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Question 1(a)

The criminal procedure generally refers to either the process by which a which a criminal case is prosecuted or the body of laws and rules regulating the administration of criminal justice. This aspect of our law is very important in view of the high premium placed on ensuring a free and fair trial for all citizens, irrespective of the offenses for which they are charged with a criminal offense shall be presumed to be innocent until he is proven guilty.

The two major statutes governing criminal procedure in Nigeria today are the criminal procedure code in force in the northern states and the criminal procedure act. Which applies generally in the southern states and throughout the federation in offenses against federal laws.

However for the federal high court, criminal actions are initiated summarily by filling a charge against the accused person rather than going by way of information. The following methods apply in state high courts:

1. Indictment or information : An indictment or information is an accusation of crime brought against an accused for trial in a High Court. An indictment or information is a criminal charge brought against a person by the attorney general or any of his subordinate legal officers on behalf of the state or country and which is for trial at the High court. Examples of information : In the high court, an information of crime is usually prosecuted in the name of relevant state or in the name of the country as the case may be. Using Isheoluwa, as the hypothetical accused person, the information brought thus:
2. State v Isheoluwa: criminal proceeding brought by a state are usually prosecuted in the name of the relevant state in a High court of such state.
3. Federal Republic of Nigeria v Isheoluwa: This is sometimes shortened in law reports as Republic v Isheoluwa. Criminal proceedings brought by or on behalf of the Federal Government of Nigeria are usually prosecuted in a Federal High court.

Some agencies that also prosecute crime in their own name

1. Board of customs and Excise v Isheoluwa: These are usually prosecuted in the Federal High court, since the Federal Government is the competent authority to legislate on Customs and Excise.
2. NDLEA v Isheoluwa: crimes under the National Drug Law Enforcement Act are tried in the Federal High court.
3. Federal Inland Revenue Service v Isheoluwa: Federal revenue matters are tried in the Federal High; and so forth.
4. PROOFS OF EVIDENCE: The proofs of evidence in proof means the names, addresses and written statements of the witnesses, that the prosecution wishes to call and list of exhibits, if any, the prosecution wishes to put evidence in trial. Photocopies of documents and list of exhibits, if any, are usually attached to information filed by the state. The real essence of attaching these proofs of evidence is to put the accused on notice, as to the nature of the case against him, to enable him take steps to prepare and state his defense. This is a fundamental right under the fair hearing provisions of theNigerian Constitution.

© ARRAIGNMENT AND PLEA: Arraignment is calling of an accused person formally before the court by name at the beginning of a criminal proceedings, to read to him the indictment or information brought against him whether he pleads guilty or not guilty. In other words, arraignment means, the registrar or other officers of court calling the accused by the name while the accused is standing in the dock and reading over and explaining the charge or information to the accused in a satisfactory way and asking the accused to make his plea thereto instantly, This is called the arraignment of a person before a court.

An accused person may plead as follows:

1 Autrefois acquit: *Autrefois acquit* means a plea that he has been tried for the same offense before and has been acquitted. This plea is an application of the rule against double jeopardy, which state that a person cannot be tried twice for the same offense. It is fundamental right under the fair hearing provisions of the Nigerian constitution.

2 Autrefois convict: *Autrefois convict* means a plea that he has been tried and convicted on a previous occasion. He cannot be tried again. This is also an application of the rule against double jeopardy.

3 He may stand mute: where an accused stands mute, this is, without saying anything, a plea of not 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 Offense: However, while intending to plead “ not guilty” to the offense charged, an accused person may plead guilty to a lesser offense which is not on the information. Where this plea is accepted by the prosecution, the court may pass its sentence accordingly. Here the prosecution usually drops the instant charge. Thus, paving the way for the court to sentence the accused for the lesser offense admitted. This, there is room for plea bargain.

5 He may plead guilty to the offense charged: where an accused person pleads guilty, the counsel for the prosecution will give the court a summary of the evidence together with details of the accused person’s background, that is, character and his criminal record, if any. After this the counsel for the defense usually makes his allocates or plea in mitigation of sentence and the court then passes its sentence.

