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**MATRIC NUMBER: 18/LAW01/124**

**CIVIL AND CRIMINAL PROCEEDINGS**

**QUESTION 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.

**Introduction**

Criminal procedure is the adjudication process of the criminal law. While criminal procedure differs dramatically by jurisdiction, the process generally begins with a formal criminal charge with the person on trial either being free on bail or incarcerated, and results in the conviction or acquittal of the defendant.

A trial on indictment or information in a High Court is an elaboration or amplification of a summary trial at the magistrate court. At its very core, it is not much different from a summary trial, except for the elaboration of certain procedures.

* **Arraignment and plea**

Arraignment (Kajubo v State (1988) 1 NWLR Pt 73, p.721 SC) is the calling of an accused person formally before the court by name at the beginning of a criminal proceeding, to read to him/her 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 other officer of court calling the accused by name 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 thereto instantly. This is called the arraignment of a person before a court.

An accused person may plead (ss. 215-221) as follows:

1. **Autrefois acquit:**

(s.221) *Autrefois acquit* 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.

1. **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.

1. **He may stand mute:**

(s.220 Zaria NA v Aishatu Bakori (1964) NNLR 25. Sugh v State (1988)2 NWLR Pt 77 p.475 SC) Where an accused stands mute, that is, without saying anything, a plea of not guilty is usually entered for the accused. This is also because the law provides that where an accused stands mute, a plea of not guilty has to be mandatorily for him by the court.

1. **Plea of guilty to a lesser offence:**

(Nwachukwu v State (1986) 2 NNLR 25, Sugh v State (1988) 2 NWLR Pt77,p.475 SC) 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 accepted by the prosecution, the court may pass its sentence accordingly. Here the prosecution usually drops the instant charge. Thus, paving the way for the court to sentence the accused for the lesser offence admitted. Thus, there is room for plea bargain.

1. He may plead guilty to the offence charged (s.218).
2. He may plead not guilty.

**PLEA OF GUILTY**

Where an accused pleads guilty, the counsel for the prosecution will give the court a summaryof the evidence together with background of the accused person’s background, that is, character and his/her 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 it sentence.

**PLEA OF NOT GUILTY**

When an accused person pleads not guilty, then the trial continues (Eyu v State (1988)2 NWLR pt 478, p.602 CA).

**PLEA BARGAINING**

Plea bargaining or plea negotiation is negotiating and agreeing for an accused to plead guilty to a lesser crime, in exchange for the dismissal of the serious criminal charge brought against him and for a quick disposal of the entire criminal proceedings. The concept of bargaining began in western countries, and it is common there, especially in the United States of America. The idea of plea bargain is not new to the Nigerian legal system as the criminal procedure laws have provision for an accused to pled guilty to a lesser offence instead of the more serious offence brought against him. Accordingly, in recent years, there have been plea bargaining in a number of cases, especially in criminal charges brought by the Economic and Financial Crimes Commission (EFCC) in order to expeditiously dispose of the potentially lengthy criminal proceedings. Thus, an accused person who does not intend to plead guilty to the serious offence charged may plead guilty to a lesser offence, which is not on the indictment or information. This plea or change of plea is usually as a result of a bargain reached between the defense counsels for the prosecution, often with the judge’s approval. The accused is then sentenced in respect of this lesser offence. This transaction or procedure is called “plea bargaining”. However, where the prosecution fails to reach an agreement with the defense and therefore refuses to accept the plea to a lesser offence, then the trial proceeds and the accused person as a rule of law cannot be sentenced on the basis of his plea of guilty to the lesser offence. This is so for the plea to the lesser offence is regarded as withdrawn, if it is not accepted by the prosecution. A trial judge may also allow an accused person to change his plea, from guilty to not guilty, and thus avoid the passing of sentence thereon, otherwise a refusal to allow a change of plea at that point in time usually becomes an issue for appeal. Where an accused changes his plea from guilty to not guilty, the trial will then proceed.

