ANALYSIS OF SECTION 24 OF THE CRIMINAL CODE IN RELATION TO *MENS REA* AND CRIMINAL RESPONSIBILITY IN SOUTHERN NIGERIA[1]*

Abstract

The general objective of criminal law is punishment of offenders. Punishment is said to be meted out on persons who committed an act or omission that is criminal. An offence which is also used interchangeably with crime is defined as a wrongful act or omission which is prohibited by law with some penal consequences. However, punishment for offences is not done for the fun of it. At least, there was the need to ascertain the actual commission of the offence or the doing of the act or omission which constitutes a crime (actus reus) by a person(s) (parties to an offence), the existence of some blame on the part of the person (mens rea). This requirement of blameworthiness on the part of the doer also expressed in the axiom 'no liability without fault' becomes the hallmark of the common law doctrine of mens rea, that is, the guilty mind which constitutes the mental element of an offence. This philosophical concept of 'no liability without fault' is the foundational basis of the defenses (general and special) to criminal responsibilities. However, Nigeria criminal law has now dispensed with the much complicated and confusing doctrine of mens rea by specifically and expressly enacting various defenses especially section 24 of the Criminal Code which provides defenses for independent acts or omissions, or events which occur by accident. This work examined Section 24 of the Criminal Code in relation to mens rea, genetic determinism, artificial intelligence, vicarious liability, thin skull/egg shell rule and strict liability as it relates to criminal responsibility in Nigeria. For an in-depth analysis, the researcher used referential materials, statutes, case laws, textbooks, articles and journals, internet materials, opinion of scholars. At the end of this academic exercise, the researcher discovered that in spite of the salutary provisions of section 24 of the Criminal Code; little considerable attention has been paid to that provision in the determination of criminal responsibilities in Nigeria. Rather, Nigerian courts and legal practitioners continued to invoke the much confusing common law principle of mens rea in determining criminal responsibility. The researcher recommended that section 24 of the Criminal Code be given its position as the foundational corner stone of defenses in Nigeria criminal law.

Keywords: Acts, Omissions, Strict Liability, Offence, Criminal, Vicarious Liability.

1. Introduction

The general aim of criminal law is punishment. This punishment was attributable to some acts or omission that offended the society and in consequence becomes criminal. At every point in time there must be the happening or occurrence of the act or conduct prohibited by law, else no crime is said to have been committed. However, punishment for offence, if we understood offence to mean the happening or occurrence of the act or conduct prohibited by law, is not usually done for the fun of it. This is so because you don't punish someone for things that he is blameless. This became the very foundation of the ancient, but vigorous, principle of *mens rea* which we understood to mean the mental element of an offence. The principle of *mens rea* is summarized as 'No liability without fault'. However, the precise meaning and scope of this doctrine has posed great confusion among the jurists; it was not such a simple doctrine. This confusion was strengthened by the existence of so many theories and jurisprudence of law. One would not be frowning face to this divergence of view because, as rightly observed by Aristotle, human beings are not casted with the same mode; thus individual and personality differences abound. However, the Criminal Code has, in a considerable effort, tried to mitigate the high devil associated with the meaning of that doctrine by the provisions of Chapter 5 and more specifically sections 24 and 25 of the Code. This discourse would be directed to section 24 of the Criminal Code and some other relevant considerations.

2. Section 24 of the Criminal Code

Section 24 of the Criminal Code provided thus:

Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission, which occurs independently of the exercise of his will, or for an event which occurs by accident.
Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or in part, by an act or omission, the result intended to be caused by an act or omission is immaterial.
Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far, as regards criminal responsibilities.

Analysis of Section 24 of the Criminal Code

A careful and sober reading of the provisions of section 24 of the Criminal Code brings into fore the following key and operative words and phrases, namely;

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a) Subject to the express provisions of this Code relating to negligent acts and omissions,
   i) Acts
   ii) Omissions
b) Independently of the Exercise of his Will,
c) Event which occurs by Accident
d) Intention
e) Motive.

Before the researchers proceed with the voyage of unraveling these purports of 24 of the Criminal Code it is worthy to mention that section 24 of the Criminal Code is one of the many sections in the Criminal Code which is itself (Criminal Code) merely a Schedule to the Criminal Code Act. The Criminal Code Act is comprised of only seven (7) sections while the Criminal Code is comprised of 521 sections divided into 55 Chapters of 8 Parts. Of more particular interest in the provisions of the Criminal Code Act to this research are the provisions in Section 2(4) of the Criminal Code Act. Section 2(4) of the Criminal Code Act provides as follows; 'The provisions of Chapter 2, 4 and 5 of the Criminal Code shall apply in relation to any offence against any Order, Act, Law or Statute and to all persons charged with any such offence'. The chapters under reference in section 2(4) of the Criminal Code Act are:

i. Chapter 2 which deals with parties to offences
ii. Chapter 4 which deals with punishment.
iii. Chapter 5 which deals with criminal responsibility.

