**NAME: KUTI MAYOWA ODUTOLA**

**LEVEL: 200**

**MATRIC NUMBER: 18/LAW01/137**

**COURSE TITLE: NIGERIA LEGAL SYSTEM II**

**COLLEGE: LAW**

**Question1; 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.**

**Civil and Criminal Proceedings**

The main focus for this piece is criminal proceedings involving the procedure from arraignment to imposition of sentence as well as remedies available for the accused.

We will start first with what criminal proceedings are;

Criminal proceedings are/is a proceeding in court in the prosecution of a person charged or to be charged with the commission of a crime, contemplating the conviction and punishment of the person charged or to be charged. The following is an example of a case law defining criminal proceeding:

“Ordinarily a criminal proceeding is some step taken before a court against some person or persons charged with a violation of the criminal law. The purpose of a criminal proceeding is to punish.” [State ex rel. Sweezer v. Green, 360 Mo. 1249 (Mo. 1950)].

Some of the sources of criminal procedure include;

* *Criminal Procedure Act* *and its equivalent laws in southern states*
* *Criminal Procedure code and its equivalent laws in northern states*
* *Statutes establishing tribunals*
* *Penal code*
* *The Constitution of the Federal Republic of Nigeria 1999 as amended (2011)*
* *Criminal code*

**CRIMINAL PROCEEDINGS IN THE HIGH COURT**

Here we’re going to discuss the proceedings in a high court from the arraignment to imposition of sentence;

**ARRAIGNMENT AND PLEA**

 Arraignment which is the calling of the accused person to court by the registrar or other officers of court. Here the information and indictment will be read for him while standing on the dock the prosecution party will explain the information in a satisfactory way. An accused person can plead;

1. ***Autrefois Acquit:*** means a plea that he has been tried for the same offense before. This helps to prevent double jeopardy.
2. ***Autrefois convict:*** this plea means that the person convicted for same offence in a previous occasion. This also helps prevent double jeopardy
3. ***He may stand mute:*** When accused stands mute the court must enter a plea of not guilty. This is mandatory.
4. ***Plea guilty of a lesser offense:*** The accused can plea guilty of a lesser offense that is not in the indictment. The prosecution drops instant charge and the court will sentence the accused for the lesser offense. It breeds room for bargain.
5. ***he may plead guilty***
6. ***He may plead not guilty***.

**PLEA OF GUILTY**

 Where an accused person pleads guilty, the counsel for the prosecution will give a summary of the evidence together with details of the accused person’s background. Then the counsel for the defence usually makes his allocutus or plea in mitigation of sentence then the sentence follows.

**PLEA OF NOT GUILTY**

 Once an accused person pleads not guilty, trial proceeds on the case. The counsel of the accused and prosecution must convince the court their plea is true with the provision evidence, judicial precedent and statutory provisions as the case may be.

**PLEA BARGAINING**

 Here, the accused pleads guilty of a lesser crime in exchange for the dismissal a serious crime laid against him. The accused is then sentenced on basis of his plea of guilty of his lesser offence. The idea of a plea bargain is not new in Nigerian legal system because there is provision for an accused person to plead guilty of a lesser offence than the offence placed or laid against him. A trial judge may also allow an accused person to change his plea from guilty to not guilty to avoid the passing of the sentence otherwise a refusal to allow a change of press becomes an issue of appeal. When an accused plea is changed from guilty to not guilty trial then commences.

