CRIMINAL LIABILITY UNDER THE NIGERIAN CRIMINAL JURISPRUDENCE

Abstract

Criminal sanction is the most serious censure the State can impose on an individual and the imposition of criminal sanction for doing nothing sound bizarre. This article examines the circumstances under which a person can be held criminally liable for acting as well as for an omission under the Nigerian criminal jurisprudence. At common law, criminal liability for pure omission is exceptional. However, all systems of criminal law seem to include offences of omission, especially where there is a legal duty. The paper shows that criminal liability will not be imposed or slammed on a person except the person breached the standard approved behaviour by the law. The paper demonstrates that in addition to actus reus and mens rea, two other elements are essential for criminal liability viz, concurrence and causation. Causation under the Nigerian criminal jurisdiction has two dimensions namely factual cause, 'but for cause' and legal cause, also called proximate cause. In causation, many events or causes can intervene to break the chains of causation and in consequence absolve the first defendant of criminal liability. To exonerate the defendant, the victim's conduct must not only be a cause of his injury, it must be a superseding cause. The victims conduct will not break the causal chain to absolve the defendant or actor unless the victim's conduct is so 'extraordinary'. The one year rule limitation period after which the defendant may be exonerated from criminal liability is no longer tenable in other climes, especially in Britain where we inherited the rule. Accordingly, it should be expunged from our criminal jurisprudence.

Keywords: Liability, Crimes, Jurisprudence, Nigeria

1. Introduction

Criminal liability is defined as the quality or condition of being answerable or accountable. It is also defined as a person's mental fitness to answer in court for his or her actions. It is used in criminal law in the sense of criminal liability and hence, means answerability to criminal law.[1] The term criminal liability simply refers to a person's ability to understand his or her conduct at the time a crime is committed. Put differently, what a person is thinking when he committed a crime or what result is anticipated when a crime is committed. Criminal liability means liability to punishment as for an offence.[2]Criminal liability envisages a breach of the moral standard of the community before such a person could be held criminally responsible. According to Okonkwo:

> 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 measure of subjective fault 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 for the insane, for young people, for those who acted in a state of unconsciousness or under compulsion and so on.[3]

In Nigeria, as in most common law jurisdictions, the basis of criminal liability is the proof of some measure of fault attributed to the accused.[4] Under the Nigerian legal system, for one to be criminally responsible for an act he must: (i) have the capacity to understand what he is doing. (ii) have the capacity to know that he ought not to do the act or mark the omission and (iii) have the capacity to control his action. A person shall not be criminally responsible if at the time of that person's conduct, the person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct or conform to the requirement of the law[5]. The Nigerian criminal jurisdiction does not allow a person to be punished for an act or omission unless the act or omission is embedded in any written law operational in Nigeria in line with the maxim – *NullaPoena Sine Lege*, which means there can be no punishment without a written law. Also, one cannot be liable for an act or omission, unless he has attained certain age. Under the Criminal Code, a person under seven years is not criminally responsible for an act or omission[6]. In the same vein, a person under twelve years of age is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or omission, he had capacity to know that he ought not to do the act or make the omission[7]. The same applies to persons of unsound mind[8] as well as other general defences as provided in chapter five of the Criminal Code Act.

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[1] Garner A, (ed) *Black's Law Dictionary*(10thedn, USA: Thomas Reuters, 2014) 1506.
[2] Criminal Code Act 2004, Law of the Federation of Nigeria. Section 1(1)(f).
[3] Okonkwo and Naish. *Criminal Law in Nigeria*, (2ndedn, Ibadan: Spectrum Books Limited 2012) 6.
[4] Anyanwu C U, *An Outline of Nigeria Criminal Law*, (Enugu: Kasimefuna Publications, 2009) 7.
[5] Article 31(1)(a) of the ICC Status 12th July, 1999.
[6] Criminal Code Act 2004, Law of the Federation of Nigeria. Section 30.
[7] Ibid.
[8] Criminal Code Act, 2004 Section 28.

The Panel Code also provides that no act is an offence which is done (a) by a child under seven years of age, or (b) by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequences of such act[9]. Also, 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[10]. In order words, ignorance of law does not afford any excuse for any act or omission which otherwise constitutes offence unless knowledge of law by the offender is expressly declared to be an element of the offence.

From the foregoing considerations, criminal liability is properly imposable on the accused person or the actor on the prove of the following conditions/requirements: (i) the act must be wrong by the moral standards of the community (ii) the accused/actor must know what he is doing, and must will to do it. That is, his causal motions must be not only voluntary, but also made recklessly or with intention to cause the resulting harm[11]. Harping on the elements of criminal liability, Samaha, wrote that the drafters of Criminal Codes have five building blocks at their disposal when they wrote the definitions of the thousands of individual crimes and defences. These building blocks are the elements of a crime that the prosecution has to prove beyong reasonable doubt to convict individual defendants: (i) Criminal act *(actus reus)* (ii) Criminal intent *(mens rea)* (iii) Concurrence (iv) Attendant circumstances (v) Bad results (causing a criminal harm)[12]. These elements will be examined *seriatim*.

