

**REVISITING THE RELEVANCE OF *MENS REA* IN DETERMINING
CRIMINAL RESPONSIBILITY UNDER THE CRIMINAL LAW**

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ABSTRACT

The most frequently contentious concept in the determination of criminal responsibility of a suspect is probably mens rea. This may be attributed to the inability of a sitting judge to readily ascertain the guilty mind of an accused being a mental state. Theoretically, mens rea is an English Common Law concept used to denote the guilty mind of a suspect in deciding his criminal culpability. It is a common knowledge that a person cannot be held criminally responsible for an act or omission which occurs independently of the exercise of his will because it is said, quite often that, not even the Devil knows the real intention of a man. Contradistinctively, it is the judges that are charged with the duty of determining both the guilty act and the guilty mind of an accused. The mens rea principle seems to suggest that a person who acts unintentionally is not liable under criminal law. However, it appears that this is not always the case as in certain circumstances a person may be liable for his unintended criminal act(s). This article reviews one of the constituent elements of a crime (mens rea) by analyzing different legislative provisions and judicial pronouncements on its relevance. It is observed that mens rea is a relevant element in the determination of criminal responsibility of an accused even though it scarcely comes up in strict liability offences and cases of transferred intent.

Keywords: *Mens Rea*, Criminal Responsibility, Criminal Legislation, Court, Relevance.

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INTRODUCTION

It is within the legislative competence of any law-making body² to proscribe an act or omission for the peace, order and good governance³ of the Federation, or for no reason whatsoever.⁴ In the course of exercising this legislative power, the lawmakers stipulate in very clear terms, certain acts that constitute a crime and prescribe the penalty thereto.⁵ This glaringly shows that an offence cannot be established in a legislation without stating expressly the act or omission (physical element) which constitutes such an offence. However, the same could not be said about the mental element, which is another constituent of a crime⁶ constituting the mental state of the accused. This is so because the legislators may outrightly exclude the mental element in a criminal legislation supposing

²The law-making body in Britain is Parliament, in United States of America (Congress), France (Assemblée Nationale); Russia (Federation Council); China (National People's Congress); and in Nigeria, it is called National Assembly; *Lawrence et al v. Texas 539 U.S. 558 (2003)*; *National Assembly v Accord [2021] 18NWLR (PT. 1808) 193*; Obiaora A.A, 'The Legislative and Legislative Oversight in Nigeria: An Appraisal *Chukwuemeka Odumegwu Ojukwu University Journal of Public and Private Law* (Maiden Edition, September, 2018); Faith Olanrewaju & Oluwatimilehin Deinde-Adedeji, 'The Legislature and Law Making in Nigeria: Interrogating the National Assembly (1999–2018)' (*Advanced in Africa Economics, Social and Political Development*). DOI: 10.1007/978-3-030-11905-8_2.

³The National Assembly in Nigeria consists of Senate and House of Representatives, ss. 4(1)(2) and 47 of Constitution of Federal Republic of Nigeria, 1999 as altered (4th Alteration, 2017).

⁴In *Obayuwana v Alli [1982] 12 SC 147*, the Supreme Court held that the motive for enacting a law cannot be impugned and that, it is not the business of the court to speculate as to the intention or purpose of enacting a particular law.

⁵Section 36(12) Constitution of Federal Republic of Nigeria, 1999 as altered; *Elephant Group PLC v National Security Adviser & Anor [2018] LPELR-45528 (CA)*; *Aoko v Fagbemi (1961) 1 ALL NLR 400*; *Kolender, Chief of Police San Diego, et al. v Lawanso 461 US 352, 103 S. Ct. 1855, 75 L. Ed. 2d 903 - Supreme Court, 1983*.

