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**LEVEL; 200LV**

**COURSE TITLE; NIGERIAN LEGAL SYSTEM**

QUESTION

1. Clearly state 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
2. Comment on the various methods of which civil proceedings may be commenced in high court

Arraignment is a formal reading of a criminal charging document in the presence of the defendant to inform the defendant of the charges against the defendant. In response to arraignment, the accused is expected to enter a plea.

The main two procedures for arraignment in a criminal trial is either by a direct criminal complaint via first information report(FIR) in a police or by a formal charge preferred by the prosecution either by the police or the Attorney Gen. After, the complaint or charge as the case may be arraignment follows as the case may be which has to be by arrest that in most cases has to be accompanied by warrant of arrest. As soon as the accused is arrested and his charges are read by the court to him and he has to plead guilty or not. The accused could plead;

**AUTREFOIS ACQUIT;** this plea states that the accused has been tried for the same offence before and has been acquitted, this sets out to protect the accused from double jeopardy.

**AUTREFOIS CONVICT;** this plea means that he has been tried and convicted for the same crime on on a previous occasion, this is also applicable for a rule against double jeopardy.

**HE MAY STAND MUTE;** whenever an accused stands mute a plea of not guilty is usually entered for the accused.

**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. Criminal procedure can be

either in form of inquisitorial or adversarial criminal procedure

**Section 33. (1)** of Federal high court Act.

*Subject to the provisions of this section, criminal proceedings before the Court shall be conducted substantially in accordance with the provisions of the Criminal Procedure Act, and the provisions of that Act shall, with such modifications as may be necessary to bring it into conformity with the provisions of this Act, have effect in respect of all matters falling within the jurisdiction of the Court. The many legal procedures associated with modern criminal trials have developed over centuries. States and the federal government follow a largely uniform set of procedures.*

Assuming that the criminal trial is carried out to completion, those procedures tend to include the following:

**Judge or Jury Trial.** The defense often has the right to decide whether a case will be tried to a judge or jury, but in some jurisdictions both the prosecution and the defense have the right to demand a jury trial. (For more on the jury-trial right, including its limitations, Juries typically consist of 12 people, but some states allow for juries as small as six members.

**Jury selection.** If the trial will be held before a jury, the defense and prosecution select the jury through a question-and-answer process called "voir dire." In federal courts and many state courts, the judge carries out this process using questions suggested by the attorneys, as well as questions that the judge comes up with on his or her own.

**Evidence issues.** The defense and prosecution request that the court, in advance of trial, admit or exclude certain evidence. These requests are called motions "in limine."

**Opening statements.** The prosecution and then the defense make opening statements to the judge or jury. These statements provide an outline of the case that each side expects to prove. Because neither side wants to look foolish to the jury, the attorneys are careful to promise only what they think they can deliver. In some cases, the defense attorney reserves opening statement until the beginning of the defense case. The lawyer may even choose not to give an opening statement, perhaps to emphasize to the jury that it's the prosecution's burden to do the convincing.

**Prosecution case-in-chief.** The prosecution presents its main case through direct examination of prosecution witnesses.

**Cross-examination.** The defense may cross-examine the prosecution witnesses.

**Prosecution rests.** The prosecution finishes presenting its case.

**Motion to dismiss (optional).** The defense may move to dismiss the charges if it thinks

that the prosecution has failed to produce enough evidence—even if the jury believes the evidence—to support a guilty verdict.

**Denial of motion to dismiss.** Almost always, the judge denies the defense motion to dismiss.

**Defense case-in-chief.** The defense presents its main case through direct examination of defense witnesses.

**Cross-examination.** The prosecutor cross-examines the defense witnesses.

**Defense rests.** The defense finishes presenting its case.

**Prosecution rebuttal.** The prosecutor offers evidence to refute the defense case.

**Settling on jury instructions.** The prosecution and defense get together with the judge and determine a final set of instructions that the judge will give the jury.

**Prosecution closing argument.** The prosecution makes its closing argument, summarizing the evidence as the prosecution sees it and explaining why the jury should render a guilty verdict.

