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DATE: 9-04-20

**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.

In a criminal trial the burden of proof is “beyond reasonable doubt”. Before an imposition of sentence can be given or passed, there are certain procedures or stages the court must follow or take. The question however requires the procedures from arraignment till sentence but it is fit to know what comes before arraignment. Before arraignment, there is “arrest”, where the accused is taken into custody for their supposed crime. After it comes bail if the accused is able to pay. Also, comes Proofs of evidence which means the names, addresses and written statements of the witnesses, that the prosecution wishes to call and the list of exhibits, if any, that the prosecution wishes to put in evidence at the trial, whose essense is to make knowledge of trial known to the accused so he can prepare.

1. Arraignment:

This is when an accused person is called formally before the court by the 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.

1. Plea of guilty:

Where an accused person pleads guilty, the counsel for the prosecution will give the court a summary of the evidence together with details of the accused person's background, their character and their criminal record if he has any. Then the counsel usually makes an Allocutus (pleading for lesser punishment based on the condition of the accused) then the court passes its sentence.

1. Plea of not guilty:

When an accused person pleads not guilty the procedures of the trial takes place and every other proceedings involving it will take place.

1. Prosecution:

The counsel for the prosecution always opens a criminal proceedings by calling evidence for the prosecution. At a stage in criminal trial, there is the “case-in-chief”, the stage at which each side presents its key evidence to the court. In its case-in-chief, the state sets forth evidence in an attempt to convince the court beyond reasonable doubt that the defendant committed the crime. It is also when the prosecutor calls eyewitnesses and experts to testify. The prosecutor may also introduce physical evidence, such as photographs, documents, and medical reports. He calls his witnesses and examines each in chief, and renders any evidence 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. It is better for a guilty person to go scot free and escape justice, than for one innocent person to be unjustly punished, due to a lowered standard of proof.

1. Submission of "no case to answer":

For the prosecution, when the case closes, the defence counsel may submit that the prosecution has not produced sufficient evidence or made out a prima facie case against the accused, the accused has no case to answer and therefore the case should not proceed further. After the reply the prosecution counsel makes on the submission addressing the court made by the defence counsel, the judge then makes a ruling on this submission. If the judge accepts it, he makes a ruling that the accused has ni case to answer, but if not, the trial proceeds.

1. Defence:

After the case closes for the prosecution and the failure of a no case submission, if such submission was made, the case for the defence then opens. The accused and his witnesses, if any one after the other, led in evidence-in-chief by the counsel for the defence and are cross examined by the prosecuting counsel and re-examined by the counsel for the defence as may be necessary. Each witness undergoes the procedure before another witness is called. This is always the procedure. The otherwise can only happen is there is a good reason for it which maybe because one is too busy or one with health issues. When all witnesses are heard, the case for the defence closes.

1. Closing address:

After the close of the case for defence, 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 review the case on both sides. He points out the strengths and weaknesses of the case and urges the court to convict as charged. The general rule of closing speeches, is that the accused or his counsel is entitled to the last word that is it's his right to round off the addresses.

1. Judgement:

After the closing addresses by counsel for both sides, the judge fixes the judgement for a date provided that it is not a summary trial, and the court rises in adjournment to enable it deliberate or evaluate the totality of evidence in the case. In the judgement, the judge sums up, weighs, or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also give his reason for disbelieving and rejecting the evidence for the other side. The judge may find the accused guilty or not guilty as the case may be and they must administer the cases with justice.

1. Discharge:

Where an accused person has not been 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. On the other hand, if the prosecution failed on a technicality, then the court will usually discharge the accused but not acquit him.

1. Sentence:

Where an accused is found guilty, before passing sentence an Allocutus is usually made by the counsel for the defence. After the Allocutus, the judge passes sentence on the accused.

REMEDIES AVAILABLE AFTER THE IMPOSITION OF SENTENCE:

1. Appeal:

An appeal is a request put forward to a higher court to reverse or modify a decision made by a lower court. These appeals act as both a process of clarifying and interrupting law. When an accused person makes a plea of guilty on his consent, he is not entitled to an Appeal. Although, instances where an appeal could be granted to an accused person includes;

* In criminal cases, a person can’t appeal unless the defendant was found guilty. If they were found not guilty, the verdict is final. If they were found guilty, you can appeal if you think your sentence was too harsh or the court made a mistake that resulted in your conviction.
* Situations where the accused person could not have committed the crimes he is being charged with.
* Or, where the accused pleads guilty ignorantly and does not even know what is being charged against him.

