

**KAMPALA INTERNATIONAL UNIVERSITY**

**SCHOOL OF LAW- DIL YEAR 1 SEM II**

**COURSE NAME: CRIMINAL LAW 11**

**COURSE CODE: DIL 2201**

**LECTURE NOTES**

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In criminal law II we look at the elements of each offence and these include following;

1. The definition of the offence which consists of the *actus reus* and *mens rea*
2. The gravity of the offence(felony or misdemeanor)
3. The punishment/sentence

This requirement rests on Article 28(12) of the constitution which provides that no person is to be convicted of an offence unless it is defined and the penalty for it is set by law. Offences are classified as; offences against the person, offences against the state, offences against public tranquility, etc

And each one of them is defined and has a maximum penalty attached to it. Many criminal offences are defined by the Penal code act where as others are set down in various other acts e.g anti corruption act, traffic and road safety act

**OFFENCES AGAINST THE PERSON:**

**Homicide:**

The killing of any person by another is homicide. Note however, that not all homicides are criminal.

Where the homicide is unlawful, the offence may be; murder, manslaughter, infanticide, or causing death by dangerous/ reckless driving. In each of these cases, the charge is sustainable where;

- i) The deceased dies within a year and a day s. 198
- ii) In the case of a child where it has completely proceeded in a living state from the body of its mother. S.197

**Murder s. 188**

A person who out of malice aforethought causes the death of another by unlawful act or omission is guilty of murder. The mens rea in the offence of murder is malice aforethought while the actus reus is the act or omission from which death resulted.

Assignment ; What is Causing death? s. 196.

## **Malice aforethought**

This is the *mens rea* for the offence of murder. **s. 191**

Malice aforethought is a premeditated intention to kill. It is the mental condition that motivates one individual to take the life of another without just cause. It is a conscious and deliberate intention to cause death to a person. It is a willful predetermination to cause the death of another person. It is usually inferred from the circumstances surrounding the unlawful act that caused the death. Therefore, the circumstances necessary to establish malice aforethought as held in **Bukenya & Ors v Uganda (1972)1 EALR 549** are;

- i) An intention to cause the death of any person whether such is the one actually killed or not.
- ii) Knowledge that an act or omission will cause the death of a person.

### **Read: Uganda v Ochieng & Ors (1976) HCB 204**

It therefore goes without saying that where an unlawful homicide/ killing occurs without such predetermined intention, the offence charged should be the lesser one, manslaughter but not murder.

Malice aforethought is established by proving a premeditated intention to kill. A person is guilty of murder if he intends to bring about the death of a person and he actually causes it; the death should occur within a year and a day. If foreexample; A shoots B in the stomach causing damage to his internal organs and B is hospitalized for one and a half years after which he succumbs to kidney failure as a result of the injuries he sustained from A's shooting, A should not be charged with murder because the death did not occur within a year and a day. However, if the death occurs within say 9 months, A should be charged with murder.

## **Types of malice**

### **a) Express Malice**

The term is used to describe the willful premeditated determination to bring about harm to another. Express malice can be inferred from the accused's own confession that he hated the deceased. A person who is forced to kill has no malice aforethought.

### **b) Implied Malice**

Generally malice is implied when death occurs during the prosecution of some unlawful design. In the case of a step parent who kills their step child, malice can be inferred from the hateful words spoken about the child or to the child accompanied with harsh treatment afforded to the child which treatment results into the child's death. Malice is implied where ones actions indicate ill will or an intention to do harm or cause death.

It is a general rule that when a man commits an act, unaccompanied by any circumstance justifying its commission, the law presumes that he intended to produce the consequences which have ensued. Read: **R V Katunsi 13 EACA 154**

**Malice may be implied when;**

a) there's intent to do an unlawful act known to be harmful or dangerous.

b) Knowledge that death or grievous harm are likely to result. This can be illustrated by the case of **Mongola V R (1963)** E.A where a seven old months baby was abandoned in the bush where by even if it cried, it could not be heard.

**c) Read:Constructive Malice**

**d) Transferred Malice**

The doctrine of transferred malice applies where the mens rea of one offence can be transferred to another. Foreexample; Ashoots at B intending to kill B but misses and hits and kills C. transferred malice can operate so that the mens rea of A (intention to kill B) can be transferred to the killing of C. A will be held liable for the murder of C despite the fact that he did not actually intend to kill C.

In **R v Saunders**(1573)2 Plowd 473, the defendant gave his wife an apple which he had poisoned with arsenic. He wanted to kill her so he could marry another. The wife took a bite of the apple then gave it to their daughter. The daughter died. Court held that the defendant was liable for the murder of his daughter although she was not the one he had intended to kill. His intention to kill his wife was transferred to his daughter. **See s. 191**

However, transferred malice does not operate where the crime which occurred was different from that intended.

**Proof of malice aforethought:**

Malice aforethought can be found in the nature of weapons used and the part of the party to which such weapons are applied.

In **Uganda V Sebagusi & Ors (1998) HCB 20**, the deceased was hit on the head with a hoe twice. The doctor's evidence showed that the deceased's head was cracked, thus internal bleeding from which he died. It was held that the accused killed with malice aforethought.

**Read:** *Uganda v Kassim Obura*(1981) HCB 90, *Uganda vs. Turwomwe* (1978) HCB 182, *Akol Patrick & Ors v Uganda C.A Cr. App 60/2002*, *R v Vickers*(1957)2 All E.R 741,*Hyam V DPP, DPP v Smith*,

**Read s. 194 diminishing responsibility.**

Punishment for murder.....

