**NAME**: UWAGBOE ESEOSA ADAUGO

**MATRIC NO**: 18/LAW01/213

**COURSE TITLE**: NIGERIAN LEGAL SYSTEM II

**COURSE CODE**: LPI 204

**LECTURERS**: DR.SESAN FABAMISE, BARR.ISEOLUWA AINA, MISS VERA

**ASSIGNMENT ANSWERS**;

1. (a)

When talking about the criminal procedure in the high court there are various stages involved which include;

1. What is an indictment or information?

2. Proofs of evidence

3. Arraignment and plea

4. Preliminary hearing; plea bargain

5. Prosecution

6. Submission of no case to answer

7. Defense

8. Closing address

9. Judgment

10. Finding of guilt and sentence

Here we'll be considering the process from arraignment to a sentence being imposed.

* **Arraignment**;

Arraignment is the formal reading of a criminal charging document in the presence of the defendant to inform the defendant of the charges against the defendant. In response the defendant is meant to enter a plea.

An accused person may plea;

i) Autrefios acquit: It is a plea by the defendant that he has been tried and acquitted for the same offence.

ii) Autrefois convict: It is a plea by the defendant that he has been tried and convicted for the same offence.

iii) The defendant can decide to stay mute and a plea of not guilty will be entered for him.

iv) An accused can plead guilty the prosecution counsel will give a summary of the accused person's record. At this point the defence will ask for plea in mitigation of the offence.

v) Where the accused pleads not guilty then trial begins as said in **section 217 of the Criminal Procedure Act(Hereinafter referred to as the CPA)**,this is usually the case in most cases like in **Eyu v State1**

* **Plea Bargain**;

Before the hearing is held the prosecutor and the defense attorney communicate to see if there is any possibility of a plea bargain, or a mutually acceptable disposition of the case. If a deal can be reached, and it is acceptable to the defendant, it is presented to the court for approval. Plea bargain is an arrangement between the prosecutor and the defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an agreement to drop other charges. This idea of plea bargaining began in the United States in the 1970s where for example a criminal defendant charged with felony theft charge, the conviction of which could land him the state prison, may be offered the opportunity to plead guilty to a misdemeanor theft

Charge which may not carry a custodial sentence, as at now the concept has spread throughout the world. In Nigeria it is not a new system owing to the fact that the criminal procedure laws have provisions (Section **219 of the CPA**) for an accused to plead guilty to a lesser offence than the more serious offence brought against him.

His plea bargain is usually an agreement reached between the defence counsel and the prosecution counsel, where no agreement is reached, trial begins and in the name of the serious offence he was brought in for and not for any lesser offence he may have preferred to plead guilty to.

* **Prosecution**;

Prosecution is the institution and conducting of legal proceedings against someone in respect of a criminal charge. **Section 240 of the CPA** provides that ''after the accused has pleaded not guilty to the charge or information the person appearing for the prosecution may open the case against the accused person and then adduce evidence in support of the charge ''The counsel for prosecution always opens the criminal proceedings by calling evidence for the prosecution, his witnesses, he chief-examines them and tenders any evidence they may have. The witnesses are cross-examined by the defence counsel and where necessary re-examined by the prosecuting counsel. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt, (actori incumbit onus probandi meaning the burden of proof is on the plaintiff). The prosecution has to prove that the accused is guilty beyond reasonable doubt because it is better for 10 guilty people to go free than for one innocent man to be punished...in **Ukorah v** **State2,** **Idigbe JSC** said ''the Romans had a maxim that it is better for ten guilty persons to go free than for one innocent man to suffer''. Prosecution as a stage in criminal proceedings is essential and as a result has been followed in a lot cases like, **Fawehinmi v A.G Lagos State3**.

* **Submission of no case to answer;**

The defendant is simply saying that there is no case to answer that is the prosecution has not provided sufficient evidence or made out a prima facie evidence against the accused so there is no way the case can proceed any further and he is asking for acquittal without having to present defence. The defence makes the plea by filing an application before the court and if the judge agrees the case is dismissed and the accused is acquitted that is a ruling of not guilty without having to present any evidence in his defence. Where the judge does not accept the no case submission the trial proceeds and the accused has to state his case by giving evidence in his defence. In some cases the defence counsel may decide to stand by its no case submission and in

such cases the accused will be convicted with no further ado like in **Ali v State4.**.

* **Defence;**

After the no case submission has failed, the case for defence opens. According to **section 241 of the CPA**, after the prosecution is over the defence counsel is entitled to address the court at the commencement or conclusion of his case. The accused and his witnesses if any are chief examined by the counsel for defence and are cross-examined by the prosecution counsel and re-examined by the counsel of defence where necessary. When the witnesses have been examined

and all necessary documents have been tendered then the defence case closes.

