# INTOXICATION AND CRIMINAL LIABILITY IN NIGERIA: A JURISPRUDENTIAL ANALYSIS*

***Abstract***
*This paper seeks to locate apparent and real inconsistencies in the criminal law governing intoxication and culpability. The study examines intoxication vis-a-vis criminal liability with regard to the conditions, if any, under which it is just and fair to exculpate persons charged with crimes when during the commission of the alleged acts they were under the influence of alcohol or other drugs. It is observed that much scholarly and judicial commentary has appeared over the years with regard to the vagaries of using intoxication as a defence strategy. Adopting a doctrinal approach, this inquiry has, inter alia, studied the positions in some other jurisdictions and juxtaposed them with what obtains under Nigerian criminal law.*

***Keywords:*** *Intoxication, Criminal Liability, Defence, Jurisprudence, Nigeria*

## 1. Introduction

Crimes of varying magnitudes are hatched and executed by human persons. On prosecution, however, they would lean on some defences to either justify the crime or to move the mind of the court to handing down to them less stiff penalty for the offence they have committed.[1] The situation in Nigeria is no exception to this issue. Indeed, it takes a guilty mind (*mens rea*) to do the guilty act (*actus reus*). Where a culprit acts out his intentions, but his mental state has greatly been altered by alcohol, for instance, and thus making him lose his sense of judgment, prior to and/or at the time of committing a crime, could he be excused from criminal liability?[2] Where the person voluntarily drugs himself and thus takes steps to commit a crime but may at his trial attempt to raise and rely on the defence of intoxication to negate the *mens rea* element, would he be or not be culpable? In fact, is intoxication a defence? If it is, how is it under the Nigerian criminal law? What would be the attitude of the courts when intoxication is raised and relied upon as a defence to a charge? This paper seeks to provide modest attempts at responding to these questions.

## 2. What is Intoxication?

The 21st Century Chambers Dictionary defines intoxication as 'a condition in which certain centers of the brain are affected by alcohol or other drugs, gases, heavy metals or other toxic substances. It is characterized by impaired intellectual ability, confusion… etc'.[3] Mitra's Legal and Commercial Dictionary defines intoxication as 'a condition produced by excessive use of alcoholic stimulants and/or hard drugs. Intoxication implies a situation where a person's state of mind have greatly been

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[1] A. Aguda and I. Okagbue, *Principles of Criminal Liability in Nigerian Law*, 2nd Edition, 1990, Ibadan, Heinemann, p. 341.

[2] Ibid.

[3] *Chambers 21st Century Dictionary*, Revised Edition, 2004, Edinburgh; Harrap, p. 712

altered to the extent of which its ability to act with full physical and mental capabilities has been diminished as a result of consumption of drugs, stimulants, and/or alcohol'.[4] Generally speaking, **intoxication** is not a defence to a crime as such, but where a person is **intoxicated** having consumed drink or drugs and commits a crime, the level of **intoxication** may be such as to prevent the defendant forming the necessary *mens rea* of the crime.[5] Public policy plays a strong factor in ascertaining whether the defendant's **intoxication** may be used by him to negative the *mens rea* of crimes of specific intent.[6] It is obviously not in the public interest for criminals to escape liability simply by saying that they were so drunk that they did not know what they were doing. This is often seen as an aggravating factor rather than a mitigating factor, particularly where the defendant put himself in that position.[7]

A person is intoxicated if he/she is affected by intoxicant.[8] Thus, intoxication is a situation where by reason of taking intoxicating substance, the person does not have the normal use of his faculties (physical or mental), thus rendering the person incapable of acting in the manner in which a sober man in full control of his senses, would act under similar conditions.[9] Intoxication must be such that can make a person incapable of forming the necessary intent. An intoxicant can be described as substance when taken by a consumer can deprive that consumer of the ordinary use of his senses or of his ability to reason clearly and intelligibly.[10] For the purposes of this paper, intoxicants include alcohol, psychotropic substances, barbiturates, opiates, and stimulants; but can, in theory, extend to any other substances that have the capacity to intoxicate a consumer of same, altering the consumer's consciousness, cognition, as well as sense of judgment.[11]

