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1. State clearly the procedure from arraignment to imposition of sentence in a criminal trial at the high court. Comment on the remedy available after the imposition of sentence.

A trial or indictment or information in a high court is really just an elaboration of a summary trial at the magistrate court. In truth, it is not much different from a summary trial, except for the elaboration of certain procedures. The following are the stages of criminal procedure at a High Court of Justice:

1. Indictment or Information
2. Proof of Evidence
3. Arraignment and plea
4. Plea of guilt
5. Plea of innocence
6. Prosecution
7. Submission of “No case to answer.”
8. Defense
9. Closing address
10. Judgment
11. Discharge
12. Finding of guilt and sentence

Indictment or Information:

An indictment or information simply is an accusation of crime brought against an individual for trial in a High Court of Justice. An indictment is a criminal charge brought against a person by the Attorney-General or any of his subordinate legal officers on behalf of the state of the country and which is for trial at the high court.

Examples of information; in the high court, an information of crime is usually prosecuted in the name of the name of the State or in the name of the country as the case may be. Using Show Boy as a hypothetical example, the information may be brought thus;

1. State v. Show Boy

Criminal proceedings brought by a state are usually prosecuted in gthe name of the relevant state in the high court of such state.

1. Federal Republic of Nigeria v. Show Boy

This is sometimes shortened in law reports as Republic v. Show Boy. Criminal proceedings brought by or on behalf of the Federal Government are usually prosecuted in the Federal High Court.

Some public agencies that can also prosecute crime on their own name include

1. Board of Customs and Excise v. Show Boy
2. NDLEA v. Show Boy
3. Federal Inland Revenue Service v. Show Boy

Proof of Evidence:

The proof of evidence simply means the names, addresses and written statements of witnesses, that the prosecution wishes to call and the exhibits, if any, that the prosecution wishes to put in evidence at the trial. Photocopies of the list of witnesses, the written statements they made to the police and the exhibits, if any, are attached to the information and filed by the state. The real essence of attaching these items of proof are to put the accused on notice as to the nature of the case against him to enable him take steps to prepare and state his defense. This is a fundamental right under the fair hearings of the Nigerian Constitution.

Arraignment and Plea: arraignment is the calling of an accused person formally before the court by name at the beginning of a criminal proceeding, to read to himself the indictment or information brought against him and to ask him whether he pleads guilty or not guilty. In other words, arraignment means the registrar or any other officer of the court calling out the name of the accused while the accused is standing in the dock and reading over and explaining the charge or information to the accused in a satisfactory way and asking the accused to make his plea immediately. This is called arraignment of a person before a court.

An accused person may plead in the following ways:

1. Autrefois acquit: this 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
2. Autrefois convict: this is where the accused has been tried for the same offence previously and has been convicted. He cannot be tried again. This is also an application of the rule against double jeopardy.
3. He may stand mute: where the accused stands mute, 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 mandatorily be entered for him by the court.
4. Plea of guilty to a lesser offence: while intending not to plead guilty to the offence charged, the accused person may plead guilty to a lesser offence which is not in the information. Where this plea is accepted by the prosecution, the court may pass sentence accordingly. Here, the prosecution usually drops the instant charge. Thus paving way for the court to sentence the accused for the lesser offence(s) committed. Therefore, there is room for plea bargain.
5. He may plead guilty: when an accused person pleads guilty, the counsel for the prosecution will give the court a summary of the evidence together with the details of the accused person’s background, that is, character and criminal record, if any. After this, the counsel for the defense usually makes his allocutus or plea in mitigation of sentence and the court then passes its sentence.
6. He may plead not guilty: where the accused person pleads not guilty, then the trial proceeds.

Plea Bargaining: this is agreeing that an accused person will plead guilty to a lesser crime in exchange for the dismissal of the serious criminal charge(s) brought against him and for a quick disposal of the entire criminal proceedings. The concept of bargaining began in western countries and so it is more common there, especially in the United States of America. The idea of plea bargaining is not new to the Nigerian legal system as the as the criminal procedure laws have provision for an accused person to plead guilty for an accused to plead guilty to a lesser offence instead of the more serious one brought against him.

Mentally Ill Persons: some 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 an accused person may then be referred for psychiatric examination and treatment. In a proven case of murder, if the accused is unable 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 the governor in respect of federal or state offense until the person is ready to be released. Alternatively, the defense may put up the defense of insanity and if successful, the accused is equally acquitted in 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 grounds on insanity.

Prosecution:

The counsel for the prosecution always opens a criminal proceedings by calling the evidence for the prosecution. He calls his witnesses and examines each of them in turn and tenders any exhibit they may have. They are then cross-examined by the defense counsel and then re-examined by the prosecuting counsel as maybe necessary for the case and then the prosecution closes. The burden of proof on the prosecution during criminal proceedings is proof beyond reasonable doubt. Where the burden is not discharged, the charge or information is dismissed and the accused is legally entitled to be set free and is accordingly discharged and acquitted. This burden of proof which rests on the prosecution counsel to prove the guilt of the accused person beyond reasonable doubt is never to be lowered or watered down. This is, for it is better for a guilty person to go free and escape justice than for an innocent man to be convicted due to a lowered standard of proof.

