***NAME: DIM PEACE IFUNANYACHUKWU***

***MATRIC NO: 18/LAW01/072***

***LEVEL: 200 LEVEL***

***COURSE TITLE: NIGERIAN LEGAL SYSTEM II***

***COURSE CODE: LPI 204***

***CIVIL AND CRIMINAL PROCEEDINGS***

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.

**NO 1**

***Proof of evidence*** is to be brought before arraignment and plea and other procedures in a criminal trial in the High court. Here, the names, addresses and written statements of 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. Then arraignment and plea comes in.

***Arraignment:*** Thisis a legal process where an accused person is formally called before the court at the beginning of a criminal proceeding, to read to him the summons or information brought against and asks him whether he pleads guilty or not guilty. An accused person may plead in ways as follows:

1. Autrefois acquit: it is a plea made by a defendant who is charged of a crime or misdemeanor. It is a plea made before the commencement of a trial. A defendant can plead that he/she was tried earlier for the same crime under same facts of the case. This plea is an application against double jeopardy, which states in the Nigerian Constitution that a person cannot be tried twice for the same offence.
2. Autrefois convict: it is a plea made by a defendant in a case when s/he is indicted for a crime or misdemeanor. By this plea, a defendant can claim that s/he was charged of the same crime under substantial same facts. This is also an application of the rule against double jeopardy.
3. He may stand mute: where am accused stands mute, a plea of guilty is usually entered for the accused. This is because the law provides that where an accused stands mute, a plea of not guilty has to be mandatorily recorded for him by the court.
4. Plea of guilty to a lesser offence: it is usually because pleading guilty to the lesser offence will have less severe consequences such as lower sentence. When pleading guilty to a lesser included offence, the lawyer or duty counsel should the arraignment part of guilty plea.
5. Pleading guilty to the offence charged
6. Pleading not guilty

***Plea of Guilty:*** if the defendant pleads guilty, the counsel for prosecution will give the court a summary of evidence together with details of the accused person’s background. After this the counsel for defence usually makes his plea in mitigation of sentence and the court then passes its sentence.

***Plea of Not Guilty:*** this is where an accused person pleads not guilty, the trial then begins.

***Prosecution:*** the counsel for the prosecution always opens a criminal proceeding by calling evidence for the prosecution. He calls his witness and examines each in chief, and tenders may exhibit they may have. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt. Where the burden of proof is not discharged, the charge or information is usually dismissed and the accused is legally entitled to be set free and is accordingly usually discharged and acquitted.

***Submission of “NO CASE TO ANSWER”:*** a submission that there is “no case to answer” by the defendant can be made in a contested criminal matter after the close of the prosecution case. A no case submission is made when the defence considers that the prosecution case does not support a finding of guilt and that the court should dismiss the charge without defence having to present a case.

***Defence:*** After the close of case for the prosecution and the failure of a no case submission, if such submission was made, the case for the defence then opens. The accused and his witnesses are one after the other, led in evidence-in-chief by the counsel for the defence and are cross-examined by the prosecuting counsel and re-examined by the counsel for defence as may be necessary. After the witnesses for the defence have testified and tendered any exhibit they may have, the case for the defence closes.

***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 reviews the case on both sides. The general rule of closing speeches is that the accused or his counsel is entitled to the last word. It is his right to round off the addresses.

***Judgment:*** after the closing for both sides, the judge fixes the judgment for a date provided that it is not a summary trial, and the court rises in adjournment to enable it deliberate, consider, or evaluate the totality of evidence in the case. On the adjourned date the court resumes sitting, the case is called and the judge may deliver judgment on the case. To summarize this, the judge may find the accused not guilty or guilty as the case may be. This must be done according to law.

***Sentence:*** where an accused is found guilty, before passing an allocation, plea for mercy or leniency is usually made by the counsel for the defence. After the plea, the judge passes sentence on the accused. When an accused has been found guilty of a crime, a court may under the Criminal Procedure Act or law pass sentence and make one or more appropriate orders as follows:

1. Imprisonment: This is a punishment for criminal offences which consists of the detention of the offender in a prison.
2. Fine: This is a sum of money which a court orders an offender to pay to the government treasury as penalty for committing an offence.
3. Death sentence: This is a judgment of court which stipulates that an offender should suffer death for the offence committed.
4. Caning: Under the criminal procedure law, caning is part of the punishment that may be imposed.
5. Deportation: In this case, where a person is a citizen of Nigeria, it means expulsion, one deportation from Nigeria to a place outside Nigeria.

Others are: Binding order over, Order for detention during pleasure of the President/Governor, Order for disposal of property, Order for costs, Award of damages and probation order e.t.c.

**NO 2**

***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 shall be endorsed with the names and addresses of the petitioner and his legal practitioner or where the petitioner brings a petition in person and corresponding to those made in writ, with the endorsements of the name and addresses of the plaintiff and his legal practitioner.

***Writ of summons:*** a writ of summons is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. Civil actions including substantial disputes of fact are commenced by the way of writ. These include but are not limited to: contract actions, tort actions, personal injury action, intellectual property actions and Admiralty and Shipping actions.

***Originating summons:*** an action is commenced by the way of Originating Summons where it is required by statute or the dispute is concerned with matters of law in respect of which is likely to be any substantial dispute of facts. This is a simpler and swifter procedure for resolution of dispute as it is determined generally on affidavits filed and does not involve pleadings.

***Originating motion:*** unlike a petition, this may be used where a statute has not provided for it. Originating motion is used when facts are not in dispute and it is used when the action relates to the interpretation of a document. Significantly, where a state has not provided for a method for enforcing a right conferred by that statute, originating motion should be used. The appropriate method of making an application to the court, where a statute provides that such an application maybe made but does not provide for any special procedure, is an Originating motion.