2. *Actus Reus*

All crimes have to include a voluntary criminal act, *actus reus* or evil act. That is the physical element in the crime. This is why it is called the first principle of criminal liability[13]. This requirement/principle is predicated upon the fact that it is impossible to prove a mental attitude by itself. It is a well known fact that as long as a thing rests in intention alone, it is not punishable as a crime for only God knows the evil machinations of individual[14]. Mental attitude by itself does not hurt anybody[15]. Punishing a state of mind is terribly difficult because it is not easy to separate day dreaming and fantasy from intent. Consequently, criminal law demands conduct, a mental attitude that turns into action. The requirement that attitudes have to turn into deeds or actions is called manifest criminality. The cardinal feature of manifest pattern of criminality or criminal liability is that the commission of the crime can be objectively discernable at the time that it occurs. A neutral third party observer could recognize the activity as criminal even if he had no special knowledge about the offender's intention. It is from this simple fact of experience that the idea of catching someone in the act, *inflagrante delicto* was derived. This feature refers to the external or outside sign or element of a crime. According to Chukwumaeze, the first of those basic premises is that beyond mere bad state of mind, there is a requirement of an act otherwise called the *actus reus*[16]. It is only voluntary acts that qualify as *actus reus*. A person is not guilty of an offence unless his liability is based on conduct that includes a voluntary conduct[17]. A voluntary act is defined as a conduct which is performed consciously as a result of effort or determination[18]. An act is a willed muscular movement culminating in a result which the law forbids[19]. In other words, an act entails body movement or willed body movement made voluntarily.

It is pertinent to note that it is not only body movement or willed body movement that constitutes an act. Omission also constitutes an act punishable under the law. In other words, omission which does not entail body movement is an act. Criminal omissions satisfy the voluntary act requirement but only when there is a legal duty to the person in danger[20]. It entails pre-existing legal duty to act and the accused person failed to perform that duty[21]. Legal duties are created by three major ways namely, statute, contracts and special relationship. Statutes are the basis for legal duties such as the duty to pay income tax, report of child abuse, asset declaration form etcetera. Individuals can also contract to perform duties. Failure to perform those duties can create criminal liability[22]. The main special relationships are the parent-child relationship, the doctor-patient relationship, the employer-employee relationship etcetera. Failure to perform moral duties enforced by conscience, religion and social norms does not qualify as omissions. According to Wayne,

[9] Penal Code Act 2004 Laws of the Federation of Nigeria. Section 50
[10]Criminal Code Act, 2004. Section 22.
[11]Orvill C, Synder, 'Criminal Responsibility'[2015] *Duke Law Journal* (204) 216.
[12]Samaha Joel, *Criminal Law*, (11thedn, Australia: Wadsworth Cengage Learning., 2014) 94.
[13]Ibid
[14]Kharisu S C, *The Law of Crimes in Nigeria*. Revised Edition (Kaduna: Ahamdu Bellow University Press, 2010) 37.
[15]Samaha J, (n12), 97.
[16]Chukwumaeze U U, 'Causation in Homicide' [2018] in Philosophical Legacy on Issues in Nigeria Public Law, Suleiman O, (ed) 193..
[17]American Penal Code, 1985 Section 201.
[18]Sahama I, (n12) 99.
[19]Kharisu S C, (n14), 37
[20]Sahama J, (n12), 106.
[21]Inegbedion N A, *Criminal Law*, (Benin City: Ambik Press, 2006) 17.
[22]Sahama J. (n12) 106.

> Generally, one has no legal duty to aid another person in peril, even when that aid can be rendered without danger or inconvenience to himself. He need not shout a warning to a blind man headed to a precipice or to an absent-minded one walking into a gunpowder room with a lighted candle in hand. He need not pull a neighbors baby out of a pool of water… a moral duty to take affirmative action is not enough to impose a legal duty to do so[23].

Therefore, there must be failure to perform a legal duty for one to be held liable for criminal omission.

Furthermore, special circumstances or state of affairs may constitute the *actus reus*. Section 64 of the Criminal Code provides that any person who:
(i) Is a member of an unlawful society or
(ii) Knowingly allows a meeting of an unlawful society or of members of an unlawful society, to be held in any house, building, or place belonging to or occupied by him or over which he has control, is guilty of a felony and is liable to imprisonment for three years. In this situation, the *actus reus* is merely a state of affairs namely, being a member of an unlawful society. This is a criminal omission but does involve body movement. Here, the *actus reus* consists of circumstance and sometimes consequences, but no acts, they are 'being' rather than 'doing' offences[24].

3. *Mens Rea*
As articulated above, criminal act, *actus reus* is very necessary but it is not enough for criminal liability in most serious crimes[25]. The mental element, *mens rea* is required in addition to the criminal act. This is because it is fair and just to punish only people we can blame. The requirement of *mens rea* is founded on the ethical concept that no person should be convicted of a crime except some fault can be ascribed to him. The actual position of the law is as expressed by Wright J. in *Sherra v De Rutzen* as follows: 'There is a presumption that *mens rea* or evil intention or knowledge or 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'[26]. Implicit in the dictum quoted above is that in some situations, the law would dispense with the requirement of *mens rea* and still criminalize an act whether or not the requisite mental element was present. Such act or offence is called a strict liability offence. Strict liability offences do not require *mens rea* to attach to an element of the *actus reus*[27]. It simply means that liability is based on voluntary action alone. In strict liability offences, the prosecution have to prove only that defendant committed a voluntary criminal act that caused the harm. It is very obvious from our discussion that for one to be criminally liable for an offence, the state of mind of the person is important. The person's mind must be guilty for criminal liability to be attached to the act. The *mens rea* or the mental element of an offence can take any of the following forms depending on the prescription of the statute creating the particular crime. These include intention, knowledge and recklessness *et cetera*. These will be examined *seriatim*.

