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QUESTION:

1. state clearly the procedure from arraignment to imposition of sentence in a criminal trial in 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

CRIMINAL TRIAL AT A HIGH COURT

A trial on indictment or information in a high court is really an elaboration or amplification of a summary trial at the magistrate court. In its pure essence, it is not much different from a summary trial, except for the elaboration of certain procedures.

The stages of criminal trial at a high court are

1. What is an indictment or information
2. Proofs of evidence
3. Arraignment and plea
4. Plea of guilty
5. Plea of not guilty
6. Prosecution
7. Submission of “no case to answer”
8. Defense
9. Closing address
10. Judgment
11. Discharge
12. Finding of guilt and sentence

INDICTMENT OF INFORMATION

Indictment of information is an acquisition 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 a crime is usually prosecuted in the name of the relevant state or in the name of the country, as the case may be. Using **Bad man**, as a hypothetical accused person, the information may be brought thus;

1. **State v bad man**: criminal proceedings brought by a state are usually prosecuted in the name of the relevant state in a high court of such state.
2. **Federal republic of Nigeria v bad man**: this is sometimes shortened in law reports as **republic v bad man**. Criminal proceedings brought by or on behalf of the federal government of Nigeria are usually prosecuted in a high court.

Some public agencies that also prosecute crime in their own name include:

3. **NDLEA v bad man**: crimes under the drug law enforcement act are tried in the federal high court.

4. **Board of custom and excise v Bad Man:** these are usually prosecuted in the federal high court , since the federal government is the competent authority to legislate on excise
5. **Federal inland revenue service v no company ltd:** federal revenue matters are tried in the federal high court

PROOFS OF EVIDENCE

The proofs of evidence or evidence in proof means the names, addresses and written statements of the witnesses, that the prosecution wishes to call and list the exhibits, if any, that the prosecution wishes to put in evidence at the trial. Photocopies of the list of the witnesses, the written statements they made to the police and the list of exhibits, if any, are usually attached to the information filed by the state. The real essence of attaching these proofs of evidence is to put the accused on notice in the case of **DENLOYE V MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL** 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 the Nigerian constitution.

ARRAIGNMENT AND PLEA

Arraignment according to *Kajubo v state*, is the 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 and to ask him whether he pleads guilty or not guilty. In other words, arraignment means, the registrar or other officer of court calling the accused by 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 instantly. This is called the arraignment of a person before a court.

An accused person may plead as follows

1. **Autrefois acquit:** this 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 states that a person cannot be tried twice for the same offence.
2. **Autrefois convict:** this means that he has been tried and convicted for the same offence on a previous occasion. He cannot be tried again. This is also a rule against double jeopardy.
3. **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. This is because the law provides that when an accused stands mute, a plea of not guilty must be recorded by the court.

PLEA BARGAINING

Plea bargaining can also be referred to as plea negotiation is negotiating 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 quick disposal of the entire criminal proceedings. The idea of plea bargain is not new to the Nigerian system. Thus, an accused person who does not intend to plead guilty to the serious offence charged may plead guilty to a lesser offence which is not on the indictment or information. The accused is then sentenced in respect of this lesser offense. A trial judge may also allow an accused person change his plea, from guilty to not guilty, and avoid passing of the sentence thereon, otherwise a refusal to allow a change of plea at that point in time usually becomes an issue for appeal.

MENTALLY ILL PERSONS

Some accused persons may be too mentally ill or disordered to make a plea to a criminal charge. This is referred to as **unfitness to plead**. Such accused person may then be referred for psychiatric examination and treatment. In a proven or clear case of murder, if the accused is unfit to make a plea of insanity, a variety of hospitals and guardianship orders may be made and the accused may be committed to a mental hospital for necessary care. Alternatively, the defense may put up the defense of insanity, in the case of **Kure v state, Udofia v state**. The leading case on insanity is **R v M'naughten** (1843). In this case, the accused person was charged with murder. A plea or 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 grounds of insanity.

PROSECUTION

The counsel for the prosecution always open 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 are in turn cross-examined by the defense counsel and reexamined 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. 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. The burden of proof which rests on the prosecution to prove the guilt of the accused beyond reasonable doubt is never lowered or watered down because it is better for a guilty person to go scot free and escape justice, than for an innocent person to be unjustly punished, due to a lower standard of proof. The proof beyond reasonable doubt has deep roots in Roman law. The Romans had it as a maxim that it is better for a guilty person to go unpunished than for an innocent person to be condemned.

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 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 council makes the submission by addressing the court. The prosecuting counsel usually replies. The judge then makes a ruling on this submission.

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

However, where the judge rejects the no case submission, on 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. 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 often usually convict the accused. In the case of **Ali v state**, 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 close for the prosecution and the failure of 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 and are cross examined by the prosecuting counsel and reexamined by the counsel for the 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.

CLOSING ADDRESS

After the close of the case for the defense, 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 sums up or reviews the cases on both sides.

He points out the strength of the case for the prosecution and identifies the weaknesses if any of the defense and urges the court to convict the accused as charged. However, the general rule of law is that the case of the prosecution must succeed on its own. In criminal proceedings, the burden of proof on the prosecution is proof beyond reasonable doubt in the case of **Okoro v state**. It must be proved beyond reasonable doubt but not beyond the shadow of doubt. The case for the prosecution must succeed on its own strength. Thus the case for the prosecution cannot rely on the weaknesses 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 weaknesses of the case of the prosecution. If the case for the prosecution is a pack of lies and a mere fabrication, conjecture, imaginative, malicious, frivolous, and vexatious and an abuse of court process, he calls it so. If a prima facie case has not been made out, or sufficient evidence has not been adduced as required by law to discharge the burden of proof that rests on the prosecution in criminal proceedings. He points it out to the court and finally, he urges

the court to discharge and acquit the accused on 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.

