capital Territory. The agency is in charge of road safety administration and management in Nigeria. The FRSC's laws ensure that its actions aim to keep highways safe, assess whether vehicles are roadworthy, recommend steps to lower accidents on highways, and teach both motorists and others on road discipline.

As described by Section 22[55] of the Federal Road Safety Corps (Establishment) Act 2007;

"A driver who has a blood alcohol level of 0.5 grams per liter or more or who is not in control of their vehicle due to intoxication, commits an offense and faces a fine, imprisonment or both".

[55] Federal Road Safety Corps (Establishment) Act 2007 s. 22

It is considered a traffic offense to operate or attempt to operate a motor vehicle on a highway while under the influence and members of the Corps may arrest and prosecute anyone suspected of the offense. Even so, FRSC members do not have enough tools to test the alcohol in the blood of individuals involved in car accidents. Ogazi and Edison pointed out in their book that alcohol testing equipment was unavailable in law enforcement almost a decade earlier. Fadekemi, O. and her team believe that since there are no alcohol testing tools, our law enforcement has to rely on subjective ways to identify defaulters. The team agreed that testing, color change, pupil size, gait, reactions to drinking, and answers to questions indicate that police have the skills to find defaulters but lack proper devices for objective detection. As a result, checking a driver's breath for alcohol is very risky for law enforcement officers.

3.3 Plea of Intoxication as a Defence in Nigerian Legal System

Nature of Involuntary Intoxication: Involuntary intoxication involves the individual not being aware of or consenting to the consumption of substances that lead to impairment.

Defence for Specific Intent Crimes: When the law requires specific intent, involuntary intoxication can be used in defense if it stops the defendant from having the intent needed for a crime.

Defence for General Intent Crimes: Sometimes, it is possible to defend oneself against a general intent crime if intoxication makes it impossible for the defendant to tell right from wrong.

Comparison to Insanity Defense: Sometimes, showing involuntary intoxication can demonstrate, like the insanity defense, that intoxication stopped the defendant from understanding the consequences of their actions.

CHAPTER FOUR

NATURE AND SCOPE OF INTOXICATION IN SOME FOREIGN JURISDICTIONS

4.1 Lessons from Other Jurisdictions

The examination of intoxication laws across different jurisdictions offers valuable insights for legal scholars, policymakers, and practitioners. Comparative analysis of how various legal systems address intoxication-related offences serves multiple important purposes. It facilitates the identification of strengths and weaknesses in different legal frameworks, promotes international cooperation on substance abuse and crime prevention, and inspires informed law reform efforts. Furthermore, such comparative study deepens understanding of how cultural, social, and historical contexts shape legal responses to intoxication, while enabling legal practitioners to handle cross-border cases more effectively. The exploration of foreign jurisdictions also contextualises international human rights obligations concerning public health, safety, and human dignity. This chapter examines the approaches to intoxication in three major jurisdictions: the United States of America, India, and the United Kingdom, drawing lessons that may inform legislative and judicial developments in other legal systems.

4.1.1 United States of America

Intoxication occupies a significant position within the criminal justice system of the United States. Courts regularly confront cases involving offenders who commit crimes while under the influence of alcohol or drugs. Unlike some legal systems that treat intoxication as a complete defence, United States law generally regards voluntary intoxication as a limited defence, while involuntary intoxication may completely excuse criminal liability under certain circumstances.[56] The treatment of intoxication depends largely on whether the offence requires a specific or general criminal intent, the nature of the intoxication, and applicable state or federal law.[57]

The Legal Position under United States Criminal Law

The United States does not operate under a single criminal code. Criminal law is governed by federal law, state statutes, and the Model Penal Code, which many states have adopted wholly or partly.[58] Although states differ, several common principles exist.

