A CRITICAL EVALUATION OF ADOPTING ACTUS REUS AS A LONE DETERMINANT IN CRIMINAL CULPABILITY AND LIABILITY UNDER THE NIGERIAN CRIMINAL LAW

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ABSTRACT

In all climes and jurisdictions, the requirement of guilty intent *mens rea* is *sine qua non* in the determination of one's culpability in criminal adjudication. To assert culpability of an individual, there must be a reasonable conviction that one had the intention to commit the crime. The contemporaneity of the intention (*mens rea*) and action (*actus reus*) lends credence to commission of a crime. Hence, the absence of *mens rea* creates a gulf between culpability and exculpability in ascertaining measures of deliberate subjective fault in criminal justice dispensation. This work relied on the doctrinal method of analysis, with primary sources of information drawn from case laws, statutes and secondary sources of information distilled from journal articles and internet sources. The article found that in Nigeria, an accused person without the prerequisite *mens rea* may not still be exculpated of criminal liability for his actions but his punishment may be mitigated on a successful plea.

This work therefore recommended, amongst others, that an accused without the prerequisite *mens rea* should be totally exculpated of any criminal culpability.

***Keywords*: *Actus reus*, lone, *mens rea*, determinant and culpability.

INTRODUCTION

The use of *actus reus* as the sole determinant of criminal culpability and liability in Nigeria has been the subject of much debate. While some scholars argue that it is a necessary and sufficient condition for criminal liability, others argue that it is an incomplete and flawed approach. In this critical evaluation, we will explore the arguments for and against the adoption of *actus reus* as the sole determinant of criminal culpability and liability in Nigeria. We will also consider alternative approaches, such as the incorporation of *mens rea* into criminal law. Ultimately, we will argue that while *actus reus* plays an important role in establishing criminal liability, it should not be the only factor considered. Instead, *mens rea* should be incorporated into the law to provide a more holistic approach to criminal liability. This will ensure that both the physical and mental elements of a crime are considered, leading to a fairer and more effective justice system.

In criminal law, it is a general position that a man is vested with the faculty and capacity to decipher a rightful action or wrongful action.For a man to be held criminally responsible, it must be established that his action was supported by an intention. That is, he had the negative or guilty mind called *'mens rea'* when he performed the action.[1] The expression *mens rea*, though of a foreign descent, is derived from two Latin words *mens* - *menis* (mental) and *rea* - *rei* (thing). *Mens rea* literally means 'the mental thing.[2] Robinson pontificates that the phrase *mens rea* appears in the edges Henrici[3] description of perjury - *reum num facit nisi mens rea* (the offence of perjury is not committed without the mental thing). St. Augustine in his sermon concerning crime of perjury also mentioned the word *mens rea* with theological exegesis pertaining to the same crime.[4] It means therefore that the church played a cardinal role in the development of this aspect of English law. Deduced from the above, it is not out of place to assert that the concept of *mens rea* emanated in England in the early seventeenth century premised on the notion that it is a moral wrong to punish a person for harm done to one another in particular or the society in general without a culpable mental faculty. This led to the evolution of the doctrine of *mens rea* as one of the major principles of criminal law.

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[1] O C Nwabueze, *Criminal Law in Nigeria* (Malthouse Press Limited, 2009) 20-35.

[2]Ibid.

[3] Ibid.

[4] Ibid.

In classical history from the latter part of the 17th century onwards, the early development of *mens rea* is typified by the decision in *Regina v Prince.*[5]In that case the defendant took an underage girl out of the possession of her father, reasonably believing that she was over the age of consent. For Lord Bramwell, the fact that the defendant's conduct was generally immoral was sufficient to find that the defendant had the *mens rea* necessary for criminal liability. However, Lord Brett would require that the defendant would at least have intended to do something criminal, not just immoral. While in *Regina v. Faulkner*[6]there was a higher and contradistinctive requirement of specific mental element to a specific crime. Thus, in the process of stealing rum from the hold of a ship, Faulkner, who was a sailor accidentally set the ship ablaze, destroying it. Relying upon Lord Brett's notion of a more specific and demanding *mens rea* requirement means that Faulkner must have at least intended to do something criminal that might reasonably have been expected to have led to the actual harm for which he is charged. For their Lordships, Faulkner ought not be liable for the offence of burning a ship when he intended to steal rum from it, which in an ordinary sense, does not lead one to reasonably see that a ship will be destroyed.[7]This article will focus primarily on a critical evaluation of adopting actus reus as a lone determinant in criminal culpability and liability under the Nigerian Criminal law.

