**CRIMINAL LAW II (PUL 302)**

**COURSE OUTLINE**

1. Conspiracy

2. Assaults (Non-Sexual and Sexual Assaults

3. Stealing and Robbery Offences

4. Imprisonment, kidnapping under Non-Sexual Offences, while Rape, Attempt to Commit Rape and Defilement will be considered under sexual assault.

5. Manslaughter

6. Attempt to Commit Murder

7. Defamation

8. Economic and Financial Offences.

**READING MATERIALS**

Chukkol, K.S., *The Law of Crimes in Nigeria* (Revised Edition. Ahmadu Bello University Press,2010)

Edeh. A. N., *Criminal Law in Nigeria: A Practitioner’s Guide* (Snaap Press Ltd, 2015)

Okonkwo, C.O., *Criminal Law in Nigeria* (Second Edition, Spectrum Books Ltd, 2012)

**Topic 1**

**Conspiracy**

This is an offence to conspire to commit an offence. It is provided for in section 516 of the Criminal Code (See also section 97 of the Penal Code). Parts of the Criminal Code which make provisions for conspiracy are as follows:

1. Conspiracy to commit a felony against law of a Statute – S. 516
2. Conspiracy to commit offence which is not a felony – S. 517
3. Conspiracy to commit offence outside a state but which is an offence within that State S. 17

**Meaning of Conspiracy**

S. 96, Penal Code defines criminal conspiracy as “when two or more persons agree to do or cause to be done: (a) an illegal act; or an act which is not illegal by illegal means, such an agreement is criminal conspiracy.” However, the agreement will only amount to conspiracy of some act is done besides the agreement.

In a similar vein, Fabiyi JSC in *Shurumo v State* described it thus:

A conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act by unlawful.

**Unlawful Purpose**

It is an offence to conspire to commit a felony (CC, S.516), or a misdemeanor (CC, S. 517). Section 518 specifies a number of purposes which render an agreement a conspiracy. These are:

1. to prevent or defeat the execution or enforcement of any written law;
2. to cause any injury to the person or reputation of any person
3. to deprecate the value of any property of a person’s property, or to enjoy any of his trade or profession
4. to prevent or obstruct the free and lawful disposition of any property by the owner for its fair value

It is a conspiracy to conspire with another ‘to effect any unlawful purpose’.

If the conspiracy is to commit an offence, the alleged offence must be particularly stated in the charge (*Otegberi v IGP),* (1942) 8 WACA. In that case, it was held that there was no conspiracy because which the accused agreed to do did not disclose any offence.

In *Nnaji v IGP* (1957), the facts were that the elders of the community had met together and agreed that from time to time, they would hear and try cases of theft in their community in accordance with their own rules drawn up by a qualified lawyer. They were convicted by the magistrate on two counts, namely: (1) for assuming to act as judicial officials contrary to section 107 (1) CC, and (2) for conspiring to do so. The High Court quashed the decision on the first count on the grounds that the appellants had not assumed to act as ‘judicial officers’ within the definition of the expression no section 1 CC (which does not cover members of the community exercising judicial powers) but he confirmed the conviction of conspiracy. the Federal Supreme Court quashed the conviction as well. It was held that although there was an agreement to do something unlawful, the funding that there was no offence under S. 107 CC inevitably led to the conclusion that there was no conspiracy “to assume to and act as judicial officers.”

Conspiracy to defraud the people, or any person, or to extort properly, or to affect market price of anything publicly sold, is a crime under S. 422 CC. The essence of the conspiracy is that it must be by deceit or fraudulent means. In conspiracy is that it must be by deceit or fraudulent means. In *Ogundipe v R* (1954) 14 WACA, the appellants, the appellants, who were in a position to influence the conduct of the members of a Trade Union, demanded for contractors who acquired the service of labourers, certain sums of money and higher rates of pay than had hitherto been paid on their particular trade. Their conviction under Section 422 was quashed on the grounds that merely exerting pressure on would be employers of labour did not constitute decent or fraudulent means, even though the labour in question was required for an essential public service. C/F this judgement to the provision of Trade Dispute Act 2004, S. 41 which makes it another for a worker employed in an essential service to cease work without giving 15 days’ notice to his employer which makes it possible to commit conspiracy to commit this crime.

**(II) A Lawful Purpose by Unlawful Means**

Under English laws unlawful means consist of fraud or false misrepresentation. For example, an agreement to obtain a passport (lawful purpose) by false representation, or to be called to the Bar by through a forged certificate *CR v Bassey,* 1931.