JUDGMENT

After the closing addresses by the counsel 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 begins to deliver his judgment on the case. However, where a trial is by summary procedure, the judge may deliver judgment there and then, or he may retire to his chamber to consider judgment and resume sitting to deliver it on that same day, as the case may be, or on an adjourned date.

DISCHARGE

Where an accused person has not being found guilty, on merit, the judge will dismiss the information or charges and accordingly discharge and acquit the accused person as provided under the criminal procedure law in the case of **kalu v state**. On the other hand, if the prosecution failed on a technicality, the court will discharge the accused and not acquit him.

Where a person has not being 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, case of **ikomi v state**
4. Order of compensation

SENTENCE

Where an accused is found guilty, before passing sentence an allocutus, plea for mercy or leniency is usually made by the counsel for the defense. After the allocutus, the judge passes sentence on the accused.

TYPES OF SENTENCES THE COURT MAY IMPOSE

Under the criminal procedure act or law, the court may pass some orders

1. **Imprisonment:** imprisonment includes any restraint of a person's liberty by another. There is a debate as to whether imprisonment has succeeded in curbing crimes, as a result, many countries are resorting to more effective ways to sanction crimes.
2. **Fine:** a fine is a sum of money which a court orders an offender to pay to the government treasury as a penalty for the commission of an offense. Some offences are required to pay for fine instead of imprisonment but where a crime is aggravated, the written law creating the law may stipulate that only imprisonment should be used as punishment or the imposition of both fine and imprisonment.

3. **Death sentence:** this is a judgment of court which stipulate that an offender should suffer death for the offense committed. In Britain, death penalty has being abolished. An offence which carries a death offence is a **capital offence**. Some are, **armed robbery, treason, murder**.

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An action may be commenced in a high court by 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 of claim:**

The writ of summons is used in commencing a civil action against a person. It is a formal document addressed to the defendant requiring him to appear before the court if he/she wishes to defend himself against the plaintiff's claim. A writ is usually accompanied by an endorsement of the claim or a statement of claim so that the defendant is made aware of the claim against him or her. A writ of summons when filed is sealed and stamped with the courts name on it for service by a bailiff on the defendant. It is used for contentious matters that deal with disputes.

Originating summons may be in **inter-partes** or **ex-parte** of the rules of court. Originating summons is heard based on affidavits filed in support. Originating summons cases are heard by registrars or judges in chambers or in an open court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support to the originating summons. Witnesses may be called to give testimony and pre-trial conferences may or may not be conducted. An application can be made to convert an originating summons into a writ at any stage of proceedings. Alternatively, the registrar or judge can decide to convert an originating summons into a writ without any applications from the parties. Originating summons is used for non-contention actions. Actions relating to contract, deed, will.

A statement of claim is a pleading served by the plaintiff in a high court action, containing the allegations made against the defendant and the relief sought by the plaintiff.

2. **Ex parte motion**, with or without a writ of summons and a statement of claim, which may be filed later;

Ex parte refers to a motion or petition by or for one party. an ex parte judicial proceeding is one where the opposing party has not received notice nor is present. ex parte hearings, petitions, or motions are usually temporary orders, such as a restraining order or temporary custody, pending a formal hearing or an emergency request for a continuance.

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 debts in a federal high court and so forth:

Petition can also be the title of a legal pleading that initiates a legal case. The initial pleading in a civil lawsuit that seeks only money (damages) might be called (in most U.S. courts) a complaint. An act on petition is a 'summary process' used in probate,

ecclesiastical and divorce cases, designed to handle matters which are too complex for simple motion. The parties in a case exchange pleadings until a cause for hearing is settled. According to black's law dictionary specifies it as an obsolete method used in admiralty cases. It deals with binding of a company, election petitions, and divorce.

REMEDY AVAILABLE FOR THE ACCUSED AFTER THE IMPOSITION OF SENTENCE

A **legal remedy**, also referred to as **judicial relief** or a **judicial remedy**, is the means with which a court of law, usually in the exercise of civil law jurisdiction, enforces a right, imposes a penalty, or makes another court order to impose its will in order to compensate for the harm of a wrongful act inflicted upon an individual.

The **term sentence or judgment** may denote the action of a court of criminal jurisdiction formally declaring an accused the legal consequences of guilt to which he has confessed or of which he has been convicted. Generally, therefore, a sentence is the punishment inflicted upon a convict at the end of the trial. A sentence is the pronouncement by the court, upon the accused after his conviction in criminal prosecution, imposing the punishment to be inflicted.

Sentence can only be imposed in the manner prescribed by the law after the establishment of proof of committing an offence beyond reasonable doubt.

Current remedies for prosecutorial misconduct, such as reversal of conviction or dismissal of charges, are rarely granted by courts and thus do not deter prosecutors effectively. Further, such all or nothing remedial schemes are often problematic from corrective and expressive perspectives, especially when misconduct has not affected the trial verdict. When granted, these remedies produce windfalls to guilty defendants and provoke public resentment, undermining their expressive value in condemning misconduct. To avoid these windfalls, courts refuse to grant any remedy at all, either refusing to recognize violations or deeming them harmless.

Constitutional remedies are not solely designed to deter misconduct, of course, many are designed to compensate victims of rights violations or to express condemnation of wrongdoing. **Sentence reduction can be tailored in magnitude**, offering more precision in compensating the defendant and making it less likely that the expressive message will be clouded by the perception of a windfall.

Criminal cases involving defensive invocation of procedural rights, courts tend to be less explicit in invoking the make whole principle, sometimes entirely eschewing corrective rationales for remedies.

Most times, the court will only reduce the weight or seriousness of the sentence. This term is referred to as **MITIGATION**.