COMPONENTS OF A CRIME

Mens Rea

In order that a person is convicted of an offence he must be proved to have had an intention to commit that offence. This element is particularly important because whether a particular act

[5] (1875) L. R. 2 C. C. R. 154

[6] (13 Cox CC 550 (1877).

[7] A Adelakun, *Criminal Law in Nigeria: Text, Cases and Materials* (Malthouse Press Ltd 2007) 30-45.

amounts to an attempt will often depend on the intent with which it is done. The *mens rea* is the intention to commit the complete offence but it cannot be completed without composite element of *Actus Reus* (action).[8] It is also important to clarify the term *mens rea* in English law; this is employed in two distinctive perspectives:

(A) *Mens rea* is used to refer to the mental element which is required to be proved in respect of a particular crime.

(B) *Mens rea* is used to refer to a general principle of statutory interpretation and criminal responsibility, which requires proof of a guilty mind against the accused.

Actus Reus

The *actus reus* of a crime may consist of an act or an omission. This may include not only the conduct. *Actus reus* therefore means the whole definition and completion of the crime with the exception of the mental element (*mens rea*).[9]

THE CONTEMPORANEITY OF BOTH ELEMENTS

Intention on its own, however wicked, or dangerous it might be if put into execution, is not generally forbidden, or punished by the law until a man with intention begins to put it into execution.[10] This principle is anchored on the premise that to control people's state of mind alone is not sufficient.The law is often ready to intervene at the slightest manifestation of that intention. This is imperative to fulfill the requisite component of a crime; the *mens rea* and *actus reus*, which must work contemporaneously before a crime is committed and culpability can be ascribed to the

[8](n 7).

[9] Ibid, 30-45.

[10]A B Kasumu, *Principles of Criminal Law* (Kachifo Limited, 2016) 20-25.

accused. Hence, the *actus reus* and the *mens rea* of an offence must be simultaneous in point of committing the offence. Thus if a man forms the intent to kill his wife, then changes his mind, then accidentally kills her, there is the *actus reus* of murder but no simultaneous *mens rea*. Conversely no subsequent amount of malice can turn an originally justified assault into an offence.[11]

COMPONENTS OF MENTAL ELEMENT

Intention and Motive

This is derived from the circumstances of a particular offense. Two words are critical to this- Foreseeability and desirability, the desire of the consequence of an act is the hallmark of intention, no matter how vague or unconscious the desire may be. Thus, in *Vallance v. The Queen*[12]The court held that the commission of an intentional act with recklessness as to the consequences is enough to describe the consequence as intended. However, sometimes knowledge of the consequence of the acts might be sufficient enough to secure conviction for an offense. Although the facts and circumstances of some offenses may require that specific intent be proved.For example, in *R v. Steane*, A British national broadcast for one of the axis powers Germany during the Second World War. His intention apparently was to save his wife and children trapped in Germany. After the war he was convicted of 'doing an act likely to assist the enemy' contrary to a Defence regulation. His appeal to the courts of criminal appeal was allowed because the prosecution failed to prove the specific intent to assist the enemy. The evidence on record showed that his intention was to save his family. This decision can be interpreted to mean that although the accused, Steane, foresaw that his acts might assist the enemy, he did not desire the consequence.

The general rule is that the motive by which a person is induced to do or omits to do an act or to form an intention, is immaterial as regards criminal responsibility. Motive simply means the reason for the accused person's conduct; that which has induced him to act unlawfully. It generally

[11] (n 10).