**TOPIC TWO**

**ASSAULT**

Assault is of two types: sexual and non-sexual assaults. An assault is an attempt or a threat to apply unlawful force on another person in such a way that he believes that such force is to be applied on him. At common law, the *actus reus* of an assault consists of the expectation created in the mind of the victims that unlawful force is about to be applied on him. The *meus rea* consists in intentionally causing such expectation in the victim’s mind and it is immaterial that the offender did not in fact intend to apply such force and could not, in fact, have Offence is battery. The distinction between in assault and battery is that the former does not involve the application of actual force whereas the latter does. The common law maintains the distinction between the two offences of assault and battery. However, it is usual, sometimes to use the word “assault” to cover the meanings of both assault and battery, and that is the sense in which the word is used in section 252CC. it reads:

A person who strikes, touches or moves or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the consent, or with consent, if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent in such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person and the act is called assault.

The ‘term applies includes the case of applying head, light, electrical force, gas, odour, or any other substance or thing whatsoever, if applied in such a degree as to cause injury or personal discomfort means. So long as the design rests on intention only, it is no indictable. When two or more agree to carry it in itself and act of each parties, promise against promise, *actuts contra actum,* capable of being enforced if lawful, punishable for a criminal object or for the use of criminal means.

In an earlier decision, Fatayi Williams, JSC (as he then was) in *Haruna v State* had held a similar view when he stated:

Conspiracy as an offence is nowhere defined in the criminal code… It means under the common law, an agreement of two or more persons to do an act which it is an offence to agree to do. The very plot is an act itself and the act of each of the parties promise against promise, *actus contra actum,* capable of being enforced if lawful, is punishable if it is for a criminal object or the use of criminal means … In short, it is an agreement to do an act which it is an offence to agree to do which constitutes the offence of conspiracy under the criminal code.

The offence of conspiracy is complete once a concluded agreement exists between two or more persons (who are not husband and wife) of a statutory marriage) that share a common criminal purpose. The ingredients of an offence of conspiracy is agreement of two or more persons to do an unlawful act or to do a lawful act in an unlawful way (*Abiodun v State (2012)).* Usually, conviction on conspiracy is based on circumstantial evidence (*Upahar v State (2013)).* Please note that the husband and wife of a statutory marriage cannot be charged for conspiracy, except they conspire with a third party (*Obiakor v State).* The reason is that they are considered in law to be one person and one person cannot conspire to commit a crime (See Section 34 Criminal Code, *Keshinro v IGP* (1955 – 56)

**Nature of Conspiracy**

It isa preliminary offence which is aimed at preventing of a crime. The interests of crime would not be served if a man intending to commit a crime were held to be innocent until he had actually committed the crime intended. Although mere intention is not a crime but a man who has begun to put the intention into effect may be guilty of an offence before he has achieved his aim.

**TOPIC 3**

**ASSAULT**

**Definition**

An assault is an attempt or a threat to apply unlawful force on another person in a way that he believes that such force is about to be applied on him. At Common Law, the *actus reus* of assault consists in the expectation created in the mind of the victim that unlawful force is about to be applied to him. The *mens rea* consists of intentionally causing such expectation in the victim’s mind. It is immaterial that the offender did not infact intend to apply such force and could not, in fact have applied it, if force is actually applied, it is battery.

The distinction between assault and battery is that the farmer does not involve the application of actual force whereas the latter does. The Common Law maintains this distinction between the two offences of assault and battery.

The Criminal Code, however, uses the word “assault” to cover the meanings of both assault and battery (See Section 252, Criminal Code).

A person who strikes, touches, or moves or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the consent, or with is consent, if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threaten to apply force of any kind to the person of another without his consent, in such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the purpose is said to be assault that other person and the act is called assault.

The term “applies force” includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever, if applied in such a degree as to cause injury or personal discomfort

From this section, where there has been an actual application of force, no proof of intentions conduct is required but it is suggested that the section envisages intentional conduct and the converts will interpret it that way (See section 24, CC). however, where there is merely an attempt or a threat to apply force, no doubt exists as to whether the conduct must be intentional because a person cannot attempt or threaten to do something unintentionally.