**3. What gives rise to a State of Intoxication?**

A person is intoxicated where he is affected by any intoxicating substance, and as stated before, intoxication can be caused by alcoholic liquor, hard drugs and/or a combination of both.[12] Intoxication is a situation whereby a person by reason of taking intoxicants into his system, that person ceases to have a firm control of his faculties, and thus rendered incapable of acting in a manner in which an ordinarily sober, prudent, and cautious man, in full possession and control of his senses, would act under like conditions.[13] Section 29 (5) of the Criminal Code[14] provides that intoxication shall be deemed to include a state produced by narcotics or drugs. The Code only points out that a person can be intoxicated if he consumes hard drugs or narcotics. It is respectfully

[4] Ibid., p. 478

[5] Aguda & Okagbue, *op. cit*., p. 345

[6] G. Williams, QC, *A Textbook on Criminal Law*, 2nd Edition, 2009, Universal Publishers, p. 464.

[7] M. T. Molan, *Source Book on Criminal Law*, 2nd Edition, 2001; London, Cavendish, p. 273.

[8] A. S. Hornby, *Oxford Advanced Learner's Dictionary, International Student's Edition* (New 8th Edition); 2010; Oxford, p. 789

[9] C. O. Okonkwo, *Criminal Law in Nigeria*, 1980, 2nd Edition; London; Sweet & Maxwell, p. 149

[10] K. D. Gaur, *Criminal Law Cases and Materials*, 5th Edition, 2008; London, Lexis Nexis Butterworths, p. 147; See also Okonkwo, p. 149

[11] Classification of substances under the NDLEA Act

[12] Oxford Dictionary supra

[13] Okonkwo supra

[14] Cap C38, Laws of the Federation of Nigeria, 2004

submitted that it may appear that the draftsman did not include alcoholic beverages as items that are capable of intoxicating a person when taken. Yet it appears to the authors that since alcohol can intoxicate its consumer, then it qualifies as an intoxicating substance.

In the leading English case of *DPP v Beard,*[15] Lord Birkenhead LC, on what may amount to a state of intoxication, observed that:

> Where a specific intent is an essential element in offence, evidence of a state of drunkenness rendering the accused incapable of forming such intent should be taken into consideration in order to determine whether he had in fact formed the intent necessary to constitute the particular crime. If he was so drunk that he was incapable of forming the intent required he could not be convicted of a crime which was committed only if the intent was proved.

Under Article 31 (1) (b) of the Rome Statute of the International Criminal Court, a person shall not be criminally responsible if, at the time of that person's conduct:

> The person is in a state of intoxication 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 to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court.

It is clear that drunkenness of a defendant must be such that would have to a reasonable magnitude rendered him incapable of hatching a plot to commit an offence. Since he is not in full control of his senses, it follows that he may not be able to form an intent to commit an unlawful act. Intoxication is relevant only to the extent that it may serve to establish the absence of the requisite mindset needed to incur criminal liability.[16]

**4. Is Intoxication a Defence at Criminal Law?**

According to Sir Edward Coke, a drunkard who is *voluntarius daemon* has no privilege (cannot rely on this defence). But what hurt or ill so ever he doth, his drunkenness is not excuse for any crime whatever; yet it is often of great importance where it is a question of intention. A person may be so drunk as to be utterly unable to form any intention at all, and yet he may be guilty of a crime.[17] In the Indian case of *Bablu alias Mubraik Hussain v. The State of Rajasthan,* the Supreme Court of India, in dismissing the appellant's appeal, held that defence of drunkenness can be availed if only when intoxication produces such a condition as the defendant loses the requisite intention for the

[15] (1920) A.C. 479

[16] Okonkwo *op. cit*, p. 155

[17] *R v. Cruse* (1838)

offence.[18] Under the Criminal Code[19] intoxication is not a defence to criminal liability. Its implication is that it is not per se excusable under the law except where some conditions exist that may afford a culprit the opportunity to rely on it as a defence. Section 29 (1) of the Code states thus: 'Save as provided in this section, intoxication shall not constitute a defence to any criminal charge'. Section 29 (2) provides that 'intoxication shall be a defence to any criminal charge if by reason thereof, the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and-

