

## THE DEFENCE OF ACCIDENT UNDER SECTION 24 OF THE CRIMINAL CODE: A CLARIFICATION\*

### Abstract

*It is a truism that the imposition of criminal liability for doing nothing sounds bizarre. Consequently, all legal system of civilized societies have to a large extent included the simple moral idea that no one should be convicted and punished for a crime unless some measure of subjective fault can be attributed to the person. The criminal law also provides defences for those who cannot be said to be at fault such as the insane, young people, those who acted in a state of unconsciousness or for accidental events. This article tried to clarify section 24 of the Criminal Code Act which deals with acts or omissions which occurs independently of the exercise of the will of the person doing the act or making the omission. The paper demonstrated that Section 24 of the Code has two arms which have the same effect if successfully pleaded. Both arms are independent of the other and should be pleaded alternatively. The article shows that while some courts interpret and apply the section properly others interpret and apply the section wrongly leading to the punishment of an innocent person. It is also observed that the importation of the unlawfulness and lawfulness doctrine is not in accordance with the intendments and spirit of Section 24 of the Code and should be diametrically rejected. The section is commendable as it is in tandem with international best practice in this area of law.*

**Keywords:** Defence of Accident, Criminal Code, Section 24, Nigeria

### 1. Introduction

Criminal liability envisages a breach of the moral standard of the community before such a person could be held criminally liable. In other words, there is no punishment without the fault of the actor/defendant or a breach of the approved moral standards of the community except in case of strict liability offenses. Articulating this position of the law, Okonkwo observed thus: ‘All legal systems have to some degree or other incorporated the simple morale idea that no one should be convicted of a crime unless some measure of some subjective fault can be attributed to him, Nigerian Criminal Law is not an exception’.<sup>1</sup>

In Nigeria, as in most common law jurisdictions, the basis of criminal liability is the proof of some measure of fault attributed to the accused person.<sup>2</sup> The Nigerian criminal jurisprudence does not allow a person to be punished for an act or omission of such an act which is not embedded in any written law operational in Nigeria in line with the maxim *nulla poena sine lege*, which means there can be no punishment without a written law.<sup>3</sup> However, it is pertinent to note that the Criminal Code and the Penal Code provide defences for criminal acts for certain class of people as well as substantive defences which if successfully pleaded and established would absolve the accused/defendant from liability. Defences are provided for those who cannot be said to be at fault, for the insane, for the young people, for those who acted in a state of unconsciousness or under compulsion and so on.<sup>4</sup> There are several ways in which accused persons may try to prevent themselves from being found guilty of crime, reduce their liability for the alleged offence or lower their sentence if convicted.<sup>5</sup> Such an accused may also raise substantive defence of which the effect is usually to assert that though the accused may have committed the *actus reus* with the requisite *mens rea*, there is a legal reason why such accused person(s) should not be liable. One of such substantive defences in Nigeria is the defence of accident. The common law doctrines of *actus reus* and *mens rea* are one of the legal colonial heritages from Britain. Under the common law, there must be a concurrence of the *actus reus* and the *mens rea* for the accused to be held criminally liable. The twin pillars of proof of criminal responsibility which satisfy proof of the elementary and fundamental elements of crime are the presence of *mens rea* and *actus reus*, that is, requisite mental capacity and intention to commit the offence and the doing of the act that constituted

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<sup>1</sup> Okonkwo and Naish, *Criminal Law in Nigeria*, (2<sup>nd</sup> edn, Ibadan Spectrum Publishers 2012) 6.

<sup>2</sup> Anyanwu C U, *An Outline of Nigerian Criminal Law*, (Enugu Kasimefuna Publishers, 2009) 7

<sup>3</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended) Section 36 (12).

<sup>4</sup> Okonkwo and Naish, (n1) 6.

<sup>5</sup> Elliott and Frances Quinn, *Criminal Law* (10<sup>th</sup> edn, London Person Education Limited 2010) 322.

the offence.<sup>6</sup> Sequel to some ambiguity in the application of these common law doctrines and, especially the codification of the doctrine of *mens rea* as provided in Section 24 of the Criminal Code. This is the trust of this article. Accordingly, the paper aims at a clarification of the application of the defence of accident as provided in Section 24 of the Criminal Code.