## **Manslaughter S.187**

Causing the death of another by an unlawful act or omission arising from negligence whether or not death was the intention of the accused.

Manslaughter is generally differentiated from murder by absence of malice aforethought. Manslaughter is therefore a minor offence to murder. Manslaughter is a killing that happens without premeditation, deliberation and malice.

(read and define : minor and cognate offences)

Generally where a homicide occurs with no intention on the part of the person who caused it, such offence will be treated as manslaughter and not murder. Such scenarios include; killing on provocation, self defence or accident. The scenarios above are treated as manslaughter because they negate the mental element (mens rea) of murder which is malice aforethought.

### **Voluntary and involuntary manslaughter**

**Voluntary manslaughter** consists of an intentional killing that is accompanied by additional circumstances that mitigate but do not excuse the killing. The most common type of voluntary manslaughter occurs when a defendant is provoked to commit the homicide.

#### **Provocation (ss. 192, 193)**

Provocation is some unlawful act or series of acts done (including words) which would cause in any reasonable person and actually causes in the accused a sudden and temporary loss of self control rendering the accused so subject to passion as to make him or her for the moment not to master his own mind. **R v Duffy (1949) 1 All ER 932**

It is not a total defence per se but merely operates to reduce the charge of murder to manslaughter.

However in some cases, courts have argued that when dealing with people who have abnormal mental disorders, such mental characteristics should be taken into account in assessing the standard of control expected of a defendant. See **R v Thornton (1996) 1 WLR 1174**.

#### **Conditions under which it may be raised;**

- a) The deceased must have done a wrongful act to the accused or to his relative.
- b) The act/ insult must have caused rage and deprived the accused of his power of self control. The test applied by courts is what effect the conduct considered provocative would have on an ordinary person.

In **Bedder v DPP (1954) WLR 1**, the accused who was sexually impotent tried unsuccessfully to have sexual intercourse with a prostitute. She jeered at and kicked him causing him to lose self control. He stabbed and killed her. On a charge of murder

he pleaded provocation and argued that the proper test to be applied was what the reaction of a reasonable impotent man would be. However, the House of Lords upheld the effect which the conduct of a prostitute would have on an ordinary person and not an impotent person.

Provocation can not be considered if it is shown that the accused merely lost his temper.

The test applied is an objective one and varies from one case to another depending on the circumstances. In **R v Davies(1975)1 QB 691**, the defendant killed his wife after seeing her lover walk towards her place place of work. It was held that this did not amount to a provocative act that would cause a reasonable man to lose self control.

**Read: R v Ahluwalia (1993) Cr. App133,**

- c) It must be shown that the killing was done during the heat of passion. i.e in the shock of the moment before the accused has had time to cool off. It should be unpremeditated. The killing must occur in close proximity to the provocative insult. In **Okwang William V Uganda CACA 69/2002**, the appellant had misunderstandings with his wife(deceased) and she returned to her parent's home. The deceased was impregnated by another man and the appellant got to know about it and when he visited the deceased at her parent's home, he found her conversing with the very man who made her pregnant. A struggle ensued and in the process, the appellant picked up a knife intending to stab the man but instead stabbed the deceased. She died from the stab wounds and he was charged with murder. The appellant raised the defence of provocation at his trial and the judge rejected it. That the accused already that the deceased was pregnant by the very man he found her with and that there was ample time for his passion to cool down from the time when he knew about her pregnancy to the time of the assault. Court of Appeal dismissed the appeal.

**Read: Ikuku alias Maina Nyaga V R (1965) EA 496**

**Sowedi Oasire V Uganda SCCA 28/1989**

**Yakoyadi Lakora V R 1960 EA 323**

- d) The retaliation should be proportional.

*Read: [www.e-lawresources.co.uk/Provocation.php](http://www.e-lawresources.co.uk/Provocation.php)*

Note the difference between murder and voluntary manslaughter. In murder, the intention to kill is premediated where as in voluntary manslaughter there is an unpremeditated intention.

## **Self defence**

The other example of voluntary manslaughter is self defence.

NB. Refer to the Principles of self defence covered in Criminal law I.

### **See S. 15**

#### **Read handout**

The kind of conduct that amounts to self defence is to be determined by principles of English law. The essential elements of the defence were summarized in **Uganda v Ojok (1992-93)HCB 54;**

- a) There must be an attack on the accused.
- b) The accused must as a result have believed on reasonable grounds that he was in imminent danger of death/ grievous body harm.
- c) The accused must have believed it necessary to use force to repel the attack made on him.
- d) The force used must be such force as the accused believed on reasonable grounds to have been necessary to prevent the attack.

In determining the reasonableness of the force used, regard must be had to the particular circumstances of each case.

#### **Read handout**

### **Involuntary manslaughter**

It is the unlawful killing of another without intent. The absence of the intent element is the essential difference between voluntary and involuntary manslaughter. Involuntary manslaughter usually arises from improper use of reasonable care or skill or from omission to perform a duty or from negligence which results in the death of another. For example failure of a doctor to give reasonable care which results in the death of a patient. Another example is where a person is killed as a result of reckless driving.

In such cases, the existence of the duty is essential because the law does not impose criminal liability for a failure to act unless a specific duty is owed to the victim.

Manslaughter is also involuntary where one kills as a result attempt to commit another unlawful act. For example armed robbery (refer to constructive malice)

#### **Read ss. 199- 203**

#### **Further reading on manslaughter-**

[legal-dictionary.thefreedictionary.com/manslaughter](http://legal-dictionary.thefreedictionary.com/manslaughter)

#### **Cases:**

**R V thornton 1992)1 ALL ER 306**

**R V Larkin (1943)1 All e.r 217**

**R v Morhall (1995)3 All E.R 659.**

## **Circumstances under which homicide is justifiable**

### **1. Death sentence**

Where a proper officer of Government executed a person who has been condemned to death by the courts of law, this execution must be done in a way authorized by law in Uganda i.e by hanging.