**MENTALLY ILL PERSONS**

A situation where an accused person is mentally ill it is referred to as ***“Unfitness to plead”***. They refer the accused for psychiatric examination. In the case of a clear murder, if the accused is mentally insane and unable to make plea, a variety of guardianship or hospital orders will be made and they will be taken to a hospital at the pleasure of the president or governor depending on whether it is a federal or state matter. Also the defence may also put up a defence of insanity and if successful will be acquitted on those grounds. This is seen in *R V M’Naghten* where a defence of insanity was made and the accused was not guilty and acquitted on those grounds. One must prove it if they want to rely on insanity because the rule of law is that every accused person is presumed sane until they prove otherwise with evidence including medical evidence. The trial judge can also raise insanity *“suo motu”.*

**PROSECUTION**

 The counsel for the prosecution usually starts criminal proceedings. It is expected of the prosecution to prove beyond reasonable doubt the charge or information against the accused This is because it is better for guilty person to go scot free than an innocent person to be persecuted. This has its roots deep from Roman law. It was in the form of a maxim “it is better for guilty person to go unpunished than for an innocent person to be condemned”. This has spread worldwide. In *Ukorah V State*, JSC Chukwunweike Idigbe said: *“The Romans had maxim that is better for ten guilty persons to go unpunished than for one innocent person to suffer”*.

**SUBMISSION OF “NO CASE TO ANSWER”**

 The defence counsel may submit that the prosecution has not produced sufficient evidence and has no case to answer therefore the case should not proceed. The prosecution usually makes a reply to this and the judge makes a ruling on the submission. If successful on merit the case will be discharged but if on technicality it would not be discharged. If the submission is rejected the trial continues and the accused has to state his case with evidence. If he refuses to do so and still stands by his failed submission the court usually convicts the accused.

**DEFENCE**

 After the case is closed for the prosecution and failure of no case submission, the defence case is opened. The accused and witnesses is questioned by the counsel of the prosecution and the counsel of the accused if necessary. Each witness undergoes the whole process before the next witness is called. They are never mixed up.

**CLOSING ADDRESS**

 The counsel of both sides both make closing speeches, the counsel of the prosecution is always the first. He outlines the strength of his case and the weaknesses of the accused and urges the court to convict the accused. According to the law the case of the prosecution can only succeed on its own, they must prove beyond reasonable doubt, the accused is not bound to put up a defence and may choose to rest his case or put up a defence. Then the counsel of the accused then follows stating if any, the weaknesses of the case of the prosecution and if they were not able to prove beyond reasonable doubt without sufficient evidence. They will urge the judge to dismiss the case on the accused. By law they are entitled to the last word of the case.

**JUDGEMENT**

 The judge then fixes a date for judgement because it is not a summary case and they rise for adjournment to enable the totality of the evidence of the case. On the judgement day the judge will evaluate the evidence and state the reasons for disbelieving or believing each party as the case maybe and may find the accused guilty or not guilty.

**DISCHARGE**

 If the accused is not found guilty on technicality the judge will acquit the accused but if the prosecution fails on technicality the judge will not acquit the accused but discharge him. Where an accused is found not guilty the court makes one or more of these;

1. Dismissal Order dismissing the information of charges
2. Order of discharge of the accused
3. Order of acquittal
4. Order of compensation if the case is frivolous or false.

**SENTENCE**

 If an accused person is found guilty before passing sentence a plea of mercy, an allocusts or leniency is usually made by the counsel of defence. After the allocusts the judge passes his judgment. some of the sentences the court can impose on a person found guilty of a criminal offence; caning, death sentence, imprisonment with hard labour, deportation, fine, probation order, Order of costs, binding over order (and suspended sentence and community service in western countries), Order for disposal of property, Award for damages and Order for detention during the pleasure of the president or governor.

**Question 2; Comment on the various methods by which civil proceeding may be commenced in the high court**

**METHODS BY WHICH CIVIL PROCEEDINGS ARE COMMENCED IN HIGH COURTS**

 Here we’re going to discuss civil procedure and how its proceedings are commenced in a high court.

Let’s start with what civil procedure is;

Broadly speaking, **civil procedure** consists of the rules by which courts conduct civil [trials](https://www.law.cornell.edu/wex/trial). "Civil trials" concern the judicial resolution of claims by one individual or [class](https://www.law.cornell.edu/wex/class) against another and are to be distinguished from "[criminal trials](https://www.law.cornell.edu/wex/criminal_law)," in which the state [prosecutes](https://www.law.cornell.edu/wex/prosecute) an individual for violation of criminal law.