(a) The state of intoxication was caused without his consent by the malicious or negligent act of another; or

(b) The person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

The Criminal Code provides that if a defendant establishes that he was intoxicated in line with the clear letters of section 29 (2) (a), and upon proof beyond any iota of doubt to the satisfaction of the Court, he shall be discharged. A defendant may also lean on section 29 (2) (b) (i), if by reason thereof, the defendant, at the time of the act, did not know that what he has done is wrong, or that he did not know what he was doing at the time of his doing the act or wrong complained of.[20] Where a defendant was reduced to an insane person by reason of intoxication, which case falls within the purview of section 29 (2) (b) (ii) of the Code, and upon careful and proper checks made on him to ascertain that he is insane to the satisfaction of the court, the court may order that the defendant be remanded in a lunatic asylum, and at the pleasure of the Governor of the State.[21]

Intoxication is a question of fact that has to be proved by evidence. The burden of establishing the defence of intoxication rests on the defendant; and for the defendant to succeed on this defence, the onus to be discharged, on the balance of possibilities, by the defendant are bifurcated. He would either show that at the time of the act or wrong complained of, he did not know what he was doing and the state of intoxication was involuntary or due to negligent act of another person or persons.[22] Alternatively, at the time of such act/omission or wrong complained of, the defendant was temporarily insane.[23]

**5. Can Intoxication (Voluntary or Otherwise) be an Excuse for Criminal Liability?**

The Criminal Code recognizes that there may be involuntary intoxication as envisaged by the provisions of section 29 (2) (a). When such is the case, the defendant who may rely on defence of intoxication shall succeed on it. The issue here is how then can one ascertain how involuntary the intoxication may be, taking into account the circumstances which gave rise to the defendant

[18] (2007) SC 7

[19] Cap C38 supra; which is *in pari materia* with Section 19 (2) of the Criminal Code Law; Cap 32, Revised Laws of Anambra State, 1991.

[20] *Ibid.*

[21] *Ibid.*

[22] See Section 131, Evidence Act 2011; see also Section 36 (5) CFRN 1999; *Osakwe v. AG Bendel State*, Suit Number CA/B/157/1988

[23] D. Sasegbon, SAN, *Sasegbon's Laws of Nigeria*, 1st Edition 7(Part 2) Volume 1301; 2005, Lagos; DSC Publishers, para 1331, p. 771.

committing the crime? Also, consent or knowledge may imply that defence of intoxication would not stand if the defendant gave his consent having full knowledge of the situation. The English case of *DPP v Beard* [24] may have proffered an answer to this where it was held that so long as the defendant was drunk and his drunken state so impaired his judgmental abilities that he was unable to form an intention to commit a crime, intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intent, specific or otherwise. Where there is absence of intent, then the defendant would not be guilty of the offence complained of.[25] The Federal Supreme Court in *Nkwulebe v The Queen*[26] held that mere absence of motive for a crime, however atrocious it may be, in the absence of proof of insanity, or evidence to drunkenness that produces such a degree of madness, even for a time, as to render the accused incapable of distinguishing wrong from right, cannot avail the defendant of the defence of intoxication as provided in sections 28 and 29 of the Criminal Code.

In *John Imo v The State,*[27] the Supreme Court of Nigeria held that:

> There is the insanity that occurs through natural process without any inducement. There is a disturbance of the mind whereby the accused never knew what he was doing but never appreciated the consequences. This type of insanity is a defence if pleaded and proved. The other type of insanity is the one that is self-induced by an accused person by taking alcoholic drink or other intoxicating and stupefying substance that renders the accused insane for a period because of the effect of the drink or stupefying substance. The substance could be drug like cocaine, cannabis sativa or any of the gaseous substances having intoxicating and stupefying influence on the consumer. In this case, the accused voluntarily without any urge by either in the way of medical prescription or necessity takes the substance and runs into a criminal act. For this, the intoxication is self-induced and it is no defence. In the case of a crime committed, for example, murder, during the period of self-induced intoxication, it is no defence to a charge that the accused did not intend to do the act alleged in the offence. He is presumed to intend the natural consequence of his act. The accused is not a person lawfully authorized to hold cocaine and he claims that he took cocaine and in the process violently attacked the deceased and killed him. No accused is allowed to take shelter under defence of intoxication if intoxication is self-induced. The appellant could not excuse his conduct or his getting off his head or faculty simply because he voluntarily took cocaine or any other stupefying substance.

