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CONSPIRACY OFFENSES IN NIGERIA AND THE COMMONWEALTH: A COMPARATIVE ANALYSIS

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Abstract: English law encompasses inchoate offences, crimes that address conduct before the full commission of a substantive crime. One such inchoate offence is conspiracy. This paper delves into the examination of conspiracy across three Commonwealth jurisdictions: Nigeria, India, and the Australian State of Queensland. The foundation for this exploration is the English legal system, the source of common law, given that these three jurisdictions base their legal systems on English common law principles. While the English legal system lays the groundwork, the analysis extends to the regulation of conspiracy in each jurisdiction. In Nigeria, the Penal Code and the Criminal Code govern this offence, while in India, the Indian Penal Code provides the legal framework. In the Australian State of Queensland, the Criminal Code of 1899, which influenced the Nigerian Criminal Code, serves as the guiding statute. This comparative analysis aims to shed light on the varying approaches to conspiracy in these Commonwealth jurisdictions and their alignment with English law principles.

Keywords: Inchoate Offences, Conspiracy, English Law, Commonwealth Jurisdictions, Comparative Analysis

1. Introduction:

English law intervenes to punish persons who have not yet committed an offence. The crimes which penalize conduct before the commission of the full or substantive crime are called inchoate offences. Conspiracy is classified under the inchoate offences. Inchoate offences are offences that are not completely formed or developed yet. Under the English law, there are three inchoate offences and they are: assisting and encouraging, conspiracy and attempt. For the purpose of this paper, we will be taking a holistic look at one of these offences. We shall be examining conspiracy from three commonwealth Jurisdictions that is Nigeria, India and the Australian State of Queensland while using the English legal system, the source of common law as foundation for the purpose of this paper. This is due to the fact that these three Jurisdictions have the foundation of their legal system on the English common law.The offence of conspiracy in Nigeria is mainly regulated by the Penal Code and the Criminal Code. In India, the offence is regulated by the Indian Penal Code. In the Australian State of Queensland, it is regulated by the Criminal Code of 1899 from which the Nigerian Criminal Code is derived.

2. Definition of Conspiracy

Conspiracy under the common law is defined as an agreement to commit unlawful by unlawful means. However, the criminal law does not generally punish mere intention.

But if two or more together express a common intention to do something unlawful, then that agreement alone may suffice for criminal liability, simply because several people are taking part in it and the law in its preventive aspect considers the plot of a number of people to be more dangerous than the devices of a single man. The offence of conspiracy has no definition under the Penal Code and the Criminal Code of Nigeria.

In Majekodunmi v R, the West Africa Court of Appeal adopted the familiar definition of Willes J in Mulcahy v R. thus:

A conspiracy consists not simply of the intention of two or more, but of the agreement of two or more to perform an unlawful act or to do an unlawful act. So long as a design rests in intention only, it is not indictable. The very plot is an act in itself when two agree to bring it into action …punishable if for a criminal object or for the use of criminal means

In R v Hoar, the court held:

This is widely accepted that there are two rationales to conspiracy. Firstly. The key justification in legislation is essentially that conspiracy is an inchoate crime which allows the law to reach out and punish criminal planning before this reaches the stage of attempt. Secondly, it is claimed that there is a new "dangerousness" inherent in the plotting because many people are preparing together: either because many can accomplish what a person will consider difficult or impossible, or because other criminal schemes that arise from the group.

However, under the United Kingdom‟s legal system, Lord Diplock in DPP v Bhagwan stated that common law conspiracy was the least systematic. The most irrational branch of English Penal Law, common law conspiracy has been largely abolished by section 5(1) of the United Kingdom‟s Criminal Law Act 1977. The defendants as usual need not have to know that what they have agreed on is an offence.

Succinctly, it can be deduced from the afore-mentioned definitions that conspiracy is the agreement of two or more individuals to make an illegal act or lawful act or allow it to be done by illegal means.

3. **Statutory Provisions**

Sections 96 and 97 of the Nigerian Penal Code and sections 120A and 120B of the Indian Penal Code Similarly provide as follows:

Section 96 (1) provides that when two or more individuals agree to commit or cause to be committed(a)an unlawful act,or (b)an unlawful act through unlawful means;such an arrangement is referred to as a criminal conspiracy (2) Notwithstanding the provisions of subsection 1, no agreement except an agreement to commit an offence shall constitute a criminal conspiracy unless one or more parties act in addition to the agreement in order to succeed.

Sections 97(1) and (2) state as follows:

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable by death or imprisonment shall be punished in the same manner as if he had committed such offence if no specific provision is made in the Penal Code for the punishment of such conspiracy. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months, or with a fine or both.

Sections 96 and 120A of the Nigerian and Indian Penal codes respectively define conspiracy and are identical to the common law definition while sections 97 and 120B of the law under which persons are charged and tried

shall be the respective penal codes. Sections 97 and 120B apply where no explicit provision is made in the codes for the prosecution of a specific crime or particular conspiracy. . Under section 97B, membership of an unlawful organization is punishable by up to seven years. The section is intended to reinforce the conspiracy law by covering the actions of societies that are dangerous to good governance in the northern part of Nigeria where there is no sufficient proof of conspiracy. The Indian Code has no specific provision. In both Penal Codes, the elements of conspiracy are: an arrangement between two or more persons; an unlawful act and an unlawful act followed by the agreement by an overt act.