Intention
The definition of the term 'intention' has proved to be a difficult task. However, intention is defined as a settled direction of the mind towards the doing of a certain act, that upon which the mind is set or which it wishes to express or achieve, purpose conceived[28]. The Supreme Court *in Aweto v F.R.N.*,[29] defined intention thus: 'Intention is defined as a mental attitude which can seldom be proved by circumstances from which it may be inferred. It is a state of mind existing at the time a person commits an offence and may be shown by act, circumstances or inferences deducible therefrom'. Intention therefore, is defined as a state of mind existing at the time a person commits an offence. Put differently, it is the mental state or state of mind that is present whenever one acts intentionally. Thus, for a person to be punished/sanctioned, he must have the requisite intention.

Knowledge
Knowledge is defined as an awareness of a fact, a state of mind in which a person has no substantial doubt about the existence of a fact[30]. In Montila[31], the House of Lords concluded thus: to know should be interpreted strictly

[23]Wayne Lafave, quoted by Samaha Joel in Criminal Law (n13) 106.
[24]Catherin Elliot and Francis Quinn, *Criminal Law(Harlow:* Pearson Education Limited, 2010), 11.
[25]Sahama, Joel (n12) 106.
[26][18955] 1 QB 918.
[27]Catherine Elliot, (n24), 36.
[28]Allen W, (ed), *The New International Webster's Comprehensive Dictionary of English Language* (USA: Thypoon Media Corporation, 2012) 398.
[29][2003] 54 NSCQR 398 (SC). See also *Usman v State* [2018] 15 NWLR (Pt. 1642) 320, (SC) *Akinkunmi v State* [1987] 1 NWLR (Pt. 52) 608, (SC) *Garba v State* [200] 6 NWLR (Pt. 661) 378. (SC).
[30]Bryan AG, (ed.)*Black's Law Dictionary* (11th edition USA: Reuters).
[31][2004] 1 WLR 27 (HL).

and not watered down. In this context, knowledge means, true belief. In *Elijah Amen Okewu v FRN*[32], the Supreme Court held that, the knowledge of a thing connotes the acquaintance with the fact or truth. According to Sahama, a person acts knowingly, with respect to a material element of an offence when: (i) if the element involved that of his conduct or the attendant circumstance, he is aware that his conduct is of that nature or that the circumstance exist and (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result. Knowledge entails that the accused understands clearly his actions and consciously and deliberately embarked on the prohibited act[33]. Knowledge, means awareness that a circumstance exist or a consequence will occur in the ordinary course of events[34]. It follows that for the accused to be held liable, it must be established that he knowingly committed the act or make the omission.

Recklessness

The formulation of a precise and universally acceptable definition of recklessness has not been easy. According to Clarkson[35], after somewhat uncertain and vacillating history, the law appeared to have settled down by the 1970s to approve a subjective meaning of the concept of recklessness. Under such a test, Byrne J, in *Rv Cunningham*[36] opined thus:

> The word malicious in a statutory crime postulated foresight of consequence, and that for an offence to be committed under Section 23 of the Offences Against Persons Act, 1861, it was necessary for the accused person either to intend the particular type of harm in fact done or foreseeing that such harm might be done for him recklessly to take risk of it.

The facts of the case were that the appellant stole a gas meter and its content from the cellar of a house and in so doing fractured a gas pipe. Coal gas escaped, percolated through the cellar wall to the adjoining house and entered a bedroom with the result that W who was sleeping inhaled considerable quantity of gas. Accordingly, Cunningham was charged with unlawfully and maliciously causing W to take noxious thing. It was on appeal that this definition of recklessness by Byrne was postulated.

Thus, recklessness involves the conscious running of an unjustifiable risk. The defendant must himself foreseen the possibility or chance of the consequence occurring and the risks taken must have been one that was unjustifiable or unreasonable to be taken in the circumstances. Also, in *R V Caldwell*,[37] the court expressed the same view when it held that, the defendant was reckless if he;
(i) did an act which created obvious risk of the consequence occurring, an obvious and serious risk occurring and;
(ii) when he did the act, he either gave no thought to the possibility of there being any risk or recognized that there was some risk involved but nonetheless went on to do the act.

In *Nwabuze v The People of Lagos*,[38] recklessness is defined as the doing of something which involves a grave risk to others whether the doer realizes it or not. It is a gross deviation from what a reasonable person would do. Recklessness is therefore, unconscious or unreasonable risk taking. The subjective test/species of recklessness requires proof that the defendant was aware of the risk that a given harm might result from his actions.[39] The subjective test is the current position of the law in Britain as well as in Nigeria.

