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# A COMPARATIVE ANALYSIS OF THE DEFENCE OF INTOXICATION UNDER COMMON AND ISLAMIC LAWS.

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## ABSTRACT

A comparative analysis of the defence of intoxication under both Common and Islamic Laws has been a very challenging and interesting discussion.

This essay is set out to examine what is intoxication as defined by the relevant laws under the Common Law and under the Islamic Law. What are the defences available to a person charged with any offence and where such person raises the defense of intoxication.

It must be stated that intoxication as a defence is recognized in both Common and Islamic Laws, but as earlier stated, the latter is inapplicable in Nigeria because it could only be raised in criminal and tortuous matters, which is now exclusively within the purview of English criminal justice system.

A critical perusal of the defence of intoxication in both laws, Islamic position tends to eradicate any form of injustice, which may arise from voluntary intoxication, which is actually institutionalized, which it considers to be harmful to peaceful co-existence.

Intoxication, according to Black Law Dictionary, is "a situation whereby reason of taking intoxicants, and individual loses control of the normal use of this mental faculties and as such rendering him incapable of acting in the manner in which an ordinary prudent, normal and cautious man in full control of his mental faculties, using reasonable and expected care would act in such condition".

Every intoxicant is *Khamr* and every (type of) *Khamr* is prohibited.

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The drink prohibited Islam is described as *Khamr*. *Khamra* originally means "it intellect and obscures the moral sensibilities of a man. *Khamr* is differently explained as meaning what intoxicates, of the expressed juice of grapes, or the juice of grapes when it has effervesced and the own up froth, and become freed there from, and still, or it has a common application to intoxicating expressed juice of anything, or any intoxicating thing that clouds or obscures the intellect.

## INTRODUCTION

It is a well known fact that the English Criminal Law is applicable in Nigeria after the abolition of the Islamic Criminal justice System by the Colonial Masters. This trend is still upheld in the 1999 Constitution of Nigeria and the Area Court Edit of Kwara State now incorporated in the Laws of Kwara State of Nigeria, 1994

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A criminal perusal of the defence of intoxication in both laws, Islamic position tends to eradicate any form of injustice, which may arise from voluntary intoxication, which is tactically institutionalized, which it considers to be harmful to peaceful co-existence.

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Where the defence is successfully pleaded, then the punishment is either mitigated or suspended on the circumstance of each case.

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## THE CONCEPT OF INTOXICATION IN COMMON LAW.

To start with, it is worthy to note that, there is no particular or specific provision that actually define the term 'Intoxication' in both Criminal Code and Penal Code.

Moreover, according to the Criminal Code<sup>3</sup>, it gives the example of substances that can be bring about the state of intoxication which includes **narcotic and drugs**. The Penal Code does not contain any provision for substance that can cause intoxication. Hence, effort shall be made in this write-up to define the term intoxication.

Ordinarily, 'Intoxication'<sup>4</sup> is a situation where as a result of an intake of intoxicants (e.g. alcohol), a person loses the ordinary use of his mental or physical faculties. On the other hand, a state of intoxication arises when there is too much consumption of alcoholic drinks or drugs. An intoxication person will not be in control of himself, he will commit a crime, which he would not have committed when he is in control of his senses. This is so, because his behaviour must have been induced by an excessive consumption of alcohol.

According to Black's<sup>5</sup> Law Dictionary,

*"Intoxication is a situation whereby reason of taking intoxicant, an individual does not have the mental use of physical or mental faculty. Thus, rendering him incapable of acting in the manner one would expect of an ordinarily prudent and cautious man".*

From above definition, it is clear that a person that is induced by drugs or alcoholic drinks will loss the normal use of physical or mental faculty of reasoning. And thereby, causing him/her to behave in an abnormal way and manner.

Generally, intoxication is not a defence to a criminal charge. But there may be a defence where intoxication is involuntary; and even voluntary intoxication may have mitigating effect on criminal liability.

