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**LEVEL:** 200 LEVEL.

**COLLEGE:** LAW.

**COURSE TITLE:** NIGERIA LEGAL SYSTEM II

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**LECTURER:** FABAMISE ESQ

**QUESTION:** 1a) State clearly the procedure from arraignment to imposition of sentence in a criminal trial in High Court.

1b) Comment on the remedy available to the accused after the imposition of the sentence.

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

**DATE:** 15th of April 2020

**SOLUTION**

**PROCESS OF CRIMINAL PROCEDURE IN THE NIGERIAN HIGH COURT, FROM ARRAIGNMENT TOIMPOSTION OF SENTENCE.**

It is of importance that one understands what the criminal procedure of Nigeria is encompassed of. The criminal procedure includes the process (commencing, conducting and concluding) by which a criminal proceedings or trial is persecuted in the court, or is being handled in the court. It could also be interpreted or explained as the process of administration of criminal justice in Nigeria, where the bodies of laws created by the Nigerian executives are being put to use. It involves the whole process of which a criminal matter is tried, in straight terms, it includes the trial process, arrest process and court process.

I have been given the assignment as to discuss the criminal procedure, not just of itself, but also what the process entails in the high court of Nigeria, and in this light, I would be using the Federal High Court of Nigeria as an example. Subject to Section 33(1) Federal High Court Act[[1]](#footnote-1) Criminal proceedings before the court shall be conducted substantially in accordance with the Criminal Procedure Act, and the provisions of this Act, have effect in respect of all matters within the jurisdiction of the court. This simply means that the criminal procedures in the high court of Nigeria are done in accordance to the Criminal Procedure Act Cap 41, 2004. The practices of the high court concerning the criminal proceedings, is therefore pursuant to the Criminal Procedure Act Cap 41, 2004.

Pursuant to Section 33(2) Federal High Court Act[[2]](#footnote-2)stating thus “notwithstanding the generality of the subsection (1) of this section, all criminal causes or matters before the court shall be tried summarily,” this simply means that all cases would be tried this way notwithstanding the fact that the subsection (1) of the section 33 of the aforementioned statute, the way the statute is insisting is the way of the Criminal Procedures Act Cap 41, 2004. Furthermore in Section 33 (3) Federal High Court Act[[3]](#footnote-3) States that “For purposes of the section, except the contrary intention appears from the context, any reference in the Criminal Procedure Act to the Attorney-General of a state shall be construed as a reference to the Attorney-General of the Federation” this is simply understandable, since it relates to the Federal High Court.

There are different processes in the procedure of the Criminal Procedures of Nigeria, which includes;

1. What is the indictment or information?
2. Proofs of Evidence
3. Arraignment and Plea
4. Plea of not guilty
5. Prosecution
6. Submission of “No case to answer”
7. Defence
8. Closing Address
9. Judgment
10. Discharge
11. Finding of guilt and sentence.

I would be discussing the process of the procedures starting from the arraignment and plea to the finding of guilt and sentence.

**Arraignment and plea**

Arraignment according to Denloye .v. Dental Practitioners disciplinary tribunal [[4]](#footnote-4)is calling of an accused formally before the court by name, at the beginning of a criminal proceeding, to read him the indictment or information brought against him, and to ask if he pleads guilty or not guilty. This simply means the registrar of the court or other officials calling the individual that has been accused with his name, and stating to him the allegation that has being brought before the court about the individual, and asking him if he pleads guilty or not. An accused person may plead as follows;

1. Autrefois acquit: This is a plea that he has been tried for the same offence before and has been acquitted. This plea is a plea that goes with the application of the rule against double jeopardy, which states that a person cannot be tried twice for the same offence. This is a fundamental provision of the rights of fair hearing provided for by the 1999 Constitution of the Federal Republic of Nigeria.
2. Autrefois convict: Autrefois convict means a plea that has been tried and convicted for the same offence on a previous occasion. He cannot be tried again. This is also application of the rule against double jeopardy.
3. He may stand mute: where an accused stands mute, that is, he does not say anything, a plea for not guilty is usually entered for him, an example is in the case of Sugh .V. State [[5]](#footnote-5) 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 Offence: 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 sentences accordingly.
5. He may plead guilty to the offence charged
6. He may plead not guilty.

**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 that is character and his criminal record, if any. After the counsel for the defence usually makes his allocutus or plea in mitigation of sentence and the court then passes its sentence.

**PLEA OF NOT GUILTY**

Where an accused person pleads not guilty, the trial continues.

**PLEA BARGAINING**

Most times the defense and prosecution come together under the approval of the trial judge and reach a bargain, where the defense can plead guilty for a lesser crime which is not originally in the indictment. However this can only happen if the prosecution agrees to the bargain, where he fails to agree to the bargain, the trial continues and the accused cannot be sentenced on the basis of his plea of guilty to the lesser crime.