[12] [1961] HCA 42; 108CLR 56; 35 ALJR 182; [1963] ALR 461.

does not form part of the mental elements of an offence.[13] Motive can take the form of love, fear, jealousy, anger, ambition et cetera. Thus, if A kills his wealthy Uncle in order to inherit his Estate, the intention is manifested in the killing while the motive is the inheritance of his uncle's property.[14]

The rule that motive is irrelevant in the determination of intentional acts admits of some exceptions therefore, under the Criminal Code motive becomes relevant in situations of emergency, compulsion, in the crime of defamation, in a particular type of murder, and where husbands and wives are accessories after each of other's crimes.It should be noted that the liability of the accused is not affected if he did the unlawful act with the intention required by law but at the time he did it, they were all sorts of other factors, operating in his mind. Accordingly, if a very poor man unlawfully takes food from a rich man's house to feed his starving children. He will be guilty of stealing, because he has the intention of permanently depriving the owner of the property. Motive may, however, be a relevant consideration, when the court is passing sentence, or when weight is being attached to evidence.It may be relevant in disproving criminal intent.Sometimes, it is difficult to differentiate between motive and intention. In the above example, the man intended to steal. He also intended to feed his family.

Knowledge

The term *'mens rea'* is a Latin Expression, which, when translated to English language means guilty mind. It is not possible for an accused person to have a guilty mind in respect of a crime without knowledge of that crime. That is why it is often required in the definition of any crime that the accused person must have knowledge of an existing circumstance. For instance, for a charge of unlawfully importing counterfeit money it is required of the prosecution to prove that the accused person knows that the money is counterfeit. Thus, where the accused person does not

[13] (n 7) 30-45.

[14] Ibid.

know that he possesses the counterfeit money or is not aware that the money is counterfeit, he will not be guilty of a felony. Thus, in *R v. Mba*[15]the appellant was convicted for publishing, a defamatory matter knowing it to be false. The evidence of record, however, did not support the finding of facts by the trial court as to knowledge. The West African Court of Appeal reversed the decision on the ground, inter alia, that there was no proof that the appellant knew that the publication was false. As for proof of knowledge, the same factors that govern proof of intention apply.[16]

It must be observed that the above situation of the law does not preclude the possibility of the courts facing the temptation of introducing extra legal considerations, when interpreting an offense, for instance under the Criminal Code, section 427, dealing with the offense of receiving property, which was obtained by means of an act constitutes a felony or misdemeanor, knowledge that the goods received have been obtained by such means, and acts constitutes the mental elements of the offense. Hence, there is no requirement of a dishonest intent.This implies that if a man, for example, takes delivery of goods which he knows to have been stolen from his friend's house, and which he intends to return to his friend, then on a strict legal interpretation, he is guilty of receiving, but the courts in Nigeria will certainly be favorably disposed, and strongly urged to follow the English case of *R v. Mathews*[17]in which the suggestion that innocent receipt is no defense (provided there is knowledge) was rejected. Surely, in this case, extralegal factors were at work as in the case of an agent provocateur, where the courts have held that a policeman, who participated in a crime in order to catch the offender is not usually an accomplice and hence not culpable.[18]

[15] [2012] EWCA Crim 2773.

[16] (n 7) 30-45.

[17] [2003] Crim LR 553.

[18] (n 7) 30-45.

Malice

Malice is the intentional commission of a wrongful act, without justification, with the intent to cause harm to others; conscious violation of the law that injured another individual; a mental state indicating a disposition in disregard of social duty and tendency toward malfeasance.

In its legal application, the term malice is comprehensive and applies to any legal act that is committed intentionally without just cause or excuse. It does not necessarily imply personal hatred, or even feelings. Rather, it focuses on the mental state that is in reckless disregard of the law in general, and of the legal rights of others. An example of a malicious act would be committing the tort of slander by labeling a non-drinker an alcoholic in front of his or her employees.

When applied to the crime of murder, malice is the mental condition that motivates one individual to take the life of another individual without just cause or provocation. In the case of *New York Times v. Sullivan,*[19]the Supreme Court held that public officials and public figures cannot be awarded damages, unless they prove that the person accused of making false statements did so with knowledge that the statement was untrue, or recklessly disregarded whether the statement might be false. Demonstrating malice in this context doesnot require the plaintiff to show that the person uttering the statement showed ill will or hatred toward the public official or public figure.

