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NLS Assignment

Civil and Criminal Proceedings

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

Ans: ARRAIGNMENT AND PLEA

The Arraignment process involves the calling of the accused person formally by name before the court, at the beginning of the criminal proceedings, to read to him the charges brought against him and to ask him to make his plea, that is whether he is guilty or not guilty.

He may plead as follows

*Autrefois acquit: a plea that he has been tried for the same offence before and has been acquitted. It is in line with the rule of double jeopardy where a person cannot be tried twice for the same offence.

*Autrefois convict: where he has been tried and convicted for the same offence he cannot be tried again

*He may choose to stand mute, where a plea of not guilty would be mandatorily recorded for him

*He may plead guilty to a lesser offence not stated in the information, if accepted by the prosecution then the initial charge is dropped , allowing the court to sentence him for the lesser offence

*He may plead guilty

*He may plead not guilty

PLEA OF GUILTY

Where the accused pleaded guilty, the prosecution reads out a summary of the evidence together with details of the accused person's background, including his criminal record if any. Then the defense counsel pleads for mitigation of sentence and the court passes its judgment

PLEA OF NOT GUILTY

When this happens the trial continues

PLEA BARGAINING

Most times the defense and prosecution come together under the approval of the trial judge and reach a bargain, where the defense can plead guilty for a lesser crime which is not originally in the indictment. However this can only happen if the prosecution agrees to the bargain, where he fails to agree to the bargain, the trial

continues and the accused cannot be sentenced on the basis of his plea of guilty to the lesser crime.

MENTALLY ILL PERSONS

As a general rule, every accused person is presumed to be sane until the contrary is proved. Some accused persons may be too mentally ill to make a plea to a criminal charge, this is usually referred to as "unfitness to plead", if the insanity is proven by use of substantial medical evidence and evidence of relevant witnesses, then the accused may be committed to a mental or psychiatric hospital for necessary care, as the case may be until the person is fit to be released.

PROSECUTION

The counsel for prosecution always opens a criminal proceeding by calling evidence

for the prosecution. His witnesses are each examined in chief and tenders any exhibit he might have, the witnesses are in turn cross examined by the defense counsel and re examined by the prosecuting counsel. In a criminal proceeding the burden of proof lies on the prosecution where he has to prove beyond reasonable doubt. This burden of proof which rests on the prosecution is never lowered down, this is because, it is better for a guilty person to escape justice than for an innocent person be unjustly punished. When the burden of proof is not discharged, the charge is dismissed and the accused is usually discharged and acquitted.

CHUKWUNWEIKE IDIGBE JSC in UKORAH v STATE said that :
"The Romans had a maxim that

it is better ten guilty persons to go unpunished than for one innocent person to suffer"

SUBMISSION OF "NO CASE TO ANSWER"

After the prosecution has made his case, the defense may submit that the prosecution has not produced sufficient evidence against the accused 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. Thus being that the accused has been found not guilty and is then discharged and acquitted based on merit, or just discharge the accused and not acquit him based on technicalities not on merit... However if the judge rejects the no case submission, the trial proceeds and if the accused still chooses to stand

by his No case submission, which had earlier failed, he'll be found guilty with the reason being that the accused failed to defend himself against a prima facie case made out against him.

DEFENCE

Here the accused and his witnesses are led in examination in chief by the counsel for the defence and are cross examined by the prosecuting counsel and re examined by the counsel for the defence if necessary, after this the the case of the defence closes.

CLOSING ADDRESSES

After the close of the case of the defence, the counsel for both sides then make closing speeches by addressing the court from their filed written addresses. The prosecution counsel is always the first to

address the court. The general rule of law here is that the case of the prosecution counsel must succeed on its own, because the burden of proof lies in the prosecution to prove beyond reasonable doubt. This is the reason why the accused person is not bound to put up a defence but rather rest his case on the prosecution's case.

The counsel for the defence addresses the court next, he points out the weakness in the prosecution's case, if it's a mere lie or a fabrication or frivolous, if a sufficient case has not been made out, enough to prove beyond reasonable doubt which is required by law to discharge the burden of proof that rests on the prosecution. If the defence counsel can argue this out in his own favor then he can surely urge the court to

discharge and acquit the accused, as the case maybe. Another general rule here is that the accused is entitled to the last word.

JUDGEMENT

In giving the judgement the judge usually adjourns the court session and resumes sitting on another day. In a summary trial the judge delivers his judgement the same day there and then, or he may retire to his chamber and resume sitting on that same day.

In the judgement the judge reviews the evidence from both sides. He gives his reasons for accepting or rejecting the case for either side. In conclusion he may find the accused guilty or not guilty

DISCHARGE

When a person has been found not guilty on merit, the judge will dismiss the charge against

him and discharge and acquit him accordingly under the criminal procedure.

On the other hand If the prosecution fails to properly deliver his case then the accused will be discharged but not acquitted.