**MENTALLY ILL PERSONS**

As a general rule, every accused person is presumed to be sane until the contrary is proved. Some accused persons may be too mentally ill to make a plea to a a criminal charge, this is usually referred to as “unfitness to plead”, if the insanity is proven by use of substantial medical evidence and evidence of relevant witnesses, then the accused may be committed to a mental or psychiatric hospital for necessary care, as the case may be until the person is fit to be released.

**PROSECUTION**

The counsel for prosecution always opens a criminal proceeding by calling evidence for the prosecution. His witnesses are each examined in chief and tenders any exhibit he might have, the witnesses are in turn cross examined by the defense counsel and reexamined by the prosecuting counsel. In a criminal proceeding the burden of proof lies on the prosecution where he has to prove beyond reasonable doubt. This burden of proof which rests on the prosecution is never lowered down, this is because, it is better for a guilty person to escape justice than for an innocent person be unjustly punished. When the burden of proof is not discharged, the charge is dismissed and the accused is usually discharged and acquitted.

CHUKWUNWEIKE IDIGBE JSC in UKORAH v STATE said that:

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

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

After the prosecution has made his case, the defense may submit that the prosecution has not produced sufficient evidence against the accused and therefore the case should not proceed further. The judge may accept the submission and make a ruling that the accused has no case to answer. Thus being that the accused has been found not guilty and is then discharged and acquitted based on merit, or just discharge the accused and not acquit him based on technicalities not on merit...

However if the judge rejects the no case submission, the trial proceeds and if the accused still chooses to stand by his No case submission, which had earlier failed, he’ll be found guilty with the reason being that the accused failed to defend himself against a prima facie case made out against him.

**DEFENCE**

Here the accused and his witnesses are led in examination in chief by the counsel for the defence and are cross examined by the prosecuting counsel and reexamined by the counsel for the defence if necessary, after this the case of the defence closes.

**CLOSING ADDRESSES**

After the close of the case of 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. The general rule of law here is that the case of the prosecution counsel must succeed on its own, because the burden of proof lies in the prosecution to prove beyond reasonable doubt. This is the reason why the accused person is not bound to put up a defence but rather rest his case on the prosecution’s case.

The counsel for the defence addresses the court next, he points out the weakness in the prosecution’s case, if it’s a mere lie or a fabrication or frivolous, if a sufficient case has not been made out ,enough to prove beyond reasonable doubt which is required by law to discharge the burden of proof that rests on the prosecution. If the defence counsel can argue this out in his own favor then he can surely urge the court to discharge and acquit the accused, as the case maybe. Another general rule here is that the accused in entitled to the last word.

  **JUDGEMENT**

In giving the judgment the judge usually adjourns the court session and resumes sitting on another day. In a summary trial the judge delivers his judgment the same day there and then, or he may retire to his chamber and resume sitting on that same day. In the judgment the judge reviews the evidence from both sides. He gives his reasons for accepting or rejecting the case for either side. In conclusion he may find the accused guilty or not guilty

**DISCHARGE**

When a person has been found not guilty on merit, the judge will dismiss the charge against him and discharge and acquit him accordingly under the criminal procedure.

On the other hand if the prosecution fails to properly deliver his case then the accused will be discharged but not acquitted.

Where a person has been found not guilty, the court usually make any of the following orders;

* Dismissal order; dismissing the information
* Order of discharge of the accused on the charges
* Order of acquittal
* Order of compensation, as the case may be for the false or malicious prosecution of the accused

**SENTENCE**

Where the accused is found guilty, the defence counsel has the chance to appeal for mitigation of his sentence. After this sentence the judge passes sentence on the accused.

 **TYPES OF SENTENCES THE COURT MAY IMPOSE**

1. Imprisonment
2. Fine in lieu of imprisonment or both fine and jail
3. Death sentence
4. Caning
5. Deportation

 **OTHER ORDERS A COURT MAY MAKE**:

* Binding over order
* 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
* Probation Order.

**IMPRISONMENT**

This a criminal offence which consists of the detention of the offender in a prison. The traditional objectives of imprisonment as a penalty for a crime are;

1. retribution
2. rehabilitation
3. deterrence
4. protection of the society
5. reformation

Some general rules which apply to imprisonment are

* Where a sentence of imprisonment is imposed, if it is not specific to be without hard labor then in law, it is deemed to be imposed with hard labor.
* Where a high court imposed a fine instead of imprisonment, any term of imprisonment imposed in default of the payment of the fine must not exceed two years.
* Where a magistrate imposes a fine instead of imprisonment, it must not exceed his financial limits.
* The term of imprisonment imposed for any offence must not exceed the maximum term prescribed for the offence by written law.

**FINE**

A fine is a sum of money which a court orders an offender to pay to the government treasury as a penalty for committing the offence.

**DEATH SENTENCE**

A death sentence is a judgment of the court which stipulates or states that an offender should suffer death for the offence committed. An offence which carries the death sentence is a capital offence they include:

1. Treason
2. Armed robbery
3. Murder

**CANING**

This is part of the punishments that maybe imposed, it may be an order for caning only or in addition to other sentence.