### **2. Medical reasons for example where a doctor has to choose between saving the life of a mother and unborn child.**

### **3. Riot suppression**

In the case of a rioting group that refuses to disperse, police are entitled to use reasonable force and if any of the rioters in so doing gets injured or gets killed, such a death would be justifiable.

### **4. Escaping prisoner s. 126 Prisons Act**

A prison warder commits no offence in shooting and killing a prisoner who tries to escape or who having escaped resists recapture.

### **5. Prevention of violent crime against a 3<sup>rd</sup> person/party**

It is the duty of every citizen to prevent violent crimes being committed against a 3<sup>rd</sup> party and where in the prevention of such crime, the offender loses his life, it is justifiable.

### **6. Resisting arrest after committing crime**

If a person resists arrest, he may be accidentally killed which killing would be justifiable

### **7. Self defence.**

Punishment for manslaughter...s. 190 PCA.....

Make a write up on attempted murder, its ingredients and punishment(with case law) s. 204

## **Kidnapping with intent to murder s.243**

Research: the ingredients of the offence, what does prosecution have to prove?, punishment

For guidance, make reference to; Wellard v R(1978)67 Cr. App, Kadir Matovu v Uganda CACA 8/2008, Uganda v Godfrey Tinkamanyire(1988-90) HCB 5 and other materials.

## **ASSAULTS**

(ss. 235-8 PCA)

The expression assault includes battery. **In Fagan v Metropolitan Police Commissioner(1969)1 QB 439**, James J said;

*“an assault is any act which intentionally or possibly recklessly causes another person to apprehend immediate and unlawful personal violence. Although assault is an independent*

*crime, and is to be treated as such, for practical purposes today assault is generally synonymous with the term battery and is a term used to mean the actual intended use of unlawful force to another person without their consent."*

See also R v Williams 1983 Cr. App. 276, R v Burstow 1998 AC 147, 1997 4 AllER 225, R v Ireland 1998 Cr.App, 1997 WLR 3 534

### **Forms of assault**

1. Common assault: The act of causing the victim to apprehend an imminent application of force upon her. Fagans case.
2. Battery which involves the unlawful application of force by the defendant upon the victim.
3. Assault occasioning actual bodily harm.

Under common law, assault is the unlawful effort or attempt to apply to apply force or violence against a person in an unfriendly manner. The effect of assault is creation of fear in the mind of the victim.

It is any act by which someone intentionally or recklessly causes another person to apprehend immediate and personal violence. Spoken words can amount to assault. **R v Ireland(1997)** as can a silent phone call. Shaking a fist at someone Stephens v Myers,showing a gun Lodgon V DPP (1976)

Assault defined in the case of **Fagan V MPC(1969)1 QB 439.**

The House of Lords defined it as:

"an assault is committed where the defendant intentionally or recklessly causes the victim to apprehend immediate unlawful personal violence."

### **Elements to be proved by prosecution for one to be convicted of assault**

#### **Actus reus**

1. Apprehension of an intention to use force/ violence

The victim need not be put in fear but must be aware that they are about to be subjected to violence. If the victim does not anticipate unlawful personal violence there's no assault(R v Lamb(1967)2 QB 981) .

Where the victim apprehends immediate unlawful personal violence an assault will be committed even if there was no actual threat of violence. In **Lodgon V DPP (1976)**, the defendant pointed an imitation gun at a woman in jest. She was terrified. The defendant then told her it wasn't real. It was held that an assault had been committed as the victim had apprehended immediate unlawful personal violence and the defendant was reckless as to whether she would apprehend such violence.



Fear: it must also be proved that the victim was made afraid, i.e fear must have been created in the mind of the victim. No assault can be committed unless the threats are actually perceived by the victim. There is no assault if a stone thrown by D flies past V's head without him noticing. If however D threatens V with an imitation firearm, this will indeed amount to an assault unless V knows that the weapon cannot fire. *Lodgin V DPP*.

In the case of assault involving battery, the actus goes beyond mere threatening to include actual use of force on the victim.

### **Can words amount to assault?**

In **R v Constanza(1997) Crim LR 576**, the defendant mounted a hate campaign against an ex work colleague over a period of 20 months. He sent over 800 threatening letters, would follow her home, wrote offensive words on her front door etc. as a result, she suffered clinical depression. On being charged the defendant contended that words alone could not amount to assault. It was held that words can amount to assault.

## **2. Immediate**

Threats of future violence will not amount to assault. There can be no assault if it is obvious to the complainant that the defendant is unable to carry out his threat.

**Smith v Chief Constable of Woking(1983) 76 Cr. App 234**, holding of Kerr LJ.

### **3. Unlawful:**

If the defendant has a lawful excuse to use force, the actions will not amount to assault. This includes; reasonable punishment of a child, where the victim consents, where the victim acts in self defence or prevention of crime.

4. Personal violence: the apprehended force must be on the person of victim himself and not another.
5. Absence of consent: see s. 226 PCA. The accused must not have had the consent of the victim prior to the assault. for example where people are shooting a film that involves violence, there can be no assault because they are presumed to have consented to the use or threatened use of such violence.

In *A.G of Nyasaland V Handerson*, the accused was in high spirits picked up the complainant and rolled him in a carpet and placed a chain around him, for fun. This kind of play had been ongoing between the two regularly and the complainant enjoyed the fun. It was held that this was no assault.