1. Sentence modification:

Sentence modification is a procedure in which a sentence which has already been passed by a judge is modified in light of new information. This is a seperate and quite different process from an appeal. Although similar, in things like the court involved, the available grounds that can affect a criminal sentence, and the procedures are quite different. In an appeal, someone attempts to overturn a [conviction](https://www.wisegeek.com/what-is-a-conviction.htm) altogether. Appeals may result in [exoneration](https://www.wisegeek.com/what-is-exoneration.htm), in which someone is deemed innocent of the crime, or a new trial, if there were factors in the original trial which lead an appeals judge to question the verdict. In sentence modification, the goal is not to prove a convicted person innocent or to arrange a new trial, but simply to change the terms of the sentence. Criminal appeals must be filled by strict deadlines, a sentence modification petition can be filled anytime while an offender is serving a sentence.

1. Clemency:

Clemency is considered to be an act of grace. It is based on the policy of fairness, justice, and forgiveness. It is not a right but rather a privilege, and one who is granted clemency does not have the crime forgotten, as in [**Amnesty**](https://legal-dictionary.thefreedictionary.com/amnesty), but is forgiven and treated more leniently for the criminal acts. Clemency is similar to pardon in as much as it is an act of grace exempting someone from punishment. Commutation of an offender's sentence, however, is the lessening of the punishment based on the offender's own good conduct subsequent to his conviction.

1. Pardon:

This is an “act of Grace”, it is the action of an executive official of the government that mitigates or sets aside the punishment for a crime. The granting of a pardon to a person who has committed a crime or who has been convicted of a crime is an act of clemency, which forgives the wrongdoer and restores the person's Civil Rights.

“Pardon” is to be distinguished from “amnesty.” The former applies only to the individual, releases him from the punishment fixed by law for his specific offense, but does not affect the criminality of the same or similar acts when performed by other persons or repeated by the same person. The latter term denotes an act of grace, extended by the government to all persons who may come within its terms, and which obliterates the criminality of past acts done, and declares that they shall not be treated as punishable.

1. Post-conviction relief proceedings:

In law, post-conviction refers to the legal process which takes place after a trial results in conviction of the defendant. After conviction, a court will proceed with sentencing the guilty party. In the American criminal justice system, once a defendant has received a guilty verdict, he or she can then challenge a conviction or sentence. This takes place through different legal actions, known as filing an appeal or a federal habeas corpus proceeding. The goal of these proceedings is exoneration, or proving a convicted person innocent. If lacking representation, the defendant may consult or hire an attorney to exercise his or her legal rights.

**QUESTION 2**:

METHODS OF COMMENCING CIVIL PROCEDURE IN HIGH COURTS.

Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits. These rules govern how a lawsuit or case may be commenced; what kind of service of process is required; the types of pleadings or statements of case, motions or applications, and orders allowed in civil cases; the timing and manner of depositions and discovery or disclosure; the conduct of trials; the process for judgment; the process for post-trial procedures; various available remedies; and how the courts and clerks must function.

Civil procedure is legally defined as the procedure under which [civil law](https://www.wisegeek.com/what-is-the-difference-between-common-law-and-civil-law.htm) is carried out. It refers to civil law, which encompasses laws pertaining to business, estates, legal contracts, domestic issues, accidents, and generally anything that is not considered criminal. There are instances in which civil and [criminal procedure](https://www.wisegeek.com/what-is-criminal-procedure.htm) may overlap. Civil procedure is carried out under the [jurisdiction](https://www.wisegeek.com/what-is-a-jurisdiction.htm) of the [civil court](https://www.wisegeek.com/what-is-civil-court.htm). Civil laws are set at both federal and state levels. Here are the methods underwitch civil procedure is commenced in the high court.

1. writ of summons:

A writ of summons is a formal document issued by a court stating concisely the nature of the claim of a plaintiff against a defendant, the relief or remedy claimed and commanding the defendant to “cause an appearance to be entered” for him in an action at the suit of the plaintiff within a specific period of time, usually eight days, after the service of the writ on him, with a warning that, in default of his causing an appearance to be entered as commanded, the plaintiff may proceed therein and judgment may be given in defendant’s absence.