⁶Kharisu Sufiyan Chukkol 'The Law of Crimes in Nigeria' (Revised Edn., ABU Press Limited, 2010)., ISBN 978 125066-6. P 37-56; Okonkwo & Naish, *Criminal Law in Nigeria* (3rd Edn, Spectrum Books Limited, 2018); Bamgbose & Akinbiyi *Criminal Law in Nigeria* (Evans Brothers Nigeria Publishers Limited, 2015).

that, it has been impliedly included in the overt criminal act. Hence, this vests the interpretational burdens of determining whether the mental state of the accused is a factor to consider in convicting him, on the courts.⁷In ascertaining the criminal responsibility of an accused, the voluntary and intentional action or omission of the suspect is called guilty mind (*mens rea*). Therefore, for the prosecution to succeed in a criminal action, he must prove that the accused possessed the requisite mental state, which often includes elements such as; the exercise of will, intention, knowledge, recklessness, *inter alia*, beyond a reasonable doubt⁸. In *R v Quick*, the Canadian Supreme Court held in this case that *mens rea* must be established for each essential element of an offense.⁹

This paper begins with the discussion of crime and its constituents in order to review the importance of the mental element of an offence which is vital for the determination of criminal responsibility. It explores the significance of *mens rea* in determining criminal responsibility within the framework of criminal law. The paper equally suggests that presence or absence of *mens rea* of the accused

⁷In *Rehlf v United States*, 139 S.C 2191, 2196 [2019] the Court observed that the understanding that an injury is criminal only if inflicted knowingly (*mens rea*) is a universal and persistent in mature systems of law...; In *Morissette v United States* [1952] 342 U.S. 246, the Supreme Court held that a person cannot be convicted for a crime involving an omission or act unless it can be proven that they acted with criminal intent or *mens rea*; in *Elonis v. United States* [2015]135 S. Ct. 2001, the Supreme Court considered the issue of intent in the context of online threats.

⁸In *Re Winship*397 U.S. 358 [1970], the Supreme Court held that the Due Process Clause of the Fourteenth Amendment requires the prosecution to prove every element of a criminal offense beyond a reasonable doubt; *Amah v State* [2023] 3 NWLR (PT. 1871) 301 SC; *Orji v State* (2008) 10 NWLR (PT.1094) 31 SC; section 135(1) of Evidence Act (2011) Cap E.18 Laws of the Federation of Nigeria; Babara J Shapiro, 'Beyond Reasonable Doubt and Probable Cause: Historical Perspective on Anglo-American Law of Evidence'(University of California Press, Berkeley and Los Angeles, California, 1991). ISBN 0-520-08451-9.

⁹[1973] QB 910.

is relevant.¹⁰It argues that mental element should be considered even in a penal provision where it has been impliedly excluded.¹¹Thus, the work critically analyzes existing legislations in Nigeria and other jurisdictions, legal principles and judicial precedents relating to criminal responsibility with the aim of providing clarifications in light of contemporary understanding and social context of guilty mind (*mens rea*).

(I) CRIME AND CONSTITUENTS OF CRIME: CRIMINAL RESPONSIBILITY

(a) CRIME

Devoid of every jurisprudential definition as it will be proper to be contended with legislative interpretations and judicial authorities, “crime” is any act or omission which the lawmaking body has prohibited in a written code and the penalty of same is prescribed thereto. The provisions of Criminal Code and Penal Code as well as the Constitution of the Federal Republic of Nigeria lean credence to this submission when they provide respectively thus;

*An act or omission which renders the person doing the act or making the omission liable to punishment under this code, or under any Act, or Law, is called an offence.*¹²

(1) *Every person shall be liable to punishment under the Penal Code for every act or omission*

¹⁰Michael A. Foster, ‘Mens Rea: An Overview of State-of-Mind Requirement for Federal Criminal Offenses’ (Congressional Research Services, R46836 June 30th 2021); Anthony Kenny ‘Freewill & Responsibility’ (Routledge Revivals) ISBN: 0-415-00182-X.