6. Anger: the gesture of the accused must have been done in anger. **R v Rev. Father John(1972) HCB 162**
7. The complainant must not have provoked the assault, the assault must not have been in self defence.

## **Mens rea**

The mensrea is intention to cause the victim to apprehend immediate unlawful personal violence or being reckless as to whether such apprehension is caused. **MPC v Fagan(1969)1 Q.B 439**. A policeman was directing the defendant to park his car. The defendant accidentally drove onto the policeman's foot, the policeman shouted at him to get off and he refused to move. The defendant argued that at the time of the actus reus, the driving on to the foot he lacked the mens rea as it was purely accidental. When he formed the mensrea he lacked the actus as he did nothing. It held that the driving on to the foot and remaining there was part of a continuing act.

It is an assault to pick a stone and throw it at somebody or to point a gun at someone else even though it is unloaded. Mere words however can never amount to assault.

In *R v Mbutia s/o Kaguru* 22 KLR 31, it was held that assault must be accompanied by an act, indicating an intention to use immediate force against another person.

Assault occasioning actual bodily harm s. 236

Occasioning means "causing". The act or conduct amounting to assault must have resulted into some harm to the victim.

However, where the harm is not a direct result of the defendant's assaulting act, the test to be applied is that in *R v Roberts* 1971 Cr. App where a girl travelling in the defendant's car jumped out of the moving vehicle and sustained several injuries after the defendant tried to make sexual advances towards her and even took off her jacket.

Stephen LJ said that the test for determining whether the defendant had "occasioned" the injuries suffered by the girl as a result of her jumping out was this;

was the girl's jumping the natural result of what the alleged assailant said and did, in the sense that was it something that could reasonably have been foreseen as the consequences of what he was saying or doing? Or so unexpected that that no reasonable man could be expected to foresee it, if it was the latter then it is only in a very remote and unreal sense a consequence of his assault but occasioned voluntarily by the victim which breaks the chain of causation between the assault and the harm or injury.

Ref; *R v Savage* 1992 1 AC699

*DPP v Parmenter*

### **Actual bodily harm**

In *Rex V Donovan*, bodily harm was defined to include any hurt or injury calculated to interfere with the health or comfort of the victim. Such hurt or injury need not be permanent but must, no doubt be more than merely transient and trifling. See also *R v Brown* 1994 1 AC 212, *R v Miller* 1954 2 All ER 529 where Lynskey J said that actual bodily harm includes any hurt or injury calculated to interfere with the health or comfort of the victim.

### **What amounts to actual bodily harm?**

According to Archbold, actual bodily harm is capable of including psychiatric injury but does not include mere emotion such as fear, distress or panic.

### **1. Cutting off ones hair against their will**

In DPP v Smith 2006 2 Cr. App the defendant held down his girlfriend and cut off her pony tail with kitchen scissors a few weeks before her 21<sup>st</sup> birthday. The magistrate acquitted him on the ground that although there was undoubtedly an assault, it had not occasioned actual bodily harm since there was no bruising or bleeding and no evidence of psychological or psychiatric harm. On appeal to the divisional court Judge P said;

*"....the hair is an attribute and part of the human body. It is intrinsic to each individual and to the identity of each individual.... An individual's hair is relevant to his or her anatomy, some regard it as their crowning glory...even if medically and scientifically speaking, the hair above the surface of the scalp is no more than dead tissue, it remains part of the body and is attached to it. While it is so attached in my judgment it falls within the meaning of "bodily" in the phrase "actual bodily harm". It is concerned with the body of the individual victim."*

It has been accepted that actual bodily harm includes any hurt or injury that interferes with the health or comfort of the victim, and which is more than transient or trifling.

In **DPP v Smith** Judge P said "actual" as defined in the authorities means that the bodily harm must not be so trivial or trifling as to be effectively without significance.

In DPP v Smith, Creswell J said that to hair is a vitally important part of a woman's body and that to damage an important physical aspect of a person's bodily integrity must amount to actual bodily harm, even if the element damaged is dead skin or tissue.

Other injuries that may be charged as assaults occasioning bodily harm are;

2. Loss or breaking of a tooth.
3. Temporary loss of consciousness
4. Extensive or multiple bruising
5. A displaced/ broken nose
6. Minor fractures of bones
7. A recognized psychiatric disorder

### **Mens rea**

Generally, assaults are crimes of basic intent and where one intends or is reckless as to the outcome of his actions, he will be deemed to have formed the necessary mensrea.

Indecent assault refers to an assault of a sexual nature (see s.147PCA)

### **Lawful assault**

lawful assault is not a crime. It is acceptable under the following circumstances;

- a) During surgical operation see s.224
- b) During voluntary sexual intercourse
- c) Lawful sport
- d) When effecting Lawful arrest
- e) Chastisement/punishment of children by parents

However the force used should not be excessive (see s. 225 PCA)

Punishment for assaults is .....

### **GRIEVOUS BODILY HARM (ss. 216,219)**

Grievous bodily harm is defined as any harm which seriously or permanently injures health or which is likely to injure health or which extends to permanent disfigurement to any external or internal organ of the body.

A person commits grievous harm if he inflicts harm that interferes with the health or comfort of the complainant. If it does not, then it's not grievous harm.

In **Mohammed v R(1972)HCB 175**, where the complainant lost one tooth, on the issue of whether loss of a tooth amounted to grievous harm, the court held that since the loss caused merely permanent disfigurement which was no danger to life it only amounted to actual bodily harm.

