

**MENTAL CAPACITY IN CRIMINAL AND CONTRACT LAW IN NIGERIA:
EVALUATING THE LEGISLATIVE FRAMEWORK FOR MENTAL HEALTH
CARE**

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BENIN CITY**

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,
UNIVERSITY OF BENIN IN PARTIAL FULFILMENT OF THE REQUIREMENT
FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B) OF
THE UNIVERITY OF BENIN, BENIN CITY.**

NOVEMBER 2025

CERTIFICATION

I, **Gift Esohe OMOREGIE**, with Matriculation Number **LAW2002926**, hereby certify that apart from references made to the works of other people which have been duly acknowledged herein, this entire project is the product of my personal research, and it has neither in part nor in whole been presented for another degree elsewhere.

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APPROVAL

We certify that this project was written and completed by **Gift Esohe OMOREGIE**, with Matriculation Number **LAW2002926**, in partial fulfilment of the requirements for the award of a Bachelor of Laws (LL.B) degree.

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DEDICATION

Firstly, this work is dedicated to God almighty for his grace to see this work to completion.

Also, to every person currently with a mental disability, your struggles are recognized and have laid the foundation for a better mental health care system in Nigeria and globally.

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The Lunacy Act, 1958.

Universal Declaration of Human Rights, 1948

United Nations, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991

United Nations Convention on the Rights of Persons with Disabilities, 2006

LIST OF ABBREVIATIONS

AC	Appeal Cases
Ch D	Chancery Division
ER	England Reports
FSC	Federal Supreme Court
KB	King's Bench
LFN	Laws of Federation of Nigeria
LPELR	Law Platform Electronic Law Reports
All NLR	All Nigeria Law Reports
NMLR	Nigeria Monthly Law Reports
NNLR	Northern Nigerian Law Reports
NWLR	Nigeria Weekly Law Reports
Q.B.	Queen's Bench
SC	Supreme Court
SCNJ	Supreme Court of Nigeria Judgement
SCNLR	Supreme Court of Nigeria Law Reports
U.S.	United States
UK	United Kingdom
WHO	World Health Organisation
WLR	Western Law Reports

ABSTRACT

The issue of mental capacity as a determinant for legal responsibility and validity has given rise to various judicial precedents and scholarly discourse within the Nigerian Legal system. Recurrently, the courts have been tasked with determining cases where the mental health of an individual is central to the case. This occurs whether in respect of assessing criminal or tortious liability or enforcing contracts. In criminal matters the argument espoused is the incapacity of an individual to form the intention necessary for the offence committed. Whereas, in contract law a person may seek to invalidate an agreement by claiming that at the time of the formation of the contract, they lacked the requisite mental capacity to understand and consider the consequences of the contractual agreement. Therefore, this study majorly examines : what legal effect mental capacity has with regards to criminal responsibility and contractual reliability respectively? What is the legislative framework in place for mental health care in Nigeria ? And lastly how effective are these legislative frameworks in relation to global mental health care standards? The rationale for modern interpretation is based on the constitutional rights of fair hearing, protection of human dignity and freedom from discrimination as provided by section 36, 34 and 42 respectively of the Constitution of the Federal Republic of Nigeria as(amended). In addition, the provision of section 17(3) of the Constitution of the Federal Republic of Nigeria (as amended), which vests the state with the duty of providing proper health care and health care facilities for individuals in Nigeria. The finding in this study shows that although laws have been enacted to cater for treatment and care of persons with mental disorders and incapacity in Nigeria, such laws do not fully cater for their rights and to a large extent does not align with modern international standards for mental health care.

CHAPTER ONE

INTRODUCTION

1.1 Introduction

The issue of mental capacity as a determinant for legal responsibility and validity has given rise to various judicial precedents and scholarly discourse within the Nigerian Legal system. Recurrently, the courts have been tasked with determining cases where the mental health of an individual is central to the case. This occurs whether in respect of assessing criminal or tortious liability or enforcing contracts. In criminal matters the argument espoused is the incapacity of an individual to form the intention necessary for the offence committed. Whereas, in contract law a person may seek to invalidate an agreement by claiming that at the time of the formation of the contract, they lacked the requisite mental capacity to understand and consider the consequences of the contractual agreement. It is widely known that the position of the court as regards application of the principles of mental capacity in criminal law, is that there must be strict compliance with the rules as laid down in the common law case of *R v. M'Naghten* as pertains to the defense of insanity.¹ However, modern psychiatric insights brings to light the concept of cognitive and volitional capacity which has resulted in a shift in the outlook of the court to such matters. Also, in contract law while the general principle remains that a contract concluded by a person of unsound mind is voidable, there have been diverging judicial opinions as to the standard of proof required to establish incapacity and the legal implication of lucid intervals. The rationale for modern interpretation is based on the constitutional rights of fair hearing, protection of human dignity and freedom from discrimination as provided by section 36, 34 and 42 respectively of the Constitution of

¹ *R v. M'Naghten* (1843) 10 Clark & Fennelly 200; 8 ER 718 (HL).

the Federal Republic Of Nigeria, 1999(as amended)².The position of this study hinged on the necessity for revaluation of the current legislations on mental capacity and mental health care in Nigeria, in order to ensure alignment with international human right standards and medical knowledge on mental health related issues. This chapter encompasses the background to the study, research questions, aim and objectives, significance of the study, scope and limitations of the study, research methodology, conceptual clarifications and literature review and structure that make up this study.

1.2 Background to the Study

Mental Health related issues are pivotal in the discourse of criminal and contract law. This study is necessitated by the tension between the rigid classical legal view and modern jurisprudential position as concerns the effect of mental health in criminal and contractual law cases. Wexler opines that the classical position of the law was that all human beings had free will and that they should be dealt with appropriately as regards the consequences of their actions. However, he suggested that modern jurisprudence acknowledges the influence of biological and psychological factors which may override freewill. This is shown in the popular criminal case of Mcnagthen, whereby the English court still acquitted a man by reason of insanity regardless of the fact of murder.³ The Mcnagthen rule established that the courts are not just interested in the element of a guilty act but also that of a guilty mind.⁴

In Nigeria, there has been an attempt to align the position of our legal system with the modern international standards that recognize the remarkable influence of mental health and its effect on criminal and contract laws. Therefore, there has been a legislative shift

² Constitution of the Federal Republic of Nigeria 1999 (as amended)

³ David B Wexler, *Mental Health Law: Major Issues* (Plenum Press 1981)
<<https://doi.org/10.1017/S036194860000405X>> accessed 3 November 2025

⁴ (n1)

from the Lunacy Act of 1958⁵ (which was less attuned with modern trends) to the National Mental Health Act 2021 (NMHA)⁶, alongside analysis on the Criminal Code⁷ and other statutory provisions that recognize the relevance of mental health, its effect and attempts to establish a proper framework for its applicability in the country.

Regardless of these developments there remains a gap in application of modern standards in addressing mental health cases in Nigeria, as pertains to the rights of such persons, funding, infrastructures or facilities for therapy, treatment and clearly defined procedures for enforcement. Thus, it is necessary to address these gaps to ensure that the law does not just focus on where liability rests in these cases but how to safeguard the rights and integrate into society these persons with mental health issues whether in contract or criminal law cases alike. Overall, the aim is to provide a mechanism where the constitutional rights of fair hearing, protection of human dignity and freedom from discrimination (as enshrined in section 36,34 and 42 of the Nigerian Constitution) are observed without justice being neglected.

1.3 Research Questions

The modern position of the courts recognize the effects of psychology in criminal and contract jurisprudence. Therefore the determination of such cases by the court is not only to apportion liability but rather to protect the rights of the individuals who may have been lacking the necessary mental capacity at the time of crime or the transaction. The aim to uphold human and constitutional rights in cases where at its core are based on mental health issues have led to criticisms, judicial and scholarly opinions that have culminated in the need for this study.

⁵ The Lunacy Act, 1958.

⁶ National Mental Health Act, 2021

⁷ Criminal Code Act, Cap C38 LFN 2004

The research questions to be explored are:

- a. What constitutes mental capacity or incapacity?
- b. How does mental incapacity affect criminal responsibility in Nigeria?
- c. What is the relevance of the defense of insanity in criminal proceedings?
- d. What is the legal effect of mental capacity or incapacity in contractual agreements in Nigeria?
- e. To what extent are the rights of persons with mental disorders catered for by the Nigerian Lunacy Act 1958 and the National Mental Health Act 2021 viz a viz international legal standards?

1.4 Aims and Objectives of the study

The aim of this study is to examine the effect of mental capacity in criminal and contract law and the applicability of the National Mental Health Act 2021 and the Lunacy Act 1958 in protecting the rights of persons with mental incapacity in cohesion with international human right standards.

The objectives of this study are to:

- a. Explain the meaning and elements of mental capacity.
- b. Analyze how mental capacity affects criminal responsibility, with emphasises on the defence of insanity in criminal law in Nigeria.
- c. Analyze the legal implication of mental capacity in determining validity and enforceability of contractual agreements in Nigeria.

- d. Evaluate the adequacy of the Lunacy Act 1958 and National Mental Health Act 2021 in protecting the rights and legal capacity of mentally disordered persons.
- e. To identify areas of legal and institutional reforms for the alignment of Nigeria's mental health scheme with international human rights standards.

1.5 Scope and Limitations of the Study

This study covers the analysis of the legal effect of mental capacity in criminal and contract jurisprudence and the applicability of Nigeria's legislative framework to safeguard the rights of such mentally incapable persons and provide therapy where necessary.

One of the challenges in the course of this study is the Paucity of case-laws based on the provisions of the Lunacy Act and Mental Health Act. However, there are a good number of scholarly opinions on these issues. A Second challenge is inaccessibility to recent data as pertains to nation-wide compliance with some areas incidental to the research topic.

A third challenge is the scarcity of Nigerian authored materials with specific localized data as pertains to the research topic.

The last challenge is combining reading for examinations and the writing of this project.

1.6 Significance of this study

This study will contribute in solidifying the relevance of the element of mental capacity in modern jurisprudence in criminal and contract cases. Also, it will explore the necessity of legal frameworks like the provisions of the Constitution, Criminal Code, Lunacy Act, National Mental Health Act in protecting the mentally disordered persons from discrimination, human indignity and safeguarding their right to fair hearing.

The first beneficiary of this study are the mentally incapable persons, who should be aware of the fact that the law puts into consideration not just physical actions, but also the elements of mental understanding at the time relevant to the transaction or offence. The second beneficiaries of this study are the law-makers and the Nigerian judiciary, of whom this study has exposed the gaps in the law and given recommendations for improvement such as to properly align our legal framework with international standards while ensuring law and order is maintained.

Thirdly, this study will be beneficial to legal practitioners and reformers, as it equips them with the necessary points to advocate and protect the rights of the mentally disabled persons through an analysis of the relevant provisions of law.

Lastly, this study would be useful to students and legal researchers who desire to have information or partake in further study on the research topic.

1.7 Research Methodology

The doctrinal legal research approach will be adopted in this study. It is a library-based approach that involves systematic sourcing and analysing of data from primary and secondary materials. The Primary materials that will be utilized for this study include the Constitution of the Federal republic of Nigeria 1999 (as amended), other Nigerian legislations and case-laws. While, secondary materials will include authoritative textbooks and journal articles. Through this process, the data evaluated will be utilized to arrive at conclusions and recommendations necessary for the implementation of this study.