¹¹Paul H. Robinson *Should the Criminal Law Abandon the Actus Reus-Mens Rea Distinction?* (1st Ed., Routledge Revivals, 2014) ISBN: 9781315085159, p. 1-26; Paul H. Robinson *Imputed Criminal Liability* (1stEd., Routledge Revivals,2014) p. 1-68.

¹² Criminal Code Act (CCA) LFN 2004, s2

*contrary to the provisions thereof of which he shall be guilty within Northern Nigeria (2) After the commencement of this Law no person shall be liable to punishment under any native law or custom.*¹³

*Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a law of a State, any subsidiary legislation or instrument under the law provisions of a law.*¹⁴

The foregoing provisions do not only capture the meaning of crime, they also suggest acts or omissions that could not constitute a criminal offence under the criminal law. It is gleanable from the above that; one, a crime may be a positive act or a failure to act when the law imposes a duty to act (omission).¹⁵ Two, a criminal offence must be in a written law and not a mere ministerial directive, or environmental policy.¹⁶ Therefore, a native law and custom, largely unwritten, cannot be a criminal offence.¹⁷ Three, there must be a punishment prescribed for the act or omission for it to be a crime. In the recent case of *Joseph Nwobike*

¹³ Penal Code Law 1963, s3

¹⁴1999 Constitution of Federal Republic of Nigeria, s36

¹⁵*R v Stone and Dobinson [1977] 2 All ER, 341; R v MacDonald (1904) St. R Qd., 151*; In cases of omissions to provide necessities, if death results, the accused may be charged under. Ss. 339 or 340 of Criminal Code as the case may be; See also s 300-305 of Criminal Code.

¹⁶*Faith Okafor v Lagos State Government & Anor. (2016) LCN/9050 (CA).*

¹⁷ In *Numan Federation N.A v Samari Numan (1961) NNLN 15*, the Court held that section 3(2) of Penal Code prevents any conviction under native laws and customs. *Owoniye v Omotosho (1961) 1ANLR 394*; In *Oyewunmi v Ogunesan [1990] 3 NWLR PT 137, 182 [207]*; *Lewis v Bankole (1908) INLR 81*.

SAN v FRN, the court held that a person cannot be convicted for an offence which is not known to the law and the punishment is not prescribed thereto.¹⁸

Similarly, in *United States v Hudson and Goodwin*,¹⁹ the Court clarified that the definition of a crime lies within the realm of legislative power, and courts cannot create new crimes or expand the scope of criminal liability beyond what is explicitly provided by law. Likewise, in *Aliyu v FRN*,²⁰ the Supreme Court held that, disobedience of ministerial directive is not penalized as a crime in a written law and as such, the conviction and sentence of the appellant for violating the directive offended section 36(12) of the Constitution of Federal Republic of Nigeria.²¹

The above exposition about the meaning of “crime” only seems to underscore the act or omission prohibited without including expressly a mental element that is required in the legislative meaning of crime.

(b) MENS REA AS A CONSTITUENT OF CRIME

Towards the end of the 12th century in Britain, a person who did a prohibited act was held liable without a recourse to the guilt of his mind.²² It was later thought that convicting a person who had no guilty intention did not depict the real sense

¹⁸(*SC/CR/161/2020*); *Aoko v Fagbemi (Supra)*; See section 36(8) of the Constitution of Federal Republic of Nigeria.

¹⁹11 US 32 (1821).

²⁰[2014] 5 NWLR (PT.1399) 101 SC.

²¹It must be stated however that disobedience to lawful order and by extension, lawful directive made by a Minister of the Federation acting under an extant law is an offence under the Criminal Code for which, upon conviction, the offender may be punished for imprisonment for one year. See; section 203 of CC; in *Maideribe v FRN (Suit: SC.176/2013)*, the Supreme Court held that a circular issued by a Federal Ministry of Transport is not an Order nor is it a legal notice and as such, the disobedience of such a circular is not a violation of section 203 of Criminal Code.

