**QUESTION 1**

**CRIMINAL PROCEDURE AT THE HIGH COURT (FROM ARRAIGNMENT TO IMPOSITION OF SENTENCE)**

In the pursuit of every legal action, whether civil or criminal, there are some stages that are undergone in order for the action to be concluded. In this paper, the stages for criminal procedures shall be discussed. Criminal Procedure can be defined as the method of commencing, conducting, and concluding criminal proceedings in the court of law.

The stages for criminal procedure in High Court are; indictment, proof of evidence, arraignment, plea of guilty, plea of not guilty, prosecution, submission of no case to answer, defense, closing address, judgment, discharge, and imposition of sentence.

These stages are explained below;

1. **ARRAIGNMENT AND PLEA:** this is an initial stage where all details pertaining to the case and the accused and his indictment are read out by the registrar of the court for the accused to make a plea. The **Criminal Procedure Act CAP C42 LFN (2004)** enumerates the kinds of plea that can be made by an accused. The accused may plead either of the following:
2. **Autrefois acquit:** a person may plead that he has been tried for the same offence before and has been pardoned or acquitted. This is a plea against double jeopardy.
3. **He may Stand mute:** the law provides that where an accused stands mute, it is recorded as plea of not guilty by the court (**section 220 Criminal Procedure Act)**.
4. **He may Plead guilty to a lesser offence:** an accused can plead guilty to a lesser offense other than the accusation made against him. In the case of **Babalola v State (1986) 2 NWLR Pt. 25**, the accused pleaded a lesser offence and the prosecution accepted it and dropped the instant charge and the court passed its sentence accordingly.
5. He may plead guilty; by doing so, the judge will pass a sentence accordingly.
6. He may plead not guilty: doing this paves way for trial to continue.
7. **PLEA OF GUILTY:** if the accused pleads guilty, the court shall record his plea andshall convict him of that offence and pass sentence upon him or make an order against him unless there shall appear sufficient cause to contrary. This is in accordance with **section 218 Criminal Procedure Act.**
8. **PLEA OF NOT GUILTY:** when a person makes a plea of not guilty, the trial shall continue in order to determine if the defence is actually not guilty.
9. **PROSECUTION:** **Section 240 Criminal Procedure Act** provides that after the accused person has pleaded not guilty to the charge, the person appearing for prosecution may open a case against the accused and then adduce evidence in support of the charge**:** the prosecution shall open his case by calling evidence. He may call evidence by calling a witness and tendering the exhibits they may have. He shall carry out the examination in chief, the defence shall do the cross examination and the prosecution shall take the re examination. The burden of proof is on the prosecution to proof beyond reasonable doubt. If he fails to do so it will lead to dismissal of the charge and the accused shall be acquitted. The position of law as to the burden of proof originated from Roman law where the Romans believed in the notion that it is better for 10 criminals to go unpunished than for 1 innocent person to go punished.
10. **SUBMISSION OF ‘NO CASE TO ANSWER’:** this stage brings both parties to argue and then the outcome of the argument is decided by the judge. The submission is first made by the defence counsel stating that there is no sufficient evidence to bring the accused to book. On the other side of the coin, the prosecution will reply the argument and the judge will give a verdict and this will determine the continuity of the case. If the submission of no case to answer is accepted, then the accused will be discharged.
11. **DEFENCE:** this is a chance for the defence counsel to prove the innocence of the accused. He is to do this by calling witnesses and tender the exhibits with them. He is to carry out the chief examination, then the prosecution will carry out the cross examination and the defence counsel will take the reexamination.
12. **CLOSING ADDRESSES:** the parties orally bring forth their argument from the written addresses they have filed. At this stage, they are telling the court the strengths of their case and urging the judge to give judgment in their favor.
13. **JUDGMENT:** after the closing address by both counsels, the judge adjourns the case to a later date to enable him prepare for the judgment. In the judgment, they are to rule out the issues of the case and resolve them. Also, they are make their remarks and observations made during the course of going through the case and finally, they are to weigh the evidence before them and give reason for their judgment.
14. **DISCHARGE:** by virtue of **section 301 Criminal Procedure Act,** where an accused person has not been found guilty, on merit, the judge will dismiss the charges and accordingly discharge and acquit the accused person. Also, if the prosecution failed on a technicality, then the person will be discharged but not acquitted.
15. **IMPOSITION OF SENTENCE:** after a person is found guilty, before passing the sentence, an alloctus, a plea for mercy or leniency is usually made by the counsel for defence. After that, the judge passes the sentence. The types of sentences the judge may give are imprisonment, fine, death sentence, caning and deportation. Orders may also be given. The orders are order for award of damages, probation order, order for costs etc.

**QUESTION 2**

**MODES OF COMMENCING CIVIL PROCEEDINGS IN THE HIGH COURT**

In Nigeria, the High Court rules of different states provide that there are specific modes that can be used to commence an action. These modes are used depending on the type of the case and the subject matter of the case. These modes are writ of summons, originating summons, petitions, originating motions and any other means prescribed by law.

1. **WRIT OF SUMMONS:** This is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. The writ of summons can be used in contract actions (such as claim for damages resulting from breach of contract), tort actions, personal injury actions (such as claim for damages in respect of personal injury or death resulting from road and industrial accidents), intellectual property actions (like damages resulting from copyright, trademarks and copyright infringements) and many others. Almost every kind of claim is brought through writ of summons.

The documents to be accompanied by a writ of summons are;

1. Statement of claim
2. List of witnesses to be called at trial
3. Written statements on oaths of witness except witness on subpoena
4. Copies of documents to be relied on at the trial

Without these documents, the writ of summons will be nullified and cannot be entertained by the court.

1. **ORIGINATING SUMMONS:** An action is commenced by way of an originating summons where:
* it is required by statute; or
* the dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of facts

The originating summons is a simpler and swifter procedure for the resolution of disputes as it is determined generally on affidavits filed and does not involve pleadings. However, many of the requirement concerning issuance, duration, renewal and service with regard to a writ may apply, with the necessary modifications, to an originating summons. An originating summons may be in forms 4 or 5 of the rules of court depending on which is appropriate. In filing originating summons, an affidavit setting out facts, exhibits to be relied upon, and written address in support of the application must be accompanied with it.

1. **ORIGINATING MOTIONS:** By rules of court under Nigerian law, matters such as enforcement of fundamental human right, must be commenced by way of originating motions. Originating motions, unlike other modes of commencing actions refers to every and any document needful at trial. Also, the originating motions are used where the statute has not provided for what mode to be used for a specific kind of case.
2. **PETITION:** a petition is a written application in the nature of a pleading setting out a party’s case in detail and made in open court. In Nigeria, petitions are usually filed in cases like marriage proceedings, winding up of companies and election cases. The petitions are filed in the same manner as the writ of summons together with the documents accompanying them.

**REFERENCES:**

1. Nigerian legal system by Ese Malemi
2. An article titled ‘a simple approach to understanding the modes of commencing civil actions in Nigeria’.