6 Plea of not guilty: where an accused person pleads not guilty, the trial then proceeds.

(D).PLEA BARGAINING: Plea bargaining or plea negotiation and agreeing for an accused to plead guilty to a lesser crime, in exchange for the dismissal of the serious criminal charge brought against him and for the quick disposal of the entire criminal proceedings. The concept of bargaining began in western countries, and it is common there, especially in the United State if America. The idea of plea bargain is not new to the Nigerian legal system as the criminal procedure laws have provision for an accused to plead guilty to a lesser offense instead of the more serious offense brought against him. Accordingly, in recent years have been plea bargaining in a number of cases, especially in criminal charges brought by the Economic and Financial Crimes Commission (EFCC) in order to expeditiously dispose of the potentially lengthy criminal proceedings. This plea or change of plea is usually as a result of bargain reached between the defense counsel and the counsel for the prosecution, often with the judges approval. The accused is then accused in respect of this lesser offense. A trial judge may also allow an accused person change his plea, from guilty to not guilty, and thus avoid the passing of sentence there on, otherwise a refusal to allow a change of plea at that point in time usually becomes an issue for appeal. Where an accused changes his plea from guilty to not guilt, the trial then proceeds.

PROSECUTION: The counsel for the prosecution always opens a criminal proceedings by calling evidence for the prosecution. He calls his witnesses and examines each in chief, and tenders any exhibit they may have. The witnesses in turn cross-examined by the defense council and re-examined by the prosecution counsel as may be necessary and the case for the persecution closes. The burden of proof 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 usually discharged and acquitted. This burden of proof which rests on the prosecution to prove the guilt of Thee accused beyond reasonable doubt is lowered or watered down. This is for , for it is better for a guilty person to go scot free and escape justice, than for an innocent to be unjustly punished, due to the low standard of proof. The principle of requirement that the the guilt of an accused beyond reasonable doubt has its root deep in Roman law.

SUBMISSION OF “NO CASE TO ANSWER” : At the close of the case for the prosecution, the defense counsel may submit that the prosecution has not produced sufficient evidence or made out a *prima facie* case against the accused and consequently, the accused has no case to answer and therefore the case should not proceed further. The defense counsel makes the submission by addressing the court. The prosecuting council usually replies. The judge makes a ruling in this submission.

The judge may accept the submission and make ruling that the accused has no case to answer. This ruling is a verdict if not guilty and the court may thereupon discharge and acquit the accused on merit, or discharged but not acquit the accused, if the submission succeeded just in technicality not on merit.

However, where the judge rejects the the case submission, in his ruling, the trial proceeds and the accused has to state his case by giving evidence in his defense. Where the accused refuses to give evidence in his defense and chooses to stand by his “No case submission”, which had earlier failed, the court would usually convict the accused. The reason being that the accused failed to defend himself against a *prima facie* case made out against him.

DEFENSE: After the close of the case for the prosecution and the failure of a no case submission, if such submission was made, the case for the defense then opens. The accused and his witnesses, if any, are, one after the other, led in evidence- in- chief by the counsel for the defense are cross-examined by the prosecuting counsel and re-examined by the counsel of defense as may be necessary. Each witness undergoes the whole process, before another witness is called. It is never mixed up. This is always the procedure. Generally , unless a witness has finished his testimony and has undergone necessary cross-examination, if any another witness may not be called, except there are good reasons to do so. After the witnesses for the defense have testified and have tendered any exhibit they have, the case for the defense closes.

CLOSING ADDRESSES: After the close of the case for the defense, the counsel for both 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 sums up or reviews the cases in both sides.