²²Kharisu Sufiyan Chukkol ‘*The Law of Crimes in Nigeria*’ (Supra) p.40.

of justice and fairness. Consequent to this realization, the concept of *mens rea* was introduced. Thereafter, no person could be convicted without an enquiry to the state of his mind, especially in homicide cases, except in cases of strict liability.²³

Mens rea is derived from the Latin Common Law principle expounded by Edward Coke, a Judge of King's Bench. The full Latin expression is "*actus non facit reum nisi mens sit rea*" meaning that an act does not make a man guilty unless his mind is guilty. However, different terms such as; will, intention, knowledge, recklessness, et cetera, have replaced *mens rea*²⁴ in criminal legislations in different jurisdictions.²⁵ *Mens rea* has been described to be very vague and slippery.²⁶ Both codes²⁷ which contain substantial provisions for different offences in Nigeria do not make mention of the term (*mens rea*). Therefore, *mens rea* is a term of convenience only __ shorthand form of complex notions. Its use cannot justify the introduction of irrelevant principles of English law into the Nigerian law.²⁸ Is *mens rea* an irrelevant principle of criminal law? But, before delving into its relevancy, some terms used to denote *mens rea* in criminal legislations are briefly examined.

(i) Will

²³ *Staples v United States 511 U.S. 600 [1999]*, the Supreme Court held that a defendant cannot be convicted under a federal firearms law unless the prosecution proves that the defendant knew he possessed a firearm and had the necessary *mens rea* regarding the firearm's characteristics.

²⁴ Child, J, Ormerod, D., Smith Hogan and Ormerod's *Essentials of Criminal Law* (2ndEdn., Oxford: Oxford University Press,2015) p. 9.

²⁵ Ibid.

²⁶ Ibid. Ft. 10.

²⁷ Criminal Code is applicable to the 17 Southern States in Nigeria and Penal Code is applicable to the 19 Northern States in Nigeria including Federal Capital Territory, Abuja.

²⁸ Okonkwo & Naish, *Criminal Law in Nigeria* (Supra). p 45.

Will as a state of mind. It is capable of polysemous meanings conceptually, legally, philosophically. It is highly difficult to decipher being a state of mind of the accused. Philosophically, will may be determined when a Judge uses mentalistic concepts to understand and respond to the actions and choices of an accused.²⁹ The will of a man requires the subjective process of examining the mind of the accused by the judge.³⁰ Will may also mean the intention, choice, wish or freewill of an individual. It includes in respect of an act or omission its surrounding circumstances not only the intention to do the act or make the omission but also awareness of all material circumstances.³¹ As regards criminal responsibility, will is very difficult to determine compared to an overt act of the accused, that is why it is often said that: The devil himself knoweth not the intention of a man.³² **Section 24 of Criminal Code** provides thus;

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. (The underlined is mine for the emphasis)

(ii) Intention

An act is intentional when it is done with full advertence to its consequences and a desire to produce them. Intention is a foresight of a consequence and a desire that the consequence ensues. In **Bakare v The State**³³, the court defined intention as a decision to bring about, in so far as it lies within the accused's power, a particular consequence, whether or not the accused desired that

²⁹ Ibid. Ft 10.

³⁰ Ibid, Ft 23.

³¹ Ibid. Ft.28.

³² It is attributed to Brian CJ in a medieval English case.

³³ [1987]) 1 NWLR 579.

consequence of his or act or not. **Section 8 of the Criminal Justice of England** which provides that “*a man intends the natural consequence of his action*” emphasizes the relevance of intention.