**Defense closing argument.** The defense's counterpart to the prosecutor's closing argument. The lawyer explains why the jury should render a "not guilty" verdict—or at least a guilty verdict on only a lesser charge.

**Prosecution rebuttal.** The prosecution has the last word, if it chooses to take it, and again argues that the jury has credible evidence that supports a finding of guilty.

**Jury instructions.** The judge instructs the jury about what law to apply to the case and how to carry out its duties. (Some judges "preinstruct" juries, reciting instructions before closing argument or even at the outset of trial.)

**Jury deliberations.** The jury deliberates and tries to reach a verdict. Juries must typically be unanimous. If less than the requisite number of jurors agrees on a verdict, the jury is "hung" and the case may be retried.

**Post-trial motions.** If the jury produces a guilty verdict, the defense often makes post-trial motions requesting the judge to override the jury and either grant a new trial or acquit the defendant.

**Denial of post-trial motions.** Almost always, the judge denies the defense post-trial motions.

**Sentencing.** Assuming a conviction (a verdict of "guilty"), the judge either sentences the

defendant on the spot or sets sentencing for another day.

**PRACTICE DIRECTION ISSUED BY THE CHIEF JUDGE OF THE FEDERAL CAPITAL TERRITORY, HON. JUSTICE ISHAQ USMAN BELLO**

**In exercise of the powers conferred on me by section 259 of the Constitution of the Federal Republic of Nigeria, 1999, section 490 (g) of the Administration of Criminal Justice Act 2015 and all other powers enabling me in that behalf, I, Ishaq Usman Bello, Honourable Chief Judge of the Federal Capital Territory High Court, make the following Practice Direction -**

**ORDER ONE**

**OBJECTIVES AND GUIDING PRINCIPLES**

1. The purpose of this Practice Direction is to carry into effect and ensure compliance with the Overriding Objective of the Administration of Criminal Justice Act 2015 as expressed in section 1(1) of that Act, particularly in; ensuring efficiency and speed in the case management of criminal trials and dispensation of justice and protecting the interests and fundamental human rights of the defendant, victim, witnesses and society; particularly the right to fair hearing.
2. This Practice Directions shall apply to all criminal trials in the Magistrates Courts, High Courts, Upper Area Courts and other courts that try criminal cases in the Federal Capital Territory.

**ORDER TWO**

**COMMENCEMENT OF PROCEEDINGS**

cases shall commence in; High court by charge or information, Magistrates court by charge or complaint or first information report and Upper area court by first information report or complaint, in substantial compliance with the Act

1. The Chief Judge or his nominee or most senior judge present shall assign cases for trial within 5 working days of filing the charge.
2. The court to which a case is assigned shall serve notices of trial within Ten (10) working days of the assignment on: the prosecuting authority, on the defendant personally if on bail, through the legal representatives by leave of court, where the defendant is in custody, a production warrant and the notice of trial shall be served through the officer in charge of the place of detention; not more than 3 days from the date of issuance, In all courts, except the court directs otherwise, a charge sheet shall be served on the defendant within Seven (7) days of filing.

## **ORDER THREE**

### **ARRAIGNMENT AND PRE-TRIAL CASE MANAGEMENT HEARING**

1. There shall be a Case Management Hearing immediately after arraignment where all the following preliminary issues shall be dealt with; objections on ground of jurisdiction, admissibility of evidence including statements of the defendant(s), relevant number of witnesses to be called by the parties, the non contentious evidence to be agreed and admitted - 'evidence agreed', time estimate and schedule of witnesses for the trial; and any other questions of law relating to the case.
2. The court shall issue a trial notice for an Arraignment and Case Management Hearing to the parties no later than Ten (10) working days from the date of the case being assigned to the court.  
unless the court directs otherwise, irrespective of any issues, including but not limited to jurisdiction, bail or plea bargain, the defendant shall be called upon to enter the dock and the charges read and explained in the language he understands to the satisfaction of the court and enter a plea, where a defendant is present in court and refuses to enter the dock to take a plea, a not guilty plea shall be entered for him, where the court entertains any objections, ruling shall be reserved till final judgment.
3. The court shall consider all issues raised at the Arraignment and Case Management Hearing and resolve matters raised in the interests of justice within Five (5) working days of the Arraignment and Case Management Hearing.
4. The presiding Judge that conducts a Case Management Hearing shall endorse the agreed evidence and the court shall serve copies on the prosecution and defence.
5. Where a trial is commenced:
  - a. by a charge, the trial shall commence within Thirty (30) days of preferring a charge or the return of the case management forms,
  - b. by First Information Reports, the trial shall commence thirty (30) days after the charge has been preferred.
6. A trial shall be concluded within a reasonable time and completed no later than 180 days from the date of commencement.