Voluntary Intoxication

Voluntary intoxication generally does not excuse criminal conduct.[59] However, in offences requiring specific intent, evidence of intoxication may be admitted to demonstrate that the defendant lacked the mental state required for conviction.[60] For instance, if first-degree murder requires deliberate and premeditated intent, severe intoxication may prevent proof of premeditation. Conversely, voluntary intoxication is generally not a defence to crimes requiring only general intent.[61]

Involuntary Intoxication Involuntary intoxication is treated similarly to insanity.[62] A defendant may be acquitted where intoxication destroys the ability to appreciate criminality, prevents understanding of one's conduct, or makes the conduct involuntary.[63]

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[56] Cornell Law School, 'Intoxication Defense', *Legal Information Institute* (2024) https://www.law.cornell.edu/wex/intoxication accessed 15 July 2026.

[57] Dinis Cheian, 'Solving General and Specific Intent: A Mapping on the MPC and Applications to the Categorical Approach' (2025) 32 *George Mason Law Review* 1, citing *People v Hood*, 462 P.2d 370, 377 (1969).

[58] Cheian (n 2).

[59] *Montana v Egelhoff*, 518 U.S. 37 (1996).

[60] *United States v Veach*, 455 F.3d 628, 632 (6th Cir 2006).

[61] *Veach* (n 11) 633.

[62] Cornell Law School (n 7).

[63] Model Penal Code § 2.08(4) (American Law Institute 1962).

Model Penal Code Approach

The Model Penal Code § 2.08 provides that intoxication is not a defence unless it negatives an element of the offence; self-induced intoxication cannot excuse recklessness where recklessness is sufficient for liability; and involuntary intoxication may constitute a complete defence if it creates a mental condition equivalent to legal insanity.[64]

Specific Intent and General Intent Crimes

A distinctive feature of American criminal law is the distinction between specific-intent and general-intent offences.[65] Specific intent crimes require proof of an additional mental purpose beyond merely committing the act. Examples include first-degree murder, burglary, robbery with intent, and attempt offences. Voluntary intoxication may sometimes reduce liability for such offences.[66] General intent crimes require only the intent to perform the prohibited act. Examples include battery, manslaughter, and driving under the influence (DUI). Voluntary intoxication is generally not a defence to these offences.[67]

Major Judicial Decisions

***Montana v. Egelhoff*, 518 U.S. 37 (1996)**

The United States Supreme Court upheld a Montana statute prohibiting defendants from introducing evidence of voluntary intoxication to negate the required mental state for an offence.[68] The Court ruled that states may constitutionally refuse to recognise voluntary intoxication as a defence. Justice Scalia, delivering the plurality opinion, observed that at

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[64] Model Penal Code § 2.08 (American Law Institute 1962).
[65] Cheian (n 2).
[66] *Veach* (n 11) 633.
[67] *Veach* (n 11) 633.
[68] *Montana v Egelhoff*, 518 U.S. 37 (1996).

common law, voluntary intoxication provided neither an excuse nor a justification for crimes, and that this position has only been strengthened by modern research.[69]

***Powell v. Texas*, 392 U.S. 514 (1968)**

The Supreme Court held that chronic alcoholism did not excuse criminal responsibility for public intoxication.[70] The Court emphasised that criminal liability may attach despite alcohol dependency, distinguishing between punishing a person for being a chronic alcoholic and punishing them for being drunk in public on a particular occasion.[71]

***United States v. Veach*, 455 F.3d 628 (6th Cir. 2006)**

The court reaffirmed that voluntary intoxication is only relevant where the crime charged requires proof of specific intent.[72] The court observed that a specific intent crime requires a defendant to do more than knowingly act in violation of the law; the defendant must also act with the purpose of violating the law.[73]

Driving Under the Influence (DUI)

One of the most common intoxication-related offences in the United States is Driving Under the Influence (DUI), also known in some states as Driving While Intoxicated (DWI).[74] Most states adopt a Blood Alcohol Concentration (BAC) limit of 0.08% for adults, lower limits for commercial drivers, and near-zero tolerance for drivers under 21 years of age.[75] Penalties

[69] *Egelhoff* (n 19) 48.
[70] *Powell v Texas*, 392 U.S. 514 (1968).
[71] *Powell* (n 21) 532.
[72] *Veach* (n 11) 633.
[73] *Veach* (n 11) 634, citing *United States v Kimes*, 246 F.3d 800, 806 (6th Cir 2001).
[74] Road Traffic Act 1988, ss 4-5 (UK).
[75] *ibid*.