Submission of the Case to No Answer:

At the close of the case for prosecution, the defense counsel may submit that the prosecution has not found sufficient evidence or made out a prima facie case against the accused, therefore the accused has no case to answer for and so the case should be proceed no further. The defense counsel usually makes the submission by addressing the court. The prosecuting counsel usually replies, then the judge makes a ruling on the submission. The judge may accept the submission that the accused has no case to answer. The ruling is a verdict of not guilty and the court may thereupon discharge and acquit the accused, if the submission succeeded just on a technicality and not merit. However, where the judge rejects the no case submission, the trial proceeds and then the accused has to state his case by giving evidence in his defense. Where the accused refuses to give evidence in his defense and chooses to stand by his no case submission, which had earlier failed, the court would often usually convict the accused. The reason is that the accused refused to defend himself against a prima facie case made against him.

Defense:

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 defense then opens. The accused and his witnesses, if any, are each led in evidence-in-chief by the prosecution counsel for the defense and are cross examined by the prosecuting counsel and re-examined by the defense counsel as may be necessary. Each witness undergoes the whole process before the next witness is called upon. It is never mixed up. This is always the procedure. Generally, unless a witness has finished his testimony and undergone necessary cross examination and re-examination, if any, another witness is not to be called upon, except there are good reasons to do so. Some good reasons to call out another witness put of turn include the need to take the evidence of a witness who is obviously very busy or who may not readily be available to testify, or who lives in a distant time or place or who is indisposed, traveling to a far place and so forth. After the witnesses for the defense have testified and tendered any exhibit they have, the case for the defense closes.

Closing Address:

After the close of the case for the defense, 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 make its closing address. He sums up the reviews on both sides. He points out the strength of the case for the prosecution and identifies the weaknesses of the defense and then urges the court to convict the accused as charged. However, it is a general rule that the prosecution must succeed in its own. This is so for in criminal proceedings, the burden of proof on the prosecution is proof beyond reasonable doubt. It must be proved beyond reasonable doubt but not beyond the shadow of doubt. The case for the prosecution must succeed on its own strength. Thus, the case for the prosecution must not rely on the weaknesses of the defense to succeed. For this reason, an accused person is not bound to put up a defense and may in appropriate cases, rest his case on his defense or on the case for prosecution. Next, the counsel for the defense addresses then court. In his address, he points out the weaknesses of the case for the prosecution. If the case for the prosecution is a pack of lies and a mere fabrication, conjecture, imaginative, malicious, frivolous, vexatious abuse of court process, he calls it so. If a prima facie has not been made out, or sufficient evidence has not been adduced as required by law to discharge the burden of proof that rests on the prosecution counsel during criminal proceedings, which is proof beyond reasonable doubt, he points it out to the court and finally urges the court to discharge and acquit the accused on the charge(s).

Judgment:

After the closing addresses by counsel for both sides, the judge fixes the judgment for a date provided that it is not a summary trial, and the court rises in adjournment to enable him deliberate, consider or evaluate the totality of evidence in the case. On the adjourned date the court resumes sitting and the case is called and the judge begins to deliver his judgment on the case. However, where a trial is by summary procedure, the judge may deliver judgment there and then, or he may retire to his chamber to consider the judgment and resume sitting to deliver it that same day, as the case may be or on an adjourned date.

Discharge:

When an accused person is found not guilty, on merit, the judge will dismiss the information or charges and accordingly discharge and acquit the accused as provided under 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:

1. Dismissal order; dismissing the information or charges
2. Order of discharge of the accused on the charges
3. Order of acquittal and;
4. Order of compensation as the case may be for the false, frivolous, vexatious or malicious prosecution or false imprisonment of the accused, and so forth as may be relevant according to the circumstances of the case’

Sentence:

When an accused is found guilty, before passing sentence, an allocutus plea for mercy or leniency is usually made by the counsel for the defense. After this, the judge passes sentence on the accused.

Types of Sentence the Court may impose:

When an accused person has been found guilty of a crime, a court may under the Criminal Procedure Law or Act pass sentence and make one or more appropriate orders as follows:

* Imprisonment; usually with hard labor
* Fine; in lieu of, that is instead of imprisonment or both fine and jail time
* Death sentence
* Caning
* Deportation

Other orders a court may make include:

* Binding over order (and suspended sentence and community service in western countries)
* Order for detention during the pleasure of the president or governor as the case may be
* Order for disposal of property
* Order for costs
* Award of damages and;
* Probation order

b) What remedy is available to the accused after the imposition of sentence?