* **Closing Addresses;**

A closing address is the concluding statement of each party's counsel reiterating the important arguments for the trier of fact, often the jury in a court case. When the defence case is closed, the both counsels make closing speeches by addressing the court from the written addresses they filed. In Nigeria as in the United States, Germany and other countries the prosecution counsel gives his address first to the court. The prosecution counsel is expected to point out and restate evidence which helps to prove the element of each offence. The prosecution is to prove beyond all reasonable doubt that the accused is guilty of the offence. The prosecution is not allowed to shift the burden of proof to the defendant that is implying he must put on some evidence.

After the prosecution counsel's closing address, the counsel of defence addresses the court, his address seeks to point out loopholes, he says all the things he thinks are lies, any evidence not sufficient enough he points it out. In summary, he takes his defence to the maximum level and he usually closes the address.

* **Judgement;**

The Judge gives a particular date when a verdict will be given when its not a summary trial but if it’s a summary trial the judge might decide to give his judgment there and then or later that day. The day that the court resumes sitting, the judge after having looked at the evidence brought before him will deliver judgment in favor of the side whose argument has been more convincing. According to **section 244 of the CPA**, when the case is closed the court will consider its verdict. In **section 246** of the same, where the accused is found not guilty he is discharged and acquitted. In **section 247** of the same, where an accused is found guilty or he pleads guilty......in **section** **248**, the court will pass sentence on the accused or make an order or reserve judgment and

adjourn the case to a later date. When a person is said to be not guilty the court makes any of the following orders:

i. Dismissal order

ii. Order of discharge of the accused on the charges

iii. Order of acquittal

iv. Order of compensation

* **Sentence;**

Where the prosecution counsel has been able to prove beyond reasonable doubt that the accused is guilty sentence will be passed on the accused. In **Donatus v the State5, Judge Okuribido** came to the conclusion that the prosecution had proven beyond reasonable doubt that the accused with intent to do grievous to a woman, had killed her. There are various kinds of sentences that courts may impose:

i. Imprisonment with hard labor: Imprisonment is a punishment for criminal offences which consist of the offender in prison. It restrains the person's liberty.

ii. Fine instead of imprisonment or both fine and jail: Here, fine can be said to be the sum of money which a court orders an offender to pay to the government treasury as a penalty for the commission of an offence. In some situations both jail term and fine is imposed on a person. It is contained in **section 389, 390 of the C.P.A.**

iii. Death sentence: In such a case the penalty for the offence committed is death as contained in **section 367 to 371 of the C.P.A** though the above is not usually in use anymore.

iv. Caning: Caning is a punishment, at times its only cane at others it is added to jail term. Under **section 384 to 388 of the Criminal Procedure Act** some certain circumstances people cannot be caned, - a woman, - a man above 45, etc.

v. Deportation: Where a person commits a crime and is not a citizen of Nigeria most often than not the person is sent out of the country usually to his place of origin.

Apart from the above, the court can give other orders like binding over order (and suspended service and community service), order for detention during the pleasure of the president or governor depending on the circumstance, order for disposal of duty, order for cost, etc.

1(b)

After the imposition of sentence, remedy is available to the accused.

1. **Appeal:**

When a person has been found guilty of a crime and a sentence has been imposed on him, the next thing for him to do is to appeal to a higher court with hope that the verdict can be changed. An appeal is defined as applying to a higher court for a reversal of the decision of a lower court. A person who has been declared guilty of a crime at a lower court and he may appeal to a higher court, the verdict may be reversed to him being declared innocent. Though it is not an occurrence that happens often there is no harm in trying. There is a hierarchy for appeal in Nigeria.

According to **section 233(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended (Hereinafter referred to as the C.F.R.N)**''the Supreme Court shall have jurisdiction to hear and determine appeals from the Court of Appeal. The Supreme Court only receives appeals from the Court of Appeal so where someone is aggrieved with a decision of the Court of Appeal the next court one can appeal to is the Supreme Court. Someone who a sentence has been imposed upon in the Court of Appeal can appeal to the Supreme Court.

According to **section 240 of the C.F.R.N** it says the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal High Court, the High Court of the Federal Capital Territory, Abuja, High Court of a state, Sharia Court of Appeal of the High Court of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a state, Customary Court of Appeal of the High Court of the Federal

Capital Territory, Abuja, Customary Court of Appeal of a State and from decisions of a court martial or other tribunal as may be prescribed by an act of the National Assembly. In respect of all of the courts listed above, where someone is aggrieved the only court that can hear appeals is the Court of Appeal.