include fines, imprisonment, driver's licence suspension, mandatory alcohol education, ignition interlock devices, and community service.[76]

Policy Reasons Behind the American Approach

American criminal law adopts a restrictive attitude toward intoxication for several reasons: individuals voluntarily choose to become intoxicated; society must protect the public from alcohol-related violence; allowing intoxication as a defence would encourage abuse; victims deserve protection regardless of the offender's intoxicated condition; and criminal deterrence would weaken if intoxication excused offences.[77]

Major Lessons from United States Law

Several important lessons emerge from the American approach. Personal responsibility is paramount in attributing criminal liability.[78] The law clearly distinguishes voluntary from involuntary intoxication, with only the latter potentially excusing criminal conduct.[79] Criminal intent remains central to liability, and the specific/general intent distinction determines the relevance of intoxication evidence.[80] Public safety concerns outweigh claims based on self-induced intoxication.[81] States retain flexibility in determining the scope of intoxication defences.[82] DUI offences receive strict enforcement throughout the United States.[83]

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[76] Road Traffic Act 1988, Sch 2 (UK).
[77] Glanville Williams, *Textbook of Criminal Law* (2nd edn, Stevens & Sons 1983) 471.
[78] *Montana v Egelhoff*, 518 U.S. 37 (1996).
[79] Cornell Law School (n 7).
[80] Cheian (n 2).
[81] *Powell v Texas*, 392 U.S. 514 (1968).
[82] *Montana v Egelhoff*, 518 U.S. 37 (1996) (Ginsburg J, concurring).
[83] Road Traffic Act 1988, ss 4-5 (UK).

4.1.2 India

The law on intoxication in India is primarily governed by Sections 85 and 86 of the Indian Penal Code, 1860 (IPC), now substantially reflected in the Bharatiya Nyaya Sanhita, 2023. Indian law distinguishes between involuntary intoxication, which may excuse criminal liability under limited circumstances, and voluntary intoxication, which generally does not excuse criminal conduct. Judicial decisions have consistently reinforced the principle that individuals who voluntarily consume intoxicants remain responsible for the consequences of their actions.[84]

Legal Framework

Section 85 of the Indian Penal Code states that "insofar as the substance that intoxicated him was given to him against his will or without his knowledge, nothing is an offence that is committed by a person who at the time of doing it is incapable of knowing the nature of the act he is doing, and what is either or contrary to the law."[85]

Section 86 provides that "unless the thing that intoxicated him was administered to him without his knowledge or against his will, then a person who does the act in a state of intoxication shall be liable to be dealt with, as if he had the same knowledge as he would have had if he had not been intoxicated."[86]

Key Lessons from Indian Law

Voluntary Intoxication Is Not a Complete Defence

The foremost lesson from Indian criminal law is that voluntary intoxication does not exempt an offender from criminal liability. A person who willingly consumes alcohol or drugs is

[84] Indian Penal Code 1860, ss 85-86.
[85] Indian Penal Code 1860, s 85.
[86] Indian Penal Code 1860, s 86.

presumed to understand the risks associated with such conduct and cannot ordinarily rely on intoxication as a defence to criminal charges.[87] This principle reflects public policy aimed at discouraging reckless behaviour and protecting society from crimes committed under the influence of intoxicants.

Involuntary Intoxication May Excuse Criminal Responsibility

Section 85 IPC provides that a person is not criminally liable where intoxication was caused without knowledge or against will, and because of such intoxication the person was incapable of understanding the nature or wrongfulness of the act.[88]

Courts Focus on *Mens Rea* Rather than Mere Intoxication

Indian courts examine whether the accused possessed the required criminal intention. Where intention is an essential element of the offence, intoxication may become relevant only in determining whether such intention existed.[89]

Knowledge Is Presumed Despite Voluntary Intoxication

Section 86 IPC provides that where an offence requires knowledge, a voluntarily intoxicated person is treated as having the same knowledge as if sober.[90]

***Basdev v. State of Pepsu* (1956) Remains the Leading Authority**

[87] *Basdev v State of Pepsu*, AIR 1956 SC 488.
[88] Indian Penal Code 1860, s 85.
[89] *Basdev v State of Pepsu*, AIR 1956 SC 488.
[90] Indian Penal Code 1860, s 86.

