

COURSE TITLE: CRIMINAL LAW

COURSE CODE: LPB 302

TOPIC: CORRUPTION AND ABUSE OF OFFICE

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1.0 INTRODUCTION

In Nigeria and other parts of the world, the offences against corruption serve many purposes apart from the general criminal law aims of punishing the offender and deterrence. In other words, offences against corruption are marks of disapproval of the acts of corruption but importantly they also protect the society against corruption.

However, corruption is more serious and pervasive than may be envisaged, posing serious threats to the political stability and security of societies, undermining democratic institutions, socio-economic development, ethical values and justice and jeopardizing sustainable development and the rule of law. Offences of corruption dealing with public officers are geared towards ensuring accountability and transparency in the management of public affairs.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Understand the offences of bribery and abuse of office
- Explain the elements and shades of the offence of bribery
- Differentiate between acts bribery and extortion

3.0 MAIN CONTENT

3.1 Official corruption and abuse of office

Offences of corruption by public officers cover acts such as bribery and extortion. Although the two are forms of corruption, there is however notable difference between the two as stated by the court in *Abu Osidola v. Commissioner of Police* [1958] N.R.N.L.R. 42 at 46 as follows:

‘While extortion injures the individual who is made to yield to it, bribe injures the common weal, not the giver of the bribe. It is made an offence for the protection of the community, not for the protection of persons who pay bribes’.

In the Australian case of *R v. Pangallo* (1991) 56 A Crim. R. 441 for instance, the court stressed the deterrence purpose of the offence of bribery.

3.2 BRIBERY

Sections 98, 98A, 98B, and 98C of the Criminal Code deals with all cases of official corruption and abuse of office

SECTION 98 deals with cases where a public officer invites bribes on account of his action. Under the Penal Code, ‘gratification’ is used by sections 115, 116, 118 and 119; also the word ‘public servant’ is used instead of ‘public officer’. A public official is defined under section 98D to mean any person employed in the public service (as defined in the interpretation section 1(1) of the Criminal Code) or any judicial officer within the meaning of section 98C.

Section 98 makes it an offence for any public officer to corruptly ask for, or to agree, or attempts to receive, or obtains any property or benefit of any kind for himself and any other person, or bribes etc., on account of anything done or to be done afterwards or omitted, or any favour or disfavour already shown to any person by the public officer in the discharge of his official duties. See section 115 of the Penal Code.

Such a public officer is guilty of official corruption and is liable to imprisonment for seven years both under the Criminal and Penal Codes. (See section 98(1) (a)(b)(i) and (ii) CC but under section 115(c) (1) PC with fine or both). One way by which it can be proved that a public officer has received a bribe corruptly is that if during the prosecution for the offence it was proved that the officer received a bribe, promise or benefit from any person who is seeking or has a contract or seeking any other thing from government department where the officer is serving, it will be deemed that he received it corruptly, unless the contrary is proved (section 98(2) (a) and (b) CC).

SECTION 98A deals with situations where any person on account of actions of a public officer corruptly gives, confers or procures any property or benefit for a public official or corruptly promises or offers to give or to procure or attempt to procure any property or benefit for a public official or for any other person on account of the public officer’s act or omission in relation to the performance of his duties. The public officer is guilty of the felony and is liable to imprisonment for seven years. See section 98A(1) CC. Under section 118 of Penal Code the punishment is three years or with fine, or both. The offence under section 98A covers situations where such bribe was invited by or from any person acting on behalf of or related to such a person.

SECTION 98B covers cases where any person apart from the public officer, corruptly asks for, receives or obtains a bribe for himself or any other person or corruptly agrees or attempts these, on account of anything already done or omitted to be done by a public official in connection with his duties. The person is guilty of official corruption and is liable to imprisonment for seven years. See section 98B(1) (a) (b) (i) and (ii) CC.

Under section 98B, it is unnecessary to prove that any public officer counseled the commission of the offence, or that the accused believed that any public officer would do the act in question or that the accused intended to give the bribe or benefit in question or any part of it to a public officer. See section 98B(2)(a)(c) and (d) CC.

