QUESTION

Ade and Okoro are friends. They went out to drink and about 4pm. That same day Ade was brought home drunk by a neighbor. He slept on his bed till about 1.00 am in the night when he said he heard some strange voices in his room. Thinking that he hearing voices of robbers, he immediately reached for his gun and fired two shots in the direction of the voices, killing his nephew who was returning from a night party. He has been charged for murder. Does he have any defense? Is the defense sustainable? (CULLED FROM THE FACULTY OF LAW UNIVERSITY OF JOS)

Our discussion of this question on our chat group more or less premised on the assumption that the question was "what are the defenses available to Ade? Are the defenses sustainable?". That assumption afforded us the opportunity to discuss sections
However it seems that the question actually envisaged the discussion of just one defense as it reads “Does he have any defense. Is the defense sustainable?”. And going by the fact of the usual time constraint (40 minutes to answer one law question) faced by undergraduate law students, it will not be reasonable to expect students to discuss three convoluted defenses in that little time.

Since I was not the author of the question (it was culled from the past questions of the Law Faculty of the University of Jos), I presume that if the lecturer was thinking of only one available defense, then that defense would have been intoxication because of the inclusion in the facts of his being brought home drunk.

But then at the same time there is section 24 which is one automatic defense which anyone may wish to explore in any question like this where the consequences of an action is different from what the accused intended or could possibly have foreseen. And also there is section 25 where there is a honest and reasonable mistake as to the existence of any state of things, which makes the accused criminally responsible to no greater extent than if the mistaken facts were true.

That is why it is always imperative that no matter the amount of tutorial classes you attend it is always important to find out how your particular lecturer reasons and what he expects of you in answering his questions. There may be objective answers which you ought to know for practical purposes but there are subjective issues with how a lecturer frames his/her questions and how he/she expects it to be answered. To discover that you must attend the lectures and by listening attentively learn what your lecturer expects of you in answering his questions.

We will therefore apply the facts of this case to three defenses available in the Criminal Code (section 24, 25 and 29) starting with the obvious defense of intoxication. An exceptional student who may have mastered his lecturer's approach may be able to summarize the three defenses and then concentrate his discussion on that defense which he knows his/her lecturer expects for the particular question.

This again is simply a guide to help you understand the provisions of the law and still leaves the discretion in your hands and that of your lecturer for the particular conclusion he wishes you to reach.

**SUGGESTED ANSWERS**

1.
The immediate defense available to Ade for murder in this scenario is the defense of voluntary intoxication because of the fact that he was brought home drunk about nine hours before the act occurred. However we do not think that the defense is sustainable from the facts of the question.

In the alternative we would also consider the defense provided in sections 24 and 25 of the Criminal Code considering the time honoured dictum of the Court that in a capital offense case, every available defense must be considered on behalf of the accused.

**DISCUSSION OF THE DEFENSE OF INTOXICATION**

By virtue of section 29(1) of the Criminal Code, intoxication shall not constitute a defence to any criminal charge except to the extent provided in the said section 29. The section goes further to provide that intoxication shall be a defense to a criminal charge if the state of intoxication was caused without his consent by the malicious and negligent act of another person and the intoxication had the effect of making the person charged with the offence not to know at the time he committed the offense that such act or omission complained of was wrong or not to know what he was doing (section 29(2)(a) Criminal Code). This is what is called involuntary intoxication. We will not dwell on this aspect of the defense because the facts do not reveal that Ade’s intoxication was a result of any malicious or negligent act of another person or was without his consent.

Intoxication can also constitute a defense to a criminal charge if the accused person at the time of committing the act or omission by reason of the intoxication did not know that such act or omission was wrong or did not know what he was doing and at the same time was as a result of the omission insane whether temporarily or permanently at the time he committed the act or the omission – (section 29(2)(b). This is referred to as voluntary intoxication and from the facts of the case should be the aspect of the defense of intoxication to be considered for Ade.