Where a sentence has been imposed on the defendant in a criminal case at any of the courts listed above, he can appeals to the Court of Appeal for a reverse of the verdict.

According to **section 28(c) Federal High Court Act Chapter 134 Laws of the Federal Republic of Nigeria**, the Federal High Court has jurisdiction to hear appeals from the decisions of magistrates in respect of civil and criminal causes or matters transferred to such acts pursuant to this act. Section 30 of the same act says the court on an appeal from the magistrate court may:

a. Maintain the conviction and dismiss the appeal

b. Allow the appeal and set the conviction aside if it appears to the court that the conviction should be set aside on the ground that it was, having regard to the evidence adduced, unreasonable, or that the conviction should be set aside on the ground of a wrong decision on any question of law or that there was a miscarriage of justice.

Although the possibility of appeal has been discussed there are certain situations where an appeal may not be possible:

1. In some situations the defendant may not want to appeal by reason of wasting time or money, he may want to result to mitigating factors of a sentence.

2. Where the court is a final court like the Supreme Court, no further appeal can be made. **Section** **235 of the C.F.R.N** establishes the Supreme Court as the final court in the Federal Republic of Nigeria and no further appeal can be made. Where a sentence is imposed on someone in the Supreme Court there is no other option than to turn to mitigating factors.

* **Allocotus**: The Black's Law Dictionary defines it as a trial judge's formal address to a convicted defendant, asking him or she to speak in mitigation of the sentence imposed. It is also defined as unsworn statement from a convicted defendant to the sentencing judge or jury in which the defendant can ask for mercy, explain his or her conduct, apologize for the crime or say something else in effort to mitigate the sentence. When a person is seeking to remedy the sentence imposed on him, he is pleading for clemency. **Clemency** is defined as a disposition to be merciful and especially to moderate the severity of a punishment or sentence. The various remedies for a person after a sentence has been imposed and an appeal is out of question are:

1. **Pardon**: A pardon is a government decision to allow a person to be relieved of some or all of the legal consequences resulting from a criminal conviction.

A person can be granted pardon after being convicted for a crime, it is usually offered to persons who are deemed to have paid their debt to the society, people suspected to have been wrongly convicted. A pardon can terminate a sentence and set the convicted free. In history the famous recorded American pardon was the pardon given by President Gerald Ford to ex-president Richard Nixon which closed the door to any future prosecutions against him. According to **section 175 of the C.F.R.N**, the president may grant any person concerned with or convicted of any offence created by an Act of the National Assembly pardon, respite, etc.

2. **Commutation** (Modification of sentence): Commutation is the substitution of a lesser penalty for that given after a conviction for a crime. The penalty can be lessened in severity, in duration or both. A commutation does not affect a defendant's underlying criminal conviction which simply means that it does not free the criminal but just lessens his punishment. The person remains guilty in accordance with the original conviction. For example, someone convicted of capital murder and sentenced to death may have his sentence modified to life imprisonment. In some cases, the commutation may be conditional meaning that there are certain conditions which must be lawful the convicted person must follow or the commutation can be withdrawn.

3. **Respite**: A respite is a delay in the imposition of sentence or the act of temporarily lessening the sentence on the accused so he can seek appeal but in no way modifies a sentence or addresses questions of due process, guilt or innocence. It is an act of reprieving, postponing or remitting a punishment. It is compassion towards an offender shown a person vested with legal authority. It is a suspension of a sentence which is to be executed at a future time. It is the delay or forbearance in serving a sentence. If a sentence has been imposed upon a person he can ask for respite so the sentence can be delayed. It is similar to reprieve which is the temporary postponement of a punishment usually so that the accused can mount appeal especially in a death sentence.

4. **Remission**: .It is the complete or partial cancellation of the penalty by the appellate court and asking that the case be retried for want of evidence or something of sort. It is 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. For example if a case is taken on appeal to the Supreme Court it could refer the case back to the the Court of Appeal to carry out further proceedings.

5. **Expungemen**t: An Expungement proceeding is a type of lawsuit in which a first time offender of a prior criminal conviction seeks that the records of that earlier process be sealed, making the records unavailable through the state or federal repositories. It is simply the process of destroying a record of criminal conviction. The difference between Expungement and pardon is that pardon does not erase the event but only constitutes forgiveness.

2.

There are various methods of commencing civil procedure in the high court. According to **Order 1 Rule 1 of the Civil Procedure Rules**, subject to the provisions of the enactment, civil proceedings may be begun by writ, originating summons, originating motion or petition or by any other means required by the rules of the court.

