**NAME: ADENIJI OLUATOSIN OMOWUMI**

**MATRIC NUMBER: 18/LAW01/012**

**COURSE CODE: LPI 204**

**COURSE TITLE: NIGERIA LEGAL SYSTEM II**

**ASSIGNMENT TITLE: Civil and Criminal Proceedings**

**QUESTION 1:** State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the High Court.

There are two broad classes of matters that come to court. These are:

1. Civil matters, requiring civil procedure or civil mode of trial,
2. Criminal matters, requiring criminal procedure or mode of trial.

Once a while, you may have matters that is mixed, for instance, a civil matter, or claim may have a criminal issue or element, in which case, the civil aspect will be decided according to the weight of evidence required by the **Evidence Act** in civil matters, which is proof on a preponderance, that is , proof on a balance of probability**( Section 137 of the Evidence Act, 2004),** whilst the criminal issue, is likewise decided according to the weight of evidence required by the Evidence Act in criminal matters, which is proof beyond reasonable doubt**( Section 138 of the Evidence Act).**

 Criminal procedure is the method or procedure of commencing, conducting and concluding criminal procedure or matters in court.

***Criminal procedure at a high court:***

 A trial on indictment in a high court is really an elaboration or amplification of a summary trial at the magistrate court. In this pure essence, it is not much different from a summary trial, except for the elaboration of certain procedures. The stages following criminal procedure at a high court;

a) Arraignment and Plea

b) Plea of Guilty

c) Plea of not Guilty

d) Prosecution

e) Submission of “no case answer”

f) Defence

g) Closing address

h) Judgment

k) Discharge

l) Finding of guilt and sentence.

***Arraignment***

Arraignment is the calling of an accused person formally before the court by name at the beginning of a criminal proceedings, to read to him the indictment or information brought against him or to ask him whether he pleads guilty or not guilty. Arraignment is when the registrar or the officer of court calling the accused by name while the accused is standing in the dock and reading over and explain the charge or information to the accused in a satisfactory way and asking the accused to make his plea thereto instantly. Following the first appearance following a complaint, an arraignment occurs. Generally, the arraignment occurs twenty-four (24) hours following an arrest. During an arraignment, pleas to a given charge are entered by defendants which may include: An accused person may plead as follows:

1.) **Autrefois acquit:** it means a plea that he has been tried for the same offence before and has been acquitted. It is an application of the rule against double jeopardy, which states that a person cannot be tried twice for the same offence.

2.) **Autrefois convict:** it means a plea that he has been tried and convicted for the same offence on a previous occasion. He cannot be tried again

3.) **He may stand mute:** where an accused stands mute, that is, without saying anything, the plea of not guilty is usually entered for the accused.

4.) **Plea of Guilty to a lesser Offence:** when intending to plead not guilty, to the offence charged, an accused person may plead guilty to a lesser offence which is not on the information. Where plea is accepted by the prosecution, the court any pass its sentence accordingly. Here, the prosecution usually drops the instant charge.

5.) He may plead guilty to the offence charged

6.) He may plead not guilty.

**Plea of Guilty:**

 Where 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 person’s background, that is, character and his criminal record, if any. After this the counsel usually makes his allocutus or plea in mitigation of sentence and the court then passes its sentence.

**Plea of not Guilty:**

Where an accused person pleads not guilty, the trial then proceeds.

**Prosecution:**

 The counsel for the prosecution always opens a criminal proceedings by calling evidence for the prosecution. He calls his witness and are examines each in chief, and tenders any exhibit they may have. The witness are in turn cross-examined by the defence counsel and re-examined by the prosecuting counsel as any be necessary band the case for the prosecution closes. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt. Where the burden of proof is not discharged, the charge or information is usually dismissed and the accused is legally entitled to be set free and is accordingly usually discharged and acquitted, this burden of proof which rests on the prosecution to prove guilt of the accused beyond reasonable doubt is never lowered or watered down. For it is better for a guilty person to go scot-free and escape justice, than for an innocent person to be unjustly punished, due to a lowered standard of proof. ***Chukwunweike Idigbe J.S.C*** said in ***Ukorah V. State,*** *“the Romans had a maxim that it is better for ten guilty persons to go unpunished than for one innocent person to suffer”.*

**Submission of “no case to answer.”**

 At the close of the case for the prosecution, the defence counsel may submit that the prosecution has not produced sufficient evidence or made out a prima facie case against the accused and consequently, the accursed has no case to answer and therefore the case should not proceed further. The judge may accept the submission and make a ruling that the accused has no case to answer. This ruling is a verdict of not guilty and the court may therefore discharge and acquit the accused on merit. However, where the judge rejects the no case submission, in his ruling, the trial proceeds and the accused has to state his case by giving evidence in his defence. When the accused still stands by the no case submission, the court would often usually convict the accused.

