OVERVIEW OF THE OFFENCES AGAINST PERSONS AND PROPERTY IN NIGERIA

NKIRUKA HELEN MAXWELL

GOU/U21/LAW/356

LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B) OF GODFREY OKOYE UNIVERSITY, ENUGU STATE.

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APPROVAL

We the undersigned, approve that this project was completed by **Nkiruka Helen Maxwell**, with the registration number **GOU/U21/LAW/356**, in partial fulfilment of the requirements for the award of Bachelor of Laws (LL.B) degree of Godfrey Okoye University.

Dr. G. O. Omeh **Date**

Supervisor

Dr. G. O. Omeh **Date**

Ag. Dean, Faculty of Law

External Examiner **Date**

DEDICATION

I dedicate this work to God Almighty, and to all the kidnapped children, victims of the offences in this work, whom the Nigerian government and criminal justice system have failed.

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TABLE OF CONTENTS

CHAPTER THREE: NATURE AND ELEMENTS OF OFFENCES AGAINST PERSONS AND PUNISHMENT IN NIGERIA

CHAPTER FOUR: NATURE AND ELEMENTS OF OFFENCES AGAINST PROPERTY AND PUNISHMENT OF OFFENDERS

CHAPTER FIVE: SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

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LIST OF ABBREVIATIONS

AC Appeal Cases

ACJA Administration of Criminal Justice Act

ACJL Administration of Criminal Justice Law

All ER All England Law Reports

ANLR All Nigeria Law Reports

BLD Black's Law Dictionary

CA Court of Appeal

CAR Court of Appeal Reports

CC Criminal Code

CCA Criminal Code Act

CFRN Constitution of the Federal Republic of Nigeria

CLR Commonwealth Law Reports

COP Commissioner of Police

CPA Criminal Procedure Act

DPP Director of Public Prosecutions

EA Evidence Act

ECSLR East Central State Law Reports

EFCC Economic and Financial Crimes Commission

ENLR Eastern Nigeria Law Reports

FCT Federal Capital Territory

FRN Federal Republic of Nigeria

FSC Federal Supreme Court

HC High Court

ICPC Independent Corrupt Practices and Other Related Offences Commission

JCA Justice of the Court of Appeal

KB King's Bench

LFN Laws of the Federation of Nigeria

LPELR Law Pavilion Electronic Law Reports

LR Law Reports

LUA Land Use Act

NDLEA Nigerian Drug Law Enforcement Agency

NGCA Nigerian Court of Appeal

NGSC Nigerian Supreme Court

NLR Nigerian Law Reports

NWLR Nigerian Weekly Law Reports

PCA Penal Code Act

QB Queen's Bench

SC Supreme Court

SCNLR Supreme Court of Nigeria Law Reports

SSS State Security Service

VAP Violence Against Persons

WACA West African Court of Appeal

WNLR Western Nigerian Law Reports

WRNLR Western Region of Nigerian Law Reports

ABSTRACT

Criminal liability is a fundamental principle of criminal law which outlines the responsibility an offender has with regards to an offence he committed. This study examines criminal liability placed on offenders who commit offences against persons and property under the Nigerian law. The importance of this research lies in the constant commission of offences against persons and property and the challenges which may arise as to the criminal responsibility of the offenders. This is with particular reference to the requirements of actus reus and mens rea and the defences available to be pled by the defendant. The aim of this study is for the purpose of examining the legal framework which governs criminal liability for the crimes against persons and property and the extent to which it is effective in the achievement of justice. The doctrinal method of legal research along with the use of primary and secondary sources including statutes and journal articles, were adopted in this study. The study found that although Nigerian criminal law is extensive in its provisions for the protection of persons and their property, challenges like procedural delays, lack of public awareness and inconsistency in criminal justice administration play down its effectiveness. Legislative review of outdated provisions, improving judicial efficiency and increasing public awareness are some of the recommendations made by this study. To conclude, this study deems it necessary that there be a more effective criminal justice system in order to ensure proper protection of persons and property which will in turn lead to the promotion of public confidence in the administration of justice in Nigeria.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Crime constitutes one of the most serious threats to social order, public safety and the effective administration of justice in any society. In Nigeria, criminal acts affecting human life, bodily integrity, liberty and proprietary interests have remained persistent despite the existence of elaborate statutory provisions regulating criminal conduct. The law therefore plays a crucial role in defining prohibited conduct, prescribing punishment and protecting persons and property from unlawful interference.[1]

Offences against persons and property form a substantial part of Nigerian criminal law. These offences are principally regulated by the Criminal Code Act, applicable in Southern Nigeria, and the Penal Code, applicable in Northern Nigeria.[2] The Criminal Code makes provision for offences against the person such as murder, manslaughter, assault, rape and offences against personal liberty, while offences against property are treated under distinct heads including stealing, robbery, fraud, mischief and arson.[3] Similarly, the Penal Code contains provisions governing culpable homicide, hurt, theft, robbery and criminal misappropriation.[4] The protection of life and property is fundamental to societal stability and economic development. Where offences against persons and property are prevalent, the result is insecurity, fear, economic dislocation and erosion of public confidence in the justice system.[5] In recent years, Nigeria has witnessed an increase in violent crimes such as homicide, kidnapping, sexual violence, armed robbery and widespread property-related offences including fraud and destruction of property. These developments have intensified concerns about the adequacy of existing criminal laws and the effectiveness of their enforcement.

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1 A Ashworth, Principles of Criminal Law (7th edn, Oxford University Press 2013) 1.

2 Criminal Code Act, Cap C38 Laws of the Federation of Nigeria (LFN) 2004; Penal Code (Northern States) Federal Provisions Act, 1960 (Cap P3 Laws of Federation of Nigeria 2004).

3 Criminal Code Act, ss 300– 356 (offences against persons); ss 383– 461 (offences against property).

4 Penal Code Act, ss 220– 269; ss 287– 313.

5 *FRN v Osahon* (2006) 5 NWLR (Pt 973) 361.

1.2 Statement of the Problem

Despite the existence of comprehensive statutory provisions regulating offences against persons and property in Nigeria, the incidence of these crimes continues to rise. Crimes such as murder, kidnapping, rape, armed robbery and fraud have become increasingly prevalent across the country, thereby undermining public safety and social order.[6] One of the major problems confronting the effective control of these offences is the dual criminal law system operating in Nigeria, namely the Criminal Code and the Penal Code. This duality often results in differences in definitions, classifications and punishments for similar offences, thereby creating inconsistencies in legal interpretation and application.[7] In addition, challenges such as inadequate investigation, delays in prosecution and weak enforcement mechanisms further undermine the effectiveness of criminal law.[8] Furthermore, although reforms such as the Administration of Criminal Justice Act 2015 have been introduced to improve the prosecution of criminal offences, questions remain as to how far these reforms have enhanced accountability, deterrence and justice delivery in relation to offences against persons and property.[9]

1.3 Research Questions

This essay will attempt to address these research challenges by providing answers to the following research questions:

1. What constitutes offences against persons and property under Nigerian law?

2. How are offences against persons classified under the Criminal Code and Penal Code?

3. What are the major offences against property recognised under Nigerian criminal law?

4. What challenges affect the effective prosecution of offences against persons and property in Nigeria?

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6 *Okeke v State* (2003) 15 NWLR (Pt 842) 25.

7 Y Aboki, Introduction to Nigerian Criminal Law (2nd edn, Tamaza Publishing 2018) 44.

8 *Olatunji v State* (2003) 14 NWLR (Pt 839) 138.

9 Administration of Criminal Justice Act 2015.

1.4 Aims and Objectives of the Study

This essay aims to examine the various offences against persons and property under Nigerian criminal justice system.

The following are the goals:

1. To examine the concept and classification of criminal offences in Nigeria.

2. To analyse the nature and scope of offences against persons under the Criminal Code and Penal Code.

3. To examine offences against property as provided under Nigerian criminal law.

4. To identify challenges and reforms relating to the prosecution of offences against persons and property in Nigeria?

1.5 Significance of the Study

This essay contributes to existing literature on Nigerian criminal law by providing a structured overview of offences against persons and property. It will be useful to law students, legal practitioners and researchers in understanding the scope and administration of these offences. It may also assist policymakers and law enforcement agencies in strengthening criminal justice administration in Nigeria.[10]

1.6 Scope and Limitations of the Study

Scope of the Study

This essay examines offences against persons and property under Nigerian criminal law, with particular emphasis on the provisions of the Criminal Code and the Penal Code, as well as relevant judicial decisions and statutory provisions, from the Constitution of the Federal Republic of Nigeria 1999 (as amended) to the Criminal Code Act 2004 and the Penal Code Act 2004.

Limitations of the Study

[10] *Nwankwo v State* (2019) 6 NWLR (Pt 1678) 1.

This essay is subject to limitations such as restricted access to some recent judicial decisions and time constraints associated with undergraduate research. The majority of people are unaware of the actions that pose as a threat to their persons as well as their property asides from the very common offences that occur daily. Despite all this the punishment provided for is not well communicated with the people and this ignorance brings about situations like jungle justice and so many more. However, we dug more into the most recent theories and studies on the subject in the hope that the recommendations offered here can effectively get over these limitations.

1.7 Research Methodology

The doctrinal research approach is used in this study. This entails analysing primary data, such as laws and court rulings, as well as secondary material, such as books, journals, articles, and online documents, to learn about Nigeria's current legal framework regarding offences against persons and property, its difficulties, and its future possibilities. It makes it possible to examine legal theories, concepts, and framework in detail, which makes it easier to identify legal principles and their implications in the context of this document.

1.8 Literature Review

Several Nigerian scholars have examined criminal liability and the classification of offences under Nigerian law. Writers such as Okonkwo and Naish have provided authoritative analyses of the general principles of criminal law, including offences against persons and property.[11] Other scholars have examined specific offences such as homicide, assault, theft and robbery under the Criminal Code and Penal Code.[12] Academic articles have also focused on the rising incidence of violent crimes and property-related crimes in Nigeria, highlighting enforcement challenges and socio-economic factors contributing to criminality.[13] However,

11 CO Okonkwo and MA Naish, *Criminal Law in Nigeria* (2nd edn, Spectrum Books 2002).

12 I Sagay, Nigerian Law of Evidence and Criminal Law (University Press 2016).

13 A. Aderinto, ‘ Crime and Violence in Contemporary Nigeria’ (2015) 3 Nigerian Journal of Criminal Law 45.

there is a noticeable gap in literature providing a consolidated overview of offences against persons and property within a single analytical framework, particularly in light of recent criminal justice reforms. This study seeks to fill that gap.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Meaning of Crime and Offence under the Nigerian Law

According to Section 2 of the Criminal Code Act an offence is defined as:

> " An act or omission which renders the person doing the act or making the omission liable to punishment under this Code, or under any Act, or law"[14]

Under the Penal Code Act an offence is defined as:

> " Except where otherwise appears from the context, the word ' offence' includes an offence under any law for the time being in force." [15]

The Constitution of the Federal Republic of Nigeria 1999 (as amended) in Section 36(12) pays heed to the issue of offence in Nigeria stating that:

> "…a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law…"[16]

This principle has been established to prevent retroactive punishment and to ensure that citizens are only tried for acts already clearly defined as offences which serves as a core protection in the Nigerian Criminal Law. This principle is cemented in the case of *Taiwo Aoko v Adeyeye Fagbemi and Anor*

> "which arose from a dispute of adultery under customary law, the decision however became a landmark for clarifying the relationship between customary law and the Nigerian Constitution, particularly on the principle

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14 Section 2 of the CCA of 2004.

15 Section 28 of the PCA Chapter 53 LFN (ABUJA).

16 Section 36(12) of the CFRN (as amended).

that no person can be convicted for an offence unless that offence is clearly defined in a written law."[17]

The issue of crime and offence in Nigeria has been divulged and defined by various scholars which we will make available in this study.

Blackstone proffered that:

> "A crime, or misdemeanour, is an act committed or omitted in violation of a public law, either forbidding or commanding it."[18]

Russell says a crime is an:

> "Act or omission involving breach of duty to which by the law of England, a sanction is attached by way of punishment in the public interest, and for which the ordinary remedy is by indictment."[19]

However, one thing is certain from the various definitions of crime and offence that we have seen, which is that an offence is a written act that has been specified by law as an offence. Therefore, the definition we choose to employ would be that of the Criminal Code Act and the Penal Code Act.

2.1.2 Meaning and Nature of Property

According to Section 1 of the Criminal Code Act, the term property is defined as:

> " Property includes everything, animate or inanimate, capable of being the subject of ownership".[20]

Under the Penal Code Act, the term property is not specifically mentioned but Section 12 of the Penal Code Act states that:

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17 Facts retrieved from <https://recordoflaw.in/taiwo-aoko-v-adeyeye-fagbemi-and-anor-1961-anlr-400> accessed on 24 January 2026.

18 Meaning of Crime and Criminalization Policy retrieved from<https://www.learnnigerianlaw.com/learn/criminal-law/crime-meaning>accessed on 24 January 2026.

19 ibid.

20 Section 1 of the CCA 2004.

> "The words "movable property" include corporeal property of every property description except land and things attached to the earth or permanently fastened to anything which is attached to the earth."[21]

The CFRN (as amended) does not have a specific definition of ' property' but mentions it in Section 43 which states that:

> "Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria." [22]

According to the Black's Law Dictionary, a property is defined as:

> "The right to acquire, possess, use or enjoy a definitive thing on the one hand, or any determinate thing over which these bundles of rights can be exercised."[23]

The nature of property in Nigeria comes in 2 types which are:

1. Choses in Action: They are described as personal rights in property which can only be claimed or enforced by action and not by taking physical possession of them. They are also called 'things in action' because they are things which a person does not possess but must bring an action in court in order to recover them[24]. It can also be defined as the right to bring a claim or cause of action[25]. Choses in Action may be classified into Legal Chose in Action which pertains to recoverable rights through legal actions, and Equitable Chose in Action which is only enforceable through equitable proceedings. Examples of choses in action include debts, shares, negotiable instruments, policies of insurance, bills of lading, patents, copyrights, rights under trusts and legacies, benefit of a contract for sale of reversionary interest, rights to claim indefinite sums of money etc. They are in law permitted to be assigned by the holders (though they can neither be seen nor possessed) to third parties who

21 Section 12 of the PCA Chapter 53 LFN (ABUJA).
22 Section 43 of the CFRN (as amended).
23 Bryan A. Garner, 'Black's Law Dictionary' (9th edn, Thomson Reuters 2009) 1335 – 1336.
24 *Torkington v Magee* [1902] 2 KB 427, 430.
25 W.S. Holdsworth, 'The History of the Treatment of Choses in Action by the Common Law' (1920) 33 HARV. L. REV. 997.

would be able to enforce the rights against the debtors even though they were not parties to the original contract.

2. Choses in Possession: Unlike choses in action, it refers to an object of tangible personal property that can be physically possessed by the owner and can be transferred. It also denotes not only the right to own the property but the right to also possess it. This right may be absolute or limited. It can further be divided into moveable and immovable property.

(i) Moveable property: They refer to personal assets that can be physically moved or transferred from one place to another. They include property like vehicles, industrial machinery and equipment and personal belongings.

(ii)Immovable property: They are referred to as real property, and they include land and everything permanently affixed to it such as buildings, structures and fixtures.

(iii)Corporeal Property and Incorporeal Property: Corporeal property generally refers to immovable property, while the right vested on the owner of the property is referred to as incorporeal. Legally, where incorporeal property is accompanied by possession, such right is referred to as corporeal right, whereas, in cases where the right in the property is partial so as not to entitle the owner to exercise incorporeal.[26]

2.1.3 Concept of Criminal Liability

According to Section 1 of the Criminal Code Act, criminal responsibility means

> "The liability to punishment as for an offence."[27]

This means that the individual' s conduct must satisfy the requirements of a criminal offence defined by law and expose them to state enforced sanctions. This concept encompasses the liability to punishment for an offence.

The 1999 Constitution of the Federal Republic of Nigeria (as amended) embeds the principal of criminal liability in Section 36(8) & (12)[28]. Section 36(8) states that:

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26 Halsbury's Laws vol 87, para 1.

27 Section 1 of the CCA.

"No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed."

These sections reflect the Latin maxim *nullum crimen, nulla poena sine lege* which means "no crime, no punishment without law" , meaning that only conduct clearly criminalised by statute can ground criminal liability. The topic of criminal liability is depicted in the Latin maxim *actus non facit reum nisi mens sit rea* which means that "a guilty act alone does not make a person liable for an offence unless it is accompanied by a guilty mind". This brings about the two elements of a criminal offence which must be present before a person can be held guilty for an offence as is established in Section 24 of the Criminal Code Act:

"…a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident..."[29]

The only exception, however, to this rule are crimes of strict liability. Crimes of strict liability do not need mens rea to be proven. Liability is said to be strict because defendants will be convicted even though they were genuinely ignorant of one or more factors that made their act or omission criminal. The defendants may therefore not be culpable in any real way, i.e., there is not even criminal negligence, the least blameworthy level of mens rea.[30]

As established, in the commission of an offence, there are two elements that must be present before a conviction can be granted. They are:

1. The mental element (*mens rea*)

2. The physical element (*actus reus)*

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28 Section 36(8) and (12) of the 1999 CFRN (as amended).

29 Section 24 of the CCA.

30 Retrieved from<Strict Liability in Criminal Law | LawTeacher.net https://www.lawteacher.net/free-law-essays/criminal-law/strict-liability.php> accessed on 24 January 2026.

The mental element

Mens rea is Latin for " guilty mind" and traditionally refers to a person's state of mind when committing an offence. This element originated from English law which was incorporated into our Criminal Code Act. The Privy Council accepted as correct what has for long been a classic statement of the doctrine of Wright J. in *Sherras v. De Rutzen*:

> "There is a presumption that mens rea, or evil intention or knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence, or by the subject matter with which it deals, and both must be considered."[31]

The presumption of mens rea was relied on in the landmark West African Court of Appeal case *Clegg v. C.O.P.*[32] The accused was charged with wilfully delivering a letter to a person other than the Person to whom it was addressed. The respondent asserted that it was enough, in establishing guilt, to show that the act of delivery was wilful, i.e., deliberate; but it was held that the word "wilfully" must govern the whole definition of the offence and that although the accused was conscious of the act of delivery, he was not aware that he was delivering to the wrong person, and must therefore be acquired.