1.8 Conceptual Clarifications

The definition of the following keywords is essential for a thorough understanding of this work: ‘mental capacity’, ‘insanity’, ‘criminal responsibility’, ‘contractual capacity’ ‘human dignity’, ‘mental health’ and ‘mentally disordered persons’

1.8.1 Mental Capacity

Mental capacity according to Merriam Webster Medical Dictionary is the sufficient understanding to generally comprehend the nature, purpose and consequence of any act or transaction one desires to engage in.⁸

1.8.2 Insanity

Insanity has been defined by Webster' Dictionary as a severely disordered state of the mind; unsoundness of mind that deprives one of the mental capacity required by law to enforce criminal or civil responsibility.⁹

1.8.3 Criminal Responsibility

Criminal responsibility is the condition by which an individual can be held legally liable for committing an offence and may be subject to punishment, provided he possessed the requisite intention to commit the offence.¹⁰

1.8.4 Contractual Capacity

⁸ “Mental capacity,” *Merriam-Webster.com Medical Dictionary*, Merriam-Webster <<https://www.merriam-webster.com/medical/mental%20capacity>> accessed 31 October 2025.

⁹ “Insanity,” *Merriam-Webster.com Dictionary*, Merriam-Webster <<https://www.merriam-webster.com/dictionary/insanity>> accessed 5 November 2025.

¹⁰ (n6)

The legal ability of a person or entity to understand the terms and consequences of a contract and be legally bound by such contractual agreement.¹¹

1.8.5 Human Dignity

Human dignity means the intrinsic value every individual possess by virtue of them being humans.¹² This is a right provided in section 34 of the Constitution of Nigeria that aims to ensure that all humans are treated fairly, equally and with respect, irrespective of status or condition. It is a right that promotes equality in diversity.

1.8.6 Mental Health

Mental health is a state of mind characterized by emotional, psychological and social wellbeing. It involves the way we act, think and feel that helps us cope with the relative stresses of life.¹³

1.8.7 Mental Disorder

Persons with Mental Disorders involves individuals having a clinical condition that causes significant disturbances that affect their cognitive capacity, emotional regulation and behaviour. These persons with mental disorders are also known as persons having mental health conditions. Examples of such conditions are bipolar, schizophrenia, anxiety disorder, depression, which may result in self harm, distress and impairment of cognitive functioning.¹⁴

1.9 Literature Review

¹¹ Melanie Morris, 'Chapter 8: Capacity' in *Business Law I* <<https://rvcc.pressbooks.pub/businesslaw131/chapter/chapter-8-capacity/>> accessed 5 November 2025

¹² C McCrudden, 'Understanding Human Dignity' (2013) <<https://pure.qub.ac.uk/en/publications/understanding-human-dignity>> accessed 5 November 2025.

¹³ American Psychological Association, *Mental Health* <<https://www.apa.org/topics/mental-health>> accessed 5 November 2025.

¹⁴ World Health Organization, "Mental Disorders" (2025) <<https://www.who.int/news-room/fact-sheets/detail/mental-disorders>> accessed 5 November 2025.

The factor of mental capacity has theoretically gained recognition in Nigeria's contract and criminal law. However, there still remains the problem of a clearly defined legal framework that not only recognizes the factor of mental incapacity or mental disorders but also provides effective enforcement to cater for the rights and therapeutic needs of persons with mental disorders. Hence, this study aims to assess the relevance of mental capacity in criminal and contract law and the efficiency of Nigeria's legal framework as regards the aspect of mental health.

With regards to the element of mental capacity and its implication in Criminal law, Afolayan and Onoja explain that mental capacity in Nigeria's criminal law refers to the ability of an individual to understand the nature and consequence of his action and possess the intention required for criminal liability at the time of committing the offence. Criminal mental capacity is saddled with elements of *mens rea* (guilty mind) and *actus reus* (guilty act). Also, persons who lack such intention at the time of committing an offence may plead the defense of mental insanity - committing an offence in the absence of proper cognitive or psychological functioning. Furthermore, their study opines that even with the proof of mental disorders, law enforcement agencies fail to recognize this disability and subject them to similar rigorous procedures as any other convicted criminal with full mental capacity. This is shown in the lack of proper infrastructures for their treatment, rehabilitation and even opportunities for redress in cases where their human rights are infringed upon.¹⁵

However, Silving's study on mental incapacity in criminal law propounds that the rationale for punishment is law-assertion. The purpose is only served when applied to the average-individual that is attuned to the law and psychological functioning of society. By

¹⁵ Afolayan AF and EO Onoja, 'The Plights of Mentally Ill Persons under the Criminal Justice System in Nigeria' *Ajayi Crowther University Law Journal* (2017) 1(1).

reason of this, punishing persons with mental disorders is seen as irrational because they do not possess the average -individual's proper functioning of mind to grasp the nature and consequence of their actions which resulted in punishment by the state. Therefore, the state should see persons with mental incapacity as exemptions to the punitive measures of the state and rather as persons in need of protection and rehabilitation to attain the average person's psychological functioning.¹⁶

In light of the aforementioned studies, both studies are relevant as they acknowledge the element of mental capacity and how a lack thereof is relevant in determining what justice should be presented as in a criminal proceeding. The studies also emphasize the duty of the state in providing systems to protect the persons with mental disorders from being subject to punitive measures rather they should be provided with treatment.

Also, with respect to contractual capacity, Sagay posits that absence of mental capacity at the time of contracting does not automatically make a contract void, rather such contract is deemed voidable - such contract can be avoided or ratified during a lucid period.¹⁷ By this a person alleging mental incapacity must prove the following; lack of understanding the nature and consequence of the contract at the time of contracting or that the other party was aware of their mental incapacity. However, he further acknowledges that a mentally incapable person will not be exempt from liability as pertains to contract for necessities or beneficial contract of service.

In a study done in Pakistan by Ajmal and Rasool, it was emphasized that with regards to contractual capacity, the mere fact of mental disorders or incapacity itself is irrelevant unless such mental disorder or incapacity is present at the time of contracting. This is because a naturally sane person may be deemed mentally incapable, if at the time of

¹⁶ Helen Silving, "Mental Incapacity in Criminal Law" *Current Law & Social Problems* (1961) 2 3.

¹⁷ I.E Sagay, *Nigerian Law of Contract* (3rd edn, Spectrum Books Limited 2018).

contracting his mental state was impaired. The authors also frown at the use of archaic and discriminatory terms like “lunatic asylum” used in the Pakistani Contract Act as such terms are parallel to modern principles on mental health.¹⁸

Based on the aforementioned studies on mental capacity in contract, it can be affirmed that the fact of a mental disorder before or after a contractual agreement has no relevance, what the court deems relevant is the mental state of the contracting parties at the time of contracting. This position of the law stems from its desire to protect the rights of parties to a contract and to properly determine where liability lies.

Furthermore, in a study concerning the adequacy of the Lunacy Act 1958, Ude argues that the Lunacy Act was wholly a failure. This is because the provisions of the Lunacy Act were custodial in nature and neglected the need to protect the rights of persons with mental disorders. The Lunacy Act makes use of discriminatory terms, prioritizes Institutionalization rather than treatment and rehabilitation. Its mental health policies were only theoretical and lacked effective enforcement due to underfunding and social-cultural influence (the need to segregate persons with mental disorders from society). The Act also vested too much discretionary powers on the magistrates. Ude posits that the Act being insufficient should be repealed or amended.¹⁹ Similarly, Akinwumi echoes these inadequacies in his study and adds that the act failed to provide for community mental health treatment rather than prioritising institutionalized care. Also, that the law improperly intersects the differing objectives of criminal justice and mental health care given that it provides the option of prisons as a mental asylum. To Akinwumi these factors show the failure of the Act to align with international standards for mental health

¹⁸ Ajmal Ali and Faiza Rasool, “Law on Mental Competency to Contract: An Analysis,” *Journal of Development and Social Sciences* (2024) 5(3) 389-395.

¹⁹ Paula Ugochukwu Ude, “Policy Analysis on Nigerian Lunacy Act (1958): The Need for a New Legislation” *Mental Illness [NAMI]* (2015) 6

as advocated by the World Health Organisation and UN conventions.²⁰ Therefore, it can be deduced from the studies by Ude and Akinwumni that the Lunacy Act is archaic and fails to properly cater for the rights and care of persons with mental disorders as solicited by modern health care policies.

In addressing the adequacy of the National Mental Health Act 2021, Amadasun and Etuvoata acknowledge remarkable changes in the provisions of the Mental Health Acts which includes; the recognition of the right of the person with mental disorder to access treatment, employment, confidentiality, legal representation and housing. However, they opine that despite the improvements in this Act as against the provisions of the Lunacy Act, there is need for periodic review of its provisions to ensure it is constantly up-to-date with modern day mental health realities.²¹ In addition to this, Odusote in his study recognizes that the Act also makes provision for voluntary admission (patient's autonomy) rather than mandatory confinement. Also he notes that the Act provides strict procedures in cases where involuntary confinement is necessary, due to the possibility of the patient causing harm to himself or others. Despite these improvements, he acknowledges that there is need for improvements in the following areas: Provision of sufficient psychiatrists, state-level adoption of this law, proper funding and adequacies of mental health infrastructures. Odusote suggests that the government needs to spread awareness on mental health conditions so as to prevent societal stigmatization and dehumanizing practices on persons living with mental health disorders.²²

²⁰ Akinsola Idowu Akinwumi and others, "Mental Health and Disability Law in Nigeria: A Call for Affirmative Interpretation" *Journal of Law, Policy and Globalization* (2022) 124-23.

²¹ Augustine U Amadasun and Anthony Etuvoata, "An Appraisal of Mental Health Legislations Vis-À-Vis Provisions of Mental Health Care in Nigeria" *Journal of Commercial and Property Law* (2023) 10(2) 49-64.

²² Abiodun Odusote, 'National Mental Health Act 2021 as a Silver Lining for the Protection of the Fundamental Rights of the Mentally Ill Patient in Nigeria' *Law and Social Justice Review* (2023) 4(3) 48-55 <<https://heinonline.org>>accessed 5 November 2025.

From the studies carried out by Amadasun and Odusote, it can be seen that the National Mental Health Act to a great degree aligns with international standards for mental health. However, the problem of effective implementation of its provisions greatly abounds. Therefore, the state has a duty to not just have beautifully crafted laws but ensure effective enforcement of those laws.

Lastly, there has been in-depth studies towards reforming mental health care in Nigeria and globally. A publication by the World Health Organisation (WHO) recognized that Nigeria has over 200 million persons in population and barely 300 psychiatrists to cater for the population's mental health needs. WHO has observed that mental health disorders arise from either mental, neurological or substance abuse. Therefore, it has introduced an intervention called the Mental Health Gap Action Programme (MHGAP), of which the programme is to ensure effective ways of training non-specialized healthcare workers in assessing, managing and treatment of persons with mental health issues in communities.²³ Similarly, Abdulmalik in echoing the benefits of programmes like the MHGAP, further emphasizes that the journey to reformation starts with the government ensuring effective implementations of laws like the Nigeria's Mental Health Act, the utilization and training of primary health care workers to bridge the gap of insufficiency of mental health specialists. Also, he emphasizes the necessity of public awareness programmes on mental health disorders and treatment, as this will help to prevent stigmatisation and discrimination.²⁴

Therefore, it can be seen that for reformation to occur in the mental health care sector, there is need for policy implementation and participation of the government and every

²³ World Health Organization, *mhGAP Intervention Guide: Mental Health Gap Action Programme Version 2.0* (WHO 2019).

²⁴ Jibril Abdulmalik *and others*, "Mental Health System Governance in Nigeria: Challenges, Opportunities and Strategies for Improvement" *Global Mental Health* (2016) 3 e9.

individual concerned (health care workers, patients and communities) to effect the necessary changes needed to protect the society and persons with mental disorders.