## **ORDER FOUR**

### **ARRAIGNMENT AND DEFENDANT'S PLEA**

1. Where the defendant enters a plea of 'guilty', the court shall proceed to convict him immediately and sentence the defendant.
2. Where the defendant enters a plea of 'guilty' to a capital offence, a plea of 'not guilty' shall be recorded for him and the procedures in paragraph 3 of this Order shall then be applicable.
3. Where the defendant enters a plea of 'not guilty';
  - a. The parties shall complete the prescribed case management forms and

identify the relevant disputed issues based on evidence for or against the defendant, and

- b. Only the witnesses listed on the case management form and proof of evidence shall be called in evidence, but where during the course of the trial, it becomes evident that the testimony of an identified and available witness is required in the interests of justice or the evidence such a witness could give may materially affect the outcome of the case in relation to genuinely disputed relevant issues, the court may grant a period not exceeding Five (5) working days or as may be convenient to the court within which to hear the testimony of such witness.
4. The parties' obligations to prepare for trial include: Completion of the Case Management Forms where applicable, Timely arrival of parties and witnesses at court, Completion by the prosecution of the investigation before arraignment, The prosecutor and the investigating officer giving the court signed undertakings to confirm that witnesses and exhibits are available and will be produced as and when required, and Arrangements for the efficient presentation of all material evidence.
5. At trial the court shall; Require the parties to provide a timed schedule of calling of: live witnesses, details of any admissions, written evidence and other material to be adduced, Ensure that the evidence, questions, and submissions are strictly limited to the relevant disputed issues.

## ORDER FIVE

### DISCLOSURE PROTOCOLS

This Order shall apply to summary trials to the extent that a defendant is given adequate time and facility for the preparation of his defence;

1. **In the high court**, both the prosecution and defence shall disclose to each other and the court, relevant material and/ or information within their knowledge or in their possession or accessible to them, pertaining to the case that will assist the court:
  - a. to identify the issues to be decided upon in the course of the trial, and/or
  - b. to narrow down the issues that are in dispute, and/or
  - c. to ensure a speedy and fair hearing for the defendant, victim, witnesses and other parties.
2. The court shall encourage the prosecution and defence to agree on non-contentious evidence.
3. The prosecution shall serve on the defendant all the materials, information or proof of evidence that it intends to rely on to prove the charge against the defendant no later than Five (5) working days before the date of arraignment.
4. After the service on defendant of the material that the prosecution intend to rely

on, the defendant shall indicate on the Case Management Form what aspects of the prosecution case he agrees or disagrees with and may elect to disclose the defence he intends to raise at trial;

5. Where a defendant notifies the prosecution of the aspects that he disagrees with in the prosecution's case and discloses the defence he intends to raise, as in the preceding paragraph (4), the prosecution in light of such disclosure shall further review all the material in their possession and shall make timely disclosure to the defendant of the existence of material known to the prosecution that tends to negate the guilt of the defendant, mitigate the degree of the offence charged or reduce the punishment.
6. At the conclusion of a Case Management Hearing the court shall give trial- readiness directions.

## **ORDER SIX**

### **REMAND HEARING PROTOCOL**

1. The Chief Judge shall from time to time designate magistrates to entertain, hear and grant meritorious remand applications in accordance with the Act.