According to Sir Samuel Griffith, draftsman of the Queensland Code on which our own Code, the Nigerian Criminal Code is based, said:

> "... under the criminal law of Queensland as defined in the Criminal Code, it is never necessary to have recourse to the old doctrine of mens rea, the exact meaning of which has been the subject of much discussion. The test now to be applied is whether the prohibited act was or was not done

[31] *Sherras v. de Rutzen* (1895) 1 Q.B.918.
[32] (1949) 12 W.A.C.A.479.

accidentally or independently of the exercise of the will of the accused person."[33]

Therefore, whenever a court is asked to determine whether Section 24 applies in a particular case, it must begin by discovering what conduct is being called in question. If it fits an act or omission, then the court must decide whether the act or omission was independent of the exercise of the will of the actor. The issue of proving mental element presents itself in different variations such as intention, recklessness, negligence, accident and unconsciousness. Every crime has its own mental element which must be proved to prove guilt.

(i) Intention: In law a man is usually said to intend a happening if he foresaw it and desired it. In *Hyam v. D.P.P.*[34] dealing with intention in cases of murder, one House of Lords held that there is an intention to cause death or grievous bodily harm if the accused deliberately did an act knowing that death or grievous bodily harm was a probable consequence of it, even though he did not desire that result. If the intention to cause a particular result is not expressly declared to be an element of the offence, then the result intended to be caused by the accused is immaterial[35]. But the definition of an offence often prescribes the specific conduct in which the prosecution must prove that the accused intended. For instance, in burglary and housebreaking, the specific intent must be an intent to commit a felony. In the leading English case on the question of specific intent, *R.v. Steane*[36], the accused, a British subject, had broadcast for the Germans during the Second World War, his purpose apparently being to save his wife and children from a concentration camp. After the war he was convicted of "doing an act likely to assist the enemy with intent to assist the enemy". But the Court of Criminal Appeal allowed his appeal because the prosecution had failed to prove the specific

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33 In *Widgee Shire Co. v. Bonney* (1907)4 C1.R. 977 at 981-982.
34 (1974) 2 ALL E.R. 41.
35 Section 24 of the CCA.
36 (1947) K.B.997.

intent to assist the enemy; the evidence was equally compatible with the view that his intent was to save his family.

There are two well-known dicta which illustrate the difficulty involved in proving intention: "The devil himself knowest not the intention of a man"[37]. "The state of a man's mind is as much a fact as the state of his digestion"[38]. It is the job of the courts to get as close as possible to discovering, by such implication, what the accused himself intended. This is often called the subjective approach to the ascertainment of intention. This test is often expressed in the form that "there is a presumption that a man intends the natural (or reasonable) consequences of his act". Thus, as Verity C.J. pointed out in *Nungu v. R*,

> "The presumption that a man intends the natural consequences of his act may be rebutted or negatived by direct evidence".[39]

The facts of the above case were that the accused aimed a blow at his brother with a heavily weighted axe but turned away the cutting edge of the blade and struck him only with the wooden haft, however the brother died. The court accepted that the accused may not have intended to kill. But it is still the offence of murder if it can be proved that the accused intended to cause "some grievous harm"[40] and in language indicating that they were concerned to discover the actual state of mind of the accused, the court held that the accused himself must have intended the natural and probable consequence of his act (i.e. grievous harm)[41].

(ii) Recklessness: A man may foresee what is likely or probably going to happen but does not actually desire it and may indeed desire it not to happen. Such a condition of mind is often called recklessness, a term which, it must be stressed, is only a term of

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37 Per Bryan CJ in a medieval english case.
38 Per Bowen LJ in *Edington v. Fitzmaurice* (1885) 29
39 *Nungu .v. R* (1953) 14 W. A. C. A. 379.
40 Section 316 of the Criminal Code Act.
41 Verity CJ. cited *R. v. Amponsah* (1938) 4.W.A.C.A. 120 (Gold Coast) which also stressed the necessity for proving subjective intention.

convenience. There are relatively few crimes in which it is enough to prove merely recklessness against the accused. Two different types of recklessness exist which are named after the cases in which they were defined: *R v. Cunningham*[42] where the subjective test was upheld where the court held that:

> "The term "malice" which is the most demanding standard of proving mens rea, means that the perpetrator either has the actual intention to cause the resulting harm …"[43].

In *Metropolitan Police Commissioner v. Caldwell*[44] where the objective test was upheld:

> "Recklessness can be found when a person carries out an act which creates an obvious risk for the destruction or damage of property and he has, at that time, not contemplated the possibility of the risk …"[45].

(iii) Negligence: A man may not himself foresee what is going to happen. Nevertheless, the law sometimes holds that he ought to have foreseen it and was guilty of negligence.[46] There is no question of any subjective approach to negligence, since the accused is punished even though he did not appreciate that his conduct was negligent. The reasonable man test comes into its own, but the application of this test is not always clear, since there may be many standards of reasonableness.[47]

(iv) Knowledge: As regards proof of this knowledge, the same considerations apply as proof of intention:

> "The fact of guilty knowledge can seldom be proved by direct evidence. Nearly always it must be inferred from the circumstances of the case, and

42 (1957) 2 QB 396.
43 Facts retrieved from<https:// collections.umn.edu>accessed on 12 February 2026.
44 (1982) AC 341.
45 Facts retrieved from <Metropolitan Police Commissioner v Caldwell | LawTeacher.net https://share.google/ZbTRa29eU0lkt07Oy> accessed on 12 February 2026.
46 Sometimes called inadvertent negligence to distinguish it from recklessness.
47 Okonkwo and Naish second edition at page 59.

the question of whether guilty knowledge on the part of an accused is the proper inference to be drawn from the evidence is for the trial Judge"[48]

In *R. v. Mba*[49], the appeal was allowed from a conviction for publishing defamatory matter, knowing it to be false, for there was no proof of such knowledge; the accused might well have believed his publication to be true.

(v) Accident: Not even a reasonable man in his position would have foreseen what was going to happen, which has therefore occurred by accident.[50] Normally an accused in this position will escape liability except where liability is strict.

(vi) Unconsciousness: Although, for a psychologist, the line between conscious and unconscious action is exceedingly rough, the criminal law will not attach responsibility to a man who is considered to have acted unconsciously and in a state of what is often called "automatism".[51]

The Physical Element

According to Glanville Williams:

"*actus reus* means the whole definition of the crime with an exception of the mental element".

The *actus reus* of a crime may consist of an act or more rarely of an omission or rather what may be considered as a passive situation. It may include not only the conduct of the accused but also the events or consequences of that conduct.

There is no hard and fast rule as to when an omission may constitute the actus reus of a crime, and when it does not; one must look at the definition of each crime to see whether mere failure to do something is criminal. Omissions can hardly constitute the actus reus of an

48 *R.v.Udo* (1942) 8 W.A.C.A. 111 at 113. Also R. v. Agu (1949) 12 W.A.C.A. 486 - "knowledge can be proved by reasonable inference".
49 (1937) 3 W.A.C.A. 190.
50 Section 24 of the CCA.
51 If a man does an act conscious that in the course of doing it, he may become unconscious, then he may, be said to be reckless as to the consequences, e.g. If a man drives knowing that he is prone to blackouts.

offence but in the few instances where it does, the law is specific about it. Omissions are therefore criminalised where it is essential that the people ought to be compelled so that anarchy and cruelty do not reign supreme. These instances may be where the law places a duty on a person to act and he fails, omits, and or refuses to act, which results to someone being exposed to harm, injury or even death. Under Section 199 of the Criminal Code, duties are imposed on police officers to suppress riot and Section 344 makes it a general offence for anyone to cause harm by negligent omission in breach of a duty.

In some offences it is the consequences of a man's conduct which constitute the actus reus of the offence rather than the conduct per se. e.g. in murder or manslaughter, death must result from the accused's conduct. In such cases problems may arise as to the nature of the causative link between the act and the consequence.

2.1.4 Concept of Property

Property includes "everything, animate or inanimate, capable or being the subject of ownership"[52]. It can also be defined as " the right to acquire, possess, use or enjoy a definitive thing on the one hand, or any determinate thing over which this bundle of rights can be exercised"[53]. Property includes " money and all other property, real or personal, including things in action and other intangible property"[54]. In *Nkwocha v Governor of Anambra State*[55], the Supreme Court recognised that property includes any legally recognised interest capable of ownership, including land and proprietary rights.

Under the Penal Code Act, the term property is not specifically mentioned but Section 12 of the Penal Code Act as aforementioned " …the words "movable property" include corporeal property of every property description."[56]

52 Section 1 of the Criminal Code Act.

53 Bryan A. Garner, 'Black's Law Dictionary' (9th edn, Thomson Reuters 2009) 1335 – 1336.

54 Section 4 of the Theft Act 1968.

55 1984) 1 SCNLR 634; (1984) 1 SC 348; [1984] NGSC 14.

56 Section 12 of the PCA Chapter 53 LFN (ABUJA).

In both the Criminal Code Act and the Penal Code Act most offences against property are similar as the *mens rea* required is usually fraudulent intention or dishonest intention. Section 383(2) of the Criminal Code Act defines fraudulently as:

> "A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents:
>
> (a) an intent permanently to deprive the owner of the thing of it;
>
> (b) an intent permanently to deprive any person who has any special property in the thing of such property..."[57]

The word 'fraudulently" has also been defined by the Penal Code as:

> "A person is said to do a thing "fraudulently' or "with intent to defraud" who does that thing with intent to deceive and by means of the deceit to obtain some advantage for himself or another or to cause loss to any other person".[58]

On the other hand, dishonest intention is defined under Section 16 of the Penal Code Act as:

> "A person is said to do a thing "dishonestly" who does that thing with the intention of causing a wrongful gain to himself or another or of causing wrongful loss to any other person"[59].

However, this is only required in offences of forgery and cheating under the Penal Code. While the Penal Code requires only moving as the *actus reus* for theft, the Criminal Code requires either taking or conversion as its *actus reus.*

2.1.5 Who is a Person in this Context

In *AG. Federation v. Abubakar*[60], the Supreme Court acknowledged that the term "person" in law may include natural and juristic persons, depending on the statutory context.

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57 Section 383(2) of the Criminal Code Act.
58 Section 17 of the PCA Chapter 53 LFN (ABUJA).
59 Section 16 of the PCA Chapter 53 LFN (ABUJA).

According to Section 1 of the Criminal Code Act:

> "person" and "owner" and other like terms, when used with reference to property, include corporations of all kinds, and any other association of persons capable of owning property; and also, when so used, include the State."[61]

The Criminal Code Act also provides that where an offence is committed by a corporation or company, the corporation itself may be held criminally liable through the acts and mental state of its officers, agents, or servants acting within the scope of their authority. This establishes that a person, for the purpose of criminal liability and offences against property, includes legal entities capable of owning property, entering transactions, and being prosecuted for statutory offences.

According to Section 5 of the Penal Code:

> "The word "person" includes a company or an association or a body of persons, whether incorporated or not.
>
> (2) A child becomes a person when it has been born alive whether it has breathed or not, and whether the umbilical cord is severed or not."[62]

However, under this a context, a "person" is one who can be held criminally liable or responsible for an offence. For one to be held criminally liable such person must be legally and mentally capable of committing the crime in question. The following are persons who cannot be held criminally liable for an offence:

(1). Persons that are not of age: According to Section 30 of the Criminal Code Act:

> "A person under the age of seven years is not criminally responsible for any act or omission. A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the

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60 (2007) 10 NWLR (Pt. 1041) 1.

61 Section 1 of the Criminal Code Act.

62 Section 5 of the PCA Chapter 53 LFN (ABUJA).

> time of doing the act he has capacity to know that he ought not to do the act or the omission. A male person under the age of twelve years is presumed to be incapable of having carnal knowledge."[63]

(2). Persons held to be mentally unstable: According to Section 28 of the Criminal Code Act:

> "A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission..."[64]

(3). Persons who commit an offence in "extraordinary emergencies": According to Section 26 of the Criminal Code Act:

> "…relating to acts done upon compulsion or provocation or in self-defence, a person is not criminally responsible for an act done or omission made under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise."[65]

(4). Persons who possess a bona fide claim of right: According to Section 23 of the Criminal Code Act:

> "A person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by him with respect to any property in the exercise of an honest claim of right and without intention to defraud."[66]

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[63] Section 30 of the CCA.
[64] Section 28 of the CCA.
[65] Section 26 of the Criminal Code Act.
[66] Section 23 of the Criminal Code Act.

(5). Persons who commit an offence because of mistake of fact: According to Section 25 of the Criminal Code Act:

> "A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things, is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist..."[67]

(6). Persons who are justified and excused: According to Section 32 of the Criminal Code Act:

> "A person is not criminally responsible for an act or omission if he does or omits to do the act under any of the following circumstances-
>
> (1) in execution of the law;
>
> (2) in obedience of the order of a competent authority which he is bound by law to obey, unless the order is manifestly unlawful… "[68]

The law also makes provision for persons who are classified as principal offenders:

> "(a) every person who does the act or makes the omission which constitutes the offence;
>
> (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
>
> (c) every person who aids another person in committing the offence;
>
> (d) any person who counsels or procures any other person to commit the offence..."[69]

Section 10 also makes provision for another set of persons considered as offenders:

[67] Section 25 of the CCA.
[68] Section 32 of the CCA.
[69] Section 7 of the CCA.

"A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence..."[70]

2.1.6 Nature of Offences Against a Person

In criminal law, the term ‘ offence against the person’ or “ crime against the person” , usually refers to a crime which is committed by direct physical harm or force being applied to another person. According to Law Insider, ‘offences against the person’ refer to:

"…offences that involve direct bodily or physical harm or force, the threat of bodily or physical harm or force, or other actions committed against the will of an individual."[71]

Offences against the person are crimes directed at life, bodily integrity, health, dignity, or the personal liberty of an individual. Under the Nigerian Criminal Law, these offences are primarily governed by the Criminal Code Act and the Penal Code Act and are reinforced by constitutional protections of fundamental human rights. The nature of offences against the person is directly linked to the fundamental human rights guaranteed by the CFRN 1999 (as amended), which includes:

i) Right to life[72]

ii) Right to dignity of the human person[73]

iii) Right to personal liberty[74]

Any criminal conduct that infringes these rights attracts penal consequences under the Criminal Law. These offences against persons are usually divided into the following categories:

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70 Section 10 of the CCA.

71 Law insider dictionary<https://www.lawinsider.com/dictionary/offences-against-the-person.com> accessed on 12 February 2026.

72 Section 33 of the CFRN 1999 (as amended).

73 Section 34 of the CFRN 1999 (as amended).

74 Section 35 of the CFRN 1999 (as amended).

i) Fatal offences

ii) Sexual offences

iii) Non-fatal non-sexual offences

a) Fatal Offences: These are offences that involve the killing of a person. They are usually classified as felonies and considered as serious offences. Fatal offences are divided into two which are Murder and Manslaughter, however these crimes fall under the umbrella of Homicide. Homicide: This is provided in Section 306 of the Criminal Code Act. This was interpreted by the court in the case of *Abru v. State*[75]. This is divided into 2 classes namely:

i) Murder: This is provided in Section 316 of the Criminal Code Act and Section 221 of the Penal Code Act.

ii) Manslaughter: This is provided in Section 317 of the Criminal Code Act:

b) Sexual Offences: Sexual offences refer to any sexual act directed against another person, without the consent of that person including instances when the person is unable to give consent. Sexual offences include penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person, without the consent of the victim. Sexual offences include:

i) Rape: This is provided in Section 357 of the Criminal Code Act and Section 282 of the Penal Code Act.

ii) Defilement: This is provided in Section 218 of the Criminal Code Act.

iii) Sexual assault: This is provided in Section 352 of the Criminal Code Act.

c) Non-fatal Offences: Non-fatal offences are generally offences which take the form of an attack directed to another person, that does not result in the death of any person. They are different from fatal offences which involve the death of a person and sexual offences which

[75] (2011) 17 NWLR (Pt.1275) 1.

are generally considered separately, since they differ substantially from other offences against the person in theoretical basis and composition. These offences include:

i) False imprisonment: This is provided in Section 365 of the Criminal Code Act and Section 255 of the Penal Code Act.

ii) Kidnapping: This provided in Section 364 of the Criminal Code Act and Section 271 of the Penal Code Act.

iii) Defamation: This is provided in Section 373 of the Criminal Code Act.

iv) Assault: This is provided in Section 252 of the Criminal Code Act and Section 264 of the Penal Code Act.

2.1.7 Nature of Offences Against Property

Offences against property consist of acts or omissions that unlawfully deprive a person of ownership, possession, use, or value of property. These offences protect both proprietary ownership and possessory interests, while recognising that interference with lawful possession may constitute a crime even where ownership is disputed.

The following are offences against property as provided in Part 6 of the Criminal Code Act and Chapter XIX of the Penal Code Act:

i) Stealing: This is provided in Section 383 of the Criminal Code Act.

ii) Theft: This is provided in Section 286 of the Penal Code Act.

iii) Housebreaking/Burglary: This is provided in Section 346 of the Penal Code Act and Section 410 of the Criminal Code Act.

iv) Robbery: This is provided in Section 401 of the Criminal Code Act.

v) Extortion: This is provided in Section 291 of the Penal Code Act.

vi) Obtaining by false pretence: This is provided in Section 418 of the Criminal Code Act:

2.2 Theoretical Framework

2.2.1 Deterrence Theory

The principle of deterrence which is at present probably the most potent principle of punishment, takes two forms. Punishment may be imposed to deter the accused from offending again or it may be imposed with the more general view of deterring the public from doing what the accused did.

"This type of offence is very common nowadays and a deterrent sentence is called for in this case. Ignorant persons should not be allowed to experiment with the lives of others."[76]

Despite much disapproval, this general theory of deterrence, which subordinates the individual to the supposed greater good of the community and which runs counter to the notion of fair desserts for the individual, is a much-needed judicial attitude. This is so when it is felt that a certain type of crime is on the rise and needs to be severely repressed.