In certain instances, a criminal conviction or a plea maybe overturned because of an error or an irregularity in the trial or newly discovered evidence. Post-conviction proceedings are different from trial proceedings because they are based fundamentally on written submissions, there is no testimony from witnesses and no jury. The following are remedies are available remedies post-conviction:

1. Appeal: generally, an appeal is a challenge to a guilty verdict at a trial in criminal law. On appeal, a convicted person may raise a number of issues directed at errors in the trial. These may include improper instructions on the law by the court, improper prosecutorial tactics and improper evidentiary rulings. From the perspective of a lawyer, appealing involves reading the recorded testimony of the trial and looking for any potential errors. Once an error has been identified, the lawyer will then submit issues in writing to the Court of Appeal, explaining the facts and the law, and why there was an error in the trial process. If the appellate court is persuaded by the lawyer’s written submission, and in some cases, argument, the court may grant the defendant a new trial or punishment hearing or may even reverse the conviction entirely.
2. Motion for new trial: a motion for a new trial is filed following a guilty verdict or an erroneous plea. The purpose of a motion for a new trial is to ask the trial court to set aside the convictions of the previous hearing and start anew. A motion for a new trial is often the first step with respect to post conviction relief because it is heard by the trial judge and not an appellate court. However, a motion for new trial must not be filed more than thirty days after the sentence has been imposed or suspended in the open court. New trials must be granted for the following reasons;

* When the defendant has been unlawfully tried in absentia or without counsel
* When the court has misdirected the jury about the law or when it has committed some other material error likely to bruise the defendant’s rights.
* When the verdict has been decided by lot or in any manner other than a fair expression of the juror’s opinion
* When a juror has been bribed to convict or has been guilty of any other corrupt conduct
* When a material defense witness has been kept from the court by force, threats or fraud or when evidence intended to establish the innocence of the defendant has intentionally been destroyed or withheld, thus preventing its production at trial
* When after retiring to deliberate, the jury receives other evidence; when a juror has talked with any one about the case or become so intoxicated that his or her vote/ opinion was probably influenced as a result
* When the jury has engaged in such misconduct that the defendant will not receive a fair and impartial trial or;
* When the verdict is contrary to the law and the evidence

1. Writ of Habeas Corpus: the writ of habeas corpus can be used after other appellate remedies have been exhausted. Not all errors are proper subject of habeas corpus. Relief based on habeas corpus maybe granted where new evidence has been discovered or where it has been demonstrated that the person is actually innocent.
2. Parole Hearings: parole hearing or representation will not undo or modify a conviction, but effective representation at a parole hearing may be the difference between whether a person is granted or denied parole. A qualified attorney can help an inmate bring evidence and arguments to the attention of the parole board in favor of an early release.

1. Comment on the various methods by which civil proceedings may be commenced in the High Court:

Commencement of a civil action is the process of instituting action before a competent court to determine the issues between parties. Essentially, there are four modes of instituting civil action in a High Court and they are:

* By Writ of Summons
* By Originating Summons
* By Originating Motion or Application and;
* By Petition

Petition: a petition according to the law dictionary is a request made upon the court asking for it to resolve a certain matter and issuing a ruling or an order, for example, a petition of the court to remove an executor of a will on grounds of potential fraudulent dealing. Or an instrument of writing or printing containing a prayer from the person presenting it known as the petitioner to the person or body to whom it is addressed for the redress of some wrong or the grant of some favor, which the latter has the right to grant. It is a general rule that in some cases that an affidavit should be made that the facts therein contained are true as far as is known to the petitioner, and that those facts which he states as knowing from others be believes to be true.

Alternative Legal Definition: a written address, embodying an application or prayer from the person or persons preferring it, to the power body or person to whom it is presented, for the exercise of his authority in the redress of some wrong or the grant of some favor, privilege or license. In the commencement of civil proceedings, petitions are used in cases of election irregularities and divorce.

Writ of Summons: the writ of summons is one of the modes used in commencing civil action against a person. It is a formal document addressed to the defendant requiring him to appear before the court if he/ she wishes to defend himself against the plaintiff’s claim. A writ is usually accompanied by an endorsement of the claim or a statement of claim so that the defendant is made aware of the claim against him/ her. A writ of summons is usually employed in contentious matters such as matters of dispute.

Originating Summons: this is another one of the means of commencing civil action. An action is commenced by originating summons when:

* When it is required by statute or
* In the event of a dispute concerning matters of law

An originating summons may be in inter-parte or ex parte of the Rules of Court. Originating summons are heard based on affidavits filed in support and its cases are heard by registrars or judges in an open court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support or opposition to the summons. Witnesses may be called upon to give testimony and pre-trial conferences may or may not be conducted. An application can also be made to convert an originating summons to a writ of summons at any stage of proceedings. Alternatively, the registrar or judge can also decide to convert a summons to a writ without an application from the parties. Once the decision has been made to convert the summons to a writ has been made, the steps relating to a writ will apply. The registry will then assign a new suit number to the proceedings and a pre-trial conference will be called for the service of the statement of the claim. Originating summons are usually employed in cases of human rights violation. Examples of actions to be instituted by originating summons are:

* Action for the interpretation of a written law or documents
* Company proceedings
* Interpretation of any instrument or deed such as wills, contracts or some other question of law.

Originating Motion/ Application: the originating motion or application is used only when provided for by a statute or a rule of court. Examples of actions of actions to be commenced this way are:

* Application for habeas corpus
* Order for mandamus
* Prohibition or certiorari
* Application for judicial review
* Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure Rules 2009.

Where a statute provides that action be commenced by application but does not specifically provide the procedure, originating motion should be used.