## **2. Clarification of Section 24 the Criminal Code**

It is a cardinal principle, however imperfectly applied, that the doctrine of *mens rea* extends throughout English Criminal law, both to common law and statutory crimes.<sup>37</sup> Nigeria being one of the common law countries by virtue of Colonization by Britain was influenced copiously by this English doctrine. However, this doctrine with regard to the defence of accident has been replaced with Section 24 of the Criminal Code which appears to be more meaningful and precise than the ambiguous English *mens rea* doctrine. With the enactment of Section 24 of the Criminal Code, it appears that the vague doctrine of *mens rea* no longer has a place in our criminal jurisprudent. In this regard, Section 2 (4) of the criminal code Act provides that: the provisions of chapter 5 of the criminal code shall apply in relation to any offence against any legislative enactment and to all persons charged with any such offence<sup>38</sup>. In *Widgee Shire Co v Bonney*<sup>39</sup>, the court per Griffith said that, ...under the criminal code law of Queensland as defined in the criminal code, it is never necessary to have recourse to the old doctrine of *mens rea*, the exact meaning of which has been the subject of much discussion. The test now to be applied is whether the prohibited act was or was not done accidentally or independent of the exercise of the will of the accused person. In the same vein, the court in *Thomas v Meather*<sup>40</sup> per Cooper CJ and Lukin J. held inter alia:

It seems to us that the Queensland legislature have, by the express provisions of Section 23 – 25 laid down in clear terms what the law in future should be in regard to the very much, very debated, much misunderstood and very much confused doctrine of what is referred to as *mens rea* and directed that the courts should not in future be guided by the conflicting and irreconcilable decisions of various courts on this question, but should be guided to determining responsibility of a person charged by reference to the tests prescribed by the language of those sections.

The defence of accident is provided in Section 24 of the Criminal Code as follows:

Subject to the express provision of this code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission, which occurs independently of the exercise of his will or for an event which occurs by accident. Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial. Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility<sup>41</sup>

An analysis of Section 24 of the Criminal Code Act quoted above shows that the section may be perceived at least from two dimensions. There are two situations of quiet different bases in section 24. When either is successfully raised, it leads to an acquittal<sup>42</sup>. They can be separated for consideration as follows: the first situation or arm of the section is to the effect that there will be no criminal responsibility due to a person for an act or Omission which occurs independently of the exercise of his will. This refers to a situation where the will of a person was not involved at all. The act was therefore involuntary. Such an act is not punishable. The purport of the first arm of section 24 appears to have been pungently captured in *Bratly v AG for Northern Ireland*<sup>50</sup>. The court held per Lord Denning held that:

No act is punishable if it is done, involuntarily. Some people nowadays prefer to speak of it as automatism, which means an act which is done by the muscles without any control by the mind, such as spasm, a reflex action or a convulsion, or an act done by a person who is not conscious of what he is doing, such as an act done whilst suffering from concussion or whilst sleep – walking.

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<sup>6</sup> *Garba v State* [2011] ALL FWLR (Pt. 584) 144

The term automatism is defined as: behavior performed on a state of mental unconsciousness or dissociation without full awareness. The term is applied to action or conduct of an individual apparently occurring without will. Automatism may be asserted as a criminal defence to negate the requisite mental state of voluntariness for commission of crime<sup>39</sup>. The first arm of the defence under section 24 is only available if there is an involuntary act or omission or there is an act or omission which happens outside the will of the person concerned, such as triggered by a spasm, a reflex action, convulsion or sleep walking or even perhaps a sudden reaction to a sharp bite or the like<sup>39</sup>.

It is very obvious from the exposition of section 24 above that an act or omission done by a person independent of the exercise of his/her will attracts no criminal punishment. Under section 24, the person is exonerated from any criminal liability. No act or omission which is unintentional can be criminal, unless it be one of those relatively few acts or omissions which are criminal according to the provisions of the code, when committed unintentionally but negligently<sup>40</sup>. Therefore, it follows that unconscious actions, reflex actions, actions done under the influence of hypnotism or automatism are not voluntary conducts and consequently, exonerate person for acts or omission made under that situations or circumstances<sup>41</sup>.

On the other hand, where a person voluntarily and consciously exercises his will to carry out an act or make an omission, such a person will be held criminally liable for the act or omission. Such a person exercised his/her will, voluntarily and deliberately. The will in the first situation/arm in section 24 of the code implies an awareness of all the circumstance surrounding the elements of the crime. As Okonkwo and Naish, observed: 'It is submitted that the word "Will" in the first paragraph of section 24 includes in respect of the act or omission and its surrounding circumstances not only intention to the do the act or make the omission but also, awareness of all the material circumstances'<sup>42</sup>.