(iii) Recklessness

This refers to taking unjustified risk either with knowledge or with indifference that certain prohibited consequences will result from the conduct.³⁴**Section 5 of Federal Highways Act** makes any person who causes the death of another person liable by driving a motor vehicle on a Federal Highway *recklessly*, or at a speed or in a manner which is dangerous to the public.³⁵

It is therefore reemphasized that *mens rea* in whatever form is a constituent of crime. Similarly, the epithets used to describe *mens rea* of an accused in order to determine his criminal responsibility are unfortunately numerous in the statutes which may not be exhaustively covered herein. They include willfully,³⁶ knowingly,³⁷ intentionally,³⁸ falsely,³⁹ corruptly,⁴⁰ unlawfully,⁴¹ fraudulently,⁴² negligently,⁴³ voluntarily,⁴⁴ recklessly, et cetera. As these words are used in their adverbial forms in the criminal legislations, they could be used in their nominal or verbal or adjectival variants.

³⁴Oluyemisi Bamgboye & Sonia Akinbiyi (Supra) p. 21-23.

³⁵For example: violation of traffic codes *R v Layiwola [1960] WNLR 133; Odulami v The Nigerian Navy (2011) 6 NWLR (Pt. 1244) 589.*

³⁶Penal Code, s311

³⁷CCA, s469

³⁸CCA, s316

³⁹CCA, s108

⁴⁰CCA, s98.

⁴¹CCA, s162

⁴²Penal Code, s17

⁴³Penal Code, s128

⁴⁴Penal Code, s27

In *R v Cunningham*⁴⁵ the House of Lords in the United Kingdom clarified that *mens rea* is a necessary element for certain crimes. It held that the accused must have had the intention to cause the particular harm or be aware that their actions were likely to cause it. In *People v Decina*⁴⁶, a landmark case in the United States addressed the issue of *mens rea* in traffic offenses. The court ruled that the accused's mental state, specifically recklessness or negligence, should be considered in determining his culpability for vehicular manslaughter.

(c) CRIMINAL RESPONSIBILITY

Criminal responsibility refers to criminal liability of the accused person. The determination of criminal responsibility of an accused person is dependent on the duty of the prosecution to prove beyond reasonable doubt⁴⁷ which is the standard of proof in criminal matters. The courts have frequently used *actus reus* and *mens rea* to denote constituents of crime; both of which are from Latin words meaning guilty act and guilty mind respectively.⁴⁸

For an accused to be criminally liable, there must be concurrence of the physical act and the relevant state of mind. The point being made is that, *actus reus* which refers to the unlawful, positive, deliberate and voluntary act/omission of

⁴⁵ [1957] 3 WLR 76; 2 QB 396, 41 Crim. App. 155.

⁴⁶[1956]2 N.Y.2d 133.

⁴⁷ The principle of 'beyond reasonable doubt' was expounded in *Woolmington v DPP [1935] UKHL1; Rex v. Davies 29 Times LR 350; 8 Cr App R 211*, the headnote of which correctly states that where intent is an ingredient of a crime there is no onus on the defendant to prove that the act alleged was accidental. Section 135(1), 139, 141(1) of Evidence Act; *Emeka v The State [2001] 4 NWLR (pt 734) 666*.

⁴⁸“Guilty” as used denotes legal guilt not moral guilt where the law does not impose any legal duty to act, omission in such situation no matter morally wrong it could be, cannot make one responsible.

the accused must coexist with *mens rea*. This is called concurrence.⁴⁹ Besides, the physical and mental elements and their concurrence, causation is also an important factor to determine criminal liability. Causation refers to the consequence or effect of the defendant's act without any intervening event (*novus actus intervenis*). There must be a proof of an unbroken chain of causation which began with the defendant's initial act and ended with the result or consequence which arose from the act.⁵⁰

In *Re Polani*,⁵¹ an accused had beaten the deceased who, at that point in time, did not die. The deceased was then hanged in a fake suicide during which she died of asphyxiation. The accused was acquitted of the murder charge because at that time of beating, the intention to kill (*mens rea*) could have been present but unknown to him, the deceased did not die and while the subsequent hanging of the deceased which eventually led to the deceased's death was to fake suicide, but at this time, there was no intention *mens rea* to kill on the part of the accused.⁵²

(II) RELEVANCY OF MENS REA

The legislative omission to expressly state the mental element of a crime in a legislation is a common occurrence in criminal legislation and several reasons

⁴⁹ *R v Tolson* [1889] 23 Q.B.D. 168.

