Questions:

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

BAYODE OLUWATOMI ANNE

18/LAW01/054

1. Criminal procedure is the method of commencing criminal proceedings. It is the process of commencing, conducting and concluding a criminal case to be prosecuted in court. Criminal procedure is also the process of administration of criminal justice in Nigeria where the body of laws and rules are used. Such laws include: the Criminal Procedure Act, Criminal Procedure Code, Criminal Code, Penal Code, the Constitution, Magistrate Court Laws, High Court Laws, Police Act, etc. However, this work basically examines the criminal trial in the High court from arraignment to sentence of an accused person. This procedure plays from arraignment to trial and then conviction before allocutus and sentencing.
2. Arraignment: This here is the beginning of a criminal proceeding in a court of law. During this procedure, an accused person is brought to the court and placed in dock unfettered. The charges against such accused are then read by the registrar of the court in the language the accused understands. After, the accused instantly takes his plea. However, pleas available to an accused vary depending on the case at hand and the stand of the accused on such case. Such plea could be plea of guilty, plea of not guilty, plea of guilty for a leaser offer, etc. All these being said, it is important to note that when an accused person pleas’ not guilty, he/she puts him/herself into trial. The doctrine of arraignment is vividly and unambiguously expressed in section 36(4)-(5) of the 1999 Constitution of the Federal Republic of Nigeria, as amended 2011 herein after referred to as CFRN.
3. Trial: This process summarizes the power given to evidence by witnesses called in other to prove prosecutor’s case or prove the accused person’s defence as upheld by section 36(6) (b) of the CFRN. Hence, examination, cross-examination and re-examination either in person or by a legal practitioner of the witnesses called by the prosecution before any court or tribunal. Section 36(6) (d) of the CFRN and section 214 of the Evidence Act express this fact unarguably.
4. Conviction: During this process, findings are being made to determine if truly the accused person is guilty. The conviction statement goes thus:

*“I hereby find you guilty of ……”*

1. Allocutus: This is a plea for the alleviation of punishment on the accused being found guilty. That is, after an accused has been found guilty of an offence he or the legal practitioner make a plea to reduce or totally alleviate such punishment meted out. However, such plea is of no value when an accused has been found guilty of a capital offence requiring mandatory punishment.
2. Sentencing: This is the pronouncement of the punishment on the accused person when found guilty. There are three (3) types of sentence, they include: mandatory sentence, maximum sentence and minimum sentence. Such sentences flow from a range of imprisonment, death, fines, canning, penalty, Haddi lashing and so on.

All of these procedures are what are being done in carrying out criminal trial on an accused person. However, there are also remedies to either partially or totally alleviate such imposed sentences. An accused has at his disposal the choice to appeal to remedy his conviction. Here, an accused person would invite a higher court to review the decision of the lower court over his case to find out whether on the proper consideration of the facts placed before it and the applicable that the court arrived at a valid decision. Such appeal is a rehearing and not a retrial as being stated in the case of Oredoyin v Arowolo (1989) NWLR (pt.114) 172. This remedy is backed up constitutionally by virtue of sections 272 & 241 of the CFRN. To this effect, the High court of state has appellate jurisdiction on criminal matters and that such appeal will lie as of right to the Court of Appeal on any final criminal decision of the Federal High Court or State High Court at the first instance or where a death sentence has been imposed respectively. While the option of appeal is at the disposal of the accused, the accused should also simultaneously file a notice of appeal signed either by him or his counsel at the registry of the court that gave the judgement; and if refused, he may file it at the registry of the court being appealed to. By virtue of section 69 of the Magistrate Court Laws, a criminal appeal should be filled within thirty (30) days after the delivery of the judgement of the Magistrate court. However, with respect to the Court of Appeal, a criminal appeal shall be filled within ninety (90) days after the delivery of the judgement by the High Court or Federal High Court as embedded in section 24 of the Court of Appeal Act. Further appeal to the Supreme Court shall be within thirty (30) days after the delivery of judgement of the Court of Appeal.

Conclusively, when an accused person has taken advantage of appealing his conviction to a higher court and the appeal is being heard in his favour then his conviction and sentencing by the lower court is set aside. Hence, the accused is being discharged and cleared of all criminal liabilities. An accused could also be granted pardon by the President and this here is constitutionally backed up by section 175(1) of the CFRN which states that the President may grant to any person convicted of any offence created by an Act of the National Assembly a pardon either free or subject to lawful conditions.

1. Upon the identification of a civil wrong, the claimant’s counsel is obliged to identify the appropriate court with the jurisdiction to hear the suit. Hence, the claimant’s counsel may commence the action by way of the most appropriate means listed below:
2. Writ of summons
3. Originating summons
4. Originating motion
5. Petition

Writ of summons: This is the most common mode of commencing a civil action on argumentative matters. In essence, where there is a disagreement between the parties with respect to the subject matter of the suit, a writ of summon is sent to the unyielding party. It is important to know that the party who commenced a suit by writ of summon is called the claimant, while the party whom the suit is against is called the defendant. In addition, when filing a writ of summon at the Court Registry, the counsel has to file it with the following statement of claim:

* List of witnesses to be called at the trial.
* List of documents to be relied on.
* Written witnesses statement on oath.
* Certificate of pre-action counselling form.
* Pre-action protocol form.

These filing guidelines are embedded in order 2 rule 2 of the High Court of the Federal Capital Territory Civil Procedure Rules, 2018.

Originating summons: This is used for non-argumentative matters like interpretation of laws or deeds or agreements. This is to say that the parties in the suit are not disputing on a subject matter rather on the purported meaning of a paragraph of a law or deed. Pursuant to order 2 rule 3 of the High Court Civil Procedure Rules, 2018 it is said that when commencing an action with originating summons, the counsel has to attach to his file an affidavit selling to the fact that it is relied upon, a written address in support, all exhibits to be relied upon and a certificate of pre-action counselling and protocol form.

Originating motion: this is used only when provided for by statute or rules of court. For example, a prerogative writ of an order of mandamus, prohibition or certiorari and also for the enforcement of fundamental human rights. When commencing an action with originating motion, the counsel has to file it with the following:

* A statement setting out the name and description of the applicant.
* The relief sought and the grounds on which the reliefs are being sought.
* An affidavit setting out facts upon which the application is made; and
* A written address in support.

Petition: This is used when the law governing the wrong says so. By virtue of section 133 of the Electoral Act, electoral matters are to be commenced by petition. Matrimonial causes are commenced by petition as well as some matter under the Companies and Allied matters Act. It is important to note here that the party who commences such matter is known as the petitioner, while the person whom the matter is against is known as the respondent.