**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 defence then opens. The accused and his witnesses, if any, are one after other, led in evidence-in-chief by the counsel for the defence and cross-examination by the prosecuting counsel and re-examined by the counsel for the defence as may be necessary. Each witness undergoes the whole process, before another witness is called. After the witness for the defence have testified and tendered ay exhibit they may have, the case for defence closes.

**Closing address:**

 After the close of the case for the defence, the counsel for both sides then make closing speeches by addressing the court from their filed written address. The prosecution 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 weaknesses if any of the defence and then urges the court to convict the accused as charged. However, the general ruler of law is that the case for the prosecution must succeed on its own. This is so, for in criminal proceedings the burden of on the prosecution is proof beyond reasonable doubts. The counsel for the defence addresses the court. In his address he points out the weaknesses of the case for the prosecution. If the case for the prosecution is a pack of lies and a mere fabrication, conjecture, imaginative, malicious, frivolous, and vexatious and an abuse of court process, he calls it so. The general rule of closing speeches, is that the accused or his counsel is entitled to the last word, that is, it is his right to round off the addresses.

**Judgement:**

 After the closing addresses by counsel for both sides, the judge fixes the judgement for a date provided that it is not a summary trial, and the court rises in adjournment to enable it deliberate, consider, or evaluate the totality of evidence in the case. On the adjourned date the court resumes sitting, the case is called and the judge begins to deliver his judgement on the case. However, where a trial is by summary procedure the judge may deliver judgement there and then, or he any retire to his chamber to consider judgement and resume sitting to deliver it on that same day, as the case may be, or on an adjourned date. In conclusion, the judge may find the accused not guilty or guilty as the case may be. This must be done according to law.

**Discharge:**

Where an accused person has not been found guilty, on merit, the judge will dismiss the information or charges and accordingly discharge and acquit the accused person as provided under the Criminal Procedure L aw. On the other hand, if the prosecution failed on a technicality, then the court will discharge the accused but not acquit him. Where a person has not been found guilty, a court usually makes one or more of the following orders:

1.) Dismissal order; dismissing the information or charge

2.) Order of discharge of the accused on the charge

3.) Order of acquittal

4.) Order of compensation, as the case may be for the false, frivolous, vexatious or malicious prosecution or false imprisonment of the accused, and so forth as may be relevant according to the circumstances of the case.

**Sentence:**

 Where an accused is found guilty, before passing sentence an allocutus, plea for mercy or leniency is usually made by the counsel for the defence. After the allocutus, the judge passes sentence on the accused.

**QUESTION 2:** Comment on the remedy available to the accused after imposition of sentence.

Sentencing of an accused person after conviction is a very important part of the criminal justice system or administration of justice process. As a general rule, penalty, sanction or sentence should be so designed to fit the crime and the surrounding circumstances of the crime. A sentence should be properly considered before it is imposed. An unreasonable sentence may destroy an entire life beyond reformation. An unreasonable or excessive sentence may be a ground of appeal, where it may be set aside, reduced or submitted and so forth. Therefore, punishment should not be the driving motive in sentence. Capital offences apart, reformation of the accused and his eventual rehabilitation back into normal life and society, should be main motive in sentencing.

**Mitigating factors in sentencing:**

The word, “mitigate” means to make something or a situation less serious, less unpleasant or less harmful. Mitigating factors are therefore the various factors a court considers in reducing the sentencing a convict receives at the end of a criminal trial. The factors that may be brought up for the consideration of a court to reduce the sentence it may pass on a convict are numerous and cannot be enumerated. The issues, facts, or factors commonly considered in mitigation of sentence includes:

1. The age of the convict.
2. First offender status of the convict.
3. Provocation.
4. Reasonable, repentant or humane behaviour of the offender after commission of the crime.
5. Plea of guilty by the accused.
6. Length of the time spent in custody, if any before conviction.
7. Rarity of the offence or accidental nature of the offence.
8. Good work record of the convict or good antecedents of the convict generally.
9. Illiteracy or level of education of the accused.
10. Minor role played by the accused.

**Aggravating factors in sentencing:**

 The word aggravate means to make a situation bad, worse, more serious, strict, punitive or harsh. Similarly, the factors that may aggravate the sentence an offender may receive are innumerable and cannot be particularised. Factors that commonly aggravate sentence includes:

1. Seriousness of the crime.
2. The callousness or wickedness displayed by the convict.
3. Prevalence of the crime.
4. Abuse of a position of trust.
5. The professional execution of the crime.
6. The helplessness or innocence of the victim.
7. Playing a major role in the crime.
8. Criminal record of previous convictions and so forth.