Read: **Livingstone v R(1972)E.A 196**  
**Rajan v R(1958) E.A 448**

### **OFFENCES AGAINST PROPERTY**

#### **THEFT S.254**

It is defined as when a person fraudulently and without claim of right takes anything capable of being stolen or fraudulently converts the use of ....

#### **Elements of the offence**

##### **1. Taking(asportation)**

This means carrying away or removing anything from the place which it occupies.

It does not necessarily mean that he took something completely to his possession to constitute taking. The accused is deemed to have taken a thing if he moved it or caused it to move.

#### **Things capable of being stolen s. 253**

- a) Inanimate things- these include animals
- b) **Movable/ mobility**

A thing must be movable in order to be capable of being stolen. This is because of the element of taking or asportation. The definition is limited to tangible things and not intangible things. It follows that immovable things such as shares, patents, copyrights, etc are not things capable of being stolen.

**c) Owned by a person**

Abandoned property is not covered by the offence as it is not owned by anyone.

Read: *R v Tailor (1911) 1 K.B 674*

**2. Converting:**

In the case of *Yorkshire Railway Co. V Mechico (1919) K.B 601* as dealing with goods in a manner inconsistent with the right manner of the true owner or denying the owner's right or asserting a right which is inconsistent with the owner's right. However, for conversion to amount to stealing it must be one of fraudulent intent.

***Ahmed s/o Mohammed V R (1957) E.A 386***

The appellant an advocate received a cheque from a debtor to be paid to his client. He instead endorsed it in a garage to reduce his own indebtedness. It was held that he had received the cheque for and account of his client and was therefore guilty of theft although the cheque had been made payable to his order.

**3. Fraud:**

There must be an element of fraud in order to constitute theft. That's to say, if a man picks up a thing merely to ascertain what it is. This is merely inquisitive taking which is not theft. Or if one takes something under a mistaken belief that It is his own; then he can raise the defence of honest claim.

Read: *R v Hall(1848).*

In order to establish fraud, the intent of the person at the time of conversion has to conversion;

- a) If the intent is to permanently deprive the owner of the thing; it must not be merely to deprive the owner temporarily e.g if B takes A's shirt intending to wear it to a dance and return it afterwards, B is not guilty of theft unless it can be proved that later he changed his mind to have the shirt for good .

Read: *R v William (1953) All E. R 106*. In *R v Erasomi (1971)2 All E.R. 945*, a woman placed her bag on the floor in a cinema. The accused who sat behind her took it and searched it for money which he had intended to steal. There was no money. He placed it back, his conviction for theft was quashed because he did not intend to permanently deprive the owner of the bag.

- b) An intent to permanently deprive any person who has a special interest in the property. This provision is there to cater for the rights of someone who may not be an owner but has special interest in the property. E.g a charge on the lien.

(what is a lien)

- c) An intent to use a thing as a pledge or security. E.g where A takes B's goods and pledges them or gives them to another person as security for a loan, this amounts to theft.

## **BURGLARY AND HOUSE BREAKING s.295**

House breaking is defined as breaking or entering into any building used as human dwelling with the intention to commit a felony or after having committed such felony (or having had the intention to commit it) breaks out of the building.

The ingredients of the two offences are the same only that burglary is committed at night while house breaking is committed during the day. The term night is defined under s. 2(q) to mean between 6.30 pm and 6.30am.

In the case of burglary, both the house breaking and entry must be done at night. If the breaking is during the day and the entry at night or vice versa, the offence is not burglary.

### **Ingredients**

#### **1. Breaking:**

This is an essential element for both offences. If a man leaves the door of his dwelling place open and a thief enters through the same open door the offence is neither burglary nor house breaking because the element of breaking is lacking.

Actual breaking happens when a person breaks any part whether external or internal of a building or opens by unlocking, pushing, pulling, lifting or any other means whatsoever any door, window, shutter, cellar, flap or any other thing intended to close or cover an opening in a building or any opening joining/giving passage from one part of a building to another.

There is breaking under the following circumstances;

- a) Where one opens a door with a master key.
- b) Lifts a latch
- c) Pushes open a closed window
- d) Where one who is lawfully in a house such as a servant or guest opens the closed door to an outsider.

There is no breaking if the window or door is partly closed.

Read: *R v Boyle* (1954) 2 Q.B 292

#### **2. Entry**

This happens as soon as any part of the accused's body or any part of the instruments used by him is in the building.

### **3. Intention to commit a felony**

This is the mens rea. It may be murder, arson, robbery, rape.etc if A honestly believes that B's house is on fire and breaks open the front door in order to put out the fire and on entering discovers that there's actually no fire and he ends up stealing, he is not guilty of burglary or house breaking unless he breaks out through another part of the building (see s. 295 (1)(b)) Otherwise, he will be guilty of theft.

The intention considered is that at the time of entry/ breaking.

## **Punishment and nature of the offence**

Burglary- felony, 10 years,

House breaking- .....

## **ROBBERY**

**ss. 285-7PCA (see Penal Code amendment act 8 of 2006 wc amended s. 286)**

This is theft of property that is accompanied by the use violence or threats to use violence on any person or other property in order to retain or obtain what is being stolen.

## **Ingredients**

### **1. Use of violence/force**

The force should be employed immediately before or immediately after the time of stealing.

In *Njuguna v R (1965 or 6) EALR 583*, the accused having burglaried a house and stolen there from was discovered without a chase at a distance of 500 yards away where he then resisted the complainant with violence. It was held that the offence committed was not robbery but burglary and theft because the element of using force immediately was lacking.

It therefore goes without saying that the offence is not committed where the complainant is absent.