## **ORDER SEVEN**

### **TRIAL**

1. The court shall schedule the time and date of the hearings on such days and times with the aim of concluding the trial within 180 days after the arraignment.
2. The hearing of cases shall be on a day-to-day basis as far as the schedule of the court may permit.
3. The court and parties shall prevent unnecessary delays as far as practicable and accordingly, not more than five adjournments may be allowed from arraignment to final judgment.
4. Counsel that has conduct of a case shall ensure that they are present in court and ready to proceed with their case or trial at all times
5. Where a counsel holding brief for another counsel is unable to proceed with the business of the day, due to his unpreparedness, costs may be awarded against him personally.
6. The defence and prosecution witnesses may at trial, without giving oral evidence, adopt their written statements and be cross examined on it in the following conditions:
  - a. The written statements have been agreed at the case management hearing, and
  - b. Where any other additional oral evidence would be a repetition of the written statement and add nothing new of evidential value.

## **ORDER EIGHT**

### **OPENING ADDRESS**

1. After a plea of not guilty has been taken or been entered for the defendant and at the conclusion of the Case Management Hearing, the prosecutor may open the case against the defendant stating in brief, by what evidence he expects to prove the guilt of the defendant.
2. The prosecutor shall then examine the witnesses for the prosecution who may be cross-examined by the defendant or his legal representative and thereafter re-examined by the prosecutor, where necessary.

## **ORDER NINE**

### **TRIAL IN ABSENCE**

1. Where a defendant who has been granted bail, or having due notice of his trial date, fails without reasonable explanation to attend or refuses to attend court for his trial, and a summons and/or warrant as the case may be, has been issued to compel his attendance without success, the trial shall continue in his absence.
2. Neither the seriousness of the offence charged nor the severity of the punishment if convicted shall be a bar to proceeding with the trial in the defendant's absence.

## **ORDER TEN**

### **TRANSFER OF CASES**

1. A petition or an application for the transfer of a case shall not act as a stay of proceedings unless there is a specific direction or order for the transfer of the case.

## **ORDER ELEVEN**

### **STAY OF PROCEEDINGS**

1. An application for a stay of proceedings in respect of a criminal case before the court shall not be entertained.

## **ORDER TWELVE**

### **NOTICES**

1. In furtherance of the objectives of the Administration Criminal Justice Act 2015 of speedy and fair dispensation of justice, electronic mail and other electronic means may be employed to give notice in order to inform counsel or unrepresented parties, of unforeseen developments in a case. Provided such a notice is given at least Forty-Eight (48) hours before the scheduled court hearing.



2. Counsel and unrepresented parties will be expected to furnish the Court Registrar with primary and secondary phone numbers and email addresses.

## **ORDER THIRTEEN**

### **DECLOGGING PANEL**

1. The Chief Judge may set up a panel of judges which may include magistrates to review and reduce the backlog of cases on the docket of courts. The panel may work by itself or in conjunction with the Administration of Criminal Justice Monitoring Committee (ACJMC).
2. The Panel set up under the preceding paragraph shall make recommendations to the Chief Judge and take such measures subject to the approval of the Chief Judge to expedite trials, clear the backlogs on the docket and decongest the courts' caseloads.

## **ORDER FOURTEEN**

### **PROCEEDINGS: ATTITUDE OF COUNSEL AND THE COURT**

1. Judges and magistrates shall have a firm control of the daily business of the court. They shall ensure that counsel conducts the business of the court with professional decorum and avoid any act, which is either an abuse of the justice system or is aimed at causing delay or truncating the course of justice.
2. Costs awarded against counsel or any party under any Order in this Practice Direction shall be treated as a fine.
3. Counsel who may wish to make a petition against a Judge or magistrate must first inform the Chief Judge in writing, of the allegation against the Judge or magistrate concerned.
4. In investigating a petition made against a Judge or magistrate, the Chief Judge shall ensure that petitions do not become a *de facto* stay of proceedings.
5. Judges and magistrates shall take concrete and identifiable steps towards improving the efficiency of the registrars and bailiffs whose activities shall be reviewed periodically.
6. Judges and magistrates must investigate and report to the Chief Judge all allegations of unethical practices by court staff.