The philosophy traces its foundation to classical criminology, particularly the works of Cesare Beccaria and Jeremy Bentham, who argued that punishment must outweigh the perceived benefits of crime.[77]

Two facts to bear in mind about deterrent punishments are these. First, deterrent punishment conflicts with the idea that punishment should be fair to the individual: the need to deter others by holding the accused up as an object lesson may be thought to override the question of whether he deserves so severe a punishment. The second point is that the deterrent capacity of punishment is very much unproven. On the one hand there is the concrete fact of all the criminals who commit crimes who were clearly not deterred by the fear of punishment. On the other hand, it is the assumption, and it is no more than that many more crimes would be committed if the law did not hold the penal threat over the community.

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76 Per Nkemena J. imposing a sentence of nine years in a case of manslaughter by a medical quack in the case of *State v. Okechukwu* (1965) 9 E.N.L.R. 91 at 94.

77 C. Beccaria, On Crimes and Punishments (1764).

In *Okegbu v. State*[78], the Supreme Court held that punishment of an offence must reflect the seriousness of the offence and serve as a deterrent to others.

Thus, deterrence operates as a protective mechanism for both human life (offences against person) and economic interests (offences against property).

Deterrent punishments are most often levelled at offenders who are believed to be “ professional criminals",[79] but people who undertake crime as a career are least likely to be deterred. For them punishment is usually a calculated risk[80], and commission of crime may win for the offender social approval within his particular social circle. It has indeed often been pointed out that it is not fear of punishment that deters the calculating criminal from crime, so much as the fear of detection. It is not suggested that the principle of deterrence plays no useful part in punishment but that it needs to be applied with caution until research has given us a clearer idea of what types of punishment deters what types of people.[81]

2.2.2 Retributive Theory

Retributive Theory is a theory of punishment based on the principle that an offender should be punished because he has committed a crime and deserves to suffer for the wrong done. The theory is founded on the idea of moral blameworthiness, justice, and proportionality that the punishment must fit the crime.[82] Unlike deterrence, retribution does not primarily aim to prevent future crimes but to ensure that justice is done by imposing a penalty proportionate to the gravity of the offence.

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78 (1979) 11 SC 1; *Akinyemi v. State* (1999) 6 NWLR (Pt.607) 449.

79 In *R v. Wray* (1941) 7 W.A.C.A. 14, although deterrence was the rationale of the sentence, the term of 15 years imprisonment was reduced to five years, because the accused was not "'a member of the professional criminal class."

80 Parker and Allerton, The Courage of his Convictions (London, 1961).

81 Okonkwo and Naish second edition at page 35.

82 A. Ashworth, Sentencing and Criminal Justice (Cambridge University Press).

Retributive theory is rooted in the principle of just desserts, associated with the works of Immanuel Kant and Hegel, who argued that punishment is a moral necessity once a crime has been committed.[83] The key elements of retribution are:

i) Punishment must be proportionate to the offence

ii) Only the guilty should be punished

iii) Punishment is justified by the offender' s wrongdoing, not by social utility.

The idea of responsibility or culpability is at the heart of this principle. Man can only be punished to the extent that he was responsible for his criminal act. We don't hang a man who kills in his insanity. We can lock him away safely, of course, but it is not to pay him back for what he has done, but to prevent ourselves from future attack.

In *Kalu v. State*[84], the Supreme Court held that sentencing must correspond with the gravity of the offence and the degree of the offender' s culpability.

Strict liability is an exception to the principle that only a man who could reasonably have regulated his conduct otherwise should be punished, and it is disliked for that very reason.

The issue with this principle is that it focuses on punishment rather than reform, it may encourage harsh or rigid sentencing, and it does not address the social causes of crime

Despite these criticisms, retribution remains a core principle in Nigerian criminal justice.

2.2.3 Rehabilitation Theory

Punishment is imposed with an eye to its future results, the fundamental aim being to prevent further crime. It must be admitted that the notion of rehabilitation or reform, just as much as deterrence, rests on unproved assumptions about human behaviour, and knowledge of how to reform individual offenders is in its infancy. The essence of the rehabilitation principle is individualisation of treatment and one of its most notable methods is probation, the only

83 I. Kant, The Philosophy of Law; G.W.F. Hegel, Philosophy of Right.

84 (1998) 13 NWLR (Pt.583) 531; *Akindipe v. State* (2012) 16 NWLR (Pt.1325) 94

unpleasantness imposed on the offender being that he is under the general supervision of a probation officer, though otherwise free to pursue his normal life.[85]

The major goals of this theory are:

i) Reform the offender’ s character and behaviour

ii) Prevent recidivism (repeat offending)

iii) Reintegrate the offender into society

iv) Promote social protection through reformation rather than harsh punishment

Rehabilitation recognises that some offenders commit crimes due to poverty, ignorance, addiction, or social influence, and therefore require treatment rather than purely punitive measures.

Rehabilitative principles are reflected in several Nigerian Legal and Institutional Frameworks:

(a) Nigerian Correctional Service Act 2019: This Act replaced the Nigerian Prisons Act and introduced a reform-oriented system aimed at:

i) Educational and vocational training

ii) Psychological and behavioural reformation

iii) Reintegration programmes for inmates

(b) Non-custodial Measures: The Nigerian Correctional Service Act 2019 also provides for non-custodial options such as:

i) Probation

ii) Community service

iii) Parole

iv) Restorative justice mechanisms

These measures emphasise correction rather than incarceration.

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85 Criminal Procedure Act Section 438 and Part 111 of the Children and Young Persons Act. Although probation is little used in Nigeria as yet, it is expected to develop.

In *Shalla v. State*[86], the Court of Appeal emphasised that sentencing should consider the possibility of reform, especially for first-time offenders.

Rehabilitation is commonly applied in cases of minor stealing, fraud, or criminal misappropriation, particularly where:

i) The offender is a first offender

ii) The value involved is small

iii) There is evidence of remorse

Courts may impose fines, probation, or short-term sentences aimed at correction.

In less serious offences such as minor assault or negligent harm, courts may adopt reformative approaches. However, for grave offences such as murder, armed robbery, or rape, rehabilitative considerations are usually secondary to deterrence and retribution.

This theory is criticised because it may appear too lenient for serious crimes, its success depends on the availability of effective correctional facilities and implementation challenges exist due to overcrowding and limited resources.

Despite these limitations, rehabilitation remains a key modern objective of Nigeria’ s Criminal Justice System.

2.2.4 Plea Bargain Theory

Plea bargaining is a criminal justice mechanism whereby an accused person agrees to plead guilty to a charge (or a lesser charge) in exchange for a concession from the prosecution, such as:

i) Reduction of charges,

ii) Recommendation of a lighter sentence, or

iii) Withdrawal of some counts.

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86 (2007) 18 NWLR (Pt.1066) 240.

The theoretical basis of plea bargaining lies in efficiency, restorative justice, and pragmatic case management, aimed at reducing delays, saving judicial time, and ensuring speedy resolution of criminal cases.[87]

According to J.A. Agaba in his book[88], to have a plea bargain, there must be:

i) A prosecutor and an accused person/defendant;

ii) A negotiation between the prosecutor and the accused person/defendant;

iii) A negotiation which must have ended in an agreement with concessions and compromises from the prosecutor and the accused/defendant;

iv) A plea, that is, a plea of guilty to the charge or to a lesser charge;

v) The involvement of the court; and

vi) An acceptance of the plea by the court.

Section 270 of the Administration of Criminal Justice Act 2015 provides that the prosecutor and the defendant may enter a plea bargain in respect of any offence, subject to court approval. Under the Act:

i) The agreement must be voluntary,

ii) The defendant must understand the consequences,

iii) The court must ensure the agreement is fair and in the interest of justice.

Although Section 14(2) of the Economic and Financial Crimes Commission Act 2004 introduces it thus:

> "Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria, 1999, the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks

[87] A. Ashworth, Sentencing and Criminal Justice (Cambridge University Press).

[88] Practical Approach to Criminal Litigation in Nigeria (Pre-Trial & Trial Proceedings) at page 589 to 590.

> fit, exceeding the amount to which that person would have been liable if he had been convicted of that offence."[89]

Section 75 of the Lagos State Administration of Criminal Justice Law, 2011 is the only state legislation that specifically mentions it. It states that:

> "Notwithstanding anything in this Law or in any other law, the Attorney-General of the State shall have power to consider and accept a plea bargain from a person charged with any offence..."[90]

The theory behind plea bargaining is based on the following considerations:

(a) Speedy Trial and Efficiency: It reduces case backlog and promotes the constitutional right to trial within a reasonable time under Section 36(1) of the CFRN 1999 (as amended).

(b) Certainty of Conviction: It helps the prosecution secure a conviction where evidence may be uncertain.

(c) Restorative Justice: In financial and property offences, plea bargaining may involve restitution or recovery of stolen assets.

(d) Reduction of Correctional Congestion: By encouraging guilty pleas, it reduces prolonged pre-trial detention.

In *FRN v. Lucky Igbinedion*[91], the court affirmed the validity of plea bargaining under Nigerian law, particularly in corruption-related offences. The Court of Appeal per Ogunwumiju, J.C.A. stated the advantages of plea bargain as follows:

i) Accused can avoid the time and cost of defending himself at trial, the risk of harsher punishment, and the publicity the trial will involve.

ii) The prosecution saves time and expense of a lengthy trial.

iii) Both sides are spared the uncertainty of going to trial.

iv) The court system has saved the burden of conducting a trial on every crime charged.

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89 Section 14(2) of the EFCC Act 2004.

90 Section 75 of the Lagos State ACJL 2011.

91 (2014) LPELR – 22760 (CA).

Plea bargaining is most used in fraud, theft, money laundering and economic and financial crimes. It often involves restitution or asset forfeiture, which aligns with economic recovery goals.

It is less commonly applied in serious offences such as murder, rape, or armed robbery, where public interest, deterrence, and retribution are considered more important.

The theory of plea bargain is criticised on the grounds that it may appear to compromise justice for convenience, risk coercion or unequal bargaining power, bring about the perception of leniency in corruption and financial crime cases, allow wealthy offenders to negotiate lighter punishment, undermine deterrence, and reduce public confidence if applied improperly.

Despite these concerns, plea bargaining remains an important modern tool in Nigerian Criminal Procedure.

2.2.5 Theory of Ownership of Property

The theory of ownership of property defines the legal and ethical relationship between individuals and resources, characterising ownership as a "bundle of rights" including possession, use, transfer, and exclusion rather than a single power. *In Adole v. Gwar*[92], the Supreme Court affirmed that ownership confers the right to possession, use, and control of property.

Key justifications of ownership of property include:

i) Labour Theory (rights earned by working on resources)

ii) Occupation Theory (first possession)

iii) Legal/Positivist Theory (rights created by law)

iv) Economic Theory (bundle of rights).

92 11 NWLR (Pt.1099) 562.

Labour Theory (John Locke): This theory proposes that because individuals own their bodies, they own the fruits of their labour. The most prominent and influential thinker for enlightenment in the field of property rights was John Locke. According to Locke,

"…man owns himself, and by extension, everything that he produces."

His famous theory of labour argues that by mixing work with nature, the resulting goods will necessarily belong to the worker. This theory suggests that a person is entitled to the full produce of their labour. The basis behind this theory is that a society should encourage labour and property should be distributed according to one's productivity. The theory is based on the approach that originally all property was owned in common, but people had the right to appropriate this property by co-mingling their labour with it.

Locke's argument that labour establishes the property right makes sense if, like Locke and his contemporaries, one sees humankind as made in the image of God, and human activity as the extension of God's will on earth. Absent this religious sentiment, the labour theory of acquisition becomes nothing more than property acquisition based on first occupancy.[93]

Occupation Theory: Suggests that ownership arises from being the first person to take possession of something. The most influential albeit inconsistent French thinker of the Enlightenment, Jean-Jacques Rousseau[94], elaborated a theory of property based on first occupation justified by labour. He held that the first appropriation is mutually recognised, and that unequal distribution is due to the different abilities of man. This theory suggests that the party who is the original discoverer and occupant of property was entitled to dispose of those assets. This philosophy is reflected in the law of property. If a person retains possession of land over a long period of time this may make this possessory title unassailable by the

93 Facts retrieved from <https://www.lawteacher.net/free-law-essays/property-trusts/theories-property-law-9837.php> accessed on the 20 of February 2026.

94 In his Discourse on the Origin of Inequality (1755), he held that "the fruits of this earth belong to all and the earth to no one"; in The Discourse on Political Economy (1755) he called the right of property "the most sacred of all citizens' rights, and more important in certain respects than liberty itself"; in the Social Contract (1762), he wrote about the communities' right to all, to which the individual's right is always subordinated.

original owner. This is based upon the concept of adverse possession of land. If you squat on land for many years and the true owner does not remove you from the property in some circumstances, you may be acknowledged as ‘ owning’ the land. Thus, Rousseau does not attach too much importance to who owns what: he is more interested in the fact that the individual acknowledges exclusion.

Legal/Positivist Theory: Asserts that property is a creation of the state or law, rather than a natural right. This theory states that ownership exists because it is recognised and protected by law.[95] A person becomes an owner only when the law confers or recognises the proprietary right. Nigerian property rights are largely governed by statutory frameworks such as:

The Constitution: This is provided for in Section 44 of The Constitution of the Federal Republic of Nigeria 1999 (as amended).

Land Use Act[96]

The Criminal Code and The Penal Code

Thus, ownership is ultimately determined by legal recognition.

Economic Theory: Views ownership as a collection of rights (use, exclude, sell, destroy) that can be separated and distributed, focusing on efficiency and value. The main thinkers of this theory are John Stuart Mill, David Ricardo, Adam Smith, Jean-Baptiste Say and Thomas Robert Malthus, they support the view that private property creates the environment where maximum productivity is created based upon the profit motive. The economic theory supports the profit motive and the incentive it provides for developing and seeking out ideas and processes to support productive activity.

The theories of ownership underpin criminal offences such as stealing, robbery, criminal misappropriation and fraud.

95 *Nkwocha v. Governor of Anambra State* (1984) 6 SC 362.

96 LUA, Cap L5, LFN 2004.

CHAPTER THREE

NATURE AND ELEMENTS OF OFFENCES AGAINST PERSONS AND PUNISHMENT IN NIGERIA

3.1 Overview of the Criminal Justice System in Nigeria

The criminal justice system in Nigeria refers to the institutional framework and legal processes established for the prevention of crime, enforcement of criminal law, adjudication of criminal cases, and punishment or rehabilitation of offenders. It ensures that individuals who violate criminal laws are investigated, prosecuted, tried, and sanctioned in accordance with the law.

The criminal justice system in Nigeria consists of three major components:

(a) Law Enforcement Agencies: They are responsible for the detection, investigation, and prevention of crime. The primary law enforcement body is the Nigeria Police Force, which is empowered to arrest suspects, investigate crimes, and maintain public order.

Other agencies involved in criminal law enforcement include:

The Economic and Financial Crimes Commission (EFCC) which investigates financial and economic crimes.

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) which addresses corruption in the public sector.

The National Drug Law Enforcement Agency (NDLEA) which combats drug trafficking and drug-related offences

These agencies work together to enforce criminal laws and ensure public safety.

(b) The Judiciary: This body is responsible for the interpretation of laws and adjudication of criminal cases. Courts determine the guilt or innocence of accused persons and impose appropriate penalties.

(c) Correctional Institutions: After conviction, offenders are committed to correctional facilities for punishment or rehabilitation. The Nigerian Correctional Service (formerly Nigerian Prisons Service) is responsible for; the custody of convicted offenders, rehabilitation and reformation of inmates, the reintegration of offenders into society

The service operates under the Nigerian Correctional Service Act 2019, which introduced modern correctional and non-custodial measures such as parole, probation, and community service.

The Nigerian criminal justice system aims to:

i) Maintain law and order in society and protect the rights of individuals

ii) Punish offenders and deter crime and ensure justice for victims

iii) Promote rehabilitation and reintegration of offenders

These objectives reflect the broader goals of criminal law which include deterrence, retribution, rehabilitation, and prevention of crime.

3.2 Offences Against Persons in Nigeria Under the Criminal Code and the Penal Code Act

In criminal law, the term ‘ offence against the person’ or ‘ crime against the person’ usually refers to a crime which is committed by direct physical harm or force being applied to another person. According to Law Insider, ‘offences against the person’ refer to:

> "…offences that involve direct bodily or physical harm or force, the threat of bodily or physical harm or force..."[97]

These offences against persons are usually divided into; Fatal offences, Sexual offences and Non-fatal non-sexual offences.

[97] Law insider dictionary<https://www.lawinsider.com/dictionary/offences-against-the-person.com> accessed on 12 February 2026.

3.3 Fatal Offences

These are offences that involve the killing of a person. They are usually classified as felonies and considered as serious offences. Fatal offences are divided into two which are Murder and Manslaughter, however these crimes fall under the umbrella of Homicide.

3.3.1 Fatal Offences under the Criminal Code

Homicide: According to Section 306 of the Criminal Code Act:

> "It is unlawful to kill any person unless such killing is authorised or justified or excused by law."[98]

3.3.1.1 Murder and Attempted Murder

Murder is the unlawful killing of another person with intent to cause death or grievous bodily harm. It is a serious crime in Nigeria as it violates the right to life protected by Section 33 of the 1999 CFRN (as amended). The offence of murder and manslaughter however fall under the umbrella of homicide.

According to Section 316 of the Criminal Code Act:

> "Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say:
>
> (1) if the offender intends to cause the death of the person killed, or that of some other person;
>
> (2) if the offender intends to do to the person killed or to some other person some grievous harm..."[99]

According to Section 221 of the Penal Code Act:

> "Except in the circumstances mentioned in section 222 of this Penal Code, culpable homicide shall be punished with death-

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98 Section 306 of the CCA; *Abru v. State* (2011) 17 NWLR (Pt.1275) 1.

99 Section 316 of the CCA.

(a) if the act by which the death is caused is done with the intention of causing death; or

(b) if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause."[100]

Requirements For Proving Murder

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

1) Intent to cause the death of the person killed.

2) Intent to do to the person killed or to some other person some grievous harm.

3) The death is caused by means of an act done in the prosecution of an unlawful purpose, or of such a nature likely to endanger human life;

4)Intent to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant.

5) The death is caused by administering any overpowering things for either of the purposes as aforesaid.