3 Section 29(5) LP Curzon

4 Criminal Law 8th Edition Pg. 81 M & E

5 Sixth Edition, 1998

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## TYPES OF INTOXICATION IN COMMON LAW

### Involuntary intoxication and criminal responsibility.

The general rule in Nigeria is the same as in many other jurisdictions that intoxication is no defence to a criminal charge. This is clearly stated, the Criminal Code which provided:-

*"Save as provided in the section intoxication shall not constitute a defence to any crime charge"*<sup>6</sup>

Also, the Penal Code apart from Section 403, provides "that a person who does act in a state of intoxication is presumed to have had the same knowledge as he would have had if he had not been intoxicated,"<sup>7</sup> for instance in the Northern Nigeria case of *TONARA BAKURI V. THE STATE*,<sup>8</sup> the Court held: intoxication is a specie of, in fact, there is no excuse and the drunken man is legally no better off than a sober man, he is legally not worse-off. This however suggests that contrary to the general rule, there may be a defence, for example where intoxication is involuntary. Also, on the other, voluntary intoxication may have same mitigating on criminal liability.

### INVOLUNTARY INTOXICATION

Section 29 (2) of the Criminal Code provides; "Intoxication shall be a defence to any criminal charge if by a reason thereof, the person charge at the time of the 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 person".<sup>9</sup>

**On the other hand, the Penal Code provides that:**

"Nothing is offence which is done by a person at the time of doing it, is by reason of intoxication caused by something

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6 Section 29(1)

7 Section 44

8 (1965) 2 NNLR 163

9 Section 29(2)

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administered to him without his knowledge or against his will; incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law".<sup>10</sup>

It must be expressed that what the Penal Code does is to merely extend the same protection of law to a person who commit an offence while in a state of involuntary intoxication as in given to an insane offender.

The provisions of the Code<sup>11</sup> except for the phrase "unsoundness of mind" in Section 52 appears to be the same. The effect of this provision is that for an accused to successfully establish a defence of involuntary intoxication under the Nigeria Penal Code, he has to establish that the intoxication caused the same kind of consequence as unsoundness of mind sufficient to remove criminal liability.

Furthermore, the Nigeria criminal base exemption from criminal liability offence committed as a result of involuntary intoxication, if at the time of committed the offence, the offender did not know what he was doing or could not know right from wrong.

To certain extent, the circumstances in which involuntary intoxication can avail a party from criminal liability resemble those circumstances prescribed under the Criminal Code<sup>12</sup> to avail an accused who is insane from liability. However, this is not to say that the Criminal Code which deals with defence of insanity provides that;

"A person is not criminally responsible from an act or omission if at the time of making the omission, he is in such a state of mental disease or natural infirmity as to deprive him of capacity to understand what is doing, or of capacity to control his actions, or of capacity to know that he ought to do the act or make the omission".<sup>13</sup>

It is of great important to note the two difference for the provision of these Sections, for insanity to avail an offender from criminal liability, under the

<sup>10</sup> Section 52

<sup>11</sup> Sections 51 and 52 of the Pencil Code

<sup>12</sup> Section 28

<sup>13</sup> Section 28

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code, must prove to the mental disease, as natural mental infirmity he was deprived him of capacity to understand what he is doing, or of capacity to control his actions or the act as make the omission.

The defence of involuntary intoxication is still available even if lack of capacity is not established. All he has to prove is that due to the involuntary intoxication he did not know that such act or omission was wrong, or that he did not know what he was doing.

The other different is that Section 29 (2) (a) Nigeria Criminal Code does not avail an intoxication offender who alleged that he acted under irresistible impulse.

Also, under those two Codes been examined for intoxication to be regarded as involuntary, the intoxicant must be administered by another person. Although, the Penal Code is not so explicit but Section 52 does not cover the case of a person who mistakenly administers an intoxicant to himself as implied in the requirement that intoxication caused by something administered to him without his knowledge or against his will.