1.10 Structure

This study comprises five chapters. Chapter one introduces the subject matter of this study, the definition of key concepts and literature review on Mental capacity in Contract law and criminal law in Nigeria and applicability of mental health legislations.

Chapter two delves into mental capacity in criminal law in Nigeria, elements of mental capacity, the defense of insanity and remarks of other related concepts.

Chapter three centers on mental capacity in contract law in Nigeria and its area of application.

Chapter four focuses on the comparative analysis between the lunacy act and National Mental Health Act and the adequacy of the extant law on mental health in Nigeria.

Chapter five of this study contains a summary of findings and recommendations.

CHAPTER TWO

MENTAL CAPACITY UNDER NIGERIAN CRIMINAL LAW

2.1 Introduction:

It was an established position of the criminal justice system that criminal liability hinged solely on the acts of the alleged offender, such that clear evidence of criminal conduct led the court to pronounce an undisputed verdict of guilt. This was the strict position of the English common law and other jurisdictions alike. However, by the passage of time and development of law, cognizance has been given to the Latin maxim “*actus non facit reum nisi mens sit rea*”- “an act does not make a person guilty unless the mind is also guilty”. This maxim established not only guilty acts (*actus reus*) but also the guilty mind (*mens rea*) of an alleged offender as factors to be essentially considered before the court passes a verdict in criminal proceedings. This led to a recognition of the physiological and cognitive ability of an individual, to be so capable at the time of an offence, understand the nature and effect of their actions, distinguish between right from wrong and form the requisite criminal intention for such offence. This is necessary as it aids the state in maintaining public order by ensuring that criminal offenders are properly punished. Thus, this chapter seeks to examine the concept of mental capacity within Nigerian’s criminal law, evaluate the extant statutory provisions such as the Criminal Code and Penal Code, Criminal procedure Act and Administration of Criminal Justice Act. This chapter will also examine the historical common law case of *R v. Daniel M’Naghten* and the applicability of its principles, including procedural matters such as fitness to stand trial and standard of proof.¹

¹ Lawrence Atseguba, Violet Omon Aigbokhaevbo and Sunday Daudu, *Criminal Law in Nigeria: A Modern Approach* (rev edn, Malthouse Press Limited 2021) 12-18.

2.2 The Concept of *Mens Rea* and Mental Capacity:

The present position of Nigeria's criminal justice system, gives consideration to not just the guilty acts (*actus reus*) of an accused but also the guilty mind (*mens rea*) before or at the time of the alleged offence.

Mens rea means the intention or knowledge of wrongdoing which the accused must have possessed at the time of committing the offence, which is necessary to establish such offense. By this, an accused can be found guilty when there is clear evidence of an intent with a corresponding wrongful act. In *R v Woolin*,² a case where the defendant's three months old baby was crying, having choked on his food, in frustration and attempting to stop the cries, the defendant (Woolin), threw the baby forcefully on a hard surface, resulting in a head injury. The defendant claimed that he did not intend to cause such bodily harm. The house of lords overturned the trial' court verdict of murder to manslaughter, as it clarified that foresight of consequence maybe evidence of intent and not intent itself. However, strict liability cases pose an exception to the consideration of *mens rea*, that is, an accused can be convicted without knowledge or intention of the offence.³

The concept of *mens rea* has paved the way for the argument of "mental incapacity"-the accused's inability to make rational decisions at a specific time due to malfunctioning of the mind or brain. This could be as a result of unsoundness of mind, mental disorders, mental illness whether developmentally or through injury or dysfunction in the brain or mind. In most cases the mental disorder only had the effect of making the accused form the necessary *mens rea* for the offense based on irrational reasons.⁴

² *R v Woolin* [1999] 1 AC 8

³ *Pharmaceutical Society of Great Britain v Storkwain Ltd* [1986] 1 WLR 903

⁴ (n1)

The concept of mental incapacity has resulted in the defence of insanity of which the accused pleads the court to consider, so as to exempt him or her from criminal responsibility or mitigate the sentence. In *R v. Omoni*⁵, the accused claimed that he was subject to uncontrollable impulse at the time of committing the offence. The court held that although uncontrollable impulse could be a defence, the defendant without medical evidence could not establish his claim.

Furthermore, it should be recognized that the concept of mental capacity in criminal law is not a discourse exclusively reserved for adults suffering from mental infirmity or disease of the mind, rather statutory provisions have extended its coverage to include minors lacking the requisite maturity to understand the nature and consequence of their actions. For example, section 30 of the Criminal Code and section 50 of the Penal Code⁶ respectively provide for an exemption of children below the age of seven years from criminal responsibility while children under the age of twelve years will only be exempt if they lacked the capacity of understanding that the act committed or omission made was wrong.

2.3 The Defense of insanity

It is no secret that the public shows open disapproval to cases in which the defense of insanity is pleaded. The rationale is that the defense of insanity is majorly pleaded in objectively morally repugnant and illegal cases and as such the public deems it as a suspicious move of the accused to escape justice.

The Black's Law Dictionary⁷ defines insanity as "Any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or

⁵ *R v Omoni* [1949] 12 WACA 511

⁶ Penal Code Law, 1959 (Northern Region No 18 of 1959)

⁷ Bryan A Garner, *Black's Law Dictionary* (10th edn, Thomson Reuters 2014).

civil responsibility. As such the term insanity represents a severely disordered state of mind; unsoundness or lack of understanding that prevents the presence of mental capacity.

The defense of insanity gained wide recognition in the prominent case of *R v M'nagthen*,⁸

The fact being that M'nagthen suffered from insane delusions of persecution from the government and attempted to kill the British Prime Minister- Robert Peel but accidentally killed his secretary instead. He was charged with murder. The trial court gave a verdict of not guilty by reason of insanity, which led to a public outcry and led the house of lords to lay down the rules now known as the Mcnaghten rules- that is to establish a defense of insanity it must be proven that at the time of committing the act, accused is shown to have:

- 1) the presence of defect of reason from a disease of the mind;
- 2) such defect or disease must have deprived the accused of capacity to know the nature and quality of the act he was doing; and
- 3) If he did know it, that he did not know he was doing what was wrong.

This test has subsequently been codified into Nigerian law. As expressly provided in the following statutory provisions:

By virtue of section 28 of the Criminal Code, person is not criminally responsible for committing an act or omission if at such a particular time of commission, he was suffering from a state of mental disease or natural infirmity that deprived him of the capacity to know that he ought not to do the act or make the omission.

The second part of this section, establishes that a person will be held criminally responsible if he suffers from insane delusions and understands the gravity of his acts and as such the court will judge such a person as if such delusional belief was true.

⁸ (n1)

Also, by section 51 Penal Code, a person will not be criminally responsible for an act, if he suffers from an unsound mind that prevents him from understanding the nature of his act and that such act is contrary to the provisions of law.

In *Godwin Odo v. The State*⁹, the evidence revealed that the appellant-Godwin killed a woman with a machete, he was charged under section 319 of the criminal code. However, witnesses testified to past violent behaviour and history of mental illness and the defense of insanity was pleaded. The court still sentenced him to death by hanging. On appeal, it was held that the trial court erred in rejecting the defense of insanity as there was evidence of insanity and the defendant only had to prove such in accordance with section 28 of the criminal code on the balance of probability and not beyond reasonable doubt.

Consequently, the crux of the defense of insanity is that the accused was mentally unsound at the time of committing the wrongful act and as such should not be held criminally responsible for such wrongful act outside his rational state of mind.

2.4 The Disease of the Mind and the Defence of Insanity

The phrase '**disease of the mind**' as referred to in M'nighten's case connotes any mental condition that impairs normal functioning of the mind. It manifests itself in violence and it is prone to recurrence.¹⁰ It must not be self-induced and must arise from an internal cause affecting the mind at the time the act was committed. In *Bratty v. A.G. Northern Ireland*¹¹ the accused claimed he was suffering from psychomotor epilepsy and as such he had no conscious control or memory of the murder of his girlfriend. The House of Lords rejected his plea of automatism. Lord Denning clarified the difference between insanity and automatism, stating; "No act is punishable if it is done involuntarily... But any

⁹ *Godwin Odo v The State* [1998] 1 NWLR (Pt 532) 24

¹⁰ *Bratty v A-G for Northern Ireland* [1963] AC 386

¹¹ *ibid*

mental disorder which has manifested itself in violence and is prone to recur is a disease of the mind.”

In *R v. Hennessy*¹² The Court of Appeal held that hypoglycaemia caused by high blood sugar levels was “an inherent defect, a disease of the mind, within the M’Naghten Rules.”

In *R v. Kemp*¹³, where the accused suffered from frequent episodes of black-outs due to restricted blood flow to the brain (arteriosclerosis). He attacked his wife with a hammer leading to serious head injury and was charged for grievous bodily harm. The court held that he was mentally insane in accordance with the M’Naghten rule. Delvin J, went further to expand the scope of the “disease of the mind” stating that it includes any physical condition that impairs the functioning of the mind. Therefore, regardless of the physical disease -arteriosclerosis, the defendant suffered a disease of the mind, given that the black outs deprived him of the mental capacity to appreciate the nature of his act.

Consequently, a disease of the mind can sustain a defence of insanity, if such defect in reason occurred naturally.

2.5 Other Related Concepts

It is expedient to note that under Nigerian law, not all mental abnormalities qualify as insanity¹⁴. For example, voluntary intoxication, emotional distress, epilepsy (unless it caused total lack of awareness during the act), mental retardation (except it leads to loss of capacity as specified in section 28 of the criminal code).

¹² *R v Hennessy* [1989] Crim App R 10

¹³ *R v Kemp* [1956] 3 All ER 249

¹⁴ *Okoro v The State* (1988) 12 NWLR (Pt 94) 255 -Differentiated between mental illness and mere abnormality of mind; confirmed that not all forms of mental weakness (natural infirmity) meet the standard for legal insanity.

2.5.1 Voluntary Intoxication

Voluntary Intoxication is not defense for criminal liability except as provided in Section 29 (2) of the criminal code which states that: 'intoxication shall be a defence to any criminal charge if by reason thereof, the person charged at the time of the act or omission complained of did not know that such 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; or

(b) The person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

In *DPP v. Beard*¹⁵, the defendant was charged with the rape and murder of a 13 year old. He pleaded intoxication as a factor depriving him of forming the intent (*mens rea*) required for murder. The house of lord held that voluntary intoxication (self induced) is not a defence, he had sufficient awareness even if intoxicated and as such convicted for murder. Thus, it was established in this case that voluntary intoxication is not a defence to basic intent crime but may be considered for specific intent offences.

2.5.2 Automatism

Automatism is a state of unconscious, involuntary movement whereby a person's action is not controlled by the mind. In *Bratty v. A.G. Northern Ireland*,¹⁶ The accused claimed he was suffering from psychomotor epilepsy and as such he had no conscious control or memory of the murder of his girlfriend. The House of Lords rejected his plea of automatism. Lord Denning clarified the difference between insanity and automatism,

¹⁵ *DPP v Beard* [1920] AC 479

¹⁶ (n 34)

stating; “No act is punishable if it is done involuntarily... But any mental disorder which has manifested itself in violence and is prone to recur is a disease of the mind.”

2.5.3 Emotional distress

In *R v. Tabigen*,¹⁷ The court held that a person’s inability to control their emotions is not considered a defect in mental power to ground a successful plea of the defense of insanity.

