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**1a**

**Arraignment**

When a criminal charge is brought against an accused by the State, he is taken to court and arraigned. The allegations are read out as contained in the charge sheet and the accused will then be required to enter a plea. The court must ensure that the accused understands the allegations read to him. In situations where several accused persons are charged jointly on the same charge sheet, each accused person must plead individually to every count alleged against him. An accused cannot enter a plea on behalf of other accused persons.

An accused person may fail to plead to the charge read out against him. This may be as a result of malice or as a result of visitation of God (a milder expression for inability to plead as a result of insanity). Where the court is able to ascertain the soundness of mind of the accused and finds that his failure to plead was borne from malice, the court must enter a plea of not guilty and proceed with the trial. Such a plea shall have the same force and effect as if the accused had actually pleaded same – this is as provided in sections 220 of the Nigerian Criminal Procedure Act (CPA) and 188 of the Criminal Procedure Code (CPC). In the Nigerian case of Yesufu v. The State (1972) 12 SC 143, four persons were charged and convicted of murder and robbery. The second and fourth accused persons failed to plead. The trial judge conducted a trial within trial to determine whether their muteness was out of malice or of visitation of God. The trial within trial revealed that they were sane and were only mute out of malice. Thus a plea of not guilty was recorded for them and they were convicted. Their appeal against the conviction was dismissed on the ground that the trial court was right in entering a plea of not guilty for them as they had failed to plead out of malice.

Where the accused is unable to plead to the charge because he is deaf or dumb, the court must endeavor to communicate with him and obtain his plea in a manner understood by him; either by sign language, lip reading or writing.

An accused person may enter any or a combination of any of the following pleas:

**1.** **Plea to the jurisdiction of the court:** the accused may challenge the jurisdiction of the court to try him. If the court rules that it has no jurisdiction, it should dismiss the charge and discharge the accused. The accused can then be rearrested and arraigned before a court vested with competent jurisdiction.

**2. Plea to the defect in the charge:** the accused may state that the charge is in contravention of any or all of the four rules of drafting charges. If the plea of the accused is sustained, the accused may be discharged. Alternatively, the court may allow the amendment of the original charge and proceed with the trial, provided that the accused would not suffer any prejudice.

**3. Plea of pardon: for instance:** the Constitution of the Federal Republic of Nigeria 1999 (as amended), empowers the President and Governors to grant a pardon to any person who has been convicted of an offence. The pardon may be absolute or conditional. In pleading to a charge, an accused can plead that he has been pardoned for such an offence. Where he is able to present the instrument of pardon before the court, the charge must be dismissed and the accused acquitted but where the plea is rejected, the accused will be required to plead to the charge against him.

**4. Plea of autrefois acquit or autrefois convict:** these pleas are succinctly provide for in section 36(9) of the 1999 Constitution (as amended). The section provides that:

No person who shows that he has been tried by any court of competent jurisdiction for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

Section 181 of the CPA provides inter alia: a person who has once been tried by a court of competent jurisdiction for an offence and acquitted or convicted of such offence shall not, while such acquittal or conviction remains in force, be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made before the court by which he was acquitted or convicted.

For a plea of autrefois acquit or autrefois convict to succeed, the following factors must be proved to the satisfaction of the court:

* That the accused had previously been tried on a criminal charge – the charge for which the accused was tried must be an act or omission constituted under a written law as an offence.
* The former trial must have been conducted before a court of competent jurisdiction.
* The trial must end with an acquittal or a conviction – where the trial ends with a discharge, the trial has not ended with an acquittal or conviction and so the accused cannot plead autrefois acquit or autrefois convict to any subsequent action filed against him.
* The criminal charge for which the accused was tried should be the same as the new charge against him or alternatively the new charge should be one in respect of which the accused could have been convicted at the former trial, although not charged with it.