[24] *Ibid.*

[25] See Section 29 (4) of the Criminal Code.

[26] (1963) 1 SCNLR; 31

[27] (1991) 11 SCNJ, 137 & 159

In the English case of *DPP v Majewski,*[28] it was contended that if intoxication affected the mind of the accused person, then it was illogical and unethical to distinguish between its effect on one state of mind and on another. It was argued that there is no permissible distinction between offences of basic intent and those of specific intent. The prosecution contended that that distinction had nevertheless represented the law of England for many years. The House upheld the contention of the prosecution, and it did so knowing fully that it was not perfectly logical. Its decision was predicated on the grounds of public policy. Historically, the law of England regarded voluntary intoxication as an aggravation rather than a potential excuse and the development of the law had been by way of a partial, but only a partial, relaxation of that common law rule where a specific intent was required. A distinction must be drawn between *voluntary* and *involuntary* intoxication. If a person had an unexpected reaction if he unwittingly consumed intoxicants (without, it appears, fault on the defendant's part), the defendant is said to have been involuntarily intoxicated; such a defendant could tender evidence to demonstrate that he or she lacked the fault for a crime. If, however, the accused intentionally consumed intoxicants, the rules governing the admission of intoxication evidence may be strict, and the Courts would rarely allow the culprit go free in the circumstances.[29]

In *Egbe Nkanu v State,*[30] the Supreme Court, in dismissing the appellant's appeal, held that self-induced intoxication cannot avail a defendant. The appellant in that case did not adduce evidence to support the defence of intoxication; rather, he succeeded in proving to the Court that he behaves abnormally at times. He voluntarily drank palm wine on the day he murdered the deceased; and according to him, he used machete to cut the deceased to death and he claimed he did so under the influence of alcohol. He did give evidence to the effect that he did not know what he was doing or that the act which he did, he did not know that such was unlawful.

In *R v Hardy,* the defendant set light to a wardrobe after consuming some out of date valium tablets which had been prescribed to his partner. He took the valium tablets as he was feeling stressed as his partner had asked him to leave their home. He was charged with arson. At his trial he stated that he remembered nothing of starting the fire due to his intoxicated state but accepted that he must have started it as he was the only one in the room when it started. The trial judge directed the jury that as the defendant had voluntarily consumed the valium, his intoxication could be no defence to the crime committed. The defendant appealed against this decision handed down by the Court. On appeal to the English House of Lords, the Law Lords held thus:

> In the present instance, the defence was that the Valium was taken for the purpose of calming the nerves only, that it was old stock and that the Appellant was told it would do him no harm. There was no evidence that it was known to the Appellant or even generally known that the taking of Valium in the quantity taken would be liable to render a person aggressive or incapable of appreciating risks to others or have other side effects such that its self-administration would itself have an element of

[28] (1977) HL

[29] Molan supra, p. 279

[30] (1980) 3 – 4 SC 1

> recklessness. It is true that Valium is a drug and it is true that it was taken deliberately and not taken on medical prescription, but the drug is, in our view, wholly different in kind from drugs which are liable to cause unpredictability or aggressiveness. It may well be that the taking of a sedative or soporific drug will, in certain circumstances, be no answer, for example, in a case of reckless driving, but if the effect of a drug is merely soporific or sedative, the taking of it, even in some excessive quantity, cannot in the ordinary way raise a conclusive presumption against the admission of proof of intoxication for the purpose of disproving *mens rea* in ordinary crimes, such as would be the case with alcoholic intoxication or incapacity or automatism resulting from the self-administration of dangerous drugs.

