**NAME; DIKE REBECCA**

**MATRIC NUMBER; 18/LAW01/071**

**LEVEL; 200**

**COLLEGE; LAW**

**QUESTION; NLS CIVIL AND CRIMINAL PROCEDURES**

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.

**ANSWERS**

1. State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the High court.Arraignment
2. Plea bargain
3. Persecution
4. Submission of “no case to answer”
5. Defense
6. Closing address
7. Judgement
8. Discharge
9. Sentence

Arraignment is a formal reading of a criminal charging document to inform the defendant to inform the defendant of the charges against the defendant. In response to arraignment, the accused is expected to enter a plea. Acceptable pleas vary among jurisdictions, but they generally include “guilty” and “not guilty” but below re other acceptable pleas an accused.

1. Autrefois convit; this means a plea that he has been tried and convicted for the same offense and their for cannot be tried Agassiz. This is applicable to the rule of “double jeopardy” which states that a person cannot be tried twice for the same offense
2. Autrefois acquit; this means a plea that he has been tried for the same offense before ad has been acquitted. This plea is also applicable to prevent the accused from being tried twice for the same offense twice(double jeopardy)
3. Plea of guilt to a lesser offense; while not intending to plead not guilty to an offense, an accused person may plead to a lesser offense that was not on the arraignment. In a situation were this plea is accepted, the court may pass its sentence accordingly and the persecution would have to drop the instant charge hereby making it possible for the court to punish the accused for the lesser offence pleaded making it possible for a plea bargain. Plea bargain is the practice of negotiating an agreement between the prosecution and the defense whereby the defendant pleads guilty to a lesser offense or one or more of the offenses charged in exchange for a more lenient sentencing, recommendations, a specific sentence or a dismissal of charges. -Supporters of this plea bargaining claim that it speeds court proceeding and guarantees a conviction, where opposers believe that it obstructs justice from being served.
4. He may stand mute; a plea of not guilty is usually entered for an accused that stand mute and that is because the law has provided that in a situation where the accused stands mute, a plea of not guilty has to be compulsorily entered in records for him by the court.
5. He may also plead guilty to the offense; when an accused person pleads guilty, the counsel of persecution will the court a summary of the evidence together with details of the accused person, background,character and his criminal record if any. After which the counsel for the defense usually makes his allocutus or plea in mitigation of sentence and the court then passes its sentence.
6. He may plead not guilty as stated above and in such situations, the trial begins.

PLEA BARGAIN

Plea bargain is the practice of negotiating an agreement between the prosecution and the defense whereby the defendant pleads guilty to a lesser offense or one or more of the offenses charged in exchange for a more lenient sentencing, recommendations, a specific sentence or a dismissal of charges.supporters of this plea bargaining claim that it speeds court proceeding and guarantees a conviction, where opposers believe that it obstructs justice from being served.

MENTALLY ILL PERSONS

Some accused may be too mentally ill to plea to a criminal charge and this is often to the ‘unfitness to plea”. such accused person may then be referred for psychiatric examination and treatment. In a proven or clear case,if the is unfit to make a plea by reason of insanity, a variety of guardianship and hospitals order may be made and the accused may be committed to psychiatric or mental for necessary care at the pleasure of the President or Governor in respect of federal or state offense, as the case may be until the person is mentally fit to be freed.

In **R V M’NAGHTEN**, the accused person was charged with murder. A plea for defense of insanity was successfully made for the accused and the House of Lords held that; “ the accused was not guilty and was acquitted on the ground of insanity” it is a general rule that every accused is presumed sane until proven otherwise and the duty to raise to issue falls on the defence but in a case where the trial judge raises *suo motu*, that is, “of its own motion”, then the persecution could then inform the court. But it is usually proved by the defense counsel on balance of probability and is usually established by by evidence of relevant witness, including medical evidence.

PERSECUTION

The persecution counsel always opens a criminal proceeding by calling evidence for the persecution. The counsel calls his witness and examines each chief, and tenders any exhibit they might have.