But before we examine the defense of voluntary intoxication, we need to be aware of section 29 which stipulates that intoxication be taken into account for the purpose of determining whether the person charged has formed any specific or general intention. If such intoxication made it impossible for him to have formed such an intention, then he would not be guilty of the offence. Thus even where the intoxication did not produce insanity, it may still be necessary to consider the evidence of drunkenness which renders the accused incapable of forming the specific intent necessary to constitute the offense alongside other facts in order to determine whether or not he had the intent” – R v Beard. Where the plea of the accused is that intoxication rendered him incapable of forming the intent required to constitute the charged offence, the onus of proof is not placed on him
but the prosecution will have the burden of showing that he had the necessary intent. We will equally address this aspect of the defense briefly in our application.

From the wordings of section 29(2)(b), for voluntary intoxication to succeed as a defense to a criminal charge, the following has to be established by the accused

1. That at the time of committing the act or omission complained of, he was by reason of the intoxication rendered insane temporarily or permanently;
2. That at the time of committing the act or omission complained of, by reason of the intoxication, he did not know that such act or omission was wrong or that he did not know what he was doing.

Professor Okonkwo and Nash have in their seminal treatise on criminal law posited that the first requirement in other words requires a person relying on the defense of voluntary intoxication to further lead enough evidence to satisfy the requirements of section 28 on the defense of insanity namely;

1. That he was put in a state of mental disease or natural mental infirmity (whether temporarily or permanently) by reason of the intoxication
2. That the insanity caused by the intoxication had the effect of depriving him of the capacity to a. Understand what he was doing; or b. Control his actions; or c. Know that he ought not to do the act or make the omission.

In other words as pointed out by professor Okonkwo and Nash the defense of voluntary intoxication is not any different from the defense of insanity but only serves to emphasize the point that insanity coupled with drunkenness is still insanity and that a successful defense of voluntary intoxication is a form of insanity. This view is supported by the WACA decision in R v. Owarey and the English case of D.P.P v. Beard.

Therefore in considering the defense of intoxication, once there is insufficient evidence to establish that the accused was by reason of the intoxication put in a state of mental disease or natural mental infirmity, there will be no further need to go ahead with considering the effect of the intoxication on his capacity to know what he was doing, control his action or to know that what he was doing was wrong and that he ought not to do same.

**JUDICIAL PRONUNCEMENT ON THE DEFENSE**

The Courts have emphasized the need to closely examine a defense of insanity from a social and public stand point, because there could be serious evil consequences if men should act on self-induced intoxication and seek to avoid legal responsibility upon a claim that they are insane – per Aniagolu JSC in Nkanu v. The state.
The Court of Appeal Benin Division examined this defense in its 2014 decision in Imasuen v. State. In the lead judgment by Yakubu JCA, he referred to the definition of intoxication proffered by Obaseki JSC in Nkanu v. The State as a “defect of reason arising from drunkenness and having three different effects 1. To impair a man’s power of perception so that he may not be able to foresee or measure the consequences of his actions as he would if he were sober 2. To impair a man’s power to judge between right and wrong so that he may do a thing when drunk which he would not dream of doing sober 3. It may impair a man’s power of self-control so that he may more readily give way to provocation, than if he were sober. (these were in relation with the provisions of section 29(2)(a) Criminal Code on involuntary intoxication. Issues with the decision are beyond the pale of the answer required for this question)

Yakubu JSC also made pronouncements on the burden and means of proving insanity resulting from excessive drinking or intoxication. He held that the onus of establishing such a defense rests squarely on the accused person and is discharged on a preponderance of evidence led by and for the accused person. Such evidence may be medical evidence, compelling evidence of eyewitnesses, particularly of the relatives of the appellant, relating to his general conduct and behavior prior to, during and after the incident in question, medical history of the family which could indicate hereditary mental affliction or abnormality, evidence of past history of the accused, etc.