⁵⁰ *R v White* [1910] 2 KB 124; *R. v Pagett* [1983] 76 Cr.App.R. 279.

⁵¹ [1920] AIR (Mad.) 65

⁵² Contrast with *Thabo Meli v R* [1954] 1 WLR 228, the defendant was in a group of four who attacked their victim, believing him to be dead, he wanted to stage a suicide and so threw the victim off a bridge. The victim did not die before he was thrown over, he died of exposure in the river. The court held that the defendant was engaged in a continuous act — a series of acts that represented one single act from the outset (the murder of the victim) thus the defendant was guilty of murder. *R v Moloney* [1985] AC 905 House of Lords; *Smith v DPP* [1961] AC 290 House of Lords.

can be attributed to this omission. One, the lawmakers may suppose that existence of the mental element of a crime is implied in the actual guilty act. Two, it is often presumed that a crime requires a guilty mind to establish the responsibility of the accused. Therefore, lawmakers see it as superfluous to include the reference of the mental element to the provisions establishing the crime. Also, the omission or abrupt inclusion which often brings ambiguity of mental element of a crime could also be a deliberate resolve to keep the statutory language broad and flexible for the court to interpret. By not explicitly defining the *mens rea*, lawmakers allow the courts to interpret and apply the law based on the circumstance of each case. This approach grants discretion to Judges, who can consider various factors and evidence to determine the accused's mental state. However, the stated reasons could be displaced by the following observations to underscore the significance of *mens rea* in ascertaining criminal responsibility:

(a) Evidential Inclusion of State of Mind (*Mens Rea*)

In Law of Evidence, the basis of admissibility is relevance. **Section 11(1) of the Evidence Act** declares facts showing the state of mind such as intention, knowledge, negligence, rashness, relevant in judicial proceedings.⁵³ This means that *mens rea* is a relevant fact to prove by the prosecution and which the court must also take into consideration in determining the criminal responsibility of an accused.⁵⁴

⁵³Evidence Act, 2011, s1(1), 5,11; *Bamgboye v AG Western State [1966] ANLR; Jimoh Ishola v State [1978] 2 LRN 11; Candide-John v Edigin [1990] LCN/0101 (CA)*.

⁵⁴Motive is thus relevant and may be proved. While facts showing motive are declared relevant, it is not absolutely necessary to prove motive in all instances. In *Oguntolu v State [1987] 1 NWLR Pt. 50 p. 464*.

(b) Presumption of *Mens Rea* in a Criminal Legislation

The evergreen classic pronouncements in the case of *Sherras v De Ruzzen*⁵⁵ which had been applied by the Privy Council in Singaporean case of *Lim Chin Aik v R*⁵⁶ is relevant: Wright J held that:

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

In the words of Lord Reid in *Sweet v Parsley*⁵⁷ whose words have been relied upon by the West African Court of Appeal in the case *Clegg v COP*;⁵⁸

In such cases there has for centuries been a presumption that Parliament did not intend to make criminals of persons who were in no way blameworthy in what they did. That means that whenever a section is silent as to mens rea there is a presumption that, in order to give effect to the will of Parliament we must read in words appropriate to require mens rea.

It is humbly posited that mere omission of the mental element in a criminal statute should not be a justification for not considering the mental state of the accused who has evidently committed a crime which is independent of his will.

⁵⁵ [1895] JOB 918.

⁵⁶ [1963] AC 160 (PC).

⁵⁷[1970] AC 132.

⁵⁸ [1949] 12 WACA 479.

