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ASSIGNMENT TITLE: CIVIL AND CRIMINAL PROCEEDINGS

COURSE TITLE: NIGERIAN LEGAL SYSTEM II

COURSE CODE: LPI 204

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.

 ANSWER NO. 1

 Firstly, an ***arraignment*** is a court proceeding at which a criminal defendant is formally advised of the charges against him and is asked to enter a plea to the charges. In many states, the court may also decide at arraignment whether the defendant will be released pending trial. Arraignment is a formal reading of criminal charging document in the presence of the defendant to inform the defendant of the charges against him or her.

 The ***arraignment*** and taking the plea of an accused person is the very commencement of a criminal trial. It is the stage when the accused person appears at the court, the charge explained to his understanding and pleads thereto in person and not even through his counsel.

An accused person may plead as follows;

1. Autrefois acquit, this simply means a plea that he has been tried for the same offence 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. It is a fundamental right under the fair hearing provisions of the Nigerian constitution.
2. Autrefois convict; autrefois convict means a plea that he has been tried and convicted for the same offence on a previous occasion. He cannot be tried again. This is also an application of the 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 so because the law provides that where an accused stands mute, a plea of not guilty has to be mandatorily recorded for him by the court.
4. Plea of guilty to a lesser offense; however, while intending to plead “not guilty” to the offence charged, an accused person may plead guilty to a lesser offence which is not on the information. Where this plea is accepted by the prosecution, the court may pass its sentence accordingly, here the prosecution usually drops the instant charge.
5. He may plead guilty to the offence charged; 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 that is character and his criminal record, if any.
6. He may plead not guilty, therefore the trial proceeds.

 **Applicability of Plea Bargaining**

In Nigeria, under the Constitution, an accused person is presumed innocent until proven guilty.5 This presumption of innocence can only be rebutted by the prosecution and this is achieved when the prosecution is able to satisfactorily discharge the legal burden on it to prove its case against the accused person beyond reasonable doubt by virtue of **Section 135(1),(2)** and **(3) of the Evidence Act, 2011**. **Section 1(1)** of the Constitution declares its supremacy over all authorities and persons throughout the Federal Republic of Nigeria. Equally, **Section 1(3)** provides that: *"If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void."*

The plea bargain is a fundamental concept, which any state which desires to make it a part of its criminal justice system should incorporate into its constitution to give it the necessary force. In the absence of any clear provision under the Constitution of Nigeria, the applicability of plea bargain is certainly contrary to the provisions of the Constitution.

The **Criminal Procedure Code** (CPC) and the **Criminal Procedure Act** (CPA) applicable in the Northern and Southern parts of Nigeria respectively (with the exception of Lagos State by reason of its enacted ACJL), regulate the conduct of trials and has a lot of provisions governing criminal trials and in all these statutes, there is no indication of the existence or applicability of the plea bargain principle.

There are very limited Nigerian authorities on the applicability of plea bargain in Nigeria even though the cases in which the concept has been explored continues to be on the rise.

While plea bargain has been practised with ease in the United States, its applicability in Nigeria cannot be hitch free. This is because of the nature of the Nigerian criminal justice system which is adversarial and which places a judge as an unbiased umpire who sits in the temple of justice to evaluate the evidence presented before it by the parties.

In **LEADERS & CO. LTD V. BAMAIYI (2010) 18 N.W.L.R. (Pt. 1225) 329, 340 @ PARAS A-B Fabiyi, J.S.C.** held that a judge is an adjudicator; not an investigator.

Except in exceptional cases where an accused person voluntarily confesses to the commission of an offence, the prosecution at all times has a duty to prove the guilt of the accused beyond reasonable doubt before it can secure a conviction. Most often than not, the issue of voluntariness of the confessional statement, come to play at trial and even on appeals to the appeal courts. As much as confessional statement raises the issue of voluntariness, the practice of plea bargain in Nigeria is also likely to raise issues of voluntariness of the agreement.

Some accused persons may be too **mentally ill** or disordered to make a plea to a criminal charge. This is usually 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 by reason of insanity, a variety of hospital and guardianship orders may be made and the accused may be committed to a mental or psychiatric hospital for necessary care at the pleasure of the president or governor in respect of federal or state offence as the case may be until the person is mentally fit to be released.

Alternatively, the defense may put up the defense of insanity and if successful the accused is usually acquitted on grounds of insanity. The leading case on insanity is ***R v M’Naghten.*** 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 ground of insanity.