The purport of this section, that is, section 2 (4) of the Criminal Code Act is that these chapters aforementioned applies to any offence(s) contained in any legislation in Nigeria whether in this Code or any other written law or enactment.[2] It is no gain saying that, under the Nigeria criminal justice system, for an act, conduct or omission to constitute a crime it must be contained in a written law and the penalty stipulated[3]. The fact that there is no uniform criminal law system in Nigeria makes one to wonder or question the rationale behind the swift provisions in section 2(4) of the Criminal Code Act especially as it relates to the Northern part of Nigeria which is being governed by a separate and distinct criminal law, that is to say, the Penal Code and Sharia Penal Code. However, this legislative anomaly is pardonable for the reason that the Criminal Code Act was the available criminal law in Nigeria then. However, the researcher opines that the continued existence and retention of this misnomer and the many unfortunate and ridiculous provisions both in the Criminal Code Act and the Criminal Code especially as it relates to fines and other monetary provisions is nothing but a regrettable exhibition of indolence and lack of will power to deliver on the part of the law makers. Be that as it may, this not being a common ground of this discourse, the writer is minded not to thread further on this issue. The corollary effect of the provisions of section 2(4) of the Criminal Code Act is that section 24 of the Criminal Code (being a section in Chapter 5 of the Criminal Code) is conferred with extra territorial applications. What that simply means is that as far as criminal responsibility in Nigeria is concerned section 24 of the Criminal Code, subject to negligent acts or omissions, must be imported as a relevant point in determining criminal responsibility in any statute whatsoever in Nigeria.

Subject to the Express Provisions of this Code Relating to Negligent Acts and Omissions

It is a trite principle, going by the attitudes of Nigerian courts that whenever or wherever the words 'subject to…' is used in any expression, provision or enactment that such words or phrase operates to take superintend over the words , phrase, clause or expression in which it is used. The import of this is that the words or phrase 'subject to' takes precedent and enjoys supremacy over the words, phrase, clause or expression wherein it is contained, appeared or used. By a similar force of argument, the inherent and irresistible logical conclusion to be inferred from the above assertion is that the expression *'subject to …'* as it relates to negligent acts or omissions in relation to section 24 of the Criminal Code applies to any or all offences relating to negligence whether under the Code or any other enactment whatsoever as far as an offence is concerned. Thus section 24 of the Criminal Code would not general apply to exculpate a person charged for road traffic offences involving negligence or reckless driving, medical negligence, factory or work place offences and so on. If the position as stated above is correct, it then follows that in any case in which negligent acts or omissions were penalized in the Code, the exculpatory provisions of section 24 of the Criminal Code will not apply. Put differently, section 24 stands suspended whenever and wherever negligent acts or omissions were penalized in the Code or any other statute by the suspensory power of 'subject to'[4]. This assertion then creates another jurisprudential question as to the nature and scope of the phrase 'subject to' in relation to24 of the Criminal Code, namely,

i. Whether the provisions excluded all kinds of kinds of negligence from the legislative coverage of section 24 of the Criminal Code.
ii. Whether the provisions relate only to the Code (Criminal Code) only without more.

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[2] C.O Oknokwo, *Nigerian Courts and Section 24 of the Criminal Code*, Faculty of Law University of Nigeria Enugu Campus; Ikenga K E Oraegbunam & Julian N K Chukwukelu, 'Section 24 of the Criminal Code and its Effect on Criminal Liability in Nigeria'

[3] See section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); *Anoko v Fagbami* (1961) 1 All NLR 400.

[4] C.O Oknokwo,(n2).

iii. And whether the law must specifically create negligence as an offence, using the word ‘negligent’, ‘negligently’, ‘negligence’ before it could be said to be or deemed to be an offence relating to negligence.

The question is whether the words ‘negligent’, negligently’ or negligence’ must be used by the draftsman before it could be referred to as an offence involving negligence. Put differently, must the word ‘negligent’ or negligence’ or negligently’ appear in the definition of the offence for it to be said be an offence in relation to negligence. In some offences the draftsman explicitly used these phrases or words to register expressly its intention of bringing the offences within the purview of negligent offences. Such cases do not, in the researcher’s opinion, pose much difficulties unlike in those cases in which the draftsman did not use such operative words. Okonkwo SAN[5] was of the view that the words negligent or negligently must not necessarily appear in the definition of an offence for it to be an express provision relating to negligent acts and omissions. It is sufficient if the offence may be committed negligently[6]. In *R v Young,* Lucas J stated thus: *‘.....* if it can be fairly gathered from the terms of a section that it comprehends negligent omissions as well as willed omissions, then it an express provision relating to negligent acts and omissions, although it is of course something else as well’.

With greatest respect, the authors entirely subscribed to the view expressed by the legal jurists to the effect that the word negligent, negligently or negligence must not appear in the definition of the offence before it could be read to be a negligent act or omission. Any such words, phrase that tends to create offences in relation to negligence suffices; it sufficient if the offence could be committed negligently[7]. For instances where the law provided that any person driving motor vehicle who exceeds a particular speed limit at a place close to a school, market or church that such a person is liable. Surely to go contrary to that provision or do otherwise would amount to negligent act or omission as the case may be.

