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1. State clearly the procedure from arraignment to imposition of sentence in criminal trial in high court. Comment on the remedy available to the accused after the imposition of the sentence.

The high court is given jurisdiction over civil and criminal cases in the federation. Arraignment means court hearing in a [criminal case](http://www.businessdictionary.com/definition/criminal-case.html) during which the charges are read out to the named [accused](http://www.businessdictionary.com/definition/accused.html), and he or she (unless insane or mute) must plead guilty or not-guilty. It also means to take before the judge based on charges brought against the person.

**THE PROCEDURE OF ARRAIGNMENT OF SENTENCE IN CRIMINAL TRIAL IN THE HIGH COURT**

In General. An arraignment must be conducted in open court and must consist of:

(1) ensuring that the defendant has a copy of the indictment or information;

(2) reading the indictment or information to the defendant or stating to the defendant the substance of the charge; and then

(3) asking the defendant to plead to the indictment or information.

The arraignment is the first time the defendant appears in court.At the arraignment, the judge tells the defendant:

• What the charges are,  
• What his or her constitutional rights are, and  
• That if he or she does not have enough money to hire a lawyer, the court will appoint a lawyer free of charge.

The defendant may then respond to the charges by entering a plea. Common pleas include guilty, not guilty, or no contest (also known as “nolo contendere”).

• **Not Guilty** means the defendant says he or she did not commit the crime. Sometimes, defendants enter a plea of not guilty as a strategic decision during plea bargaining or because they want to go to trial and force the prosecution to prove its case beyond a reasonable doubt.  
• **Guilty** means the defendant admits he or she committed the crime. The judge finds the defendant guilty and enters a conviction in the court record.  
• **No Contest**means the defendant does not contest (disagree with) the charge. This plea has the same effect as a guilty plea, except the conviction generally cannot be used against the defendant in a civil lawsuit.

If the defendant is in custody at the time of arraignment, after the defendant enters a plea (responds to the charges), the judge will:

• Release the defendant on his or her “own recognizance” (which means the defendant promises to return to court on a specified date), OR  
• Set bail and send the defendant back to the jail until the bail is posted, OR  
• Refuse to set bail and send the defendant back to jail.

“Bail” is money or property that a defendant puts up as a promise to return for future court dates. When setting the amount of bail, the judge takes into account the seriousness of the crime, whether the defendant is a risk to the community, and whether he or she is a “flight risk” and likely to run away.

 In **misdemeanor** cases, if the defendant enters a not guilty plea, after the arraignment and before the trial:

* The prosecution and the defense exchange information. This is called “discovery.” Defendants may be limited in what information they are able to see, but their lawyers usually are not. This is because lawyers are required by law to protect the identity of witnesses while still preparing a defense so that the witnesses are not put in jeopardy. This is why it is so important that a defendant charged with a misdemeanor or felony be represented by a lawyer.
* Either side can file pretrial motions, including motions to set aside (cancel) the complaint, to dismiss the case, or to prevent evidence from being used at trial.
* The defendant can change his or her plea to guilty or no contest.
* The judge and lawyers from both sides may talk about how the case can be resolved without going to trial.

In **felony** cases, after the arraignment, if the case does not settle or get dismissed the judge holds a preliminary hearing. At this hearing, the judge will decide if there is enough evidence that the defendant committed the crime to make the defendant have to appear for a trial. If the judge decides that there is enough evidence, the prosecutor will file a document called “the Information.” Then, the defendant will be arraigned, a second time, on the Information. At that time, the defendant will enter a plea and proceed to trial. Before the trial:

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**IMPOSITION OF SENTENCE IN CRIMINAL TRIAL IN THE HIGH COURT**

The criminal justice system in Nigeria starts to run with the commission of a crime and continues with subsequent interventions by agencies of the system with the arrest, arraignment, trial, sentencing and punishment of the offender. A criminal trial involves two processes both of which are important to the society and the offender. Firstly, there is the process of determining whether the defendant/accused did the act or made the omission alleged against him; if he did, then the second leg is that of sentencing him for his wrongdoing. In some legislation, the words sentence and judgments are used as if they were synonymous.