6) The death is caused by wilfully stopping the breath of any person for either of such purposes is guilty of murder.

The onus of proof is on the prosecution to prove intent. It may rely on the presumption that a man intends the natural consequences of his actions[101] but it is open to the accused to show that the death occurred in pure accidental circumstances and that he has no intent to kill or cause grievous harm to any person.[102]

In the case of *Hyam v. DPP*[103], the learned Justice, Lord Hailsham stated:

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[100] Section 221 of the PCA Chapter 53 LFN ABUJA.
[101] *Nungu v R* (1953) 14 W.A.C.A. 379.
[102] Okonkwo and Naish second edition at page 232.
[103] (1974) 2 ALL E.R. 41.

> "..If a man in full knowledge of the danger involved and without lawful excuse deliberately does that which exposes a victim to the risk of probable grievous bodily harm or death and the victim dies, the perpetrator of the crime is guilty of murder and not manslaughter to the same extent as if he had actually intended the consequences that flowed. Irrespective of whether he wishes it or not..."[104]

As provided in Section 221(b) of the Penal Code, the words "likely" and "probable" are used. In the case of *Maijamaa vs State*[105], the accused and some other people attacked the deceased with sticks, and he was beaten to death. The court convicted them for murder under Section 221(b) and Section 79 of the Penal Code. The reasoning of the court was that the act of a group of people attacking a person with sticks has a probable consequence of causing death. On appeal, the Supreme Court dismissed the appeal and upheld the conviction.

In order to establish the guilt of the accused person, the prosecution must show the nexus between the act or omission of the accused and the death of the deceased[106]. In addition, the prosecution must prove the guilt of the accused beyond reasonable doubt.[107]

It is held that the person last seen with the deceased bears full responsibility. In a situation in which the accused was last seen with the deceased and the circumstantial evidence is overwhelming and leads to no other conclusion than that the accused killed the deceased, it leaves no room for acquittal.[108] By virtue of the provision of Section 314 of the Criminal Code, a person would not be held to have murdered the deceased if the death occurs a year and a day after the injury is inflicted. The day of the injury is also reckoned with in this calculation.

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104 *Hyam v. DPP* (1974) 2 ALL E.R. 41.
105 (1984) vol 1 ANLR.
106 *Mbang vs The State*(2010) vol 7 NWLR pt 1194.
107 *Teggivonor v. State* (2008) vol 1 NWLR pt 1069.
108 *Mbang vs The State*(2010) vol 7 NWLR pt 1194.

In *Ogba v. State*[109], the Supreme Court held that in a charge of murder, the prosecution must prove beyond reasonable doubt that the death of the victim resulted from the act of the accused and that the accused intended to kill or cause grievous harm.

Attempted murder: This is provided for in Section 320:

> "Any person who attempts unlawfully to kill another or with intent unlawfully to kill another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life, is guilty of a felony and is liable to imprisonment for life."[110]

If a person is charged with such an offence the prosecution must prove an intent to kill and not merely an intent to do grievous harm,[111] although if death results from grievous harm which is caused intentionally, it is murder. In *R v. Owe*[112] the accused intending to kill the deceased inflicted stab wounds on his neck and stomach and he died. The accused was charged with murder, but no evidence was adduced to show that the deceased died because of the wounds. The conviction for murder was quashed, and a conviction attempted murder was substituted.

3.3.1.2 Manslaughter

Manslaughter can be regarded as the twin brother of murder. Clarkson & Keating are of the view that manslaughter occurs when there is the *actus reus* of murder, but the offender is not entirely blameworthy to warrant the offence of murder that is the intention to kill (*mens rea*) was not present.

According to Section 317 of the Criminal Code Act:

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109 (1992) 2 NWLR (Pt.222) 164.

110 Section 320 of the CC.

111 *R v. Albert* (1960) W.R.N.L.R 31 (F.S.C).

112 (1961) All N.L.R. 680.

> "A person who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughter."[113]

Section 318 of the Criminal Code Act provides for killing on provocation:

> "When a person who unlawfully kills another in circumstances which, but for the provisions of this section of this Code, would constitute murder, does the act which causes death in the heat of passion caused by grave and sudden provocation, and before there is time for his passion to cool, he is guilty of manslaughter only."[114]

A lawful act is not provocation to any person for an assault. An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.[115]

The offence of manslaughter is usually classified into two:

i). Voluntary manslaughter

ii). Involuntary manslaughter

Voluntary Manslaughter: This is a situation in which the accused kills the deceased through provocation. Where provocation is successfully pleaded, the charge of murder would be reduced to manslaughter. Thus, raising the defence of provocation in murder trials has now become a common plea. Provocation is pleaded since if one is convicted for murder, such person would be sentenced to death. This is provided in Section 318 of the Criminal Code Act.

According to Conklin in his book *Criminology*, he raised the issue of victim precipitation of a crime by saying that the person who suffers eventual harm from a crime might have played a

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113 Section 317 of the CCA.

114 Section 318 the CCA.

115 Okonkwo and Naish second edition at page 241.

direct role in causing that crime to be committed.[116] This position gained credence by the provision of Section 3 of the English Homicide Act (1957) which provides inter-alia that:

> "In a charge of murder, where there is evidence on which the jury can find that the person charged was provoked, whether by things done or said or both, by the deceased which warrants the accused to lose his self-control. All these shall be considered in the defence of provocation."[117]

Before a plea of provocation can succeed certain conditions have to be fulfilled:

First, the provocation must be such as to cause a reasonable person to lose his self-control. Yet, if a reasonable person would be provoked but the accused wasn't then the plea of provocation will fail. It must therefore be shown not only that the provocation was such as could cause a reasonable man to lose his self-control but also that the accused did in fact lose his self-control as a result of the provocation.[118] A reasonable man in this context has been held to be mean a reasonable man in the accused person's station in life and standard of civilisation.

Second, the act which causes death must be done in the heat of passion caused by sudden provocation and before there is time for passion to cool. In *R v. Green*[119] on a charge of murder the prisoner pleaded provocation, but this was rejected because between the provocation and the killing enough time has elapsed for his passion to cool. In determining whether there has been enough cooling time it is proper to consider the degree of provocation offered, for the more serious the provocation the longer the time will be for cooling.[120]

Thirdly, provocation by one person is no excuse for killing another person who does not in fact offer any provocation to the accused. In *R v. Ebok*[121] he was charged with the murder of

116 *Criminology* by John. E Conklin 2012.
117 Section 3 of the English Homicide Act (1957).
118 Okonkwo and Naish second edition at page 241.
119 (1955) 15 W. A. C. A. 73.
120 *Thuku (alias Nyaga) v. Republic* (1965) E.A 496.
121 (1950) 19 N.L.R 84.

his ex-wife but was convicted of manslaughter on the grounds of provocation. On a further charge of murdering the second woman it was held that even if the accused lost his self-control because of the provocation given by his ex-wife, he was nevertheless guilty of murder because the second woman did not give any provocation. However, provocation given by a group of persons acting in concert may be successfully pleaded where the person so provoked kills a member of such group.[122] It has been held that in such occasions the provocation is not merely the blow struck but also the attack by the entire group and the real test is whether if the deceased had lived, he could have been properly prosecuted in respect of that blow.[123]

Fourth, the mode of resentment must bear a reasonable proportion to the provocation offered[124] and in considering this question the courts take into account the nature of the instrument with which the homicide was effected[125] and the nature of the act resulting from the provocation.[126] In *R v. Akpan*[127] a woman brought her dead daughter's body home and when her husband reprimanded her against such conduct, she used filthy and offensive language to him and he stabbed her five times with a heavy dagger. It was held that the degree and method of violence used by him precluded the court from bringing a verdict of manslaughter.

Fifth, the killing must have involved an assault. This requirement is essential if the meaning of provocation in Section 318 of the Criminal Code is contained in Section 283 of the Criminal Code which refers to an offence of which an assault is an element.[128]

In the case of *R v. Doughty*,[129] the accused was to take care of his baby and the home at the same time. This was since his wife had a Caesarean section and could not assist. On a

122 *R v. Ekpo* (1938) 4 W. A. C. A. 110.
123 ibid.
124 *R v. Nwanjoku* (1937) 3 W. A. C. A. 208.
125 ibid.
126 *R v. Akpapan* (1956) 1 F. S. C. 1.
127 (1956) 1 F. S. C. 1.
128 Okonkwo and Naish second edition at page 249.
129 (1986) vol 83 C.A.R.

particular night his 17 day old baby was crying profusely and the accused, to stop the crying, covered the baby's mouth. Due to his exhaustion and confusion, he pressed too hard and it resulted in the baby's death. At the trial court, it was held that this could not amount to provocation. On appeal, the Court of Appeal held that the circumstances of the scenario could end up provoking the man and thus, his sentence was reduced from murder to manslaughter.

The burden is never on the prisoner to establish a plea of provocation.[130] If the evidence discloses a possible plea of provocation, the burden of proof remains throughout on the prosecution to negate it and prove beyond reasonable doubt that the prisoner did not kill the deceased in the heat of passion caused by sudden provocation.[131]

In the case of *Mareni v. The State*,[132] the court provided three ingredients that needed to be proved in an offence of manslaughter: The death of a human being took place, such death was caused by the accused and the accused intended such act to cause death or such bodily injury as is likely to cause death or it was caused by a rash or negligent act.

Lastly in the case of *Ewo Akang v The State*,[133] the court stated:

> "Provocation which reduces what will otherwise amount to murder to manslaughter is a legal concept. It is of paramount importance in the consideration of this concept that the act held out as a natural and justifiable reaction of the provoked person was done not in self revenge, but in ventilation of a natural, sudden and contemporaneous feeling of anger caused by the circumstances of the occasion."[134]

Involuntary Manslaughter

This is the killing that is done unintentionally and independent of the will of the accused person. This is expressly provided for in Section 24 of the Criminal Code Act.

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130 Okonkwo and Naish second edition at page 252.
131 *Chan Kau v. R* (1955) A.C. 206.
132 (2010) vol 3 NWLR pt 1181.
133 (1971) vol 1 ANLR.
134 *Ewo Akang vs The State*(1971) vol 1 ANLR.

3.3.1.3 Infanticide

This is provided in Section 327A:

> "Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of lactation consequent upon the birth of the child..."[135]

In *R v. Chima*[136] a woman gave birth to twins and within an hour killed them because of a custom prevalent in her town that it was an abomination to give birth to twins. She was convicted of murder but on appeal it was held that the conviction if any should have been for infanticide and not murder. It is submitted that this conviction is wrong and that the conviction for murder correct because there is no suggestion in the case that the woman was suffering from the effects of childbirth or that her balance of mind was disturbed.

Killing of an unborn child: This is provided for in Section 328:

> "Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a felony ..."[137]

This provision must be read subject to Section 297 which provides that:

> "A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case."[138]

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135 Section 327A of the CC.
136 (1944) 10 W. A. C. A. 223.
137 Section 328 of the CC.
138 Section 297 of the CC.

Attempt to procure abortion: This is provided for in Section 228:

> "Any person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony..."[139]

3.3.2 Fatal Offences under the Penal Code Act

Culpable homicide is the offence of causing the death of another person by an unlawful act or omission with the necessary intention or knowledge. It is the principal offence relating to unlawful killing under the Penal Code Act. This offence is like murder and manslaughter under the Criminal Code Act, but the Penal Code classifies unlawful killing under the single heading of culpable homicide.

Under Section 220 of the Penal Code:

> "Whoever causes death by doing an act with the intention of causing death or such bodily injury as is likely to cause death or by doing an act with the knowledge that he is likely by such act to cause death or by doing a rash or negligent act, commits the offence of culpable homicide."[140]

Thus, culpable homicide may arise from either intentional acts or acts done with knowledge that death is likely to occur. Culpable homicide is further divided into two categories depending on the circumstances which are:

a) Culpable Homicide punishable with death

b) Culpable Homicide not punishable with death

3.3.2.1 Culpable Homicide Punishable with Death

This occurs where the act causing death is committed with a clear intention to cause death or such bodily injury that is likely to result in death. It is provided for under Section 221:

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[139] Section 228 of the CC.

[140] Section 220 of the PCA Chapter 53 LFN ABUJA.

"Except in the circumstances mentioned in section 222 of this Penal Code, culpable homicide shall be punished with death if the act by which the death is caused is done with the intention of causing death or if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause."[141]

The punishment is death, reflecting the seriousness of the offence. In *Afolabi v. The State*[142] the learned Judge, John Inyang Okoro JSC, held that the judgment of the Court of Appeal delivered on the 22nd day of March, 2012 which upheld the conviction for the offence of culpable homicide punishable under section 221 (b) of the Penal Code and sentence of the appellant to death, is hereby affirmed and the appeal hereby dismissed. In *Wadata Isah V. The State*[143] the appellant stabbed one Hamidu Mohammed a Police Constable with a knife at the back of his neck which resulted in the death of his victim. He was arrested, investigated, charged to Court, tried and convicted for the offence of culpable homicide punishable with death contrary to Section 221 of the Penal Code. On 22nd May 2010, the Appellant was found guilty of the offence for which he was charged and was consequently convicted and sentenced to death by hanging. The appellant filed an appeal which was dismissed.

Before the court can convict under Section 221 of the Penal Code the charge must be proved beyond reasonable doubt and this is achieved when the Court is satisfied with that; the death of a human being has occurred, the death of the deceased was caused by the accused/appellant or the act was done with the intention of causing death or that the accused knew or had reason to know that death will be the probable and not only the likely consequence of his act.[144]

141 Section 221 of the PCA Chapter 53 LFN ABUJA.

142 (SC.181/2012) [2016] NGSC 28 (21 April 2016).

143 (2017) Legalpedia (SC) 11701.

144 *Bello V State* (2007) 10 NWLR (PT.1043) 564.

3.3.2.2 Culpable Homicide Not Punishable with Death

This occurs where the act causing death lacks the aggravated intention required for the death penalty but still involves unlawful killing. This is provided for under Section 222:

> "(1) Culpable homicide is not punishable with death if the offender whilst deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.
> (2) Culpable homicide is not punishable with death if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of that defence..."[145]

In *Tukur Saleh v. The State*[146] The appellant was arraigned at the Jigawa State High Court, for knowingly causing the death of one Idi Musa by hitting him with a stick on the head being an offence under Section 221(b) of the Penal Code Law. The Prosecution called and relied on two witnesses to prove its case while the Appellant gave evidence for himself with no other witness testifying in his defence. At the end of trial, including addresses of counsel, the trial judge convicted and sentenced the Appellant under Section 224 of the Penal Code Law of Jigawa State for the offence of culpable homicide not punishable with death. Aggrieved by the judgment of the trial court, the Appellant appealed to the Court of Appeal, where the decision of the trial court was affirmed. He further appealed to the Supreme Court, who dismissed the appeal.

The prosecution must prove beyond doubt; The death of the deceased, the act of the accused that caused the death of the deceased and the act of the accused was during a sudden fight and

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145 Section 222 of the PCA Chapter 53 LFN ABUJA.
146 (2018-12) Legalpedia (SC) 61103.

undue advantage was taken by the accused or that death was caused by accused person’ s rash or negligent act.[147]

3.4 Sexual Offences

Sexual offences refer to any sexual act directed against another person, without the consent of that person including instances when the person is unable to give consent. Sexual offences include penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person, without the consent of the victim.

3.4.1 Rape and Attempted Rape

According to Section 357:

> "Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm…".[148]

According to Section 282:

> "(I) A man is said to commit rape who, except in the case referred to in subsection (2) of this section, has sexual intercourse with a woman in any of the following circumstances; against her will, without her consent, with her consent, when her consent has been obtained by putting her in fear of death or of hurt, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, with or without her consent, when she is under fourteen years of age or of unsound mind.
>
> (2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty."[149]

147 *Tukur Saleh v. The State* (2018-12) Legalpedia (SC) 61103.
148 Section 357 of the CC.
149 Section 282 of the PCA Chapter 53 LFN ABUJA.

The Violence Against Persons Prohibition Act defines rape:

> "As when a person intentionally penetrates the vagina, anus or mouth of another person with any other part of his/her body or anything else without consent or with incorrectly obtained consent".[150]

Consent can be incorrectly obtained where it is obtained by; force/ threat/ intimidation, means of false or fraudulent representation as to the nature of the act, use of substances capable of taking away the will of that person, a person impersonating a married woman's husband to have sex with her.[151]

According to Section 30:

> "…A male person under the age of twelve years is presumed to be incapable of having carnal knowledge."[152]

This means that a male under 12 years cannot be punished for rape or attempted rape although on such charge he may be guilty of indecent assault.[153] The presumption is one of law and cannot be rebutted by showing that the accused has reached the full stage of puberty and even though he is below 12 years. A husband cannot be guilty of rape upon his wife.[154] But this immunity is of limited effect as when the marriage is dissolved it shall be considered as rape.[155]

Carnal knowledge must be proved. For this purpose, it is not necessary to prove that the hymen was ruptured or that there was an emission of semen. The slightest penetration of the vagina is sufficient.[156] But there cannot be rape without penetration.[157] Although the offence of rape is complete upon penetration it has been held that the act of sexual intercourse which

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150 Section 1 of the VAP Act 2015.
151 ibid.
152 Section 30 of the CC.
153 Section 176 of the CPA, Brett and McLean, para. 1967.
154 Okonkwo and Naish second edition at page 272.
155 *R v. Clarke* (1949) 33 Cr. App. R. 216.
156 Section 6 of the CC.
157 *R v. Kufi* (1960) W. N. L. R. 1.

follows is part of the offence itself, so that aid given after penetration makes the aider a party to the offence.[158]

On a charge of rape, absence of consent is very important, and the prosecution has to prove that the accused has carnal knowledge of the woman or girl despite her age without her consent.[159] It is no excuse that the complainant is a common prostitute.