Another point that is worthy of consideration or is the scope of superintendence of offences in relation to negligent acts or omissions over section 24. We have said earliest in this work that negligent offences dispel the application or invocation of section 24 of the Criminal Code. Negligence could occur by a passive conduct (omission or inaction) or by a positive of action. In the first case, it usually involves the failure to do an action mandated by law, while in the second case; it involves the doing of that which is prohibited by law. However, for omission to constitute a crime there must be a legal duty to act of which duty was omitted or neglected. Moral obligation or duty is not sufficient. It is not sufficient if B stood by a swimming pool and watched X’s child of three year drown therein in. morally speaking the conduct of B is highly reprehensible especially when one looked at it from the divine teaching in the book of John about loving your neighbour and being your brother’ keeper. But, strictly legally, there may not be any attendant legal condemnation for B’s complacence to help save X’s drowning child[8]. Borrowing the words of the Okonkwo[9], one would agree that 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 have to look at the definition of each particular crime to see whether mere failure to do something is criminal. Generally speaking, the law is reluctant to punish omissions or inactivity; majority of crimes be committed only by the doing of something_ positive act or action[10]. Omission could arise from the doing of something which is prohibited by law. Conversely, it could arise from the failure to do something which is mandated by law. The most convenience principle that could be garnered from the above stated position is succinctly elucidated by the most learned Prof. C.O. Okonkwo in the following words:

But when all this is said and done, we emerge with no other principle that that in respect of certain carefully defined types of activity the law impose duties to do something, the omission of which is an offence. The list of duties is concerned mainly wish duties to avoid risk of serious harm to the person where a special relationship exists between the parties. Hardly any omission causing harm merely to property are criminal…The reason why omissions are not often made criminal is simply that human nature being what it is, it would be harsh if men were to be pushed too far by th[11]e criminal law into doing their neighbourly duty. Specific duties can always be added to the list if there is felt to be any unwarranted gap in the criminal law. And it should not be forgotten that though a man may not be criminally liable for an omission, liability for omissions in civil law is much wider

On the other hand, for an act to constitute a negligent act there must be a duty expressly or impliedly prohibiting or forbidding the doing of the thing or act in question. Conversely, commission of a criminal offence by negligent act is the opposite of commission of a criminal offence by omission. In the former case, requires the negligent doing of that

[5] C.O Oknokwo & Naish,, *Criminal Law in Nigeria,* (2nd edn, Spectrum Law Series Publishers,Ibadan, 2009) p. 81.
[6] *R v Young* (1969) Qd R 417 at P.441*;*
[7] *R v Young,* ibid.
[8] C O Oknokwo & Naish, (n5) p 47.
[9] ibid, p. 46.
[10]Omission technically could arise from a passive or negative action or even positive action. For instance, the failure of a police officer to prevent the commission of a felony is a passive or negative act of omission. Conversely, the failure of a failure of a motorist to observe speed limit is an act of overt or positive omission. At the end one would agree that the distinction between omission and act is semantic, or a distinction without a difference.
[11] C O Oknokwo & Naish, (n5) ps 47- 48.

or something which is not permitted in law. The latter is the failure to do an act which is required by law to be done. For example, the failure of an officer on duty to prevent breach of peace may amount to an omission. Conversely the actual doing or involvement of the police orderly in breach of public peace may be an act[12]. It is important to state that for such a criminal liability to arise where there is a duty to act or refrain from acting the person on whom the duty is so imposed must possess a correspondent capacity to discharge same. Capacity here includes the legal and any other justifiable back up. For instance, it would be rash and irrational to expect an armless police office to dispel armed robbers with sophisticated weapons. Furthermore, although the reservations as to negligent acts is confined to express provision of this Code relating to negligent acts and omissions it will not necessarily followed that section 24 of the Criminal Code could successfully be pleaded to offences outside the Code of which negligence is an element. This is because by the doctrine of implied repeal, a statute which is later in time than the Code and which created an offence of negligence would impliedly repeal the negligence reservation in section 24 so far as that statute is concerned[13]. What that means is that any enactment or legislature that criminalizes negligent acts or omissions would surely dispel the application section 24 of the Criminal Code which is subject to negligent acts or omissions.

Acts or Omission and Independently of the Exercise of a Person's Will: the First Limb of Section 24 of the Criminal Code

Section 24 of the Criminal Code provides that a personal will not be criminally liable for an act or omission which occurred independently of the exercise of his will.

What is an Act or Omission?