Concurrence

In addition to the mental state of the defendant, two more elements are essential for criminal liability, namely concurrence and causation. It is pertinent to note that causation per se is not a constituent of a crime as *actus reus* and *mens rea*. Its discussion is however necessary in the sense that causation connects the two constituents in a way that but for its presence, no crime is committed, especially in resulting crimes. Establishing criminal liability normally involves the prosecution proving that there was a coincidence of the *actus reus* and the *mens rea* for the offence in question[40]. The principle of concurrence means that some mental fault has to trigger the criminal act in conduct crimes and the cause in result crimes. So all crimes, except strict liability offences are subject to the concurrence requirement[41]. Conduct crime involves criminal act triggered by criminal intent such as breaking and entering the house with intent to steal something from the house. The act of breaking is triggered by the intent to steal some item(s) from the house. The Criminal Code is very eloquent on this. It provides that:

[32][2012] 49 NSCQR (pt. 1) 330 (SC).
[33]Samaha Joel, Criminal Law, (11thedn, USA: Wadsworth 2014) 131.
[34]Article 29 (3) of ICC Statute 12th July, 1999.
[35]Clarkson CMV, *Understanding Criminal Law* (3rdedn, London: Maxwell 2001) 65.
[36][1957] 2 QB 396 (HL)
[37][1982] ALL ER 34 (HL).
[38][2018] 11 NWLR (pt. 1630) 201 (SC).
[39]Michael M, *Source Book on Criminal Law* (2ndedn. London: Covendish Publishing Limited, 2003) 106. See also *RV Cunningham* (n36).
[40]Michael M, *Source Book on Criminal Law* (2ndedn. London: Covendish Publishing Limited, 2003) 158.
[41]Samaha, J; Op cit 142

> Any person who breaks and enters the dwelling house of another with intent to commit a felony there in; or (2) having entered the dwelling house of another with intent to commit a felony there, or having committed a felony in the dwelling of another, breaks out of the dwelling house, is guilty of felony, and is liable to imprisonment for fourteen years. If the offence is committed in the night, the offender is liable to imprisonment for life.[42]

Also, the Court of Appeal Yola Division in *Garba V. State*[43], on the issue of components of proof of criminal liability held thus:

> The twin pillars of proof of criminal responsibility which satisfy proof of the elementary and fundamental element of crime are the presence of *mens rea* and *actus reus*. That is, requisite mental capacity and intention to commit the offence and the doing of that act that constituted the offence. There must also be an act by the accused person done in pursuit of the intent of his said mind or in conjunction with another or other persons to actualize the common intention. The duty is always on the prosecution to prove the commission of the offence alleged and establish both the act done and the requisite guilty mind by the accused person.

In result crime, the criminal act has to cause the bad result such as causing the death of some one. Put in another way, the criminal act must be triggered by intent which caused the death. The Criminal Code provides that, except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say: (i) If he intends to cause death of the person killed…[44] The general rule is the coexistence of the two elements, *actus reus* and *mens rea* must be at the same time in point. This is expressed in the latin maxim of *actus non facitreum nisi men sit rea*. It means that no act is a crime without a guilty mind. This was given judicial approval in the case of *Young Husband v Lufig*[45], and also in *Folwer v Padget*, where Lord Kenyon lent weight to the basis of criminal responsibility when he stated that intent and the act must both concur to constitute a crime.[46] However, at times, both elements occur at different times contrary to the general rule that both occur at the same point in time. Capturing this point more vividly, 'Michael opined that, in some cases, however, the courts have to deal with arguments based on non-coincidence. In *Thabo Meli and others v R*[47], the four appellants were convicted of murder. The facts were that the appellants brought the deceased to a hut where they treated the deceased with beer and was partially drunk. While the deceased who was partially drunk was seated and bending forward, he was struck a heavy blow on the back of the head with a piece of iron. The appellants took out the body of the deceased rolled it over the cliff and dressed up the scene to make it look like an accident. Although, the appellants believed the deceased was dead at the time they rolled his body over the cliff, the medical evidence is to the effect that the injuries which the deceased received at the hut were not sufficient to cause the death and that the final cause of death was exposure when he was left unconscious at the foot of the cliff.

The point of law raised by the accused on appeal was that there were two acts, namely, the attack in the hut and placing the body outside and rolling it down the cliff and that they were separate acts. It was contented by the accused that while the first act was accompanied by *mens rea*, it was not the cause of death. The second act which was the cause of death was not accompanied by *mens rea*. On that ground, it was argued that the accused was not guilty of murder, though they may have been guilty of culpable homicide. It was further contented by the accused that the *mens rea* necessary to establish murder is an intention to kill and that there could be no intention to kill when they accused thought that the man was already dead, so their original intention to kill ceased before they did the act which caused the man's death. Court held that there can be no separation such as that for which the accused contend. The Court further stated that: it is impossible to divide up what was really one series of acts in this way. There is no doubt that the accused set out to do all these acts in order to achieve their plans and because they were under a misapprehension at one stage and thought that their guilty purpose had been achieved before cannot make them to escape the penalties of the law. Their crime is not reduced from murder to lesser crime merely because the accused were under some misapprehension for a time during the completion of their criminal plot. Articulating this more pungently, Lord Lane in *R v Le Brun*[48] stated that:

> It seems to us that where the unlawful application of force and the eventual act causing death are parts of the same sequence of event, the same transaction, the fact that there is an appreciable interval of time between the two does not serve to exonerate the defendant from liability. That is certainly so where the appellants subsequent actions which caused death, after the initial unlawful blow, are designed to conceal his commission of the original assault.

[42]Criminal Code 2004 *Section* 411. See also Section 288 of the Penal Code 2004.
[43][2011] ALL FWLR (Part 584) 14 (CA).
[44]Criminal Code 2004 *Section* 411.
[45](1949) 2KB 254 (CA).
[46](1798) 7TR 509 (CA).
[47][1954] 1 WLR 228. (HL).
[48][1992] 1 QB 61 (CA).

