18/LAW01/181

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1. State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the High Court. b) Comment on the remedy available to the accused after the imposition of sentence.
2. Comment on the various methods by which civil proceedings may be commenced in the High Court.

 Answers.

1) The procedures include;

a) **Arraignment and plea**; this is the calling of an accused person before the court formally by name at the beginning of a criminal proceeding, to read to him the information brought against him and to ask whether he pleads guilty or not guilty and so Arraignment can be said to be the registrar or other officer of court calling the accused by name while the accused is standing in the dock and reading over and explaining the charge or information to the accused in a satisfactory way and asking the accused to make his plea thereto instantly. This is the arraignment of a person before a court.

 An accused person may plead as follows;

i) Autrefois acquit; this means a plea that he has been tried before for the same offence and he had been acquitted. This plea is an application of the rule against double jeopardy, which states that a person cannot be tried twice for the same offence.

ii) Autrefois convict; this means a plea that he has been tried before and convicted for the same offence on a previous occasion. He cannot be tried again.

iii) He may stay mute; when an accused stands mute, i.e. without saying anything, a plea of not guilty is usually entered for the accused.

b**) Plea of guilty to a lesser offence**; however, while 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 this plea is accepted by the prosecution, the court may pass its sentence accordingly. Here the prosecution usually drops the instant charge. Thus, paving the way for the court to sentence the accused for the lesser offence admitted. Thus, there is room for plea bargain.

c**) 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, i.e. character and his crime record if any. After this the counsel for the defense usually makes his allocutus or plea in mitigation of sentence and the court then passes its sentence.

d) **Plea of not guilty**; where an accused person pleads not guilty, the trial then proceeds.

e) **Prosecution**; the counsel for the prosecution always opens a criminal proceeding by calling evidence for the prosecution. He calls his witnesses and examines each in chief, and tenders any exhibit they may have. The witnesses are in turn cross-examined by the defense counsel and re-examined by the prosecuting counsel as may be necessary and 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 discharged, the charge or information is usually dismissed and the accused is legally entitled to be set free.

f) **Submission of ‘’no case no answer’’;** at the close of the case for the prosecution, the defense counsel may submit that the prosecution has not produced sufficient evidence or made out *a prima facie* case against the accused and consequently, the accused has no case to answer and therefore the case should not proceed further. The defense counsel makes the submission by addressing the court. The prosecuting counsel usually replies. The judge then makes a ruling on this submission.

g) **Defense**; after the close of the case for the prosecution and the failure of a no case submission, if such submission was made, the defense then opens. The accused and his witnesses, if any, are one after the other, led in evidence-in-chief by the counsel for the defense and are cross-examined by the prosecuting counsel and re-examined by the counsel for the defense as may be necessary. Each witness undergoes the whole process, before another witness is called. It is never mixed up. This is always the procedure. Generally, unless a witness has finished his testimony and undergone necessary cross-examination and re-examination, if any, another witness may not be called, except there are god reasons to do so.

h) **Closing address**; after the close of the case for the defense, 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. 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 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 in criminal proceedings the burden of proof on the prosecution is proof beyond reasonable doubt. It must be proved beyond reasonable doubt, but not beyond the shadow of doubt. Next, the counsel for the defense 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, vexations and an abuse of court process, he calls it so.

i) **Judgment**; after the closing addresses by counsel for both sides, the judge fixes the judgment 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 judgment on the case. However, where a trial is by summary procedure the judge may deliver judgment there and then, or he may retire to his chamber to consider judgment and resume sitting to deliver it on that same day, as the case may be, or on an adjourned date. In his judgment, the judge sums up, weighs, or review the evidence for both sides. He states his reason for believing and accepting the case for either side and also gives his reason for disbelieving and rejecting the evidence for the other side. In conclusion, the judge may find the accused guilty or not as the case may be. This must be done in accordance with the law.

j) **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 law. On the other hand, if the prosecution failed on a technicality, then the court will usually discharge the accused but not acquit him. Where a person has been found guilty, a court usually makes one or more of the following order;

* Dismissal order; dismissing the information, or charge(s)
* Order of discharge or the accused on the charge(s)
* Order of acquittal; and
* 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.

k) **Sentence**; where an accused is found guilty, before passing sentence an alloctus, plea for mercy or leniency is usually made by the counsel for the defense. After the alloctus, the judge passes sentence on the accused.