Section 252 requires: where a person attempts to or threatens to apply force on another person, he shall have *actually* or *apparently* a present ability to effect the purpose. e.g. if appoints a loaded gun at B, this is an assault because A has *actually* a present ability to do it. *(R v Jame 1844).* If unknown to B, the gun is not loaded, but A purports it to be loaded, this is also an assault, because A has *apparently* a present ability to effect the purpose *(R v St. George,* 1840; *Kwaku v R* (1946) AC 83

It is, however, not deer whether the word *apparently* envisages an objective or subjective test ie is the test of what is apparent to a reasonable men or what is apparent to the victim? The court may, subject to its direction, adopt the objective test.

**Exceptions**

Under the CC, it will not be an offence:

1. to threaten to strike a sleeping man,
2. or to a man who is so clearly out of range that he ought not reasonably expect the application of force. This is like a man in the moving vehicle who shakes his first at another man standing beside the road.

It is not necessary that the victim’s mind should be one of fear or alarm. It is enough if he merely expects the application of unlawful force. In a Queensland Case, *Brady v Sehatzel* (1911), the accused pointed a loaded gun at the prosecutor and threatened to shoot him. The prosecutor said in evidence “I was not a bit scared.” It was held, nonetheless, that this was an assault.

**Assault Occasioning Bodily Harm**

Section 355 CC provides that if any person unlawfully assaults another and thereby does harm to him, he has committed a felony, and is liable to imprisonment for three years.

However, for one to be convicted for an assault occasioning harm, it has to be proved that:

1. the offender has no legal justification for assaulting the victim;
2. the victim sustained bodily harm;
3. the evidence on record must show clearly the injury was sustained.

If the prosecutor is unable to show convincingly how the bodily injury was sustained but was able to show that the victim was actually unlawfully assaulted by the offender, a charge of assault could be brought under section 351 CC i.e. assault not occasioning bodily harm. Section 351 provides:

Any person who unlawfully assaults another is guilty of misdemeanor, and is liable, if no greater punishment is provided, to imprisonment for one year.

In *Imohodion v CoP* (1961), the appellant was charged and convicted at the magistrate court for assault occasioning bodily harm under S. 355CC. PW1 who was the victim of the assault gave evidence to the effect that the appellant “pushed his left eye” with a walking stick. PW2 in his evidence stated that he did not see it happen.

The evidence of PWI and PW@ were irreconciliable as to whether the appellant pierced the left eye of PW1 with a stick. There was also no evidence whatsoever to support the finding that the Appellant “dealt more blows” than one on PW1. The magistrate convicted the appellant as charged and sentenced him to none month imprisonment with hard labour. The appeal of the appellant to the High Court was dismissed and his conviction affirmed. The appellant further appealed further appealed to the Federal Supreme Court where the appeal was allowed and substituted a conviction for assault under section 351 CC. in doing that the courts held that:

1. where a trial court declares that it accepts the evidence of certain witnesses in support of the finding of a material fact, and the record shows the testimony of those witness to be irreconciliable in the fact as found, an appellate court will disregard the finding.
2. Where the record discloses, no evidence to support a finding of the trial court, such finding will be disregarded on appeal.

However, where there was clear evidence that the offender unlawfully assaulted and wounded the victim a charge under S. 355 will be sustained. This was the position in *Offorlette v the State* (2000) 12 NWLR (Pt 681) 415. In the case, the appellant was charged with murder. The case of the prosecution was that in August 1988, the appellant took part in a fight initially involving his brother and the deceased. PW1, the wife of the deceased testified that the appellant grabbed a kitchen bench and hit it on the head of the deceased. The head was swollen. Three months later, the deceased was taken to the general hospital, when he died. Medical evidence as to the cause of the death led by the prosecution were given by two medical experts, the doctor who attended to the deceased while alive and the doctor who conducted the post mortem examination on the corpse. The defence denied ever hitting the deceased as alleged by PW1. After the trial, the trial court found the evidence of PW1 unchallenged and convicted the appellant of manslaughter and sentenced him to a term of five years imprisonment.

The appellant appealed to the Court of Appeal which affirmed the decision of the trial court still dissatisfied, the appellant appealed to the Supreme Court, which allowed the appeal but convicted him for assault occasioning bodily harm. Kalfo JSC who read the lead judgement found that: “---There is clear unchallenged and unambiguous evidence of PW1, the deceased’s wife and the only eyewitness of the incident, that the appellant hit the deceased with the kitchen stool on the head and there was swelling. This is an unlawful act constituting an offence under section 355 of the criminal code. I find the appellant guilty of the offence and I convict him accordingly.