Also it should be noted that the violence used mustn't necessary be on the owner of the property but also on anybody. For example where the robber holds a gun to the complainant's child and threatens to shoot them if the property is not handed over.

The violence is seen in the nature of the weapon used and the injury caused to any person.

### **2. Theft**

There must be property stolen. Where the supposed robber is intercepted before he takes the property and flees without the property, the offence committed is attempted robbery.( ref. s. 254 on theft)

**Punishment and nature of offence;**

Felony, 10years

Read:

Opoya v Uganda(1967) EA 752

Kigoye v Uganda(1970) EA 402

**RECEIVING OR RETAINING STOLEN PROPERTY s. 314 PCA**

It is provided that any person who receives or retains any chattel, money, valuable security, or other property *knowing or having reason to believe the same to have been feloniously stolen/ or obtained* is guilty of the offence.

(the mens rea is knowledge that the property was stolen)

**Ingredients**

**1. Receiving:**

To prove receiving, it is sufficient to show that the accused person has either alone or jointly with some other person had the thing in his possession or has aided in concealing it or disposing of it. Even mere assisting in disposing with actual possession of it is not receiving.

The receiving must be dishonest i.e the receiver must have the knowledge that the property he receives is stolen and he must have the intention to appropriate to his own use and deprive it from the true owner. E.g receiving stolen goods with the view of handing them to the police or true owner is not an offence.

Read: *R v Matthews*(1951) 1 All E.R 137

**2. Retaining**

A person does this when the property comes into his possession without his knowledge that it was stolen but afterwards he comes to know that it was stolen and he still retains it.

**3. Knowledge that the property had been stolen**

A person commits the offence when he receives the property knowing or having reasonable belief that it had been stolen. For example if the person attempts to sell the property below the market price, this may be imputed to him as guilt i.e that he knew that the property he received has been stolen.

**4. Proof that the property was stolen.**



Under s. 314(3) it is a prerequisite for the prosecution to prove that the property was in fact stolen before a conviction or receiving and retaining stolen property can succeed. It must be proved that the property received had been previously stolen and obtained by an act constituting a felony or that it had been unlawfully taken.

**Read: R v Valenky(1892)2 K.B 597**

**R v King(1958)2 All E.R 662**

### **Punishment and nature of offence:-**

14 years imprisonment, felony

**Handout**-Specific and basic intent crimes

## **OFFENCES AGAINST MORALITY**

### **RAPE s. 123**

It means having unlawful sexual intercourse with a woman/ girl against her will or consent. This offence is only committed against females by males. This means that a woman cannot be said to rape another woman.

The term “unlawful” is deliberately inserted to rule out forceful sexual intercourse between married couples because such sexual intercourse is presumed to be lawful since it has the backing of law. It follows therefore that a man cannot be said to rape his wife since she is deemed to have consented to sexual intercourse by virtue of their marriage.

### **Elements of rape**

#### **1. Unlawful Carnal knowledge/ penetration**

To prove rape it is necessary to prove carnal knowledge (penetration of the penis into the vagina)

Ejaculation does not mean penetration. There is no need for emission of semen to be proved. In **R v Salim (1970) HCB 38**, a woman was asleep at night when she was suddenly awaked by finding somebody on top of her. When the man ran away, she discovered that there was seminal fluid over her vagina. It was **held** that ejaculation without penetration is not rape but indecent assault.

It is important to note that even partial penetration is sufficient to prove rape, in that even when the hymen is not ruptured the man can be convicted of rape.

#### **2. Lack of consent**

Consent must be absent at the time of intercourse and where it is present it must have been obtained willingly and not by use of the threats, force, coercion, intimidation, misrepresentation or impersonation.

Impersonation happens when somebody pretends to be someone else for example where a man pretends to be the woman's husband.

Consent obtained by misrepresentation is not real consent either. This happens where deceitful tricks are employed. In **R v Williams (1923) 1 K.B 340**, a singing master persuaded his pupil that sexual intercourse could improve her singing voice and she consented to sexual intercourse with him. It was held that there was no consent.

Rape may also be found when a person has sex with someone deemed legally incapable of consenting due to mental illness, impairment, or intoxication. A sleeping woman is not capable of consenting and there is also no consent where a medical doctor/ witchdoctor has sexual intercourse with his patient/ client pretending to be treating her.

The punishment for rape is death and it is a felony. S. 124

Where one of the elements/ ingredients is lacking the offence charged will be attempted rape or indecent assault.

Read:

1. **Nakholi v R 1967EA 337**
2. **Chila & Anor v R 1957 EA 722**
3. **Hamisi v R 1972 EA 367**
4. **Abasi Kibazo v U 1969 EA 507**

Guiding question: What is the legal position where a woman consents at first and later withdraws her consent? Will the offence have been committed?

## **DEFILEMENT**

Defilement is provided for under **s.129** of the PCA as amended. The offence is committed when any person performs a sexual act with another person who is below the age of eighteen years. The term sexual act is defined in **s.129 (6)** to mean;

- i) Penetration of the vagina, mouth or anus however slight of any person by a sexual organ.
- ii) The unlawful use of any object or organ by a person on another person.

It is important to note that with the advent of homosexuality, sodomy and other forms of sexual practices (e.g oral sex) in Uganda, the definition for defilement was modified to cater for any person (whether a girl or boy below 18), and any sexual practice hence the reference to **penetration of the anus or mouth**.

In addition to that, it caters for all forms of sexual acts like, oral sex, sodomy, etc.

It should be noted that in cases of defilement, the fact the victim consented to the sexual relations is immaterial. In **R v Goviati (1972)**, the appellant who made arrangements to have sex with a girl under 14 years in exchange for payment raised the defence that the girl

had fully consented and cooperated. It was held that the consent of the complainant was immaterial/ irrelevant to the charge of defilement.