As a general rule of law, every accused person is presumed to be sane until the contrary is proved. It is usually the duty or right of the defense to raise the issue of insanity, however in obvious cases, a trial judge may raise it *suo motu,*that is, established by the defense leading evidence on the balance of probability. Thus, the issue of insanity is a matter fact to be decided by court and it is usually established by evidence of relevant witnesses, including medical evidence.

 ***PROSECUTION.***

The counsel for the prosecution always opens 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 re-examined 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 discharged and acquitted. The principle of requirement that the guilt of an accused be proved beyond reasonable doubt has its root deep in Roman. Stressing the need for the prosecution to discharge the burden of proof required by law in criminal proceedings, ***CHUKWUNWEIKE IDIGBE JSC in Ukorah v state that;***

 ***“The Romans had maxim that it is better for ten guilty persons to go unpunished than for one innocent person”.***

 ***SUBMISSION OF “NO CASE TO ANSWER”.***

After the prosecution has finished presenting its case, if the defence feels that the prosecution has failed to prove its case, then the legal process in Nigeria allows the defence to make an application known as a ***no case submission***.

When a **no case submission**is made, it basically means that the defendant is asking the court for an acquittal without it having to present a defence. The defendant is literally saying to the court that there is no case to answer i.e. the prosecution has not sufficiently proven the legal threshold to establish the commission of a crime in the court of law.

The submission is reliant on the strength (or rather, the lack thereof) of the prosecution’s evidence.  When used, the results are extremely beneficial to a defendant because, when successful, it means that the case effectively stops without the need for the defendant to call any evidence at all.

The defence makes the plea by filing an application before the court, and if the judge agrees, then the matter is dismissed and the defendant is acquitted without having to present any evidence in their defence. If the judge does not accept the submission, the case continues and the defence must present their case. Therefore, because the defence really loses nothing by filing a no case submission application, it is a very common defence tactic used in criminal cases in Nigeria. When deciding a no case submission, the court must consider all the evidence called by the prosecution, including prosecution witnesses’ answers to cross-examination questions. The court does not have to consider evidence that contradicts or explains the prosecution case or evidence that supports the defence case. However, where expert evidence has already been called by the defence, it may be taken into account by the court. This may occur where the court has ordered that expert evidence be heard concurrently or consecutively.

 ***DEFENCE.***

After the close of the case 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, are, 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 whole process, before another witness is called. It is never mixed up. Generally, unless a witness has finished his testimony and undergone necessary cross-examination and reexamination, if any, another witness may not be called except there are good reasons to do so. Like, the need to take the evidence of a witness who is obviously very busy or who is suffering from ill-health, travelling to a far place and so forth. After the witnesses for the defence have been testified and tendered any exhibit they may have, the case for the defence closes.

 ***CLOSING ADDRESSES.***

After the close of the case for the 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 reviews the case on both sides. He points out the strength of the case for the prosecution and identifies the weaknesses if any of the defence and then urges the court to convict the accused as charged. Next the counsel for the defence addresses the court. In his address he points out the weaknesses of the case for the prosecution.

  ***JUDGEMENT.***

After the closing addresses by the 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, 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 judgement on the case. However, where a trial is by summary procedure the judge may deliver judgement there and then, or he may retire to his chamber to consider judgement and resume sitting to deliver it there and then, or may retire to his chamber to reconsider his judgement and resume sitting to deliver it on that same day, or an adjourned day. In conclusion the judge may find the accused not guilty or guilty as they case may be. The judgement must be passed according to the law.

 ***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 law. On the other hand, if the prosecution failed on a technicality, then the court will usually discharge the accused, but not acquit him. Where a person has not been found guilty, a court usually makes one or more of the following orders; dismissal order, order of discharge, order of acquittal and order of compensation as the case may be for false, frivolous or false imprisonment of the accused and so forth as may be relevant according to the circumstance of the case.

 ***IMPOSITION OF SENTENCE.***

Where an accused is found guilty of a crime, before passing the sentence an allocutus, plea for mercy or leniency is usually made by the counsel for the defence. After the allocutus the judge passes on sentence on the accused. A court may under the criminal procedure act or law pass sentence and make one or more appropriate orders as follows; imprisonment usually with hard labour, fine, death sentence, caning, and deportation. Other order may include; order of detention, order of cost, probation order and so on.

 ***ANSWER 1B.***

 ***APPEAL.***

It is a well know procedure that every judgment of a court must of legal necessity be in writing except as otherwise provided by law for Magistrates courts in the Southern part of Nigeria. It must be stated that court judgment in criminal and civil matters is not the same as God's divine judgment entrenched in the holy bible. Judgment in legal sense is the final decision of the court upon a criminal charge, rights and obligation of the parties. A judgment can be in favour of the accused person or the complainant. It is in favour of the accused person if the prosecution fails to prove its case beyond reasonable doubt thereby providing the opportunity for the defense counsel to plead a no case submission. It is in favour of the complainant if the prosecution is able to establish that the accused actually committed the offence through verifiable evidence and exhibits pointing to show directly that an offence has been committed.