X-RAYING SOME PROBABLE DEFENCES

[19] [1964] 376 U.S 254.

Provocation

This is an act or series of acts done by one person to another which can cause in a reasonable person and actually caused in another a sudden and temporary loss of self-control rendering him so subject to passion as to make him for the moment not master of his mind. The Black's Law Dictionary defines it as 'the act of inciting another to do something, especially to commit a crime'.It is further defined by this dictionary as 'something (such as words or actions) that affect a person's reason and self-control, especially causing the person to commit a crime.'[20]

Recklessness

Recklessness is a convenient term coined to describe those states of mind, short of intention, but distinguishable from mere inadvertent negligence because the accused foresaw the consequence of his conduct and risk them. The precise definition of recklessness has been contested and has evolved. It generally involves a person pursuing a course of action, while consciously, disregarding the fact that the action gives rise to a substantial and unjustifiable risk. The precise nature of the necessary foresight may vary. Clearly, a man is not reckless who foresees a criminal consequence as only a remote possibility.Equally if he foresees as certain to happen, that is tantamount to a finding that he desired it and therefore intended it. Between these two extremes is a whole range of degree of probability.Consequences may be described for instance, as possible, reasonably likely, or probable. There is little authority for the meaning of the word 'likely'. In *R v. Okon*[21], it seems in section 316 paragraph three to have been taken to mean 'reasonably probable'.In *Idiong v. R,*[22]*a* consequence was said not to be likely, if a reasonable man would not expect it.

[20] Bryan A Garner, (ed) *Black's Law Dictionary* (9th ed , West Thomas Reuters 2009) 1346.
[21] Suit No. CA/C/265C/2016.

[22] [1950] 13 W.A. C.A 30.

The test of foresight in recklessness has to be subjective, as in intention- that is, did the accused foresee the consequence as likely? With the reasonable Man standard used only as a guide to discovering this foresight but the word ‘likely’ in the Code is not used in any uniform sense. In some offenses the accused is not guilty, unless the criminal's consequence is ‘to his knowledge likely’; a test which is clearly subjective. In others, where the unqualified likely is used. It is not made clear nor have the courts yet given a firm indication of what the test is to be. In yet other offences, the accused would appear to be liable on an objective test; for example, where he knows, or has a reason to believe that the consequence is likely. In such cases, the liability is not liability for recklessness but, merely for inadvertent negligence.

In short, a judgment of inadvertent negligence, rests merely in a comparison between the conduct of the accused, and that of a reasonable man only as a guide to what went on in the accused’s mind, and only as long as it can possibly be assumed that the accused mind accorded with the normal at the time of the act.

Negligence

This is determined through an objective rather than subjective test. The accused person in negligence is liable or blameworthy for an act or omission, which a reasonable man ought to have foreseen will lead to the consequences of his conduct. For the fact that there is no need to prove subjective foresight, there are generally few offenses that can be committed by negligence. In fact, most of these offenses, except manslaughter, are relatively unimportant, and do not attract serious penalties.

In England, and in many common-law countries, distinction is usually drawn by the courts between the degrees of negligence which attracts liability in criminal law, and civil law. In the former, the degree is higher than that of the latter. For example, for the prosecution to secure conviction for negligence in manslaughter, the negligence of the accused must have been ‘gross’ that is it must be a very high degree. Therefore, if a man drives his car fast, and Zig zags at night in a beautiful area showing complete and criminal disregard for life and the safety of others, he will be guilty of gross negligence. In *R v. Awonu*[23], It was held that a failure to take reasonable care was sufficient to sustain a charge for manslaughter. In *Dabholker v. R,*[24]thePrivy Council, while interpreting section 346 of the Criminal Code preserved the distinction between criminal negligence and civil negligence.

It must be noted also that the accused person will be punished, even though he did not appreciate that his conduct was negligent. The standard of measurement varies, depending on the status of the accused in question; for instance, where a doctor is charged with manslaughter, the standard applied will be measured against the skill of a reasonably qualified doctor of his status. The justification for punishing negligence in criminal law is that a man owes another duty of care and hence ought to take due care. It is also aimed at setting standards of care that reasonable people are expected to take from time to time.

