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What is meant by "Criminal Procedure" is the sum-total process of commencing, conducting and concluding a criminal case or trial. It refers to the process of the administration of criminal justice in Nigeria whereby the body of laws and rules relating to criminal matters are used. In the most basic definition, criminal procedure / criminal trial are the series of stages and method by which a criminal case is prosecuted in the court. Criminal cases involve the commission of acts that are prohibited by law and are punishable by probation, fines, imprisonment—or even death. Furthermore, criminal cases are decided on proof beyond reasonable doubt (**Sect 137, Evidence Act 2011**) and the burden of proof in criminal cases lie on the prosecutor (**Sect 139, Evidence Act 2011**).

ARRAIGNMENT

At the arraignment, the defendant enters a plea of "guilty", "not guilty", or "no contest" (*nolo contendere*). If the defendant enters a not guilty plea, the judge will set a trial date. If the defendant enters a guilty plea or declares no contest to the charges, the judge will set a date to sentence the defendant for the crime.

PRE-TRIAL MOTIONS

Pre-trial motions are brought by both the prosecution and the defense in order to resolve final issues and establish what evidence and testimony will be admissible at trial. Rulings made during this stage of the case can also be issues for appealing the case later.

TRIAL;

Opening Statements – The defendant has the right to a trial in which either a jury or the judge determines guilt. When the court is ready for the trial to begin, each side can make an opening statement. In a criminal case, the prosecuting attorney speaks first. To begin, the prosecuting attorney gives an overview of the facts that will be presented. The defense attorney may present the same type of opening comment or may save the opening statement until later in the trial when that side of the case begins. Either attorney may decide not to give an opening statement.

Witnesses – The prosecuting attorney begins the case by calling witnesses and asking them questions. This is direct examination. Witnesses in all trials take an oath or an affirmation that what they say in court is true. All trial evidence, including testimony and physical evidence, such as documents, weapons, or articles of clothing, must be acceptable before it can be admitted into evidence and shown to the jury. The judge decides what evidence and testimony are admissible under the criminal-matters related body of rules. In a criminal trial, the prosecuting attorney presents evidence and witness testimony to try to prove beyond a reasonable doubt that the defendant committed the crime.

The defendant's attorney may present evidence and witnesses to show that the defendant did not commit the crime or to create a reasonable doubt as to the defendant's guilt. The defendant is considered innocent of the crime charged until proven guilty. When the prosecution has finished questioning a witness, the defense is allowed to cross-examine the witness on any relevant matter. After cross-examination, the attorney who first called the witness may ask the witness more questions to clarify something touched on in the cross-examination. This is redirect examination. The judge may allow an opportunity for the opposing attorney to re-cross examine. When the prosecution has called all the witnesses for its side of the case and presented all of its evidence, it rests its case.

At this point, the defendant's attorney may ask for a judgment of acquittal. This means that the attorney is asking the court to decide the case in the defendant's favor because the prosecuting attorney did not present enough evidence to prove the case against the defendant. If the judge agrees that there is not enough evidence to rule against the defendant, the judge rules in favor of the defendant, and the case ends. If a judgment of acquittal is not requested or if the request is denied, the defense may present evidence for its side of the case. The defense attorney often waits until this point in the trial to make an opening statement. The defense may choose not to present evidence, as it is not required to do so. The defendant in a criminal case is not required to prove innocence. The burden is on the prosecution to prove the defendant's guilt beyond a reasonable doubt.

If the defense does present a case and call witnesses, the same rules and procedures that governed presentation of evidence by the prosecution now apply to evidence presented by the defense including the opportunity for the prosecutor to cross-examine defense witnesses. At the end of the defendant's case, the prosecutor may present additional information to respond to evidence offered by the defense. Following this, the defense is given another opportunity to present more evidence on the defendant's behalf.