The provisions of the Criminal Code applicable in Southern Nigeria and Queensland Criminal Code relating to conspiracy are similar. The broad effect of sections 516 to 518 of the code is to render liable to punishment anyone who conspires to achieve an unlawful intent with another to effect an unlawful purpose by unlawful means. Taking the Nigerian Criminal Code as a guide, relevant provisions are provided as follows:

(a) Section 516 states: any person who conspires with another to commit any crime or to commit any act in any part of the world which, if committed in Nigeria, would be a crime and which is an offence under the law in force where it is proposed to be committed is guilty of a crime and, if no other punishment is imposed, is liable to imprisonment for seven years or such lesser punishment

(b) Section 517 states: any person conspiring with another to commit any offence which is not a felony or to commit any act in any part of the world which, if committed in Nigeria, would be an offence but not a felony and which is an offence under the laws in force where it is proposed to be committed is guilty of a misdemeanour and is liable to two years ' imprisonment. (c) Section 518 states: any person conspiring with another for any of the following purposes: to impede or undermine the execution or compliance of any Act, Law, Statute or Order; or to cause injury to the person or any person's reputation, or to depreciate the value of any person's property;or to prevent or obstruct the free and lawful disposal of any property by the owner; cannot arrest an offender without a warrant.

Sections 516A and 517B deal with conspiracy to do an act in another State rather than abroad. Under the Queensland criminal code, the word “crime” is used instead of “felony”. In sections 541 and 542 which correspond to sections 516 and 517 of the Nigerian Criminal code, the word "crime" is used instead of "crime." Crimes are classified as indictable offences in section 3 of the Queensland

Criminal Code, that is, persons can not be charged or convicted except on indictment, unless otherwise expressly state d. "Felony," on the other hand, is defined in section 3 of the Nigerian Criminal Code as any crime deemed by law to b e a criminal offence or punishable without proof of death or imprisonment for a period of three years or more.

Section 518(1) of the Nigeria Criminal Code provides for enforcement of any Act, Law, Statute or Order. The same provision is found in section 543(1) of the Australia Criminal Code. Also, the penalty stipulated in sections 517 and 518 of the Nigerian Criminal Code is imprisonment for two years but under sections 542 and 543 of the Queensland Code, it is three years with hard labour.

The two codes contain provisions for the punishment of specific conspiracies. Such conspiracies include, conspiracy to commit treason, to bring false accusation, to pervert the course of justice, to defile a woman or girl, to murder, to defraud etcetera.

Unlike the Penal codes of India and Northern Nigeria, the Criminal Codes of Southern Nigeria and Queensland do not define conspiracy.[20] Resort has therefore been had to the common law definition. In Okosun v A–G Bendel

State and R v Rogerson, the Supreme Court of Nigeria and the High Court of Australia respectively adopted the wellknown definition of Willes J. in Mulcahy v R:

In England, there are two types of conspiracy:

1. Agreements to Commit a Crime. These are termed statutory conspiracies and are governed by the provisions of section 1 of the Criminal Law Act, 1977 as amended by section 5 of the Criminal Attempts Act, 1981.The Act provides as follows:

Section1(1) states: Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct is followed which, if the agreement is pursued in compliance with their wishes, either: (a) necessarily amounts to or requires the commission of any crime or offence by one or more of the parties to the agreement, or (b) does so only in respect of offence or offences in question.

2. Where liability for any offence may be incurred without the knowledge of the person committing the offence or of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit the offence

pursuant to subsection(1) above unless he and at least one other party to the agreement intends or knows that fact or circumstance. The ingredients of conspiracy under the Criminal Law Act,

1977 are: (a) an agreement between two or more persons, (b) the object of the agreement. An agreement must be concluded that: a course of conduct should be followed; which, if carried out in accordance with their intentions, will necessarily amount to liability for any offence may be incurred without knowledge on the part of the person committing it or any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection(1) above unless he and at least one other party to the agreement intend or know that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.

2. Common Law Conspiracies

The Criminal Law Act, 1977 abolished the offence of conspiracy at common law. It however preserved two species of common law conspiracy:

(a) Conspiracy to Defraud.

Section 5(2) as amended by section 12 of the Criminal Justice Act, 1987 provides that the common law rules continue to apply "so far as they relate to conspiracy to defraud".

(b) Conspiracy to Corrupt Public Morals or Outrage Public Decency

Section 5(3) provides that the common law rules continue to apply to such conspiracies provided the object of the agreement does not amount to a crime.

The definition of statutory conspiracy substantially repeats the common law, except that:

(i) It is more restricted than the common law in requiring the object of the conspiracy to be criminal.

(ii) It is wider than the common law by not requiring the object of the conspiracy to be possible.

(iii) It creates doubts as to the mental element which did not exist at common law.

4. ELEMENTS OF THE OFFENCE OF CONSPIRACY

(a) Agreement

This is the actus reus of the offence. In R v Mulcaphy, Willes, J. declared that the gist of the offence of conspiracy lies not in doing the act or effecting the purpose for which the conspiracy is formed, but in the forming of the agreement between the parties. Conspiracy is a crime consisting of two or more people agreeing to perform an

unlawful act or to do an unlawful act. Unless two or more persons are found to have collectively agreed, there can be no conviction. It may be that an agreement in the strict sense required by the law of is not necessary but the parties must at least have reached a decision to perpetrate the unlawful object.