2.6 Presumption of sanity and burden of proof

Nigeria’ criminal law is largely governed by the provisions of the Criminal Code and Penal Code applicable in Southern and Northern Nigeria respectively. Although as earlier established the defense of insanity is hinged on the fact of mental incapacity at the time of committing the alleged offence, cognizance must be given to the unambiguous provisions of statues, which provides for the prima facie presumption of sanity of every person and without a successful rebuttal of such presumption, the defence of insanity is of no effect.

The presumption of sanity is contained in section 27 of the Criminal Code, which states that:

“Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes into question, until the contrary is proved.”

Also, section 139 (1) of the Evidence Act 2011¹⁸Provides:

Where a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged is upon such person.”

¹⁷ *The Queen v Tabigen* (1960) 5 FSC 8.

¹⁸ Evidence Act, 2011 (Act No 18, Laws of the Federation of Nigeria)

In the case of *Popoola v. The State*,¹⁹ the court stated that; “It is not the duty of the court to scout for evidence to find a defence of insanity relied on by an accused. However, the burden of proof on the accused person, who relies on the defence of insanity, is less than the burden cast on the prosecution to prove his guilt beyond reasonable doubt. The burden of proof is satisfied on a balance of probability or preponderance of evidence.”

By these provisions the accused has the burden of proving that he or she is in a state of mental incapacity at the time of committing the alleged offence. The presumption of sanity can be successfully rebutted on the balance of probability and through credible evidence like expert medical reports, witness observation of the accused behaviour before, after or at the time of the crime.²⁰ Also, evidence of earlier treatment of mental illness is not conclusive evidence to negate the plea of insanity.²¹ Thus, a successful rebuttal of the presumption of sanity is relevant in order to give the accused the desired result when the defense of insanity is pleaded.

Furthermore, it must be recognized that the plea of the defense of insanity is an acceptance of the alleged offence, however, such plea is made with the view to totally exonerate or mitigate the sentence of the accused on the ground that his cognitive and moral capacity was affected by reason of a disordered mind at the time of committing the offence.²²

In *Yakubu Kure v. The State*²³ The accused was charged with the culpable homicide of his father by inflicting grievous bodily harm with a machete, which is punishable by death under section 221 of the Penal Code. The accused pleaded insanity as a defense and as such not criminally liable under section 51 of the Penal code. However, he had no

¹⁹ *Popoola v The State* [2013] LPELR-20967 (SC) <http://www.lpelr.org/>

²⁰ *ibid*

²¹ *Chukwu v The State* [1994] 4 SCNJ (Pt 1) 85 at 95–96.

²² (n15)

²³ *Yakubu Kure v State* (2020) LPELR-49378(SC)

medical evidence to support his claim but relied on oral testimony of his relatives. The Supreme Court affirmed the previous conviction of death sentence, as he had not sufficiently discharged the burden of proving insanity to the satisfaction of the court.

In the case of *Guobadia v. state*,²⁴ the Supreme stated that for a successful plea of the defense of insanity so as to successful rebut statutory provisions, the accused must prove that at the relevant time, he was suffering from either mental disease or from natural mental infirmity, that is, a defect in mental power which was neither produced by accused own fault nor the result of disease of the mind. The accused person must also establish that the mental disease or natural mental infirmity was such that, at the relevant time, he was as a result deprived of capacity to understand what he was doing or to control his actions or to know that he ought not to do the act or make the omission.

Consequently, by the provision of section 27 of the Criminal Code, the accused has the evidential burden of proving that he or she was in a state of mental incapacity at the time of committing the alleged offence. The presumption of sanity can be successfully rebutted on the balance of probability. Also, credible evidence like expert medical reports, witness observation, medical history, family history, can be relevant for rebuttal. However, evidence of earlier treatment of mental illness is not conclusive evidence to negate the plea of insanity.

Lastly, a successful rebuttal of presumption of sanity, shifts the evidential burden to the prosecution to prove the sanity of the accused at the material time of committing the offence.

2.7 Effect of a successful plea of insanity

²⁴ *Guobadia v The State* (2004) 17 NSCQR 222 at 232–233.

Section 229 Criminal Procedure Act ²⁵provides that;

“Whenever any person is acquitted by virtue of the said section 28 or 29 (2) (b) of the Criminal Code, the verdict of the court before which the trial has been held or, in the case of a trial with a jury, of the jury, shall state specifically whether he committed the act alleged or not.”

By this provision, when an accused is found to have committed an act, a successful plea of insanity leads to a verdict of “not guilty by reason of insanity”.

Also, by the provisions of section 230 of the Criminal Procedure Act, The court, after finding a person not guilty by reason of insanity, is to order that such mentally disordered person be kept in safe custody- psychiatric facility, hospital or prison. Thereafter, a report is made to the governor, on whose discretion determines the duration of the mentally incapable person being so confined. Similarly, by section 285 of the Administration of Criminal Justice Act (in the states so applicable)²⁶, the court can order the detention of such a person acquitted by reason of insanity, to be confined in a place of safe custody for a period of 31 days of which, there should have been a report to the Attorney-General for proper administrative oversight.

These aforementioned provisions raise a constitutional dilemma: Should persons acquitted by reason of insanity be placed in the Nigerian prisons given their mental health needs? This question arises due to evidence of the ill-equipped nature of the Nigerian prison to render adequate psychiatric treatment. Recent studies by the World Health Organisation²⁷ has shown that Nigeria generally has limited structural facilities, fully

²⁵ Criminal Procedure Act, Cap C41, Laws of the Federation of Nigeria 2004.

²⁶ Administration of Criminal Justice Act, 2015 (Act No 13) Cap A3 Laws of the Federation of Nigeria (LFN) 2015.

²⁷ World Health Organization, *WHO-AIMS Report on Mental Health System in Nigeria* (World Health Organization 2006).

equipped to provide for treatment for persons with mental disorders. By virtue of these statistics, it has come to light that there is a possibility of such persons who are placed in prisons to be without the needed therapeutic care and are faced with a custodial system of justice instead. This can be seen as a deviation from the modern health care policies that seek to prioritize the right to treatment, care and reintegration into society of such a person with mental disorder.²⁸

Afonja and Onoja have opined that confinement of persons with mental disorder to prisons, is tantamount to subjecting them to similar conditions with other persons who are properly convicted for their crimes and by so preventing such persons with mental disorder from accessing proper treatment and therapy.²⁹

2.8 Fitness to Plead and Stand Trial

Aside from the defence of insanity, the law also considers the mental state of the accused at the time of trial. This has been coined into the concept of fitness to stand trial and the defense of insanity refers to two different stages in a criminal proceeding. The term fitness to plead and stand trial is also known as ‘competence to stand trial’. Fitness to plead and stand trial refers to the mental capacity of the accused to understand the legal proceedings at the time of trial. It is raised before or at the commencement of the trial. In contrast, the defense of insanity deals with the mental state of the accused at the time of committing the alleged offence.³⁰The defense of insanity is a substantive defense with regards to criminal responsibility and it is raised during the trial.

The term fitness to stand trial is borne out of necessity of the legal system, particularly the judiciary to ensure fair trial as constitutionally provided in section 36 of the

²⁸ United Nations, ‘Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care’ (adopted by UN General Assembly Resolution 46/119 of 17 December 1991).

²⁹ (n 15)

³⁰ *ibid*

Constitution of the Federal Republic of Nigeria 1999, which advocates for the right to fair hearing.

The test for ascertaining the competence of an accused to stand trial was well established by Alderson J, in the common law case of *R v. Pritchard*³¹, where, the accused was charged with bestiality which was at the time a capital offence. Before the trial, questions were raised as to his mental capacity given that he was also alleged to be deaf, mute and unable to enter a plea. The court in order to determine whether or not the accused was fit to stand trial stated that "There are three points to be enquired into:- first, whether the prisoner is mute of malice or not; secondly, whether he can plead to the indictment or not; thirdly, whether he is of sufficient intellect to comprehend the course of the proceedings in the trial so as to make a proper defence - to know that he might challenge any of you to whom he may object - and to comprehend the details of the evidence, which in a case of this nature must constitute a minute investigation."

The Forensic Psychiatric Experts³² opine that in an assessment, the accused must be able to:

1. To comprehend the course of proceedings of the trial, so as to make a proper defence,
2. To understand the evidence involved in the case,
3. To instruct their legal representatives, or,
4. To challenge a juror to whom they may object.

The aforementioned principle in *R v. Pritchard* has been given recognition through statutory provision in Nigeria, that permits judges to order medical assessment to

³¹ *R v Pritchard* (1836) 7 C & P 303; 173 ER 135.

³² Forensic Psychiatry Experts, Lion Court, Melbourne Road, Staunton Harold, Ashby-de-la-Zouch LE65 1RT.

ascertain the mental capacity of an accused when such is in doubt. These include the similar provisions of section 46 of the National Mental Health Act 2021 and section 223 of the Criminal Procedural Act, by virtue of which when the court finds a person unfit to stand the trial the effect is that the trial will be suspended and the accused may be detained in a psychiatric facility until assessed and recovered by medical personnel. Furthermore, the failure of the court to assess the competence of an accused to stand trial could be seen as a miscarriage of justice and when such an issue is brought on appeal and the previous conviction is quashed, there is need for a retrial of the case. As seen in the case of *Zaria Native Authority v Bakori*,³³ The respondent, without legal representation and assessment as to his mental capacity to stand trial, was sentenced to two years imprisonment by the Zaria native authority court even though there were clear signs of an unsound mind. On appeal the high court set aside previous convictions stating that there were sufficient signs to trigger an inquiry into the mental capacity of the respondent. The court further stated that the trial court's failure to inquiry was contrary to the respondent's right to fair hearing. The trial court was to order a medical examination and suspend trial proceedings. In *R v. Ogor*³⁴, the Supreme Court was of the opinion that when the accused's competence to stand trial is in issue, the court must carry out investigations rather than just relying on the defense counsel' statement from the bar or sole testimony of the accused. This led to a successful appeal and quashing of the murder conviction of the trial court.

2.9 Diminished Responsibility

It must be mentioned that the Nigerian criminal justice system only proffers the option of insanity as a defense with regards to persons who plead mental illness. This is because

³³ *Zaria Native Authority v Bakori* (1964) NNLR 25.

³⁴ *Michael Ogor v The Queen* [1961] All NLR 75

the concept of diminished mental capacity is not recognized in Nigeria. However, the concept of diminished responsibility as a possible defense will be discussed in this chapter given that there are mental conditions which fall short of insanity and the concept is recognized in other jurisdictions.

Section 2(1) of the English Homicide Act 1957³⁵ defines diminished responsibility as “such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.” Examples of this condition include; Schizophrenia, Bipolar disorder, severe depression, sexual psychopathy, drug-induced psychosis, involuntary intoxication, Post-Traumatic Stress Disorder (PTSD) *etcetera*. The concept of diminished responsibility is a partial defense that majorly applies in murder cases. A successful plea does not grant an acquittal rather it reduces a murder charge to manslaughter.

By virtue of the Coroners and Justice Act 2009³⁶, to successfully plead the defence of diminished responsibility, the defense must establish the following:

- 1) An abnormality of the mental functioning caused by a recognized medical condition;
- 2) Which provides an explanation of the defendant's acts or omissions in being party to the killing;
- 3) Which substantially impaired his or her mental ability to either of the aforementioned in (1) or (2) from understanding the nature of their conduct or form a rational judgment or exercise self-control.