Act: Before the researcher proceeds, it is important to note that the Criminal Code neither defined an act or an omission. Thus, we are compelled conjecture on the very meaning of the concepts and their scopes as they relate to section 24 of the Criminal Code. In the absence of any definition or explanation of the concepts the opinion of legal materials or scholars might be of moment. According to Black's Law Dictionary[14] defined an act thus: **Act**

1. Something done or performed, esp. voluntarily; a deed, also termed action.

Act or action means a bodily movement whether voluntary or involuntary ….' Model Penal Code section p. 13.

2. The process of doing or performing, an occurrence that results from a person's will being exerted on the external world;

The term act is one of ambiguous import, being use in various senses of different degrees of generality. When it is said, however, that an act is one of the essential conditions of liability it is capable we use the term in the widest sense of which it is capable. We mean by it any event which is subject to the control of the human will. Such a definition is, indeed, not ultimate, but it is sufficient for the purpose of the law'. John Salmond, Jurisprudence 367 (Glanville L.Williams ed., 10th ed. 1947).

The word 'act' is used through the Restatement of this subject to denote an external manifestation of the actor's will and does not include any of its results, even the most direct, immediate, and intended. Restatement (Second) of Torts section 2 (1965).

Omission: Omission is the failure to do something. For the purposes of this discussion, omission would then mean the failure or neglect of a person to do something or an act which there is a legal duty so to do. The researcher wishes to adopt the explanations furnished earlier in this work as it regards an act and omission.

In summary, we would define an act or omission to mean the physical element/component of an offence expressed in the Latin maxim *actus reus* which constitutes the one limb of the Latin maxim '*actus non facit reum nisi mens sit rea_* the act does not make a man guilty unless his mind be guilty'. *Actus reus* is rather the whole definition of the crime with the exception of the mental elements[15]. Thus an act and/or omission, if taken to mean the *actus rus*, would include not only the physical act or omission but at least also extends the circumstance in which it is done or omitted[16].

A community reading of the first limb of section 24 of the Criminal Code would then mean that a person is not criminally responsible for an act or omission which occurred independently of the exercise of his will. This aspect of section 24 will exculpate acts or omission done under automatism or under hypnotism or reflect action[17]. To be able to apply the first limb of section 24 one must ascertain what the forbidden act is and then inquire whether it occurred independently of the exercise of the doer's will. In most cases the forbidden act would be found to include not only the physical act done by the defendant but also the surrounding circumstances, i.e., the external elements of the

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[12] That assertion is not a perfect assertion as the researcher has earlier observed that the distinction between omission and act is semantic and academic.

[13]. C O Oknokwo & Naish, (n5*)* p.87.

[14] B A Garner , *Black's Law Dictionary,* 9th edn, (Thomson Reuters, USA) p. 27

[15] C O Okonokwo & Naish, (n5) p. 45.

[16] ibid, p. 83.

[17] ibid, p 83; Ikenga K E Oraegbunam & Julian N K Chukwukelu,(n2).

offence[18]. Awareness in this respect must extent to all the external elements or circumstances of the offence[19]. Just like with act, omission has reference to all the external elements of the offence, and as such would entail an awareness of the circumstances which calls for action or refrain. Therefore if the defendant is unaware of such circumstances, his omission to act is unwilled[20]. In the case of *Paul Onyia v.*

The State[21] the Court of Appeal held thus:
It is the law that 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. Such a situation may arise where the accused acts in a state of unconsciousness, sleepwalking or hypnotism…

Independent of the Exercise of the Will
Unfortunately, the Criminal Code neither defined independence nor will. However, Black's Law Dictionary defined will thus; 'will wish, desire, choice…'[22]. Obviously, this definition is very scanty. An act or omission is not willed if it is not voluntary. Will includes volition, consciousness and awareness of all relevant surrounding circumstances. Thus, if an act or omission includes the external elements of an offence, then a person would not be said to have willed an act unless his volition extends to all the external circumstances surrounding the offence charged and not merely the muscular contraction or body movement which initiates or forms part of the *actus reus* of the offence[23]. In *Timbu Kolia v. the Queen*[24], a husband aimed a moderate blow at his nagging wife in the night and the blow of missed the wife and fell on the head of their little baby boy of three months she was carrying of which he was not aware that she was carrying their little baby. The baby died thereafter. The court held that the act occurred independently of the exercise of the man's will. By this decision the court ruled out the principle of transfer of malice. However, it is important to state that by the provisions of section 316 of the Criminal Code (relating to murder) the draft man had recognized the transfer of malice or aggression. Also, sections 8 and 9 of the Criminal Code had impliedly held someone as being criminally responsible for probable consequences of the act or omission of others despite he did not willed it. Therefore, a person cannot be considered to be acting if his physical movement is unconscious or involuntary. Also, he must be aware of the physical movement and willing it, if it is to be considered an *actus reus*[25]. For example, if B drags C's hand and slapped D then the slapping of D by C is an unwilled act or an act independent of the exercise of his will. Thus, will in relation to section 24 as it relates to an act or omission and its surrounding circumstance would include not only the intention to do the act or make the omission but also awareness of all the material circumstances[26].