The most offending limitation on involuntary intoxication contained in the requirement of the Criminal Code that:

“The state of intoxication (be) caused by the malicious or negligent act of another person”.

As a result of the above provision, where a person is fraudulently coerced into either taking alcohol as compound of beverage and drugs or where a doctor negligently gives a wrong prescription to a patient, the intoxication which however result from these cases will be regarded as involuntary under the Nigerian Criminal Code. But one important fact that should not be forgotten is that there many situation or instances on which a person may become intoxicated against his wish in the absence of either fraud or negligence on the part of the person giving him the intoxicant.

The first step is a preliminary determination as to whether the intoxication is voluntary before determining the question as involuntary before determining the question as to whether the other elements by Section 29 (2) (a) of the

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Criminal Code is essential to successfully raising a defence of involuntary intoxication is present.

Since Penal Code provides that involuntary intoxication must be caused by the malicious or negligent act of another person, it disallow a defence of intoxication which is not caused by the malicious or negligent act of another person from being considered as involuntary.<sup>14</sup>

In the opinion of OKONKWO and NAISH "the wording of the provision is that the act of the other party must be malicious and negligent. If the injection of the wrong drug in ... Were accidental and not negligent, then the patient who subsequently committed an unlawful act in an intoxicator state could not rely on Section 29 (2) (a) of the Criminal Code of Nigeria"<sup>15</sup>.

The intoxication in such a case is involuntary but the defence cannot be heard on the subsection.

Some other authors have however criticized this notion of involuntary intoxication. Among them are SMITH AND HOGAN<sup>16</sup> who have put it this way:

*"It is difficult to understand precisely in what the defence consists. If a man intends to kill and does kill, it can hardly be a defence simply to prove that he has some alcohol in his blood which he did not intend to have.*

*Presumably, he has at least to show that he would not have committed the crime but for the alcohol, but this is such a highly speculation matter as to be incapable of satisfactory proof. This is English authority on this matter".*

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14 Section 52

15 Criminal Law in Nigeria (1980) 86 CIR 358

16 3rd Edition Chapter 9 page 154

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## **SUMMARY OF MAIN INGREDIENTS OF INVOLUNTARY INTOXICATION.**

The following are the summary of ingredients needed to be established in court before the plea of involuntary intoxication can avail on accused.

- i. The state of intoxication must have been caused without the consent or knowledge of the offender.
- ii. It must have rendered the offender incapable of knowing the nature of offender he committed.
- iii. It must have caused the offender to be in a state of temporary insanity etc.

It is therefore clear from the above that before a person can rely on involuntary intoxication his state of drunkenness, which must have been caused by negligent or malicious act of another, must have caused the offender state of temporary insanity. To the extent that the person do not know what he was doing or that what he was doing was wrong at the time he was doing it.

## **VOLUNTARY INTOXICATION AND CRIMINAL RESPONSIBILITY**

Voluntary intoxication has been described by SMITH & HOGAN as  
*"Intoxication caused by substances that the person knowing introduce into his body, the tendency of which to leave intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such duress as would afford a defence to a Criminal charge"*<sup>17</sup>

Therefore, a person is deemed to have intoxicated himself voluntary where he knowing consumed alcohol or takes narcotics drugs.

The rule that intoxication is not generally a defence to a criminal liability applied mostly to cases of voluntary or self-induced intoxication. Although there are cases of voluntary intoxication where intoxicated where intoxication

<sup>17</sup> Ibid P. 234



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may avail an offender, if the intoxication results to insanity e.g. delirium tremens. Some people hold view that if this is the case, the people might commit crime. This point, it appears over looks the fact contrary to the popular notion intoxication may render the task of the crime more difficult.

Justice Aguda, in his book<sup>18</sup> feels that it would not be an easy task for any person is put up this pretence and succeed in court. This can be seen from the fact that in any criminal case while the prosecutor has to prove both the *actus reus* and *mens rea*, evidence has to be led to show that the accused was drunk at the time of committing the offence. Some people also are of the view that a large number of people act drunk to give themselves "Dutch Courage" to commit crime for this group of people, the rule that voluntary intoxication is no defence is in order. The main ingredients of voluntary intoxication will be discussed below.