The witnesses are cross-examined by the defense council and re-examined by the prosecuting counsel as may be necessary and the case for the prosecution closes. The burden of proof in a criminal proceeding falls on the prosecution and is proof beyond reasonable doubt. 4 4 4 44 3 3 3 3 The charge or information is usually dismissed and the accused is legally entitled to be set free and according discharged and acquitted when the burden of proof is not discharged as the burden of proof upon the prosecution is to proved beyond reasonable doubt that the accused is guilty and is nit to be lowed, watered or mellowed down.

The Romans had it that it is better for a guilty person to go unpunished than for an innocent person to be unjustly punished due to a lowered standard of proof. **CHUKWUNWEIKE IDIGBE JSC** in **UKORAH V. STATE** said that;

“ *the Romans had a maxim that it is better for ten guilty persons to go unpunished than for one innocent man to suffer”*

SUBMISSION OF “NO CASE TO ANSWER”

At the close of the case for the persecution, the defense council may at that time submit that the prosecution has not provided enough evidence or made a *prima facie* case against the accused thereby, the accused has no case to answer to and that the case should not proceed any further. The make this submission by addressing the court, the prosecution then usually replies and the Judge makes a ruling on this submission

Where the judge accepts the submission and makes a ruling that the there is no case for the accused to answer to,then this ruling is a verdict of not guilty and the court will discharge the case and either acquit the accused on merit or not.

But where the judge reject the no case to answer submission , the trial proceeds and the accused has to state his case by giving evidence to support his defense. However, in a situation where the accused stand by the no case to answer submission which the judge has rejected and not give evidence to support his defense then the accused is often convicted and the reason for this is that the accused has failed to defend himself against the *prima facie* brought up against him.

DEFENCE

After the failure of the no case to answer submission, if such submission was made, the case for the defense then opens. The accused with his witnesses if he has any would be one after the other led into the court by the evidence-in-chief by the counsel for the defense and are cross-examined by the prosecution and re-examined by the defence counsel as may be necessary. Generally, each witness has to go through this procedure and no other witness is allowed to be called in until the witness in the court has gone through the procedures required except there are good reasons to do so and some the good reasons t call a witness out of turn include;

* The need to take the testimony of a witness who is obviously very busy or who may not be readily available to testify
* The need take the the testimony of a witness who leaves in a distant town or place
* The need to take the testimony of a witness who is suffering from ill health
* Need to record the testimony of a witness who is travelling to and fro and other examples.

After the witnesses for the defense council have made their testimonies and tendered any exhibit they might have the case for the defense closes

CLOSING ADDRESS

After the defence case has closed, the counsel for both sides makes closing speeches by addressing the court the court from their filed written address. The persecution counsel is always the first to address the court. He reviews the case on both sides. He points out the strengths and weaknesses of the defence if any and convinces them to convict the accused. The general rule of the law is that the case for the persecution must succeed on its own and must proof beyond reasonable doubt and not beyond any shadow of doubt. This means that the persecution cannot rely on the weakness of defense counsel to succeed and for this reason the accused person can therefore forego putting up a defense and can rest his case on that of the persecution.

After the address of the court by the persecution, the defense counsel then addresses the court. In this address, he would point out the weakness of the persecution, for example, if the case of the persecution was filled with lies, fabrication, conjecture, imaginative, malicious, frivolous, vexatatious and an abuse of court process, he can say it that way. If sufficent evidence has not not been adduced by the standards of the law to discharge the burden of proof, hr points it out to the court and finally, he urges the court to discharge and acquit the accused on the charge or charged as the case may be.

A general rule of closing speeches is the the accused or counsel is entitled to that last words.

JUDGEMENT

When the closing address is over for both sides,the judge will then fix a date for the judgement, the date cannot be the same as the date of the summary trial and the court rises in adjournment to enable the court deliberate, evaluate or consider the totality of evidence in the case. One the adjourned date, the court will sit again and the judge will begin to give his judgement from there.

