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 **QUESTION 1**

**CRIMINAL PROCEDURE AT THE HIGH COURT**

 **From Arraignment to Sentence**

**INTRODUCTION**

In carrying out criminal actions in the high court, there are certain procedures to be followed for such action to be a success. In the legal spectrum, it is termed, ‘criminal procedure’. Criminal Procedure can be defined as the method of commencing, conducting, and concluding criminal proceedings in the court of law.

Different courts have their different procedures. For the purpose of this assignment, the procedures for criminal actions at the High Court shall be considered. The stages for criminal procedure in High Court are[[1]](#footnote-2);

1. Indictment
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. Defence
9. Closing address
10. Judgment
11. Discharge
12. Finding of guilty and imposition of sentence

Now, we shall consider these stages from arraignment to imposition of sentence.

1. **ARRAIGNMENT AND PLEA:** At this stage, the name of the accused will be called out by the registrar or any other officer of the court and the alleged crime or indictment will be read out to them in order for them to make a plea. The **Criminal Procedure Act CAP C42 LFN (2004)** makes provisions for what an accused facing arraignment can plead. The accused may plead either of the following:
2. **Autrefois acquit:** by virtue of **section 221(1)(b) Criminal Procedure Act,** a person may plead that he has been tried for the same offence before and has been pardoned or acquitted. This is similarly known as plea against double jeopardy.
3. **Stand mute:** in the provisions of **section 220 Criminal Procedure Act,** it is provided that where an accused stands mute, that is, without saying anything, it is recorded as plea of not guilty by the court.
4. **Plead guilty to a lesser offence:** an accused can plead guilty to a lesser offense other than the accusation made against him. In the case of **Nwachukwu v State (1986) 2 NWLR Pt. 25**, the accused pleaded a lesser offence and the prosecution accepted it and dropped the instant charge and the court passed its sentence accordingly.
5. Plead guilty
6. Plead not guilty
7. **PLEA OF GUILTY:** if the accused pleads guilty, the court shall record his plea as nearly as possible in the words used by him and if satisfied that he intended to admit the trust of all the essentials of the offence of which he pleaded guilty, the court shall convict him of that offence and pass sentence upon him or make an order against him unless there shall appear sufficient cause to contrary. This is in accordance with **section 218 Criminal Procedure Act.**
8. **PLEA OF NOT GUILTY:** Every person by pleading generally the plea of not guilty shall without further form be deemed to have put himself upon trial. In other words, when a person pleads not guilty, the trial shall proceed. (**section 217 Criminal Procedure Act**)
9. **PROSECUTION:** **Section 240 Criminal Procedure Act** provides that after the accused person has pleaded not guilty to the charge, the person appearing for prosecution may open a case against the accused and then adduce evidence in support of the charge. He may call evidence by calling a witness and tendering the exhibits they may have. The burden of proof is on the prosecution to proof beyond reasonable doubt. Failure to do so will lead to dismissal of the charge and the accused shall be acquitted.
10. **SUBMISSION OF ‘NO CASE TO ANSWER’:** After the prosecution has been concluded, the defense council makes a submission that there is no case to be answered. This submission is done by addressing the court that the prosecution has not provided sufficient evidence that the accused is guilty. After which, the prosecution gives a reply to the submission and the judge gives a ruling. If the ruling is in favor of the defense, then the accused shall be discharged. On the other hand, if the ruling is in favor of the prosecution, then the trial will proceed and the accused will have to state his case by giving evidence. If the accused chooses to stand by his no case submission then he shall be convicted.
11. **DEFENCE:** In this stage, the accused and his witnesses, if any, are called for chief examination by the defence counsel, cross examination by the prosecuting counsel and re examination by the defence counsel.
12. **CLOSING ADDRESSES:** here, the counsels from both sides are to address the court from their filed written addresses. The prosecution is the first to address the court. In his address, he is to point out the strengths of his case and the weaknesses of the defence. On the other hand, the defense counsel is to point out the weaknesses of the prosecution in his address and then urges the court to discharge and acquit the accused.
13. **JUDGMENT:** after the closing address by both counsels, the judge fixes a date for judgment to enable it evaluate the totality of evidence in the case. However, where the trial is summary procedure, the judge may deliver the judgment there and then or retire to chambers to consider the judgment and still call for sitting that same day. This is similar to what occurred in the case of **Okonji v State (1987)1 NWLR pt. 52** where judgment was delivered immediately because the trial was a summary procedure. In the judgment, the judge sums up, weighs or reviews the evidence of both sides. He also gives reasons for his judgment.
14. **DISCHARGE:** by virtue of **section 301 Criminal Procedure Act,** where an accused person has not been found guilty, on merit, the judge will dismiss the charges and accordingly discharge and acquit the accused person. Also, if the prosecution failed on a technicality, then the person will be discharged but not acquitted.
15. **IMPOSITION OF SENTENCE:** after a person is found guilty, before passing the sentence, an alloctus, a plea for mercy or leniency is usually made by the counsel for defence. After that, the judge passes the sentence.