He also upheld the evaluation of the evidence by the trial judge who found that the accused was conscious of everything before and after the act and that his intoxication was voluntary and as such he was not involuntarily intoxicated as provided under secton 29(2). He held that from the preponderance of evidence the appellant did not establish that he was “out of his mind” after consuming indian hemp and guinness stout leading to his raping and setting ablaze the nine year old daughter of his employer

It is questionable whether the proviso to section 28 on insanity as to non-insane delusions which has the effect of making the accused person criminally responsible only to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist, applies in the case of insanity resulting from voluntary intoxication. (This proviso almost mirrors the effect of section 25 on the defense of fact which if successfully proven, makes the accused person not criminally responsible for an act or omission to any greater extent than if the real state of things had been such as he believed to exist). The issue was not considered by professor Okonkwo and one may argue that section 29 only referred to a state of insanity produced by intoxication and not to a state of insane delusion under section 28 and as such any person relying on non-insane delusions caused by intoxication should rather explore the defense of mistake of fact provided by section 25. Yakubu JCA also stated in Imasuen v The State that insane delusion is a product of a disordered mind which conjures up some facts which it thinks do exist and adheres to such impaired facts against all reasonable evidence to the contrary. And that for a defense of intoxication or insane delusion to avail an accused person, his reaction to the state of things as believed by him must be such that it could be regarded as legitimate and natural reaction to such state of things.
WHETHER THE DEFENSE OF INTOXICATION IS SUSTAINABLE FROM THE FACTS OF THIS CASE?

From the facts of the case, involuntary intoxication is ruled out because his getting drunk was with his own consent and not because of the negligent or malicious act of another person.

The defense of voluntary intoxication will also be impossible to prove because the facts do not reveal that he was put in a state of temporary or permanent insanity i.e. that he was in a state of mental disease or natural mental infirmity caused by the intoxication which deprived him of the required capacities, when he committed the act. If he is able to lead evidence of non-insane delusion (hallucination) which I strongly doubt, then he would still be liable to the extent as if his cousin was actually a thief in his room at that time of the night. This is because the facts do not seem to suggest hallucination but rather a mistake of fact as to whether the voices he heard were that of thieves. Furthermore, as we have argued, section 29 only refers to intoxication causing temporary or permanent insanity and not intoxication causing non-insane delusions under section 28.

However, according to section 29(4) the facts reveal that his mind did not form an intention to cause the death of his nephew nor did he specifically intend to cause the death of any other person as he was laboring under the misapprehension that the voices he heard were the voices of thieves. Thus the specific intent for murder cannot be established from the facts. It might therefore result in the reduction of the offence from murder to manslaughter.

(I would presume that the above is sufficient to handle the question of intoxication negativing intent for murder since the specific offenses of Manslaughter and Murder are second semester topics and the lecturer will not be expecting a student in first semester to begin to delve into the issues of the specific intent for murder and when a killing amounts to manslaughter instead of murder)

[The next application of the facts will be in reference to section 24 and section 25]

SUMMARY:

Note that what we have done here is to set out for you the logical way to address issues relating to the defense of intoxication. You simply must ask the following questions

1. Is the intoxication involuntary (you must know the legal interpretation of that word) or voluntary
2. If the intoxication was involuntary did it have the effect of making the person charged with the offence not to know at the time he committed the offense that such act or omission complained of was wrong or not to know what he was doing.

3. If the intoxication was voluntary, was he by reason of the intoxication rendered insane temporarily or permanently; and at the time of committing the act or omission complained of, he did not know that such act or omission was wrong or that he did not know what he was doing.

4. Even if the intoxication was not involuntary and also did not produce a state of insanity temporary or otherwise, you would still have to ask whether the evidence of intoxications such as to have made the accused incapable of forming the requisite intention required to constitute the offence.

5. A related question which was not called for by the facts of this case and which should have come earlier is whether the intoxication was caused by excessive drinking or by drugs or narcotics?}

It is left to you to fill in the blanks in respect to your knowledge of the defense of intoxication.

R.N.A