**5. Plea of guilty:** the accused may plead guilty to the charge read out against him. Section 218 of the CPA provides that if the accused pleads guilty to any offence with which he is charged, 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 truth of all the essentials of the offence of which he has pleaded guilty, the court shall convict him of that offence and pass sentence upon or make an order against him unlessthere shall appear sufficient cause to the contrary.

For the court to convict on a plea of guilty entered by the accused, the following conditions must be satisfied:

* That the court must be satisfied that the accused understands the charge against him.
* The court must hear the facts alleged by the prosecution as constituting the offence charged. The court should ask the accused if he admits all the facts alleged by the prosecution.
* The court must be satisfied that the accused intended to admit the commission of the offence charged. The plea of the accused must therefore be an unequivocal plea of guilty.
* The facts stated by the prosecution and admitted by the accused must sustain the charge against the accused.
* That when an accused pleads guilty to a capital offence, the court must not convict on that plea, but must record a plea of not guilty. Section 187(2) of the CPC provides that if the accused pleads guilty, the plea shall be recorded and he may in the discretion of the court be convicted thereon, unless the offence charged is punishable with death, when the presiding judge shall enter a plea of not guilty on behalf of the accused.

**6. Plea of not guilty:** the accused may plead not guilty in which case he is deemed to have put himself up for trial. This means that issues are now joined and the prosecution has to prove his case. In another vein, the accused may plead not guilty to the offence charged but guilty to another offence. Where the court can convict for the offence to which he pleaded guilty, it may with the prosecution’s consent accept the plea and go ahead to convict the accused on it. However, if the court rejects the plea for the other offence and proceeds to try the accused based on the charge against him and he is found not guilty, the court cannot convict of that other offence to which his plea of guilty was rejected.

**7. Plea of not guilty by reason of insanity:** with this plea, the accused person states that as at the time of commission of the alleged offence, he was insane. Where this plea is entered, the court must commence the trial and determine whether the accused committed the alleged offence and whether he was insane at the time of committing the offence. If the accused is found not to have committed the offence, he must be acquitted and the court will not decide the issue of insanity but where the accused is found guilty of the offence and found to have been sane at the time of the commission of that offence, he should be convicted and charged accordingly. If the accused is found guilty and found to have been insane at the time of committing it, he should be found not guilty by reason of insanity. Where a verdict of not guilty by reason of insanity is passed, the court must order that the accused be remanded or detained at the Governor’s pleasure.

The essence and importance of pleas in criminal proceedings cannot be overemphasized. Pleas are meant to determine the tone and direction of criminal trials from the onset. It cannot in any way or form be ignored or wished away. This is because pleas are at the root of determining whether an accused understands the reason for his arraignment and whether he sees himself as being guilty or not guilty. As a matter of fact, where pleas are ignored or improperly taken, gross miscarriage of justice would occur.

 **Preliminary Hearing or Grand Jury Proceedings**

The government generally brings criminal charges in one of two ways: by a "bill of information" secured by a preliminary hearing or by grand jury indictment. In the federal system, cases must be brought by indictment. States, however, are free to use either process. Both preliminary hearings and grand juries are used to establish the existence of probable cause. If there is no finding of probable cause, a defendant will not be forced to stand trial.

A preliminary hearing, or preliminary examination, is an adversarial proceeding in which counsel questions witnesses and both parties makes arguments. The judge then makes the ultimate finding of probable cause. The grand jury, on the other hand, hears only from the prosecutor. The grand jury may call their own witnesses and request that further investigations be performed. The grand jury then decides whether sufficient evidence has been presented to indict the defendant.

## Pre-Trial Motions

## Pre-trial motions are brought by both the prosecution and the defense in order to resolve final issues and establish what evidence and testimony will be admissible at trial.