## **REMEDIES OF THE ACCUSED**

1. Sentencing

The rights of the accused after trial are many and varied. Criminal defendants who are convicted at trial must go through the process of sentencing, but they have the right to argue for a certain sentence. They then have the right to appeal the guilty verdict and

the sentence. Should all available appeals fail, they have the right to attack the conviction again through a civil proceeding against the prison warden called a writ of *habeas corpus*. Finally, defendants have the right to ask the state's governor or the president of the United States (depending on whether the conviction was in federal or state court) for clemency. The sources of these rights can be found in federal and state constitutions and statutes. Sentencing options for judges include fines, imprisonment, restitution to victims, probation, and a variety of lesser penalties.

Probation is a status of conditional liberty. That is, the defendant is free only so long as he fulfills certain conditions and refrains from certain conduct. A judge may order a probationer to do or refrain from doing a number of things for the length of the probationary period. The length of a probationary period can depend on a variety of factors, most significantly the seriousness of the crime.

On the federal level and in most states, sentences are formulated from "sentencing guidelines." Sentencing guidelines set forth a presumptive sentence for a conviction based on factors that relate to the defendant and the crime involved. Such factors include the nature of the defendant's crime or crimes and the defendant's criminal history. The judge may depart from the sentencing guidelines, and if the sentence stays within the minimum and maximum allowed under the guidelines, the judge does not have to state the reasons for the departure on the record. If, however, a judge decides to increase or decrease a defendant's sentence beyond the maximum and minimum sentences allowed under the guidelines, the judge must clearly state the reasons for the departure on the record..

Capital defendants are entitled to a full sentencing hearing before a sentencing authority. The sentencing authority is either the judge or jury or both. In most cases, the sole sentencing authority in a capital case is the jury that delivered the verdict. At the hearing, the sentencing authority must be given sufficient guidance to make an informed decision. If the prosecution argues to the jury that a capital defendant should be put to death because he presents a future danger to the community, the defendant has the right to inform the sentencing authority that he would be ineligible for parole and would die in prison if it decides to reject the death penalty.

**Sentences may be appealed.** The standards for sentencing review vary from state to state. Approximately half of all states allow appeals courts to review all sentences, even sentences that are within statutory guidelines. Other states allow appellate review only of sentences that fall below or above the state's sentencing guidelines.

### **Appeals**

The federal government and all states provide the opportunity to appeal a criminal conviction. However, on the federal level and in most states, there is no constitutional right to appeal a criminal conviction. Instead, the right is provided by statute. This means that a legislature may retract the privilege of an appeal. In the appeals statutes, legislatures declare that defendants are entitled to information necessary to appeal, such as a transcript of the trial and instructions on how to file an appeal with the appropriate reviewing court.

All jurisdictions provide the right to appeal a criminal conviction, and so all must make

sure the right is available to all defendants. Where appeal is available as a matter of right (in most cases this is only the first appeal), the court must appoint a lawyer, free of charge, for persons who are unable to afford their own attorney. Where the appeal is discretionary (i.e. a second appeal, usually to the state's highest court), no such right to a free attorney exists. A person who is on probation or parole and is accused of violating the terms of his probation or parole may be faced with revocation of that status. In such cases, if the probationer or parolee cannot afford an attorney, he may be entitled to free legal counsel. This depends on a number of factors, but generally, if the defendant denies committing the act and faces imprisonment, the court will appoint an attorney.

Capital defendants in state court are entitled to a review of the death sentence in a court with state-wide jurisdiction. On the federal level, capital defendants are entitled to one appeal: to Court of Appeals for the particular circuit in which the district court sits. An appeal to Supreme Court is not automatic, even for capital defendants. In most situations, state court criminal defendants must appeal first to the state's highest court

### ***Habeas Corpus***

A defendant who has filed all possible appeals may thereafter petition the courts for *habeas corpus* relief. *Habeas corpus* relief can consist of a new trial, a new sentence, or outright release from incarceration. *Habeas corpus* relief is available only to defendants who are incarcerated.