In **Uganda v Mulindwa 1975 HCB 206**, it was held that where the accused did not know that the girl was under 14 years/ under age, he could not be exonerated, this is merely a mitigating factor.

In cases of defilement of a girl, proof of rapture of the victim's hymen is unnecessary therefore non-rapture of the hymen of a defilement victim was no proof that there was no penetration. A sexual act on a girl in defilement cases is deemed complete upon proof of penetration therefore the slightest penetration possible suffices to constitute the offence of defilement.

In **Habyarimana Ronald Vs Uganda Cr. Appeal No. 68 of 1998** the court held that the finding of semen all over the victim's vagina was sufficient. In the instant case, the medical evidence revealed that the victim's vulva was inflamed and that sperms were found in the victim's vagina though her hymen was not ruptured.

**Read:**

- Uganda v Byamunda 1974 HCB 279,
- Kibaale v Uganda (1999)1EA 198.
- Nfutimukiza v Uganda (1999)1 EA 220.
- Patrick Akol Vs Uganda, Cr. Appeal No. 23 of 1992 SC
- Christopher Byamugisha Vs Uganda [1976] HCB 317;
- Gerald Gwayamadde Vs Uganda [1970] HCB 156.

**Read s. 2(3) of the amendment that provides for aggravated defilement.**

## **INDECENT ASSAULTS S. 128 PCA**

**READ**

**Hamisi v R 1972 EA 367**

**Uganda v Venansio Bamuta (1979) HCB 4**

## **ADULTERY S.154PCA**

The offence is committed when a married man or woman has sexual intercourse with somebody other than their wife or husband.

The only ingredient is sexual intercourse. Sexual intercourse and carnal knowledge are synonymous.

In **Alai v Uganda(1967) EA 596**, it was held that the term "wife" refers to a wife acquired through any of the marriages recognized Uganda and is not limited to a wife acquired through a monogamous marriage.

## **CORRUPTION, ABUSE OF OFFICE AND RELATED OFFENCES**

### **FORGERY; c/s 342 & 347 PCA**

It is the making of a false document with intent to deceive or defraud. The specific intention to defraud or deceive must be proved.

(identify the actus reus and mensrea)

Proof of falsity is by handwriting experts. In *Kazinda's case* (Uganda v Kazinda HC 138/2012) it was held that In a case of forgery, the Prosecution must prove the following,

1. That the document is forged /false
2. That it was made with intent to deceive or to defraud.
3. That it was done by the accused.

To forge a document means to make or alter or deal with the document so that the whole or part of it;

- (a) Purports to be what, or of an effect that, in fact it is not
- (b) Purports to be made, altered or dealt with by authority of a person who did not make, alter or deal with or by or for some person who does not , in fact exist or
- (c) Purports to be made altered or dealt with by authority of a person who did not give that authority.
- (d) Otherwise purports to be made, altered or dealt with in circumstances in which it was not made, altered or dealt with.

For a writing to be false, it had to be a writing of a party other than the party that makes it and it must indicate attempted deception or similarity.

In **Baiganamu Vs Uganda (1973) EA 26** where the Court held that a forged document must tell a lie about itself. (read case)

### **Meaning of intention to defraud**

In **Uganda V Teddy Seezi Cheeye**, it was held that to defraud is to deceive by deceit and to deceive is to induce a man or woman to believe that a thing is true which is false. Shortly put, to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action. *R.V WINES* [1953] 2 ALL E.R. 1497

Intent to defraud here means the intention to practice fraud on another person as long as that person shall be prejudiced by the fraud.

The intention to defraud is established even where there is no intention to cause pecuniary or economic loss, **Welham Vs DPP (1961) AC 103**

In **R Vs Potter and Another (1958) 2 ALL ER 51** William Potter put on a piece of document a signature which represented that of his brother.

It was a standard document usually filed when seeking a driving certificate. The question that arose was whether the document was false since it bore a forged signature. Paul J asked himself and wrote;

*“When William Potter put that signature on the document, was that document then a genuine one or a false document? I hold that it was a false document because it was falsely filled in. It was falsely filled in because William Porter knew he had no right to fill it in, he knew that in filling it in the name of A F Potter, he was doing something to deceive, and he knew that he did that with intent that his brother could defraud.*

*I hold therefore that it is a forgery because it was the making of a false document.”*

The above quotation seems to say that the answer lies in the intent of the person forging. He must intend to defraud or deceive and it must be a signature which is not his.

### **Proof of intention to defraud:**

Intention to defraud is mostly proved by circumstantial evidence. for example in Kazinda z case The fact that after the forgeries the accused took the documents home and jealously guarded them is indicative of their importance to him. He must have intended to deceive or defraud people.

It was immaterial whether the documents were put to use or not. What was important was whether they were deceitful or capable of defrauding anyone.

**Read :**Mbande Vs Republic (1971) EA 553.

## **OFFENCES UNDER THE ANTI-CORRUPTION ACT 2009**

### **ABUSE OF OFFICE c/s 11(1) e(2)**

It was held in the case of Kazinda that abuse of office is committed when the office holder acts (or fails to act in a way that constitutes a breach of the duties of that office and that to prove abuse of office the prosecution must prove;

1. That the accused was an employee of a public body
2. That the accused performed the arbitrary act
3. That this act was in abuse of his authority.
4. That the arbitrary act was prejudicial to the interests of his employer.