## Trial

At trial, the judge or the jury will either find the defendant guilty or not guilty. The prosecution bears the burden of proof in a criminal trial. Thus, the prosecutor must prove beyond a reasonable doubt that the defendant committed the crimes charged. The defendant has a constitutional right to a jury trial in most criminal matters. A jury or judge makes the final determination of guilt or innocence after listening to opening and closing statements, examination and cross-examination of witnesses and jury instructions. If the jury fails to reach a unanimous verdict, the judge may declare a mistrial, and the case will either be dismissed or a new jury will be chosen. If a judge or jury finds the defendant guilty, the court will sentence the defendant.

## Sentencing

In all criminal trials, where a conviction is secured, the next logical step would be sentencing. Sentencing is a very broad field accommodating different approaches and ideas. It is an exercise of a discretionary power that is little guided in a country such as Nigeria. Hence the power presents sentencers with a very wide playing field and accommodates individual inclinations and approaches or solutions to the same problem.

The criminal justice system in Nigeria starts to run with the commission of a crime and continues with subsequent interventions by agencies of the system with the arrest, arraignment, trial, sentencing and punishment of the offender. A criminal trial involves two processes both of which are important to the society and the offender. Firstly, there is the process of determining whether the defendant/accused did the act or made the omission alleged against him; if he did, then the second leg is that of sentencing him for his wrongdoing. In some legislation, the words sentence and judgments are used as if they were synonymous.

However in actual fact, the use of the word judgment is of a wider scope than the word sentence. In simple legal parlance therefore, the word “sentence is an order which is definite in its nature, type and quantum, whether it is made mandatory by law or it is fixed by the court or tribunal at its discretion (made at the conclusion of a criminal trial consequent upon finding of guilt).

A sentence of the court can be defined as a definite disposition order issued by a court or other competent tribunal against a person standing trial at the conclusion of a criminal trial. This is subsequent to the finding of guilt against him and must be an order which is definite in its nature, type and quantum. The Nigerian Criminal Code and the Penal Code as well as other offence-creating statutes specify the quantum of sentences, while the sentences themselves find their legitimacy in the criminal Procedure legislations applicable at the states and federal levels.

The quantum or degree of sentences is specified in the offence-creating laws and this is done with or without judicial discretion. For example, certain sentences can be made mandatory by law, leaving no discretion to the courts as is the case of death penalty for all the offences for which it is stipulated as the sentence or punishable with specified single terms of imprisonment. On the other hand, certain sentences are provided with specification of a range in each instance of a minimum term and a maximum term of imprisonment, while others just specify a statutory minimum punishment or a statutory maximum punishment.

Sentencing generally aims at the protection of the society through prevention of crime or reform of the offender which may be achieved by the means of deterrence, elimination or reformation/rehabilitation of the offender. The justification is that imposing the penalty will reduce the future incidence of such offences by preventing the offender from re-offending or correcting the offender so that the criminal motivation or inclination is removed or by discouraging or educating other potential offenders. These are known as reductive justification. As such, the key purpose of sentencing includes:

1. Punishment
2. Deterrence (general and specific)
3. Rehabilitation
4. Denunciation and
5. Protection of the community.

These purposes overlap and none can be considered in isolation from the others when determining what an appropriate sentence is in a particular case. They are guide posts to the appropriate sentence but sometimes they point in different directions.

Sentencing guidelines are designed to indicate to judges the expected sanction for particular types of offences. They are intended to limit the sentencing discretion of judges and to reduce disparity among sentences given for similar offences. Although statutes provide a variety of sentencing options for particular crimes, guidelines attempt to direct the Judge to more specific actions that could be taken.

Here are some basic rules governing sentencing:

* Separate offences charged together must each receive a separate sentence but if they all form part of the same criminal action, the sentence will be concurrent;
* Where a term of imprisonment in default of fine is ordered, it cannot run concurrently with a sentence of imprisonment imposed at the same time or with default sentence in respect of another fine;
* A fine must not be too heavy for the offender to pay;
* Separate fines imposed on different counts at the same trial are to be cumulative. But the aggregate must be within the Court’s jurisdiction;
* While the age of the offender, being a first offender, pleading guilty to the charge, may all sustain a plea in mitigation of sentences. Conversely, the fact of previous conviction, the prevalence of the offence, the seriousness of the offence, the non repentant attitude of the offender and the adverse effect of the offence on the victim are all factors that aggravate sentence.