Writing on the effect of section 23 of the Queen's land criminal code which is in *pari materia* with section 24 of the Criminal Code, Colin opined that 'It has never been in doubt that Section 23 has the effect of requiring knowledge of all the elements of the offence on the part of the defendant'. This interpretation is in accord with the import of Section 24 of the criminal code. This assertion is hinged on the fact that a man cannot be said to have exercised his will with regard to a particular element of an offence unless he is aware of it. In *Achukwu v The State*<sup>7</sup>, the court said: the point I am laboring to ram home is that the appellant's shooting of the deceased was not independent of the exercise of his will. It was a willed act... in law, will or deliberate act are incompatible with the defence of accident. A person is not criminally responsible for an act or omission, which occurred independently of the exercise of his will. The second situation arm in Section 24 of the Criminal Code is to the effect that no criminal responsibility is due to a person for an event which occurs by accident. This involved a voluntary act but where the voluntary act results in an event which was neither intended nor foreseen, the consequence is an accident<sup>8</sup>. The defence of accident presupposes that the accused physically committed the offence with which he is charged but having regard to the facts which he admits, he should be acquitted because his conduct in the commission of the offence was accidental. In *Maigari v State*<sup>9</sup>, Court held that: when an accused person claims that he did not commit the offence for which he was charged, the defence of accident does not arise. This is so because no offence has been committed upon which the defence will rest. The purport of section 24 is to the effect even where an act or omission is intentional, there will be no liability under the section for any accidental event, that is the result or consequence of that act<sup>10</sup>.

### **Meaning of Event and Test of Accident**

The criminal Code did not define the meaning of an event or event occurring by accident. Consequently, it's definition may pose some difficulty. However, within the context of Section 24, it may be seen as

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<sup>7</sup> [2015] ALL FWLR (pt. 779) 1 079 (CA). See also *Adelumola v The State* [1988] INWLR (pt. 73) 683.

<sup>8</sup> *Festus Amayo v The State* (2001) 8 NSCQ 431.

<sup>9</sup> [2010] ALL FWLR (pt. 546) 405 (AC)

<sup>10</sup> Okonkwo and Naish, (n1) 82

the result or consequence of human act. In *Timbukolan v The Queen*<sup>11</sup>, the court defined event per Windey J. thus: an event in this context refers to the outcome of some action or conduct of the accused, for a man cannot be responsible for an event in which he had no part at all, and it would be unnecessary to say so. According to Oputa, JSC as he then was in *Adelumola v the State*<sup>12</sup>:

It seems to me that the expression an event which occurs by accident used in Section 24 describes an event totally unexpected by any ordinary person, the reasonable man of the law. In other words, the test is both subjective from the stand point of the door of the acts as well as objective from the stand point of the ordinary man of common prudence. An event is thus accidental, if it is neither subjectively intended nor objectively foreseeable by the ordinary man of reasonable prudence.

Accident as an event is no other than a voluntary act but which results in unforeseen and unintended consequences. It is a matter of ordinary factual evidence which will be subjected to the objective test. An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precaution against it<sup>13</sup>. In *Ogor v State*, the appellant was convicted of the murder of the deceased and sentenced to death by the High Court of Rivers State. The deceased and the appellant were both students of River State University of Science and Technology, Port – Harcourt. The case of the prosecution was that the appellant stabbed the deceased through the ribs right down to the lung and the heart, resulting in the latter's death. The incident resulted from a dispute over sleeping arrangements between the appellant and the deceased. The appellant at the trial court based his defence on accident and self defence. The appellant was convicted of murder and sentenced to death. However, the court of appeal allowed his appeal and held as follows:

An accident is the result of an unwilled act, and means an event without the fault of the person alleged to have caused it. The expression, an act which occurs by accident used in Section 24 of the Criminal Code Act connotes an event totally unexpected by the doer of the act and also not reasonable to be expected by any reasonable person<sup>14</sup>.

From the above discourse, under section S24, accidental event of willed acts or omission does not give rise to any criminal liability. For the defence of accident to avail the accused person, he must admit the commission of the offence and establish that the willed act was accidental. The first situation/arm under the provision of Section 24 is only available if there is an involuntary act or omission or there is an act or omission which happens outside the will of the person concerned, such as triggered by Spasm, a reflex action, convulsion, sleep – walking or even perhaps a sudden reaction to sharp bite or the like<sup>15</sup>. The second situation or arm under the provision of section 24 deals with events, human acts, conducts etcetera which occurs by accident. That is, event that is neither subjectively intended nor objectively foreseeable by the ordinary man of reasonable prudence. It is a sudden or an un expected event taking place upon the instant, without one's foresight and which produces a result not feasible. It is also pertinent from the discussion that both arms or situations should not be combined. This was the position of the Supreme Court in *Amayo v State*<sup>16</sup> where the Supreme Court observed that: It is untidy to combine the defences in the two arms of section 24, as though both relate to and define the defence of accident but they may be raised in the alternative, one being automatism, the other accident as may be appropriate, depending on the true nature of the evidence.