**Note:** If the assault results into wounding; and there was ample evidence to prove this; and in the absence of self-defence, the offender can be charged and convicted for murder and not assault occasioning harm, nor assault occasioning grievous harm (*Iya v The State)* (1965) 1 AllNLR 211.

**Rape**

Rape is the most serious kind of sexual assault and is punishable with imprisonment for life with or without whipping (S. 358 CC). The offence is defined in Section 357 CC as follows:

Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threat or intimidation of any kind, or by fear or harm, or by means of false and fraudulent representation as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.

**Facts to be Proved to Succeed in Case of Rape**

**a) Capacity Issues**

1. According to Section 30 CC, a male person under the age of 12 years is presumed to be incapable of having carnal knowledge. It follows from this that he cannot be guilty of the offence of rape or attempted rape, although on such charge, he may be convicted of indecent assault. This presumption is that of the law and cannot be rebutted by showing that the accused has reached the full stage of puberty even though he is bellow the age of 12 years. This is the issue of capacity in rape cases.

2. A husband cannot be guilty of rape upon his wife. S. 6 CC defines “unlawful carnal knowledge” as “carnal knowledge which takes place otherwise than between husband and wife.” However, this privilege is of limited effect. If the marriage has been dissolved, or if a competent court has made a separation order containing a clause that the wife be no longer bound to cohabit with her husband, then the implied consent to intercourse given by the wife at marriage is thereby revoked. While the order is inforce, it will be rape for the husband to have intercourse with the wife without her consent *(R v Clarke (1949)*).

3. The mere wife that the wife has presented a divorce for petition does not revoke the implied consent to intercourse (R v Miller (1954)).

Although a husband may not be guilty of rape upon his wife, yet if he uses force or violence to exercise his right to intercourse, he may be guilty of assault or wounding.

4. A woman cannot be guilty of committing rape upon a man because according to S. 357, the offence can only be committed upon a woman or a girl.

However, in any case a person is not capable of committing rape, he or she may be charged with the offence by virtue of Section 7 CC for aiding, counselling or procuring the commission of the offence. In *R v Ram* (1893) where a husband raped a maid, the wife was convicted as principal in the second degree.

**b) Carnal Knowledge**

The carnal knowledge must be proved. For this purpose, it is not necessary to prove that the hymen was raptured, or there has been an emission of semen. The slightest penetration of the vagina is sufficient. But there cannot be rape without penetration. Although the offence of rape is complete upon penetration, it has been held that the act of sexual intercourse which follows is part of the offence itself, so that aid given after penetration makes the aider a party to the offence (Rv Mayberry (1973))

**c) Consent**

In a case of a rape, absence of consent is very important, and the prosecution has to prove that the accused had carnal knowledge of a woman or a girl, despite her age, ‘without consent’.

The requirement of consent holds even if the woman or girl is a prostitute, or that she has consented to the intercourse from the accused in other occasions or that she is the accused person’s concubine. However, these facts may make the court’s cautious of believing the complainants denial of consent in the instant case.

In *Okoh v Nigerian Army* (2018), All FWLR, the Supreme Court considered what constitutes consent in the case of rape. The details of the case are as follows:

The appellant, a soldiers in the Nigerian Army was alleged to have raped PW1 under the guise of borrowing a torch from her. He was arrested and arraigned before the General Court Martial on a charge of rape. In his defence, the appellant stated that that PW1 has consented to the sex and it was not rape. The trial court found him guilty and sentenced him to 14 years imprisonment, Dissatistied, the appellant appealed to the Court of Appeal which equally dismissed his appeal. Following the dismissal of his appeal, the appellant approached the Supreme Court, contending that the lower court erred in holding that PW1 did not consent to the intercourse between her and the appellant. The Supreme Court notedthat :

* By provisions of Section 77 of the Armed Forces Act, consent means approval, concurrence, permissions, accord and acquiescence.
* Consent must be previous to the act.
* It involves element of volition.
* As a voluntary agreement, it means a deliberate and free act of the mind.

Hence, it was held that consent induced by fraud or tricks is not real consent. Or when a consent is obtained by threat or intimidation or fear of harm or false or fraudulent misrepresentation as to the nature of the act.

Since in the instant case, the appellant did not obtain PW1’s consent before having sex with her forcefully, the lower court rightly affirmed his conviction for rape (Babalola v State (1989)1 SCNJ 127; Calabar Central Cooperative Thrift and Credit v Ekpo (2008) All FWLR (Pt 418)198) .The appellant in the instant case was arraigned under Section 77, Armed Forces Act which is similar to Section 357 of the Criminal Code.