Generally, all actions are to be commenced by the writ of summons except where there is any express legislation prescribing another mode as in [***Order 3 Rule 1 & 2 Lagos High Court (Civil Procedure) Rules 2004;***](file:///C:\Documents%20and%20Settings\me\My%20Documents\Law%20school2\text\777e60ed-1188.html#Form_and_Commencement_of_Action)[***Order 1 Rule 2, Uniform Civil Procedure Rules (UCPR); and Order 4 Rule 2, Abuja.***](file:///C:\Documents%20and%20Settings\me\My%20Documents\Law%20school2\text\777e60ed-1184.html#FORM_AND_COMMENCEMENT_)From the cases, writ of summons is the appropriate mode for commencing an action which by its nature is contentious. Usually, action commenced by a writ of summons requires the filing of pleadings and possibly a long trial as in [***Doherty v. Doherty (1968) NMLR 241***](file:///C:\Documents%20and%20Settings\me\My%20Documents\Law%20school2\text\777e60ed-328.html)***;*** [***NBN Ltd v.  Alakija [1978] ANLR 231***](file:///C:\Documents%20and%20Settings\me\My%20Documents\Law%20school2\text\alakija.htm)***.***

Under the Lagos High Court (Civil Procedure) Rules. 2004. All civil actions commenced by writ of summons shall be accompanied by:

a)      Statement of claim;

b)      List of witnesses to be called at the trial;

c)      Written statement on oath of the witnesses; and

d)     Copies of every document to be relied upon at every trial – ***Order 2 Rule 1, Lagos***

1. Petition:

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, however, only used where a statute or Rules of court prescribe it as such a process **Order 1 R. 2(3) UCPR.** For example, ***section 410(1) of Companies and allied Matters Act (CAMA) 2004*** provides that *an application to the court for the winding-up of a company shall be by a petition.* Also, ***section 54(1) of Matrimonial Causes Act, 1970*** provides that proceedings for dissolution of marriage are commenced by petition. **The Electoral Act** also states that petitions are the only modes of procedure in election litigations. An election petition has been said to be similar to pleadings in civil matter as it is in that the practitioner sets out all the material facts he relies on for his petition ***Egolum v. Obasanjo (1999) 5 SCNJ 92 at 125.***

A petition as the Uniform Procedure Rules provides, shall include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby and at the end thereof a statement of the names of the persons, if any, required to be served a statement to that effect as in ***Order 7 R. 2(1) UCPR.***

1. originating summons:

It is a summons that initiates proceedings. However, a summons in a pending matter does not initiate proceedings but it is used for making interlocutory applications in a pending cause or matter.

Generally, originating summons is used for non-contentious actions, that is, those actions where the facts are not likely to be in dispute (a question of law rather than disputed issues of facts). When the principal question in issue is or is likely to be one of construction of a written law or any instrument or of any deed or will or contract, originating summons may be used for the determination of such questions or construction as in the case of ***Director, SSS v. Agbakoba (1999) 3 NWLR (Pt. 595) 425;*** In ***Unilag v. Aigoro (1991) 3 NWLR (Pt. 179) 376***, it was held that originating summons is used where it is sought to correct errors in a judgment; In ***Orianwovo v. Orianwovo (2001) 5 NWLR (Pt. 752) 548***, it was held that an action for declaration of title to land ought not to be commenced by originating summons. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support of or in opposition to the originating summons. Witnesses may be called to give testimony and pre-trial conferences may or may not be conducted. **Order 3 R. 5 and 6 Lagos; Order 1 Rule 2(2) Abuja; and Order 1 Rule 2(2) Kano**, states that, affidavit evidence in support of originating summons and counter affidavit will take the place of pleadings

1. Originating motion:

This is the last of the originating processes. Unlike a petition, this may be used where a statute has not provided for it. Originating application is used when 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 Rights, originating motion may be used.  Significantly, where a state has not provided for a method for enforcing a right conferred by that statute, originating motion should be used – ***Order 40 Rule 5(1) Lagos; Order 43 Rule 5(1) Kano; and Order 42 Rule 5(1) Abuja***.  It is rarely used in the Magistrate Court.

Its use was highlighted in the case of ***Chike Arah Akunna v. A-G of Anambra State & Ors (1977) 5 SC 161***, it was held that the appropriate method of making an application to the court, where a statute provides that such an application may be made but does not provide for and special procedure in an originating motion.

REFERENCE:

* THE NIGERIAN LEGAL SYSTEM TEXTBOOK ESE MALEMI
* [www.wisegeek.com](http://www.wisegeek.com)
* [www.wikipedia.com](http://www.wikipedia.com)
* [www.wingrass.com](http://www.wingrass.com)
* [www.thelawdictionary.com](http://www.thelawdictionary.com)