Where a person has been found not guilty, the court usually make any of the following orders:

- *Dismissal order; dismissing the information

- *Order of discharge of the accused on the charges

- *Order of acquittal

- *Order of compensation, as the case may be for the false or malicious prosecution of the accused

SENTENCE

Where the accused is found guilty, the defence counsel has the chance to appeal for mitigation of his sentence. After

this sentence the judge passes sentence on the accused.

TYPES OF SENTENCES THE COURT MAY IMPOSE

- *Imprisonment
- *Fine in lieu of imprisonment or both fine and jail
- *Death sentence
- *Caning
- *Deportation

OTHER ORDERS A COURT MAY MAKE:

- *Binding over order
- *Order for detention during the pleasure of the President or Governor as the case may be
- *Order for disposal of property
- *Order for costs
- *Award of damages
- *Probation Order.

IMPRISONMENT

This a criminal offence which consists of the detention of the offender in a prison. The traditional objectives of

imprisonment as a penalty for a crime are

- *retribution

- *rehabilitation

- *deterrence

- *protection of the society

- *reformation

Some general rules which apply to imprisonment are

- *Where a sentence of imprisonment is imposed, if it is not specific to be without hard labor then in law, it is deemed to be imposed with hard labor

- *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

- *Where a magistrate imposes a fine instead of imprisonment, it must not exceed his financial limits

- *The term of imprisonment imposed for any offence must

not exceed the maximum term prescribed for the offence by written law.

FINE

A fine is a 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 a judgement of the court which stipulates that an offender should suffer death for the offence committed. An offence which carries the death sentence is a capital offence they include:

- *Treason
- *Armed robbery
- *Murder

CANING

This is part of the punishments that maybe imposed, it may be an order for caning only or in addition to other sentence.

An order for caning cannot be made in respect of the following Under the Criminal Procedure Act and Laws

- *A male who has attained 45 years and above

- *A female

- *Caning is to be effected with a light rod or cane

- *The number of strokes is to be specified it must not exceed 12 strokes

The order of caning must not be imposed more than once for one offence.

DEPORTATION

This is expulsion from another country, where the offender is not a Nigerian citizen, it means expulsion from Nigeria.

BINDING OVER

Where a person has been found guilty of a crime, but is released for any reason, or a complaint was dismissed, a defendant, or both complainant and the

defendant with or without having sureties maybe bound over to keep the peace.If the accused breaches a court order he would go to prison for a term of imprisonment.

DETENTION DURING THE PLEASURE OF THE PRESIDENT OR GOVERNOR

- *persons who are found not guilty by reason of insanity

- *persons who are found to be of unsound mind

These are the two categories of people who may be detained at the pleasure of the president and the governor.

ORDER FOR THE DISPOSAL OF PROPERTY

During or after a trial a court may order that property with respect to an offence which has been committed, be:

- *confiscated by the government

- *forfeited to the state

*or released to to an appropriate party

AWARD OF COSTS

The court can order that a certain cost be paid to the prosecutor in addition to any other penalty which might be imposed. The prosecution may also be asked to pay a certain cost to the accused.

AWARD OF DAMAGES

Damages can be awarded to the aggrieved party in a case which involves wrongful conversion or detention of property.

PROBATION ORDER

Probation is a period of time during which an offender must behave well that is, keep the peace and or do community service well, in default of which a defender maybe sent to prison for a fixed period of time.

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. 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 conviction 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.

RESPIRE: 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.

2. Comment on the various methods by which civil proceedings may be commenced in the High Court.

An action may be commenced in a High court by a counsel filing one or a combination of the following papers or originating processes in court.

1.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 a writ.

These include,

- *Contractual actions, eg, claim for damages resulting from breach of a contract

- *Tort actions, eg, claim for damages in respect of damage to property resulting from negligence, Claim for damages resulting from fraud and defamation.

- *Personal Injury actions, eg, claim for damages in respect of personal injury or death resulting from road and industrial accidents.

- *Intellectual property actions, eg, claim for damages resulting from the infringement of copyright, trademark or patent.

2. ORIGINATING SUMMONS

An action is commenced by way of an Originating Summons where,

- *It is required by statute

- *The dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of facts.

An Originating Summons may be in Inter partes or Ex-parte of the Rules of Court.

Originating Summons is heard based on affidavits filed in support. Originating Summons cases are heard by registrars or judges in chambers or in open Court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support of or in opposition to the Originating Summons. Witnesses may be called to give testimony and pre-trial conferences may

or may not be conducted. Compared to a Writ of Summons, 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 or many interlocutory proceedings.

3. ORIGINATING MOTION

This is used only when provided for by a statute or a rule of court. Where a statute provides that action be commenced by application but does not specifically provide the procedure, originating motion should be used.

Examples of actions to be commenced by this way are

- a. Application for habeas corpus,
- b. Order for mandamus,
- c. Prohibition or certiorari,

- d. Application for judicial review
- e. Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure rules 2009

4. PETITION

This is a written application made to court setting out a party case.

It is only used where a statute or the rule of court provide for its.

References

The Nigerian Legal System text and cases by Ese Malemi.

<https://www.indyjustice.com/criminal-defense/post-conviction-relief/>