- Closing Arguments – After the prosecution and the defense have presented all of their evidence, each side may make closing arguments. Closing arguments—similar to opening statements—provide an opportunity for the attorneys to address the judge or the jury a final time. The prosecutor speaks first, usually summarizing the evidence that has been presented and highlighting items most beneficial to the prosecution. The defendant's attorney speaks next. The defense attorney usually summarizes the strongest points of the defendant's case and points out flaws in the prosecutor's case. The prosecutor then has one last opportunity to speak.

INSTRUCTING THE JURY

- **Instructing the Jury** – After closing arguments in a jury trial, the judge reads instructions to the jurors, explaining the law that applies to the case. Jury members must follow these instructions in reaching a verdict.

JURY DELIBERATIONS

Jury Deliberations The jury goes to a special jury room and elects a foreman to lead the discussion. Jurors must consider all of the evidence presented, review the facts of the case, and reach a verdict. When the jury makes its decision, the court is called back into session.

VERDICT

Verdict – The foreman presents a written verdict to the judge, and either the judge or the court clerk reads the jury's verdict to the court. The court then enters a judgment based on the verdict, and the jury is released from service. If found not guilty, the defendant is released immediately. If the defendant is found guilty, a date is set for sentencing. The defendant may be held in custody or remain on release status until sentencing.

SENTENCING

Sentencing –A sentence is a decree of punishment of the court in criminal procedure. A sentencing hearing is scheduled to determine the punishment a convicted defendant will receive. The judge hears testimony from the prosecution and the defense regarding the punishment that each side feels the convicted defendant should receive. Sentences for different crimes are imposed following the provisions of criminal-matters related statutes and the judge must impose a sentence within the range outlined by law. The options may include probation(a state of conditional liberty), fines, imprisonment, restitution to victims or a combination of these punishments. In some cases, the death penalty can be imposed. A jury rather than the judge is required to decide whether the defendant will receive the death penalty.

However after the court has imposed it's sentence on the accused, there are certain rights he can fall on as remedy. These include the application of appeals (to higher courts),post-conviction relief, habeas corpus relief, remission of sentence, right of the accused not to suffer imprisonment for period longer than the maximum, and Right of the accused to be heard in question of sentence in warrant cases; the relevant provision as to the right of the accused to be heard on question of sentence in warrant cases exclusively triable by a court of Session is provided in **Sect.235 (2) of the Criminal Procedure Code**, this provision of hearing on question of sentence is mandatory. Non –compliance with the provision is not an irregularity, but is an illegality which vitiates the sentence.

APPEAL

- **APPEAL:** In criminal cases, an appeal asks a higher court to look at the record of the trial proceedings to determine if a legal error occurred that may have affected the outcome of the trial or sentence imposed by the judge. An individual convicted of a crime may ask that his or her case be reviewed by a higher court. If that court finds an error in the case or the sentence imposed, the court may reverse the conviction or find that the case should be re-tried. A convicted defendant may appeal. If the death penalty has been imposed, an automatic appeal is filed with the Supreme Court. The Court of Appeal hears appeals in all other criminal cases.

POST-CONVICTION RELIEF: Post-conviction relief is a procedure that allows the defendant in a criminal case to bring more evidence or raise additional issues in a case after a judgment has been made (post-trial). With valid grounds, post-conviction relief can help one obtain a fair resolution in his case. This process can take several years. The appeals can take a year-and-a-half to two years and likewise, post conviction motions can take that long. Normally, though, they do not take as long because they're in the trial court and the judge directs the response to be made usually within 60 days. The rights of the accused after trial are many and varied. ... They then have the right to appeal the guilty verdict and the sentence. Should all available appeals fail, they have the right to attack the conviction again through a civil proceeding against the prison warden called a writ of habeas corpus.

HABEAS CORPUS RELIEF

A defendant who has filed all possible appeals may thereafter petition the courts for habeas corpus relief. Habeas corpus relief can consist of a new trial, a new sentence, or outright release from incarceration. Habeas corpus relief is available only to defendants who are incarcerated. A habeas corpus petition is a civil suit filed against the prisoner's jailer. In the suit, the prisoner must allege that she was deprived of a constitutional right in the case, and that continued incarceration is unlawful.