(c) Differentiation in the Liability and Sentencing of a Convict

Consideration of *mens rea* is relevant in determining the extent of liability of a convict and the term of the sentence. For instance, what sets the offences of murder and manslaughter apart is unlawful intention⁵⁹ and as such, their punishments are different.⁶⁰ This implies that *mens rea* as a constituent of a crime may, if established, serve as a defense, and sometimes, reduce the term of the sentence. The court in the case of *Timbukolian v R*,⁶¹ the appellant had killed their baby being carried by his wife in her arms by throwing a light stick in the dark with the aim of stopping his wife with whom he had a verbal exchange and who followed him outside to continue the verbal abuse. The appellate court held that the accused was not liable as the act occurred by accident.

In the High Court of Australia in *Vallance v R*,⁶² the considered **section 13(1) of Tasmanian Criminal Code** similar in terms with the first paragraph of section 24 of Criminal Code:⁶³

No person shall be criminally responsible for an act unless it is voluntary and intentional; nor, except as hereinafter expressly provided, for an event which occurs by chance.

⁵⁹ Section 316 and 317 of Criminal Code.

⁶⁰ Punishment for Murder is death while punishment for manslaughter is life imprisonment or a lesser term. Section 319(1) of Criminal Code; s. 220, 221 and 221 of Penal Code.

⁶¹ [1968] 42 ALJR 295. L 299.

⁶² [1961-1962] 35 ALJR. 182.

⁶³ Penal Code, s27

The fact of the case was that the accused fired an air gun at a group of children and hit one but claimed that he intended only to frighten them and was not aiming to hit. He was acquitted.

Likewise, it is observed that though the court cannot and will not pass any sentence in excess of the terms of years or amount of fine stipulated by the law. However, the Court can pass sentences lesser in terms than those stipulated in the statutes regard being had to the facts and circumstances of each case. One of the factors that could influence the court to exercise this discretion is the consideration of *mens rea* of the convict.⁶⁴

(d) In the Determination of Accident and Coercion Cases

Karibi Whyte, JSC in the case of *Aliu Bello & Ors v Attorney General of Oyo*⁶⁵ stated that "*An accident is the result of an unwilled act, and an event without the fault of the person alleged to have caused it.*" *The English law calls an accident a blameless inadvertence.*⁶⁶ While lack of intention on the part of the accused person may be a defence, it may also sometimes reduce the liability of the accused person. The following cases illustrate this assertion. In **Iromantu v State**,⁶⁷ the deceased grabbed a gun from the accused and in the struggle to collect back the gun, the accused mistakenly touched the trigger and the gun went off killing the deceased. The court held that the accused was not criminally liable since the act occurred independently of the exercise of the accused

⁶⁴*Ubiaru v Federal of Nigeria (2019) LCN/13563 (CA; Nafiu Rabiu v State (1980) 2 NLR 112.*

⁶⁵ [1986] 5 NWLR.

⁶⁶Bamgbose & Akinbiyi 'Criminal Law in Nigeria' (Supra).

⁶⁷ [1964] 1 All NLR 311.

person's will. In **R v Steaner**,⁶⁸ the accused a British subject had broadcast for the Germans during the second world war, his purpose was to save his wife and children from a concentration camp. After war, he was convicted of doing an act likely to assist the enemy with intent to assist the enemy contrary to Defence Regulation. The Criminal Appeal allowed his appeal because the prosecution had failed to prove the specific intent to assist the enemy, the evidence was equally compatible with the view that his intent his was to save his family.

Section 48 of Penal Code also provides:

That nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the course of doing a lawful act in a lawful manner by lawful means and with proper care and caution.