Involuntary Acts

Criminal responsibility does not attach to an act done in the state of automatism, that is, where the act is not done in consciousness of the nature of the acts and in exercise of a choice to do an act of nature.*Ryan v The Queen*[25]explicates the general presumption that an accused has the mental capacity to act in such a way as to encourage criminal responsibilities including a presumption that the relevant act was willed or voluntary. That is, if the accused was apparently conscious of the time.

When an issue of voluntariness due to automatism arises (as to which the accused bears an evidential burden of showing a reasonable possibility that the act was not willed consideration has

[23] [1946] 12 WACA 95.

[24] [1976] AIR 242.

[25] [1967] HCA 2-121 CLR 205; 40 ALJR 488; [1067] ALR 577.

to be given as to the etiologyof the automatism, since the manner in which the issue is left to the jury depends on the distinction drawn between insane and sane automatism. Where there are some evidences of automatism which points to an etiology other than 'disease of the mind', the crown must prove beyond reasonable doubt that the relevant act was an illed and voluntary one. That is, it was not the result of a condition of automatism. Otherwise, the accused is entitled to an outright acquittal.

The relationship between voluntariness, intent and mental disease was considered by the high court in *Hawkins v. The Queen*[26]*;*as to the distinction between an underlying mental infirmity which is prone to recur, which deprives the accused of the capacity to control his or her act, and which prevents him or her from appreciating its nature and quality (insane automatism) and a transient, non-recurrent malfunction, caused by external factors, whether physical or psychological, which the mind of an ordinary man would be likely not to have withstood, and which produces an incapacity to control his or her acts(sane automated). The case of *R v. Falconer*[27]gives a vivid description and illustration of sane automatism.

It will be a matter for the trial judge to determine whether there is evidence sufficient for the issue of automatism to be left to the jury and the basis it should be left. *R v. Mcleod*[28]commonly it will be clear that the condition is referable exclusively to a disease of the mind, in which case only defense of mental illness will avail, in other cases, the reverse may be the position. If the evidence is capable of demonstrating either form of automatism, it must be left to the jury for them to decide whether the automatism was sane or insane in nature.

Accidental Events of Intentional Acts

[26] [1994] HCA 28-179 CLR 500.
[27] [1990] HCA 49-171 CLR 30.

[28] [2007] VSCA 183-16 VR 682.

Even when the act or omission is intentional, there will be no liability for any accidental events. (That is the result or consequence) of that act. If X having lit a cigarette deliberately throws the match away and through no fault of his, the smoking match sets alight a hidden piece of paper and starts a great fire. This rule clearly applies to the accidental events of lawful acts. Does it apply to the accidental events of an unlawful act? It is now well settled that the unlawfulness of the act is irrelevant to the question of liability, for its accidental results.

In *R v. Matyr*[29]a unanimous Queensland Court of Criminal Appeals rejected the unlawful act doctrine with reference to the defense of accidents and in *Timbu Kolian v The Queen*[30]the fact that the death of the baby resulted from an unlawful act, did not exclude the operation of section 24.Therefore, when anyone does an act, no matter whether it is lawful or unlawful, and he is prosecuted for an event of that act, the only question for consideration is whether the events did in fact occur by accident.

JURISDICTIONAL APPLICATION

The Nigerian legal framework has been criticized for relying exclusively on *actus reus* as the determinant of criminal culpability and liability.[31] While *actus reus*, or 'guilty act', is an important element of a crime, scholars argue that it is not sufficient on its own to establish criminal liability. This is because it does not consider the mental state of the defendant, or *mens rea*. As a result, innocent people may be punished for crimes they did not intend to commit. For example, under Nigerian law, a person can be convicted of theft even if they did not intend to steal. All that is required is that they took another person's property without their consent. This means that a person who accidentally picks up the wrong coat in a crowded restaurant or who is tricked into taking another person's property can be convicted of theft. In addition, a person can be convicted of

[29] [1962] Qd R 398.

[30] [1968] 84 CLR 170.