### **3. Effect of Section 24 of the Criminal Code**

It is now settled law that where it has been established to the satisfaction of the court that the act of the accused person was precipitated by accident, then, the defence of accident will lead to the discharge and acquittal of the accused person, for a person is not criminally responsible for an act or omission

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<sup>11</sup> [1968] 119 CLR 4

<sup>12</sup> [1988] INWLR (pt. 73) 638 (SC)

<sup>13</sup> Stephen's Digest on Criminal Law, 19<sup>th</sup> edn ,260 See also *Turak v State* [1995] 3 NNLR (pt. 381) 63. (CA)

<sup>14</sup> Ibid 501

<sup>15</sup> *Amayo v State*(n41) 442 – 443.

<sup>16</sup> (n1) 443

which occurred independently of the exercise of his will or for an event which occurs by accident<sup>17</sup>. The defence of accident which is codified in Section 24 of the Criminal Code is exculpatory in effect. When it avails the accused person, it exonerates him from criminal liability<sup>18</sup>. Also, on the effect of successful plea of Section 24 of the criminal code, the court of Appeal in *Ubochi Romanty v State*<sup>19</sup>, set aside the judgement of the High Court and held as follows: where a person discharges a fire arm unintentionally and without the attendant criminal malice or negligence, he will be exempted from criminal liability both for the firing and its consequences. Accordingly, the effect of the defence of accident when raised and successfully established under Section 24 of the criminal code Act is that the defendant or accused would not be held liable sequel to the fact that the event or the consequence of the act or omission occurred by accident.

It is important to note that the Queensland criminal code Act particularly, Section 23 of the code from which our Section 24 was adopted has been amended with consequential effects not in the previous Section 23. The 1995 Queensland Criminal Code provides for the defence of accident in Section 50.

The Sections provides thus:

1. A person is not criminally responsible for an act that happens independently of the exercise of the persons will or for an event that happens by accident.
2. An event caused by the application of force by a person to anyone does not happen by accident t because the person to whom the force is applied has a weakness, defect or abnormality unknown to the person using the force.
- 3 Subsection (1) applies subject to the code's provision about negligent acts; and  
Queens Land criminal code 1995 Section 50
- 4 The result intended to be caused by an act is immaterial to person's criminal responsibility unless the intention tocause a particular result is expressly declared to be an element of the offence as constituted.

A closer look at the above section shows that there are glaring differences between the present section of the Queensland code on accident and section 24 of our code. Section 50 and our section 24 provide that a person is not criminally responsible for an act that happens independently of the exercise of his will or for an event that occurs by accident. The difference here is sequel to enlarged section 23 in section 50 as the follows: The word omission is diametrically excluded in the new provision. Subsection (2) of the new code appears to have incorporated the common law doctrine that those who use violence on other people must take their victim as they find them. Consequently, the accused person will no longer rely on the principle that he did not intend or did not reasonably foresee the consequences of his acts. Such argument would no longer be tenable anymore<sup>62</sup>. Thus, the present queensland code excludes the reasonable man's opinion on what he would have expected from the actions of an accused person<sup>63</sup>. Accordingly, if the new Queensland code on accident is applied to the case of *Umoru v State*<sup>64</sup>, the accused person would have been convicted of murder. The facts of the case were that the deceased, while returning from a wake-keeping at about 1:00am, parked his Car in front of a house and alighted from the car. The appellant challenged the deceased for parking the car at the spot. The appellant was ignored by the deceased. The appellant walked up to the deceased and gave him a dirty slap. The deceased fell down from the impact of the blow, hit his head on the tarred road, became unconscious and eventually died. At trial, the appellant argued that the fall of the deceased and the hitting of his head on the tarred road are the rational consequence of the act of a mere slap. The trial court convicted the accused for the lesser offence of the manslaughter. However, the court of appeal set aside the judgement of the trial court, discharged and acquitted the appellant on the basis of accident under section r4 of the code. The court held inter alia: 'The event that followed that intentional act of slapping can, in my view be regarded as an accidental result, in the sense that it was not intended and not reasonably probable. It would be a different matter if other circumstances surrounded the act which makes the consequence probable'.