In R v Plummer, the court applied the basic rule to a case in which three persons were charged jointly with conspiracy and one pleaded guilty and the other two were acquitted. The conviction of the third was quashed. It was held that the three accused being jointly indicted, the trial should be regarded as joint, with the result that the record of conviction "would be inconsistent and contradictory and so bad on its face.

In State v Mushtaq Ahmad, the Respondent and four other accused persons were tried and acquitted of the offences of theft and conspiracy. The State appealed against the acquittal of the Respondent only and this was dismissed because he alone could not be found guilty of conspiracy after his alleged co-conspirators had been found not guilty.

This area of the law was subjected to a rigorous review in DPP v Shannon. Shannon was one of a number of defendants charged on an indictment containing 22 counts. In one of those counts, he was charged with one Tracey with conspiring dishonestly to handle stolen goods. Shannon pleaded guilty and was accordingly convicted and sentenced to imprisonment for four years to run concurrently with sentences imposed in respect of other offences. Tracey pleaded not guilty and was eventually acquitted. Shannon then appealed on the ground of mutually inconsistent entries on the record touching the guilt of Tracey and himself, there being but one record notwithstanding the different pleas and the fact that there was no joint trial. The House of Lords refused to set aside the conviction. The dual rationale given for departing from the settled rule was that the reasons for the acquittal of one conspirator may have nothing to do with the other and that an acquittal does not amount to a finding of innocence. The High Court of Australia followed the decision in Shannon in R v Darby.

In Shodiya v State, the Court of Appeal in setting aside the conviction of the Appellant, stated that the acquittal of the Appellant would not affect the conviction of the 1st accused in so far as the evidence against the 1st accused was properly admitted.

Under the Indian Penal Code, it has been decided by the Supreme Court in BimbadharPradhan v State of Orissa that more than one person should not beconvictedof the criminal conspiracy offence except necessary. It is appropriat e if the court is in a position to find that in the criminal conspiracy two or more people were actually involved. Sinha J. noted:

The argument put forward on behalf of the appellant was that the other defendants had been acquitted by the Courtof Justice, and that the appellant should not have been convicted because the evidence against all of them was si milar.In this case, it would have been very persuasive, not as a matter of principle but as a matter of prudence if we were satisfied that the acquittal of the other four accused persons was entirely correct.

In England, under the Criminal Law Act and at common law, a husband and wife cannot alone be found guilty of conspiracy. They are considered in law as one person and are presumed to have but one will. The doctrine equally applies under the Criminal Codes of Queensland[39] and Nigeria.[40]

Although, the doctrine essentially derives from monogamous practice, the Privy Council in R v Mawji, held that it also applied to potentially polygamous marriage as well. There are no statutory provisions of this point in the Penal Codes of Nigeria and India.

The truth is that there can be no objection to either (a) a husband and wife being indicted for conspiracy together with another defendant (or other defendants): or (b) husband and wife being indicted alone for conspiracy where

the particulars alleged that they conspired with named or unnamed persons. Also, a person cannot conspire with another who is under the age of criminal responsibility, 10 years in England and 7 years in the other jurisdictions. Under section 2(1) of the Criminal Law Act, 1977, a person who is an intended victim of an offence shall not be liable for conspiracy to commit the offence. Also, by section 2(2)(c) of the
Act,a person shall not be guilty of conspiracy to commit any crime or offence if the only other person or persons with whom he agrees are the intended victim of that offence (both initially and at all times in the currency of the agreement) or each of those offences. In all the jurisdictions, a company may be convicted of an offence of conspiracy. However, in R v McDonnell, it was decided that there cannot be a conspiracy between a person and a company of which he is the sole person responsible for the acts of the company. Provided that there has been an agreement of at least two, it does not matter that only one of them has been caught. The charge should allege conspiracy with person or persons unknown.

Since the essence of conspiracy is agreement, it is no defence to say that having been a party, for example, to plotting a robbery, the accused later had second thoughts and withdrew from the criminal enterprise. In Erim v State,[50] the court held that the act
of conspiracy was committed in its entirety when two or more people decided to do certain thing
Immediately or in the future. In order to complete the offence, it is not appropriate to do anything beyond th e agreement reached. At that stage, even if the conspirators repented and stopped or had no opportunity to carry out their agreement or are prevented or fail in what they agreed to do, the offence is already a fait accompli. A conspiracy does not end when the agreement is made.It will proceed until two or more parties plan to implement the design. It is a crime of duration, a continuing offence.[51]

(b) The Unlawful Act / Unlawful Means

The mens rea in criminal conspiracy can be described as an intention to be a party to an agreement to do an unlawful act or to do a lawful act by an unlawful means. The meaning of the word "unlawful" is uncertain. In R v Parnell,[53] the conspiracy was for the purpose of inducing tenants to refuse the payment of the legitimate rents for their farms. This was held to be a criminal conspiracy even though, the non-payment of rent per se at best can only give rise to civil liability. Fitzgerald, J. summarised the law as follows:

A conspiracy consists in the agreement of two or more persons to commit an unlawful act or to do a lawful act by unlawful means . . . "illegal" or "unlawful" may extend to and embrace many cases in which the purpose is a conspiracy as for instance, if several persons combined to violate a private right.