Sentencing generally aims at the protection of the society through prevention of crime or reform of the offender which may be achieved by the means of deterrence, elimination or reformation/rehabilitation of the offender. The justification is that imposing the penalty will reduce the future incidence of such offences by preventing the offender from re-offending or correcting the offender so that the criminal motivation or inclination is removed or by discouraging or educating other potential offenders. These are known as reductive justification. As such, the key purpose of sentencing includes:

1. Punishment
2. Deterrence (general and specific)
3. Rehabilitation
4. Denunciation and
5. Protection of the community.

These purposes overlap and none can be considered in isolation from the others when determining what an appropriate sentence is in a particular case. They are guide posts to the appropriate sentence but sometimes they point in different directions. Sentencing guidelines are designed to indicate to judges the expected sanction for particular types of offences. They are intended to limit the sentencing discretion of judges and to reduce disparity among sentences given for similar offences. Although statutes provide a variety of sentencing options for particular crimes, guidelines attempt to direct the Judge to more specific actions that could be taken.

Here are some basic rules governing sentencing:

* Separate offences charged together must each receive a separate sentence but if they all form part of the same criminal action, the sentence will be concurrent;
* Where a term of imprisonment in default of fine is ordered, it cannot run concurrently with a sentence of imprisonment imposed at the same time or with default sentence in respect of another fine;
* A fine must not be too heavy for the offender to pay;
* Separate fines imposed on different counts at the same trial are to be cumulative. But the aggregate must be within the Court’s jurisdiction;
* While the age of the offender, being a first offender, pleading guilty to the charge, may all sustain a plea in mitigation of sentences. Conversely, the fact of previous conviction, the prevalence of the offence, the seriousness of the offence, the non repentant attitude of the offender and the adverse effect of the offence on the victim are all factors that aggravate sentence.

Penal statutes often provide for the maximum punishment for committing an offence; this maximum is not mandatory, the court has discretion to impose punishment that is less than the maximum, and the court is not bound to give reasons for doing so. The appellate court shall not interfere with the discretion of the court to impose punishment unless it is made a ground of appeal. The type of Sentences that may be imposed on a convicted person includes:

**1.  Death penalty:** see Section 319 of the Criminal Code Act Cap. C38 Laws of the Federation of Nigeria, 2004; see also Section 220 of the Penal Law Cap 89 Laws of Northern Nigeria, 1963.

**2. Imprisonment:** this can be defined as a term of judicial sentence available for a convicted offender of adult age, involving incarceration in prison for either life or a specified period of time. A term of imprisonment may be imposed with or without hard labour. Where no specific order is made, it is deemed to be with hard labour. See Sections 377, 381 and 395 C.P.A. Concurrent and consecutive sentences are also considered where the accused had been previously convicted and sentenced, the new sentence may commence at the expiration of a current sentence previously imposed on the accused. In R v Savage 20 N.L.R. 55, it was held that in the situation above, the new term could not be ordered to commence at the expiration of more than one term of imprisonment. Where there are sentences in case of conviction of several offences at one trial and the sentence in respect of each offence is to run concurrently, the aggregate term of imprisonment shall not exceed 4 years or the limit of jurisdiction of the trial court whichever is greater. But under section 24(2) of the CPC, the court may impose a sentence twice its limit of jurisdiction to punish.