<sup>17</sup>Adedokan Elias, *Defences Of Criminal Liability in Nigeria* (Ibadan Alvari Communication Limited, 2014) 31

<sup>18</sup> *Ikechkwu Nwabueze v people of Lagos State* [2018] 11NWLR (Pt.1630) 201 (SC) See also *Okadipo v S tate* [1992] 6 NWLR (pt. 298) 131 (SC) *Bashiru Popoola v State* [2018]10 NWLR (pt. 16.8) 485 (SC)

<sup>19</sup> [1964] 1 ALL NLR 311.

Under section 50 (2) of the Queensland code, the accused here Umoru, would be held liable. This is the effect of the subsection (2) which abolished unintended and unforeseeable consequences as ingredients of accidents. Thus, the contention of Umoru that the death of the deceased sequel to a mere slap was unintended, unforeseeable and not a natural consequence of a mere slap would not hold water under section 50( 2). We, humbly agree with Irene that that the defence of accident, that is a “willed act with unforeseen circumstances” will not be available to an accused person in light of subsection (2) and (4) of the new Queensland code. The same would also apply to the case of *Turaku v State*

### **Section 24 and Nigerian Court**

A perusal of a plethora of cases decided by courts in Nigeria bordering on Section 24 of the Criminal Code Act shows that while some courts had interpreted and applied the section properly in their judgement, others for either lack of firm grasp of the section or other reasons best known to them did not properly interpret the section leading to wrong decisions contrary to the spirit and intendments of the lawmakers. It is humbly submitted that in *Okon v State*<sup>20</sup>, the court of Appeal Port-Harcourt decision properly, interpreted and applied section 24. The Court of Appeal set aside the judgment of manslaughter slammed on the appellant despite the fact that the trial judge found out that gunshot which led to the death of the deceased was unintentional and accidental. Setting aside the judgement of the trial court, the Court of Appeal held inter alia:

On the whole, I am not satisfied that the prosecution has proved its case beyond reasonable doubt that the gun shot which produced the injury which caused the death of the deceased was intentional and the proper verdict to be returned is that of not guilty. We are of the view that the learned trial judge clearly misdirected himself when having found that the charge of murder had not been proved, he attributed to the accused *mens rea* to justify a finding of manslaughter in the clear absence of evidence in support...

In *Turaki v State*<sup>21</sup>, the court of Appeal Jos Division set aside the judgement of the trail court which convicted and sentenced the accused to lesser punishment of five years imprisonment despite the fact that Section 48 of penal code which has similar effect with section 24 of the criminal code was also solidly established by the appellant. In setting aside the judgement, the Appeal Court observed that: the appellant was engaged in escorting a bullion van carrying many while army vehicle refused to clear from the road to give way to the bullion van he was guarding as a police officer. He, then, fired into air to scare army vehicle. Furthermore, it could not be said that the act of firing into air have been foreseen to cause death of the deceased. It is clear that the appellant did not intend the death of the deceased or to cause grievous bodily harm. Section 48 of the criminal Penal Code was available to the appellant and he is, accordingly discharged and acquitted.

However, it is also pertinent to note that courts have in some case interpreted and applied section 24 of the criminal code wrongly by the importation of lawful and unlawfulness of the act of the accused person or some other extraneous variables/factors. Consequently, once the act of the accused is unlawful, even where the accused established the defence of accident such courts will slam lesser punishment on the accused contrary to the spirit and intendments of the code. This unlawfulness of the accused act was acted upon by the Supreme Court in *Festus Amayo v State*<sup>22</sup>, when the court held as follows:

Where the act which a person is engaged in performing is unlawful, then if at the same time it is a dangerous act, that is, an act which is likely to injure another person, and

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<sup>20</sup> (1991) 8NWLR (pt. 210) 424 (CA)

<sup>21</sup> (1992) 3NWLR (pt. 381) 63 (CA)

<sup>22</sup>[2001] 8NSCOR: 431 Note: This type of interpretation were made in a host of other cases viz *Adegbaye v State* [2017] 16 NWLR (pt. 1591) 249 the court opined that... but the act leading to the accident must be lawful, a lawful act done in a lawful manner. *Thomas v Sate* [1994] 4 NWLR (pt.285), *Adekunlethe v State* [2006] 26 NSCOR (pt.2) 1367 (SC)

quite inadvertently the doer of the act causes the death of that other person of that act, than he is guilty of manslaughter.