In R v MuljiJamnadas and ors, the Court of Appeal for Eastern Africa held that the term "unlawful" used in the Penal Code of Uganda, includes civil wrongs as well as acts punishable criminally. This statement of the law applies to both Penal Code and Criminal Code. **(c) Knowledge of the Unlawful Object**

A person cannot truly agree to something without knowing what it is that is supposed to be agreed to and the courts have long insisted that for a person to be guilty of conspiracy, he must at least have been cognizant of the object of the conspiracy. In Schussler v Director of Enforcement, the Supreme Court of India held that if in furthering the plot, other people are guided to commit an unlawful act without the knowledge of the conspiracy of the plot, they cannot be considered conspirators, even though they may be guilty of an offence related to the actual unlawful act. Where a person conspired to commit one offence in furtherance of which his co-conspirators committed another offence, the person is not guilty of conspiracy to commit that latter offence unless he, at least foresaw its commission. The basic requirement of mens rea was re-affirmed by the House of

Lords in Churchill v Walton where it held that knowledge of what the object of the alleged agreement is, including knowledge of any circumstances by reason of which the object is unlawful, must be proved against a defendant even though, the object is unlawful only because it is an offence of strict liability and such knowledge may be negatived by a positive mistake or simple ignorance. Although, a conspirator must know what it is that is allegedly agreed to, he needs not know that it is unlawful. Neither ignorance of the unlawfulness of the object nor a positive belief that it is lawful is a defence. However, if the substantive offence allegedly agreed upon is so defined as to require knowledge of the law for its commission, such knowledge will also be required for a conspiracy to commit it.

(d) Knowledge of Other Parties

It must be proved that „D" conspired with another but the other need not be identified. A person may conspire with another, although, he does not know his identity and is not in direct communication with him, but he must at least know or believe that there is another who agrees with him.

Without such knowledge or belief, a party would be ignorant of the existence of the alleged agreement. Where the number of alleged conspirators exceeded two, however, some doubt may arise as to what parties must know before they could be held to have conspired together. In R v Griffiths, D had contracted with seven farmers to supply lime and D, his book-keeper and seven farmers were subsequently convicted of conspiring together to defraud the Government when claiming a subsidy payable under a statutory scheme. These convictions were quashed on appeal because there was no evidence to support the allegation that the farmers were co-conspirators for, although each might have conspired with D to defraud the Government, and each might have, in fact participated in a wider scheme conceived by D, yet, there was no evidence that any of the farmers knew of any contract or fraud, apart from the one he was directly concerned with. The Court held that, for any of the farmers to be guilty of the wider conspiracy, it had to be proved that he, at least, knew that there were other parties in addition to D. he must, at least, have known that he was participating in "a scheme" which went beyond the particular illegal act he was directly concerned with. The case of R v Griffiths was applied in R v Chrastny (No. 1) where the Court held a wife liable for conspiracy when she agreed with her husband to commit an offence knowing that there were other conspirators not withstanding the fact that she had no detailed knowledge of who the other conspirators where or had not come to any positive agreement with any of them.[63] **(e) Additional Mental Element.**

Apart from the awareness of the alleged object and other persons which a person must have before he can have the necessary intention to conspire, additional state of mind must be proved before it can be said that a person intentionally agreed to an unlawful object so as to be guilty of conspiracy.

Firstly, a defendant may become a conspirator by expressing his assent to the pursuit of the unlawful object even though it is not intended that he should personally do anything to further it beyond encouraging it by joining the agreement.

In R v Gurney, the court ruled that a defendant could be convicted of conspiracy to defraud by means of the publication of a false prospectus but it was held that he could not be convicted of "having published or concurred in publishing" it, apparently because he had taken no part in the actual preparation or publication of the prospectus.

In Erim v State, the Supreme Court of Nigeria stated that an individual may be implicated in the offence of conspiracy by merely consenting to and promoting the plan, even though nothing may have been delegated or planned to be directly executed by him..

On the other hand, the court held in R v Thomson that a person who merely pretended to carry out the unlawful object, which he really "had no intention of doing anything of the kind" was not guilty of conspiracy. This decision seems to suggest that a party is not a conspirator even though he expresses his agreement to an unlawful object, unless he intends that the object be achieved, or he intends to do something which he knows will further that object. It also appears that conspiracy at common law generally requires an intention to commit the unlawful object, that is, an intention that the unlawful object be achieved. In R v Hollinshead, the House of Lords confirmed that intent was necessary for conspiracy to defraud. In this case, the agreement was to sell devices to persons who could themselves use them to defraud the Electricity Board by attaching the devices to meters and paying lower charges. The actual causing of pecuniary loss would have been carried out by third parties and not by any of the conspirators, but the House of Lords held that at common law it was sufficient that the conspirators had the intent to defraud.

Dishonesty is an essential element of mens rea in conspiracy to defraud. In R v Ghosh, the court set out a two-stage test. Thus, a person acts dishonestly if:

(a) his behaviour would be regarded as dishonest by the standards of ordinary decent people; and

(b) the person realises that his behaviour is so regarded. If he did, then he was dishonest, even by his own particular standards, he saw nothing wrong with his behaviour.