An Event which occurs by Accident

Event: The Criminal Code also did not define an event neither did it defined an accident. An event here would be taken, for the purposes of section 24 of the Criminal Code to mean the result or consequences of a human act. It is immaterial that the act is a willed act. Clearly, the second limb of section 24 is concerned, mostly with, the outcome of a willed act[27]. Thus, the view of the court as expressed in *Mamote Kulang Tamagot v. R* to the effect that death cannot be an event under section 23 of the Queensland Criminal Code (equivalent to section 24 of the Criminal Code of the Southern Nigeria) or that an event for the purpose of the section is the intervention of some happening of an accidental nature, that is, a *novus actus interveniens*, was in the researcher's view, rightly reject in *Timbu Kolia v. The Queen*[28]. In *Timbu Kolia v. The Queen,* Wendeyer J has this to say. '… an eventful action in context refers to the outcome of some actions or conduct of the accused, for a man cannot be responsible for an event in which he had no part at all, and it would be unnecessary to say so'. In that same case (Timbu Kolia case), Barwick J also observed thus. 'I am unable to see that death as a consequence of such an act cannot be relevantly an event. In my opinion, an unintended, unforeseeable, fortitudinous death which results from an act which is a willed act causally related to the death may be an event which occurs by accident or chance'[29].

By the foregoing, it has now become settled that death is an event. It cannot be an act since it is a consequence of an act or omission. However, it is not in all case that death would result from an act. In those cases, which does not result to death, whether an act would be said to be an event would to a large extent depend on a number of variables. That is to say, what will constitute the relevant act may vary with the nature of the criminal charge[30]. Thus where the

[18] C O Okonkwo, (n2).
[19] ibid, p.4.
[20] ibid, p. 5.
[21] *Paul Onyia v. The State* (2006) QCCR Vol 6, p.169 CA @ 187-188 lines 46-15 by *Per* Ibiyeye JCA.
[22] B A Garner *Black's Law Dictionary* 9th Edition (Thomson Reuters, USA) at page 1735
[23] Windeyer J in *Timbu Koliav. The Queen* (1968)119 CLR 47; C O Okonkwo ,(n2), p.5
[24] *Timbu Kolia v. the Queen,* ibid.
[25] C O Okonokwo & Nash, (n5), p.61.
[26] ibid, p.83.
[27] C O Okonkwo (n2), p. 6.
[28] ibid.
[29] Ibid.
[30] ibid, p.7; *Timbu Kolia v The Queen, (n23).*

defendant has achieved the full operation of the act willed by him but something else occurs_ directly or indirectly, which is not intended by him and which forms the substance of the charge, that happening (that is to say, that something else that occurred) would be better be classified as an event, and within the ambit of the second limb of section 24[31] of the Criminal Code. It is immaterial that death did not result or occur from the act or omission. For instance, where C (intentionally) threw a stone at D and the stone hits D and further escaped to hit E who was close to D. From the foregoing example, the hitting of the stone on E is an event and comes within the ambit of the Second limb of section 24 of the Criminal Code.

Accident: The Criminal Code also did not define an accident. Black's Law Dictionary defined an accident more elaborately as: Accident
1: An unintentional and unforeseen injurious occurrence, something that does not occur in the usual course of events or that could not be reasonable anticipation.
2. Equity practice: An unforeseen and injurious occurrence not attributable to the victim's mistake, negligence, neglect, or misconduct; an unanticipated and untoward event that causes harm.

'The word 'accident', in accident policies, means an event which takes place without one's foresight or expectation. A result, though unexpected, is not an accident; the means or cause must be accidental. Death resulting from voluntary physical exertions or from intentional acts of the insures is not accidental nor is disease or death caused by vicissitudes of climate or atmosphere the result of an accident, but where, in the act which precedes an injury, something unforeseen or unusual occurs which produces the injury, the injury results through accident[32].

An event is said to be accidental or occur by accident if it is not intended by the actor (that is to say, it is not foreseen by the actor) and is not reasonably foreseeable (that is to say, it is not foreseeable by a prudent man)[33]. Stephen's Digest defines an accident event thus: 'An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstance in which it is done, to take reason precaution against it[34]'. Similarly in *Vallance v The Queen*, Kitto J construing section 13 (1) of the Tasmanian Criminal Code which exempts a person from liability for an event which occurs by chance, has this to say: 'it seems to me that 'by chance' is an expression which, Janus-like, faces both inwards and outwards, describing an event as having been both unexpected by the doer of the act and not reasonably to be expected by an ordinary person, so that it was at once a surprise to the doer and in itself a surprising thing'.