The Women Centre of Northwest University, Illinois, defined consent to mean a voluntary, sexual positive agreement between the participants to engage in specific sexual activity.[160]

There must be an intention to rape before the act will amount to rape. In the case of *DPP .V. Morgan*[161], Morgan invited three strangers to have sexual intercourse with his wife. He allegedly told them that she was 'kinky' and was likely to struggle to get turned on. Morgan denied having said all these. The three men had sexual intercourse with her using violence to overcome her resistance. The three men claimed, inter alia, that they believed Mrs. Morgan was consenting. The House of Lords held that, there can be no conviction for rape where a man honestly believes that a woman consents to the sexual intercourse and that his belief doesn' t have to be reasonable. However, the three men were convicted of rape because they were reckless as to whether she consented to the intercourse or not; and Morgan was convicted aiding and abetting the rape. The above decision was based on the English Legislation, Sexual offences (Amendment) Act, 1976, which confirmed the subjective test of recklessness and the offence of rape in relation to elements of the offence. As the prosecution has the burden of proving the *actus reus* and *mens rea* of the offence of rape it must prove as part of its case that the accused intended to have sexual intercourse with the woman without her consent.[162]

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158 *R v. Mayberry* (1973) Qd. R. 211.

159 *R v. Kufi* (1960) W. N. L. R. 1.

160 Facts retrieved from <https://www.northwestern.edu/womenscentre/issues-information/sexual-assault/definingsexual-assault> accessed on 11 March 2026.

161 (1975)2 All ER 347.

162 Okonkwo and Naish second edition at page 274.

Before any person can be convicted for an offence of rape in any part of Nigeria, the prosecution must prove the following; that the alleged rapist had sexual intercourse with the victim of rape. That the act of sexual intercourse was done without consent of the victim or that the consent was obtained by fraud, force or threat. That the victim was not the wife of the alleged rapist. That the alleged rapist had the criminal intention to have sexual intercourse with the victim without the victim’ s consent.[163] That there was penetration of the penis of the alleged rapist into the vagina of the victim.[164]

Attempted rape

Section 359 provides for the offence of attempted rape and its punishment.

> "Any person who attempts to commit the offence of rape is guilty of a felony…"[165]

In *Idris v. State*[166], the court held that attempted rape is established where the accused clearly intended to have unlawful sexual intercourse but was prevented before penetration occurred.

3.4.2 Defilement

According to Section 218:

> "Any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony.., Any person who attempts to have unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony..” [167]

According to Section 221:

> "Any person who has or attempts to have unlawful carnal knowledge of a girl being of or above thirteen years and under sixteen years of age…"[168]

In *R v. Seidu*[169], the court reiterated the fact that a person cannot be convicted of either offence upon the uncorroborated testimony of one witness.

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163 *Posu v. State* (2011) 2 NWLR (Pt.1234) 393.
164 *Ogunbayo v. State* (2007) 8 NWLR (Pt.1035) 157.
165 Section 359 of the CC.
166 (2004) 11 NWLR (Pt.885) 589.
167 Section 218 of the CC.
168 Section 221 of the CC.

To succeed in a case of defilement, the prosecution must prove beyond reasonable doubt the following ingredients; that the accused had sex with the child who was under the age of 11 years, that there was penetration into the vault of the vagina and that the evidence of the child must be corroborated.

The evidence for defilement is the same as in rape except that for defilement, it is immaterial whether the act was done with or without the consent of the child. A girl under the age of eleven is a child and so cannot consent to sex.[170] The court would hold that she did not consent even if she did consent.

In *Ahmed v. Nigerian Army*[171], the court held that in the offence of rape, lack of consent is material, in a case of defilement, the consent of the victim is immaterial.

In *Adonike v. State*[172], on or about the 16th day of June 2010, the appellant invited and requested a child of 5 years of age to buy a sachet of water for him. On her return, the appellant lured her into his room, pulled her pant, and had carnal knowledge of her. The appellant was arrested and charged to court for defilement punishable under section 218 of the Criminal Code Cap. 48 Volume 11, Laws of the defunct Bendel State 1976 as applicable in Delta State. The trial court sentenced him to six years imprisonment. The conviction was also affirmed by both the Court of Appeal and the Supreme Court.

3.4.3 Indecent assault

According to Section 360:

> "Any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanour…"[173]

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169 (1960) W. R. N. L. R 32.

170 *Onwuta v. State of Lagos* (2022) 18 NWLR (Pt. 1863) 701.

171 (2016) 17 NWLR (Pt. 1540).

172 (2015) 7 NWLR (Pt. 1458) 237.

173 Section 360 of the CC.

Consent is a defence to a charge under this section. If there is consent and the complainant is under the age of 16 years (13 outside of Lagos) the charge may properly be laid under Section 222 of the Criminal Code.[174]

In *Alawusa v. Odusote*[175] the accused shaved the pubic hair of his wife's private part and was charged with indecent assault. The court held that the assault as between husband and wife could not properly be characterised as indecent and he was convicted of an assault under Section 351 of the Criminal Code. The case does not decide that a husband cannot be guilty of indecent assault upon his wife but merely decides that an assault upon a wife is not rendered indecent by circumstances which would render it indecent in the case of another woman. On a charge of rape or defilement contrary to Section 218 or 221 the accused may be convicted for indecent assault.[176]

3.5 Non-fatal Non-Sexual Offences

Non-fatal offences are generally offences which take the form of an attack directed to another person, that does not result in the death of any person. They are different from fatal offences which involve the death of a person and sexual offences which are generally considered separately, since they differ substantially from other offences against the person in theoretical basis and composition.

3.5.1 Offences Causing Harm

Offences causing harm are offences that involve the infliction of physical injury, bodily pain, or impairment to another person. These offences fall under the broader category of offences against the person and are punishable under the Nigerian Criminal Law.

Harm refers to any physical injury, disease, or impairment of bodily condition caused to another person. In criminal law, harm may range from minor injuries to serious bodily damage. According to Section 1:

[174] Okonkwo and Naish second edition at page 275.
[175] (1941) 7 W. A. C. A. 140.
[176] Section 175 and 176 of the CPA.

"Harm means any bodily hurt, disease, or disorder, whether permanent or temporary"[177]

3.5.1.1 Offences Causing Harm under the Criminal Code

(a) Assault: This involves the unlawful application of force or the threat of force against another person without lawful justification.

(b) Grievous Harm: This refers to serious bodily injury that permanently or seriously affects the health or physical condition of a person. This offence attracts severe punishment because of the seriousness of the injury caused.

(c) Wounding: This occurs when a person unlawfully cuts or breaks the skin of another person, causing injury.

3.5.1.1.1 Assault

Assault is an unlawful and intentional application of force directly or indirectly to the person of another or expectation that force is immediately to be applied to him/her. The elements of the offence are application of force or apprehension unlawfulness of such act and the intention to do the act common assault, assault occasioning harm to wounding. Ideally assault is an injury against the physical integrity of another. Assault is about the second most prevalent offence in the crime statistics in Nigeria.

According to Black's Law Dictionary, assault is defined as:

"i. the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful offensive contact

ii. an attempt to commit battery, requiring the specific intent to cause physical injury."[178]

According to Section 252:

"A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his

[177] Section 1 of the CC.
[178] BLD.

consent, or with his consent, if the consent is obtained by fraud…is said to assault that other person, and the act is called an assault.."[179]

In *Brady v. Schatzel*,[180] the accused pointed a loaded gun at the prosecutor and threatened to shoot him. The prosecutor said in evidence; " I was not a bit scared" . It was held, nonetheless, that this was an assault words alone, however provoking, without any bodily gesture intended to cause an apprehension of impact, will not constitute an assault. Furthermore, words accompanying an act or gesture which would ordinarily be an assault, may explain the conduct so that no assault is committed.

To constitute an offence the assault must be unlawful. An assault is unlawful only if it is not authorised or justified or excused by the law. According to Section 253:

> "An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law or the application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person."[181]

To be unlawful, the assault must be done without the consent of the person assaulted. The law presumes that persons who go about in public consent to that degree of contact which is an inevitable incident of everyday life.[182] Consent, expressly given usually negatives the offence of assault. Consent to an assault is ineffective if the assault is of a nature likely to endanger human life or to amount to a breach of peace. Consent obtained using threats or intimidation is not valid consent nor is consent obtained by fraud because fraud vitiates consent.[183]

In Nigeria, provocation may be a valid defence to a charge of assault. It is provided in Section 284 of the Criminal Code Act. The force used must not be disproportionate to the

179 Section 252 of the Criminal Code.
180 (1911) St. R. Qd. 206.
181 Section 253 of the CC.
182 Okonkwo and Naish second edition at page 269.
183 Facts retrieved from<https://www.learnnigerianlaw.com/learn/criminal-law/assault> assessed on 9th March 2026.

provocation. Provocation is a complete defence to a charge of assault. But on the charge of murder, it merely reduces the offence to manslaughter.[184]

Common assault: This refers to the intentional or reckless application of force[185], or the threat of immediate force, against another person without lawful justification. It is a misdemeanour, with punishment of imprisonment for one year. To give a conviction for common assault it must be proved beyond reasonable doubt that

a. it is unlawful and without the consent of the person assaulted

b. there was movement (or words coupled with movement), alarm and some force.

Unlike grievous harm or wounding, common assault does not require proof of serious injury.[186]

Assault Occasioning Harm: According to Section 355:

The Supreme Court held that where unlawful force applied by the accused results in bodily injury, the offence may amount to assault occasioning harm rather than simple assault.[187]

> "Any person who unlawfully assaults another and thereby does him harm,
> is guilty of a felony..."[188]

Assault occasioning harm is an aggravated form of assault in which unlawful force applied to another person results in bodily injury or harm. Unlike common assault, which may involve minimal force without injury, this offence requires proof that the assault caused actual bodily harm to the victim.

The harm need not be permanent, but it must be more than trivial or insignificant injury.

In *State v. Ibanga*[189], Per Muhammed Lawal Shuaibu, JCA, the court held that the essential elements to prove assault occasioning harm are:

a) that the accused threatened the complainant or some other person.

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184 Okonkwo and Naish second edition at page 270.
185 *Ishola v. State* (1978) 9– 10 SC 73.
186 *Ogbodu v. State* (1987) 2 NWLR (Pt.54) 20.
187 ibid.
188 Section 355 of the CC.
189 (2020) LPELR-51246 (CA).

b) that the threat was of some injuries to him.

c) that it was given to cause alarm to him or to cause him not to do or omit to do any act which he is legally entitled to or not bound to do.

Assault on Public Officers: According to Section 356:

> "Any person who
> (1) assaults another with intent to commit a felony, or with intent to resist or prevent the lawful arrest or detention of himself or of any other person; or
> (2) assaults, resists, or wilfully obstructs a police officer while acting in the execution of his duty, or any person acting in aid of a police officer while so acting; or....is guilty of a felony..."[190]

Assault on a public officer is a criminal offence that occurs when a person unlawfully assaults, resists, obstructs, or uses force against a public officer while the officer is performing his lawful duty. The offence is treated seriously because public officers perform functions essential to the administration of justice and maintenance of public order. The law protects public officers to ensure the effective enforcement of the law and maintenance of public order.

3.5.1.1.2 Grievous Harm

Grievous harm means

> "any harm which amounts to a maim or dangerous harm (ie harm endangering life), or which seriously or permanently injured health or which is likely to injure health, or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, member or sense."[191]

According to Section 335:

> "Any person who unlawfully does grievous harm to another is guilty of a felony..."[192]

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190 Section 356 of the CC.
191 Section 1 of the CC.
192 Section 335 of the CC.

In *Bille v. State*,[193] during a bye-election held on 11 September 2010 in Cross River State, the appellant allegedly snatched a ballot box and attempted to escape. When people tried to stop him, he pulled out a pistol and fired a shot, which hit a man on the leg and caused injury. He was immediately apprehended and the pistol recovered from him. The appellant was charged before the High Court of Cross River State on two counts; Unlawful possession of a firearm contrary to the Robbery and Firearms (Special Provisions) Act or Causing grievous harm contrary to the Criminal Code Act.

The trial court convicted him and sentenced him to imprisonment. His appeal to the Court of Appeal failed, and he further appealed to the Supreme Court which dismissed the appeal and affirmed the conviction of the appellant.

3.5.1.1.3 Wounding

This is an offence against the person which involves the unlawful cutting or breaking of the skin of another person, resulting in bodily injury. It is regarded as a serious offence because it involves direct physical violence against another individual.

According to Section 338:

> "Any person who unlawfully wounds another; or unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by, any person, is guilty of a felony..."[194]

In *R v. Smith*[195] the accused struck the victim violently, causing injury that broke the skin and resulted in bleeding. The court held that the offence of wounding was proved. The court further explained that both the inner and outer layers of the skin must be broken before an injury can legally be described as a wound.

193 (2016) CLR 7(J) (SC).

194 Section 338 of the CC.

195 (1837) 8 C & P 173; As opposed to R v. Eisenhower where there was no wounding because the skin was not broken.

In *Onyenye v. State*[196] the Supreme Court further explained that for the offence of wounding to be established, the prosecution must prove; that the accused inflicted the wound on the victim, that the act was intentional or unlawful, that the wound broke the skin of the victim.

3.5.1.2 Offences Causing Harm under the Penal Code

(a) Hurt: A person causes hurt if he causes bodily pain, disease, or infirmity to another person.

(b) Grievous Hurt: This refers to the infliction of serious injuries on another person.

(c) Voluntarily Causing Hurt or Grievous Hurt: This occurs where a person intentionally causes bodily injury to another, the offence becomes more serious and attracts heavier punishment.

3.5.1.2.1 Hurt

According to Section 240:

> "Whoever causes bodily pain, disease or infirmity to a person is said to cause hurt."[197]

3.5.1.2.2 Grievous Hurt

According to Section 241:

> "The following kinds of hurt only are designated as grievous; emasculation, permanent deprivation of the sight of an eye, of the hearing of an ear or the power of speech, deprivation of any member or joint..."[198]

3.5.1.2.3 Voluntarily Causing Hurt or Grievous Hurt

According to Section 242:

> "Whoever does an act with the intention of thereby causing hurt to a person or with the knowledge that he is likely thereby to cause hurt to a person and does thereby cause hurt to a person is said voluntarily to cause hurt."[199]

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196 (2012) LPELR-7866 (SC).
197 Section 240 of the PCA Chapter 53 LFN ABUJA.
198 Section 241 of the PCA Chapter 53 LFN ABUJA.
199 Section 242 of the PCA Chapter 53 LFN ABUJA.

3.5.2 Offences Against Personal Liberty

These refer to criminal acts that unlawfully interfere with the freedom of movement or personal autonomy of an individual. These offences involve situations where a person is wrongfully restrained, confined, or deprived of their freedom without lawful justification.

The protection of personal liberty is guaranteed under Section 35 of the 1999 CFRN (as amended). Personal liberty refers to the right of an individual to move freely and to live without unlawful restraint or detention. Any act that unlawfully restricts or deprives a person of this freedom may constitute an offence under criminal law.

3.5.2.1 Offences Against Personal Liberty under the Criminal Code

(a) Kidnapping: This occurs where a person unlawfully seizes, carries away, or detains another person against their will. It is a serious offence and often attracts severe punishment due to its threat to personal safety and freedom.

(b) Abduction: This involves taking a person away from a place against their will through force, fraud, or coercion. The offence is particularly recognised where women or minors are taken away unlawfully.

(c) False Imprisonment: This occurs where a person intentionally and unlawfully restrains another person so that they cannot move freely.

The restraint must be complete and without lawful justification.

(d) Unlawful Detention: This refers to keeping a person in custody without legal authority or justification. This may occur where a person is held without lawful arrest or beyond the period permitted by law.

3.5.2.1.1 Kidnapping

According to Section 364:

> "Any person who
> (1) unlawfully imprisons any person, and takes him out of Nigeria without his consent; or

> (2) unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovering to any other person the place where he is imprisoned…is guilty of a felony..."[200]

According to Section 271 of the Penal Code Act:

> "Whoever takes or entices a person, under fourteen years of age if a male or under sixteen years of age if a female, or any person of unsound mind out of the keeping of the lawful guardian of such person without the consent of such guardian or conveys that person beyond the limits of the Federal Capital Territory, Abuja, without the consent of someone legally authorised to consent to such removal is said to kidnap such person."[201]

Kidnapping is the unlawful seizure, detention, or carrying away of a person against their will[202], often with the intention of demanding ransom, facilitating another offence, or unlawfully confining the victim. To establish the offence of kidnapping, the prosecution must prove that the victim was taken or detained against his or her will, the accused participated in the act of taking or detention and that the act was unlawful and without consent.

In the Supreme Court affirmed that kidnapping is established where the accused unlawfully restrains or carries away another person and deprives them of their liberty.

3.5.2.1.2 Abduction

According to Section 361:

> "Any person who, with intent to marry or carnally know a female of any age, or to cause her to be married, or carnally known by any other person, takes her away, or detains her against her will, is guilty of a felony..."[203]

According to Section 272:

> "Whoever by force compels or by a deceitful means induces a person to go from a place, is said to abduct that person."[204]

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200 Section 364 of the CC.
201 Section 271 of the PCA Chapter 53 LFN ABUJA.
202 *Eze v. State* (2017) LPELR-42097 (SC).
203 Section 361 of the CC.
204 Section 272 of the PCA Chapter 53 LFN ABUJA.

According to Section 362:

> "Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanour…"[205]

Abduction involves the unlawful taking away of a person, usually by force, coercion, or deceit. It often relates to situations where women or minors are taken away without the consent of their lawful guardians. To establish the offence of abduction the prosecution must establish that the victim was taken away or enticed from lawful custody, the accused acted intentionally and the act was without lawful authority.

In *R v. Prince*[206], the court held that a person commits abduction where he takes a minor out of the possession of a lawful guardian without consent, even if he believed the minor had consented.

3.5.2.2 Offences Against Personal Liberty under the Penal Code Act

3.5.2 Wrongful Restraint

According to Section 254:

> " (1) Whoever voluntarily obstructs a person to prevent that person from proceeding in a direction in which that person has a right to proceed, is said to restrain that person wrongfully.
>
> (2) The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not within the meaning of this section."[207]

Wrongful restraint refers to the unlawful obstruction of a person to prevent that person from proceeding in a direction in which they have a lawful right to proceed.

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205 Section 362 of the CC.
206 (1875) LR 2 CCR 154.
207 Section 254 of the PCA Chapter 53 LFN ABUJA.

For the offence to be established, the prosecution must prove the following; The victim had a lawful right to proceed in a particular direction and the accused voluntarily obstructed the victim, the obstruction prevented the victim from moving in that direction and the act was unlawful and without justification.