**3. Fines:** Sections 382 of the CPA and 23 of the CPC provide for the power of a court to impose fine in lieu of imprisonment. A fine is a payment of money ordered by a court from a person who has been found guilty of violating a law. It may be specified as the a punishment for an offence, usually a minor offence, but could also be specified and used as an option to imprisonment for major crimes or a complement to other punishments specified for such crimes. See section 129 Criminal Code, Section 389 C.P.A, Section.74. Penal code. In Price Control Board v Ezema (1982) 1 N.C.R. 7, it was held that even when the law creating an offence provides that the accused shall be ‘sentenced without option of fine’ the court still has discretion to impose a fine. But where the law provides for the minimum (not maximum) period of imprisonment to be imposed for the commission of an offence, the court cannot impose fine in lieu of imprisonment. Assessment of fine- Section 382(2) & (3) of the CPA provides that: In the case of a high court, the amount of the fine shall be in the discretion of the court, and any term of imprisonment imposed in default of payment of the fine shall not exceed two years.Imprisonment in default of payment of fine- Section 392 of the C.P.A provides procedures a court must follow before an accused can be imprisoned in default of payment of fine:

* Issue a warrant of commitment
* Allow time (days of grace) for the payment of the fine
* Direct payment of the fine to be made by instalments
* Provide security either with or without sureties for the payment of the fine.

Under the C.P.C before an accused can be imprisoned in default of payment of fine, the court may order the attachment of his moveable and immovable properties. If the properties attached cannot satisfy the fine, the accused may be imprisoned subject to the limit contained in section 74 of the Penal Code.

**4. Caning or whipping:** Caning is another form of punishment which the courts are empowered to impose although it is important to note here that as a form of sentence, it has generally fallen into disuse. Caning may be considered for use as a punishment, or it may be in lieu of any punishment or it may be in addition to other punishment. The courts may pass a sentence of caning of up to twelve (12) strokes. Where a person is convicted of one or more offences at one trial, the total number of strokes awarded must not exceed 12.The number of strokes passed must be specified in the sentence.  The following categories of persons cannot be subjected to caning:

* Persons above the age of 45
* Women
* In eastern Nigeria, only a juvenile offender can be subjected to caning. See Section 386(1) C.P.A and Section 77 P.C.

1. Comment on the various methods by which civil proceedings may be Commerce’s in the high court

Civil proceedings are commenced by way of originating processes issued and served by the courts. There are various types of originating process. These include writs of summons, originating summonses, originating motions and petitions. In Nigeria, actions in which the facts are disputed must be commenced by writ of summons. The Lagos State High Court (Civil Procedure) Rules 2019 provides for a system under which originating process must be accompanied by a statement of the claim, a list of witnesses, list of documents to be relied on and the sworn statements of the witnesses. In Lagos, the writ of summons is to be served within six months from the date of issuance. A writ may be renewed for a further three months no more than twice, as no writ can be valid for more than 12 months from the date of issuance. A number of other state jurisdictions have now adopted this procedure, which was first introduced in Lagos State.

Courts (especially those in highly commercial cities such as Lagos and Abuja) do experience capacity issues, which substantially affects their ability to attend to cases in a timely manner. However, some jurisdictions have invested heavily in various alternative dispute resolution mechanisms, to relieve the courts of their congested caseload. In Lagos State, the ‘multi-door courthouse’ was created to encourage out-of-court settlement. The Court of Appeal Mediation Centre has also been launched, to create a two-path justice system in the Court of Appeal - litigation and mediation. Courts are constantly enjoined to refer parties to the multi-door courthouse to have disputes resolved out of court and expeditiously. Various courts have also reviewed their procedural rules and practice procedures for the purpose of encouraging resolution of disputes through other alternative dispute resolution mechanisms. For instance, the High Court of Lagos State (Civil Procedure) Rules 2019 makes it mandatory for parties to have taken steps to have their disputes resolved amicably prior to taking out a writ of summons and evidence of such steps must be included in the originating processes; otherwise, the action shall be dismissed as being null. Furthermore, the High Court of Lagos State (Civil Procedure) Rules 2019 introduced the Backlog Elimination Programme to give special attention to matters that have been lingering in courts for five years and above. The Court of Appeal Mediation Rules 2018 also provides that all appeals will be screened by the court to determine their suitability for mediation, and resolved at the centre if found appropriate.