Some of the methods are;

1. Petition

2. Originating motions or applications

3. Originating summons

4. Writ of summons

* **Petition**;

A petition is a written application from a person or persons to some governing body or public official asking that some authority be exercised to grant relief, favors, and privileges. In law, a petition is a formal written request to a court for an order of the court. It is distinguished from a complaint in a law suit which asks for damages or performance by an opposing party. Petitions include demand for writ, orders to show cause, modifications of prior orders, continuances, dismissal of a case, reduction of a bail in criminal cases and a whole lot more legal activities. Petitions are directed to courts of law or administrative agencies and boards. A petition may be made ex parte that is without the presence of the opposing party where there are no parties in opposition. In most cases when petition is used to institute civil proceedings in a high court it is used divorce (The parties are called petitioner and respondent), also in elections-in public law petition is used to place a proposition on ballot, nominate a person for public office or demand a recall election in the latter case it has to be signed by a specific number of voters. Act on Petition in the United States is a summary process used in probate, ecclesiastical and divorce cases, designed to handle matters which are too complex for simple motion. According to **Order 5 Rule 2**, a petition contents include, a concise statement of the nature of the claim made or relief or remedy required in the process begun and at the end a statement of the names of the persons required to be served.

How a petition works

When a lawsuit is filed, it moves through a series of stages before it is finally resolved. In civil cases, the first stage has the plaintiff file a petition or complaint with the court. The document outlines the legal basis for the lawsuit. The defendant receives a copy of the document and a notice to appear in court. At this point the plaintiff and defendant are given the opportunity to settle the case privately or use an alternative dispute resolution (ADR) mechanism rather than go to trial.

* **Originating motions or applications**;

Originating motion is one of the modes of commencing civil action in the High Court. It is a type of document that starts a civil proceeding. It is usually required when:

i. there is no defendant

ii. You are making an application to the court under a particular Act

iii. Where for that particular action you are required to use an originating motion.

* **Originating summons**;

According to the law dictionary an originating summon is a document which formally begins a legal case where people agree on facts but need a judge to decide on the meaning of law, contract, or other document.

Originating summons is one of the ways of commencing a civil action in a high court. An action is commenced by originating summons when it is required by a statute or the dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of fact. It may be inter partes or ex-parte. Originating summons is based on affidavits filed in support.

Cases of originating summon are heard by registrars or judges in chambers. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support or opposition of the originating summon .Alternatively a judge can decide to convert an originating summon into a writ without any application from the parties. The originating summons is a simpler and swifter way of resolving disputes as it is determined generally on affidavits filed and does not

involve pleadings or many interlocutory proceedings. An originating summon may be in **Forms 4 or 5 of the Rules of Court** depending on which is appropriate.

In **National Bank of Nigeria & Anor v Lady Ayodele Alakija & Anor6**, the Supreme Court said that originating summons should only be applicable in such circumstances as where there is no dispute on questions of fact or the likelihood of such disputes. Where, for instance the issue is to determine short questions of constructions and not matters of such controversy that the justice of the case would demand the setting of pleading originating summons could be applicable. According to **Order 4 Rule 6**, a 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.

* **Writ of Summons**;

A writ of summons is one of the ways of commencing a civil action in the high court. It is an official order for someone to appear in a court of law when they have been accused of committing an offence against someone. It is a formal document addressed to the defendant requiring him to appear before the court if he or she wishes to defend himself against the defendant's claim. According to **Order 3 Rule 2 of the High Court of Lagos State Civil Procedure Rules 2012**, a writ of summons is the appropriate way of starting a proceedings where a plaintiff claims:

i. Any relief or remedy for any civil wrong

ii. Damages for breach of duty, whether contractual, statutory or otherwise or

iii. Damages for personal injuries or wrongful death of any person or in respect of damage or injury to any person or property.

**References**:

justia.com

https://lawpadi.com

https://www.investopedia.com

https://www.supremecourt.gov.sg

https://www.elitigation.sg

https://www.lawdictionary.com

The Nigerian Legal System, Text and cases; Ese Malemi L.L.M. BL.

The Criminal Procedure Act

High Court of Lagos State Civil Procedure Rules 2012

Cambridge Dictionary

1999 Constitution of the Federal Republic of Nigeria as amended ( Hereinafter referred to as the C.F.R.N)

The Black's Law Dictionary

**Case citations**;

1. (1988) 2 NWLR pt. 478, p.602 CA

2. (1977) 4 SC 167 at 171

3. (1989) 3 NWLR pt. 112 p.707 CA

4. (1988) 1 NWLR pt. 68, p.1 SC

5. (1990) 7 NWLR pt. 164 550 at 560

6. (1978) SC 139