The Court's decision has drawn a fine line between involuntary intoxication and voluntary intoxication. Involuntary intoxication results where a person has had his food or drink spiked without his knowledge. However, it may also cover where the effect of a particular drug has an unexpected result or that the effect of which is unanticipated; but if the effect of that intoxicant is anticipated, but the defendant merely underestimates the strength of the intoxicating drug, then the intoxication remains voluntary. In *R v Allen,*[31] appellant consumed some homemade wine. This had a much greater effect on him than anticipated. He committed sexual assaults and claimed he was so drunk that he did not know what he was doing. He argued that he had not voluntarily placed himself in that condition as the wine was much stronger than he realized. The Court held that intoxication was still voluntary even though he had not realized the strength of the wine. The crime of sexual assault is one of basic intent and therefore the appellant was unable to rely on his intoxicated state to negative the intent.[32]

***6. Intoxication as a Defence--Basic and Specific Intent***

It was in the case of *DPP v Beard* that Their Lordships crafted the principle or rule of 'Specific Intent' thus:

> Where a specific intent is an essential element in the offence, evidence of a state of drunkenness rendering the accused incapable of forming such intent should be taken into consideration in order to determine whether he had in fact formed the intent necessary to constitute the particular crime….

Defining specific and basic intent crimes has posed problems to legal scholars since every definition does not fully capture the concept, and of course it will not go without exceptions. But a crime that requires a defendant to intend some unlawful outcome or result that is specifically identified in the offence is a specific intent crime. All other criminal damage and assault offences are basic intent crimes. It will be wrong to assume that every offence can simply be categorized as of specific and basic intent. There are always diverse elements that need proof of different state of mind.

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[31] (1988) Crim LR

[32] P. A. Onamade, *Cases and Materials on Criminal Law*, 1st Edition, 2008; Lagos, Philade Publishers, p. 1035

Intoxication is no defence to strict liability offences. Where a person is arrested and charged to court for the offence of drunk driving, he shall have no excuse to the crime for it is a strict liability offence, but drinking alcohol may genuinely reduce inhibitions and may cause a defendant to act differently from the way he would but for his state of intoxication. If it is shown by evidence that he was in truth knocked out cold, and same made him not to realize or intend the natural consequences of his actions, he may plead the defence of intoxication, and same may avail him.

Where a defendant fortifies self with alcohol or drugs to gain the guts to commit a criminal act, this is known as *Dutch courage* and therefore is not an acceptable defence, as was the case in the Irish matter of *Attorney General for Northern Ireland v Gallagher.*[33] In that case, the prosecution appealed against the decision of the court below which acquitted Mr. Gallagher (The Respondent) over the murder of his wife. The facts, according to the prosecution, were that the respondent had nursed the idea of killing his wife. He made futile attempts to do so but he could not. It was even reckoned for him that he was an aggressive psychopath. The respondent guzzled down a big bottle of whisky just to gain the guts to carry out the act he had hatched. The following morning, he left a knife in his wife's heart; and a hammer too, which, according to the prosecution, suggested that he may have severally hit his wife with the hammer when he realized that the knife thrusts did not finish her off. In allowing the appeal, the House of Lords held that the respondent cannot rely on the defence of intoxication, since he formed the guilty intent but could not do the act, and resorted to taking alcohol just to gain some courage to gruesomely murder his wife in cold blood; thus he cannot lean on the premise of Dutch courage to get off the hook for a crime which he deliberately have committed.[34]

**7. The Defence of Intoxication: Echoes from Some Foreign Jurisdictions**

Historically, the numerous communities and ethnic groups that make up Nigeria have got their own uniqueness and peculiarities in terms of the native laws and customs that govern them. Under the common law, intoxication could not be an offence. This position of the law was not shared by the Maliki scholars of the pre-independent Northern Nigeria for whom mere drinking of alcohol is an offence (*Shurb*) on its own, and same is outlawed under the various Sharia Penal Codes of core northern states.[35] It is an offence punishable in the North as part of its customary offences before the introduction of the Penal Code of Northern Nigeria by the British colonialists and Administration of Criminal Justice Act (ACJA) 2015. ACJA seeks to unify Criminal Procedure Act and Criminal Procedure Code; and same made applicable throughout the Federal Republic of Nigeria. Under Shari'a law, alcoholism is an offence. Witnesses to the act of the culprit may not be required to give direct evidence. If the culprit reeks of alcohol; and a witness testifies to the fact that he saw the culprit take alcoholic drink; then such evidence is sufficient evidence of drunkenness. [36]