**TYPES OF SENTENCES THE COURT MAY IMPOSE**

1. **Imprisonment, usually with hard labou**r: this involves detention of the offender in prison and restraining his liberty. **Section 377-383 of Criminal Procedure Act** provides for all rules pertaining to imprisonment.
2. **Fine**: this is a sum of money which a court orders the offender to pay to the government treasury as penalty for commission of the offence. **Section 389 of Criminal Procedure Act** provides that a person convicted of a crime may be sentenced to pay a fine. Also, imprisonment may be imposed as punishment for default to pay the fine.
3. **Death sentence**: this is a judgment of court which stipulates that the offender should suffer death for the offence committed. Only capital offences carry death penalties. These offenses are treason, armed robbery, and murder. Under the criminal procedure Act, **Section 367-371 of Criminal Procedure Act** provides for the rules guiding death sentence. It provides that death penalty is usually carried out by hanging on the neck except the law stipulates otherwise. It also provides that a pregnant woman cannot be sentenced to death, but rather, sentenced to life imprisonment. Another rule is that death sentence cannot be imposed on someone who, at the time of commission of the offense, has not attained age seventeen.

It is also essential to avert our minds to the fact that the provisions of the constitution allow for exercise of prerogative of mercy by either the President or the Governor (depending on if it is a federal or state offense)

1. **Caning**: this is usually imposed in addition to other sentences. The law provides that caning cannot be imposed on a male of 45 years and above and a female.[[2]](#footnote-3) The caning must be done with light rod and the number of strokes must not exceed 12.[[3]](#footnote-4)
2. **Deportation**: if the person is not a citizen of Nigeria, the person may be expelled from Nigeria to a place outside Nigeria, usually the country of origin of the person involved in the crime.

Apart from imposing sentences, the courts may also give an order which must be adhered to. The orders are;

* Binding over order (and suspended sentence and community service in western countries)
* Order for detention during the pleasure of the President or Governor
* Order for disposal of property
* Order for costs
* Award of damages
* Probation order

**QUESTION 1B**

The remedy available to a person whom a sentence has been imposed is a **right of appeal**. The provisions of the Constitution of Federal Republic of Nigeria allows that a person whom a sentenced has been imposed on has a right of appeal at both the Court of Appeal and Supreme Court. The Court of Appeal, for instance, has the jurisdiction to hear and determine appeals from decisions in any criminal proceedings in which the Federal High Court or state high court has imposed a sentence of death.[[4]](#footnote-5)

Likewise, the Supreme Court of Nigeria has the jurisdiction to hear and determine appeals from decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of Appeal has affirmed the death sentence imposed by any other court.[[5]](#footnote-6)

In other words, a person whom a sentence has been imposed on is still privileged to a remedy which is the right of appeal.

**QUESTION 2**

**METHODS OF COMMENCING CIVIL PROCEEDINGS IN THE HIGH COURT**

In order to commence a civil action at the High Court, there are various forms or methods. That is, some papers are to be filled out and filed by the party instituting the action. These methods usually depend on the type of action that is instituted. The methods are;

1. Writ of summons
2. Originating summons
3. Petitions
4. Originating motion on notice; or any method required by other rules of court governing any special subject matter.
5. **WRIT OF SUMMONS:** This document is filed, sealed, or stamped with the courts name on it for service by a bailiff on the defendant to give him notice of the claim made against him and requiring him to acknowledge service and to defend it if he does not admit the claim. **Order 5 rule 1 High Court of Lagos Civil Procedure Rules (2019)** provides that a writ of summons shall be the form of commencing all proceedings where a claimant claims relief of remedy for a civil wrong, damages for breach of duty and damages for personal injury to or wrongful death of any person. Also, a writ of summons is filed where the claim is based on or includes an allegation of fraud and where an interested person claims a declaration.