### **SUMMARY OF MAIN INGREDIENT OF VOLUNTARY INTOXICATION**

It is a statement of fact that voluntary intoxication will never be admitted in court of law as a defence to criminal liability.

Moreover, if an accused person gets himself intoxicated in order to have Dutch Courage to commit an offence, he cannot raise the defence of the intoxication for the law regard a person who forms an intention to commit an offence and later drinks in order to be bold to face the consequences.

The following are the main ingredients of voluntary intoxication:-

1. The state of intoxication must exist with the full knowledge of the accused.
2. It must be intentional; this is to say that the accused must have a prior intention of committing the crime.
3. The voluntary intoxication must be willingly, knowingly and advisedly done.
4. The act or omission done must be unlawful and malicious

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18 Principle of Criminal Liabilities in Nigeria 2nd Edition 1990 pg. 342

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5. It must be done in a manner so rash or negligent as to be falsely, likely and fraudulent etc. It is very clear that any criminal offence committed by an accused whose action is in line with these ingredients will not be discharging of his criminal liability as established in the case of **ATT. GEN FOR NORTHERN IRELAND V. GALLAGHER**.<sup>19a</sup> The accused expressed a desire to kill his wife, he later consumed a bottle of whisky to have a "Dutch Courage" to perform the dastardly act, he was found guilty of murder.

Lord Denning observed that;

*"The wicked of his mind before he got drunk is enough to condemn him coupled with the act he intended to do and did do".*

### **VOLUNTARY INTOXICATION WHICH RESULTS TO INSANITY OR ABNORMALITY OF THE MIND**

Excessive drinking can actually cause insanity such as *delirium tremens*, if this happens, the rule in *M'NAGHTEN*<sup>19b</sup> will be applied in exactly the same way as where insanity arises from any other causes. This is to say that, an accused will be discharged of his criminal liability if he had taken alcohol or drugs or other intoxicants to the extent of becoming insane or having abnormal mind. The onus of proving this fact is on the accused that at that material time he was suffering from a defect of reasoning due to the disease of the mind caused of by intoxication such that he did not know the nature and quality of his act that it was wrong. It should be noted that the defence of insanity, is of course, of general application it is not limited to offence requiring specific intent.

Going by these principles, it appeared clearly that there are differences between the provisions of the Nigeria penal code and the Nigeria Criminal Code. In respect of criminal liability of an accused stating that he was of

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19a (1963) AC 349

19b *RV Davis* (1981) 14 COXCC

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abnormal mind or in a state of insanity, it is clearly manifested in the area of voluntary intoxication and criminal responsibility. The Nigerian Penal Code provides that

*"A person who does an act in a state of intoxication is presumed to have the sane knowledge as he would have had if he had no been intoxicated".<sup>20</sup>*

However, the Criminal Code considers intoxication where the accused may be temporarily insane, it states this:

"intoxication shall be a defence to any criminal charge if by reason .... (b) the person charged, was by reason of intoxication insane temporarily or otherwise at the time of such act or omission".<sup>21</sup>

### **BURDEN OF PROOF OF INTOXICATION IN COMMON LAW**

Under the English Law, it is for the accused to adduce evidence that he was intoxicated at the time he committed the act complained of, if the accused contended that this state of intoxication was to the involuntary taking of alcohol or some drug, he will have to adduce evidence to the effect. Furthermore, he must show that in consequence of such, he did not know what he was doing at the time he committed the act constituting the offence. Here it is suggested that the burden on the accused is no more than to cast a reasonable doubt in the minds of the jury as to the probability of the story.

If intoxication is raised on general principle as an element negating *mens rea*, it seems that if the jurist is left in doubt as to whether the accused was so intoxicated as to be liable to conceive the requisite *mens rea* than, he should be entitled to an acquittal because the provision would leave failed to prove an element of the offence.