Also in Ag's Ref. (No. 3),[49] Lord Mustill rehearsed what he saw as the established rules of liability for homicide, including the rule that *mens rea* and *actus reus* should coincide. According to him: the existence of an interval of time between the doing of an act by the defendant with the necessary wrongful intent and its impact on the victim in a manner which leads to death does not in itself prevent the intent, the act and the death from together amounting to murder so long as there is an unbroken causal connection between the act and the death. Thus, for the purpose of the principle of concurrence of the *actus reus* and the *mens rea* in causation, a continuous act or continuous chain of causes leading to death is treated in law as if it happened when first initiated[50].The act which caused the death and the mental state which is needed to constitute manslaughter need not to coincide at the same time in point[51].It is enough by the original unlawful and dangerous act, to which the required mental state is related and eventual death of the victim are both part of the same sequence of events[52]. This now takes us to causation as an element of criminal liability.

Causation

Causation is about holding an actor or the accused person criminally accountable for the result of his/her conduct. Causation simply implies the causing or producing an effect[53]. The question of causation often arises for the purpose of attributing responsibility to someone so as to blame him/her for something which has happened or to make him guilty of an offence or liable in damages. Causation applies only to result crimes, the most prominent being culpable homicide. Others include causing bodily harm in assault, damage to property in malicious mischief, and the destruction of property in arson[54]. The prosecutor is, therefore, required to prove causation beyond reasonable doubt. This requires proving two kinds of causes viz, factual cause, 'but for' cause and legal cause also called proximate cause. The factual cause also called 'but for cause' or cause in fact is an empirical question of fact that seeks whether the accused conduct trigged a series of events that ended in causing death or other bodily harm, damage to property or destruction of property[55]. The latin name is *Sine qua non cause*. 'But for cause' means, if it were not for the accused conduct, the result would not have occurred. In other words, the accused conduct triggered a chain of event culminating sooner or later to the death or injury. Conduct is the cause of result when it is an antecedent but for which the result in question would not have occurred[56]. Although, proving but for cause appears less cumbersome, it is not a complete panacea to the causation problems. According to Smith and Hogan, the but for test serves to filter out irrelevant factors but cannot be regarded as any more than a starting point in the causation inquiry[57]. The first step in establishing a claim of causation is for the prosecution to prove that the defendant's act or omission is a cause in fact of the prohibited result. This is normally done by applying the 'but for test'[58].

The legal or proximate cause on the other hand is a subjective question of the fairness that appeals to the jury's sense of justice. It asks, is it fair to blame the defendants/accused for the harm triggered by a chain of events of his/her action(s) set in motion. The test is to find out if the harm is accidental enough or far enough removed from the defendant's triggering act, that there is a reasonable doubt about the justice of blaming the defendant and that there is no proximate cause.[59]Consequently, the accused or actor will not be held liable. In *Friday Aiguoreghian and another v State[60]*, the Court held that the matter before us zero's on the law of causation in our criminal jurisprudence. Around the terminology, causation is proximate cause, legal cause and direct cause, terms which are used synonymously. The expressions of 'immediate cause', 'effective cause' and cause *causans* are used to denote the last link in the chain of causation. Thus, the principle of causation dictates that an event is caused by the act proximate to it and in absence of which the event would not have happened.[61]

New Intervening Causes *(Novus Actus Interveniens)*

This principle is predicated upon the fact that something else in addition to accused's act has contributed to the bad result. This is referred to as an intervening cause, an event that comes between the initial act in sequence and the end result. According to Samaha, an intervening cause is defined as an event that comes between the initial act in a sequence and the end result.[62] According to the Black's Law Dictionary, an intervening cause is defined as:

[49][1997] 3 ALL ER 936 (CA).
[50]Michael M, *Source Book on Criminal Law* (2nd edn, London: Cavandish Publishing Limited 2003) 172
[51](n37) 948
[52]Ibid 9450.
[53]Byran A. G, (ed) *Black's Law Dictionary* (10thedn. USA: Thomas Reuters 2004) 265.
[54]*Sahama J.* (n 12) 143.
[55]*Ibid, 143*.
[56]Model Penal Code 1983 *Section* 2.03 (1).
[57]Smith and Hogan, *Criminal Law, (*10th(ed) USA: Oxford University Press, 2009). 16.
[58](n 33) 59
[59](n 33) 144
[60][2004] 3 NWLR (pt. 860) 367 (SC)
[61]*Eric Uyo V AG. BendelState* (CA) [1986] 1 NWL (Pt. 17) 418.
[62](n33) 144.

> an even that comes between the initial event in a sequence and the end result, thereby altering the natural course of events that might have connected a wrongful act to an injury, especially an independent agency's act that destroys or severally weakens the causal causation between defendant's negligent act and the wrongful independent act being the immediate cause, so that there typically can be no recovery from the defendant. If the intervening cause is strong enough to relieve the wrongdoer of any liability, it becomes a superseding cause.