 *Types of sentences court may impose.*

When an accused person has been found guilty of a crime, a court may under the Criminal Procedure Act or law pass sentence and make one or more appropriate orders as follows;

* Imprisonment, usually with hard labor;
* Fine, in lieu of, that is, instead of imprisonment or both fine and jail
* Death sentence
* Caning
* Deportation;

Other orders a court may make includes;

* Binding over order(and suspended sentence and community service in western countries)
* 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; and
* Probation order

REMEDIES AVAILABLE TO ACCUSED PERSON AFTER THE IMPOSITION OF SENTENCE ARE;

1. **Restitution**; this is the monetary payment by an offender to the victim to compensate the victim for the financial consequences caused by the commission of the crime. Generally, restitution must be requested at or before the sentencing. What a victim receives during the criminal case is usually an order for an amount of restitution and a payment schedule. Once an offender is released from prison and is no longer on probation a victim may have to go to civil court to convert a restitution order into a civil judgment in order to collect additional monies.
2. **Appellate Review by the Defendant or the State**; this is the way you ask a higher court to review what the lower court or a lower actor in the system has done to see if they did it right. There are a number of avenues to seek appellate review in a criminal case but each is specifically set forth in law and some only attach to the defendant or the state, leaving the victim with fewer remedies.
3. **Interlocutory appeal**; this is an appeal of a non-final court decision that may occur anytime before the final judgment.

*Direct Appeal*; a direct appeal may be taken after the final judgment has been rendered.

*Post-conviction relief*; A post- conviction motion may be brought by the defendant.

*Herpes Corpus*; A defendant may petition for herpes corpus both under state and federal law.

*Writ of mandamus*; a writ of mandamus is an extraordinary writ that compels performance of a mandatory duty.

Writ of prohibition; a writ of prohibition is an extraordinary writ issued by a higher court to a lower court prohibiting that lower court from acting in excess of it jurisdiction.

1. **Probation and Probation Revocation Hearings**; this is a procedure under which a defendant found guilty of a crime is not imprisoned but instead is released subject to conditions imposed by the court and subject to the supervision of a board of probation or parole, or the jurisdictions equivalent. If a defendant is accused of violating the conditions of probation, generally he may be arrested and brought to court for a hearing to determine whether there is probable cause to conclude that a violation took place. If probable cause is found, or if the defendant waives the hearing, the defendant is subject to a revocation hearing to have probation revoked and to be re-sentenced.
2. **Parole and Parole Revocation Hearings**; Parole is the release of an offender to the community by the court or a probation/parole board prior to the expiration of the offenders term, subject to conditions imposed by the court or board.
3. **Compensation**; compensation is money paid by the government to victims of crimes to restore all or part of the financial losses the victim suffered as a result of the crime committed against him or her. Compensation is sometimes referred to as Reparations.
4. 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;
5. Writ of summons, or originating summons, together with a statement of claim, or
6. Ex parte motion, with or without a writ of summons and a statement of claim, which may be filed later
7. Petition, as may be necessary, such as in a matrimonial proceeding for divorce and so forth, or winding up of a company for its inability to pay its debts in a Federal High Court and so forth.

A writ of summons when filed is sealed or stamped with the courts name on it for service by a bailiff on the defendant to give him notice of the claim, made against him and requiring him to acknowledge service and to defend it, if he does not admit the claim. A statement of claim may be filed along with the writ, or later on within 14 days of the service of the writ on the defendant. In Lagos State, the writ of summons or originating process shall be accompanied by the statement of claim, list of witnesses, written statement, copies of every document to be relied on at the trial, written address in support of the action, and so forth, otherwise, it will not be accepted for filing at the registry.

A writ or other originating process usually contains the following indorsement or information;

1. Names of the parties to the suit, that is;
* The name of the plaintiff or claimant and his address
* Name of the defendant and his address; and
* Name of the plaintiffs solicitor and his business address for service of court processes.
1. An indorsement of the claim against the defendant. A writ is required to be served on the defendant personally. The life of a writ is usually 12 months. In Lagos, it is 6 months, within which time it has to be served, although its life may be renewed before it expires, to enable it to be served.