[31] (n 7) 30-45.

murder even if they did not intend to kill the victim. For example, if someone commits a dangerous act that results in the death of another person, they can be convicted of murder even if they did not intend to kill that person. This lack of consideration for *mens rea* has been criticized as unfair and ineffective.[32]

Relying solely on *actus reus* as the determinant of criminal liability has some serious drawbacks. One option would be to introduce the concept of 'negligence' into the law. Negligence refers to a failure to exercise reasonable care, resulting in harm to another person.[33] For example, a doctor who fails to properly diagnose a patient's condition could be found guilty of negligence if that patient is harmed as a result.By incorporating *mens rea* into the law, the legal system could more accurately determine criminal liability and ensure that only those who are truly guilty are punished.

In addition, it would be beneficial to establish different levels of *mens rea* for different crimes. For example, some crimes could require a higher level of intent than others. This would allow the legal system to differentiate between different types of crimes and impose appropriate punishments accordingly. Overall, incorporating *mens rea* into the criminal law in Nigeria would lead to a more effective and fair justice system. In Nigeria, *mens rea* principle is aptly captured by the wordings of the Criminal Code, sections 24 and 25[34] on which the doctrine of *mens rea* is fully embedded in principle but not effectively in practice. This stems from the confusion in the application of the doctrine of *mens rea*. Though, it is believed that the doctrine of *mens rea* originated from England in the early 17th century, it has spread to other jurisdiction in the United States of America (USA).The concept was bedeviled with ambivalence in connotation and application prior to 1960s.The American Law Institutes Model Penal Code (MPC)[35] elucidated

[32](n 31).

[33] Ibid.

[34] Cap C 38 Laws of the Federation of Nigeria 2004

[35](n 7) 30-45.

on the *mens rea* doctrine. Section 2.0(1) of the Code brings to limelight the proof of culpability with respect to each material offence. This implies that the level of culpability required for one element is different from that of the same offence. Section 2.04 (1) makes mistake as a defence if it negates an offence culpability requirement "logical relevance".This makes a person's mistake relevant to the determination of criminal liability.

INTENTION AND MOTIVE IN DETERMINING CULPABILITY

Intention and motive are not the same in criminal law. The motive by which a person is induced to perform or not to perform an act or to form an intention, is immaterial in criminal culpability. This is sequel to the fact that motive alone cannot form a composite element of a crime (Intention). Motive may be very relevant as evidence. It may go to disprove criminal intent in a criminal trial. Plainly put, it is difficult to distinguish intention and motive. The legal distinction between them is that a motive is any reason behind the intention of the accused to formulate an intention for the guilty action. This forms the mental element of the offence. They are certain actions which bereft the mind of intention.These are reckless actions, inadvertent negligence and accident. Culpability and liability in negligence and recklessness are relatively unimportant and are not the subject of heavy punishment. The exception to this is manslaughter which mitigates the punishment in murder cases from capital punishment to life imprisonment. This punishment is viewed to be harsh and unwarranted in an offence where the prerequisite elements (*mens rea* and *actus reus*) did not coincide contemporaneously and simultaneously at the point the offence was committed.[36]

[36] (n 7) 30-45.

STRICT LIABILITY OFFENCES

In strict liability offences, the conviction is based on the action (*actus reus*) without an intention (*mens rea*), knowledge or negligence on the part of the accused. The presumption is to encourage people engaging in sensitive activities to take extra care and uphold the principle of *uberrimae fidei* to guard against infringing the law. Thus in *R. V. Efana*[37] Webber J. held that even though both accused believed in all innocence that the second accused was entitled to take certain cases out of Customs they were guilty of offences in respect of taking those cases away because the relevant sections of the Customs Ordinance were prohibitive.

CHALLENGES OF RELIANCE ON ADOPTING ACTUS REUS AS A LONE DETERMINANT IN CRIMINAL CULPABILITY AND LIABILITY UNDER THE NIGERIAN CRIMINAL LAW

One of the biggest challenges of relying solely on *actus reus* to determine criminal liability is the difficulty of proving that a person intended to commit a crime. This is especially true in cases where the evidence is circumstantial or where the defendant claims to have acted in self-defence. In these cases, it can be difficult to prove beyond a reasonable doubt that the defendant had the necessary intent to commit the crime. This can lead to innocent people being punished, which is obviously not the goal of the criminal justice system.