Penal statutes often provide for the maximum punishment for committing an offence; this maximum is not mandatory, the court has discretion to impose punishment that is less than the maximum, and the court is not bound to give reasons for doing so. The appellate court shall not interfere with the discretion of the court to impose punishment unless it is made a ground of appeal.

The type of Sentences that may be imposed on a convicted person includes:

**1.  Death penalty:** see Section 319 of the Criminal Code Act Cap. C38 Laws of the Federation of Nigeria, 2004; see also Section 220 of the Penal Law Cap 89 Laws of Northern Nigeria, 1963.

**2. Imprisonment:** this can be defined as a term of judicial sentence available for a convicted offender of adult age, involving incarceration in prison for either life or a specified period of time. A term of imprisonment may be imposed with or without hard labour. Where no specific order is made, it is deemed to be with hard labour. See Sections 377, 381 and 395 C.P.A. Concurrent and consecutive sentences are also considered where the accused had been previously convicted and sentenced, the new sentence may commence at the expiration of a current sentence previously imposed on the accused. In R v Savage 20 N.L.R. 55, it was held that in the situation above, the new term could not be ordered to commence at the expiration of more than one term of imprisonment. Where there are sentences in case of conviction of several offences at one trial and the sentence in respect of each offence is to run concurrently, the aggregate term of imprisonment shall not exceed 4 years or the limit of jurisdiction of the trial court whichever is greater. But under section 24(2) of the CPC, the court may impose a sentence twice its limit of jurisdiction to punish.

**3. Fines:** Sections 382 of the CPA and 23 of the CPC provide for the power of a court to impose fine in lieu of imprisonment. A fine is a payment of money ordered

by a court from a person who has been found guilty of violating a law. It may be specified as the a punishment for an offence, usually a minor offence, but could also be specified and used as an option to imprisonment for major crimes or a complement to other punishments specified for such crimes. See section 129 Criminal Code, Section 389 C.P.A, Section.74. Penal code. In Price Control Board v Ezema (1982) 1 N.C.R. 7, it was held that even when the law creating an offence provides that the accused shall be ‘sentenced without option of fine’ the court still has discretion to impose a fine. But where the law provides for the minimum (not maximum) period of imprisonment to be imposed for the commission of an offence, the court cannot impose fine in lieu of imprisonment.

Assessment of fine- Section 382(2) & (3) of the CPA provides that:

* In the case of a high court, the amount of the fine shall be in the discretion of the court, and any term of imprisonment imposed in default of payment of the fine shall not exceed two years
* In the case of magistrate courts, the amount of the fine shall not exceed the limit of the scale provided for by the relevant law establishing the court or any other law. See Section 13 to 18 CPC and Goke v Police (1957) W.R.N.L.R. 80

Imprisonment in default of payment of fine- Section 392 of the C.P.A provides procedures a court must follow before an accused can be imprisoned in default of payment of fine:

* Issue a warrant of commitment
* Allow time (days of grace) for the payment of the fine
* Direct payment of the fine to be made by instalments
* Provide security either with or without sureties for the payment of the fine.

Under the C.P.C before an accused can be imprisoned in default of payment of fine, the court may order the attachment of his moveable and immovable properties. If the properties attached cannot satisfy the fine, the accused may be imprisoned subject to the limit contained in section 74 of the Penal Code.

**4. Caning or whipping:** Caning is another form of punishment which the courts are empowered to impose although it is important to note here that as a form of sentence, it has generally fallen into disuse. Caning may be considered for use as a punishment, or it may be in lieu of any punishment or it may be in addition to other punishment. The courts may pass a sentence of caning of up to twelve (12) strokes. Where a person is convicted of one or more offences at one trial, the total number of strokes awarded must not exceed 12.The number of strokes passed must be specified in the sentence.  The following categories of persons cannot be subjected to caning:

* Persons above the age of 45
* Women
* In eastern Nigeria, only a juvenile offender can be subjected to caning. See Section 386(1) C.P.A and Section 77 P.C.