³⁵ Homicide Act, 1957 (UK)

³⁶ Coroners and Justice Act, 2009 (UK)

Lastly, in the common law case of *R v. Byrne*³⁷ The court stated that; “The expression ‘abnormality of mind’... includes a state of mind so different from that of ordinary human beings that a reasonable man would term it abnormal.” The appellate court was of the opinion that the appellant- Byrne, had evidence to show that he suffered from a psychopathic condition which led to the inability to control his sexual impulses. For it was these impulses that caused him to gruesomely murder a young woman. The Appeal Court then set aside the earlier conviction of murder to manslaughter in consideration of the Section 2 of the Homicide Act 1957 given that the appellant’s mental capacity was impaired at the time of the offense.

2.10 Conclusion

Every state desires to uphold justice through protecting the rights of citizens and maintenance of law and order. The concept of mental capacity in criminal law is very essential, as a careful examination of it shows the rigorous effort that is needed to strike a balance between ensuring that criminal culprits are punished while the law recognizes that other offenders may have lacked the requisite mental capacity during an offence. The defense of insanity in Nigeria can be traced to the common law case of *R v. M’nghten*, which established rules for a plea of a successful defence. However, the defense like everything else has its limitations, in cases like voluntary intoxication, emotional distress and automatism. Ultimately, with the aid of statutory provisions such as the criminal code, Penal code amongst others and the observance of procedural principle of fair hearing or fitness to stand trial, the criminal court will be able to ensure justice is served in instances where medicine intersects law

³⁷ *R v Byrne*[1960] 2 Q.B. 396

CHAPTER THREE

MENTAL CAPACITY IN NIGERIAN CONTRACT LAW

3.1 Introduction

In the case of *Orient Bank of Nigeria PLC v. Bilante International Limited*¹ Niki Tobi J.C.A as he then was, defined “a contract as an agreement between two or more parties which creates reciprocal legal obligation or obligations to do or not to do a particular thing...”

Black’s Law Dictionary ²defines a contract as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.

It is trite law that for a valid and enforceable contract to exist, there must be a consensus ad idem or an agreement to the same thing between the parties.

Generally, there are five ingredients necessary for a contract to be established which includes: offer, acceptance, consideration, intention to enter into legal relations and capacity to contract.

The enforceability of a contract is hinged on the legal competence of a party to understand the nature, consequence and give true assent to the terms of a contract. The lack thereof of this element of mental capacity whether through intellectual incapacity, mental disorder or temporary impairment may make a contract voidable or void ab initio as the case may be. The English common law which is now reflected in Nigerian law recognized the imbalance in contractual capacity of children, illiterates and generally mentally impaired persons, such that there is a risk of them being vulnerable to unfavourable contractual dealings. This chapter seeks to examine contracts made with persons deemed mentally incapable, the statutory provisions such as the Sales of Goods Acts 1898, Illiterate Protection Law, Matrimonial Causes Act. It also explores areas like void and voidable contracts, burden of proof and accompanying remedies for deficient contracts.

¹ *Orient Bank of Nigeria Plc v Bilante International Ltd* [1997] 8 NWLR (Pt 515) 37.

² Bryan A Garner, *Black’s Law Dictionary* (11th edn, Thomson Reuters 2019).

3.2 General Principles of Contractual Capacity

Capacity to contract connotes the legal and mental ability to enter into a binding and enforceable contract. Therefore, an individual's capacity to contract is an evaluation of whether a person at the specific time of entering into a contract-understood the terms of the contract, weighed the legal consequences and gave free and informed consent.³

The Latin maxim- *consensus ad idem*, that is, the meeting of mind is also a cogent factor to consider in determining the validity of a contract. It implies that the parties to a contract in agreement to the terms of the contract gave voluntarily and knowledgeable consent without duress, incapacity or unsoundness of mind. Also, that this free and informed consent was given having fully considered their rights and obligations in the contract and with the intention to perform such obligations.

It is essential to acknowledge that the applicable principles of contract law in Nigeria, draws strongly from the received common law principles. By virtue of this, the law recognizes the need to protect the following persons who lack or may have limited capacity to contract: illiterates, minors, intoxication and persons with unsound mind.⁴

3.2.1 Minors

The Nigeria legal system shares similar views to the common law principles in relation to minors. At common law, a minor is regarded as a person below the age of 21 years and is

³ (n 18)

⁴ Morris, "Chapter 8: Capacity" *Business Law I (RVCC Pressbooks)* (2021)
<<https://rvcc.pressbooks.pub/businesslaw131/chapter/chapter-8-capacity/>>accessed 5 November 2025.

deemed to have limited contractual capacity.⁵ Similarly in Nigeria the age of maturity varies between 21 years or 18 years depending on the provision as seen in section 29(4) Constitution of Nigeria 1999. The rationale behind this limitation is that the law sees minors as incapable of efficiently comprehending the terms of the contract, analyzing the legal implication and rendering due performance. The Nigerian case of *Omidyi v. Federal Mortgage Bank & ors*,⁶ represents the limited capacity of a child to make a contract involving land, as such contracts are to be transformed into trusts for the child.

Contracts delved into by minors are voidable, that is, valid until the contrary is proven. The individual has to successfully prove to the court that he or she is a minor. Due to this, a minor can avoid any contract entered into and can only ratify such contracts expressly or impliedly within a reasonable time after attaining majority and will be so bound by such contract.⁷ Thus, a minor is deemed incapable of giving free and informed consent due to lack of legal capacity, as the law considers his inability to appreciate the consequences of certain contracts. However, a minor can enter binding contracts when it concerns; (a) contracts for necessities or (b) beneficial contracts of service.

3.2.1.1 “Necessaries”

Necessaries means goods suitable for the condition of life of the minor at the time of the sale and delivery. Necessaries here could be tangible things other than luxuries such as food, clothing, shelter, medical care while other goods and services are determined on a case by case basis.⁸

⁵ *Labinjoh v Abake* (1924) 5 NLR 33.

⁶ *Omidyi v Federal Mortgage Bank & Ors* [2019] 11 NWLR (Pt 1684) 411

⁷ Steven Wolfe, 'A Reevaluation of the Contractual Rights of Minors' *UMKC Law Review* [1988] (57) (1) 145-156.

⁸ Sales of Goods Act, 1893 (56 & 57 Vict. c.71).

In the leading common law case of *Nash v. Inman*,⁹ where the tailor- Mr Nash failed to discharge the dual burden placed on him by the law. Firstly, he was to prove that the goods were suitable for the condition of life of the defendant and that it was an actual necessity at the time, given that the defendant would not have been adequately supplied with the goods prior to the contract. In this case, the 11 waist coats supplied to the defendant, who was a minor, were held to be luxuries and as such the plaintiff could not recover the price.

Also, in the common law case of *Peters v. Fleming*,¹⁰ It was before the court for determination whether the gold watch and chain purchased by the defendant was considered “necessaries”. The defendant was a minor and student of Cambridge University. The court stated that “...The question for the jury is, whether the articles were necessaries, suitable to the condition in life of the infant, and to his actual requirements at the time of the sale and delivery. If he were sufficiently supplied with articles of a similar kind, they are not necessaries.” In light of this besides clothing, shelter and food items deemed reasonable for a minor’s condition in life at the time of contracting, which are not luxuries are considered “necessaries”.

3.2.1.2 ‘Beneficial Contracts of Service’

Beneficial contract of service like apprenticeship, service, education a minor would only be able to repudiate the contract if the terms of the contract are prejudicial and generally outweighs the benefits the minor would derive¹¹. In *De Francesco v. Barnum*,¹² the court held that service contract must not be oppressive rather it should advance future livelihood for minors. This is because such contracts are seen as training the minor for

⁹ *Nash v Inman* (1908) 2 KB 1

¹⁰ *Peters v. Fleming* (1840) 6 M&W 42 (Exchequer)

¹¹ (n 17)

¹² *De Francesco v. Barnum* (1890) 45 Ch D 430,

future profession and to earn a livelihood. With regards to contract of apprenticeship, the Nigerian law recognizes that there is need for medical examination as to the physical and mental capacity of the apprentice, so as to affirm his or fitness for the job. By this, the law is of the view that the minimum age of entering into a contract apprenticeship is 12 years, this is to ensure the attainment of basic education before such contract is delved into. Generally, an apprentice must not enter into a contract of apprenticeship by coercion, misrepresentation, undue influence and as such for minors between 12-16years the parents or guardian are the ones legally recognized as having the legal capacity to hand over the minor to be apprenticeship. This is to ensure that contractual terms are understood and benefit the minor.¹³

This is similar to judicial opinions in other jurisdictions. For example, in New Hampshire's case of *Hall v. Butterfield*,¹⁴ The court noted that the defense of incapacity for minors should not be used to propagate injustice. The court further stated that minors like other persons lacking mental capacity should be liable for the benefits derived from a contract whether or not they are deemed necessities. Also, in New Zealand, the Minor's contract Act of 1969 provides that in the absence of unfair and oppressive terms of a contract, a minor will be liable to enforce such contract.

3.2.1.3 Contract to marry

Lastly, with relations to contract to marry, the Nigerian legal system has no statutory limitation as to the minimum age of which a party must attain to be involved in a contract to marry. The law simply states marriageable age.¹⁵ By this, the law is silent as to whether a minor is mentally or intellectually lacking to be involved in a contract for

¹³ O V C Okene, *Labour Law in Nigeria: The Law of Work* (CDL Publishers Port Harcourt 2011).

¹⁴ *Hall v Butterfield* (1879) 59 NH 354.

¹⁵ Matrimonial Causes Act 1970, Cap M7 LFN 2004.

marriage. Rather, as seen in cases like *Ugboma v. Morah*,¹⁶ *Agbo v. Udo* and in accordance with section 18 of the Marriage Act, the law advises that a party below the age of 21 years obtain parental consent before such marriage¹⁷

Also, by section 21 of the Child Right Act,¹⁸ in states in which it is applicable marriages under the age of 18 years are held null and void. Nonetheless, it is trite law that a marriage could be decreed void when a party so asserting, successfully proves mental incapacity hinged on the fact of minority, that prevented him or her from grasping fully the nature and implication of the marriage contract.¹⁹ However, this plea must be based on whether the party asserting the incapacity truly did not understand the information as to the contract and not whether or not he or she feels that an unfavourable contract to marry was made.

3.2.1.4 Burden of Proof:

It must be shown by credible evidence that the defendant was a minor at the time of contracting and such fact deprived him of the requisite capacity to properly understand the nature and consequence of such a transaction. Hence, the burden of proof rests on the party asserting such a fact of the minority to prove it.²⁰ However such proof does not refrain the minor from liability in the case of contract for necessities or beneficial service.

3.2.2 Persons with Unsound Mind

¹⁶ *Ugboma v Morah* [2000] 5 NWLR (Pt 656) 236., *Agbo v Udo* [2005] 15 NWLR (Pt 958) 215.

¹⁷ (n 76)

¹⁸ Child Rights Act, 2003.

¹⁹ E. I. Nwogugu, *Family Law in Nigeria*, 3rd edn, (Heinemann Educational Books (Nigeria) Plc 1990)

²⁰ (n 42)

Nigeria adopts similar principles to common law with regards to persons with unsound mind. Generally, a person is regarded as bound by contractual agreements except it is proven that due to unsoundness of mind, he or she lacked mental capacity at the time of contracting. Therefore, it is necessary for a person to be of sound mind at the time of contracting and it becomes irrelevant whether or not the person previously suffered from a mental disorder before the time of contracting.²¹

The law may set aside any contract which was made while a party was of an impaired mind and if this fact was to the knowledge of the other contracting party, who may have taken advantage of such circumstances.²² In the common law case *Imperial loan v. Stone*²³ the court held that a contract concluded by a person of unsound mind is voidable, that is, it is valid and will only be set aside when it is proven that the unsound party lacked the mental capacity to understand the nature of the contract at the time of contracting and the other party knew or ought to have known of such mental condition.