Lord Mansfield in **R Vs Bembridge (1783) 3 Dong K.B 32** referred to a public officer as one having an office of trust, concerning the public, especially if attended with profit by whomever and in whatever way the officer is appointed.

He is therefore, *“A public office holder who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of fund provided by the public”*

According to **R Vs Whitaker (1914) KB 1283** an arbitrary act is, *“an action, decision or rule not seeming to be based on reason, system, or plan and at times seems unfair or breaks the law”*.

It is therefore an action or decision that is based on personal will or discretion without regard to rules or standards. It is a decision that may be made outside the existing law.

The arbitrary act or omission must be done willfully that is deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not.

**Cases:**

- Uganda v Mugisha Gregory High Court Criminal Case No.150 of 2010 (Anti Corruption Division)
- Uganda v Eng Bagonza High Court (Anti Corruption Div) Criminal Session Case No. 9 of 2009
- UGANDA v JOHN KASHAKA MUHANGUZI & Ors Cr. session 47 of 2012(H.C)

**CAUSING FINANCIAL LOSS s. 20**

The ingredients of the offence of Causing Financial Loss c/s to Section 20(1) were laid down in the cases of **Alex Oboth v Uganda Criminal Appeal No. 88 of 2011** where it was held that to constitute the offence of Causing Financial Loss the following ingredients must be proved beyond reasonable doubt:

1. That the accused was employed by the Government, a Bank or Credit institution, an insurance company or a public body at the material time
2. That the accused did any act or omitted to do an act knowing or having reason to believe that such act or omission would cause financial loss
3. That the Bank or Financial Institution suffered loss
4. That it is the accused who so caused the loss

**Cases:**

Kassim Mpanga v Uganda Criminal Appeal No. 30 of 1994 (SCU)  
Uganda v Walubi High Court Criminal case No. 30 of 2011

**EMBEZZLEMENT S. 19**

The offence of embezzlement is committed where a person being a Director, Officer or Employee of a Company steals any chattel / money or valuable security, to which he or she has access by virtue of his or her office. Prosecution must prove the following ingredients;

- (a) that there was a Company.
- (b) accused was a Director, Official or Employee of that Company.
- (c) that he had access to the Company's property
- (d) and that accessibility enabled him to steal money belonging to the Company.

**OFFENCES AGAINST THE STATE**

It is presumed that criminal law has an objective to ensure that there is stability in the country. Offences against the state are geared towards protecting the arms of government.

**s. 4** of the Penal Code defines the jurisdiction of the courts in Uganda to extend to every place within Uganda. It creates an exception with regard to treason, annoying the president, concealment of treason, terrorism which are offences against the state.

## **TREASON s. 25 PCA**

### **What is treason?**

It is a crime that involves betrayal of one's country especially by attempting to kill the sovereign or overthrow the government or deliberately acting to aid its enemies.

### **Types of treason**

The following acts constitute the offence of treason.

- levying war against the country.
- causing or attempting to cause the death of the president.
- plotting to overturn the government.
- aiding or abetting any of the above acts.

What is an overt act?

### **Cases**

1. Ug. v Yassin Hamisi & Moses Ali HCCS 4 of 1992
2. Gabula Bright Africa V Uganda HCCS 170 of 1991.
3. Ug. V Mike muwonge & Ors HCCS 31/1988
4. Uganda v Hofini & Ors HCCS 7/1992

Punishment for treason- death.

## **CONCEALMENT OF TREASON/ MISPRISON OF TREASON S. 25 PCA**

The offence relates to concealment of acts of treason i.e. knowing that one intends to commit treason and one does not report promptly to the authorities.

In **Mataka & Ors V R (1971) EA 495** the Court of Appeal noted that the offence of misprison is committed when someone who knows that another person is about to commit treason doesn't report the matter promptly.

It must be seen that there are two essential factors;

- i) the accused person must have had knowledge and not mere suspicion or belief.
- ii) Knowledge must be on an intention to execute treasonable acts. Knowledge of that other person considering or simply discussing possible treasonable action is not enough.

Punishment- Imprisonment for life.

## **TERRORISM S. .... Anti terrorism Act**

In s. 26(6), Terrorism is defined as the use of violence or threats with intent to achieve or promote political ends in an unlawful manner and involves the use of threats or violence calculated to put the public in such fear as may cause discontent against the Government.

### **Ingredients**

1. Any unlawful act done to cause discontent against the government.
2. The act must involve violence or threats
3. This act must be calculated/ intended to achieve or promote political ends by making unpopular. This is the mens rea.

## **OFFENCES UNDER THE TRAFFIC AND ROAD SAFETY ACT 1998**

Note that some offences under the act are offences of strict liability/ statutory offences.

**Assignment:** With relevant authorities discuss statutory offences and the standard of proof in such offences. ref. Warner V Metropolitan Police Commissioner (1968)2 All ER 356

Read ss 107-112 and identify the ingredients for each offence and which of the offences are those of strict liability.

- a. Causing bodily injury or death by dangerous driving s. 108(1)  
identify the ingredients – Seidi V R 1969 EA 280, Kamau s/o Muga V R 1963 EA 172
- b. Driving under the influence of drink or drugs s.111
- c. Use of a motor vehicle which is not in good working orders. s.107(1)

## **OFFENCES AGAINST PUBLIC TRANQUILLITY**

### **UNLAWFUL SOCIETY, ASSEMBLY, RIOT**

**READ: SS. 56-67 PCA**

**Read:**

1. Chande v Republic 1961 EA 581
2. R v Odinga & Ors 1959 EA 1969 624
3. R v Issa Ndarama & ors 1958 EA 294
4. Wise v Dunning (1902)1 KB 267