Section 245 of the Criminal Procedure Act (CPA) provides that: "The judge or Magistrate shall record his judgment in writing and every such judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the Judge or Magistrate and the time of pronouncing it; provided that in the case of a Magistrate, in lieu of writing such Judgment , it shall be sufficient compliance under this section if the magistrate (a) records briefly in the book his decision thereon and where necessary his reasons for such decision and delivers an oral Judgment; or (b) records such information in a prescribed form." Once a judgment is delivered, the deed is done (functus officio).

***MITIGATION.***

Mitigating factor. In criminal law, a mitigating factor, also known as extenuating circumstances, is any information or evidence presented to the court regarding the defendant or the circumstances of the crime that might result in reduced charges or a lesser sentence.Mitigation evidence is critical to effective sentencing advocacy. It is the key to helping your client avoid imprisonment or reducing its severity. Mitigation encompasses any circumstances that significantly affect or affected your client's character and behavior related to the offense.

**What Are The Steps To The Mitigation Process?**

First, a mitigation specialist will need to gather a series of records. After pulling together the needed documents, counsel needs to outline them and use them to show evidence of mitigating factors, the second step involves interviewing family members and significant others. Unlike records which are more easily accessible through request, finding family members to discuss the inmate often proves difficult, for example, if a past abusive trauma can be a reason for mental health problems that mitigate a crime, family members may not be willing to discuss the abuse. Interviews may need to be done multiple times until one family member admits to the drug, physical, sexual, or emotional abuse. In these situations, a criminal defense lawyer may want to petition the court for a social worker/counselor/therapist who can conduct the interviews with the appropriate training to protect everyone’s emotional health. The third step includes hiring a psychological or neuropsychological expert. This expert will review not only review the records but also determine the necessity of additional testing or evaluation, for example, some individuals convicted of crimes benefit more from having an intelligence test than a personality test ,this is another area in which a defense attorney can help. Since the attorney knows the client best, they can direct the expert towards the appropriate measures. Finally, despite not being outlined specifically, a defendant’s good deeds may be reviewed. Some defendants care for elderly parents or are excellent parents to their own children.

Scholastic, athletic, or artistic accomplishments may also be reviewed. When combined with a traumatic childhood or life, these qualities may help keep someone from the death penalty.

 ***ANSWER 2.***

 Firstly, Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits.

Civil proceedings are commenced by way of originating processes issued and served by the courts. There are various types of originating process. These include writs of summons, originating summons, originating motions and petitions.

Subject to the provision of any enactment, civil proceedings may be begin by writ, originating summons, originating motion or petition, or any other method required by other rules of court governing any special subject matter as provided in those rules. A writ by which an action is started in the High Court.

Subject to the provisions of any enactment or of these Rules by virtue of which any proceedings are expressly required to be begin otherwise than by writ, proceedings in which a claim is made by a plaintiff for any relief or remedy for civil wrong made by the plaintiff is based on an allegation of fraud is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a law or independently of any contract or any such provision) or where the damages claimed consist of or includes damages in respect of death of any person or in respect of injuries to any person or in respect of damage to any property is made by the plaintiff in respect of the infringement of a patent, trade mark, copyright, intellectual or any other proprietary interest of whatever kind for a declaration is made by an interested person, shall be begun by writ.

Proceedings may also begin ***by petition***; A petition is a formal request seeking a specific court order, made by a person, group or organization to the court, typically at the start of a lawsuit. A plaintiff files a petition or complaint with the court in stage one of a civil lawsuit, specifying what the lawsuit is about.

Proceedings may be begin by originating summons where- the sole or principal question at issue is, or is likely to be, one of the construction of a written law or of any instrument made under any written law, or of any deed, will, contract or other document or some other question of law or there is unlikely to be any substantial dispute of fact. Proceedings may be begun by originating motion or petition where by these Rules or under any written law the proceedings in question are required or authorized to be so begun, but not otherwise. The Forms in Appendix 6 to these Rules or Forms to the like effect, may be used in all matters, causes and proceedings to which they are applicable, with such variations as circumstances may require.

***REFRENCES***

 ***WIKIPEDIA***

***NIGERIAN LEGAL SYSTEM BY ESE MALAMI***

***LAW PADI.***