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**ASSIGNMENT TITLE: CIVIL AND CRIMINAL PROCEEDINGS.**

**COURSE TITLE: NIGERIAN LEGAL SYSTEM II**

**COURSE CODE: LPI 204.**

**QUESTION:**

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 the sentence.
2. Comment on the various methods by which Civil proceedings may be commenced in the High Court.

**Solution:**

1.

The term arraignment simply refers to the procedure where the accused person is brought before the court and while standing in or sitting in or sitting in the dock has the charge or allegation read to him in the language he understands. it is the initial step in a criminal prosecution whereby the defendant is brought to court to hear the charges against him and to enter a plea. In practice arraignment comprises reading over the charge or allegation over to the accused and his making a plea thereto. An accused person may plead as follows:

- **Autrefois acquit:** this means a plea that he has been tried for the same offence before and has been acquitted. The plea is an application of the rule against double jeopardy, which stated that a person cannot be tried twice for the same offence.
- **Autrefois convict:** this means a plea that he has been tried and convicted for the same offence on a previous occasion.
- **He may stand mute:** where an accused stands mute, that is, without saying anything, a plea of not guilty is usually entered for the accused.
- **Plea of Guilty to a Lesser Offence:** however, while intending to plead not guilty to the offence charged, an accused person may plead guilty to a lesser offence which is not on the information.
- **He may plead guilty to the offence charge**

It is at this stage that it could be said that criminal proceedings have commenced in the court. **Sec. 211 of the ACJL** provides:

*“The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court and such person shall be called upon to plead instantly thereto.....”*

Please note that it is the duty of the Registrar to read out the charge to the defendant/Accused in the Language understood by the Defendant, if not an interpreter should be brought to interpret the charge to the defendant and therefore his plea is taken. If the defendant is charged with more than one offence each count of the offence shall be read to him separately and his plea taken separately in respect of each count. Also, if there are two or more persons charged with an offence or offences, the count or counts shall be read separately and distinctly to each of the accused persons and a separate or distinct plea shall be taken in respect of each offence.

The courts must record the plea of the accused before trial can proceed, failure of the court to record the plea of the accused would render the trial a nullity. See EDE VS. THE STATE (1986) 5 NWLR (pt. 42) 530.

Failure to observe the procedure of arraignment would render the entire proceedings a nullity *ab initio*. See UDO Vs. STATE (2006) ALL FWLR (pt. 337) 456.

After the charge has been read to the accused, there are various ways by which the accused may plead or react to the charge. He /She may react in the following ways:

- a) He may fail or refuse to Plead in which case the court is bound to investigate the cause of the muted response. If it is as a result of an inability to plead (i.e. Insanity) or a medical condition or as a result of Malice, whereby the court would record a plea of “Not guilty” and proceed with the trial.
- b) He may raise a preliminary objection on the grounds of jurisdiction.

This may be as result of a defect in the charge whereby the charge wasn't properly drafted or that the criminal case is statute- barred.

- c) He may plead Not guilty to the charge read to him.

When an accused person pleads “not guilty” he is in effect denying all the particulars of the offence charged. The plea of not guilty makes it incumbent on the prosecution to prove the guilt of the accused person beyond reasonable doubt. This is in addition to the fact that the constitution presumes in favour of the accused person, innocence until his guilt is established See. **Sec. 36(5) 1999 CFRN (as amended)**.

- d) He may plead make a plea of “*Not guilty by reason of insanity*”.

In which case the court would investigate through the evidence of an expert if indeed the accused is of unsound mind. If it is so determined that he is indeed of unsound mind then the court would make an order that the accused be detained at the pleasure of the governor.

- e) He may enter a plea of “Guilty”, in which case the court would record his plea and invite the prosecution to state facts of the case and inquire from the defendant whether his plea of guilt is to the facts as stated by the prosecution , if so the court would then go ahead to convict him of that offence and pass sentence upon him **See Sec213 ACJL**.

## **COMMENCEMENT OF TRIAL:**

### **PRESENTATION OF THE CASE BY THE PROSECUTION AND THE DEFENCE BY THE DEFENDANT / ACCUSED AT TRIAL.**

At the commencement of trial, there are three main stages in a trial they are as follows:

#### **1) EXAMINATION IN CHIEF.**

This is when the parties (i.e. the Prosecution and then the defendant respectively) goes ahead to open its case by calling witnesses who would provide both oral or documentary Evidence in support of their Case. **Sec. 214 of the Evidence Act 2011.**

Please note, after the defendant has taken his plea, the burden of proof rests on the prosecution to open his case and prove same beyond reasonable doubt. **Sec. 138 of the Evidence Act.**

#### **2) CROSS-EXAMINATION:**

After One party is through with his examination of his witness, the law permits the adverse party (the accused/defendant) to interrogate that same witness. This process is called **CROSS - EXAMINATION. Sec. 215(1) of the Evidence Act 2011.** This is done to dis-credit the witness the testimony of the witness and impinge on his character so as to ensure that the court doesn't place much weight on his testimony. At this stage, one is allowed to ask any question he feels may be relevant to building his case.

#### **3) RE-EXAMINATION:**

When the adverse party is done questioning the witness the other party, could re-examine the witness to clear up any ambiguity made during his testimony.