In *Bird v. Jones*[208], the court distinguished between partial obstruction and total restraint, holding that where a person is merely prevented from moving in one direction but is free to move elsewhere, the act constitutes restraint but not imprisonment.

3.5.2.2.2 Wrongful Confinement

According to Section 255:

> "Whoever wrongfully restrains a person in such a manner as to prevent letting that person from proceeding beyond certain circumscribing limits, is said to confine that person wrongfully."[209]

Wrongful confinement occurs where a person unlawfully restrains another person in such a manner as to prevent that person from proceeding beyond certain circumscribed limits. To establish the offence, the prosecution must prove; the accused restrained the victim within certain limits, the restraint prevented the victim from leaving the confined area and the act was intentional and unlawful.

In *Fawehinmi v. Abacha*[210], the court emphasised that unlawful detention or confinement of a person without legal justification amounts to a violation of personal liberty protected under the Constitution of the Federal Republic of Nigeria 1999.

3.6 Unnatural Offences

According to Section 214:

> "Any person who has carnal knowledge of any person against the order of nature; or has carnal knowledge of an animal; or permits a male person to

208 (1845) 7 QB 742.
209 Section 255 of the PCA Chapter 53 LFN ABUJA.
210 (1996) 9 NWLR (Pt.475) 710.

have carnal knowledge of him or her against the order of nature, is guilty of a felony ..."[211]

According to Section 284:

> "Whoever has carnal intercourse against the order of nature with a man, woman or an animal, shall be punished with imprisonment ..."[212]

If an adult permits a boy under 12 years to have carnal knowledge of him it appears that the adult is not guilty of an offence under Section 214 of the Criminal Code though he may be convicted under Section 216 or 217.[213] A boy or girl under the age of 12 who permits an adult to have carnal knowledge of him against the order of nature may be guilty of an offence under Section 214 if it can be proved that he has the capacity to know that he ought not to do the act.[214]

According to Section 215:

> "Any person who attempts to commit any of the offences defined in section 214 of this Code, is guilty of a felony ..."[215]

According to Section 352:

> "Any person who assaults another with intent to have carnal knowledge of him or her against the order of nature is guilty of a felony ..."[216]

3.7 Punishment of Offenders

The severity of punishment usually depends on the nature of the offence, the degree of harm caused, and the intention of the offender. Provisions for these punishments are enshrined in the Criminal Code and the Penal Code Act. They include:

Punishment for murder: According to Section 319:

> "(1) Subject to the provisions of this section of this Code, any person who commits the offence of murder shall be sentenced to death..."[217]

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211 Section 214 of the CC.
212 Section 284 of the PCA Chapter 53 LFN ABUJA.
213 Okonkwo and Naish second edition at page 277.
214 ibid.
215 Section 215 of the Criminal Code.
216 Section 352 of the CC.

Punishment for attempted murder: According to Section 320:

> "…imprisonment for life."[218]

Punishment for manslaughter: According to Section 325:

> "…imprisonment for life."[219]

Punishment for infanticide: According to Section 327A:

> "…may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child."[220]

Punishment for attempt to procure abortion: According to Section 228:

> "…imprisonment for fourteen years."[221]

Punishment for killing an unborn child: According to Section 328:

> "…imprisonment for life."[222]

Punishment for culpable homicide punishable with death: According to Section 221:

> "Except in the circumstances mentioned in section 222 of this Penal Code, …punished with death."[223]

Punishment for culpable homicide not punishable with death: According to Section 224:

> "…imprisonment for life or for any less term or with fine or with both."[224]

Punishment for rape: According to Section 358:

> " ..imprisonment for life, with or without caning" [225]

According to Section 283:

> "…imprisonment for life or for any less term and shall also be liable to fine."[226]

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217 Section 319 of the CC.
218 Section 320 of the CC.
219 Section 325 of the CC.
220 Section 327A of the Criminal Code.
221 Section 228 of the CC.
222 Section 328 of the CC.
223 Section 221 of the Penal Code Act Chapter 53 LFN ABUJA.
224 Section 224 of the PCA Chapter 53 LFN ABUJA.
225 Section 358 of the CC.

Punishment for attempted rape: According to Section 359:

"…imprisonment for fourteen years, with or without caning."[227]

Punishment for defilement: According to Section 218:

"…imprisonment for life, with or without caning.

Punishment for attempted rape: " …imprisonment for fourteen years, with or without caning…"[228]

Punishment for indecent assault: According to Section 360:

"…imprisonment for two years"[229]

Punishment for assault: According to Section 351:

"…if no greater punishment is provided, to imprisonment for one year."[230]

Punishment for assault occasioning harm: According to Section 355:

"...imprisonment for three years."[231]

Punishment for assault on public officers: According to Section 356 of the Criminal Code Act such a person has committed a felony and liable to imprisonment for 3 years.[232]

Punishment for Abduction: According to Section 361:

"Any person who, with intent to marry or carnally know a female of any age, or to cause her to be married, or carnally known by any other person, takes her away, or detains her against her will, is guilty of a felony, and is liable to imprisonment for seven years."[233]

According to Section 362:

"Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against the will

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226 Section 283 of the Penal Code Act Chapter 53 LFN ABUJA.
227 Section 359 of the Criminal Code.
228 Section 218 of the CC.
229 Section 360 of the CC.
230 Section 351 of the CC.
231 Section 355 of the CC.
232 Section 356 of the Criminal Code.
233 Section 361 of the CC.

of such father or mother or other person, is guilty of a misdemeanour, and is liable to imprisonment for two years."[234]

Punishment for Kidnapping: According to Section 364:

"…imprisonment for ten years."[235]

Punishment for wrongful restraint: According to Section 256:

"…imprisonment for a term which may extend to one month or with fine which may extend to sixty naira or with both."[236]

Punishment for wrongful confinement: According to Section 257:

"…imprisonment for a term which may extend to one year or with fine which may extend to one hundred naira or with both;

(b) if the wrongful confinement continues for three days or more with imprisonment for a term which may extend to three years or with fine or with both."[237]

Punishment for unnatural offences: According to Section 214:

"Any person who

(1) has carnal knowledge of any person against the order of nature; or

(2) has carnal knowledge of an animal; or

(3) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony and is liable to imprisonment for fourteen years."[238]

According to Section 284:

"Whoever has carnal intercourse against the order of nature with a man, woman or an animal, shall be punished with imprisonment for a term of which may extend to fourteen years and shall also be liable to fine."[239]

According to Section 215:

"Any person who attempts to commit any of the offences defined in section 214 of this Code, is guilty of a felony and is liable to

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234 Section 362 of the CC.
235 Section 364 of the CC.
236 Section 256 of the Penal Code Act Chapter 53 LFN ABUJA.
237 Section 257 of the PCA Chapter 53 LFN ABUJA.
238 Section 214 of the Criminal Code.
239 Section 284 of the PCA Chapter 53 LFN ABUJA.

> imprisonment for seven years. The offender cannot be arrested without warrant."[240]

According to Section 352:

> "Any person who assaults another with intent to have carnal knowledge of him or her against the order of nature is guilty of a felony and is liable to imprisonment for fourteen years."[241]

3.8 Judicial Attitude and Notable Case Laws

The judicial attitude in Nigeria toward offences against persons reflects a commitment to protecting human life, dignity, and personal liberty. Nigerian courts have consistently interpreted the provisions of the Criminal Code and Penal Code strictly to deter violent crimes and ensure justice for victims. Through notable judicial decisions, the courts have clarified the elements of various offences and reinforced the principle that offenders must be held accountable under the law.

Murder: In *Kalu v. The State*[242] this stands as the locus classicus on the death penalty in Nigeria. The Supreme Court affirmed that the death penalty is not cruel, inhuman, or degrading treatment, and it does not violate the constitutionally guaranteed right to life.

Manslaughter: In *Egbirika v. The State*[243] the court outlined that manslaughter requires that the act be unlawful, directly cause the death, and be done without the intent to kill.

Attempted murder: In *State v Iloduba & Ors*[244],the court clarified that if the prosecution fails to prove the specific intent to kill, but proves intent to cause grievous bodily harm, it may not satisfy the requirements for attempted murder.

Infanticide: In *R v. Chima*[245] a woman gave birth to twins and within an hour killed them because of a custom prevalent in her town that it was an abomination to give birth to twins. She was convicted of murder but on appeal it was held that the conviction if any should have

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240 Section 215 of the CC.
241 Section 352 of the CC.
242 (1998) 13 NWLR (Pt. 583) 531.
243 (2014) 4 NWLR (Pt. 1398) 558.
244 (2020) LPELR-50593 (CA).
245 (1944) 10 W. A. C. A. 223.

been for infanticide and not murder. It is submitted that this conviction is wrong and that the conviction for murder correct because there is no suggestion in the case that the woman was suffering from the effects of childbirth or that her balance of mind was disturbed.

Culpable Homicide punishable with death: In *Wadata Isah v. The State*[246]the appellant stabbed one Hamidu Mohammed a Police Constable with a knife at the back of his neck which resulted in the death of his victim. He was arrested, investigated, charged to Court, tried and convicted for the offence of culpable homicide punishable with death contrary to Section 221 of the Penal Code. On 22nd May 2010, the Appellant was found guilty of the offence for which he was charged and was consequently convicted and sentenced to death by hanging. The appellant filed an appeal which was dismissed.

Culpable Homicide not punishable with death: In *The State v. Abdulazeez Ali*[247], The trial court, in its judgment, found the Respondent guilty of culpable homicide not punishable with death under Section 224 of the Penal Code (rather than the more serious charge of culpable homicide punishable with death), and sentenced him to ten years imprisonment with a fine of Five Hundred Thousand Naira (N500,000.00). The State, being dissatisfied with this decision, appealed to the Court of Appeal, arguing that the prosecution had proved all elements of the more serious charge. The court held that the appeal was allowed. The Court of Appeal further held that the prosecution had successfully proved all three ingredients of culpable homicide punishable with death beyond reasonable doubt: that the deceased died, that her death resulted from the act of the Respondent, and that the act was intentional with knowledge that death or grievous bodily harm was its probable consequence. The Court set aside the judgment of the trial Court delivered on March 2, 2021, which had convicted the Respondent of the lesser offence of culpable homicide not punishable by death. The Court of Appeal convicted the Respondent of culpable homicide punishable with death under Section

[246] (2017) Legalpedia (SC) 11701.
[247] (2025-01) Legalpedia 28984 (CA).

221(a) of the Penal Code Law of Kaduna State 1991 and imposed the mandatory death sentence prescribed by law.

Rape: *Ogunbayo v. The State*[248], this Supreme Court case is landmark for establishing that a person can be convicted on the uncorroborated evidence of the victim (the prosecutrix) if her testimony is credible and convincing. It established that rape is complete upon the slightest penetration.

Defilement: In *Edwin Ezigbo v. The State*[249], this is a key case regarding the defilement and rape of minors, highlighting the callous nature of child rape and the need for strict legal protection.

Indecent assault: In *Nwafor Ifeanyi v. The State of Lagos*[250], At the conclusion of the trial, the court found the Appellant guilty, convicted him, and sentenced him to life imprisonment. The appeal was dismissed for lacking in merit and the Court of Appeal upheld the decision of the lower Court and affirmed the conviction and sentence of the Appellant to life imprisonment. The Court further held that the essential elements of the offence of sexual assault by penetration under Section 261 of the Criminal Law of Lagos State, 2015, were proven beyond reasonable doubt. The Court held that even without the confessional statement, other evidence before the Lower Court was sufficient to ground the conviction of the Appellant. The Court also found that the Appellant had not shown any circumstances that would warrant consideration for a lesser offence under Section 263 of the Criminal Law of Lagos State.

Assault: In *Ishola v. State*[251], the Supreme Court held that assault occurs where an accused person intentionally applies unlawful force to another person.

Assault occasioning harm: In *State v. Ibanga*[252], the court highlights the essential elements required to prove the offence of assault occasioning harm.

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248 (2007) LPELR-2323 (SC).

249 (2012) 16 NWLR Pt. 1326 p. 318.

250 (2025-02) Legalpedia 37197 (CA).

251 (1978) 9– 10 SC 73.

Kidnapping: In *Ewugba v. State*[253], this case established key ingredients of kidnapping in Nigeria, noting that the offense is committed when a person is detained against their will, often involving force or fraud, and confirming that taking a person from their rightful place to another constitutes the offence.

Abduction: In *Lase v. State*[254], this Supreme Court case involved the kidnapping and murder of an 18-month-old baby (Dada Rachel Akinboye) in Ondo State. The court confirmed the death sentence of the appellant based on his confessional statement (Exhibit D), confirming that an abettor present at the scene is a principal offender, even if they only acted as a guard.

Wrongful restraint: In *Agbakoba v. SSS*[255], this case established that for a claim of unlawful detention (a form of wrongful restraint/confinement) to succeed, the plaintiff must prove that the report to the police was made without reasonable cause, or with malice/bad faith.

Wrongful confinement: In *Fawehinmi v. Abacha*[256], the court emphasised that unlawful detention or confinement of a person without legal justification amounts to a violation of personal liberty protected under the Constitution of the Federal Republic of Nigeria 1999.

3.9 Available Defences

Any person accused of committing an offence may escape criminal liability when he successfully raises a legally recognised defence. These defences are made available in the Criminal Code and the Penal Code Act. They act to either justify the act, excuse the accused person, or negate the required criminal intention. These defences include:

a) Self-defence: At common law, homicide committed while acting in reasonable self-defence of oneself is excusable. If a man is violently attacked by another and reasonably believes that he is in immediate danger of death and kills his assailant, it is not unlawful

252 (2020) LPELR-51246(CA).
253 (2018) 7 NWLR (Pt. 1618) 262.
254 (SC. 532/2015) [2017] NGSC 2.
255 (1994) 6 NWLR (Pt. 351) 475.
256 (1996) 9 NWLR (Pt.475) 710.

killing, but the common law required that the person attacked should retreat as far as possible before retaliating.[257] According to Section 286:

> "When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for him to use such force to the assailant as is reasonably necessary to make effectual defense against the assault:
> Provided that the force used is not intended, and is not such as is likely, to cause death or grievous harm..."[258]

In *Nwuzoke v. State*[259], the court held that self-defence is a valid defence where the accused reasonably believed that his life was in danger and used force necessary to repel the attack.

This protection however does not extend to the following cases; the person first began the assault with intent to kill or to cause grievous harm to the deceased or where the person endeavoured to kill or do grievous harm to the deceased before the necessity of protecting himself.[260]

According to Section 62:

> "The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence."[261]

In *Uwaekweghinya v The State*[262], the court held that where a person kills another in defence of himself, such a killing is excused, and it does not amount to manslaughter under the Criminal Code or culpable homicide not punishable with death under the Penal Code. If while acting in reasonable self-defence the accused accidentally or mistakenly kills a person other than the assailant the homicide is excusable.[263] A person may use force in self-defence

257 Okonkwo and Naish second edition at page 222.
258 Section 286 of the CC.
259 (1988) 2 NWLR (Pt.72) 529.
260 Okonkwo and Naish second edition at page 223.
261 Section 62 of the PCA Chapter 53 LFN ABUJA.
262 (2005) 9 NWLR (Pt. 930) 27 SC.
263 *The State v. Enabosi* (1966) N. M. L. R. 241.

if they reasonably believe that they may face imminent danger.[264] For the plea of self-defence to be successful, the following conditions must be satisfied:

i) The accused must be free from fault in bringing about the encounter.

ii) There must be present an impending peril to life or of great bodily harm either real or apparent as to create the honest belief of an existing necessity.

iii) There must be no safe or reasonable mode of escape by retreat.

iv) The accused used reasonable force to defend himself.

b) Provocation: This occurs where a person is suddenly provoked into losing self-control and commits an act that would otherwise amount to a crime.

In homicide cases, provocation may reduce the offence of murder to manslaughter[265], provided that the accused acted in the heat of passion and before there was time for the passion to cool.

c) Accident: According to Section 24:

> "…a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident..."[266]

An accident is an event which a reasonable man in the shoes of the accused would not have foreseen as likely or probable. However, the defence of accident applies where the event was unexpected and could not reasonably have been foreseen by the accused. On this test of objective reasonable foresight any event which is not reasonably foreseeable, whether resulting from an existing, physical condition such as haemophilia is an event occurring by accident.

In *Iromantu v. State*[267], the deceased gripped the appellant's gun. To recover it from him, the appellant accidentally touched the trigger and the gun went off and killed the deceased. It was

264 *Ekpoudo v State* (2021) LPELR-52826 (CA).
265 *Ewo Akang v. State* (1971) 1 All NLR 47.
266 Section 24 of the CC.

held that Section 24 applied. The prosecution had failed to prove that the firing was voluntary or that the circumstances disclosed recklessness. The appellant was therefore not guilty of manslaughter. The court further explained that where death occurs purely as a result of an accident without intention or negligence, criminal liability does not arise.[268]

d) Compulsion or Duress[269]: This is a general defence that is provided where anyone commits an act or omission in order to save himself from threatened harm. But the defence is very limited in scope. The harm threatened must be death or grievous harm, and it must be immediate, presumably if it is not immediate the person threatened has time to seek the protection of the authorities[270]. The harm must be to be inflicted upon the person threatened. The threat must have been made by some person present and in a position to execute the threat" (there could be no defence if it were delivered by telephone or letter). The person threatened must believe that there is no way of escaping the execution of the threat against him, other than to commit the act in question.[271]However, this defence does not apply to very serious offences such as murder.

e) Mistake of Fact[272]: A person may rely on the defence of mistake where he honestly and reasonably believed in the existence of a state of facts which, if true, would make his act lawful. The mistake must be honest and reasonable. The mistake must be "a mistaken belief in the existence of any state of things" as mistakes of law are irrelevant because "ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence.[273]

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267 (1964) 1 All NLR 311.