One striking similarity between the opinions expressed in the Stephen's Digest and the case of *Vallance v. The Queen* is that there are two major tests to be employed in determining whether an event occurred by accident or not. The first test which is the subjective test (from the stand point of the doer) is that the event which occurred must be such as to be unexpected by the doer, that is to say, a surprise to the doer. Then the second test which is the objective test (from the stand point of a prudent man of the doer's class in life) is that the event must be such as to be reasonably unexpected by an ordinary person of prudence of the doer's class in life. Thus, where the event which occurred was a surprise to the doer and at the same time a surprise to a reasonable man of ordinary prudence, then the event would be said to have occurred by accident. In the Supreme Court case of *Bayo Adelumola v. The State*[35], Oputa JSC gave a salutary pronouncement to the aforementioned test. Delivering the leading judgment, Per Oputa JCS (as he then was) has this to say:

It seems to me that the expression 'an event which occurs by accident used in section 24 … describes an event totally unexpected by the doer of the act and also not reasonably to be expected by any ordinary person, the reasonable man of the law. In other words, the test is both subjective from the standpoint of the doer of the act, as well as objective from the standpoint of the ordinary man of common prudence. The event should, to qualify as accidental, be a surprise both to the doer of the act that caused it, and a surprising thing to all and sundry. An event is thus accidental if it is neither subjectively intended nor objectively foreseeable by the ordinary man of reasonable prudence.
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Generally, it is not clear the standard of a reasonable prudent or ordinary man the court and other authorities referenced earlier had in mind. However, it is the writer's belief that the courts would interpret the prudent man to mean somebody of the doer's station in life. However, where the action in question is such as to endanger human life or calls for utmost skill and attention the standard of a reasonable or prudent man to be applied would be the standard expected of a qualified practitioner in that area. Thus, a native doctor who administered a medical treatment upon which death resulted or occurred would obviously be judged by the standard expected of a qualified medical practitioner. It is the researcher's view that such a standard is justifiable on the ground that matter affecting life should

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[31] C.O Okonkwo, 'Nigeria Courts and section 24 of the Criminal Code'(n2).
[32] B A Garner, *Black's Law Dictionary,* 9th edn, p. 17.
[33] C O Oknokwo (n2) ,p. *9;* Ikenga K E Oraegbunam & Julian N K Chukwukelu, (n2)..
[34] Stephen's *Digest of the Criminal Law,* 9th edn at p.260.
[35] *Bayo Adelumola v. the State* (1990) 6 NWLR (Pt. 158) p.567 @ 692- 693.

not be left at the mercies of incompetent practitioners[36]. In such a situation the law must operate to set some standard to obviate death arising from unskilled conduct by not condoning same. In fact, such a scenario would most likely be an evidence of negligence which would dispel, to the extent of the negligence, the exculpatory operations of the second limb of section 24 of the Criminal Code.

It is pertinent to state that it has now become a settled principle of law that the unlawfulness of an act is irrelevant to the question or consideration of criminal liability for its accidental result. The unlawfulness of an act is not a factor to be taken into consideration in determining or considering the second limb of section 24. Put differently, the unlawfulness of an act is immaterial for the consideration of the second limb of section 24[37]**.** In *R v. Martyr*[38], Philip J opined thus:
As to the construction of section 23 of the Code I adhere to the opinion I expressed in R v. Callaghan (supra), namely that I am unable to see any suggestion in the Code that lawfulness or unlawfulness of an original act is a criterion of criminal responsibility for its accidental result.

Also, in that same case, *R v. Martyr*, Townley J stated thus:
I cannot, however, subscribe to the opinion that criminal responsibility for an 'event' should be judged solely by the lawfulness or unlawfulness of the act which occasions that event. One may not, in my opinion, simply say, the act was unlawful and therefore the event was also unlawful.

Intention and Motive
This is the third and last phase of the consideration of sections 24 of the Criminal Code. The provisos to section 24 of the Criminal Code read thus:
Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial

Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far, as regards criminal responsibility

The Criminal Code neither defined intention nor did it define motive. However, because the bulk of the discussion of this work is particularly on section 24 in respect of an independent act or omission, or an event which occurs by accident, the researcher would not undergo an inquiry into the meaning of intention or motive. More so, not only that they are only mentioned in the provisos to section 24, rather the bulk of their relevance has been covered by a discussion of the first and second limb of section 24.

At common law there exists a doctrine called the doctrine of transferred malice or intent. For example where B intending to strike C aims a blow at him but misses it and it rather struck at D and wounded D accidently, then B would be guilty of maliciously wounding D, because although he (B) did not intend to strike D, his intentions against C must be transferred to the case involving D[39]. However the rule would be excluded or not apply where the kind of harm done is different from the kind of harm intended[40]. It is submitted that the doctrine of transferred malice or intent has no place under the Criminal Code of Nigeria. This is because under section 24 of the Criminal Code 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 occurred by accident, unless the act or omission complained against relates to negligence[41]. However, sections 316 (1) & (2) of the Criminal Code (relating to murder) has successfully incorporated the doctrine of transferred malice. Technically it could be taken that sections 316 (1) & (2) of the Criminal Code *ab initio* deems the conduct of the wrongdoer as a serious case of malice involving life and death. Also, it could also be said that the section does not want to give the wrongdoer the privilege of restricting his strong malicious intentions only to his targeted recipient. Thus, it was a strong legislative condemnation of the wickedness of the intention *ab intio* notwithstanding the person against whom it was particularly formed against. In *Timbu Kolia v The Queen*[42] which has been treated somewhere earlier in this write up, a husband aimed a moderate blow at his nagging wife in the night (dark). The blow missed the wife and landed on the head their three months old son, whom unknown to him, his wife was carrying and the child died thereafter. The court held that the act of killing the child was independent of the exercise of the husband's will and that the eventual or eventful death of the baby was by accident, and exculpated the husband. But it could be argued that the position would be different under 316 (1) & (2) of the Criminal Code if it could be shown that the blow was such that could cause grievous harm to the wife or some other person, in this case,