The writ of summons is to be accompanied by some documents or else it will be nullified. **Order 5 rule 2 (a-e) High Court of Lagos Civil Procedure Rules (2019)** lists out these documents. The documents to be accompanied by a writ of summons are;

1. Statement of claim
2. List of witnesses to be called at trial
3. Written statements on oaths of witness except witness on subpoena
4. Copies of documents to be relied on at the trial
5. Pre-Action Protocol Form 01 with necessary documents.
6. **ORIGINATING SUMMONS: Order 5 rule 1 High Court of Lagos Civil Procedure Rules (2019)** makes provisions for proceedings to be commenced by Originating Summons. It provides that an originating summon may be used where;
7. A person is claiming a legal or equitable right under a Deed, Will, enactment or any written instrument.
8. A person is claiming legal or equitable right in a case where a question on whether he is entitled to the right is to be determined and for a declaration as to the right claimed.

In filing originating summons, some documents are to accompany it. **Order 5 rule 3 High Court of Lagos Civil Procedure Rules (2019)** lists out these documents. The documents are as follows:

1. An affidavit setting out the facts relied upon
2. Exhibits to be relied upon
3. Written address in support of the application
4. Pre-Action Protocol Form 01 with necessary document
5. **PETITIONS:** 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 is usually used in marriage proceedings, winding up of companies or even for election matters where the results of elections are challenged. **Section 410(1) of Companies and Allied Matters Act (2004)** provides that an application to the court for winding up shall be made by a petition. Also, **section 54(1) Matrimonial Causes Act** provides that proceedings for dissolution of marriage to be brought through petitions. **The Electoral Act (2010)** also provides that petitions are the only modes of procedure in election litigations.

A petition, when filed, shall be accompanied by:

1. The petitioner’s petition
2. List of witnesses to be called
3. Written statements on oaths of witness except witness on subpoena
4. Copies of documents to be relied on

The High Court Rules of Lagos stipulate that a petition shall be presented by being left with the registrar and that the party presenting it shall hand a copy to the registrar. These rules further require that the original should be sealed with the seal of the court and filed. Service is effected in the same manner as the writ of summons. A respondent normally files a reply to the petition and at the trial, oral evidence is taken.

1. **ORIGINATING MOTIONS:** This is used where a statute has not provided for it. Originating motion is used when the facts are not in dispute and it is used when the action relates to the interpretation of a document. In an application for prerogative orders of certiorari, prohibition, mandamus, Habeas Corpus or enforcement of Fundamental Human Right, originating motion may be used. Its use was highlighted in the case of **Chike Arah v AG Anambra State & Ors. (1977) 5 SC 161**, where it was held that the appropriate method of making an application , where the statute provides that such an application may be made but does not provide for any special procedure, is an originating motion. Also, where it is sought to enforce a right conferred by statute, but in respect of which no rules of practice and procedure exist, the proper procedure is motion on notice.

**BIBILOGRAPHY**

1. Malemi, .E. (2012); *The Nigerian Legal System; 3rd edition,* Princeton Publishing Company, Lagos.
2. Criminal Procedure Act CAP C42 LFN (2004)
3. High Court of Lagos Civil Procedure Rules (2019)
1. Malemi, .E. (2012); *The Nigerian Legal System; 3rd edition,* Princeton Publishing Company, Lagos. Page 449. [↑](#footnote-ref-2)
2. *Section 385 Criminal Procedures Act* [↑](#footnote-ref-3)
3. *Section 386(1) Criminal Procedures Act* [↑](#footnote-ref-4)
4. Section 241 (1) (e) Constitution of Federal Republic of Nigeria 1999 as amended [↑](#footnote-ref-5)
5. Section 233 (2) (d) Constitution of Federal Republic of Nigeria 1999 as amended [↑](#footnote-ref-6)