In *Basdev v. State of Pepsu*, the Supreme Court held that voluntary drunkenness is generally no defence to crime. The Court emphasised that a person who voluntarily becomes intoxicated is presumed to intend the natural consequences of his actions.[91]

The Burden of Proof Lies on the Accused

Where intoxication is raised as a defence under Section 85 IPC, the accused bears the burden of proving that the intoxication was involuntary and rendered him incapable of understanding his actions.[92]

Modern Criminal Law Retains the Same Principles

The Bharatiya Nyaya Sanhita, 2023, substantially preserves the long-standing principles established under the IPC, demonstrating India's continued commitment to holding voluntarily intoxicated offenders criminally accountable.[93]

4.1.3 United Kingdom

Intoxication occupies an important place in the criminal law of the United Kingdom. English criminal law has developed a sophisticated body of rules governing the extent to which intoxication may affect criminal liability. Unlike a complete defence such as insanity, intoxication is generally not a defence to crime. The law distinguishes between voluntary intoxication and involuntary intoxication, and between crimes of specific intent and crimes of basic intent.[94]

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[91] *Basdev v State of Pepsu*, AIR 1956 SC 488.
[92] Indian Evidence Act 1872, s 105.
[93] Bharatiya Nyaya Sanhita 2023.
[94] Williams (n 28) 464-68.

The Legal Position under United Kingdom Criminal Law

The law governing intoxication in England and Wales is largely based on judicial decisions rather than statute.[95] The courts have consistently held that voluntary intoxication is generally no excuse for criminal conduct.

Voluntary Intoxication

Where a crime requires specific intent, evidence of intoxication may be considered in deciding whether the accused actually formed the necessary intent.[96] However, voluntary intoxication affords no defence to crimes of basic intent because voluntarily becoming intoxicated is itself regarded as reckless conduct.[97]

Involuntary Intoxication

Involuntary intoxication is treated more favourably by the courts. A defendant may rely upon involuntary intoxication where it prevents the formation of the required criminal intent.[98] Nevertheless, where the defendant still possesses the necessary *mens rea* despite being involuntarily intoxicated, criminal liability remains.[99]

Specific Intent and Basic Intent Crimes

The distinction between specific intent and basic intent forms the cornerstone of English intoxication law.[100] Specific intent offences require proof of an additional mental purpose beyond merely committing the prohibited act. Examples include murder, theft, burglary, robbery, and criminal damage with intent. Where voluntary intoxication prevents formation

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[95] Herring (n 46) 231-33.
[96] *DPP v Beard* [1920] AC 479 (HL).
[97] *Majewski* (n 49).
[98] *Kingston* (n 51).
[99] *Kingston* (n 51).
[100] Ormerod and Laird (n 47) 394-95.

of the required intent, liability may be reduced.[101] Basic intent offences require only the intention or recklessness involved in committing the prohibited act. Examples include assault, battery, manslaughter, rape, and assault occasioning actual bodily harm. Voluntary intoxication provides no defence to these offences.[102]

Leading Judicial Decisions

***DPP v. Beard* [1920] AC 479**

The House of Lords held that voluntary intoxication may be considered only where it prevents formation of the specific intent required for the offence.[103]

***Director of Public Prosecutions v. Majewski*[1977] AC 443**

This landmark case established that voluntary intoxication is no defence to crimes of basic intent because becoming intoxicated voluntarily constitutes reckless conduct.[104]

***R v. Kingston* [1995] 2 AC 355**

The House of Lords held that involuntary intoxication is not a defence where the defendant nevertheless formed the required criminal intent.[105]

***R v. Lipman* [1970] 1 QB 152**

The Court of Appeal ruled that intoxication caused by voluntary consumption of LSD could not excuse a conviction for manslaughter where murder required proof of specific intent.[106]

[101] *Beard* (n 53).
[102] *Majewski* (n 49).
[103] *Beard* (n 53).
[104] *Majewski* (n 49).
[105] *Kingston* (n 51).
[106] *R v Lipman* [1970] 1 QB 152 (CA).