The implication is that the contract becomes voidable and not automatically void and this is dependent on the fact of knowledge of impairment by a contracting party, if the other party asserts that he was of an unsound mind at the time of contracting.

In some instances, the law may allow the appointment of a guardian or for such an unsound person to exercise capacity in his or her choice of legal representative to contract in the stead of the mentally unsound person, so as to protect the interests of such mentally incapable individual.²⁴

²¹ *Sparrow v Demonico* 960 NE 2d 296 (Mass 2012) temporary insanity at the time of contracting suffices. ;Indian Contract Act, 1872

²² *Imperial Loan Co v Stone* [1892] 1 QB 599

²³ *ibid*

²⁴ (n6)

In the case of *Brown v. Joddrell*,²⁵ The court was of the opinion that proof of mental unsoundness, where there is evidence that such an individual benefitted substantially and the other party contracted genuinely or in good faith, will not be a ground to avoid such a contract.

In the case of *Hart v O'Connor*,²⁶ The court held the contract valid and enforceable as it considers that although O'Connor suffered from senile dementia, the sale of his farm was at a fair market price and evidence showed that the other party was not aware of his mental condition neither was there evidence of undue influence.

In light of the aforementioned cases, the court considers not just the factor of unsound mind, or if the other party was aware of such conditions but also it considers if such a party may have benefitted substantially from the contract given that the other party dealt in good faith.

Furthermore, it is an established fact that contracts concluded by persons of unsound mind during periods of lucidity are binding on them. Also, on recovery of sanity, contracts previously avoided can be ratified expressly or impliedly.

It is relevant to also note that a mentally unsound person is bound by a contract for necessities. By virtue of section 2 of Sales of Goods Act 1893, a reasonable price must be paid where necessities are sold or delivered to a person with mental incapacity. This obligation will arise where the supplier proves that some consent was given by the lunatic or his agent for the supply of such necessities and the goods or services were granted while the supplier had at all times had the intent to be paid for it. This obligation holds save as earlier mentioned that the goods or services are not necessities and the mentally unsound person proves that due to mental incompetence he did not understand the

²⁵ *Brown v Joddrell* [1827] Moo & M 105

²⁶ *Hart v O'Connor* [1985] 1 AC 1000.

implication of the contract he concluded and the other party may have been aware of his incapacity.

Ultimately, contracts made by persons of unsound mind are not void but voidable depending on the knowledge and conduct of the other party and whether the transaction was fair, beneficial, and executed in good faith.

3.2.2.1 Burden of Proof:

The law presumes every person to be of sound mind and capable of contracting until the contrary is proven. Thus, a person who seeks to avoid a contract must plead his defect of sound mind at the time of contracting otherwise the contract remains validly binding on both parties until set aside. Therefore, the burden of proof is to be discharged on the balance of probability at the instance of the party asserting such mental incapacity at the time of contracting.²⁷ The assertion of mental unsoundness can be successfully proven by expert testimony, witnesses, medical history, statement or conduct of the party at the time. Conclusively, Contracts made before adjudication of mental unsoundness are voidable-valid until proven, while contracts made after adjudication of mental unsoundness are void.

3.2.3 Intoxicated Persons

A major factor which could be detrimental to contractual capacity is intoxication. The position of the law is that contracts entered into during the period of intoxication are voidable at the instance of the intoxicated person. This is because the individual was in such a state rendering him or her incapable of understanding the nature and effect of the

²⁷ (n 42)

contract. However, such contracts may become binding if the individual subsequently ratifies it during a state of sobriety²⁸.

In the common law case of *Mathews v. Baxter*,²⁹ the defendant- Mr. Baxter in a state of drunkenness entered into a contract with Mr. Mathews -the plaintiff, of which subsequently after being sober he affirmed the contract. He later attempted to avoid liability relying on his drunken state at the period of contracting. The plaintiff sought an action to enforce the contract relying on subsequent ratification of the contract by the defendant. The court in favor of the plaintiff held that a contract made in a state of drunkenness is voidable not void. Consequently, the intoxicated person will be bound by such a contract if he affirms it while in a state of sobriety and such affirmation cannot be repudiated.

In addition to the aforementioned, the court in *Gore v. Gibson*³⁰ has held that aside from the individual proving he lacked mental capacity to understand the nature and implication of the contract due to drunken state, he must also prove that the other party knew or ought to know of such drunken state that deprived him of mental capacity. However, it must be stated that as regards proof of knowledge of the other party, the position of the court has been criticized. The rationale being that the state of drunkenness that so deprived one of mental capacity to understand a contract must have been so obvious, thereby making it unnecessary to prove that the other party had knowledge of the drunken state of the individual so asserting.³¹

²⁸ (n17)

²⁹ *Mathews v Baxter* (1873) LR 8 Exch 132

³⁰ *Gore v. Gibson* (1845) 13 M & W 623

³¹ (n 15)

Furthermore, it is necessary to differentiate between voluntary and involuntary intoxication. Voluntary intoxication is wilful consumption of alcohol or other intoxicating substances. Generally, the law frowns against self-induced or voluntary intoxication being used as a defense to avoid contractual obligation. Therefore, where evidence shows that an individual procured his own intoxication in a bid to subsequently avoid a contractual agreement, this will render him incompetent and preclude him from pleading such intoxication as a defense given that he had harboured such fraudulent intent *ab initio*.³²

With regards to *necessaries*, by Section 2 of the Sales of Goods Act 1893, the law holds the intoxicated person liable to pay a reasonable sum for any goods or services so procured which are considered necessaries. The rationale is to prevent suppliers of essential goods from suffering losses when dealing in good faith with an intoxicated person, and to ensure that intoxicated individuals are not unjustly enriched at the expense of others.

3.2.3.1 Burden of Proof:

The defense of intoxication can be pleaded by the intoxicated person when sober, his personal representatives or heirs. Thus, the burden will rest on any party asserting intoxication as a defense to prove to the satisfaction of the court that such intoxication was present at the time of contracting and to such degree that it deprived the individual of the requisite mental capacity to understand the nature and consequence of the contract. Therefore, mere drunkenness or partial impairment will not suffice; the intoxication must be so extreme as to negate the voluntary nature of consent. A

³² S J Dudley, 'Intoxication as Defense to an Express Contract' *University of Pennsylvania Law Review and American Law Register* [1913-1914] 62(1) 34.

successful proof of intoxication may lead to court to set aside contractual obligation if there was no fraudulent intention preceding such fact.³³

3.2.4 Illiteracy:

Generally, the position of the Nigerian court is that the fact of illiteracy, especially in the case of oral contracts, does not give rise to a lack of mental capacity to contract. This is because verbal communication affords the illiterate proper understanding of the contract.

Therefore, the issue of mental capacity arises from the law recognizing the need to protect an illiterate contractor with regards to properly understanding the nature and consequence of a written contract.

The term Illiteracy with regards to contractual relations as opined in the case of *S.C.O.A Zaria v. Okon*³⁴, encompasses the inability of a contractor to understand the meaning and effect of the document being signed.

In Nigeria, the statutory provisions which aim to protect the illiterate contractor include: The Illiterate protection Laws of various states(IPL) ³⁵and the Land instrument Registration Law (LIRL)³⁶. Both laws place duties on the writers of contracts drawn up on behalf of illiterate persons to ensure that the document is read to the illiterate contractor, explained in the language he understood and also ensure that an *illiterate jurat* is inserted. An illiterate jurat is a clause at the end of a document that attest to the fact that the document was read over, explained and understood by the illiterate before making his mark. A contravention of any of the requirements by the writer of the contract may give

³³ *ibid*

³⁴ *SCOA Zaria v Okon* (1960) NLR 34

³⁵ Illiterate Protection Law, Cap 67 Laws of Lagos State 1986.

³⁶ Land Instruments Registration Law, Cap 56, Laws of Western Nigeria 1959

rise to avoidance of liability by the illiterate person unless proper understanding of the terms of the contractual documents is proven.

In the case of *P.Z. & Co. Ltd v. Gusau & Katoma*,³⁷ The Nigerian court was of the opinion that an illiterate is one who is incapable of reading and writing in any language. This view has been criticized as widely limited. However, in the Nigerian case of *SCOA Zaria v. Okon*,³⁸ The supreme court was of the view that in determining whether a person is illiterate what is of import is whether or not the person understood the meaning and effect of the document he is signing and not necessarily whether he is sufficiently literate to sign his name and read figures.

Thus, an “illiterate person” is not limited to a person who is totally unable to read and write at all but includes persons who although are not totally illiterate, are however lacking sufficient literacy to read and understand the contents of the document in question.³⁹

In *Anaeze v. Anyaso*,⁴⁰ The Supreme Court was of the opinion that mere technical non-compliance will not preclude a contractor from the obligations of a contract he thumb imprinted or signed. He must also prove that he lacked understanding of the content of the signed document.

In light of this, what the courts are necessarily focused on is whether or not the party properly understood and was consensus ad idem as to the contractual terms and obligations provided in the document in question of which he assented to and not necessarily whether or not he can read and write in a particular language. This is because a person may be literate in German language and illiterate in English language. Therefore,

³⁷ *P.Z. & Co. Ltd v Gusau & Katoma* [1962] 1 ALL NLR 242.

³⁸ (n95)

³⁹ (n 17)

⁴⁰ *Anaeze v Anayso* [1993] 5 NWLR(P.T. 291)1

what the “illiterate party” contends is his mental capacity at the time of contracting and not the fact of assenting to the document.

3.2.4.1 Burden of Proof:

The fact of illiteracy can only be established by circumstantial evidence. The burden of proof rests on the party asserting the defence of illiteracy to prove that at the time of contracting, there was lack of understanding as regards the contents of the document in question and as such the contractual document should be unenforceable. Therefore, the assertion of illiteracy is rebuttable. Consequently, a successful proof of the fact of literacy will validate the contract, while proof of lack of proper understanding will obviate liability at the instance of the person asserting illiteracy.⁴¹

3.3 Volitional and Cognitive Incapacity

Under contract law, volitional incapacity and cognitive incapacity are observed as distinct tests for determining whether or not a person has the requisite mental capacity to contract. These terms are relevant in determining the validity of contracts especially with regards to persons asserting mental disorder.

Cognitive Capacity is the test the court carries out to evaluate whether or not at the point of contracting the individual could properly understand the nature and effect of the transaction in question. It focuses on the intellectual or rational aspect of decision making. A person suffering from cognitive incapacity may fail to comprehend, interpret and access the consequences of his actions. Therefore, such a person will not be bound by contractual obligations, if he can prove that:

⁴¹ *Otiotju v Governor of Ondo State*[1994] 4NWLR (Pt 340)518

a) He did not understand the nature or effect of the contract due to mental disorder or defect of reason, and

b) The other party knew or ought reasonably to have known of such incapacity.

By contrast, Volitional incapacity deals with the court considering whether the individual, despite possessing the required cognitive capacity, fails to control his actions or rational judgment due to an impaired will or emotional compulsion.⁴² These could present itself in the following mental illnesses such as mania, Obsessive Compulsive Disorder (OCD) which compels him to act contrary to his best interest.

The concept of volitional capacity has not been statutorily recognized by Nigeria law. However, as a result of the evolution of medical law and assessment of capacity, the courts in various jurisdictions have recognized the relevance of both cognitive and volitional capacity in determining whether or not mental impairment existed while contracting.

In the English case of *Masterman-Lister v. Brutton & Co*,⁴³ Lister suffered severe injuries in a motorcycle accident. The issue was whether he was mentally capable to conduct his litigation given that he could be considered a 'patient'. The court was of the position that despite the injuries, he retained mental capacity, in that he understood and made informed decisions.