Another challenge is the fact that *actus reus* does not consider the mental state of the defendant. For example, consider the case of a young man who accidentally kills his neighbour's dog while playing a game of fetch with his own dog. The young man had no intention of harming the neighbour's dog, and in fact, he was trying to be a good neighbour by playing with his dog in a way that would not disturb the neighbour. However, because *actus reus* is the only factor considered in determining criminal liability, the young man could potentially be charged with a

[37] (1927) 8 N. L. R 81

crime, even though he did not intend to commit one. In this example, it seems clear that taking *mens rea* into account would lead to a more just outcome.[38]

Also, another challenge of relying solely on *actus reus* is that it can lead to harsh punishments for relatively minor offences. For example, a person could be charged with a serious felony offense for something as simple as shoplifting a small item from a store. While the person did commit the *actus reus* of shoplifting, the offense was relatively minor and did not cause any serious harm. However, because *actus reus* is the only factor considered, the person could potentially face a long prison sentence. This seems like a disproportionate punishment for the offence.[39]

In addition, incorporating *mens rea* into the law would also help to consider the intent of the defendant. For example, if a person accidentally starts a fire that causes damage to another person's property, the intent of the defendant should be considered when determining criminal liability. If the person did not intend to start the fire, it seems unfair to charge them with a crime. On the other hand, if the person intentionally started the fire, it seems appropriate to charge them with a crime. Incorporating *mens rea* into the law would help to ensure that only those who have malicious intent are punished. Lastly, another challenge of relying solely on *actus reus* is that it can lead to a lack of consistency in the criminal justice system. For example, two people could commit the same act, but one person could be punished more harshly than the other person based on factors such as race, gender, or social status. This type of disparity in the criminal justice system is unfair and goes against the principle of equal justice under the law. Incorporating *mens rea* into the law would help to ensure that all people are treated equally, regardless of their background or status.[40]

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[38] A B Kasumu, *Principles of Criminal Law* (Kachifo Limited, 2016) 20-25.

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[40] A B Kasumu, *Principles of Criminal Law* (Kachifo Limited, 2016) 20-25.

CONCLUSION

In every jurisdiction the requirement of guilty intent is the condition precedent for culpability and liability. This has posed fundamental questions on the *modus operandi* and guide to ascertain intent as a fundamental yardstick to measure culpability. The principle of no liability without fault is bedeviled with complexities in many legal jurisdictions with the attendant introduction of English doctrine of *mens rea*. The intricate nature of this doctrine and the ambivalence in its approach has led to a lot of court decisions antithetical to the interest of the accused. Apart from leading to miscarriages of justice, it is a travesty when provocation, automatism, somnambulism and other allied defences cannot secure a total exculpation from criminal liability but a mitigation of sentencing. To conclude, the reliance on *actus reus* as the sole determinant of criminal liability under the Nigerian Criminal Law presents several challenges. These challenges include the difficulty of proving intent, the potential for disproportionate punishments, and the lack of consistency in the criminal justice system. By incorporating *mens rea* into the law, these challenges could be addressed, and the criminal justice system could be made more fair and just for all people.

RECOMMENDATIONS

The following recommendations are proffered.

1. Instead of hanging the fate of an accused person on a singular Judge, it is recommended that a minimum number of three Judges should sit to determine capital punishment offences.
2. It is recommended that synergy should be fostered between medical sciences and the Judiciary in deciphering the presence of *mens rea*(evil intention) in criminal adjudication.

3. Jury system of criminal Justice adjudication should be deployed into the Nigerian criminal jurisprudence to assist in ascertaining culpability in criminal trials.
4. For any offence of omission or commission that is bereft of *mens rea*, an accused should be completely exculpated from criminal liability without any negative sanction since the component of a crime is made up of the *mens rea*. Hence, without this element, it should be deemed that no crime has been committed.
5. There should be a clear definition of *mens rea* in the law, so that it is clear what types of intent will be considered in each case.
6. There should be a clear standard for determining *mens rea*, such as the reasonable person standard. This would help to ensure that all cases are judged consistently. Burden of proof for establishing *mens rea* should be high, so that only those who have truly malicious intent are punished.