In the South of Nigeria, intoxication was never regarded as a crime under the native laws of the communities of the South. Drinking and merry-making are seen as part of normal social life. With the introduction of the Criminal Code, intoxication which may arise as a result of intake of alcohol, weed, and other substances does not automatically avail a culprit as a defence to his/her crime save

[33] (1963) A.C. 349

[34] Ibid.

[35] Aguda and Okagbue *supra*

if by reason of intoxication, the accused lost his ability to think clearly (losing the ability to form a guilty mind); and that led him to doing the act complained of.[36] If the accused deliberately and voluntarily ingested substances, and goes ahead to doing the act complained, he would fall short of the provisions of the Criminal Code.

A close careful study of intoxication would reveal that one common denominator runs through it in some jurisdictions other than Nigeria; to the effect that intoxication is no excuse for a crime; and that same cannot avail an accused person. If intoxication is self-induced with the sole aim of committing a criminal act or some wrong; then the defendant cannot rely on intoxication to escape liability or to receive a less stiff punishment for his crime. Where the defendant is a victim of substance intake (abuse), such that he/she lacks the cognition and the ability to form the necessary intent to committing a crime, he may rely of the defence of intoxication so long as there is clearly no intention formed to commit an alleged act or omission.[37]

In Canada, intoxication does not exculpate a defendant from criminal liability. Rather, in some cases, defendant's proof that he was intoxicated is relevant either to rebut the mental element or, more rarely, the criminal act which the prosecution must prove to secure conviction. The mere loss of inhibition caused by intoxication is not an excuse to a criminal charge.

In Sri Lanka (formerly Ceylon), and in Pakistan, the law excuses a person from criminal liability for otherwise criminal actions, if by reason of intoxication the person was incapable of reason of knowing the nature of the act provided that the intoxication was involuntary. This position of their law is similar to the unsound mind defence. The Code also provides that a defendant who is voluntarily intoxicated (or did self-induced intoxication) will still be criminally liable for his actions in a specific intent crime if he had the same knowledge as he would have had if he had not been intoxicated. This opens the door to a factual inquiry into an intoxicated person's state of mind at the time the person committed the alleged crime. Consent cannot be given under any of the Penal Code by an intoxicated person if he is unable to understand the nature and consequence of that to which he gives his consent.[38]

In India, Singapore, Thailand and Malaysia, voluntary intoxication affords no excuse to the accused, but if the accused leads evidence that at the time he was doing the criminal act, he was incapable of judgment by reason of intoxication; and he was incapable of understanding the nature of the act; or that what he is doing is contrary to law, so far as the thing which intoxicated him was administered to him without his knowledge or against his will. This also opens the door to inquiry into an intoxicated person's state of mind at that material time. In essence, the law grants immunity to the accused intoxicated involuntarily.[39]

The Penal Codes of Pakistan, Malaysia and Singapore, also go further to provide that in cases where an act done is not an offence unless done with a particular (specific) intent, if the doer of the act is

[36] *Ibid.*

[37] Molan *supra*, p. 279; see also Williams, p. 466

[38] See Sections 85 and 86 of the Indian Penal Code.

[39] K. D. Gaur *supra,* p. 148; see also Section 29 (2) of the Criminal Code Act

intoxicated, he shall be liable; and he is to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the substance which intoxicated him was administered to him without his knowledge or against his will.[40] The thrust of this is that if a defendant is intoxicated but he was 'high' that he was unable to know that what he did was legally wrong; and that the substance he was exposed to was so done independent of his knowledge or was carried out against his will. This is also the position of the law in Nigeria, and where the defendant satisfactorily proves same; the Criminal Code will afford him immunity.