[36] However, this is not be taken to mean that there are no good or professional native doctors. Neither does the researcher intended to make a comparison as to competence between native doctors and their counterpart_ medical doctors.
[37] *Timbu Kolia v. The Queen* (n2); C O Okonokwo & Naish,(n5) (p.82; C O Okonkwo , (n2)p.11.
[38] *R v. Martyr (1962) Qd. R398.*
[39] See generally *R v. Latimer* (1886)17 QBD359;
[40] *R v. Pemblition* (1874) LR 2 CCA 119; C O Okonkwo and Naish,(n2) p. 53.
[41] C O Okonkwo and Naish, (n2), Ibid, p.53.
[42] ibid.

the baby. Perhaps, the mildness of the blow (moderate) operated in the minds of the court as not capable of causing grievous harm. It was based on this reasoning that he was acquitted.

On the other hand, motive simply means any reason for the accused's conduct which induces him to do an unlawful act but which does not form of the mental element of the offence as defined by the law. The motive by which a person is induced to do or omit to an act is immaterial as regards criminal responsibility. Thus, an act or omission may be induced or done with the best, highly resounding morals or pitiable condition and yet will be an offence. For instance, under section 249 (b) of the Criminal Code, it is an offence for someone to beg or gather alms in a public place[43]. It is possible that the person was begging for alms with the motive of feeding her hungry children. Conversely, an act or omission may be induced by the most morally reprehensible or condemnable motive and yet it may not be offence[44]. For instance, there is generally no duty on a person to rescue the child of his neighbour that fell into a small gutter and got drown by water even when he could have rescue the baby without any difficulty. He might have refused to assist because he had a quarrel with the parents of the baby.

3. Comparison of Section 24 of the Criminal Code with the Laws of other Countries as it Relates to Criminal Responsibility

The Laws of England

The researcher wishes to start this discussion or subtopic with the erudite observation of one of the legal scholars in Nigeria, C O Okonkwo .The learned guru stated thus:

All legal systems have to some degree or other incorporated the simple moral idea that no one should be convicted of a crime unless some measures of objective faults can be attributed to him. Nigerian criminal law is no exception. Most offences are defined in terms of intention or knowledge. Defences are provided for those who cannot be said to be at fault…..[45].

Under the English criminal justice system there is the general doctrine known as *mens rea* which simply translates to guilty mind. *Mens rea* was the second phase of the Latin maxim *actus non facit reun nisi mens sit rea* which translates to 'the act does not make a man guilty unless his mind be guilt'. *Mens rea* then becomes a convenient word for the mental element of an offence which can also be termed the doctrine of no liability without fault[46]. In English law, the scope of the operation of the doctrine of *mens rea* differs according to whether a particular crime or offence is a common law offence or an offence contained in a statute[47]. It is no gain saying that common law principles are generated from those customs which were common to the people of England. Common law principles as it relates to England are not codified likewise common law offences. At common law, there is an irrebuttable presumption that practically every common law offence requires proof of a guilty mind with the exception of unimportant crime of public nuisance[48]. Conversely, where the offence is a statutory one, then the presumption of proof of a guilty mind becomes rebuttable upon proof that the wording of the offence or the object of the legislature excluded it[49].

In Nigeria, this distinction between common law offences and statutory offences is useless or at best meaningless. This is because, admitted that Nigeria is a recipient of the English common law doctrines, however such offences known as common law offences or customary law offences (unless contained in a written statute) no longer exist in Nigeria. This is because for an act or omission to be said to be criminal in Nigeria such act or omission must be provided against in a written law together with the attendant punishment(s)[50]. Furthermore, in Nigeria, the importation of the doctrine of *mens rea* becomes unnecessary by the provisions of the Criminal Code and more particularly under section 24 of the Criminal Code. We have also stated earlier elsewhere in this work that by the provisions of section 2(4) of the Criminal Code Act that Chapter 5 of the Criminal Code which is a Schedule to the Act operates extra territorially to other enactments or statutes creating an offence and also to other jurisdiction in Nigeria. The aforementioned chapter (Chapter 5) deals with Criminal Responsibility.