Some of the sources of civil procedure include;

* *The Nigerian Constitution*
* *Statutes establishing courts*
* *Civil procedure rules of relevant courts*
* *Rules of practice and procedure of English courts*

**CIVIL PROCEDURE IN THE HIGH COURT**

 The *High Court Civil Procedure Rules* makes provision for the procedure for conducting civil procedures in the High courts in every state. Here are the stages for civil procedure in the high court;

* The Pre-Court Stage and consultation of a lawyer
* Form and commencement
* Appearance
* Stay of proceedings
* Discontinuance
* Settlement
* Summary judgement
* Pleadings
* Pre-trial conferences and scheduling
* Discovery and Inspection
* Issues, Inquires, Accounts and References to Referees
* Special case
* Proceeding at trial :trail
* Filling of written address : closing address
* Judgement
* Enforcement of judgment

**METHODS BY WHICH CIVIL PROCEEDINGS ARE COMMENCED IN THE HIGH COURT**

 After the pre-court stage and consolation of a lawyer the proceeding commences. For an action to be commenced in the high court a counsel must file one or combination of the following originating processes or papers;

* Writ of summons or originating summons together with a statement of claim
* Ex party motion with or without a writ of summons and a statement of a claim which may be filled later
* Petition, may be necessary in matrimonial proceedings like divorce etc. or winding up of a company for being unable to pay its debts.

**WRIT OF SUMMONS OR ORIGINATING SUMMONS**

 When filled it is tamped and sealed with the courts name by a bailiff to give a defendant notice of the claim made against him. It urges him to acknowledge and defend himself before the court. It shall reoccupied by a statement of claim , written statements , lists of witnesses , written address in support of action , copies of every document to be relied on in trial , written statements and so on in Lagos. It usually contains the following endorsements;

* Names of the parties to the suit

(a) Name of plaintiff and his address

(b) Name of defendant and his address

(c) Name of plaintiff’s solicitor and his business address

* Endorsement of claim against the defendant. It serves the defendant personally

It lasts for 12 months, however, in Lagos it lasts for only 6 months and must be served between the time frame. It can be renewed.

**EX PARTE MOTION**

 Ex parte is a Latin term which means, ***“from/out of the party/faction of" (name of party/faction, often omitted), thus signifying "on behalf of (name)"***. This decision is one decided by a judge both parties are not required to be present for this. In English law however, ex parte refers to a legal proceeding brought by one party without notification of the other party.

It refers to improper unilateral contacts with a court, arbitrator, or represented party without notice to the other party or counsel for that party. It was common in the titles of habeas corpus and judicial review cases until the end of the twentieth century, due to the fact that those cases were originally brought by the Crown on behalf of the claimant. In common law, the title typically appeared as *Sawyer v (Defendant)*, *ex parte (Claimant)*; however in the US it was shortened to *Ex parte (Claimant)*. Proceedings of executive agencies to establish a right, for example, patent prosecution, can also be ex parte.

**PETITION**

 A petition is a legal document formally requesting a court order. Petitions, along with complaints, are regarded as pleadings at the onset of a lawsuit. It is a request seeking a specific court order, made by a person, group or organization to the court, typically at the start of a lawsuit. Here, a plaintiff files a petition or complaint with the court in stage one of a civil procedure, specifying what the lawsuit is about. A petition is made to the court by a petitioner against a respondent, versus a claimant, which is filed by a plaintiff against a defendant.

Where an action is commenced by a petition or an expert motion it must also include the endorsements which are explicitly stated above. These are the ways a civil procedure can be commenced in the high court.

REFRENCES: The Nigerian Legal System by Ese Malemi <https://www.law.cornell.edu/wex/civil_procedure>

<https://definitions.uslegal.com/c/criminal-proceeding>