In the Australian case of R v Walsh and Harney, the appellants were convicted of conspiracy to defraud members of the general public and members of the Warnambol Greyhound Racing Club by manipulating the entries in a race so as to gain an unfair advantage, namely, the No.1 starting box for a particular greyhound. It was contended on their behalf that in order to obtain a conviction for conspiracy to defraud, the Crown must prove that the fraud contemplated amounts at least to a civil wrong. It was held that the intended means by which the conspirators intent is to be accomplished must be deceptive and this need not entail false misrepresentation as is necessary to constitute the tort of deceit. The above discussion of mens rea is applicable to the Penal Codes of India, Nigeria, the Criminal Codes of Queensland, Nigeria and the Common Law of England.

(f). **Agreement followed by an Overt Act**

Under the Penal Codes of India and Nigeria, agreement alone does not suffice to constitute the offence of conspiracy. The doing of an overt act, independent of the agreement is a step further in prosecution of the object of the conspiracy and stamps it as a criminal act within the meaning of section 120A of the Indian Penal Code. In Oladejo v State, the court stated that ". under the Penal Code, mere agreement does not amount to conspiracy unless there has been an overt act done in the execution or pursuit of the agreement.

In Rajaram Gupta & Ors v Dharamchan &Ors[72], it was held that the mere act of engaging in an agreement to do an illegal act is an overt act, and the word "act" also includes an illegal omission. The overt acts that constitute a conspiracy are acts that either (i) signify consent, or (ii) prepare for the ofen ce, and (iii) constitute the offence itself. The gist of offence is therefore a question of establishing a scheme or agreement between the parties. The external or overt act of the crime is a concerted act by which mutual consent is exchanged for a common purpose. It is therefore sufficient if the combination exists and is unlawful. Mere allegation of conspiracy without any evidence indicating the agreement itself or acts preparatory to the offences or acts constituting the offence itself is not enough.

5. **PROVING CONSPIRACY**

For the prosecution to succeed in proving the offence of conspiracy, it must prove the conspiracy as described in the charge and that the accused persons were engaged in it or prove the circumstances from which the judge or jury may presume or infer it. To prove the existence of conspiracy, it must be shown that the alleged conspirators were acting in pursuance of a criminal purpose held in common between them. Since privacy and secrecy are the elements of criminal conspiracy, it is difficult to obtain direct evidence in its proof. In Benson Obiakor v The State, the Supreme Court held:

. . .In view of the nature of the offence of conspiracy, it is rarely or seldomly proved by direct evidence but by circumstantial evidence and inference from certain facts. It is inconceivable that two or more persons will set out to do an unlawful act or commit a crime of whatever magnitude without a sort of meeting of their minds one way or the other. There must be a discussion, an agreement, a planning and then the execution of that agreement. Except one of the conspirators is arrested and he agreed to give evidence on how the agreement was struck, it is rather difficult to have direct evidence of conspiracy. Where persons are charged with conspiracy in addition to the offence committed in pursuance of it, care must be taken in considering the evidence relevant to conspiracy and keep several issues clear. Proof of conspiracy does not necessarily have to be by direct evidence of an actual agreement as such is not always easy to come by. Conspiracy to commit an offence is usually inferred from proved facts or unbroken chains of events pointing irresistibly to the meeting of the minds between two or more persons to commit crime.

It is probably because of the incapability of positive proof of conspiracy that made the Supreme Court to suggest the proper approach to indictment which contains a charge of conspiracy and a substantive charge in Okanlawon v State: thus: the proper approach to an indictment containing a conspiracy offence as a charge and a substantive charge is, first, to deal with the main charge and the conspiracy charge.

In Shodiya v State, the Court stated that proof of the existence of conspiracy is generally a matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them.

Also, in Subhas Bhattacharyya v State, the appellant, a senior cashier in a Bank, was convicted on a charge of conspiracy with other accused person to rob a bank. There was uncontroverted evidence that the appellant was frequently seen in the company of the other accused before the robbery. On the day of the robbery, the applicant left the bank just before the robbery and talked with the other accused persons on his way out. The Court held that the conduct of the Appellant was sufficient to draw an inference of conspiracy and his conviction was upheld.

In order to convict on a charge of conspiracy, it is not necessary to prove that the defendants met to concoct the scheme, the subject-matter of the charge, nor that they should have originated the conspiracy. If a conspiracy is already formed and a person joins it afterwards, that person is also guilty. A conspiracy may exist between persons who have never seen each other or corresponded with each other.[81]

In Erim v State, the Supreme Court of Nigeria stated that in order to prove conspiracy, direct communication between every conspirator is not required . All that needs be established is that the criminal design alleged is common to all of them. Proof of how they connected with or amongst themselves or that the connection was made is not necessary for there could even be cases where one conspirator may be in one town and the other in another town and they may never have seen each other but there would be acts on both sides which would lead the trial court to the inference.

Direct proof of conspiracy is rarely available. In dealing with such cases based on circumstantial evidence, however, an inference of guilt needs only be drawn when the circumstances are such as to be incapable of being reasonably explained on any other hypothesis than the guilt of the accused.