Statutory Provisions Relating to Intoxication

Although intoxication law is primarily governed by the common law, several statutes regulate alcohol-related offences. The Road Traffic Act 1988 makes it an offence to drive or attempt to drive a motor vehicle while exceeding the prescribed alcohol limit.[107] Similarly, the Licensing Act 2003 regulates the sale and consumption of alcohol and creates offences relating to drunken behaviour in licensed premises.[108]

The prescribed alcohol limit in England and Wales is 35 micrograms of alcohol per 100 millilitres of breath; 80 milligrams per 100 millilitres of blood; or 107 milligrams per 100 millilitres of urine.[109] Penalties include unlimited fines, driving disqualification, imprisonment, and mandatory licence endorsement.[110]

Policy Reasons Behind the United Kingdom Approach

English criminal law adopts a restrictive attitude toward intoxication because individuals should bear responsibility for voluntarily becoming intoxicated; public safety requires deterrence of alcohol-related violence; criminals should not escape liability because they deliberately impaired their judgment; victims deserve equal legal protection irrespective of the offender's intoxication; and public confidence in the criminal justice system would be undermined if intoxication frequently excused crime.[111]

Major Lessons from United Kingdom Law

[107] Road Traffic Act 1988, ss 4-5 (UK).
[108] Licensing Act 2003, ss 141-43 (UK).
[109] Road Traffic Act 1988, ss 4-5 (UK).
[110] Road Traffic Act 1988, Sch 2 (UK).
[111] Herring (n 46) 236.

Several important lessons emerge from the English approach. Personal responsibility remains central to criminal liability.[112] The law distinguishes between voluntary and involuntary intoxication.[113] The distinction between specific intent and basic intent determines whether intoxication is legally relevant.[114] Recklessness in becoming intoxicated itself justifies criminal liability for basic-intent offences.[115] Courts carefully balance fairness to defendants with protection of the public.[116] Strict regulation of drink-driving demonstrates the law's commitment to public safety.[117]

4.1.4 South Africa

For intoxication situation in South Africa, Unini Chioma[118] explained that as criminal matters are concerned in relation to intoxication, it happens to be a legal defence though in some situations. Firstly, there are two aspects of namely, a situation where the offender does not have control over how he got intoxicated and another situation where he is part of his own intoxication. Apparently, it is impossible to hold someone answerable to things he could not control. In South Africa, the law sees intoxication as a veritable defence accessible to offender when influenced with alcohol.

A*ctio libera in causa* as a principle under voluntary intoxication is invoked as it regards to an offender who intentionally got himself intoxicated to enable him commit an offence. In this circumstance, the person is entirely answerable. When proven that intoxication has nothing to do with the offence but has relevance to mental impairment, usual procedure as it relates to

[112] Ormerod and Laird (n 47) 403-04.
[113] Williams (n 28) 471.
[114] Ormerod and Laird (n 47) 395-98.
[115] *Majewski* (n 49).
[116] Ormerod and Laird (n 47) 404.
[117] Road Traffic Act 1988, ss 4-5 (UK).
[118] Unini Chioma (2023) "An Examination of the Criminal Defence of Intoxication: An Excuse to Escape Criminal Liability?" An
_ Examination Of The Criminal Defense Of Intoxication: An Excuse To Escape Criminal Liability? - TheNigeriaLawyer Accessed
15 December, 2024

defence of mental impairment should apply. If a person is intoxicated to the extent that his actions can be seen as spontaneous and without mental control, he will not be criminally responsible, no matter the result of his actions. Automatism is the type of defence referred to as here. In circumstances where a person does not understand that what he is doing is against the law while influenced by alcohol, such individual cannot be criminally liable because he is perceived not to have enough criminal capability. In this perspective, offender might partly be free from punishment, in so far as it is possible for inability to form intent is the same as negligence. Example, If A Stabs B while extremely controlled by alcohol, in which B slumps and dies. A is believed to form the intent to kill B via the intake of much alcohol. However, intoxicated to the point he cannot expect that B might die due to his action. On that note, A is responsible for culpable homicide or manslaughter, and not regarded as murder. If intoxication is not categorized in any of the foregoing conditions, the offender is responsible. The nature and extent of intoxication may be a reason to moderate the punishment the offender will receive from the court. Where someone has taken enough alcohol to affect his thoughts and understanding, it will be unjust and inequitable to hold another person responsible for the material conditions he found yourself.

