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LPI 204

NIGERIAN LEGAL SYSTEM

200 LEVEL

QUESTION 1;

* Arraignment by a judge; Before the trial, the defendant appears in a court and enters a plea. The most common pleas are guilty and not guilty.

He may plead as follows;

* Autrefois acquit; a plea that he has been tried for the same offence before and has been acquitted. It is in line with the rule of double jeopardy where a person cannot be tried for the same offence.
* Autrefois convict; where he has been tried and convicted for the same offence he cannot be tried again.
* He may choose to stand mute, where a plea of not guilty will be mandatorily recorded for him.
* He may plead guilty to a lesser offence not stated in the information, if the accepted by the prosecution then the trial is dropped, allowing the court to sentence him for the lesser offence.
* Plea of guilty; where the accused pleads guilty, the prosecution reads out a summary of the evidence together with the details of the accused person’s background, including his criminal record if any. Then the defense counsel pleads for mitigation of sentence and the court passes its judgement.
* Plea of not guilty; when this happens, the trial continues
* Pretrial detention and/bail; Detention refers to a custody prior to bail. Bail is an amount of money paid by a defendant to ensure he/she will show up for trial.
* Plea bargaining between the defense attorney and the prosecutor; Usually, in plea bargaining, the defendant agrees to plead guilty in exchange for a charge reduction or sentence reduction.
* Trial/adjudication of guilt by a judge or jury, with the prosecutor and a defense attorney participating. A trial is held before a judge/jury. The standard of evidence for a criminal conviction is guilt beyond a reasonable doubt- less than 100 percent certainty but more than high probability. If there is doubt based on reason, the accused is entitled to be acquitted.
* Sentencing by a judge; If the accused is found guilty, a judge metes out a sentence. Possible sentences include; a fine, probation, a period of incarceration in a correctional facility, such as a jail or prison, or some combination of supervision in the community and incarceration.

Appeals filed by attorneys in appellate courts and then ruled on by appellate judges. If an appellate court reverses a case, the case returns to trial court for retrial. With a reversal, the original trials become moot (that is, it is as though it never happened). Following a reversal, a prosecutor decides whether to refile or drop the charges. Even if a prosecutor drops the charges, the defendant can still be prosecuted later as long as the statute of limitations for the crime and the defendant is accused of committing hasn’t run out. Such a statute imposes time limits on the government to try a case.

Punishment and/ or rehabilitation administered by local, state or federal correctional authorities. Most inmates do not serve the complete term and are released before the expiration of their maximum sentences. Release may be obtained by serving the maximum sentence mandated by a court or through an early release mechanism, such as parole or pardon.

B.

Post-conviction remedies are a specific and complicated legal proceeding that challenges the legality of some aspects of the criminal trial or sentencing. A criminal defendant has limited opportunities to challenge a conviction or sentences:

* A direct criminal appeal; these are not like trial proceedings, they are completely different, even though they arise out of the same conviction. At the appeal stage, the goal is to convince the appellate court that an error at the trial made the conviction or sentence unfair or contrary to law, warranting a different outcome
* Sentence modification; is a separate and quite different process from a criminal appeal. Although both may feel like the same, the court involved, the available grounds that can affect a criminal sentence, and the procedures involved are different. While criminal appeals must be filed by strict deadlines, a sentence modification petitions can be filed at any time while an offender is serving a sentence.
* Clemency; or commutation of sentence, is a form of relief that may reduce or alter a sentence but does not affect the conviction.
* Pardon; is a type of post-conviction relief that the president or governor can give an individual serving time in prison, or facing other criminal consequences, that essentially forgives the remainder of the sentence.

QUESTION 2;

Commencement of a civil action is the process taken to institute an action before a competent court to determine the issues between the parties.

Essentially, there are 4 modes of commencing a civil action in court in Nigeria namely;

* By Writ of Summons; is a form of document addressed to the defendant requiring appearance if he decides to dispute the plaintiff’s claim. Civil actions involving substantial disputes of facts are commenced by way of writ. These include, contractual actions, tort actions, personal injury actions, intellectual property actions.
* By Originating Summons; an action is commenced by way of an Originating Summons where,
* It is required by statute
* The dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of facts.

An Originating Summons may be in inter partes or Ex-Parte of the Rules of the court.

Originating Summons is heard based on affidavits filed in support.

Originating Summons cases are heard by registrars or judges in chambers in Open Court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support of or in opposition to the Originating Summons. Witnesses may be called to give testimonies and pre-trial conferences may or may not be conducted. Compared to Writ of Summons, 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 or many interlocutory proceedings.

* By Originating Motion; This is used only when provided for statute or a rule of court. Where a statute provides that action be commenced by application but does not specifically provides the procedure, originating motion should be use.

Examples of actions to be commenced by this way are

* Application for habeas corpus
* Order for mandamus
* Prohibition or certiorari
* Application for judicial review
* Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure rules 2009
* By Petition.

This is a written application made to a court setting out a party case. It is only used where a statute or the rule of court provides for its case.

References;

<https://www.cliffnotes.com/study-guides/criminal-justice>

<https://www.resolutionlawng.com>