He points out the strength of the case for the prosecution and identifies the weakness of any of the defense and then urges the court to convict the accused as charged. However, the general rule of law is that the case for the prosecution must succeed on its own. This is so, for in criminal proceeding as the burden of proof is beyond the shadow of doubt, but not beyond the shadow of doubt. The case for the prosecution must succeed in its own strength. Thus the case for the prosecution cannot rely on the weakness of the defense to succeed. For this reason an accused person is not bound to put up a defense and may in appropriate circumstances rest his case or defense on the case for the prosecution. Next , the counsel for the defense addresses the court. In his address he points out the weakness of the case for the prosecution. If the case for the prosecution is a pack of lies and a mere fabrication, and an abuse of court process. If a *prima facie case* has not been made out, of sufficient evidence has not been as required by the law to discharge the burden of proof that rests on the prosecution in criminal proceedings, which is proof beyond reasonable doubt, he points it out to the court and finally, he urges the court to discharge and acquit the accused in the charge or charges, as the case may be. The general rule of closing speeches, is that the accused or his counsel is entitled to the last word, that is, it is his right to round off the addresses.

JUDGEMENT: After the closing addresses by the council for both sides, the judge fixes the judgement 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 in the case. On the adjourned date the court resumes sitting, the case is called and the judge behind to deliver his judgement on the case. However, where a trial is by summary procedure the judge may deliver judgement there and then, or he may retire to his chamber to consider judgement and resume sitting to deliver it on that same day, as the case may be, or on an adjourned date.

In judgement, the judge sums up, weighs, or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also gives his reason for disbelieving and rejecting the evidence for the other side. In conclusion, the judge may find the accused not guilty or guilty as the case may be. This must be done according to the law.

DISCHARGE: Where an accused has not been found guilty, on merit, the judge will dismiss the information or charges and accordingly discharge and acquit the person as provided under the criminal procedure law. On the other hand, if the prosecution failed on a technicality, the court will usually discharge the accused, but not acquit him.

Where a person has not been found guilty, a court usually makes one or more of the following orders:

1 Dismissal order: dismissing the information, or charges

2 Order of discharge of the accused on the charges

3 Order of acquittal and

4 Order of compensation, as the case may be for the false, malicious prosecution or false imprisonment of the accused, and so forth as may be relevant according to the circumstances of the cases.

SENTENCES: Where an accused is found guilty, before passing sentence an allocutus, pleas for mercy or leniency is usually made by the counsel for the defense. After the allocutus, the judge passed sentences in the accused.

TYPES OF SENTENCES THE COURT MAY IMPOSE:

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 usually with hard labor: Imprisonment is a punishment for criminal offenses which consists of the offender in a prison. Imprisonment includes any restraint of a person’s liberty by another.

2 Fine, In lieu of, that is, instead of imprisonment or both fine and jail: In this context, a fine is a sum of money which a court orders an offender to pay the government treasury as a penalty for the commission of an offense. However, where a crime is aggravated, the written law creating the offense may stipulate:

1. Only imprisonment as punishment:or
2. The imposition of both fine and imprisonment at the same time as punishment to serve as a deterrence.

3 Death sentence: A death sentence is a judgement of court which stipulates that an offender should suffer death for the offense committed.

4 caning:Under the criminal procedure law, caning part of the punishment that may be imposed. It may be an order for caning only or in addition to other sentences.

5 Deportation : Generally, deputation means expulsion from a country. In this case, where a person is not a citizen of Nigeria, usually to the country of origin if the person involved in a crime.

QUESTION*( 1 aii )*

Remedy available to the accused after imposition of sentence are;

A. Correcting Clear Error; Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

B. Reducing a Sentence for Substantial Assistance;

(1) Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

(2.) Evaluating Substantial Assistance. In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's presentness assistance.

(3)Below Statutory Minimum. When acting under Rule 35(b), the court may reduce the sentence to a level below the minimum sentence established by statute.

QUESTION(2)

Civil proceedings are the methods, or procedure of commencing, conducting and concluding civil matter, trials, or claims in court. In general civil proceedings in various High Courts in uniform but there are some important differences.

In the High Court of a State: the high court of a state has a comprehensive civil procedure, which is fairly represents civil procedure at the high court level. However, the civil procedure of the other superior courts such as the court of Appeal and the Supreme Court are not quite the same, because these two courts do not undertake a trial like a High court does. The civil procedure of a High court is usually made up of so many orders, many of which are divided into rules, and sub-rules.