(e) Safeguarding Children from Criminal Liability

Section 30 of Criminal Code⁶⁹ exempts a child below the age of seven from criminal responsibility. This seems to be in consideration of the presumption in favour of the child that he is incapable of having a guilty mind at that tender stage. However, were *mens rea* deemed irrelevant, children below seven years could be held liable for criminal offences as it was done in the Tort case of **Garret v Dailey**. In that case, a young boy (5 years old) pulled a chair from underneath a woman's seat, who fell and broke her hip. She filed a lawsuit against the boy's family claiming that the boy had acted intentionally, causing her personal injury. The court found the boy liable and awarded \$11,000 against him. His family appealed on the grounds that he was an under-aged child and

⁶⁸ [1947] KB 997.

⁶⁹ See; Child's Right Act, s21; Penal Code, s50; Children and Young Persons Act, 1967

could not be liable for an intentional tort. *The court held that children can be held liable in Tort and that when the intent element is in place if the person knew with certainty that the act carries a risk of injury.*⁷⁰

Having explicated the relevance of *mens rea* in different situations, it is imperative to look into cases where *mens rea* may not be considered relevant. This is not to say that *mens rea* is not present but it should not be considered because there has been a breach of absolute duty not to do the criminalized act.

(III) STRICT LIABILITY OFFENCES

Strict liability offences are offences which the mere commission makes the offender strictly liable to punishment under criminal law without proof of mental element.⁷¹ Whether his mind is blameworthy is irrelevant. For instances; traffic rules⁷² and illegal sales of intoxicating liquor are considered strict liability crimes.⁷³ *Mens rea* is also not considered in treason.⁷⁴ This may be on the basis that ignorance of criminal law is not an excuse provided *mens rea* is not stated to be an element of the crime.⁷⁵ In strict liability offences the principle that a man intends the natural consequence of his action⁷⁶ is overemphasized.

⁷⁰[1955] 46 Wash 2d 197, 279 P.2d 1091.

⁷¹*Rylands v Fletcher* (1704) 91 ER 20, 314 and 634 (in civil cases).

⁷²Ibid. Ft.35.

⁷³ Bryan A. Garner (Ed.) Black's Law Dictionary, 9th Edition, p. 429

⁷⁴ CCA 2004, s37(1); 410 of Penal Code; For treasonable felony, the intention is known from the overt act of the accused. s412(2); *Queen v Enahoro (1965) 1 All NLR 125*.

⁷⁵CCA 2004, s22

⁷⁶ See section 50(3) of Criminal Code; *DPP v Chike Obi (1961) 1 All NLR 186*.

(IV) CASES OF TRANSFERRED INTENT

Transferred intent is a legal doctrine when a person intends to criminally harm one individual but instead unintentionally harm another individual causing an unintended consequence. Notwithstanding the lack of intention to hurt the other individual, he will be held liable under criminal law. In *Basonyi v AG Western Nigeria*,⁷⁷ the husband in the case intended to kill the wife with a cutlass but mutilated the child and the child died. The court held that the husband was liable for the death of the child even he never intended to kill the child. In *The People v Bland*⁷⁸ the Court observed that the doctrine of transferred intent applies when the defendant intends to kill one person but mistakenly kills another. The intent to kill the intended target is deemed to transfer to the unintended victim so that the defendant is guilty of murder.

CONCLUSION

It has been established that *mens rea* is a relevant element in criminal law and in fact, it is so important that it could exculpate or reduce the liability of an accused. It is suggested that legislature should always expressly insert the *mens rea* in the proscription of any criminal act. *Mens rea* is still undoubtedly a relevant element in the determination of criminal responsibility of an accused though it scarcely comes up in strict liability offences and cases of transferred intent.

⁷⁷ [1966] NMLR; *R v Latimer* [1886] 17 OBD 359, *R v Pembliton* (1874) LR 2 CCR.

⁷⁸ 121 Cal.Rptr.2d 546 (2002); *People v. Scott* [1996] 14 Cal.4th 544, 59 Cal.Rptr.2d 178, 927 P.2d 288 (*Scott*); *Ford v State of Maryland* 330 Md. 682 (1993).