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**18/LAW01/149**

**NIGERIAN LEGAL SYSTEM II**

**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 sentence.

**Answer**

1. **Arraignment and plea**

Arraignment is the calling of an accused person formally before the court by name at the beginning of a criminal proceeding to read to him the indictment or information brought against him and to ask him whether he pleads guilty or not guilty. It simply means the officer of the court calling an accused person by name while he stands in the dork and reading out the charges against him and asking him if he pleads guilty to the offences stated or not.

An accused person may plead as follows:

1. Autrefois acquit: this simply means that he has been tried for this offence before and acquitted
2. Autrefois convict: this means he has been tried and convicted for the same offence on a previous occasion
3. He may decide to stand mute and in this case, a plea of not guilty is entered for the accused.
4. Plea of guilty to a lesser offence: the accused may decide to plead guilty but to a lesser offence which is not included in the information. Here the prosecution usually drops charges for the previous offence and lets the court sentence the accused for the lesser offence.
5. He may plead guilty
6. He may plead not guilty.
7. **Plea of guilty**

Where an accused person pleads guilty, the prosecution will give the court a summary of the evidence together with the accused person’s background, that is, his criminal record (if any) and his character. After this, the defense counsel usually makes a plea for the mitigation aof the sentence and the court then passes its sentence.

1. **Plea of not guilty**

When an accused person pleads not guilty, the trial proceeds.

1. **Plea bargaining**

Plea bargaining or plea negotiation is agreeing for an accused person to plead guilty to a lesser crime in exchange for the dismissal of the serious charges brought against him and for a quick dismissal of the entire proceedings. It is a common method used in criminal cases in Nigeria especially in criminal charges brought by the Economic and Financial Crimes Commission. This plea is often as a result of a bargain between the defense counsel and the prosecution counsel with the judge’s approval and then the accused is then sentenced in respect to the lesser offence.

1. **Mentally ill persons**

Some accused persons may be too mentally ill or disordered to make a plea to a criminal charge. This is usually referred to as unfitness to plead and such accused person may then be referred for psychiatric examination and treatment. In a clear case of murder, if an accused is unable to make a plea as a result of insanity, a variety of hospital and guardian orders may be given and the accused will be subjected to a mental institution for care.

1. **Prosecution**

The counsel for the prosecution always opens 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 are in turn cross-examined by the defense counsel and re-examined by the prosecuting counsel as may be necessary and the case for the prosecution closes. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt.

1. **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 judge may accept this and make a ruling that the accused has no case to answer. This is a verdict of not guilty and the court may thereupon discharge and aquit the accused or discharge but not acquit the accused.

However, where the judge rejects the no case submission in his ruling, the trial proceeds and the accused has to state his case by giving evidence in his defense.

1. **Defense**

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 defense opens. The accused and his witnesses, if any, are led in and examined by the counsels. Each witness undergoes the whole process before another witness is called. It is never mixed up. After all the witnesses have testified and tendered any available exhibit, the case for the defense closes.

1. **Closing address**

After the close of the case by the defense, the counsel for both sides then make closing speeches by addressing the court from their filled written addresses. The prosecution counsel is usually the first to address the court and he sums up the case on both sides. What he does is to point out the strengths of the prosecution counsel and the weaknesses of the defense counsel and urges the court to convict the accused as charged. The defense counsel also does the same.

1. **Judgment**

After the closing address by both sides, the judge fixes the judgment for a later 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 events in the case and on the adjourned date, the judge delivers his judgment. But if it is a summary judgment the judge will deliver his sentence there and then.

1. **Discharge**

When an accused person has not been found guilty, on merit, the judge will dismiss the charges and accordingly discharge and acquit the accused person as provided under the criminal procedure law.

1. **Sentence**

Where an accused is found guilty, before passing the sentence, a plea for mercy or leniency is usually made by the counsel for the defense. After the plea, judgment is passed. Some of the types of sentences the court may impose are: imprisonment, fine, death sentence, caninig, deportation. Other orders include: binding over order, order for disposal of property, order for costs, probation order and award for damages.

**Remedy available to the accused after the imposition of a sentence**

An appeal to a higher court: in a situation where the sentence was given by a court of lower jurisdiction, an appeal can be made to a higher court to review the decision of the court. Higher courts have the powers to reverse the decision of the lower courts. In a situation where the higher court finds the decision of the lower court outrageous, they can revoke the judgment of the higher court and give a new sentence.

**QUESTION 2**

Comment on the various methods by which civil proceedings may be commenced in the high court

**Answer**

There are four methods by which civil proceedings can be commenced in the high court:

1. **Originating summons**: this is one of the four methods of commencing a civil procedure. An action is commenced by originating summons when it is required by a statue or it is required by a dispute, which is concerned with matters of law, is unlikely to be any substantial dispute of fact. It may be inter parte or Ex-parte of the rules of the court. It is heard based on affidavits filed in supports. Originating summons in comparison to a writ of summons is a simpler and swifter procedure for resolution of disputes. Originating summons cases are heard by registrars or judges in chambers or in open court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support or in opposition. Witnesses may be called to give testimony and pre-trial conferences may or may not be conducted.
2. **Writ of summons**: writ of summons is used in commencing a civil action against an individual. It is a formal document addressed to the defendant requiring him to appear before the court to defend himself against the plaintiff’s claim. It is usually accompanied by an endorsement of the claim or a statement of the claim so that the defendant is aware of the claim against him. Civil actions involving substantial disputes of facts are commenced by way of a writ.
3. **Originating petitions**: it is a written application made to court setting out a party case. It is only used where a statute or the rule of court provided for its use. Petition may be necessary in cases such as matrimonial proceedings for divorce, or the winding up of a company for its inability to pay its debts in a federal high court. A petition usually contains the following information:
4. Names of the parties to the suit, that is, the name of the plaintiff or claimant and his address, name of the defendant and his address and name of the plaintiff’s solicitor and his business address
5. An indorsement of the claim against the defendant.
6. **Originating motions**: an originating motion is used when only specifically required by a statute or a rule of court. Motions are requests made to the court to issue an order or a ruling on a legal matter. Notice of motion is a written notice that a party to the lawsuit has filed a motion or that a motion will be heard or considered by the court at a particular time. Examples of actions to be commenced by this way are: application for habeas corpus, order for mandamus, prohibition or certiorari, application for judicial review and action for the enforcement of fundamental rights.