**QUESTION 1**

**CRIMINAL PROCEDURE FROM ARRAIGNMENT TO IMPOSITION OF SENTENCE**

Criminal Procedure can be defined as the method of commencing, conducting, and concluding criminal proceedings in the court of law. There are certain stages or procedures to be followed for an action under criminal procedure to be successful.

The stages for criminal procedure in High Court are clearly explicated below:

1. **ARRAIGNMENT AND PLEA:** this is the initial stage in court where the court official calls out the name of the accused and the allegation brought against him in order for him to make a plea. The accused may plead either of the following:
2. **Autrefois acquit:** the provisions of **section 221(1)(b) Criminal Procedure Act** provides that a person may plead that he has been tried for the same offence before and has been pardoned. (plea against double jeopardy)
3. **He may Stand mute:** the law provides that where an accused stands mute, that is, without saying anything, it is recorded as plea of not guilty by the court.
4. **Plead guilty to a lesser offence:** an accused can plead guilty to a lesser offense other than the accusation made against him. If the plea is accepted, the instant charge will be dropped and the court will pass its sentence accordingly.
5. He may plead guilty and a sentence will be passed accordingly
6. He may plead not guilty and the trial shall continue
7. **PLEA OF GUILTY:** if the accused pleads guilty, the court shall record his plea as nearly as possible in the words used by him and if satisfied that he intended to admit the trust of all the essentials of the offence of which he pleaded guilty, the court shall convict him of that offence and pass sentence upon him or make an order against him unless there shall appear sufficient cause to contrary.
8. **PLEA OF NOT GUILTY: section 217 Criminal Procedure Act** provides that where a person pleads not guilty, the trial shall continue.
9. **PROSECUTION:** the prosecution shall open his case by calling evidence. He may call evidence by calling a witness and tendering the exhibits they may have. He shall carry out the examination in chief, the defence shall do the cross examination and the prosecution shall take the re examination. The burden of proof is on the prosecution to proof beyond reasonable doubt. If he fails to do so it will lead to dismissal of the charge and the accused shall be acquitted. The position of law as to the bburden of proof originated from Roman law where the Romans believed in the notion that it is better for 10 criminals to go unpunished than for 1 innocent person to go punished.
10. **SUBMISSION OF ‘NO CASE TO ANSWER’:** this stage enjoins the defence council to make a submission of no case to answer. What this means is that the defence counsel will address the court stating that the prosecution has not provided sufficient evidence that the accused is guilty. Moving on, the prosecution will give a reply to the submission and the judge will give his verdict. If the verdict is in favor of the defense, then the accused shall be discharged. Also, if the verdict is in favor of the prosecution, then the trial will proceed and the accused will have to state his case by giving evidence or else the court will be left with no choice but to convict him.
11. **DEFENCE:** In line with **section 241-243 of CPA**, the accused and his witnesses, if any, are called for chief examination by the defence counsel, cross examination by the prosecuting counsel and re examination by the defence counsel. This is an opportunity for the defence to prove innocence.
12. **CLOSING ADDRESSES:** in this stage, both parties are to make an oral address to the court from the written address they have filed as a way of rounding off the case. This is a chance for them to give their remarks based on the evidence in the case and urge the judge to give judgment in their different favours.
13. **JUDGMENT:** after the closing address, the judge fixes a date for the judgment to be issued. In the judgment, the judge sums up, weighs or reviews the evidence of both sides. He also gives reasons for his judgment. He is obliged to give reason for his judgment.
14. **DISCHARGE:** by virtue of **section 301 Criminal Procedure Act,** where an accused person has not been found guilty, on merit, the judge will dismiss the charges and accordingly discharge and acquit the accused person. Also, if the prosecution failed on a technicality, then the person will be discharged but not acquitted.
15. **IMPOSITION OF SENTENCE:** after a person is found guilty, before passing the sentence, an alloctus, a plea for mercy or leniency is usually made by the counsel for defence. After that, the judge passes the sentence. The types of sentences the judge may give are imprisonment, fine, death sentence, caning and deportation. Orders may also be given.

**QUESTION 2**

**MODES OF COMMENCING CIVIL PROCEEDINGS IN THE HIGH COURT**

In Nigeria, the High Court rules of different states provide that there are specific modes that can be used to commence an action. These modes are used depending on the type of the case and the subject matter of the case. These modes are writ of summons, originating summons, petitions, originating motions and any other means prescribed by law.

1. **WRIT OF SUMMONS:** This is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. The writ of summons can be used in contract actions (such as claim for damages resulting from breach of contract), tort actions, personal injury actions (such as claim for damages in respect of personal injury or death resulting from road and industrial accidents), intellectual property actions (like damages resulting from copyright, trademarks and copyright infringements) and many others. Almost every kind of claim is brought through writ of summons.

The documents to be accompanied by a writ of summons are;

1. Statement of claim
2. List of witnesses to be called at trial
3. Written statements on oaths of witness except witness on subpoena
4. Copies of documents to be relied on at the trial

Without these documents, the writ of summons will be nullified and cannot be entertained by the court.

1. **ORIGINATING SUMMONS:** An action is commenced by way of an originating summons where:

* it is required by statute; or
* the dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of facts

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. However, many of the requirement concerning issuance, duration, renewal and service with regard to a writ may apply, with the necessary modifications, to an originating summons. An originating summons may be in forms 4 or 5 of the rules of court depending on which is appropriate. In filing originating summons, an affidavit setting out facts, exhibits to be relied upon, and written address in support of the application must be accompanied with it.

1. **ORIGINATING MOTIONS:** By rules of court under Nigerian law, matters such as enforcement of fundamental human right, must be commenced by way of originating motions. Originating motions, unlike other modes of commencing actions refers to every and any document needful at trial. Also, the originating motions are used where the statute has not provided for what mode to be used for a specific kind of case.
2. **PETITION:** a petition is a written application in the nature of a pleading setting out a party’s case in detail and made in open court. In Nigeria, petitions are usually filed in cases like marriage proceedings, winding up of companies and election cases. The petitions are filed in the same manner as the writ of summons together with the documents accompanying them.

**REFERENCES:**

1. Nigerian legal system by Ese Malemi
2. An article titled ‘a simple approach to understanding the modes of commencing civil actions in Nigeria’.