Another strong point or distinction to be made of English law from Nigeria law (Criminal Code) is the unnecessary demarcation by the judges in England between an event resulting from an unlawful act and an event resulting from a lawful act. In the former, the courts have consistently been reluctant to exculpate the defendant. The courts were very much preoccupied with the unlawful conduct or act resulting to the event and where ready to substitute, for instance,

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[43] The researchers are of the view that offences of this nature is one of such that brings about civil disobedience especially when the law tries to common the doing of the impossible or to rash and harsh as not be in tune with the immediate realities of the society where it is to operate.

[44] Okonokwo & Naish, (n5), C O Okonkwo, *(n2).*

[45] C O Okonokwo & Naish, ibid, p.66.

[46] See *Sweet v. Parsley* (1970) AC 32.

[47] *C O Okonokwo & Naish, (n5), p 67.*

[48] ibid.

[49] ibid.

[50] Constitution of the Federal Republic of Nigeria 1999, section 36 (12); *Aoko v. Fagbemi* (1961) 1 All NLR 400; C O Okonkwo and Nash,(n5) , p. 67.

manslaughter to murder in such cases. It is important to state that the position would be different in Nigeria. Section 24 (the Second Limb) dispels with this English courts practices of making distinction between the consequence or event resulting from an unlawful act and an event resulting from a lawful act. Thus, a person could conveniently be exculpated under section 24 despite the act leading to the event was unlawful unless the act was done negligently in which case the provisions of the law as it relates to negligence would apply to override the provisions of section 24[51].

Queensland Criminal Code

Section 24 of the Nigeria Criminal Code is similar to section 23 of the Queensland Criminal Code from which Nigeria copied copiously its Criminal Code[52]**.** In *Widge Shire Council v. Bonney*, Sir Samuel Griffith, the draftman of the Queensland Criminal Code stated thus;

… Under 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 accidentally or independently of the exercise of the will of the accused person[53]

In Queensland, just like in Nigeria, recourse to the old doctrine of *mens rea* has been dispensed with by the provisions of section of section 23 of the Queensland Criminal Code similar to section 24 of the Criminal Code. Also, all the arguments canvassed in this write up in relation to section 24 of the Criminal Code apply *mutatis mutandi* to Queensland in relation to section 23 of the Queensland Criminal Code.

4. Conclusion and Recommendations

It is a settled principle of law that you do not punish someone for an act or omission that he is blameless. This is expressed in the maxim No liability without fault. The doctrine of *mens rea* is to the effect there is 'No liability without fault'. This becomes the second arm of an offence; the mental element of an offence. However, the scope and nature of this doctrine is not precise or, at best, confusing to jurists. At times, the jurist may interpret a particular case as even dispensing with the requirement of mental element (*mens rea_* guilty mind). This is what is seen in strict liability offences and, in some cases, vicarious liability offences. But in most cases the court has always presumed the requirement of *mens rea* with the attendant imprecision. Luckily, the Nigeria Criminal Code has attenuated the devil of imprecision inherent in this common law doctrine by the provisions of Chapter 5 (which deals with criminal responsibility) and more specifically, sections 24 and 25. Section 24 of the Criminal Code was a carbon copy of section 23 of the Queensland Criminal Code where Nigeria copied copiously its Criminal Code. Being the originators of that section, the understanding of the real intendment of sections 24 of the Criminal Code as it relates to criminal responsibility in Nigeria, would be incomplete without references to the opinions of jurists and legal minds from Queensland. It was a common understanding that the provisions of section 24 of the Criminal Code (similar to 23 of the Queensland Criminal Code) has dispense with recourse to the common law doctrine of *mens rea.* However, like one scholar observed while discussing about the non-continued application of cause of action in tort that, though the cause of action we have buried, yet it still rule us from the grave; so does *mens rea* still rule us from its grave.

However, the authors commend the grand steps of some Nigeria Courts in the recent time in considering and construing the true purports of section 24 of the Criminal Code rather than an unnecessary voyage to the very much confusing English law doctrine of *mens rea*. The writer hopes that Nigeria Courts would in no distant future imbibe the culture of considering Criminal responsibilities within the confines of Chapter 5 of the Criminal Code. That would, at least, reduce, if not completely avoid, an unnecessary importation of the doctrine of *mens rea* in Nigeria Criminal Law System. The researchers also recommend that the draft man should revisit both the Criminal Code Act and the Criminal Code especially on the extra territorial application of section 2 (4) of the Act and the many ridiculous monetary provisions most of which are no longer legal tenders in Nigeria or , at best, of ridiculous economic moments. Amendments are also needed to bring the law to the fore front of civility especially now the world has become technological. Thus, there is the need to expand the scope of criminal liability to include offences committed by artificial intelligence (robots) especially with the recent development of the society in science and technologies. Also, there is need for specific legislative opinion or intention as to the criminal liabilities of persons with genetic hereditary disorders.

[51] C O Okonokwo & Naish, ibid.

[52] C O Okonkwo, (n2).

[53] *Widgee Shire Council v. Bonney (*1907) 4 CLR 977 at page 1981-1982.