It is, humbly submitted that the dichotomy between lawfulness and unlawfulness of the act or the accused/defendant as a requirement for one to be availed of the defence of accident under Section 24 of the criminal code is not the proper position of the law. The purport of Section 24 of the Criminal Code Act is to the effect that even where an act or omission is intentional, there will be no liability under the section for any accidental event. This rule applies both to the accidental events of lawful acts and accidental events of unlawful acts<sup>23</sup>. Capturing this position of the law, the Supreme Court in *Alhasan Mai Yaki v State*<sup>24</sup> averred that, it seems to me that under Section 24 of the Criminal Code, there is no such restriction. For an event to qualify as accidental under Section 24 of the Criminal Code, it must be a surprise to all sober and reasonable people. The test as settled, is always objective. Furthermore, the second arm of Section 24 does not deal with an act, but an event and an event within the meaning of the section is what apparently follows from an act. In *R v Martyr*<sup>25</sup>, the Queensland Criminal Court of Appeal rejected the unlawful act doctrine with regard to the defence of accident under Section 23 of their Criminal Code which is in *Pari matria* to our own section 24. This rejection of the unlawful act doctrine was perhaps, more pungently elucidated in the case *Timbu Kolian v The Queen*. The court unanimously rejected the argument that Section 23 identical to Section 24 of the Criminal Code from which Section 24 was modeled should not avail the accused on the ground that the act was unlawful. The court held that; when any one does an act no matter whether it is lawful or unlawful and he is prosecuted for an event of that act, the only question for consideration is whether the event did in fact occur by accident.

It is very clear now that Section 24 of the Criminal Code Act did not create any distinction between lawful and unlawful acts for the defence of accident to avail any person who successfully pleaded and proved it. The importation of the provision of Section 48 of the Penal Code into Section 24 is diametrically wrong and should be discarded. It provides thus: 'Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the course of doing a lawful act in a lawful manner by lawful means and with proper care and caution'<sup>26</sup>. In *Oludemino v State*<sup>27</sup>, the court harped on what a party raising the defence of accident under section 48 of the Penal Code must prove as follows:

- (1) The act must be done by accident.
- (2) There was no Criminal intention or knowledge.
- (3) The act was done in the course of doing a lawful act in a lawful manner by a lawful means and with proper care and caution.

A juxtaposition of the provisions of 48 of Penal Code and Section 24 of the criminal Code shows that such requirement is not provided in the Criminal Code Act and should not be imported into Section 24 of the criminal code. Consequently, the importation of this aspect of Section 48 of the Penal Code act is contrary to the provisions of the Section 24 of the Criminal Code and shall be jettisoned.

#### 4. Conclusion and Recommendations

The article tried to clarify the provisions of Section 24 of the Criminal Code Act. This Section which provides for the defence of accident has two arms, the first arm deals with acts or omissions which occur independently of the exercise of the will of the person doing the act or making the omission. The second arm deals with event or result of the persons act which occurs by accident. In both cases, successful plea and prove exculpates the accused person from liability. It is not proper to plead the two arms together. Rather, they should be pleaded alternatively depending on the evidence and facts of each case. Both arms work independent of the other but having the same effect if successfully pleaded.

<sup>23</sup> Okonkwo and Naish, *Criminal Law in Nigeria* (2<sup>nd</sup> edn, Ibadan Spectrum Law Series 2012) 82.

<sup>24</sup> [2008] 30 NSCOR 675 (SC)

<sup>25</sup> (1962) QdR. 398 (CA) (1968) 42 ALJR 295 (CA)

<sup>26</sup> Section 48 Penal Code Act.

<sup>27</sup> (2010) 41 NSCOR (pt. 2) 1145 (SC)

The importation of the dichotomy of unlawful and lawful acts in the interpretation of Section 24 as a requirement for determining whether or not the section avails the accused person is not proper. Such requirement is not provided for under Section 24. Section 24 should be giving its proper interpretations by the court in accordance with the provision of the section

In the light of the above, courts should clearly determine which arm of the Section that is called into question by examining the facts exhibited in the charge. Where the charge deals with the act of the defendant, the first arm applies. Where the borders on the consequence of the defendant's act, the second arm applies. Members of the Bench should be given proper orientation on the meaning and effect of the second arm of the section to ensure proper interpretation and justice in their decisions. The unlawfulness or lawfulness act doctrine should not be imported in the interpretation of Section 24. Court should have the courage to interpret and apply the full effect of Section 24 where it is successfully pleaded.