A High court civil procedure rules usually includes the following procedures:

1. THE ORE-COURT STAGE AND CONSULTATION OF A LAWYER:

A party who has been wronged or is aggrieved and wishes to seek relief in a High Court usually consults a lawyer for legal advise, who takes down the facts of his case and instructions.

2) FORM AND COMMENCEMENT OF ACTION: An action may commenced in a High Court by a counsel filing one or a combination of the following papers or originating processes in court:

1. Writ of summons, or originating summons, together with a statement if claim: A writ of summons when filed is sealed or stamped with the court’s name on it for service by a bailiff on the defendant to give notice of the claim, made against him and requiring him to acknowledge the service and defend it, if he dies not admit the claim. A statement of claim may be filed along with the writ, later on within 14days of the service of the writ on the defendant.
2. Ex parte motion, with or without a writ of summons and a statement of claim, or may be filed later;
3. Petition, as may be necessary, such as in a matrimonial proceedings for divorce and so forth, or winding up of a company for its inability to pay its debt in a Federal High Court and so forth.

3) APPEARANCE: A defendant may acknowledge the service of a writ, and then enter appearance in the case by instructing his solicitor or counsel to file a memorandum of appearance, and then show up to defend it or settle the case as he may wish to . However, when a defendant fails to make appearance, within the time limited, the plaintiff, may be a motion on notice obtain interlocutory or final judgement against the defendant in default of appearance and or failure to defend the action.

4) STAY OF PROCEEDINGS: After a lawsuit is filed, whether or not a defendant has entered appearance, any of the above mentioned procedures may be followed.

A court may order a stay of proceedings in an action temporarily:

1. Until something requisite is done
2. Until a party has complied with an order. However, a stay of proceedings may be permanent by way of a strike out or dismissal of the claim, such where;
3. To proceed with the action would be improper, or would amount to contempt if another court, superior court
4. The suit is scandalous or an abuse of court process, that is , an abnormal use if court process
5. The suit is brought to prejudice, embarrass or cause delay
6. Where the defendant does not have a good defense; and so forth.

5). DISCONTINUANCE: A plaintiff may discontinue an action by filling a notice if discontinuance in court, indicating that he does not wish to proceed further with the case, with or without disclosing reasons.

A notice if discontinuance is a process whereby a plaintiff voluntarily puts an end to a legal action. Where a plaintiff does not discontinue an action timelessly, he may be ordered to pay the defendant’s cost. However, a plaintiff after discontinuance may initiate another action for the same cause.

Likewise, a defendant may withdraw his defense at any time. He may also discontinue a counter claim and may be ordered to pay the cost of the plaintiff. Finally all the parties to a suit may settle and consent to the withdrawal of an action.

Non suit : Where a person is sued, a court will strike out his name at his application.

6). SETTLEMENT: Parties to an action may also settle the dispute for valuable consideration, or without consideration and withdraw the action without filing terms of settlement in which case the action will be struck out by court or filing terms of settlement in court, and the terms of settlement will be pronounced as consent judgement of the court in conclusion of the action. In the Lagos multi-door court system, pre-trial conference and scheduling, and reference to arbitration, are further opportunities to settle a matte, apart from a ore-court settlement or settlement outside the court.

7). SUMMARY JUDGEMENT: Summary judgement is a procedure or device available for promptly and expeditiously obtaining judgement and disposing off a controversy, case or matter without going to trial. It is usually available where:

(a) There is a default in appearance

(b) Faure to fail a defense

© When there is no dispute as to either material facts or interferences

1. Where the defendant has no defense
2. There is no indolent or lack of diligent prosecution, and so forth.

This procedure permits any party to any civil action to move for a summary judgement on a claim, counter-claim or cross-claim, dismissal of a claim of a claim, where he believes that there is no genuine issues as a matter of fact to be tried, and that he is entitled to judgement as a matter of law, in any of the situations listed above.

8). PLEADINGS: Pleadings are written statements of material facts a party is relying on for his claim, defense, or reply in a suit, and which are filed and exchanged by parties to a suit. A pleading is comprehensive statement or narration of a party’s claim or case.