Some states of the United States of America recognize intoxication as a legal defence to a crime. As it is the case in other jurisdictions such as the United Kingdom, India, Canada, Australia, and New Zealand, there is a vital distinction between voluntary and involuntary intoxication. Intoxication, as stated herein is no excuse for committing a crime. Since ancient times, debate has ensued as to whether intoxication should be partially excusing or whether it should increase the gravity of the crime. Great thinkers like Saint Thomas Aquinas believed that intoxication should be partially excusing. In contrast, Aristotle thought the penalty should be doubled, since in addition to the crime, the intoxicated individual was setting a bad example for others. However, the law is certain and justice has to be served according to the extant law and practice in force.

Although voluntary intoxication cannot be used as a basis for an insanity defence, in some jurisdictions there is a concept of "settled insanity" resulting from a period of drug usage. Settled insanity does qualify for an insanity defence. Since late 19th century in the State of California, "settled insanity" can result from drug or alcohol use over a period of several months or even hours as long as it is not just a temporary condition produced by recent, rather than long standing, use of drugs or alcohol.

In some US states, voluntary intoxication does not excuse criminal conduct, but it can be used under limited circumstances to negate the intent. There is a further distinction between general intent crimes, where the accused intends merely to perform an action but not necessarily the one that resulted, and specific intent crimes, which require proof that the actor intended to perform the specific criminal act charged. Voluntary intoxication, including that resulting from habitual drug or alcohol consumption, is normally not a defense to general intent crimes like assault and battery. However, voluntary intoxication may be used as proof that the defendant did not mean to perform a specific criminal act, such as murder, and can serve as evidence to negative the mental element of specific intent crimes. The voluntary intoxication defence is often asserted in homicide cases to disprove pre-meditation, deliberation, or intent to kill on behalf of the defendant. Involuntary intoxication is the result of coerced intoxication, mistake as to the nature of substance consumed, intoxication from prescribed medication, or pathological intoxication. Under the English common law, it could excuse criminal liability of any resulting actions by the defendant. Some jurisdictions treat involuntary intoxication like temporary madness. While the American law recognizes involuntary intoxication as a separate and distinct excuse which may afford a defendant some measure of immunity; under the German law, intoxication, if acute, is integrated into the framework of insanity.

[40] Provisions of sections 85 and 86 of the Indian Penal Code are similar to those of sections 85 and 86 of Penal Code of Malaysia, and that of section 89 of the Penal Code of Singapore.

In the Republic of South Africa, intoxication is a legal defence in criminal matters in certain circumstances. In the first instance, however, a distinction is drawn between self-induced intoxication and situations where the actor became intoxicated as a result of occurrences which he had no control over. Obviously, the person cannot be held accountable for things that he or she has no control over. South African law recognizes intoxication in these situations as a total and competent defence available to the person who was intoxicated while committing a crime. South Africa though a full member of the Commonwealth, incorporated the Roman-Dutch laws into its corpus of laws.

In the case of voluntary intoxication, the doctrine of *actio libera in causa* applies in terms of which the perpetrator who deliberately drugs himself in order to commit a crime is held fully responsible. Where the intoxication is not the result of an intended commission of a crime, but does lead to a state of mental disease or incapacity, the normal rules in respect of a defence of mental incapacity may apply.

Where someone is so intoxicated that his or her actions can be regarded as automatic and devoid of any mental control, whatever the result of his or her actions, he or she would not be criminally liable. The defence here is one of automatism. Someone may be so intoxicated as to be unable to appreciate that what he or she is doing is in fact unlawful or wrong. In such instances, the person is held to have lacked sufficient criminal capacity and can therefore not be found guilty of any crime. Where the person is intoxicated but not to the extent that he or she cannot appreciate the unlawfulness of the act, it may still be that such person is too intoxicated to form the required intent to commit the act. Here the perpetrator may not escape liability entirely, as it is possible for lack of intent to amount to negligence, e.g. If X stabs Y while heavily intoxicated, as a result of which Y slumps and dies. X is shown to have been too intoxicated to form the intent to kill Y, but not so drunk that he could not have foreseen that Y may perhaps die as a result of his act. He is therefore guilty of manslaughter, or culpable homicide, but not murder. Where intoxication does not fall under any of the previous situations, the actor does not escape liability, but the state of intoxication, and degree thereof, may have the effect of mitigating the sentence which the trial court may hand down on the concerned culprit.