It is submitted, however, that the burden to offer evidence of intoxication, which is in the defendant here, cannot be more than the burden, which rests

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<sup>20</sup> Section 44

<sup>21</sup> S. 29(2) Criminal Code

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on a plaintiff in a civil case to establish his claim.

In Nigeria, there is a statutory provision covering the matter, the Evidence Act<sup>22</sup> which is applicable to all court in Nigeria with minor exceptions, the proof of commission of criminal offence beyond reasonable doubt is on the prosecution. This is subject, however, to Section 141 subsection 3©, which provides that the burden of proof of a defence of intoxication or insanity is on the accused. The case of *R V. ECHEM*<sup>23</sup> illustrates this preposition that proof of insanity, which rests on an accused under this provision, is not higher than the burden, which rests on a plaintiff or defendant in a civil proceeding. The position with regard to intoxication must be the same.

### **THE CONCEPT OF INTOXICATION (KHAMR) IN ISLAMIC LAW**

Intoxication means to be out of senses with the use of liquor,<sup>24</sup> narcotics et cetera.

The drink prohibited in Islam is described as "Khamr" khamara originally means "it veiled or covered or concealed" a thing and wine is called Khamr because it veils the intellect and obscure moral sensibilities of man<sup>25</sup>

Khamr is differently explained as meaning what intoxicates, of the expressed juice of grapes or the juice of graps or when is has effervesced and thrown up forth and become freed there from and still or it has a common application to intoxicating expressed juice of anything, and any intoxicating thing that clouds or obscures the intellect.<sup>26</sup>

The jurists of Makkah and Medinah defined intoxicant as every drink that gives delights and excitement, which cause one to lose self control.<sup>27</sup> An intoxicated person is one is out of his senses, is incapable of understanding

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22 S. 138(1)

23 (1952) 14WACA 158

24 Abdul Qadir Qudan Saheed – Criminal Law of Islam Vol 2 Pg 310

25 Muhammed Iqbal Siddiq – The Penal Law of Islamic (Shariah) Kozi Publication Lahore Pa 112

26 Ibid P. 112

27 Abdul Qadir Zubari – Exigesis of Legislative Verse in the Quran and the relevant Traditional (All-Hudud) BK 1 AL-MADINAH HERITAGE PUBLICATIONS LAGOS Pg. 77

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anything, and, of distinguishing between male or female or heaven and earth.<sup>28</sup> According to the tradition of the prophet reported by ibn Umar.

*"Every intoxicant is khamr and every intoxicant is Haram i.e. unlawful"*

The term Khamr is generally said to be all embracing with respect to what intoxicates and thus, is forbidden in the Holy Quran. The prohibition was done in systematic manners.

*"They will ask the concerning wine and the game of chance. Say: In both there is great sin, and some benefits for men; but this sin is greater than the benefit."<sup>29</sup>*

This first injunction prohibit wine itself. Then, came the second prohibition. "O ye who believe! Draw not near unto prayer when ye are drunken, till ye know that which ye utter".<sup>30</sup>

This verse only asks the Muslims not to offer prayers while drunk. The third and the final stage of prohibition goes thus:

*"O ye who believe, surely wine and games of chance (ungodly) shrinks, and dividing devices are only an infamy of Satan work". Avoid them, that ye may prosper. Satan seekth only to cast among you enmity and hatred by means of wine and games of chances, and turn you aside from remembrance of Allah, and from prayer. Will you not therefore abstain from them."<sup>31</sup>*

The above injunctions are strengthened by the tradition of the prophet which says:

*"Allah has cursed wine and the one who drinks it and the one who serves it and the one who sells it and the one who buys it and the one who extracts it and the one who has it extracted and the one one who carries it and the one for whom it was carried".<sup>32</sup>*

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28 Ibid P. 88

29 Quran 2 V 219

30 Quran 4 V 43

31 Quran 90 V 91

32 The Penal Laws of Islam (Shariah) page 116 by Moahmmed Igbal Siddiq

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As could be seen, the Shariah makes the drinking of liquor absolutely unlawful without regards to whether it intoxicates or not.