An order for caning cannot be made in respect of the following Under the Criminal Procedure Act and Laws

1. A male who has attained 45 years and above
2. A female
3. Caning is to be effected with a light rod or cane
4. The number of strokes is to be specified it must not exceed 12 strokes

The order of caning must not be imposed more than once for one offence.

**DEPORTATION**

This is expulsion from another country, where the offender is not a Nigerian citizen, it means expulsion from Nigeria.

**BINDING OVER**

Where a person has been found guilty of a crime, but is released for any reason, or a complaint was dismissed, a defendant, or both complainant and the defendant with or without having sureties maybe bound over to keep the peace. If the accused breaches a court order he would go to prison for a term of imprisonment.

**DETENTION DURING THE PLEASURE OF THE PRESIDENT OR GOVERNOR**

1. Persons who are found not guilty by reason of insanity.
2. Persons who are found to be of unsound mind.

These are the two categories of people who may be detained at the pleasure of the president and the governor.

 **ORDER FOR THE DISPOSAL OF PROPERTY**

During or after a trial a court may order that property with respect to an offence which has been committed, be:

1. confiscated by the government
2. forfeited to the state
3. or released to an appropriate party

**AWARD OF COSTS**

The court can order that a certain cost be paid to the prosecutor in addition to any other penalty which might be imposed. The prosecution may also be asked to pay a certain cost to the accused.

**AWARD OF DAMAGES**

Damages can be awarded to the aggrieved party in a case which involves wrongful conversion or detention of property.

**PROBATION ORDER**

Probation is a period of time during which an offender must behave well that is, keep the peace and or do community service well,in default of which a defender maybe sent to prison for a fixed period of time.

**Solution to Question 1B**

**Question**

1b) Comment on the remedies available to the accused after the imposition of sentence.

**Solution**

Post-Conviction remedies are a specific and complicated legal proceeding that challenges the legality of some aspects of the criminal trial or sentencing.

A criminal defendant has limited opportunities to challenge a conviction or sentence:

* a direct criminal appeal,
* sentence modification
* clemency
* pardon
* post-conviction relief proceedings

**DIRECT CRIMINAL APPEAL**

Direct criminal appeals are not like trial proceedings, they are completely different, even though they arise out of the same conviction. At the appeal stage, the goal is to convince the appellate court that an error at the trial court made the conviction or sentence unfair or contrary to law, warranting a different outcome.

**SENTENCE MODIFICATION**

Sentence modification is a separate and quite different process from a criminal appeal. Although both may feel like the same, the court involved, the available grounds that can affect a criminal sentence, and the procedures involved are quite different. While criminal appeals must be filed by strict deadlines, a sentence modification petition can be filed any time while an offender is serving a sentence.

**CLEMENCY**

Clemency, or the commutation of a sentence, is a form of relief that may reduce or alter a sentence but does not affect the conviction.

**PARDON**

A pardon is a type of post-conviction relief that the President or Governor can give an individual serving time in prison, or facing other criminal consequences, that essentially forgives the remainder of the sentence.

**OTHER REMEDIES INCLUDE**

**REMISSION**: Complete or partial cancellation of the penalty, whilst still being considered guilty of said crime (i.e., reduced penalty). Also known as remand, the proceedings by which a case is sent back to a lower court from which it was appealed, with instructions as to what further proceedings should be had.

**RESPITE:** The delay of an ordered sentence, or the act of temporarily imposing a lesser sentence upon the convicted, whilst further investigation, action, or appeals can be conducted.

**EXPUNGEMENT:** The process by which the record of a criminal conviction is destroyed or sealed from the official repository, thus removing any traces of guilt or conviction.

**Solution to question NO.2**

**Question:**

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

**Solution:**

An action may be commenced in a High court by a counsel filing one or a combination of the following papers or originating processes in court.

1. **A WRIT OF SUMMONS**

 is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. Civil actions involving substantial disputes of fact are commenced by way of a writ. These include,

\*Contractual actions, eg, claim for damages resulting from breach of a contract

\*Tort actions, eg, claim for damages in respect of damage to property resulting from negligence, Claim for damages resulting from fraud and defamation.

\*Personal Injury actions, eg, claim for damages in respect of personal injury or death resulting from road and industrial accidents.

\*Intellectual property actions, eg, claim for damages resulting from the infringement of copyright, trademark or patent.

1. **ORIGINATING SUMMONS**

An action is commenced by way of an Originating Summons where,

\*It is required by statute

\*The dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of facts.

An Originating Summons may be in Inter partes or Ex-parte of the Rules of Court.

Originating Summons is heard based on affidavits filed in support.  Originating Summons cases are heard by registrars or judges in chambers or in open Court. 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

Compared to a Writ of Summons, the Originating Summons is a simpler and swifter procedure for the resolution of disputes as it is determined generally on affidavits filed and does not involve pleadings or many interlocutory proceedings.

1. **ORIGINATING MOTION**

This is used only when provided for by a statute or a rule of court. Where a statute provides that action be commenced by application but does not specifically provide the procedure, originating motion should be use.

* 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
1. **PETITION**

This is a written application made to court setting out a party case.

It is only used where a statute or the rule of court provide for its use.

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