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COURSE TITLE: NIGERIAN LEGAL SYSTEM

COURSE CODE: LPI204

LEVEL: 200

ASSIGNMENT: 1) State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the high court. 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.

1. The procedure for criminal trial in the high court are as follows:
2. Indictment or information: There cannot be an arraignment without indictment. This is a formal legal document charging an individual with a crime. The criminal charge is brought against a person by the Attorney-General or any of his subordinate legal officers on behalf of the state or country and which is for trial at the high court. The information of crime in high court is usually prosecuted in the name of the relevant state or in the name of the country as the case may be. For example State v Richard, criminal proceedings brought by a state are usually prosecuted in the name of the relevant state in a high court of such state.
3. Proof of evidence: This are the names, addresses and written statements of the witnesses that the prosecution wishes to call and the list of exhibits, if any, that the prosecution wishes to put in evidence at the trial. Photocopies of these are usually attached to the information filed by the state. The essence is to put the accused on notice as to the nature of the case against him so he can take steps to prepare and state his defence. This is a fundamental right under the fair hearing provisions of the Nigerian constitution.
4. Arraignment: The accused person is then formally called before the court by name at the beginning of the criminal proceeding, to read to him the indictment brought against him and to ask him whether he pleads guilty or not guilty. The registrar or other officer of court calls the accused by name while he is standing in the dock and reads over the charge to him in a satisfactory way and ask the accused to make his plea instantly. An accused person may plead as the following:

**Autrefois acquit** which means a plea where he has been tried for the same offence before and has been acquitted. This is a rule against double jeopardy which states that a person cannot be tried for the same offence twice.

**Autrefois convict** which means a plea that he has been tried and convicted for the same offence on previous occasion, so he cannot be tried again.

**He may stand mute**, when an accused stands mute, a plea of not guilty is usually entered for the accused as provided by law as mandatory.

**Plea of guilty to a lesser offence,** an accused may plead guilty to a lesser offence that was not in the indictment or information. This could create room for plea bargain.

**Plea of guilty**

**Plea of not guilty**

1. Prosecution: The prosecution counsel always opens a criminal proceeding by calling evidence for the prosecution, he then calls his witnesses and examines each in chief and tenders any exhibit they may have. The witnesses are then cross-examined by the defence counsel and re-examined by the prosecuting counsel as may be necessary and the case for the prosecution closes. The burden of proof which is on prosecution must be proof beyond reasonable doubt. Where burden of proof is not discharged, the charge is dismissed and the accused is legally entitled to be set free and is usually discharged and acquitted.
2. Submission of “no case to answer”: At the close of the case for 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 therefore, the accused has no case to answer and the case should not proceed further. This submission is made by addressing the court. The judge then makes a ruling on the submission as he sees fit.
3. Defence: After the close of the case for the prosecution and the failure of a no case submission if such was made, the case opens for the defence. The accused and his witnesses if any, are led in evidence-in-chief one by one by the counsel for the defence and are cross-examined by the prosecuting counsel and re-examined by the defence counsel if necessary. After the witnesses for the defence have testified and tendered any exhibit they may have, the case for the defence closes.
4. Closing addresses: 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 addresses. The prosecution counsel is always the first to address the court. He sums up or reviews the case on both sides.
5. Judgement: The judge sums up, weighs or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also gives his reason for disbelieving and rejecting the evidence of the other side. The judge may find the accused not guilty or guilty as the case may be, which is done according to law.
6. Discharge: When the 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. However, if the prosecution failed on a technicality, the court will usually discharge the accused but not acquit him.
7. Imposition of sentence: When the accused is found guilty, before passing sentence an allocutus, plea for mercy or leniency is usually made by the defence counsel. After allocutus, the judge passes sentence on the accused. When the accused is guilty, the court may under Criminal Procedure Act pass sentence or order by imprisonment, fine, death sentence, caning or deportation. Other orders may include binding over order, order for detention, order for disposal of property, order for costs, award of damages and probation order.

There are remedies available to the accused after imposition of sentence, these are:

* Appeal to court of appeal: The accused could go to the court of appeal on appeal.
* Appeal for bail pending appeal: The accused can ask for bail once he intends to appeal to the court of appeal.
* Stay of execution of death sentence: If an accused is sentenced to death, he can ask for a stay of execution pending his appeal.
* Modification of term of imprisonment: If the accused pleads guilty, he can appeal to court for a lesser sentence. This could be with hard labour or without hard labour.
* Suspended sentence or probation: This is a legal term for a judge’s delaying of a defendants serving of a sentence after they have been found guilty, in order to allow the defendant to perform a period of probation. Probation is the release of an offender from detention subject to a period of good behaviour under supervision.

1. A party who has been wronged or is aggrieved and wishes to seek relief in a High court usually consults a lawyer for legal advice, who takes down the facts of his case and instructions. 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:
2. Writ of summons: When filed, it is sealed or stamped with the court’s name 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. Writ of summons must contain 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 trial and written statements on oath of witnesses.
3. 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. It is, however, only used where a statute or rules of court prescribe it as such a process. For example, section 410(1) of Companies and allied Matters Act (2004) provides that an application to the court for the winding-up of a company shall be by a petition. A petition shall contain:

* A concise statement of the nature of the claim made or relief or remedy required in the proceedings begun thereby.
* 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.
* Where a person brings a petition in person, it must include the address of the person’s place of residence, the person’s occupation and an address for service, telephone number or e-mail where available.

1. Originating summons: 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 declaration of rights of the person interested. A person claiming any legal or equitable right in a case where determination of a question is whether such a person is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for determining such question and for a declaration as to the right claimed. In Unilag v Aigoro (1991) 3 NWLR, it was held that originating summons is used where it is sought to correct errors in a judgement.
2. Originating motion or application: This is the last of the originating processes. Unlike petition, this may be used where a statute has not provided for it. It is used when facts are not in dispute and when action relates to the interpretation of a document. In an application for prerogative orders of certiorari, prohibition, mandamus, habeas corpus or enforcement of human rights, originating motion may be used. In Chike Arah Akunna v AG of Anambra State & ors (1977) 5 SC, 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 an originating motion.

Where a wrong mode is used to institute action in court, the court will strike it out for wrong cause of action.

REFERENCES: wingrass.blogspotcom, [www.resolutionlawng.com](http://www.resolutionlawng.com) and Nigerian Legal System by Ese Malemi