In the American case of *Blatt v. Manhattan Medical Group*,⁴⁴ The court was of the opinion that a contract will only be voided by reason of mental impairment if ; the

⁴² S M Scott, 'Contractual Incapacity and the Americans with Disabilities Act' (2020) 124(2) *Dickinson Law Review* 253.

⁴³ *Masterman-Lister v Brutton & Co* [2003] 1 WLR 1511 (CA).

⁴⁴ *Blatt v Manhattan Medical Group, P.C.* 519 NYS 2d 973 (NY App Div 1987).

individual lacked understanding of the transaction and acted irrationally due to such impairment and the other party was aware of such fact.

Ultimately, where evidence shows that there is a lack of either volitional or cognitive capacity, such a contract becomes voidable at the instance of the party so asserting. The relevance of these concepts are necessary so as to aid the court in protecting the right of the mentally impaired person while ensuring that sanctity of contract is observed.

3.4 Conclusion

From the foregoing, it is evident that the concept of mental capacity is fundamental to the validity and enforceability of contractual obligations in Nigerian law. The law also recognizes its duty to protect vulnerable parties to a contract, which may not possess the necessary mental capacity such as; minors, intoxicated persons, illiterate and persons with unsound mind. It is also seen that the law acknowledges that these individuals may also be held liable in contracts for necessities and contracts where evidence shows that requisite mental capacity was present. Lastly, the modern concept of volitional and cognitive capacity was examined even though it has not been adopted in Nigeria. Its relevance is to ensure that the court recognizes both the element of intellectual understanding alongside the possession of rational exercise of will power. Consequently, the study of mental capacity in contractual transactions is necessary to aid the court in preservation of the rights of contracting parties and the sanctity of contract.

CHAPTER FOUR

NIGERIA'S LEGISLATIVE FRAMEWORK ON CAPACITY OF PERSONS WITH MENTAL DISORDERS: THE LUNACY ACT 1958 AND NATIONAL MENTAL HEALTH ACT 2021 IN FOCUS

4.1 Introduction

The Lunacy Act 1958 is a pre- independence legislation, which served as Nigeria's principal governing law on mental health till the enactment of the National Mental Health Act in 202. The Lunacy Act was archaic and concerned itself with segregation and confinement of persons with mental health disability rather than rehabilitation or proper treatment. This inadequacy led to the legislative reformation which aided the development of the now extant law- Mental Health Act 2021, that has aligned its provisions with the vision of the United Nations Committee on the Rights of Persons with disabilities (UN CRPD),¹ to ensure and protect the rights, dignity and autonomy of persons suffering from mental health disability. This chapter seeks to critically and primarily examine the provisions of the Mental Health Act 2021 and conduct a comparative analysis between it and the archaic-Lunacy Act, in order to determine its usefulness in the Nigerian's criminal justice system, aspect of contractual obligation and its relevance in treatment, remedies and protection as pertains to the health sector and persons laboring under mental health disorders.

¹ United Nations Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

4.2 Mental Health Legislation in Nigeria:

The legislative development from the Lunacy Act to the Mental Health Act, is also significant in the aspect of criminal and contract law operations in Nigeria. By this, the aspects of protection of dignity, rehabilitation, detention and decision- making capacity will be examined in the analysis of the key provisions of the respective legislative framework.

4.2.1 Key provisions of the Lunacy Act 1958

The Lunacy Act 1958 is a pre-independence enactment which was greatly influenced by the Lunacy Act of England 1890. Its concerns were founded on the need to enforce social control and treatment or rehabilitation for mental health patients. Hence, it was custodial in nature. The Act is fraught with describing mentally ill persons in a discriminatory manner, referring to them as idiots and lunatics. Also, mere suspicion of insanity empowered the magistrate alongside other governing and medical bodies to declare the need for arrest and detention. This process involved minimal due process: only one medical certificate was needed, and no provision existed for appeal, legal representation, or review.

The Act also made a makeshift provision for guardianship with regards to contractual rights of the mentally ill person, such that by section 19 and 21 of the Act, an officer, relatives or community head could deal with the property of a mentally ill person with good faith and to provide for his care. This concept evolved into the modern principle of the court appointment administrators or guardians ad litem for the management of property of persons lacking mental capacity.

Also, with regards to criminal matters, Section 17 of the Act expressly excluded persons detained under Sections 223 and 230 of the Criminal Procedure Ordinance (now section 285 and 230 of the criminal procedure Act). The implication is that the ordinance provided a civil means for persons to be released from detention, whose detention was not based on criminal allegations but rather their insanity was deemed a public nuisance. Thus, matters concerning their detention were handled by the magistrate and medical officers. In contrast, it shows that the ordinance did not cater for the release of mentally ill persons, whose detention was as a result of being unfit to stand a criminal trial or given a verdict of not guilty by reason of insanity. Thus, the matters of such a category of mentally ill persons were handled by the discretion of the court or the governor.

The provisions of section 15 of the Act, allows the magistrate to order the detention of a suspect mentally disordered person in safe custody for a period not exceeding 30 days. This is a quasi- criminal procedure that concerns itself with segregation and inquiry for an extended period of time rather than medical examination and treatment.

Furthermore, section 25 provides for the removal of the lunatic to a hospital only in the case of illness. This implies that the asylum in which these mentally disordered persons are detained are not health care sufficient but may rather be punitive in nature.

4.2.2 Key provisions of the National Mental Health Act 2021

The National Mental Health Act 2021(NMHA) is a result of the legislative evolution from the prior Lunacy Act. The NMHA is encompassed with provisions that align with modern approaches towards ensuring a better health care system for mentally ill persons. It is the extant law, which governs health care policy in Nigeria currently. By the provisions of Part 2 of the Act, the rights of persons with mental health conditions have been properly catered for such as to ensure in line with the UN CRDP, that it protects

such persons from discrimination, ensures rehabilitation and proper health care treatments amongst other rights.

Section 57 of the Act, defines *mental health conditions* as impairments, limitations arising from medically recognized disorders which cause significant emotional, behavioral changes including psychological or cognitive disabilities. Furthermore, it opines that *mental incapacity*, is the inability of a person to understand information, consider consequences a regards to the nature of his disorder, treatment and effect a lack thereof can have on others.

Furthermore, section 57 provides for the concept of “Supported decision making”-these may include family members, organisations or professionals which helps a person understand, make and communicate their decisions while still retaining decision making capacity. Also, section 17 of the Act, allows a person with mental health condition to appoint a “legislative representative” that may make decisions as regards his treatment and in his best interest in situations whereby he is further mentally incapable of making such decisions. The hierarchy being spouse, adult children, parents, court-appointed persons.

With regards to property of persons with mental conditions, section 49 and 50 of the Act, vests the High court with powers to manage the property and affairs of such persons for their care, interest and the interest of their family members. This will only occur after reliable evidence shows lack of mental capacity. The implication of this is that contracts without the authorization of court- appointed managers will be held voidable.

The NMHA also makes provisions that intersect with the criminal justice system. By virtue of section 41NMHA,there is an aim to decriminalize mental illness, such that persons who are suspected to be posing danger to themselves or others by reason of

mental health conditions are taken to “a place of safety” rather than prisons. It also provides for a 48 hours period of assessment. The implication of it is that the act focuses on the treatment and care of mentally ill persons rather than a custodial or punitive system.

Furthermore, section 46 of the NHMA makes provision that in the court can issue an hospital order on the instance of a person who is before the court for a criminal offence and is suspected to have a mental disorder thus making him unfit for trial . However, this may occur after written evidence has been admitted from two medical practitioners, who attests that; the offender has a mental disorder, the mental disorder is of a severe degree that warrants detention in a hospital and that the offender is likely to benefit from the treatment as regards future criminal tendencies. In light of this, the court aims to achieve treatment rather than punishment for such mentally disordered persons. Section 46(4) of the Act also provides for the possibility of a six months extension period, where no prior progress has been made with the detention. However, the patient retains a right to appeal to the Mental Health Review Tribunal.

By section 47 of this Act, The court, in consideration of public safety and the seriousness of the offence, can issue a compulsory order with restrictions to a person suspected to be of a mentally disordered nature. This affords the patient a medium for observation and the possibility of raising the defense of insanity and as such may get a judgment of “not guilty by reason of insanity”.

Lastly, the act has impliedly acknowledged the fact of prisons not being properly equipped to provide for adequate psychiatric care of prisoners. This is seen in the provisions of section 48 of the NHMA that allows the minister or governor to transfer sentenced prisoners who develop severe mental health conditions to a hospital facility.

4.3 Comparative Analysis of the Lunacy Act 1958 and Mental Health Act 2021

The Lunacy Act 1958 and the National Mental Health Act were both established to promote mental health policies and implementation in Nigeria. However, they are both saddled with diverging philosophical approaches. These approaches will be examined under the following categories of; legislative intention, protection of human dignity, the implication of the Act in criminal law, property and contractual rights. This comparative analysis seeks to examine these approaches vis a vis the modern intent for the rights of mentally disordered persons.

4.3.1 Legislative Intent

A Fundamental difference between the Lunacy Act and the National Mental Health Act is their legislative intention. The objectives for the creation of the Lunacy Act was to protect public safety and ensure proper care and treatment of the mentally unsound. However, there seems to be a deviation from this given its provisions on how this objective is to be achieved. It constantly prioritizes the confinement of the mentally unsound for long durations under the guise of ensuring public safety, whereas essentially neglecting the aspect of rehabilitation and proper treatment.²On the other hand, the core of the Mental Health Act is its rehabilitative nature and patient-care centred approach. The mental health act advocates for the treatment, rehabilitation of persons with mental conditions in the least restrictive environment where possible. It also provides a structure to ensure reintegration into society in a shorter period of time and after-treatment support structure as the patient reintegrates into society. This modern approach encourages a system whereby the treatment of the patient and its reintegration is prioritized rather than mere confinement.

² (n52)

4.3.2 Human dignity and Non-discrimination

Also, both Acts differ with regards to their provisions for human dignity and freedom from discrimination. In tandem with the provisions of the Universal Declaration of Human Rights³, the rights to human dignity and freedom from discrimination has been expressly provided in section 34 and 42 of the Constitution of Nigeria. However, there have been criticisms that the provisions of the Lunacy Act were discriminatory in nature as it simply defined mental illness as “lunacy” as such giving it a stigmatizing effect.⁴ Thus, the Act fails to protect the dignity of such persons as it chooses to address them as lunatics rather than persons with mental health conditions. By doing so, the Lunacy Act does not just address but also neglect the treatment of these patients and subject them to involuntary confinement in degrading environs. This is contrary to the goals of United Nations and World Health Organisation policies, which seek to protect the right of these mentally disordered persons from discrimination while ensuring they are properly treated. In contrast, section 5 of the National Mental Health Act, places a duty on the state to safeguard the rights of the mentally ill from discrimination and stigmatization. Also, section 12 buttresses the right from non-discrimination by ensuring they have access to medical care, legal and social services. These provisions in the Mental Health Act are more aligned with the modern trends to establish a safe environment for the treatment and protection of the rights of the mentally ill. Therefore, there is a call for increase in mental health facilities and personnels a demand for effective mechanisms for the implementation of the provisions of the National Mental Health Act.

4.3.3 Criminal Law implications: detention and discharge

³ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).