While the wording of these sections appears too technical, an analysis of the elements of both offences of corruptly receiving and giving will aid your understanding of these. These can be stated as follows:

The guilty act

Under sections 98, 98A and 98B CC, guilty act consist in mere asking for a bribe, giving or receiving it. Under section 98, mere asking without having received constitutes the offence. Note therefore, that the liability of a public officer who having asked for the bribe thereafter changes his mind not to receive it will not be affected, although the court might be lenient in his punishment. Under section 98, it is not a defence that the public officer did not subsequently do the act or omission. See section 98(3)(a) and (b) CC. Also, it need not be proved that the accused fulfilled his promise. See *Sogbanmu v. C.O.P.* 12 W.A.C.A. 356. You should realize that the offence under section 98 is not committed if the public officer innocently receives the money but formed the corrupt intention only afterwards. This is because the corrupt intent must accompany the receipt of the money to constitute 'corruptly receives'. Learned authors, Okonkwo and Naish have submitted that in that case, the public officer might be guilty of stealing by conversion and cited the East African Court of Appeal case of *A.G. v. Kajembe* [1958] E.A. 505 at 513 in support.

The manner of the act

Under sections 98, 98A and 98B CC, the offering or giving, receiving of the bribe must have been corruptly done. In section 98A for instance, you must note that the act, i.e. giving the bribe or a promise of it, must have been corruptly done. The offence is committed if the offer or intend to sway or deflect the public officer from the honest and impartial performance of his duties. See *Biobaku v. Police* (1951) 20 N.L.R. 30. In *Ogbu v. R* [1959] N.N.L.R. 22 the giving of a bribe to influence the appointment of someone as a village head was held to constitute the offence of corruptly giving.

Note however, that under section 98 a public servant will still be guilty of corruptly receiving a bribe irrespective of whether he did not do the act or omission, contrary to the decision in *Biobaku v. Police*, which was decided based on the old section 98 (1) of the Criminal Code which has now been deleted and replaced by the current section 98 in order to prevent situations where public officers who are manifestly corrupt evade punishment.

Also, a person acts corruptly if offers a bribe to a public officer, it does not matter that he intend to expose him as corrupt. See the English case of *R v. Smith* [1960] 2 QB 431. For offences under sections 98 to 98B a judicial officer cannot be arrested without a warrant and no prosecution shall be commenced against a judicial officer except on a complaint or information signed by or on behalf of the Attorney-General of the Federation or of the State (section 98C(1) and (2)) CC. For the purposes of offences of official corruption, a judicial officer is defined under section 98C(3) CC.

The giving or receiving must relate to public officer's duty

Note that, under sections 98 and 98A, the giving or receiving of the bribe must relate to the duties of the public officers' office. See *R v. Eka* [1945] 11 W.A.C.A. 39 although under the sections, a public officer can be rightly convicted if he asks or receives for any other person. In that sense, the bribe may relate to the other person's duty.

3.3 Extortion by public officers

Section 99 of the Criminal Code provides for the offence of extortion by public officers, where the officer takes or accepts a bribe for the performance of his duties, any reward beyond his proper pay and emoluments, or any promise of reward. The punishment is imprisonment for three years. It would appear however, that looking at the wording of section 99 nothing suggests extortion. Rather, note that extortion is committed where the public officer uses his office to obtain or receive property or benefit which ordinarily the person who gives will not part with but for the threat. The right section of the Criminal Code dealing with extortion is section 406, which provides the offence of demanding property with menace with intent to steal it. The punishment for this is imprisonment for three years.

The definition of extortion in section 291 of the Penal Code as intentionally putting another in fear of any injury to that person or any other and thereby dishonestly induces the person so put in fear to deliver to any person any property or document of title or anything convertible to valuable property, is unambiguous. The punishment is up to five years imprisonment or with fine or both. See section 292 PC.

In the English case of *Thorne v. Motor Trade Association*, [1937] AC 797 at 817, per Lord Wright, a menace was interpreted as a threat of any action that is detrimental to or unpleasant to

the person addressed. The wording of section 406 of the Criminal Code and that of section 291 of the Penal Code in substance, accords with this definition.

Note that despite the provisions of sections section 99 and 406 of the Criminal Code, section 404(1)(a) is however often used for public officers who extort money or other property. This is because of the use of the words 'under colour of' in that section. Thus, a public officer who corruptly and under the colour of his employment demands or takes property from any person is guilty of an offence, notwithstanding that no threat was used. The punishment is imprisonment for five years.

According to the definition of the words 'under the colour of' decided in the English decision of *Wallace Johnson v. R* (1938) 5 W.A.C.A. 56, this phrase was held to require some element of pretence on that part of the public officer that he was entitled to the money or that he has a duty to receive it. You must note that the decisions in which the said section 404(1)(a) has been considered have not been consistent.