In *Thabo Meli v R.*[63] the appellant struck a man with the intent to kill him. Believing him dead, though in fact he was unconscious, they rolled him over a cliff in order to make his death appear accidental. He died from the subsequent exposure. The defence argued that the intent to kill did not occur with the act causing death and that in respect of the latter act, the defendant should be guilty not of murder but of the lesser offence of culpable homicide. The Privy Council, however, rejected the argument by saying that the transaction could not be divided up in this way. The position expressed in this case by the Privy Council is often referred to as the 'one transaction theory'. Okonkwo and Naish have amplified the application of the 'one transaction theory.' According to them,

> The test should be if the accused (mistakenly believing that his original intention has already been effected), were apprised of the true facts at the moment at which his original intention were about to become effective, would he still say, 'yes, I desire that to happen?' if not, then, it is submitted that it cannot be said that the physical and mental elements occurred (though he might be liable for a different offence e.g. manslaughter).[64]

Accordingly, the accused persons were held liable because there is no *novus actus interveniens*. One way of determine the issue of *novus actus interveniens* is to ask whether some other cause of sufficient significance intervened to break the causal chain. Many events or causes can intervene or contribute towards the ultimate harm and, therefore, break the chain of causation and absolve the first defendant/actor from liability. These include the following:

It is usually the case in homicide trials that the injury an accused person inflicted on the victim is aggravated by another cause to the extent that it appears unreasonable to hold him responsible for the victims subsequent death.[65] Where this is the case, the chain of causation is considered broken and, accordingly, any resultant death is attributed to a new cause. In R v Jordan, the appellant in this case stabbed the victim with knife. The victim was taken to the hospital where he eventually died. The accused was convicted of murder and all the defences raised by him were rejected. However, the appellant appealed on the ground that new evidence was discovered, particularly, the evidence of two medical doctors. The new evidence showed that the continued administration of terramycin and the intravenous introduction of wholly abnormal quantities of liquid which waterlogged the lungs were the actual cause of the victim's death and not the wound inflicted on the victim by the accused. The court observed as follows: 'It is sufficient to point out here that it was not normal treatment. Not only one feature, but two separate independent features of treatment were, in the opinions of the doctors, palpably wrong and these produced the symptoms discovered at post mortem examination which were the direct and immediate cause of the death'.[66] The court held that it was the later action of the hospital that killed the victim. The accused was therefore relieved of responsibility hence, the appeal was allowed. It is pertinent to note that for the accused to be set free as an in this case, the intervening cause must be substantial. This means that it is not a remote cause of death, but it is an appreciable cause of death.[67]

Act of God as *Novus Actus Interveniens*

This is an event which is entirely unconnected with the accused act. If this is sufficient on its own to bring about the consequence in question, it breaks the chain of causation. An act of God is defined as an earthquake, flood or tornado.[68] Thus, where a natural event such as lightening, tornado, flood, earthquake etcetera, intervened between the initial act in sequence and the end result, the original actor/defendant would be exonerated from liability arising there from. This is due to the fact that the natural event is an independent intervening cause. Its occurrences were independent of and not immediately connected to the original actor's action. Such an independent intervening cause will break the causal link and exempt the original actor/defendant from liability. In *Southern Water Authority v Pegrum*[69], the respondent were charged with an offence contrary to section 31(1) of Control of Pollution Act 1974, causing polluting water, (pig effluent) to enter a river. The respondent reared pigs and effluents produced by the pigs were channeled into lagoon constructed for that purpose which was used for manure. After a heavy rainfall, a blocked drain caused rain water to flow into the lagoon. Sequel to this, a fissure

[63](n 35) 265
[64]Okonkwo and Naish, (n3) 63.
[65]Kharius S. C. (n. 14) 47.
[66][1956] 40 CRAPPR 152 (CA).
[67]Ibid 164.
[68]*R V Hennigan* [1971] 3 ALLER 133 (CA).
[69][1989] CLR 442

developed in one side of the lagoon and polluting liquid escaped into a river and polluted it. The respondents were charged to court. The Magistrate found that the overflow from the lagoon was caused by the act of God. The ingress of the rain water and it was not necessary to consider whether the respondents were negligent either in not inspecting the drain or in not providing adequate drainage. The Magistrate further found that the blocked drain causing the ingress of rain water was an intervening event breaking the chain of causation and dismiss the information. However, on appeal, Court allowed the appeal and remitted the case with a directive to convict the respondent. The Court of Appeal further held that in deciding whether intervening cause affords a defence, the test is whether it was of powerful nature that the conduct of the defendant was not a cause at all but was merely part of the surrounding circumstances. On the present facts, the active operation or positive acts of the respondents were the storage and re-use of the effluent which resulted in the formation of toxic sediment which polluted a river. Also, the Magistrate erred in law in finding that the ingress of rain water was an act of God. The blockage and break down were within the system of the 'active operations' which led to the creation of and storage of pollutant. The judgement of the lower court was set aside and respondents were held reliable for the pollution of the river.