The offence of taking intoxicant is a hard offence, and could only be committed by adult Muslims, or extra-ordinarily necessity such as danger of suffocating, where water is not available.

The prohibition covers both intoxicants and narcotics like hemp. The scholars describe narcotic

*"That which numbs is anything that leads to numbness of the limbs. But the punishment for both is not the same. While the punishment for the former is huddud, the jurist converted as to the latter."<sup>33</sup>*

The proponent of the first view led by Ibn Taymiyyah hold that intoxicant caused by an anesthetic (bary) or any other type of narcotic requires legal punishment. The second view holds that though intoxication is forbidden, but where intoxication is as a result of narcotics, tazir punishment is incurred rather than legal punishment.

The third view immunises a person taking narcotic for medical reasons, his immune from legal punishment, but held that taken of narcotics pleasure incurs ta'zir punishment.

But the view of the majority of the jurists is that narcotics incur ta'zir punishment only, with the exception of Imam Abu Hanifah, which employed for drinking and the giving of it as present.

## **TYPES OF INTOXICATION IN ISLAMIC LAW**

Basically, a person can be intoxicated through alcohol, liquor (intoxicant) or narcotic either voluntarily or involuntarily.

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33 Islamic Criminal Justice P. 188

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## **VOLUNTARY INTOXICATION**

A person voluntarily or out of his own accord drinks intoxicants and under, its influence commits any criminal or tortuous shall not be held responsible for such, even though, he was both with his senses when he committed the act such a person incurs the hadd punishment of wine as well as the stipulated penalty for the other offences committed; This view accords with that of the modern jurists. He will not be allowed to rely on the doctrine of immunity from criminal responsibility laid down by the prophet when he said

*Three people are excused; One who is asleep; until he wakes up, a child until he attains maturity, and an insane person until he regains his senses".<sup>34</sup>*

The punishment for wine drinking is eighty stroke and will only be administered on the drinker of wine, after of the intoxication wears off. The rationale for melting out punishment on the drinker of intoxicants who incur criminal responsibility, though temporarily deprived of his senses as a result of the effect of the intoxicants, is that wine itself is prohibited let alone drinking it, without necessity. If the punishment is suspended, people might under the guise of immunity from criminal liability commit criminal or tortuous act. In other words, such an exemption from criminal responsibility as well as punishment will serve a person under voluntary intoxication divorces his wife or enter into contract of sales or purchases, such will be held binding.

However, if under intoxication, he renounces his faith, such will not be given weight for it is a matter of faith. Also, where he made confessions, if such falls within the realms of right of Allah, for example, regarding Adultery, false charge, the court will not base his conviction solely on that.

## **INVOLUNTARY INTOXICATION**

A person may be involuntary get intoxicated by being forced to drink inebriating liquor or when he unknowingly takes medicine and is stupefied, he will be exonerated from the offence of wine-drinking and consequently,

<sup>34</sup> Opcit page 89

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the legal punishment in this case, he loses his *ahliyat*<sup>35</sup> that is, capacity and in that situation, he can rely on one who is asleep from legal punishment.

However, he is not immuned from tortuous act committed against person or property. This is so because Shariah gives protection to life and property. The fact that he loses his senses does not immuned him from tortuous liability in the account does not in itself give room for the interference with another's life and property.

### **THE BURDEN OF PROOF OF INTOXICATION IN ISLAMIC LAW**

The burden of proof lies in the person who alleges that the accused is drunk. The person must substantiate his allegation with two male witnesses, who actually saw the accused drinking the intoxicants. Because of the nature of the offence, evidence of woman cannot be relied upon to incur conviction. Where an accused person confesses to drinking intoxicants but later retracted his confession, hadd punishment will be suspended, because the offence of drinking of alcohol or intoxicants falls within the realm of Allah's right. But if he is brought to a judge intoxicated and smell of liquor is perceived coupled with his confession, the allegation of wine drinking is substantiated and thus established.