268 As opposed to *State v. Appoh*, where Section 24 did not apply

269 Section 32 of the CC.

270 Okonkwo and Naish second edition at page 122.

271 Okonkwo and Naish second edition at page 117.

272 Section 25 of the CC.

273 Okonkwo and Naish second edition at page 102.

f) Immaturity[274]: A child under 7 years cannot be guilty of an offence. A child of 7 to 12 years is charged with an offence if there is a legal presumption that he is incapable of committing it which is rebuttable on proof that he had capacity to know that he ought not to do what he did. The only exception is that such a child cannot have carnal knowledge.

g) Insanity[275]: This is a defence where the accused person, at the time of committing the act, was suffering from a mental disorder that made him incapable of understanding the nature of his actions or knowing that the act was wrong.[276]

This defence is recognised under Nigerian criminal law because criminal liability generally requires a sound mind capable of forming criminal intent.

A test for determining the degree of mental disorder requisite for relieving of criminal responsibility was first seriously propounded in England in the famous and so-called M'Naghten Rules, formulated in 1843 by the judges as advice given to the House of Lords after M'Naghten's case." These rules were:

(1) That everyone is presumed sane until the contrary is proved.

(2) That it is a defence for the accused to show that he was labouring under such a defect of reason, due to disease of the mind as either:

(a) not to know the nature and quality of his act, or

(b) if he did know this, not to know that he was doing wrong.

(3) That if a man commits a criminal act under an insane delusion, he is under the same degree of responsibility as he would have been on the facts as he imagined them to be.

The M'Naghten Rules were formulated in the belief that responsibility is the essence of the criminal law and that capacity to choose between right and wrong is the essence of responsibility.[277]

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274 Section 30 of the CC.

275 Section 28 of the CC.

276 *R v. Omoni* (1949) 12 WACA 511.

277 Okonkwo and Naish second edition at page 130.

CHAPTER FOUR

NATURE AND ELEMENTS OF OFFENCES AGAINST PROPERTY AND PUNISHMENT OF OFFENDERS

4.1 Offences Against Property in Nigeria

Offences against property are crimes that involve the unlawful taking, interference with, destruction, or conversion of another person's property. Nigerian criminal law protects both tangible and intangible property rights, recognising property as an essential component of economic stability and social order. Property refers to anything capable of being owned or possessed, including money, goods and chattels, land and buildings and valuable securities.

According to Section 1 of the Criminal Code Act property "…includes everything, animate or inanimate, capable of being the subject of ownership"[278].

Under the Penal Code Act, the term property is not specifically mentioned.

Offences against property consist of acts or omissions that unlawfully deprive a person of ownership, possession, use, or value of property. These offences protect both proprietary ownership and possessory interests, while recognising that interference with lawful possession may constitute a crime even where ownership is disputed.

4.2 Offences Against Property under the Criminal Code

a) Stealing/Theft: Theft which is referred to as stealing under the Criminal Code is the fraudulent taking or conversion of property belonging to another person with the intent to permanently deprive the owner of it.

b) Robbery and Armed Robbery: It is an aggravated form of theft involving the use or threat of violence immediately before or after stealing.

c) Burglary and Housebreaking: Burglary involves breaking into and entering a building with intent to commit a felony, usually theft.

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[278] Section 1 of the Criminal Code Act.

d) Receiving Stolen Property: This occurs where a person receives or retains property knowing or having reason to believe it is stolen.

4.2.1 Stealing

According to Section 383:

> "(1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing…"[279]

By the provision of Section 1(1) of the Theft Act of 1968:

> "A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it".[280]

To constitute a "taking"' it is not necessary for the thief to take the thing completely into his physical possession. On the contrary, he is deemed to have taken a thing if he moves it or causes it to moves. But in order that the conversion amount to stealing it must be done with one of the fraudulent intents specified in section 383(2)[281]. In *R v. Anyadiegwu*[282]**,** the accused was convicted of converting the money. On appeal, it was held quashing the conviction, that moving of this £6 10 from one Native Administration safe to another so that it should be included in the checking of the money in his hands for his employers cannot possibly be regarded as conversion of the £6 10 to the appellant's own use. A servant who receives money for his master and converts it, is guilty of stealing[283]. But if a servant acting outside the scope of his employment uses his master's tool to obtain money for himself, this, it appears, is not stealing.

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279 Section 383 of the Criminal Code Act.
280 Section 1(1) English Theft Act 1968.
281 Okonkwo and Naish second edition at page 289.
282 (1943) 9 W. A. C. A 67.
283 *Adewusi v. R* (1963) 1 All N. L. R 316.

In *Oshinye v, Commissioner of Police*[284]**,** the accused obtained some goods from someone saying, falsely that the owner had authorised him to take the goods. When he received them, he had no fraudulent intent but he later appropriated them to his own use. He was held guilty of stealing by conversion.

In considering stealing there must be an element of fraud. In considering whether or not there existed one of these fraudulent intents the test is what was the intent of the accused at the time of the taking or conversion. The fraudulent intents specified include:

a) An intent to permanently deprive the owner of the property of it: This is because an intention to deprive the owner of the property temporarily of the property will not amount to stealing.[285]

b) An intent permanently to deprive any person who has any special property in the thing of such property.

c) An intent to use the thing as a pledge or security.

d) An intent to part with the property on a condition as to its return, which the person taking or converting it may be unable to perform.

e) An intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion.

f) In case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.[286]

Special Cases of Stealing

Under Section 384(1) when a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted

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[284] (1960) 5 F. S. C 105.

[285] *R v.Easom* (1971) 2 All E.R. 945.

[286] *State v. Odimayo* (1967) N. M. L. R. 92.

or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be stealing. Under subsection (2), if a servant contrary to his master's orders, takes from his possession food in order that it may be given to an animal belonging to or in the possession of his master, such taking is not deemed to be stealing.[287]

4.2.2 Housebreaking

Housebreaking is an offence for anybody to break and enter the dwelling-house of another with the intention of committing a crime in it or having entered the dwelling-house with intent to commit a crime in it or having committed a crime in it breaks out of the house.[288]

Elements of Housebreaking

Breaking: The act of breaking in can be committed by the actual breaking of any external or internal part of a building or by unlocking, pulling, pushing, lifting of a door, window shutter which are ordinarily used for closing or opening a building or used as giving passage to the building or from one part of the building to another.[289]

It is also breaking in where entrance into a building is obtained by means of a threat or by trick. The situation will be different if the door is left open and a person comes in to steal. It will however amount to breaking in if entrance is obtained into a building by collusion with any person in building or if entrance is gained through the chimney or any small opening in the building left open for any use other than as a means of entrance.

Entering: To constitute entering, the whole body of the accused person needs not to have entered the building. It is sufficient if any part of the accused's body is within the building. Thus, there will be entry where the accused person projects his hand or leg inside the building but not of any instrument used by him.

Dwelling-house: This includes " ..any building or structure, or part of a building or structure, which is for the time being kept by the owner or occupier for the residence therein of himself,

287 Okonkwo and Naish second edition at page 296.
288 Section 411 of the CCA.
289 Section 410 of the CCA.

his family, or servants, or any of them: it is immaterial that it is, from time to time, uninhabited...."[290]

The deciding factor whether a building is a dwelling-house or not is the use to which the building in question is put to and not what it is built for. Thus, a caravan or houseboat used as a house will qualify as a dwelling-house for this purpose[291]. The same applies to a ship.

Intent to commit felony: As a necessary ingredient of this offence, you need to know that the accused person must intend to commit felony (a serious crime) within the building. If such intent is lacking at that material time but is only formed after the breaking in and entry into, the building is completed, there is no housebreaking.

4.2.3 Burglary

It is important to state that the offence of burglary have the same ingredients as that of housebreaking. The only difference between the two offences is the time when the offence was committed. If the offence is committed during the day, it is housebreaking and if committed at night it is burglary. In order to show that the offence is committed a night, there is necessity to prove the offence was committed between the hours of 6:30pm in the evening and 6:30am in the morning. Thus, if the breaking and entry took place 6:00pm and after committing a crime within the building the accused left the building at 6:45pm this will not be burglary unless after committing the crime, the accused breaks out of the building at 6:45pm. Under Section 347 of the Penal Code, for the offence to be burglary it must be committed between sunset and sunrise.

Punishments

> The punishment for housebreaking is imprisonment for fourteen years and for burglary, it is imprisonment for life according to Section 411 of the Criminal

[290] Section 1 of the CCA.
[291] *R v. Rose* (1965) 1 QWN 35.

> Code Act. An attempt to commit the offence attracts seven years imprisonment while that of burglary is imprisonment for fourteen years.[292]

4.2.4 Robbery

The vice of robbery has been criminalised by Section 401 of the Criminal Code and by the provisions of the Robbery and Firearms Act.

According to Section 401:

> "Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is said to be guilty of robbery"[293].

It should be noted that the accused would not be guilty of the offence if at the time he took the property, he believed that he had a legal right to deprive the victim of the property.[294].

Also, for an act to be robbery, the use of violence has to be immediately before/during the taking of the property or immediately after the taking of the property. Thus, in the case of *R v. Bekum*[295], the plaintiff and his companions left some valuable property in the possession of the accused and went out to buy some meat. On their way back, they were attacked by the accused, who then subsequently possessed the valuables. It was held that this was robbery since the use of violence in this instance was immediately before the taking of the property.

According to the provision of Section 1(1) of the Robbery and Firearms Act, the punishment for robbery is imprisonment for not less than 21 years, e.g a felony.

4.2.5 Armed Robbery

There is a distinct difference between the offence of robbery and the offence of armed robbery. In the offence of robbery, the accused uses violence or threatens to use violence, this

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292 Section 412 of the CCA.

293 Section 401 of the CCA.

294 *R v. Robinson* (1997).

295 (1941) W. A. C. A vol 17.

violence could be without the use of weapons of any kind. On the other hand, armed robbery involves the use of some specific weapons recognised by the law.

Thus, According to Section 1(2) of the Robbery and Firearms Act:

> "…armed robbery would occur if the accused, while carrying out robbery, was armed with a firearm or any other offensive weapon or was in company with a person that is armed."[296]

If a person is found guilty of armed robbery, such person would be sentenced to death. This punishment would also apply if the accused wounds any person immediately before, during or after the robbery.

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

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

> "…any canon, gun, rifle, carbine, machine-gun, cap-gun, flint-lock gun, revolver, pistol, explosive or ammunition or other firearm, whether whole or in detached pieces".[297]

Offensive weapon is also defined as:

> "…any article (apart from a firearm) made or adapted for use for causing injury to the person or intended by the person having it for such use by him and it includes an air gun, air pistol, bow and arrow, spear, cutlass, machete, dagger, cudgel, or any piece of wood, metal, glass or stone capable of being used as an offensive weapon."[298]

To secure a conviction for armed robbery, the prosecution must prove the following elements beyond reasonable doubt: That there was a robbery, that the robbery was accompanied by violence or threat of violence and that the accused was armed with a dangerous weapon, or acted in company with others, or inflicted injury

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296 Section 1(2) Robbery and Firearms Act.
297 Section 11 of the Robbery and Firearms Act.
298 ibid.

Failure to prove any of these elements will result in acquittal.

In the case of *John Nwachuckwu v. The State*[299], the accused carried out robbery with a fake gun. The court held that although the threat of violence was present at the performance of the act, it would only amount to robbery. This is due to the fact that a toy gun does not fall under the category of firearms or offensive weapons as provided and recognised by The Robbery and Firearms Act".

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

a. For an individual, imprisonment for not more than five years.

b. For a hospital/clinic, a fine of ten thousand naira or in addition, the hospital shall be closed down. Moreover, since it is an offence classified under felony, it carries capital punishment and thus, not bailable.

4.2.6 Fraud

Fraud and deceit– related offences are crimes involving dishonesty, deception, or misrepresentation used to obtain property, financial advantage, or other benefits. These offences undermine trust in commercial and social transactions and are therefore strictly punished under the Nigerian criminal law. Fraud generally refers to intentional deception or misrepresentation made to gain unlawful advantage or to deprive another person of property or rights. The essence of fraud is dishonesty, deception and intent to gain or cause loss.

[299] 1985 vol 2 NWLR.

4.2.7 Obtaining Property by False Pretences

According to Section 418:

> "Any representation made by words, writing, or conduct, of a matter of fact, either past or present, which representation is false in fact and which the person making it knows to be false or does not believe to be true, is a false pretence."[300]

According to Section 419:

> "Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony and is liable to imprisonment for three years.
> If the thing is of the value of one thousand naira or upwards, he is liable to imprisonment for seven years."[301]

The felony of obtaining property by false pretence is committed when a person by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen. It is immaterial that the thing is obtained or its delivery is induced through the medium of a contract induced by the false pretence. In *R v. Jennison*[302], the accused, a married man, represented himself as being single and induced a girl to give him money promising that he would use the money to furnish a house and thereafter marry her. He was convicted of obtaining the money by false pretences. Here although there was a future promise yet the statement that the accused was single related to an existing fact and was an important factor in inducing the girl to part with her money. The pretence must not only be false but it must be false to the knowledge of the maker, or at least, he must not believe it to be. true. If he honestly believes in the truth of the statement which turns, out to be false, there is no false pretence.

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300 Section 418 of the CCA.
301 Section 419 of the CCA.
302 (1862)L & C. 157.

The prosecution has the burden of proving the falsity of the pretence and this ought not to be presumed. In order that this crime may be committed there must be an intent to defraud, though it is not necessary to allege an intent to defraud any particular person. If a person makes a false representation in order to regain his property from a wrongful possessor, no offence is committed. An intent to defraud is an intent to induce another by deceit to act to his detriment or contrary to what would otherwise be his duty and it is immaterial that there is no intention to cause pecuniary or economic loss. The pretence must have induced the owner to part with his property. It must be shown that the alleged false representation weighed on the mind of the re-presentee and caused him to part with his property. If the re-presentee is aware of the falsity of the representation or he is not deceived by it, but nevertheless parts with his property, the felony of obtaining by false pretences is not committed although the offender may be convicted of attempting to obtain goods by false pretences.

4.2.8 Damage to Property

Damage to property refers to any act whereby a person wilfully, unlawfully, or negligently destroys, defaces, or diminishes the value or usefulness of property belonging to another person. It is commonly referred to as malicious damage to property. The offence protects both movable and immovable property. To establish damage to property, the prosecution must prove:

a. The property belongs to another person

b. The accused destroyed or damaged the property

c. The act was wilful or unlawful

d. There was intent to damage or recklessness

Wilful Damage

Wilful damage (also referred to as malicious damage) is an offence against property which occurs where a person intentionally and unlawfully destroys or damages property belonging to another. The key feature is intention, the act must be done deliberately and not accidentally. According to Section 458:

> "Any person who:
>
> (1) willfully removes, defaces or injures any survey mark or boundary mark which shall have been made or erected by or under the direction of any government department or in the course of or for the purposes of a government survey; or
>
> (2) being under an obligation to maintain in repair any boundary mark made or erected as aforesaid, neglects or refuses to repair the same...."[303]

However, a person is not criminally liable if they destroy property under a genuine belief they own it, but this defence fails if they destroy more than necessary or know they have no title.

4.2.9 Arson

Arson is a serious offence against property which involves the intentional and unlawful setting of fire to property, particularly buildings or structures, with the intent to destroy or damage them.[304]Arson may apply whether the property belongs to another person or, in some cases, even where the offender sets fire to his own property in circumstances that endanger others. To establish the offence, the prosecution must prove; there was a setting of fire, the property was destroyed or damaged, the act was intentional or reckless and the act was unlawful

According to Section 443:

> "Any person who willfully sets fire to any of the following things: (a) any building or structure whatever, whether completed or not;
>
> (b) any vessel, whether completed or not;
>
> (c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel;

[303] Section 458 of the Criminal Code Act.

[304] *Okhiria v. The State* [2016] NGCA 83

(d) a mine, or the workings, fittings, or appliances of a mine,

is guilty of a felony and is liable to imprisonment for life."[305]

According to Section 444 an attempt to commit arson will make a person " ..guilty of a felony and liable to imprisonment for fourteen years."[306]

4.2.10 Receiving Stolen Property

Receiving stolen property is a criminal offence that occurs when an individual buys, accepts, or takes control of items they know or have reasonable cause to believe were obtained through theft or other illegal means.

Stolen property is defined in Section 316 as:

> "Property, the possession whereof has been transferred by theft or by extortion or by robbery, and property, which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is stolen property, whether the transfer has been made or the misappropriation …but if the property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property."[307]

Before an accused person can be convicted of receiving stolen property, he must have received the stolen property. In order to prove receiving, it is sufficient to show that the accused person has either alone or jointly with some other person, had the thing in his possession, or has aided in concealing it or disposing of it. Merely assisting in disposing of the thing without having control of it is receiving. As was said in *Olujomoye v. R*[308] :

> "It is clear that actual manual possession of goods by a defendant is not necessary to the completion of the offense of receiving; it is sufficient if they are in the actual possession of a person over whom the defendant has a control, so that they would be forthcoming if ordered."

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305 Section 443 of the CCA.
306 Section 444 of the CCA.
307 Section 316 of the PCA Chapter 53 LFN (ABUJA).
308 (1936)3 W.A.C.A.71.cf C.C.s 1.

The receiving must be dishonest, and must intend to appropriate them to his own or to the use of some person other than the true owner. If the receipt is innocent but later the accused changes his mind and misappropriates the goods he is not guilty of the offence of receiving but may be guilty of stealing for converting the goods to his own use. It must be proved that the property received had been previously stolen or obtained by means of an act constituting a felony or misdemeanour. The doctrine of recent possession is embodied in Section 148 (a) of the Evidence Act which provides that a court may presume, inter alia, "that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession". The burden of proving guilty knowledge always remains on the prosecution and this doctrine never operates so as to shift the burden to the accused[309], the grounds of suspicion must exist at the time when the charge was made. If the accused offers any explanation which might reasonably be true of how he came by the property and thus raises some doubt, he is entitled to be acquitted because the prosecution would then have failed to prove beyond reasonable doubt that the accused had guilty knowledge. The doctrine of recent possession is not limited to proof of guilty knowledge in cases of receiving stolen goods.

According to Section 427 of the Criminal Code Act, the punishment for receiving stolen property is imprisonment for seven years however if the means of obtaining that stolen property was a felony, then it is imprisonment for life. According to Section 430 of the Criminal Code Act, the punishment for having possession of any thing suspected to have been stolen is imprisonment for six months.

309 *Aiguokhian v. State* (2004) 7 NWLR (Pt.873) 565.

In *Kuforiji v. State*[310], the Supreme Court held that possession of recently stolen property may raise a presumption that the accused either; stole the property or knowingly received it as stolen property.