It is implicit from this case and principle of law in this area of law that not every operation of natural forces can constitute an act of God capable of relieving the accused or defendant from liability. For an act to qualify as an act of God, it must be overwhelming, unpreventable by reasonable care and independent of active operation of the accused person. In other words, the relevant question is whether that event could or would not have been prevented by reasonable care. If it could not, then it is an act of God which will relieve from liability, however, trivial or common its cause may have been.[70] If this can be correct, then the unpredictable nature of the occurrence will go to show that the act of God in question was one which the defendant was under no duty to foresee or prevent against.[71]

4. The Victims Actions in Seeking to Escape from the Defendant/Scene

In *People v Armitage,*[72]the Harbours and Navigation Code provides that: no person shall operate any boat or vessel, while under the influence of intoxicating liquor or drug… which act or neglect proximately causes the death or serious bodily injury to any person other than himself. The facts of this case were that the defendant and his friend, Peter Maskovich were drinking in a bar around mid night. In the early morning hours, the defendant and Maskovich wound up racing defendant's boat on the Sacramento River while both of them were drunk. The defendant operated the boat at a high speed and zigzagging until it capsized. He left the hanging boat and went to the house to James Snoot who lives near the Sacrament to River. He reported that his friend left the hanging boat to swim ashore despite his warning not to do so and that he was afraid that his friend did not make it. James Snoot reported to the river authorities. The autopsy conducted on the dead body of Maskovich showed that he had a blood alcohol level of 2.5 percent while that of the defendant was 1.4 percent. The defendant did not dispute the fact that he was intoxicated. The defendant was convicted of drunk boating causing death. The defendant appealed but the Appeal Court confirmed the judgement of the lower court. At the Appeal Court, the defendant contended that his actions were not proximate cause of the death of the victim. In order to be guilty of felony of drunk boating the defendant's act or omission must be the proximate cause of the ensuing injury or death. The defendant maintained that after his boat flipped over, he and the victim were holding on to it and the victim, against advice, decided to abandon the boat and try to swim to shore. According to the defendant, the victim's fatally reckless decision should exonerate him from criminal responsibility for his death.

The Court rejected the defendant's contention. The question whether defendant's act or omission criminally caused the victim's death is to be determined according to the ordinary principles governing proximate causation. Proximate cause of a death has traditionally been defined in the natural and continuous sequence that produces the death and without which the death would not have occurred.[73]The defendant's claim that the victim's attempt to swim ashore, whether characterized as an intervening or superseding cause, constituting a break in the natural and continuous sequences arriving from the unlawful operation of the boat cannot hold water. Continuing the Court stated that it has long been the rule in criminal prosecution that the contributory negligence of the victim is not a defence. In order to exonerate a defendant, the victim's conduct must not only be a cause of his injury, it must be a superseding cause. If an intervening cause is a normal and reasonably foreseeable result of a defendant's original act, the intervening act is 'dependent' and not a superseding cause, and will not relieve the defendant of liability. An obvious illustration of a dependent cause is the victim's attempt to escape from a deadly attack or other danger in which he is placed by the defendant's wrongful act. Thus, it is only unforeseeable intervening cause, an extra ordinary and abnormal occurrence, which rises to the level of an exonerating superseding cause that can exonerate the defendant from liability. Consequently, in criminal law, a victim's predictable effort to escape a peril created by the defendant is not considered a superseding cause. In other words, an unreflective act

[70][1989] CRMLR 424 (DC).
[71]Brayan A. G. (n53) 41.
[72](1987) CR. AP R. 515 (HL).
[73]Harbours and Navigation Code 1989Section 655.

in response to a peril created by the defendant will not break a causal connection. Accordingly, when defendants conduct causes panic, an act done under the influence or extreme fear will not negate causal connection unless the reaction is wholly abnormal. In the present case, the defendant through his conduct placed the intoxicated victim in a middle of a dangerous river in the early morning hours clinging to an overturned boat. The fact that the panic-stricken victim recklessly abandoned the boat and tried to swin ashore was not wholly abnormal reaction to the perceived danger. Having placed the inebriated victim in peril, the defendant cannot obtain exoneration by claiming that the victim should have reacted differently or more prudently. In sum, the evidence established that defendant's acts and omissions were the proximate cause of the victim's death. In *R. v Latif*[74], the court held that, the free, deliberate and informed intervention of a second person who intends to exploit the situation created by the first, but is not acting in concert with him, is normally held to relieve the first actor of criminal responsibility.

5. Refusing medical Treatment by the Victim

The position of the law is that the victim's conduct will not break the causal chain to absolve the defendant/actor unless the victim's conduct/action is so 'extraordinary'. In other words, the action or conduct of the victim must be extraordinary for it to break the chain of causation. In *R v Blaue*[75], the appellant was convicted of manslaughter on the ground of diminished responsibility. He had inflicted four serious stab wounds on the deceased, one of which pieced a lung. The deceased, a Jehovah's Witness, refused to have blood transfusion because it was contrary to her religious beliefs, and acknowledged this refusal in writing despite the Surgeon's advice that without the transfusion she would die. The crown maintained at the trial that if she had the blood transfusion, she would not have died. The Court of Appeal held inter alia:

> It has long been the policy of the law that those who use violence on other people must take their victim as they find them. This in our judgement means the whole man, not just the physical man. It does not lie in the mount of the assailant to say that his victim's religious beliefs which inhibited him from accepting certain kinds of treatment were unreasonable. The question for decision is what caused her death. The answer is the stab wound. The fact that the victim refused to stop this end coming about did not break the causal connection between the act and death.