When intoxication is involuntary, but serious, it is a defense. This means that if the intoxication was not caused by the actions carried by the accused, rather another person and made him not to understand what he was doing, any act done under such circumstance will not be hold against him.

When a person engages in incessant drunkenness which brings about mental disorder called *delirium tremens* to the point where the offender became insane when he committed the offence and did not understand all he was doing, he is not liable. However, under such case, the person can be affirmed insane. See S v. Johnson[119]

In South Africa laws and of course Nigeria, the border line is that intoxication should not be used as excuse to someone who is accused of intoxication related offence, unless in some situations permitted by laws of various nations.

4.2 Summary of Lessons from Foreign Jurisdictions

The examination of intoxication laws in the United States, India, the United Kingdom and South Africa reveals several common principles that may inform legal development in other jurisdictions.

First, all three jurisdictions distinguish between voluntary and involuntary intoxication, with voluntary intoxication generally offering little or no defence to criminal liability. This reflects a consistent policy position that individuals who knowingly choose to consume intoxicating substances must bear responsibility for the consequences of their actions.

Second, the distinction between specific intent and basic intent (or general intent) offences is central to determining the relevance of intoxication evidence. Where an offence requires proof of a specific mental state beyond the mere commission of the act, intoxication may negate that mental state. However, for basic intent offences, voluntary intoxication provides no defence.

Third, involuntary intoxication is treated more favourably across all three jurisdictions. Where intoxication results from coercion, mistake, or the unexpected effects of properly

[119] S v. Johnson (1969) 1 SA 20 (A)

administered medication, and where it prevents the formation of the required *mens rea*, it may constitute a complete defence.

Fourth, public safety and the protection of victims remain paramount policy considerations. Courts and legislatures in all three jurisdictions have consistently refused to allow intoxication to become an easy avenue for escaping criminal responsibility.

Fifth, strict enforcement of drink-driving offences demonstrates a shared commitment to protecting the public from the dangerous consequences of intoxication.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

1. So many cases have given effect to Nigerian legislation against intoxication. In voluntary intoxication cases in Nigeria, the courts did laid emphasis on the defendant's own volition in taking materials that makes him to disregard conscience and rationality. Where such becomes the case, the courts have insisted that the defendant is not wronged if he is held criminally responsible for the consequences his actions might have caused under such situation. Presumably, using drugs and drinks to cause his intoxicating situation shows that mens rea is present as seen in the cases of *Theophilus v State; Egbe Nkanu v State etc via Criminal Code and* R. vs Owarey via Penal Code Act and Dahiru Sule (Zamfara State), sentenced in February 2000; Ibrahim Musa (Bauchi State), sentenced in November 2004 vis Sharia Law.

   It is a possibility that someone can mistakenly get intoxicated, aside another person's wickedness and carelessness, neither is the intoxication induced on him without his knowledge and approval. In this situation, the accused misconceived facts. Example, getting intoxicated by drinking red wine thinking it is coca cola as both substances have the same colour appearance. So, the Penal and Criminal Codes in sections 52 and 29 respectively, did not foresee this possible situation. It will be wrong to regard and treat such intoxication as voluntary and any punishment served in this circumstance should be faulty.

2. Definition of basic and specific intent crime was also found to be a challenge to scholars and practitioners of law in Nigeria. In the study of law, multiplicity of definitions to comprehend legal concepts have been untenable, especially where exceptions abound and given numerous authorities. There are categorizations, ranging from specific intents where offenders are expected to have mind set on consequences against the law as they commit offences and basic intent offences which are all other offences not within the specific intent ones. It is illogical to believe that if any offence does not have specific intent, it must have basic intent. It is necessary to understand there is a possibility of having different mind set aside specific and basic intents mind sets.