6. **IMPOSSIBILITY AS A DEFENCE**

At common law, impossibility is a defence to conspiracy. In D.P.P v Nock,[84] the accused agreed to obtain cocaine by separating it from the other substances contained in a powder obtained from a co-accused. They believed that the powder was a mixture of cocaine and ligocaine, and that they would be able to produce cocaine from it. This was not so. The agreement was to pursue a course of action which could never in fact have produced cocaine. The House of Lords acquitted him of the charge of trying to produce cocaine. In Nigeria, the opinion of legal writers seems to favour the view that impossibility does not afford a defence to conspiracy.[86]

The authority cited in support of this view is R v Majekodunmi, where a statute punishes postal workers for criminal acts connected with their work. They conspired with a lawyer to tamper with postal matters and on being charged with conspiracy, it was argued on behalf of the lawyer that since he was not working in the post office and as the statute envisaged only employees of the postal services, he could not be liable as a conspirator. This argument was rejected and it was held that one can be convicted of a conspiracy for agreeing to commit a crime which, if he were alone, he could have been incapable of committing in law.

7. **BONA FIDE CLAIM OF RIGHT AS A DEFENCE TO CONSPIRACY**

A claim of right exists whenever a man honestly believes that he has a lawful claim, even though it may completely be unfounded in law or in fact. Therefore, defence of bona fide claim of right validly raised is a complete defence to a charge of conspiracy. In Ibeziako v State, the Supreme Court held that while a mistake of law is not a good defence, a sincere belief in a state of facts which if true would render the illegal conduct legal would be a good answer to any charge of conspiracy. For instance, if conspiracy to trespass be a crime, belief in a state of facts which would give rise to an enforceable right of way would be a defence.

8. **Husband and Wife**

By virtue of section 34 of the Nigeria Criminal Code, a husband and wife of christian marriage are not criminally responsible for conspiracy between themselves alone. The provision of section 34 of the Criminal Code only gives defence to a christian couple charged and tried for conspiracy between the two of them only.

This is based on the presumption of common law that a husband and wife are one, each part of the other and because conspiracy requires the consent of at least two individuals to commit an offence, such a husband and wife cannot commit the offence. But they will be liable for conspiracy with a third party.

9. **COMPLETE OFFENCE COMMITTED**

Even when the substantive offence is actually committed, the parties can nevertheless be charged additionally with conspiracy. Where there are substantial charges that can be proven, and it is generally unwanted to complicate and prolong the trial by a count of conspiracy to commit any of those charges. In Clark v State, the Court of Appeal stated that it is undesirable to combine the charge of conspiracy with the charge of a substantive offence because: evidence that would otherwise be inadmissible on the substantive charges against the accused becomes admissible, and such a combination of charges adds to the length and complexity of the case so that the trial can easily be nearly unworkable and imposes a quite intolerable strain on the court. Where such a course is adopted in Australia, the jury would be directed to consider the substantive charges first and then proceed to

consider how far the count of conspiracy should be there at all and if so, whether it is made out. The practice is also discouraged in England unless the prosecution can justify both charges as being in the interest of justice.

To this end, a Practice Direction was issued in 1977 as follows: 1.In any case where an indictment includes substantive counts and a conspiracy count, the judge may order the defendant to justify the joinder or, in the absence of reason, to determine whether to proceed on the substantive or on the counts of conspiracy. 2. A joinder is justified for this purpose if the judge considers that the interest of justice so demands it. There are, however cases when it is permissible to include the count of conspiracy with that of the commission of the substantive offence. In Clark v State, examples were given as follows:

(a) Where there is evidence that some, but not all, of the accused persons committed a few, but not all, of the overt acts, or

(b) Where the principal culprits are not before the court, or

(c) Where conspiracy can be inferred from the facts and circumstances of commission of the substantive offence, particularly where available evidence of the commission of the substantive offence is not direct, a count of conspiracy may quite properly be joined with that of the commission of the substantive offence.

Conspiracy does not merge into the substantive offence. It is therefore not an inflexible rule of law that a discharge on a count of conspiracy must involve a discharge on the substantive offence or offences or vice versa. The course to be taken by the court must be dictated by the circumstance of the case. The doctrines of election and severance are also relevant to the offence of conspiracy where there has been a joinder of a count of conspiracy with another for the commission of the substantive offence. This is the rule in R. v Cooper Crompton. In that case, the charge of conspiracy adds nothing to that of the substantive offences, and the court held it was not desirable to include it.

10**. JURISDICTION**

Under the Indian Penal Code, Gour has stated that "it is not the act done in pursuance of the conspiracy but the place where the conspiracy was formed or made which determines the jurisdiction of the court".

However, the Indian Supreme court decided in Mukherjee v State of Madras[100] that a court with jurisdiction to prosecute offences committed may try a conspiracy offence even if it was committed outside its jurisdiction. Similarly, under the Nigerian Penal code, it is not only the court with jurisdiction over the area where the conspiracy offence was committed that can try the defendants; it is also possible for the defendants to be tried by the court with jurisdiction over the offence that the court having jurisdiction to try offences committed in pursuance of the conspiracy can try the offence of conspiracy even if it was committed outside its jurisdiction.

