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COURSE TITLE: NIGERIAN LEGAL SYSTEM II

QUESTION 1 ANSWER:

**ARRAIGNMENT:** Is the calling of an accused person formally before the court by name at the beginning of a criminal proceeding to read him the indictment or information brought against him and ask him whether he pleads guilty or not guilty.

An accused person may plead as follows:

1. Autrefois Acquit: means a plea that he has been tried for the same offense and has been acquitted.
2. Autrefois Convict: means a plea that he has been tried and convicted for the same offense on a previous occasion.
3. He may stand mute
4. Plead Guilty to a lesser offense
5. He may plead guilty to the offense charged
6. He may plead not guilty.

**PLEA OF GUILTY:** When an accused person pleads guilty the counsel for the prosecution will give the court a summary of the evidence together with details of the accused persons background

**PLEA OF NOT GUILTY:** When an accused person pleads not guilty, the trial then proceeds.,

**PLEA BARGAINING:** Plea bargaining is negotiating and agreeing for an accused to plead guilty to a lesser crime, in exchange for the dismissal of the serious criminal charge brought against him for a quick disposal of the entire criminal proceeding. A trial judge may also allow an accused person to change his plea, from guilty to not guilty and thus avoid the passing of sentence thereon, otherwise a refusal to allow a change of plea at that point in time usually becomes an issue for appeal. Where an accused changes his plea from guilty to not guilty, then the trial proceeds.

**MENTALLY ILL PERSONS**: Some accused persons may be too mentally ill or unstable you make a plea to a criminal charge. This is usually referred to as “unfitness to plead” Such accused person may then be referred for psychiatric examination and treatment. In a proven case of murder, if the accused is still unfit to make a plea by reason of insanity, a variety of hospital and guardianship orders may be made and the accused may be committed to a mental and psychiatric hospital for necessary care for the pleasure of the president or governor in respect of federal or state offence, as the case may be until the person is mentally fit to be released.

**PROSECUTION:** The counsel for the prosecution always open a criminal proceeding by calling evidence for the prosecution. He calls his witnesses and examines each in chief and tender any exhibit they may have, the witnesses are in turn cross-examined by the defense council and re-examined by the prosecuting counsel as may be necessary and the case for the prosecution closes.

**SUBMISSION OF “NO CASE TO ANSWER”:** At the close of the case for the prosecution, the defense council may submit that the prosecution has not produced sufficient evidence or made out a *prima facie* against the accused and consequently, the accused has no case to answer and therefore the case should not proceed further. The defense council makes the submission by addressing the court. The prosecuting council usually replies. The judge then takes a ruling on this submission. The judge may accept the submission and make a ruling that the accused has no case to answer.

**DEFENCE:** After the close of the case for the prosecution and the failure of a no case submission, if such submission was made, the case for the defense then opens. The accused and his witnesses, if any are after the other, led in evidence-in-chief by the counsel for the defense and are crossed examined by the prosecuting counsel and are re-examined by the counsel for the defense as may be necessary. Each witness undergoes the whole process before another witness is called.

**CLOSING ADDRESSES:** After the close of the case for the defense, the counsel for both sides then make closing speeches by addressing the court from their field written address. The prosecution counsel is always the first to address the court, He sums up or reviews the case on both sides. He points out the strength of the case for the prosecution and identifies the weakness if any of the defense and then urges the court to convict the accused as charged. However, the general rule of law is that the case for the prosecution must succeed on its own, this is so, for criminal proceedings the burden of proof on the prosecution is proof beyond reasonable doubt.

**JUDGEMENT:** After the closing address by the council for both sides, the judge fixes the judgement for a date provided that it is not a necessary trial, and the court rises in adjournment to enable it deliberate, consider, or evaluate the totality of evidence in the case. In the Judgement, the judge sums up, weighs the evidence of the case, he states his reasons for believing and accepting the case for either side and also gives his reasons for disbelieving and rejecting the evidence for the other side. In conclusion the judge may find the accused guilty or not guilty as the case may be. This must be done according to law.

**DISCHARGE:** When an accused party has not been found guilty, on merit the court will dismiss the information or charges and accordingly discharge and acquit the accused person as provided under criminal procedure law. On the other hand, if the prosecution failed on a technicality, them the court will usually discharge the accused, but not acquit him. When a person has not been found guilty, the court usually makes one or more of the following orders:

1. Dismissal Order
2. Order of Discharge
3. Order of Acquittal
4. Order of compensation

**SENTENCE:** When an accused is found guilty, before passing sentence an allocatus, plea for mercy or leniency is usually made by the counsel for the defense, after the allocatus the judge passes sentence to the accused.

**TYPES OF SENTENCES COURT MAY IMPOSE**

1. Imprisonment, usually with hard labor.
2. Fine or Fine and Jail
3. Death sentence
4. Caning
5. Deportation
6. Order for disposal of property
7. Award for damages
8. Probation order

IMPRISONMENT: This is a criminal offence which consists of the detention of the offender in a prison. The traditional objectives of imprisonment as penalty of a crime are retribution, rehabilitation, deterrence, protection of the society, reformation. Some general rules which apply to imprisonment are:

1. Where a sentence is imposed, if it is not specific to be without hard labor then in law it is deemed to be imposed with hard labor.
2. Where a high court imposed a fine instead of imprisonment, any term of imprisonment imposed in default of the payment of the fine must not exceed two years.
3. When a magistrate court imposes a fine instead of imprisonment, it must not exceed his financial limits.
4. The term of imprisonment imposed by any offence must not exceed the maximum term prescribed for the offence by written law.

FINE: This is the sum of money which a court orders an offender to pay to the government treasury as a penalty for committing the offence.