**MENTALLY ILL PERSONS**

Some accused person 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 accuse person may then be referred for psychiatric examination and treatment. In a proven or clear 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 and psychiatric hospital for necessary care at the pleasure of the President or Governor in respect or state offence, as the case may be until the person in mentally for to be released.

Alternatively, the defense may put up the defense of insanity (Karma v State (1989) 1 NWLR Pt 96, p.124 SC, Kure v State (1988) 1 NWLR Pt 71 p.404 SC, Udofia v State (1988) 3 NWLR Pt 84 p.533 SC) and if successful, the accused is usually acquitted on grounds of insanity. The leading case on insanity is R v M’Naghten (1834)10 C& F 200. 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, of its own motion, and the prosecution may inform the court of it. The fact of insanity is usually proved, that is, established by the defense leading evidence on the balance of probability. Thus, the issue of insanity is a matter of fact to be decided by court and it is usually established by evidence of relevant witnesses, including medical evidence.

**PROSECUTION**

(Fawehinmi v A.G. Lagos State (No.1) (1989)3 NWLR Pt. 112, P.707 CA. Ogbodu v State (1988)3 NWLR Pt. 84, p.533 SC) The counsel for the prosecution always opens a criminal proceeding 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 proved beyond reasonable doubt. Where the burden of proof is not discharged, the charge or information is usually dismissed and the accused is legally entitled to be set free and is accordingly usually discharged and acquitted. The burden of proof which rest on the prosecution to prove the guilt of the accused beyond reasonable doubt is never lowered or watered down. This is for, for it is better for a guilty person to go scot-free and escape justice, than for an innocent person to be unjustly punished, due to a lowered standard of proof. The principle or requirement that the guilt of n accused be proved beyond reasonable doubt has its root deep in Roman law.

**SUBMISSION OF “NO CASE TO ANSWER”**

(Okoro v State (1988) 5 NWLR Pt 94, p.225 SC, Oluka v State (No 2) (1988)4 NWLR Pt 86, p.36 SC).At the close of the case for the prosecution, the defense counsel may submit that the prosecution has not produced sufficient evidence or made out a *prima facie* case against the accused and consequently, the accused has case to answer and therefore the case should not proceed further. The defense counsel makes the submission by addressing the court. The prosecuting counsel usually replies. The judge then makes a ruling on this submission.

However, where the judge reject the case submission, in his ruling, the trial proceeds and the accused has to state his case by giving evidence in his defense. Where the accused refuses to give evidence in his defiance and chooses to stand by his “no case submission” which had earlier failed, the court would often usually convict the accused. Ali v State (1988)1 NWLR Pt 93, p.164 SC, Babalola v State (1989) 4 NWLR Pt 115, p.264 SC.

**DEFENSE**

After the close of the case for the prosecution and the failure of a no case submission, if each submission was made, the case for the defense then opens. (Ukwwunenyi v State (1989)4 NWLR Pt 114, p.131 SC. Stephen v State (1986)5 NWLR Pt 46, p.978 SC) The accused and his witnesses, if any, are one after the other, led in evidence-in-chief by the counsel for the defense and are cross-examined by the prosecuting counsel and re-examined by the counsel for the defense as may be necessary. Each witness undergoes the whole process, before another witness is called. 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 may not be called, except there are good reasons to do so. Some good reasons to call a witness out of turn include the need to take the evidence of a witness who is obviously very busy or who may not be readily available to testify, or who lives in a distant town or place, or who is suffering from ill-health, travelling to a far place and so for. After the witnesses for the defense have testified and tendered any exhibit they may have, the case for the defense closes.

**CLOSING ADDRESSES**

(Ogugu v State (1994)9 NWLR Pt 366, p.1 SC) After the close of the case for the defense, the counsel for both sides then makes 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 cases on both sides.

He points out the strength of the case for the prosecution and identifies the weaknesses if any of the defense and then urges the court to convict the accused as charged. However, the general rule of this law is that the case for the prosecution must succeed on its own. This is so for criminal proceedings, as the burden of proof rest on the prosecution and it must be proven beyond all reasonable doubt. Onafowokan v State (1987)3 NWLR Pt 61, p.538 SC.