9). PRE-TRIAL CONFERENCES AND SCHEDULING: Within 14 days after close of pleadings, the plaintiff or claimant shall apply for the issuance of a pre-trial conference notice, for the following purposes: disposal of matter which must or can be dealt with on interlocking application; giving directions as to the future course if an action; or to secure it’s just, expeditious and economical disposal; promoting amicable settlement of the case, or adoption of alternative dispute resolution. If the claimant does not make the application for pre-trial, the defendants may do so or apply for an order to dismiss the action.

10). ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES: In all proceedings, issues of facts in disputes shall be defined by each party and filed within 7 days after close of pleadings. If the parties differ on the issues, the pre- trial judge at settle the issues

11). SPECIAL CASE: At the pre-trial conference parties may concur and state the question of law arising in their case in the form of a special case for the opinion of the judge. Every special case shall be in paragraph numbered consecutively and concisely state such facts and documents as may be necessary to enable the court to decide the questions. Upon argument of such case the judge and parties may refer to all the content of such documents and the judge may draw from the facts and documents may inference, whether of fact or law, which might have been drawn from them if prices at a trial.

12). PROCEEDING AT TRIAL: On the date fixed for trial, the parties and their witnesses usually assemble in court for the trial. They come to court with the documents or any other thing required to be tendered as exhibit. Where a witness refuses to appear in court, a subpoena may issued on him to attend court. A subpoena is a summons to appear in court and give evidence, that is, testify or tender an exhibit, such as a document and so forth, in evidence, on the condition that reasonable expenses will be paid by him, by the part calling him as a witness. Witnesses, who ignore are in contempt of court for disobedience and may be punished for such contempt, by a fine or imprisonment.

13). FILING OF WRITTEN ADDRESSES: CLOSING ADDRESS : Each parties is entitled and required by the law to file a written address. A written address shall be filed in respect of all application in court and final address.

14). JUDGEMENT: After the closing speeches or address of counsel, the judge sums up, that is, he considers or evaluates the evidence given in the case and then gives judgement on the same day. Where a judge requires more time to consider the case, he may reverse judgement and adjourn the matter for judgement to a later date.

In the judgement day the judge the gives verdict stating the facts and legal issues in the case, explain the appropriate burden and standard of proof and states the basis of the judgement, in favor of the appropriate party and also makes such orders relevant in the case , provided that such orders were sought by such party. Where the plaintiff proves his case, judgement would be given in his favor. However, where he fails to prove his case, the suit will be dismissed and judgement will not be entered in his favor and the defendant will escape liability. In civil cases, the burden of proof is on the plaintiff, is proof on a balance of probabilities or proof on a preponderance of evidence.

15). ENFORCEMENT OF JUDGEMENT : When judgement has been entered in favor of a party, the judgement, award of damages, offer of apology and so forth, if not satisfied within the time limited by law, appealed against nor otherwise stayed, the plaintiff may endorse the judgement by one or a combination of the following ways:

(a) JUDGEMENT FOR PAYMENT OF MONEY: may be enforced by:

(I) A WRIT OF FIFA: Directing the sheriff to seize the debtors properties, movable and immovable, as may gave been appropriately ordered, for sale in satisfaction of the debt

(ii) A CHARGING ORDER: May be made over the debtors landed property, shares or the other property of the debt. When the money is not paid , such property may be sold upon application to court, in order to satisfy the debt

(iii) A WRIT OF SEQUESTRATION: Directing persons to go to the debtors land and take the rents and profits and seize the goods of the debtor and take effective control of such real and personal property until the debtor has complied with the courts order.

(iv ) ATTACHMENT OF EARNINGS: Earnings may be attached to pay debt. Where a debtor is in employment, a judgement creditor may obtain an order directing the debtor’s employer to deduct a specified sum from the defendant debtor’s wages or salary and pay it into court for the plaintiff. Attachment is not available against the profit of a self-employed person.

JUDGEMENT FOR POSSESSION OF LAND AND OTHER PROPERTY: may be enforced by :

1. A writ of possession
2. A vesting order, specific performance, and so forth.

JUDGEMENT FOR DELIVERY OF GOODS: may be enforced by:

1. A writ of delivery
2. An order of specific performance, and so forth.