In instances where the offence with which someone is charged requires only negligence to be proven, it is assumed that while the reasonable person is not someone who never drinks, it is nevertheless negligent of him or her to, for instance, drive a car while being intoxicated, as the reasonable person would appreciate that his or her abilities may be negatively affected by the intake of alcohol. Therefore, the person would also not escape liability. Where you have had sufficient intake of alcohol to materially affect your inhibitions and understanding, it would hardly be just and equitable to punish someone else for your lack of appreciation of the circumstances and situations you find yourself.

The South African appellate court has stated that, as a general rule, drunkenness (intoxication) is not an excuse for the commission of a crime, though it may be a reason for mitigation of punishment. If the drunkenness is not voluntary, and is severe, it is an excuse; that is, if the drunkenness was caused not by the act of the accused person but by that of another, and was such as to make him

unconscious of what he was doing, then he would not be held in law responsible for any act done when in that state. If constant drunkenness has induced a state of mental disease, *delirium tremens*, so that, at the time the criminal act was done, the accused was insane, and therefore unconscious of his act, he is not responsible, but in such a case he can be declared insane.[41]

The obvious golden thread that runs through the laws of the aforestated jurisdictions including Nigeria is that intoxication cannot avail as a defence to an accused save in certain circumstances provided in criminal laws of the various countries we have attempted at examining.

**8. Conclusion**

In this paper, a very modest attempt has been made at examining the legal defence of intoxication; whether that can be a defence available to a defendant charged for a crime; whether the defendant can be immune from the harsh side of the law in event of default; as well as the attitude of the Courts in determining the criminal culpability of the defendant where he attempts to prove to the trial court that he did the act but it was due to the fact that he was 'high' on substance either administered to him or that he voluntarily ingested substances just to muster courage to do the complained act.[42] Will the trial court ever believe the story of the one who in actual sense, voluntarily took alcohol (or hard drugs) to commit a crime, but would come to court to deny same, claiming that he did not know what he was doing at the time of committing the alleged crime? Would the Court also believe the story of a defendant, who is a victim of substance intake, lacking the ability to form the *mens rea* of a crime for which he is standing trial? Evidence Act places on him the burden to prove that he did not know what he was doing at the time he was doing the unlawful act.[43] This underscores the beauty of our jurisprudence, as he is given the opportunity to defend himself.[44]

Ordinarily, intoxication is not a defence to a criminal charge against a defendant, but it can be relied upon by the defendant if there are circumstances or situations captured in the various national laws, to the effect that the accused did not give his consent; lacked the ability to form the intention to commit a crime; and due to the fact that he did not know what he was doing, he did the act independent of his will. The defence can avail him if he proves that he was drugged against his will or consent; and that intent was basically lacking. It can be seen that the defence of intoxication can provide an effective response to a criminal charge and may lead to an acquittal. However, there are limitations and it is probably more appropriate to consider intoxication not as a defence as such but relevant to the question or issue as to whether *mens rea* can be established by the prosecution. It is possible to argue and make out a case for allowing the defence in such circumstances by reference to the fundamental principles of criminal liability, namely, the need for a voluntary act '*actus reus'* and the coincidence of the necessary *mens rea.* In all, it is most respectfully submitted that intoxication is a defence which is not absolute or automatically available to an accused standing trial save and subject to his satisfactorily showing that certain circumstances would prompt him to lean thereon so as to be immune from liability or be given less stiff penalty.

[41] S v. Johnson (1969) 1 SA 201 (A)

[42] Aguda and Okagbue *supra*, and also Williams, p. 465

[43] See Section 131 of the Evidence Act, 2011.

[44] See Section 36 (5) of Constitution of the Federal Republic of Nigeria 1999 (as amended).