However, where the accused confessed to drinking wine and the smell of wine could no longer be perceived punishment is not incurred. This is the opinion of majority of the jurists with the exception of Imam Muhammed of the Hanafi School who held that voluntary confession of the accused has established the offence, and so the punishment should be inflicted.

Also, if the accused person is arrested with the smell of alcohol but the smell afterwards ceases as a result of decay in arrangement before the court, and the integrity of the witnesses are not in question the jurist unanimously hold that the punishment should be inflicted.

It should be noted that any arrest of a person on the basis of smell of liquor or any other intoxicants without witnesses testifying to seeing the person

<sup>35</sup> Muslim Jurisprudence page 84



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drinking wine or vomiting wine, judgment cannot be based on that because of the precarious nature of the circumstances because it is possible for the accused in the absence of his confession to have sat where wine is being drunk and in the process contracted the smell or took wine under duress or it is even possible that he voluntarily drink wine. This uncertainty is a bar to the administration of the punishment. This is in line with the prophetic tradition of the prophet, which says

*"Set aside punishment if there is a least doubt"<sup>36</sup>*

At this juncture, it must be stressed that the punishment for wine drinking is not predicated on the wine drinking itself if it is drunk under compulsion or inebriating by lawful article or food.

## **CONCLUSION**

As a general rule, in Common Law and Nigerian Law is that intoxication will not be a good defence to any criminal charge. However, if the accused was so drunk as not to know what he was doing, then, he will not be guilty of any offence by virtue of **Section 24 of Criminal Code**. This is because the foremost element in criminal liability under the Code is that the act in question must be a construes, voluntary and deliberate act. Any doubt as to this should result in acquitted and discharge of the accused, regardless of the nature of the crime for no liability in law attaches to an involuntary act.

On the plea of voluntary intoxication, as a general rule in common law, voluntary intoxication is not a good defence in criminal charge, but it has a mitigation effect on criminal liability.

For the defence of plea intoxication to avail an accused person, he must show that he drank the intoxicating substance either through duress, compulsion, coercion, necessity. In such a situation, he would only be immune from the legal punishment, but will still be liable for all tortuous acts committed while under the influence of intoxicants in other word, successful plea of

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<sup>36</sup> Muslim Jurisprudence Page 72

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intoxication only avail the accused person from incurring legal punishment and does not extent to tortuous act.

Therefore, he would be liable/ask to pay certain amount of money in form of retribution to the family or heirs of the deceased, and, this type of money is known as **BLOOD MONEY (DIYYAH)**.

However, where it is established that accused voluntary induced himself with intoxicating substance, the defence of plea of intoxication will not avail him at all. He will be liable for tortuous act committed, and also, will not be exculpate from legal punishment in other words, he will be liable for both tortuous act and will not be immune from legal punishment.

In both Common and Islamic Laws, the defence of intoxication when successfully pleaded will avail the accused and in effect mitigate the legal punishment to manslaughter and blood- money respectively.

However, the above is not absolute in Islamic Law, in that, a person who voluntarily and knowingly drinks any intoxicants and under the influence commits any or tortuous act shall be held liable for both. The rationale behind this, is that intoxicants are prohibited in Islam and by voluntary drinking it, he is deemed to have the consequence of this act.

On common law, drinking of alcohol in itself is not a crime or an offence where is not accompanied by criminal or tortuous act. But where it is established that there had been malice against the deceased and later the accused drinks any intoxicants, which under its influence in disguise or and made the accused to commit that offence the plea of intoxication will not avail him.

It is noted that Islamic Criminal Law is not implemental in Nigeria by virtue of **Section 277 of the 1999 Constitution**. This Section limits the application of the law to Islamic Personal Law and thus the right of the Muslim that constitutes predominantly in the country, is denied as far back as early 60's.

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**(Endnotes)**

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