After the parties have closed their case, the parties file their **FINAL WRITTEN ADDRESS** to the court and the court adjourns for Judgement.

#### **4) JUDGEMENT**

Here the court would examine the body of evidence presented during the course of trial and decide if the defendant / accused person(s) are guilty or not guilty of the charge levelled against him by the prosecution. A valid judgement should contain both the ratio of the decision given and also state the established legal principles used in arriving at that decision. See **the STATE VS. AJIE (2000) FWLR (pt.16) 2831.**

#### **5) ALLOCUTUS AND SENTENCING.**

After conviction but before the court passes sentence, the court would inquire of the convict if he has anything to say why sentence should not be passed on him, this is called *allocutus*. **Sec. 281 of the ACJL.**

It is usually a plea in mitigation of sentence and the court is by no means bound to consider such in sentencing the convict.

The different types of punishment that could be meted out to the accused is normally codified into law and vary due to the nature and severity of the offence and they are as follows:

**a) CAPITAL OFFENCES.**

These are offences that attract the death penalty and is a mandatory sentence they include offences like murder, culpable homicide punishable with death, treason, treachery, armed, robbery etc.

**b) IMPRISONMENT:**

This sentence is awarded to the convict in most felony offences. It is a system whereby the liberty of the accused is taken and he is kept in the custody of the state for a specific period of time as stated in the judgement.

**c) FINES:**

This involves the payment of money as a punishment. The sentence of fine may be independent or in addition to imprisonment or any other sentence.

**OPTIONS AVAILABLE TO THE ACCUSED UPON SENTENCING.**

The Option available to an accused upon sentencing is a right of appeal at the Court of Appeal. The court of Appeal is empowered under the Section 237 of the Constitution of the Federal Republic of Nigeria 1999 (As amended) to hear Appeals from the High Court and other courts of coordinate jurisdiction.

If you are found guilty after a trial, you have the right to an appeal process. There are many reasons for an appeal of a criminal case, but appeals are also very difficult, so talk to a lawyer to make sure you know what is best for you.

There are also important deadlines that apply to appeals. If you miss the deadline, your appeal will most likely be dismissed.

For misdemeanor cases, you must file a Notice of Appeal (Misdemeanor) within 30 days of the date of the judgment or order.

For felony cases, you must file a Notice of Appeal — Felony (Defendant) within 60 days of the date of the judgment or order.

Keep in mind that the appeal is not a new trial. The appellate court can review the evidence (testimony and exhibits) presented at your trial to see if the trial court made a legal error in

how the testimony or exhibits were received. The appellate court does NOT decide the facts of the case as the judge or jury in the trial court does.

You can only appeal if:

1. You say there was not enough evidence in your trial to justify the verdict or judgment; and/or
2. You say there were mistakes of law during or before the trial that hurt your case.

If you say there was not enough evidence in your trial to justify the judgment, the appellate court will review the record and decide if there was substantial evidence to support the judgment. If you say mistakes of law were made, the appellate court will hold a hearing to listen to both parties. Then they will decide if there was any irregularity or mistake that prejudiced (hurt) your case.

In addition to appealing after a trial, there are other situations when you can file an appeal, like appealing the validity of a plea or probation violations. Talk to your lawyer to learn more about your options to appeal.

- If you are appealing a misdemeanor conviction, you can appeal to the appellate division of the superior court.
- If you are appealing a felony conviction, you can appeal to the Court of Appeal in your appellate district

**QUESTION 2:**

Comment on the various methods by which civil proceedings may be commenced at the High Court.

**Solution:**

There are basically four methods of commencing action at the High Court, they are stipulated in the various High Court Rules of the various High Courts in Nigeria. They are as follows:

➤ **BY WRIT OF SUMMONS.**

This is the most common mode of commencement of action at the High Court. The writ is used in commencing every suit that involves contentious issues. Where there is uncertainty as to what mode of commencement should be used then such actions are commenced by Writ of summons. The writ of summons is normally accompanied with the Statement of Claim, the witness' statement on Oath, the list of witnesses and the list of exhibits etc. these documents are served on the defendant who in turn files his Statement of Defence in response.

➤ **BY ORIGINATING MOTION:**

This mode of commencement is used only where the High Court Rules or any written Law so provides. It is the accepted mode for applying for prerogative writs e.g. Certiorari, Mandamus, Habeas Corpus, Judicial review.e.t.c.

➤ **BY PETITION:**

Like an Originating Motion, actions are commenced by Petition where the rules or any written law so prescribes. Petitions are normally employed for actions for winding up of companies under the Companies and Allied Matters Act (CAMA), electoral matters and matrimonial proceedings under the matrimonial matters Causes Act.

➤ **BY ORIGINATING SUMMONS:**

An action may be begun by Originating Summons where the sole or principal question in issue is or is likely to be , one of construction of a written law or any instrument made under a written law , or of any Deed, Will , Contract or written document or some other question of law or there is likely to be any substantial dispute of fact.

The Originating summons must be supported with an affidavit disclosing the facts of the case. In response the defendant is to file a counter -affidavit.

Citation

- <https://www.courts.ca.gov/1069.htm>
- Ese Malemi 'The Nigerian Legal System: text and cases'
- [www.nigeria-law.org](http://www.nigeria-law.org)