Next, the counsel for the defense addresses the 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 of lies, conjecture and an abuse of court process, he calls it so. The general rule of closing speeches, is that the accused or his counsel is entitled to the last word, that is, of his right to round off the addresses.

**JUDGMENT**

After the closing addresses by counsel for both sides, the judge fixes the judgment for a date consider, or even 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 judgment on the case. However, where a trial is by summary procedure the judge deliver his judgment there and then, o he may retire to his chamber to consider judgment and resume sitting to deliver it on the same day, as the case may boor on an adjourned date. In the judgment, the judge sum up, weighs, or reviews the evidence for both sides. He states his reason for believing or accepting the case for either side and also for disbelieving the other side. Gufwat v State (1994)2 NWLR Pt 327, p.435 CA. Onuoha v State (1988)3 NWLR Pt 83, p.460 SC.

**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 provides under the criminal procedure law (Kalu v State (1988)4 NWLR Pt 90,, p.503 SC). On the other hand, if the prosecutin failed on a technicality, then the court will usually discharge the accused, but not acquit him. When a person has been found guilty, a court usually more of the following orders:

1. Dismissal order: dismissing the information or charge(s).
2. Order of discharge of the accused on the charge(s).
3. Order of acquittal (Adili v State (1989) 2 NWLR Pt 103, p.305 SC).
4. Order of compensation.

**SENTENCE**

Where an accused is found guilty, before passing sentence an allocotus, plea for mercy is usually made by the counsel for the defense. After the allocotos, the judge passes sentence on the accused.

When an accused has been found guilty of a crime, 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 labor
* Fine, in lieu of, that is, instead of imprisonment or both fine and jail.
* Death sentence
* Caning
* Deportation

Some other others include; 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 and probation order.

In certain instances, a criminal conviction or a plea maybe overturned because of an error 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 are no testimony, witnesses and no jury. The following are the available post-conviction remedies;

* **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 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.

* **Motion for new trial:**

A motion for new trial is filed following a guilty verdict or an erroneous plea. The purpose of 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 because it is heard by the trial judge and not appellate 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 not 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 das 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 anyone 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.
* **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.

* **Parole Hearings:**

Parole hearings 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 a denied parole. A qualified attorney can help the inmate bring evidence and arguments to the attention of the parole board in favor of an early release.

**QUESTION 2**

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

**Introduction**

Proceedings are commenced by the issuance of process out of the registry of a court. Such process may be a writ, a summons, a petition or originating motion, depending upon the nature of the proceedings. However, the fact that an action is commenced by a wrong mode will generally not to be fatal to the proceedings and will be treated merely as an irregularityOrder 5 of the High Court of Lagos State (Civil Procedure) Rules 2012. Nigeria operates an adversarial system of justice, and the courts determine causes upon material presented by the parties. Generally, the party making a claim is required to establish the claim and the court is not ordinarily entitled to conduct its own investigation into the claim. Under most High Court rules, claims are commenced by writs, which are endorsed with a statement of the relief sought from the court. The writ is also required to be accompanied by a statement, in summary form, of the material facts relied upon to establish the claim. In addition, statements of all witnesses are required to be delivered along with the writ and statement of claim (Order 16 of the High Court of Lagos State (Civil Procedure) Rules 2012). Defendants are entitled to seek, where they are absent, particulars of allegations made in the statement of claim.

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 and;
* By Petition.

**Petition**

A petition according to the *legal dictionary* is a formal written 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 is 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, an affidavit should be made that the fact therein contained are true as far as is known to the petitioner, and that those facts which he states as knowing from others are believed 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 redress of some wrong or 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. If 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 claim so that the defendant is made aware of the claim 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 commenced by originating summons when: it is required by statute or in the event of a dispute concerning matters of law. An originating summons may be 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 proceeding. 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 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 o the claim. Originating summons is 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 a court. Examples 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 the 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.