In *Potts Johnson v. C.O.P.* (1947) 12 W.A.C.A. 198 for instance, where a lady welfare officer threatened three prostitutes that unless they pay her a certain sum of money, she would cause them to be repatriated. The prostitutes seeing that their means of livelihood is endangered paid the officer the money and she was held guilty under section 404. Following the decision in *Potts Johnson*, it thus means that it is not necessary under section 404 that there should be pretence as to the fact that the public officer is entitled to the money and that it is sufficient if the public use the power or influence of his office to demand for the money. Which decision is not in accord with that of *Wallace Johnson*. However, in *Motayo v. C.O.P.* (1950) 13 W.A.C.A. 22 the decision in *Potts Johnson* was rightly reversed on the basis that the words 'under the colour of' requires some element of pretence that the public officer is legally entitled to the money as decided in *Wallace Johnson*. In other words, the public officer should extort money or property under section 404(1) CC under the guise or pretence of being legally entitled to it and which his employment gives a cloak of legality to in the mind of the giver. Unfortunately, the decision in *Motayo's* case has not been followed in other cases. See *Otiti v. I.G.P.* [1960] L.L.R. 123; *Azubogu v. C.O.P.* (1948) 12 W.A.C.A. 358.

You need to know that the essential requirement under section 404(1)(a) is that, the demanding or taking must be done corruptly, with the element of corrupt intent accompanying either the demanding or taking simultaneously. See *R. v. Okuma*(1936) 13 N.L.R. 106.

Other offences of official corruption are contained under sections 101, 102 and 103 relating to public officers knowingly acquiring interest directly or indirectly in government contract or agreement made on account of the public service, etc.,with different grades of punishment.

3.4 Abuse of office

Under the Criminal Code, it is an offence for a public officer to abuse the authority of his office by doing or directing to be done, any arbitrary act prejudicial to the rights of another. Such officer is guilty of a misdemeanour, and is liable to imprisonment for two years. Where the act done or directed to be done by the public officer is for the purposes of gain, he is guilty of a felony, and is liable to imprisonment for three years (section 104 CC). The offender cannot be arrested without warrant.

A prosecution for an offence under sections 101 -104 CC cannot be instituted except by or with the consent of a law officer. Other offences relating to public officers and those that can be committed by non-public officers and covered by sections 105, 106, 107, 108, 109, 110 and 112 are, giving of false certificate, false assumption of authority, personating public officers, etc., with varying degrees of punishment. In relation to the offence of personating members of the armed forces under section 110 CC; there is a proviso to that section which exempts the use of such uniforms in the course of a stage play or in any bona fide public entertainment. This justifies the use of such uniforms in home videos and on stage plays or drama by artists.

4.0 CONCLUSION

In this unit, we examined the offences of bribery and its elements, the different ways the offence of bribery can be committed, extortion and its essential elements and abuse of office. We however mentioned in passing, a variety of other public officer's related offences such as, public officers knowingly acquiring interest directly or indirectly in government contract or agreement made on account of the public service, acquiring interest in property in his charge and making false returns or statement, and those offences that can be committed by non-public officers.

5.0 SUMMARY

Bribery generally covers all cases of corruptly asking for, giving or receiving a property or benefit or an attempt of these by a public officer in discharge of his duties or any other person on account of the public officer's act or omission. The guilty act consists in mere asking for a bribe, giving or receiving it. That fact that a public officer who having asked for bribe thereafter changes his mind and did not to receive it will not affect his liability. It is not a defence that the public officer having received the bribe did not subsequently do the act or omission. The corrupt intent on the part of the public officer must accompany the receipt of the money to constitute 'corruptly receives'. The offence is not committed if the public officer innocently receives the money but formed the corrupt intention only afterwards. He might be guilty of stealing or conversion.

In all bribery offences, the offering or giving, receiving of the bribe must have been corruptly done, i.e. the offeror of the bribe must intend to sway or deflect the public officer from the

honest and impartial performance of his duties. A person acts corruptly if offers a bribe to a public officer, it does not matter that he intend to expose him as corrupt. The giving or receiving of the bribe must relate to the duties of the public officers' office. Extortion is committed where the public officer uses his office to obtain or receive property or benefit which ordinarily the person who gives will not part with but for the threat.