The defendants can also be tried by the court having jurisdiction over the area where an overt act was done in pursuance of the conspiracy. In Haruna v State, the conspiracy was hatched in Lagos, while the offence conspired at was committed in Bida. The court held that by virtue of section 96(2) of the Penal Code, the submission by one of the accused persons of a forged payment voucher in Bida and his receipt of a cheque in payment of the amount stated therein amounted to criminal conspiracy in Bida by all the accused, even though the agreement to obtain payment by means of the forged vouched was made in Lagos.

In Njovens& Others v State, the first three defendants who were senior police officers and the fourth defendant, a politician were convicted by the High Court of Kwara State of various offences including abetment of conspiracy contrary to section 85 of the Penal Code arising from their acts or omissions in Ibadan in the then

Western State in connection with an armed robbery committed in Kwara State by four other persons. On appeal, they contended that under section 4(2)(a) of the Penal Code, they were not triable in Kwara State for the offence because the "initial element" of the offence did not occur in Kwara State, nor indeed any of the elements; and section 4(2)(b) could not in any case apply as the defendants did not "afterwards enter" Kwara State but were brought there involuntarily under arrest. It was held by the Supreme Court as follows, that:

1. In the context of section 4(2) of the Penal Code Law, the word "element" therein is more widely received and is not limited either to an actus reus or the mens rea in conventional jurisprudence. For the purpose of applying the subsection, it is necessary to look for the "initial element" of the offence, that is, the "initial act or omission" concerned. If that initial act or omission occurs in the State even though the other "elements" do not, the person who does or makes that initial act or omission is punishable by the State under the Penal Code. On the other hand, if that initial act or omission occurs outside the state, the other or others occurring within the state, and the person who does or makes that initial act or omission afterwards enters the state, he is by such entry triable by the state under the Code.
2. On a charge of abetment of an offence, the initial element is the instigation or positive act of encouragement to do or make the act or omission which constitutes the offence. In this case, the initial element took place outside Kwara State, but the commission or the act abetted, which is an element of a charge under section 85 of the Penal Code took place in Kwara State. On the evidence, the defendants were apprehended in that State. They were therefore properly triable in Kwara State by virtue of section 4(2)(b) of the Penal Code.

Under the Criminal Codes of Queensland and Nigeria, the courts have virtually the same jurisdiction with the English Courts with regard to trial of conspiracy. In Board of Trade v Owen,[106] the House of Lords held that a conspiracy to commit a crime abroad would not be charged in England unless the crime envisaged was one for which an indictment would lie in England. Carter observed that section 541 of the Queensland Criminal Code states the law as declared in Board of Trade v Owen. The decision in Board of Trade v Owen is applicable in Nigeria under section 516 of the Criminal Code and section 373 of the Penal Code respectively.

In England, a conspiracy formed out of jurisdiction is indictable in England if acts in furtherance of that agreement are committed in England. In D.P.P v Doot,[107] the defendants were convicted of conspiring "fraudulently to evade the prohibition imposed by the Dangerous Drug Act, 1965 on the importation of cannabis resin into the United Kingdom". The evidence revealed that the conspiracy involving the defendants had been formed abroad. The whole scheme had been worked out in detail while the defendants were in Belgium and Morocco. The House of Lords held that conspiracy is a continuous offence. Accordingly, Lord Pearson held:

I think a conspiracy to commit in England an offence against English law ought to be tried in England if it has been wholly or partially performed in England. In such a case, the conspiracy has been carried out in England with the consent and authority of all the conspirators. It is not necessary that they should all be present in England – one of them, acting on his own behalf and as an agent for the others, has been performing their agreement with their consent and authority in England. In such a case, the conspiracy has been committed by all of them in England . . . The Crime of conspiracy in the present case was committed in England, personally or through an agent or agents, by all the conspirators.

The decision in D.P.P v Doot was followed in Australia in Woss v Jacoboon. It is submitted that the law is same under the Nigerian Criminal Code jurisdiction. Under section 96 of the Administration of Criminal Justice Act,

2015 in Nigeria , a continuing offence committed in more than one division or district can be tried or inquired into by a court having jurisdiction in any such division or district. As conspiracy is a continuing offence, it can be tried and inquired into not only by the courts with jurisdiction in the division or district where the agreement was entered into, but the courts with jurisdiction in the division where the agreement was carried into effect.

11. **PUNISHMENT**

Where there is a conspiracy to commit a crime in Queensland or a felony in the case of Nigeria, section 541 of the Queensland Criminal Code, section 516 of the Nigerian Criminal Code all provide that the offender is liable, if no other punishment is imposed, to imprisonment for seven years or if the greatest punishment for which a person is liable is less than seven years imprisonment, then to such lesser punishment. With regard to conspiracy to commit misdemeanours and other conspiracies, the two Codes provide for imprisonment for two years, or three years with hard labour. For conspiracy to commit murder, the Codes stipulate a punishment of fourteen years, imprisonment, with hard labour in Queensland. Under the Penal Codes of India and Nigeria, it provides thus: Whoever is a party to a criminal conspiracy to commit an offence punishable by death or imprisonment shall be punished in the same manner as if he had committed such crime if no specific provision is made in the Codes for the punishment of such conspiracy.