DEATH SENTENCE: A death sentence is the judgement of the court which stipulates that an offender should suffer death for the offense committed. An offense which carries the death is a capital offense they include Treason, Armed robbery and Murder.

CANING: Under the criminal procedure, caning is part of the punishment that may be imposed, it may be an order for caning or an addition to other sentences. Under the Criminal Procedure Act and Laws an order for caning cannot be made in respect of

1. A male who has attained 45 years and above
2. A female
3. Caning is to be effected with a light rod or cane
4. The number of strokes must not exceed 12 strokes.
5. Order of caning must not be imposed more than once for the same offense.

Caning as a punishment has been abolished in the United Kingdom and it is prohibited for children in Nigeria by the Child Rights Act.

DEPORTATION: Generally, deportation means expulsion from a country. In this case where a person is not a citizen of Nigeria, it means expulsion, or deportation from Nigeria, to a place outside Nigeria, usually to the country of origin of the person involved in a crime.

ORDER FOR DISPOSAL OF PROPERTY: Under the criminal procedure act or its equivalent laws in the southern cases, a court may during or after the conclusion of a trial make an order as it deems fit for the disposal of property, or exhibits in a manner, whether by way of Forfeiture to the state or Federation, Confiscation or seizure by government or its agency or sale or release to an appropriate party or person and so forth.

AWARD FOR DAMAGES: Under the Criminal Procedure Law, in charge of stealing or receiving stolen property, where there is insufficient evidence to support the charge, but a case of wrongful conversion or detention of property is established, a court may in addition to making an order for restoration of such property to the owner, also make an offer for award of damages for such wrongful conversion or detention of property.

PROBATION ORDER: In this context, probation is a period of time during which an offender must behave well, that is keep peace and or do community service well, in default of which the offender may be sent to prison for a fixed period of time.

QUESTION 1B ANSWER

1b. Comment on the remedies available to the accused after the imposition of sentence.

Post-Conviction remedies are a specific and complicated legal proceeding that challenges the legality of some aspects of the criminal trial or sentencing.

A criminal defendant has limited opportunities to challenge a conviction or sentence:

\*a direct criminal appeal,

\*sentence modification

\*clemency

\*pardon

\*post-conviction relief proceedings

DIRECT CRIMINAL APPEAL

Direct criminal appeals are not like trial proceedings, they are completely different, even though they arise out of the same conviction a .At the appeal stage, the goal is to convince the appellate court that an error at the trial court made the conviction or sentence unfair or contrary to law, warranting a different outcome.

SENTENCE MODIFICATION

Sentence modification is a separate and quite different process from a criminal appeal. Although both may feel like the same, the court involved, the available grounds that can affect a criminal sentence, and the procedures involved are quite different. While criminal appeals must be filed by strict deadlines, a sentence modification petition can be filed any time while an offender is serving a sentence.

CLEMENCY

Clemency, or the commutation of a sentence, is a form of relief that may reduce or alter a sentence but does not affect the conviction.

PARDON

A pardon is a type of post-convictionY relief that the President or Governor can give an individual serving time in prison, or facing other criminal consequences, that essentially forgives the remainder of the sentence.

OTHER REMEDIES INCLUDE

REMISSION: Complete or partial cancellation of the penalty, whilst still being considered guilty of said crime (i.e., reduced penalty). Also known as remand, the proceedings by which a case is sent back to a lower court from which it was appealed, with instructions as to what further proceedings should be had.

RESPITE: The delay of an ordered sentence, or the act of temporarily imposing a lesser sentence upon the convicted, whilst further investigation, action, or appeals can be conducted.

EXPUNGEMENT: The process by which the record of a criminal conviction is destroyed or sealed from the official repository, thus removing any traces of guilt or conviction.

QUESTION 2 ANSWER**:**

**Subject to the provisions of any enactment, civil proceedings may begin with:**

**WRIT OF SUMMONS:** The writ of summons is one of the modes used in commencing civil action against a person. It is a formal document addressed to the defendant requiring him to appear before the court if he/she wishes to defend himself against the plaintiff’s claim. A writ of summons is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. Civil actions involving substantial disputes of fact are commenced by way of writ. These include Contract actions such as claim for damages resulting from breach of contractual terms and obligations, etc. Also tort actions such as claim for damages resulting from breach of contractual terms and obligations etc. Personal Injury actions such as claim for damages in respect of personal Injury, Intellectual property actions such as claim for damages resulting from the infringement of copyright and trademark etc. Admiralty and Shopping Actions.

A writ of summons shall be issued by the Registrar or any other officer empowered by the court to issue summonses on such application. The application shall be made in writing by the plaintiff’s solicitor by completing a form. The writ of summon shall consist of the name and place of the person, shall state briefly and clearly, the subject matter and the relief sought for and the date. Before a writ is issued, it is usually endorsed.

**ORIGINATING SUMMONS:** An originating summon is one of the wats of commencing a civil action against someone. The party taking out an originating summon other than an ex parte summons shall be described as a plaintiff and the party against whom it is taken shall be described as defendant. Every originating summon shall include a statement of the question on which the plaintiff seeks the determination or direction by the Court. An originating summon shall be endorsed where the plaintiff sues with a representative capacity

**PETITION:** This is a written application made to court setting out to a party case.Every party shall include a concise statement of the nature of the claim made or relief or remedy required in the proceedings. When a person brings a petition by a legal practitioner, the petition shall be endorsed with that person’s address and the legal practitioner name or firm and a business address of his within the jurisdiction and also, id the legal practitioner is the agent of another the name of firm and business address of his principal. When a person brings a petition in person, the petition shall be endorsed with the address and place of residence, occupation. A petition shall be presented in the Court Registry. No application in any pending cause or matter may be made by petition.