⁴ (n20)

With respect to criminal law implications on a person acquitted by reason of insanity, the respective Acts have differing provisions. At criminal trials, The Lunacy Act vests the magistrate with the power to examine a suspect and appoint a qualified medical practitioner to also carry on examinations to ascertain the mental state of the suspected person. Consequently, by the opinion of the magistrate and the evidence of a medical certificate ascertaining such a fact of insanity an order of confinement will be issued. Also, by the provisions of section 17 and 18 of the Act, a person can only be discharged at the discretion of the Governor after deeming him mentally sane. The Act does not provide for periodical review of the mental state of the confined person and this could lead to a prolonged period of confinement. In contrast, section 46 of the National Mental Health Act vests the courts with the power to authorize a hospital admission so as to ascertain the mental state of the suspected person after evidence by two practitioners. The Act makes accommodation for an every six months periodical review to ascertain the suspect's mental state before an order for discharge can be made.

4.3.4 Property Rights and Contractual Capacity

Furthermore, both Acts have slight differences regarding the property rights and contractual capacity of the mentally unsound person. The Lunacy Act does not expressly address the aspect of contractual capacity. However, the Act clearly shows that property rights are controlled by either the chief warder or the courts as provided in section 19 and 20 of the Act respectively and this control of such property is to facilitate the care, treatment and maintenance of the mentally unsound person. The implication of this provision is that a mentally unsound person lacks capacity to administer his property right or contract. Thus, his property and decision- making rights will be controlled by others till he is deemed sane to act.

Conversely, under the National Mental Health Act, the High court only controls and administers the property and affairs of the mentally unsound person, for his care, treatment, trade, legal affairs, property settlement, maintenance as enumerated in section 49 and 50 of the Act. This authorization to administer the property comes subsequently after medical examinations have certified the person mentally unfit to administer. Also, with regards to contractual capacity the Act does not expressly provide, however, it states that a mentally unsound person by section 17 and 57 of the Act has the right to appoint a legal representative to make decisions regarding care, treatment and maintenance. The implication of this provision is that by extension the legal representative can have rights to administer his property and contract on his behalf till the person is certified mentally sane.

4.4 A Brief Examination on the Adequacy of the National Mental Health Act 2021 vis a vis International standards on Mental Health

The importance of an effective healthcare system in a nation cannot be overemphasized. As such the Nigerian constitution in section 17(3)(d) duly saddles the state with the responsibility of providing adequate medical and health care facilities to persons in Nigeria. Section 6(6) recognizes the duty of providing health care as one of the many non-justiciable rights or directive of state policy that the State should make available for all individuals.

The National Mental Health Act 2021 (NHMA), is a legislative framework enacted by the state to cater for mental health care in Nigeria. The NMHA was approved by the National Assembly in 2021 and enacted in 2023 after being signed into law by President Muhammadu Buhari. The Act seeks to establish nation-wide health care facilities for the progressive treatment of mental health patients. Also, to align with the policies and

objectives of modern trends espoused by the World Health Organisation (WHO) , United Nations Conventions on the Rights of Persons with Disabilities(UN CRPD), the International Covenant on Economic, Social and Cultural Rights (ICESCR). These international organisations recognize the need of the State providing proper physical and mental health care systems. Therefore, they aim to ensure a conducive environment for treatment and rehabilitation, protect privacy, autonomy, human dignity as well as freedom from discrimination for persons with mental health disorders on a global scale⁵. However, there have been notable struggles in the implementation of these brilliantly crafted policies, due lack of proper legislative enforcement funding, insufficient health personnels and infrastructural facilities, socio-cultural influence. These struggles are all interrelated as will be seen below.

There is a notable gap in legislative enforcement of the NMHA. A reason for this legislative gap is the lack of domestication of the Act throughout the states in Nigeria. The need for domestication stems from the nature of the NMHA, being a federal enactment which derives its powers from the concurrent legislative list. As of now, only Lagos state has domesticated its provision in the form of the Mental Health Law of Lagos 2018⁶. The lack of domestication can be seen as the root cause of ineffective enforcement of the beautifully crafted provisions of the NMHA- it still remains a theory without practical effect. Therefore, the resultant effect is poor funding. Simply put, the state is not interested in investing into a vision they are not part of. As such a measly less than 10% of the total budget for healthcare is allocated to mental health care in Nigeria.

The struggle of poor funding has led to the inability of the State in establishing adequate infrastructural facilities. These facilities are not just buildings but properly equipped

⁵ International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

⁶ Mental Health Law of Lagos State 2018

structures that indicate a conducive environment for treatment and rehabilitation. Research has shown that with a population of over 200 million persons, the Federal Ministry of Health only accounts for eight (8) neuro- psychiatric hospitals owned nationwide by the federal government. Although state owned-psychiatric centers have been created in some Central and teaching hospitals⁷, it still does not satisfy the requirement of 10 bed spaces per 1000 patients as posited by WHO.

In addition, there has been a significant shortage of practicing psychiatrists in Nigeria. The Association of Psychiatrists of Nigeria (APN) only accounts for 250 practicing psychiatrists. The WHO through its MHGAP advocates for the initiative of utilizing non-specialized health care workers (pharmists, social workers, general practitioners etcetera) in catering for the prevailing mental health needs, given that WHO estimates that 450 persons globally struggle with mental illness.⁸ Despite WHO's initiative, there has been no notable efforts in applying the international approach to implement mental health care in Nigeria.

Lastly, the NMHA fails to account for measures to curb social-cultural influences that militate against the implementation of the provisions of the Act. Social - cultural influences like religious bodies and customary beliefs, which refuse to acknowledge the medical nature of mental disorders and treat such conditions as spiritual issues that require exorcism and dehumanizing cultural practices for its resolution⁹. This has in many cases led to the aggravation of mental health conditions and death in some cases. Therefore, there is a need for the State to initiate community based public awareness

⁷ Wada YH and others, 'Mental health in Nigeria: A Neglected issue in Public Health' *Public Health Practice* [2021] (2) 100166 <https://doi.org/10.1016/j.puhip.2021.100166>

⁸ Fadele KP, Igwe SC, Toluwalogo N-O, Udokang EI, Ogaya JB and Lucero-Prisno III DE, 'Mental Health Challenges in Nigeria: Bridging the Gap Between Demand and Resources' *Cambridge Prisms: Global Mental Health* [2024] 11 e29.

⁹ (n 22)

programmes to propagate an enlightenment of the medical nature of mental illnesses or disorders and proper treatment mechanisms.

4.5 Conclusion

This comparative analysis shows that unlike the Lunacy Act 1958 which was archaic, custodial and discriminatory in nature, the Mental Health Act 2021 tends to accommodate modern initiatives to improve the mental health care in Nigeria. Its provisions are aimed to ensure the rehabilitation, autonomy, protection of the rights of the mentally disordered persons and their possible reintegration into society. However, there are profound gaps that need to be remedied in the aspect of financing, infrastructures, health personnels and legislative enforcement in order to align the mental health care initiative in Nigeria to modern international standards.

CHAPTER FIVE

FINDINGS, RECOMMENDATION AND CONCLUSION

5.1 Introduction

This final chapter concludes this study. This chapter highlights the fact of the concept of mental capacity in criminal proceedings and contract law in Nigeria is necessary for the protection of the rights of persons with mental disorders. Also, it shows the obvious gaps in implementation of the National Mental Health Act 2021 as it to a large extent fails to cater for the overwhelming population in Nigeria. Simply put, the Act has not fully captured Nigeria's constitutional objectives for an effective health care system and globally is limited in aligning with international standards for care and treatment of persons with mental health conditions.

5.2 Summary of Findings

By virtue of all the discussions carried out in this study, being in line with the aims and objectives aforementioned, the summary of findings are as follows:

1. Mental capacity deals with an individual's psychological state. It entails not just physical actions but also understanding of the consequences of one's action.
2. The presumption of sanity can only be rebutted by sufficient evidence of mental incapacity at the the time of committing a criminal offence (section 28 of the criminal code)
3. A successful plea of insanity could lead to an acquittal by reason of insanity (section 229 of the CPA and the case of *Godwin Odo v. The State*)

4. In contracts, the Law is generally protective of persons which it considers vulnerable with regards to liability specifically, intoxicated persons, minors, persons with mental disorders and illiterate persons. The rationale is that they engaged in contracts with impaired mental capacity.
5. The law will not protect individuals from contractual liability, when it concerns necessities and beneficial service contracts.
6. The protections available under the Lunacy Act 1958 relate to care, custody and management of the affairs of the persons adjudged by a court as a “lunatic”. They do not protect the transactional rights of persons with mental disorders in Nigeria.
7. The National Mental Health Act 2021 not only provides for treatment, care and rehabilitation of persons with mental disorders but also fosters a system of “supported decision making” and “legal representation” with regards to contracts and property management. However, it does not capture a number of other provisions contained in international instruments that stipulate standards for mental health care.
8. Nigeria's mental health care structure experiences challenges in legislative enforcement, specialized personnels, infrastructure and social-cultural practices. There is need for improvement in these areas, if the country’s mental health structure is to properly align with section 17(3) constitutional objective for healthcare and modern international standards for mental health care as postulated by WHO, UN and other organisations.

5.3 Recommendations

At this juncture, the following recommendations are deemed suitable to this study:

1. That being armed with sufficient knowledge of global modifications in mental health care, the National Assembly and various State Houses of Assembly should have periodic

reviews and frequent amendments of the Mental Health Act and state legislations respectively. A five year interval is highly recommended between each legislative review as it will be within the typical timeframe as WHO' National Policy Alignment review.

2. There is a need for amendment of the constitution to specifically provide for sections pertaining to persons with mental health disability. This is because the provision in section 17 CFRN 1999 (as amended) alongside other constitutional provisions hardly states in clear language the rights, duties and protection accessible to persons with mental disability. For example, the provision should read “Except as stated in sub section — Persons who have been certified with mental disability are entitled to the following...”
3. The judiciary and the executive arm, should seek the aid of health care professionals and initiate various workshops and public awareness programmes respectively for enlightenment of legal practitioners, law enforcement agents, communities and schools on modern development in mental health care.
4. The Court should conduct proper examination of mental fitness, with the aid of honest medical practitioners to ensure that the defense of insanity is not utilized as an avenue by deviant individuals in society to escape the punishment of the law.
5. Every city should have a well equipped mental health care facility consisting of modern medication, treatment plan, equipment and at least 20 bed spaces manned by one specialised psychologist for every 5 patients, who will be working with other non-specialised mental health care workers. This is necessary in order to create a conducive and attentive environment for treatment and patient' rehabilitative progress.

6. The National Mental Health Law should vests the court with power for appointing psychiatric specialists, who are to create a tailored treatment plan and after- discharge supervision for persons who were acquitted of criminal offences by virtue of insanity.

5.4 Conclusion

The study sought to resolve the question: what effect does the plea of mental capacity or incapacity have in criminal and contract law Nigeria? and what laws has the State put in place to cater for those labouring under mental incapacity in Nigeria ? These questions have led us into a critical examination of the existing laws in Nigeria on Mental health.

The study shows that Nigeria's legislative framework possesses properly theorized laws to a large extent. This suggests that an implementation of the current provisions of the National Mental Health Act, will largely cater for the rights of mentally disordered persons. However, despite these laudable provisions there is need for improvement of the law as concerns a practical implementation system for: treatment plan and infrastructure, property management and specific mental assessment for persons who had faced criminal trial before they are discharged. This is needed in order to align Nigeria's mental health laws with global standards for mental health care. Consequently, there is need for reforms in Nigeria's mental health care legislations and judicial approach to cases where mental incapacity is pleaded. The reason for these reforms is due to the insufficient preparations made by the State to treat and cater for persons with mental health disorders especially those who were faced with criminal trials.

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