Sections 109 and 85 of the Indian and Nigerian Penal Codes respectively provide: whoever abets any offence, shall if the act abetted is committed in consequence of the abetment and no express provision is made by this (Penal) Code (or by any other law for the time being in force) for the punishment of such abetment, be punished with the punishment provided for the offence.[115]

Sections 91(1) and 115 of Nigerian and Indian Penal Codes respectively state: Anyone who abets the commission of an offence punishable by death or imprisonment for life shall be punished with imprisonment for a term of up to seven years if that crime is not committed as a result of abeting and no express provision is provided by the penal code or by any other ordinance or law in effect for the time being) for the punishment of such abetment..

Section 115 of the Indian Penal Code states further that: and if any act, for which the abettor shall be liable for imprisonment for which the abettor is liable as a result of the abetment and which causes damage to any person.

For a term of up to 10 years, and subject to fines. Section 91(2) of the Nigerian Penal Code provides that: If the abettor is a public servant whose responsibility is to prohibit any crime from being committed shall be liable to imprisonment for a term of up to ten years and shall be liable to fine. In cases where the offence abetted does not involve punishment with death or life imprisonment and the offence shall not be committed as a result of abetment; the offender shall be punished with imprisonment for a term which may extend to one-fourth of the longest period of time provided for in that offence or for the fine provided for in that offence or both. In the case of a public servant, he shall be punished with imprisonment for a term that may extend to one- half of the longest term for that offence or with such fines as are provided for the offence or both.

Going by the provisions of the various Codes, it is clear that the punishment prescribed by law, that is, the Codes for conspiracies to commit various offences is generally lower than that prescribed for the complete offences themselves. The rationale for this is that the wrong sought to be done by the conspirators has not been done, society suffers no loss. Under the Penal Codes of India and Nigeria, where the offence conspired at is actually committed, the conspirators shall be liable to the same punishment prescribed for the complete offence.

These provisions are somewhat similar to the position in England under section 3 of the Criminal Law Act, 1977 which limits the punishment for conspiracy, contrary to section 1 of the Act, to the maximum sentence for the complete crime which the defendants conspired to commit.

The difference between the Indian and Nigerian Penal Code, on the one hand and the English Criminal Law Act on the other hand, is that in India and Nigeria, the complete offence must have been committed before the conspirators can be sentenced to the maximum punishment applicable for the complete offence whilst in England, it is sufficient that the defendants merely conspired to commit the offence for the purpose of imposing the sentence prescribed for the complete offence. Under sections 37(2) and 37(4) of the Nigerian Criminal Code and the Queensland Criminal Code respectively, conspiracy to commit treason is punishable as the complete offence by death in Nigeria and imprisonment with hard labour for life in Australia.

The Nigerian Government has enacted various laws such as the Advanced Fee Fraud and Other Related Offences Act the Money Laundering (Prohibition) Act, 2011 and Corrupt Practices and Other Related Offences Act to curb an upsurge in drug and fraud related crimes in Nigeria. These various enactments make conspiracy to commit an offence under these various enactments subject to the same punishment prescribed for the relevant offences.

What is, therefore, the rationale behind the harsher penalties stipulated in the Criminal Law Act, 1977 and the above-mentioned enactments? At common law, it was held in Verrier v Director of Public Prosecutions that some conspiracies might call for a greater punishment than could be imposed for the completed offence where the circumstances warranted the conclusion that any offence, whether inchoate or completed, which is committed by a number of people acting in concert may be viewed as presenting a greater social danger than the same offence committed by an individual.

On general deterrent grounds, the sentence for "group" offences may, therefore, be longer. Sentences for rape by gangs are on this account higher than those for rape by an individual. Howardputs it thus: a conspirator by reason of his organizational ability is considerably more of a menace than the principal offender. Individual crime is nothing like so great a menace to society as organised crime.

In a well organized criminal group, the actual perpetrators of offences are the least significant members, for they depend for their effectiveness on the opportunities and instructions furnished by others more able and powerful than themselves. Frequently, conspiracy is the only weapon available in the Criminal Law with which to strike at the organizers of large-scale crime.

For this reason, there is nothing wrong in punishing conspirators as if they had committed the offence they conspired to commit.

12. CONCLUSION

Conspiracy is a complex offence. The law does not sanction the mere intention of one person to commit a crime, but when two or more people agree to commit the same crime, the act of agreement is criminal. From the analysis of the provisions in the various jurisdictions, it is apparent that all the jurisdictions make use of the same common law principles in applying their various statutory provisions on conspiracy. The only exception is England which has two kinds of conspiracy that is statutory and common law conspiracies. With regard to statutory conspiracy in England, it is observed that, although, the actus reus is not different from that of common law conspiracy, the mens rea is not easily identifiable. The decision in D.P.P v Shannon which has been followed in Australia and Nigeria does not accord with the definition of the offences, as it takes, at least, two to commit the offence of

conspiracy. It is difficult to see how A can be found guilty of conspiring with B in one trial while in another trial or the same trial, B would be found not guilty of conspiring with A.

The idea of punishing conspirators as if they had committed the offence they conspired to commit as shown in section 8 of the Advanced Fee Fraud and Other Related Offences Act, 2004, section 18(a) and (c) of the Money Laundering (Prohibited) Act, 2011 and section 29 of the Corrupt Practices and Other Related Act, 2004 is a welcome development. The mens rea for conspiracy is the same with the commission of the substantive offence.

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