   This research also found that the Criminal Code, section 29 (5) is deficient concerning intoxication as a defence to criminal liability. This section only associated intoxication with drugs or narcotics. The draftsmen failed to envisage the possibility of getting intoxicated through alcoholic beverages.

3. The FRSC (Establishment) Act 2007 states in section 22 that "Anyone who operates a motor vehicle on a highway while under the influence of intoxicating drugs or alcohol in excess of 0.5 grammes per litre or to the extent that they are unable to have proper control over such vehicle, shall be guilty of an offence and be liable on conviction to a fine of five thousand Naira or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment."

   However, this research discovered that members of FRSC lack equipment for testing alcohol intake among drivers which should have enabled them to discharge their responsibilities effectively and efficiently. Many officers of the Road Safety have not even seen alcohol detecting equipment like the breathalyzer and do not know how to use it on drivers. As a result, they resort to using local method of smelling driver's breath or observing their mannerisms which could be deceptive and misleading.

4. It was also discovered that in foreign jurisdictions like USA, there is public policy that law enforcement officers are obligated to escort people who are publicly intoxicated to a treatment facility for assistance and support, examples are Alaska, Massachusetts etc. This measure helps to avert commission of possible intoxication offences. Such proactive measure does not exist in Nigeria. Rather, it is until there is intoxication offences that legal consequences and punishments as per Criminal Code Act, Penal Code Act, Sharia Law etc, are invoked.

5.2 Recommendations

Leveraging from the above findings, the following recommendations are put forward:

1. Both the Penal and Criminal Codes, sections 52 and 29 respectively need to undergo legislative amendment in order to capture circumstances in which a person is mistakenly intoxicated under misconception of fact as discovered in finding number one above. This was not envisaged by draft men of Penal and Criminal Codes.

2. Also, in Criminal Code, section 29 (5) need to undergo legislative amendment to clarify or revise this obscured section in finding number 2 above. This will remove ambiguity due to its complexity or lack of specificity, ensuring the law is applied consistently and fairly. Other legislative instruments on crime and criminality should also be amended to explicitly and unambiguously define specific and basic intent crimes for easy understanding.

3. The penalty established in section 22 of the FRSC (Establishment) Act 2007 in relation to drunk driving as seen in finding number 3 above is disproportionate to the offence. It is therefore recommended that the penalty be significantly increased to dissuade people from drunk driving.

   It is also recommended that government and non-governmental organizations should engage in vigorous and continuous training and education of drivers and other road users on traffic regulations. There should be adequate provisions and constant training of Road Safety Corps officers on the use of Breathalyzer especially on the high ways.

4. It is also recommended that Nigeria should implement a proactive public policy where law enforcement officers should be obligated to escort people who are publicly intoxicated to a treatment facility for assistance and support. This will help to avert possible commission of intoxication offences.

5.3 Conclusion

Characteristically, intoxication is not a defence which an offender can rely on to escape liability.

However, an offender can rely on intoxication as a defence when enabling situations are included in several national laws to the effect that the offender's agreement was not given; there is the inability to form needed intention for commission of crime; again, the person was ignorant in all he did, meaning that he acted inadvertent of his will. If he successfully convinces the court that he was put in intoxicated condition contrary to his will and agreement, the defence can be helpful especially when there is complete lack of intent. Invariably, defence of intoxication as it were, has probative value to a criminal intoxication charge and may acquit a defendant. However, this is not without boundaries or limitations which makes it suitable to contemplate intoxication as not a defence but pertinent to the concern of whether or not the prosecution can establish *mens rea*. The possibility to contend and secure permission to allow the defence in such situation is there, given the ultimate doctrine of criminal responsibility, required for intended *actus reus* combined with essential *mens rea*. On the whole, to acquiesce the fact that defence of intoxication is not spontaneous and total in practical terms is expedient, though available to a defendant subject to his ability to convince the court that some conditions would enable him to rest on it and be protected from culpability or at least given less severe punishment.

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