However, a court may not mitigate a sentence where:

1. An allocutus is not cogent.
2. It does not believe the allocutus.
3. The allocutus is counter-balanced by aggravating factors.
4. It is doubtful that leniency will be effective.
5. Leniency will be misunderstood by the outraged public.
6. Leniency would not help law enforcement.

**QUESTION 3:** Comment on the various methods by which civil proceedings may be commenced in the High Court.

There are four different ways or methods of commencing actions in the High Court. These are:

1.) By writ of summon

2.) By petition

3.) By originating summons

4.) By originating motion (also known as application).

Each of the above is referred to as originating process. Almost, as a general rule, it is by the writ of summons that most actions are commenced, each of the remaining original processes being restored to where the Rules or a statute or a rule of practice prescribes the particular process as a model of starting specified type of actions.

**Writ of Summons:**

 A writ of summon is a formal document issued by a court stating concisely the nature of the claim of a plaintiff against a defendant, the relief or remedy claimed and commanding the defendant to cause an appearance to be entered for him in an action at the suit of the plaintiff within a specific period of time, usually eight days, after the service of the writ on him, with a warning that, in default of his causing an appearance to be entered as commanded, the plaintiff may proceed therein and judgement may be given in defendant’s absence. Generally, all actions are to be commenced by the writ of summon except where there is any express legislation prescribing another mode. Writ of summon is the appropriate mode for commencing an action which by its nature is contentious. Usually, action commenced by a writ of summons requires the filling of pleadings and possibly a long trial ***Doherty V. Doherty [1968] NWLR 241.***

**By petition:**

 A petition is a written application in the nature of a pleading setting out a party’s case in details and made in open court. It is however, only used where a statute or Rules of court prescribe it as such a process. For example, ***Section 410[1] of the Companies and Allied Matters Act (CAMA) 2004,*** provides that an application to the court for winding-up of a company shall be by a petition. Also, ***Section 54[1] of the Matrimonial Causes Act, 1970*** provides that proceedings for dissolution of marriage are commenced by petition. ***The Electoral Act*** also states that petitions are the only modes of procedure in election litigants. An election petition has been said to be similar to pleadings in civil matters as it is in that the practitioner sets out all the material facts he relies on his petition ***Egolum V. Obasanjo [1999] 5 SCNJ 92 at 125.***

 A petition as the Uniform Procedure Rules provides, shall include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby and at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served a statement to that effect.

**By originating summons:**

 It is a summons that initiates proceedings. However, summons in a pending matter does not initiate proceedings but it is used for making interlocutory applications in a pending cause or matter. Generally, originating summons is used for non-contentious actions, that is, those actions where the facts are not likely to be in dispute (a question of law rather than disputed issues of facts). When the principal question in issue is or likely to be one of construction of a written law or any instrument or any deed or will or contract, originating summons may be used for the determination of such questions or construction- ***NBN Ltd V. Alakija [1978] ANLR 231, Director, SSS V. Agbakoba [1999] 3NWLR(pt. 595)225.*** In ***Unilag V. Aigoro [1991] 3NWLR (Pt. 179)376,*** it was held that originating summons is used where it is sought to correct errors in a judgement. Also in ***Orianwovo V. Orianwovo [2001] 5NWLR (Pt.752)548,*** it was held that an action for declaration of title to land ought not to be commenced by originating summons. In ***Fagbola V. Titilayo Plastic Industries [2005] 2NWLR (Pt. 909) at 19***, it was held that where proceedings are commenced by the originating summons, pleadings are not used, that is, no statement of claims or defence are filed. Affidavit evidence in support of originating summons and counter affidavit will take place of pleadings.

**Originating motion or application:**

This is the last of the originating processes. Unlike petition, this may be used where a statue has not provided for it. Originating application is used when facts are not in dispute and it is used when the action relates to the interpretation of a document. In an application for prerogative orders of certiorari, prohibition, mandamus, Habeas Corpus or enforcement of Fundamental Human Rights, originating motion may be used. Significantly, where a state has not provided for a method for enforcing a right conferred by that statute, originating motion should be used. It is rarely used in the Magistrate Court. It was highlighted in the case of ***Chike Arah Akunna V. Anambra State& Ors [1977] 5SC 161,*** it was held that the appropriate method of making an application to the court, where a statute provides that such an application may be made but does not provide for any special procedure, is originating motion- ***Fajinmi V. Speaker, Western house of Assembly [1962] 1All NLR (Pt. 1) 206.*** The rule was also restated ***in Kasoap V. Kofa Trading Co. [1990] 2SCNJ 325 at 325.***

**REFERENCES:**

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