Typical bases for habeas corpus petitions include complaints about the trial, including ineffective assistance of counsel, discrimination in the jury selection, juror misconduct, prosecutorial misconduct, violation of the right to be free from self-incrimination, and similar issues pertaining to constitutional rights.

REMISSION OF SENTENCE RELIEF: Remission of sentence means, waiver of the entire period of the balance of imprisonment. It is granted under special circumstances including the circumstances under which the offence had taken place and the manner of the disposal of the case through trial and appeals. Once remission is granted, it is not revocable. Apart from granting, remission of sentences, in individual

cases the government may grant remission generally to serve certain classes of persons as an act of policy of the State. Remissions may be by restricting the sentence to a period of imprisonment already undergone.

QUESTION 2

Subject to the provisions of any enactment, civil proceedings may be begun by writ of summons, originating summons, originating motion or petition or by any other method required by other rules of Court governing a particular subject matter. Originating process in law refers to the mode of instituting or commencing an action in civil proceedings. Originating process shall be prepared by a claimant or his Legal Practitioner, and shall be printed on a paper of good quality.

WRIT OF SUMMONS

Writ of summons is an originating process wherein issues of facts are being disputed between two parties. Subject to the provisions of **Federal High Court(Civil Procedure) Rules 2009** or any applicable law requiring any proceeding to be begun otherwise than by writ, a writ of summons shall be the form commencing all proceedings:

- a) where a plaintiff claims any relief or remedy for any civil wrong, or damages for breach of duty (whether contractual or statutory), or damages for personal injury to or wrongful death of any person, or in respect of damage or injury to any person or property.
- b) where the claim is based on or includes an allegation of fraud
- c) or where an interested person claims a declaration.

All civil proceedings commenced by writ of summons are accompanied by statement of claim, copies of every document to be relied on at the trial, list of non-documentary exhibits, list of witnesses to be called at the trial and written statements on oath of witnesses.

Originating Summon: Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested. An originating summons shall be with such variations as circumstances may require. It shall be prepared by the applicant or his legal practitioner, and shall be sealed and filed in the Registry, and when so sealed and filed shall be deemed to be issued.

An originating summons is accompanied by:

- (a) an affidavit setting out the facts relied upon:
- (b) all the exhibits to be relied upon:
- (c) a written address in support of the application.

The person filing the originating summons shall leave at the registry sufficient number of copies for service on the respondent or respondents. Usually originating summons as a way of commencing civil proceeding is used for non-contentious actions, that is, questions of law rather than disputed issue of facts and it sometimes involves the granting of ex-parte orders whereby the other party does not necessarily need to appear before the court.

ORIGINATING MOTIONS

Originating motion is an originating process used in commencing an action in civil proceedings. This is used only when provided for by a statute or a rule of court.

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.**

Where a statute provides that action be commenced by application but does not specifically provide the procedure, originating motion should be use.

The Registrar makes up, for each day on which there are any motions to be heard, a motion list, on which he shall enter the names of each cause in which a motion is made, the party moving, and the terms of the order sought by him. Every motion shall be supported by an affidavit setting out the grounds on which the party moving intends to rely, and no affidavit shall be used at the hearing unless it is duly filed. Where service of a motion is required by the Fed. High Court(civil procedure) Rules or directed by the Court or Judge, the motion shall be served together with all affidavit on which the party moving intends to rely. A

motion may be heard at any time while the Court is sitting. The hearing of any motion may from time to time be adjourned upon such terms as the Court may deem fit.

PETITIONS

Order 5 of the Federal High Court(civil procedure)rules 2009 applies to petitions by which civil proceedings in the court are begun, subject, in the case of petitions of any particular class, to special provisions relating to petitions of that class made by or under any decree or other enactment. Every petition shall include a concise statement of the nature of the claim made or relief or remedy required in the proceeding. Every petition shall include 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. Petitions are presented in the Court Registry and no application in any pending cause or matter may be made by petition, this as a way of commencing civil proceeding is used mainly for matters relating to election, and sometimes divorce.