It appears that the *Blaue* case is the best known in English criminal law on the application of the 'Thin-Skull' rule as well as the authority for a wider principle concerning the freedom of a victim to follow his or her conscience. The victim in the *Blaue* case has a right to hold her religious views as long as they do not harm others. This principle of law has been statutorily provided for in Nigeria. *Section 312*[76]of the Criminal Code provides that: when a person cause a bodily injury to another from which death results, it is immaterial that the injury might have been avoided by proper precaution on the part of the person injured, or that his death from that injury might have be prevented by proper care or treatment. The penal code equally provides that: where death is caused by bodily injury the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.[77] Section 313[78] appears more pungent with regard to this principle. It provides that:

> When a person does harm to another and such other person has recourse to surgical or medical treatment and death results from the injury or treatment, he is deemed to have killed that other person, although the immediate cause of death was the surgical or medical treatment, provided that the treatment was reasonably proper under the circumstance and was applied in good faith.

The implication of the above provisions appears to be that if the immediate cause of death was failure of the deceased to subject himself to treatment or take proper care or caution or surgical or medical treatment applied in good faith, the legal cause of death was the injury inflicted.[79] The constitution of the Federal Republic of Nigeria 1999 (as amended) provides that every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.[80] Thus, statutorily and judicially, actions taken by a victim on the basis of such religious belief do not constitute breaks in the causal chain and these beliefs must be taken as found by the wrongdoer. As Klinechuk's puts it: 'Freedom of religion is in a sense an equality right, for it not only permits persons the right to hold and manifest whatever religious beliefs they chose so far as such manifestations do not violate the rights of others, but (correlative) it forbids us from discrimination on terms of religious beliefs and matters in the public realm'.[81] In

[74][1996] 1 WLR 104 (CA)
[75][1975] 3 ALLER 414, (CA)
[76]Criminal Code Act Laws of the Federation 2004 Section 30
[77]Panel Code Act 2004 Section 220 (c)
[78]Criminal Code Act 2004 313
[79]*Karimu v State* (1999) 13 NWLR (Pt. 633) 1.
[80]Section 38(1) of the 1999 Constitution.
[81]Kilnechuk D. 'Causation, Thin Skulls and Equation' [1998] *Canadian Journal of Law and Jurisprudence* (11)

R v Robert[82] where the defendant has given a lift to a young woman and had touched her cloths, she panicked, thinking that he was about to sexually assault her, and jumped out of the moving car injuring himself. He was found to have caused her injuries as her reaction was foreseeable and not so daft to the extraordinary. This decision is in accordance with the provision of the Criminal Code Act. It provides that a person who by threats or intimidation or any deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed him.[83] So, the victim's conduct that will break the chains of causation and absolve the defendant from liability must be an extra ordinary one. Also, in *Uyo v Ag Bendel State*[84] the deceased and appellant were in a dispute over a piece of land. The appellant and others at large hit the deceased with iron rod and wood into a pulp and left him there. The shout of the deceased that the assailant was killing him attracted the neighbours who took him to the hospital. The deceased eventually died the next day in the hospital. The appellant was charged to court for murder, convicted and sentenced to death. On appeal, he contended that the judgement should be set aside on the ground that the real death of the deceased could have resulted from other cause other than the beating in the fight. He also argued that there was no medical report as to the cause of the death of the deceased. Court held that: it is elementary principle that the accused must take his victim as he finds him. It is not sufficient for an accused whose physical assault results in the death of another to argue that his victim who had weak heart died from such defect and not from the assault. The accused is criminally liable if death results from his act.

Section 311[85] of the Criminal Code provides:

> A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person. The Penal Code also provides that: A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity and thereby accelerates the death of that other, shall be deemed to have caused his death.[86]

6. Limitation as to the Time of Death

For the purpose of establishing causation in result crimes, especially where the event result to injury leading to death, the prosecution, in addition to proving the 'but for cause' and the proximate cause(s) is expected to prove the fact that the death occurred within one year and one day rule of the occurrence of the event leading to the death. In origin, this rule was dictated by the desire to limit the difficult problems of causation when medical science was very rudimentary. Under this rule, a victim who has lingered for more than one year one day after the blow before dying could not be said with full assurance to have died as a result of the blow. However, the rule saved awkward medical questions from arising. This rule is provided in the Criminal Code Act. Section 314 of the Act provides thus: 'A person is not deemed to have killed another, if the death of that other person does not take place within a year and a day of the cause of death. Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done'.[87] This rule is no longer the law in most countries including Britain and America. The rule has been abolished in most jurisdiction. In *Common Wealth v. Lewis*[88], the court observed that the rule appears anachronistic upon a consideration of the advances of medical and related science in solving ethnological problems as well as sustaining or prolonged life in the face of trauma or disease.

7. Conclusion and Recommendations

The position of the Nigerian jurisprudence in this area of law is commendable as it is in tandem with international practice. Most of the common law doctrines in this area of law have been statutorily provided for in our criminal jurisprudence. However, the anachronistic one year and one day rule is no longer tenable in view of the modern development in medical field. Omission liability should be exceptional and needs to be adequately justified to avoid the curtailment of the individual liberty to make a choice. When omissions liability is imposed, it should be done by clear statutory language. The one year one day rule limitation period after which the defendant could be exonerated from criminal liability should be abolished.

[82][1971]56 C APPR. 4.
[83]Criminal Act 2004. Section 310.
[84][1986] INWLR (Pt. 17) 418 (SC)
[85]Criminal Act 2004 Section 311.
[86]Penal Code Act 2004 Section 2020 (C)
[87]Chukwumaeze U U, *'Causation in Homicide in Philosophical legacy on Issues' edited by Ikepchukwu S.O. (Sokoto: 2018) 193.*
[88]Section 314 of the Criminal Code Act 2004.