4.3 Offences Against Property under the Penal Code Act

4.3.1 Theft

According to Section 286:

> "(1) Whoever, intending to take dishonestly any movable property out of the possession of a person without that person's consent, moves that property in order to take it, is said to commit theft.
> (2) Whoever dishonestly abstracts, diverts, consumes or uses any electricity or electric current is said to commit theft."[311]

According to Section 288:

> "Whoever commits theft in or from a building, tent or vessel, which building, tent or vessel is used as a human dwelling or used for the custody of property, or in or from any railway carriage, lorry, omnibus or aircraft used for the conveyance of passengers or goods, shall be punished with imprisonment for a term which may extend to seven years with fine or with both."[312]

According to Section 289:

> "Whoever, being a clerk or servant being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both."[313]

According to Section 290:

> "Whoever commits theft having made preparation for causing death or hurt or restraint or fear of death or of hurt or of restraint to a person in order to commit such theft or in order to effect his escape after the committing of such theft or in

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310 (2001) 6 NWLR (Pt.709) 1.
311 Section 286 of the PCA Chapter 53 LFN (ABUJA).
312 Section 288 of the PCA Chapter 53 LFN (ABUJA).
313 Section 289 of the PCA Chapter 53 LFN (ABUJA).

> order to retain property taken by such theft, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine."[314]

4.3.2 Housebreaking

Housebreaking is also covered under section 346 of the Penal Code:

"A person is said to commit housebreaking, who commits house trespass, If he effects his entrance into the house or a part of It in any of the six ways hereinafter described; or if being in the house or a part of it for the purpose of committing an offence or having committed an offense therein, he quits the house or a part of it in any of those six ways..."[315]

Housebreaking by night under the Code attracts three years imprisonment with fine.[316]

Breaking in/out of other buildings carries stiffer punishments. House trespass carries a maximum of one year imprisonment or with fine.[317]

4.3.3 Extortion

Extortion is an offence against property which involves obtaining property, money, or any valuable benefit from another person through threats, intimidation, coercion, or abuse of authority. The essence of extortion lies in the use of fear or pressure to induce the victim to part with property. Extortion differs from robbery in that:

a. The victim appears to consent, but such consent is obtained through fear

b. The threat may relate to future harm, not necessarily immediate violence

c. It may involve non-physical threats, such as exposure of secrets or abuse of office

Therefore, extortion is essentially a fraudulent and coercive method of obtaining property.

Extortion is defined by Black's Law Dictionary as:

> "The act or practice of obtaining something or compelling some action by illegal means as by force or coercion".[318]

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[314] Section 290 of the PCA Chapter 53 LFN (ABUJA).
[315] Section 346 of the PCA Chapter 53 LFN (ABUJA).
[316] Section 355 of the PCA Chapter 53 LFN (ABUJA).
[317] Section 349 of the PCA Chapter 53 LFN (ABUJA).

According to Section 291:

> "Whoever intentionally puts any person in fear of any injury to that person or to any other and thereby dishonestly induces the person so put in fear to deliver to a person any property or document of title or anything signed or sealed which may be converted into a valuable security, commits extortion"[319]

According to Section 292:

> "Whoever commits extortion shall be punished with imprisonment for a term which may extend to five years or with fine or with both."[320]

To establish the offence of extortion, the prosecution must prove:

a. A demand was made by the accused.

b. The demand was accompanied by threats, intimidation, or coercion.

c. The threats were intended to induce fear in the victim.

d. The victim delivered property or conferred a benefit.

e. The act was dishonest and unlawful.

In *COP v. Abigail Isah*[321], the defendant was charged with extortion under Section 294 of the Penal Code for threatening to kidnap a man and demanding, through fear, that he transfer N500,000.

4.3.4 Criminal Misappropriation

Criminal misappropriation is an offence against property which occurs where a person dishonestly converts property belonging to another for his own use or benefit without lawful justification. The distinguishing feature of this offence is that the property may have initially come into the possession of the accused lawfully or innocently, but is later dishonestly appropriated.

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318 BLD 7th edition Page 605.

319 Section 291 of the PCA Chapter 53 LFN (ABUJA).

320 Section 292 of the PCA Chapter 53 LFN (ABUJA).

321 FCT High Court, FCT/HC/CR/588/2022.

According to Section 308:

> "Whoever dishonestly misappropriates or converts to his own use any movable property, commits criminal misappropriation"[322]

According to Section 309:

> "Whoever commits criminal misappropriation shall be punished with imprisonment for a term which may extend to two years or with fine or with both."[323]

As established in *Hembe v. FRN*[324], the prosecution must prove; the property is moveable, the accused converted it and the conversion was dishonest.

To establish criminal misappropriation, the prosecution must prove:

a. The property belongs to another person

b. The accused came into possession of the property (lawfully or otherwise)

c. The accused dishonestly converted or appropriated the property

d. There was intention to deprive the owner of the property

In *FRN vs Abubakar Rabiu Wada*[325], the accused was alleged to have dishonestly misappropriated and converted the said sum to his own use, monies belonging to Sadiq Zubairu purportedly as payment for the supply of broken rice and neither the rice was supplied nor the money paid back, and thereby committed an offence and punishable under Section 308 and 309 of the Penal Code Laws of Borno State, Cap 102 Vol. 13 1994. The trial judge convicted and sentenced him to three years imprisonment with an option of N100,000.00 (One Hundred Thousand Naira) fine.

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322 Section 308 of the Penal Code Act Chapter 53 LFN (ABUJA).
323 Section 309 of the Penal Code Act Chapter 53 LFN (ABUJA).
324 (2014) LPELR-22705 (CA).
325 2025.

4.3.5 Cheating

According to 320:

"Whoever by deceiving a person:

(a) fraudulently or dishonestly induces the person so deceived to deliver any property to a person or to consent that any person shall retain any property; or

(b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat."[326]

According to Section 322:

> "Whoever cheats shall be punished with imprisonment for a term which may extend to three years or with fine or with both."[327]

Cheating is committed when a person by means of any fraudulent trick or device obtains from any other person anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods, or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device. The offence is a misdemeanour punishable with imprisonment for two years.

It has been held that although words coupled with a certain course of conduct may amount to a trick or device[328], a mere false representation or pretence is not synonymous with trick or device. To prove the offence of cheating, these five elements must be present as established in case of *Michael Uzoagbo v. COP*[329]:

1. The victim was deceived and gave or allowed someone to keep property.

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326 Section 320 of the PCA Chapter 53 LFN (ABUJA).

327 Section 322 of the PCA Chapter 53 LFN (ABUJA).

328 *Lababedi v. Queen* (1959) 4 FSC 48.

329 (2014) 5 NWLR (Pt. 1401) 441.

2. The victim was induced to part with that property.

3. The victim acted based on that inducement.

4. The accused acted fraudulently or dishonestly.

4.3.6 Criminal Breach of Trust

Criminal breach of trust is an offence against property which occurs where a person entrusted with property dishonestly misappropriates, converts, or uses that property in violation of the terms of the trust.

According to Section 311:

> "Whoever, being in any manner entrusted with property or with a dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which that trust is to be discharged or of a legal contract express or implied, which he has made touching the discharge of the trust, or wilfully suffers any other person so to do, commits criminal breach of trust."[330]

According to Section 312:

> "Whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to seven years or with fine or with both."[331]

To establish criminal breach of trust, as held in *Uzoagba & Anor v. COP*[332]**,** the prosecution must prove; entrustment of property to the accused, the accused had control or dominion over the property, the accused dishonestly misappropriated, converted, or used the property and that the act was in violation of the terms of the trust or legal direction

4.3.7 Mischief

According to Section 326:

> "Whoever, with intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or to a person causes the destruction of any property or

330 Section 311 of the PCA Chapter 53 LFN (ABUJA).
331 Section 312 of the PCA Chapter 53 LFN (ABUJA).
332 (2012) LPELR-15525(SC).

> any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously, commits mischief."[333]

According to Section 327:

> "Whoever commits mischief shall be punished with imprisonment for a term which may extend to two years or with fine or with both."[334]

To establish a case of mischief, the following must be present:

a. The offender must intend or know they are likely to cause wrongful loss or damage.

b. The act must diminish the property's value or utility.

c. Mischief can be committed even on one' s own property if it results in damage to others.

In *Bala Ataguba v. Commissioner of Police*[335], the appellant was found guilty of criminal trespass under Section 348 and mischief under Section 327 punishable under the Penal Code. The court upheld the conviction, which involved actions causing damage to property, resulting in a prison sentence running concurrently with the trespass charge.

4.4 Judicial Attitude and Notable Case Laws

Despite the seriousness of property offences, courts insist that prosecution must strictly prove all ingredients of the offence. A recurring judicial attitude is that:

"Mere possession or taking is insufficient without proof of fraudulent intent". Although the attitude of the court is strict, it endeavours to observe genuine defences. Thus, courts balance of the protection of society with fairness to accused persons.

Stealing: In *Oshinye v, Commissioner of Police*[336], the accused obtained some goods from someone saying, falsely that the owner had authorised him to take the goods. When he received them he had no fraudulent intent but he later appropriated them to his own use. He was held guilty of stealing by conversion.

333 Section 326 of the PCA Chapter 53 LFN (ABUJA).
334 Section 327 of the PCA Chapter 53 LFN (ABUJA).
335 (CA/A/90/C/08) [2011].
336 (1960) 5 F. S. C 105.

Housebreaking: In *Afolalu v. State*[337], it was held that housebreaking may be proved through; circumstantial evidence, recovery of stolen items or conduct of accused. The Supreme Court affirmed that circumstantial evidence can be sufficient where it irresistibly points to the accused.

Robbery: In *Olayinka v. State*[338], the court held that the prosecution must prove both stealing and the use of violence to secure a conviction for robbery.

Armed Robbery: In *Afolalu v. State*[339], the Supreme Court held that circumstantial evidence and confessional statements can be sufficient to sustain a conviction for armed robbery, where direct evidence is unavailable.

Obtaining by false pretence: In *Ijuaka v. Commissioner of Police*[340], Humphreys, J. dealing with what has to be proved in order to establish the intent to defraud stated as follows, "In order that a person may be convicted of that offence it has been said hundreds of times that it is necessary for the prosecution to the prove to the satisfaction of the court that there was some misstatement which in law amounts to a pretence, that is, a misstatement as to an existing fact made by the accused person; that it was false and false to his knowledge; that it acted upon the mind of the person who parted with the money; that the proceeding on the part of the accused was fraudulent."

Extortion: In *COP v. Abigail Isah*[341], the defendant was charged with extortion under Section 294 of the Penal Code for threatening to kidnap a man and demanding, through fear, that he transfer N500,000.

Criminal misappropriation: In *FRN vs Abubakar Rabiu Wada*[342], the accused was alleged to have dishonestly misappropriated and converted the said sum to his own use, monies

337 (2010) 16 NWLR (Pt. 1220) 584.
338 (2007) 9 NWLR (Pt.1040) 561.
339 (2010) 16 NWLR (Pt.1220) 584.
340 (1976) LPELR (1466) 1 at 1.
341 FCT High Court, FCT/HC/CR/588/2022.
342 2025.

belonging to Sadiq Zubairu purportedly as payment for the supply of broken rice and neither the rice was supplied nor the money paid back, and thereby committed an offence and punishable under Section 308 and 309 of the Penal Code Laws of Borno State, Cap 102 Vol. 13 1994. The trial judge convicted and sentenced him to three years imprisonment with an option of N100,000.00 (One Hundred Thousand Naira) fine.

Cheating: In *Lababedi v. Queen*[343], the accused used false invoices and forged vouchers to pay less duty to the Customs Department. This was held to be cheating, as it involved a fraudulent trick.

Criminal Breach of trust: In *Kure v. COP*[344], the Supreme Court clarified the distinction between criminal breach of trust and cheating, highlighting that criminal breach of trust requires a prior trusting relationship, whereas cheating is often based on deceptive dishonest inducement from the outset.

4.5 Available Defences

a. Bona fide claim of right: This is provided under Section 23 of the Criminal Code Act. If the accused honestly believes the property belongs to him or that he has a legal right to it, there is no *mens rea* (dishonest intention) even if the belief is mistaken, it can still be a defence if honest. In *Iroaghan v. Commissioner of Police*[345], the court recognised that an honest claim of right negatives the fraudulent intent required for stealing under section 383 of the Criminal Code.

b. Mistake of fact: According to Section 25 of the Criminal Code Act, "A person is not criminally responsible if the act was done under an honest and reasonable mistake of fact". In *Okonkwo v. State*[346], it was held that mistake must be honest and reasonable.

343 (1959) 4 FSC 48.
344 (2020) LCN/4914 (SC).
345 (1959) WRNLR 118.
346 (1998) 8 NWLR (Pt. 561) 210.

c. Consent of the owner: Offences against property such as stealing and theft require prove of obtaining such property without the consent of the owner. Valid consent destroys the offence. In *State v. Ajayi*[347], the court held that where the owner voluntarily consents to the accused taking possession of property, the offence of stealing is not established because one of the essential ingredients of theft "absence of consent" is missing.

d. Insanity: This is provided under Section 28 of the Criminal Code Act. It states that a person cannot be held criminally liable for an offence if at the time of commission, he was in a state of mental disease so as to deprive him of the capacity to understand his actions. In *Ubani v. State*[348], the court held that the defence of insanity must be specifically proved by the accused through credible evidence showing that he lacked the mental capacity to understand the nature or wrongfulness of his act at the material time.

e. Intoxication: This is provided under Section 29 of the Criminal Code Act. In *R v. Owarey*[349], the court held that voluntary intoxication is generally not a defence, except where it prevents the accused from forming the specific intent required for the offence charged.

347 (1974) 2 ECSLR 39.
348 (2003) 18 NWLR (Pt. 851) 224.
349 (1954) 14 WACA 379.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

The purpose of this study was to examine offences against persons and property under the Nigerian criminal law, particularly referencing the statutory provisions of the Criminal Code and the Penal Code. Using these statutes and others we sought to analyse the nature, classification and legal regulations of these offences. The following findings were made.

The foundation of Nigerian criminal law is formed on the offences against persons and property. Some of the primary aims of criminal law in Nigeria are the protection of life, bodily integrity, liberty and property and both offences against a person and offences against property are essentially regulated for the maintenance of public order, security and economic stability. Laws regulating these offences and providing for their punishments thus seek to prevent unlawful interference with human life and interests in property (proprietary interests) through the use of criminal sanctions.

The Nigerian legal system operates a dual criminal law system. Offences against persons and property are not regulated only by one major statute, but are primarily regulated by the Criminal Code in Southern Nigeria and Penal Code in Northern Nigeria. The Codes may tend to present similar objectives, but there are differences in the crimes they provide for, the definitions of those crimes, their classifications and the punishments for those crimes. The differences may and often do lead to inconsistencies in interpretation and application of some offences.

Criminal responsibility is based generally on the presence of the physical element, actus reus, and the mental element, mens rea. Thus, liability to an offence is dependent on conduct which has been defined as an offence by the law in addition to the mental element required to commit that offence. This is the case except in offences of strict liability where the mental element often is disregarded as a necessary element for imposing liability. Recognisable defences to liability in these offences include mistake of fact, insanity, extraordinary emergency, bonafide claim of right, lawful justification and infancy.

Offences against a person are classifiable into various categories. They are generally divided into fatal offences such as murder and manslaughter, sexual offences such as rape and defilement and non-fatal offences such as assault and kidnapping.

A wide range of offences against property are recognisable under the Nigerian criminal law. They include stealing, burglary, theft, housebreaking, robbery, obtaining under false pretences and armed robbery.

The criminal justice system plays the important role of enforcing criminal law and effective enforcement of criminal law depends on the law enforcement agencies, the judiciary and correctional institutions. These agencies have the job of collective investigation of offences, prosecution of offenders, facilitating offenders and adjudicating on criminal matters.

There are still challenges which affect the effectiveness of the enforcement of criminal law. crimes against persons and offences against property are still common though there are existing legal provisions. Some of the challenges affecting the effectiveness of criminal law, some of which are weak enforcement mechanisms, limited public awareness of these offences and their punishments, inadequate investigation strategies and agencies, and delays in prosecution. The study found that there are still questions regarding the effectiveness of the reforms which the Administration of Criminal Justice Act (ACJA) 2015 had introduced.

5.2 Recommendations

1. The possibility of bringing together or harmonising the Criminal Code and Penal Code should be considered in order to reduce any inconsistencies in their provisions including in their definitions, classifications, and punishments in cases where the offences are similar.

2. Law enforcement agencies such as Economic and Financial Crimes Commission (EFCC), Police officers and others should be given better funds, training and technological support in equipment in order to improve and enhance investigation and investigative strategies and crime detection. There should also be a better collaborative effort among these agencies and the judiciary to more efficiently combat criminal offences.

3. Courts should implement measures that would help to reduce delays in criminal trials and improve citizens access to justice. There should be effective implementation of the ACJA 2015 in order for the criminal justice administration to be improved upon but also for accountability to be strengthened.

4. Citizens should be educated and enlightened on what constitutes an offence against their person or their property and the proper punishments or sanctions for those offences through the use of public enlightenment programs.

5. Existing laws, especially those relating to changing systems such as robbery, rape, cyber-fraud and other such crimes, should be occasionally reviewed to ensure that they remain effective.

6. Programs that seek to rehabilitate and reintegrate offenders within correctional institutions should be strengthened for the promotion of lawful conduct after release and to reduce instances of recidivism.

5.3 Conclusion

Through this study, there was an examination of the offences against persons and the offences against property under the Nigerian criminal law and the relevant provisions of the Criminal Code Act and the Penal Code Act in relation to these offences were analysed. It is established that offences against persons and property are central to the protection of the life, liberty, dignity and property interests of a person or citizen in the society. This study reveals that though there are existing legal frameworks which provide for the extensive regulation of these offences, there are still challenges relating to the enforcement of the regulations, prosecution of these offences and public awareness as to the offences and their corresponding punishments. In light of these challenges there is, therefore, a need to strengthen criminal justice institutions, improve mechanisms used for enforcement and enhance the legal awareness of the public as to these offences in order to achieve the greater protection of persons and their property in Nigeria.

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