**5. Forfeiture:** forfeiture may be more in the nature of an ancillary order made after conviction than a substantive sentence. It is usually imposed in the case of offences involving bribe, where the property which has changed hands in the course of commission of such an offence may be ordered to be forfeited to the state. See Section 19 of the Criminal code and Section 111 Penal Code.

**6. Hadi Lashing:** this is provided for only in the states of northern Nigeria under the C.P.C. It can only be inflicted on a Muslim. Hadi lashing can be inflicted only where the  offender is guilty of any of the following:

* Adultery
* Drinking alcohol
* Defamation
* Injurious falsehood.

Hadi lashing is inflicted in an enclosed place and the public is permitted to watch. It is a kind of symbolic punishment meant to disgrace rather than inflict pain on the accused.

There are many different factors that can affect legal sentencing, including the type of crime, the criminal history of the convict, the circumstances of the crime and the rules of the legal system.

In addition we have two broad discretionary factors that affect the passing down of sentences by a court. These are mitigating factors which act to reduce the sentence to be handed down and aggravating factors which acts to increase the sentence or makes the mitigating factors inapplicable. Most sentencing decisions typically include the weighing of these aggravating and mitigating factors, insofar as they exist, in order to individualise the sentence with respect to the offender and the circumstances of the offence(s).

**1b**

Generally on remedy available to the accused after imposition of sentence in criminal matters where the defendant is found guilty of the alleged crime, the only ‘remedy’ was sentencing. Victims of crimes are often neglected and left without any form of compensation. The ACJA has however brought succor to victims of crime by broadening the powers of the court to award commensurate compensation in deserving cases to victims of crime[27].

Further, the Act provides that a court may, within the proceedings or when passing judgment, order the convict to pay compensation to any person injured by the offence, a bonafide purchaser for value, or for defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence[28].

This is a very commendable provision of the law in that it does not only seek to punish the offender, but also to ameliorate the hardship occasioned by the commission of the offence thus, serving justice in both ways.

**2**

Commencement of a civil action is the process taken to institute an action before a competent court to determine the issues between parties.

Essentially, there are 4 modes of commencing a civil action in court in Nigeria namely;

* By Writ of Summons,
* By Originating Summons,
* By Originating Motion and
* By Petition.

Each of these modes is dependent on the specific nature of cases.

**Factors to be considered before commencing a civil suit**

Before civil actions can be filed in Court, there are factors to be considered by the litigant (person filing the action). Some of these factors can be summarized as follows:

* **Cause of Action:** these are the series of events or events that gave rise to a civil action. It forms the basis upon which a person is entitled to obtain a remedy against another in Court. The cause of action is founded in the relief or claim sought by the litigant.
* **Jurisdiction:** this factor is important to decide the court to commence the civil action. The law is clear on the importance of jurisdiction. Where a matter is filed in a wrong jurisdiction, it is liable to be struck out for want of jurisdiction.

Jurisdiction has to do with the subject matter in dispute, the location where the cause of action arose, the court the matter is brought before, the competence of the court to decide on the matter and the composition of the judges sitting in that matter.

The Lawyer usually advises the client on the right court for the subject matter in dispute to be brought.

* **Limitation of Action:** this is another important factor to be considered before commencing an action in court. There is a limitation period set for almost all actions that can be filed in court. This is to prevent any individual from sleeping on their right and to promptly exercise their legal right when a wrong is done.

For example, where the subject matter of a suit is a contract, the limitation period is six (6) years, action for recovery of land is 12 years etc. Thus, it is important for the plaintiff counsel to consider whether the cause of action is out of time before venturing into the expense of issuing a process in court.

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