In judgement, the judge summaries, weighs and reviews the evidence provided for both sides. He gives reasons for believing and accepting the case for either side and also sates reasons for disbelieving and rejecting the evidence form the other side. In the end, the accused maybe found guilty or not guilty as the case may be. This always and must be accordance with the law.

DISCHARGE

An accused person who has nit been found guilty on merit, the judge will dismiss the charges against him. In an instance where a person has not been found guilty, a court normally makes one of the following orders;

1. Dismissal order; this order normally dismisses the information or charges.
2. Order of acquittal
3. Order of discharge of the accused on the charges
4. Order of compensation in cases for the false, vexatious, frivolous or malicious prosecution or false imprisonment of the accused and so forth as may be relevant according to the circumstances of the case.

SENTENCE

In situations where the guilty, before passing sentence an allocutus( a formal statement made to the court by the defendant who has been found guilty prior to being sentenced), plea for mercy or leniency is usually made by the counsel for the defense. After the allocutus, the judge passes sentence on the accused. Some of the sentences which a court can impose on the guilty person include

* Imprisonment (in most cases, with hard labour)
* Fine. Sometimes the accused person is sentence to jail and still compelled to pay fine
* Deportation
* Caning
* Death penalty
* Order of disposal of property
* Award of damages
* Probation order
* Community services, etc.

1. A(I) Comment on the remedy available to the accused after the imposition of the sentence.

The accused person who in this case with his council may feel that he was wrongful punished and that justice wasn’t given in his case may resort to the only remedy he has which is appeal. Appeal is the process of applying to a higher court for a reversal of the decision of the lower court. Based on the court hierarchy, this accused could appeal to the Federal High Court to dispense justice on his case. If he was given jail time, he would be set free as he would be visiting the courts form the jailhouse.

Appeal is the only hope of such kind of man and such appeal must be done at a higher court as all lower courts are bound to the decision of the higher court and it s law. If at the end, such accused person is not also satisfied with the rulings of the higher court, he can also appeal to a higher court. If st the level of the supreme court, he is not also satisfied he can appeal no further and would have to serve whatever punishment is granted unto him as the Supreme Court is the highest court in Nigeria.

1. Comment on the various -methods by which civil proceedings may be commenced in the High Court.

Civil procedure is a method, way or process of concluding, conducting and commencing civil cases, matters and civil claims in court. It can also be described as the body of law that sets out rules and standards that courts follow when adjudicating civil lawsuits.

The various methods by which civil proceedings may be commenced in the high court include;

1. Petitions
2. Originating summons
3. Originating motions
4. Writ of summons
5. Petitions;

This is a legal document formally requesting a court order. Petitions, along with complaints, are considered pleadings at the onset of a lawsuit.

Cases that can filed under this method include;

* Matters relating and concerning divorce
* Election petition matters
* Issues relating to winding up of a company

1. Originating Summons;this is a mode for commencing a civil action. An action is commenced by originating summons when it is required by a statue or is related a dispute concerned with matters of the law. The following are issues that can be commenced with originating summons;

* Actions relating to contract
* Actions relating to constructions of laws
* Actions relating to deed and wills
* Non contentious matters which include corporate finance, shipping, conveyance, commercial property, etc.

1. Writ of Summons;

This is a formal document addressed to the defendant requiring him to appear before the court if he wishes to defend himself against the plaintiff claim. Matters that can be filed under this mode of commencing civil matters include;

* Contentions matters such as family, employment, civil litigation, shipping, construction, immigration,m etc.
* Actions relating to disputes

1. Originating Motions;

This is only when provided for by a statute or a rule of court. Examples of actions to be commenced in the high court through this medium includes

* Application for habeas corpus
* Order for mandamus
* Prohibition or certiorari
* Application for judicial review
* Action for the enforcement of fundamental human rights

Reference

www.nairaland.com

www.oxfordreference.com

Afe Babalola University lecture, Mrs. Isheoluwa

<https://nigeriaalii.org>

High Court Civil Procedure Rules

[www.elitigation.sg](http://www.elitigation.sg)

Nigeria Legal System