A *habeas corpus* petition is a civil suit filed against the prisoner's jailer. In the suit, the prisoner must allege that she was deprived of a constitutional right in the case, and that continued incarceration is unlawful. Typical bases for *habeas corpus* petitions include complaints about the trial, including ineffective assistance of counsel, discrimination in the jury selection, juror misconduct, prosecutorial misconduct, violation of the right to be free from self-incrimination, and similar issues pertaining to constitutional rights. Furthermore, a claim of actual innocence based on newly discovered evidences not a basis for *habeas corpus* relief.

State court defendants may file a round of *habeas corpus* petitions in the state courts and, if a federal constitutional question is involved, another round in the federal courts. Many states limit the number of times that a prisoner may file *habeas corpus* petitions to one round. In most states, this means one petition at the trial court level, one petition to an appeals court, and one petition to the state's highest court. Some states have only trial courts and a high court, which effectively limits the possible number of *habeas corpus* petitions in state court to two.

A prisoner whose conviction came from federal court may file *habeas corpus* petitions only in the federal court system. For prisoners who come from states that provide counsel to prisoners, the filing deadline is six months after the date of the "direct review" of the state court's final judgment. The term "direct review" is not defined in the legislation, but commentators believe that it refers to the date of the last review in state court. For prisoners petitioning from states that do not provide free counsel, the filing deadline is one year. The statute of limitations, or limited amount of time during which actions can be brought or rights enforced, is tolled (overwritten), however, by certain

events, including the discovery of new evidence for a constitutional claim.

### **Prison**

By and large, prisoners are entitled to only a "minimal civilized measure of shelter." Prisoners have a modicum of rights, but most of them may be curtailed in the interests of security. Established rights of prisoners include: the right to sufficient nourishment; the right to be free from arbitrary punishment on the basis of beliefs, religion, or racial and ethnic origin; the right to be free from constant physical restraint; the right to access to the courts and to legal materials; the right to a minimal amount of exercise; the right to adequate medical care; the right to essential personal hygiene; and the right to adequate heat, cooling, ventilation, and light. Other rights, such as the right to see visitors, the right to send and receive mail, the right to free speech, the right to practice religion, the right to privacy, and the right to personal property all may be infringed upon to the point necessary to preserve safety and security within the prison.

### **SENTENCE:-**

A sentence is a decree of punishment of the court in Criminal procedure. The sentence can generally involve a decree of imprisonment, a fine and / or other punishments against a defendant convicted of a crime. Those imprisoned for multiple crimes will serve a consecutive sentence (in which the period of imprisonment equals the sum of all the sentences served sequentially, or one after the next), a concurrent sentence (in which the period of imprisonment equals the length of the longest sentence where the sentences are all served together at the same time)

### **I. SUSPENSION OF SENTENCE:-**

"Suspension" means to take or withdraw sentence for the time being. It is an act of keeping the sentence in abeyance at the pleasure of the person who is authorised to suspend the sentence, and if no conditions are imposed, the person authorised to suspend the sentence has the right to have the offender re-arrested and direct that he should undergo the rest of the sentence without assigning any reason.

## **2**

Various method by which civil Proceedings can be commenced in High Court

### **ORIGINATING PROCESS;**

Originating process is a term for various documents by means of which a civil action may be commenced, such as a default summons, statement of claim, cross-claim and summons. An originating process must be served to the defendant personally (except in cross-claims against active parties).

### **WRIT OF SUMMONS**

The Writ of Summons is one of the two modes used in commencing a 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. It is a fundamental process in any suit

### **ORIGINATING MOTION.**

A type of document that starts a civil proceeding. This is often required when:

- there is no defendant
- you are making an application to the court under a particular Act, or
- the *Supreme Court (General Civil Procedure) Rules 2015* or the *Supreme Court (Miscellaneous Civil Proceedings) Rules 2018* tell you to use an originating motion. See also writ.

### **PETITION;**

A petition is a legal document formally requesting a court order. Petitions, along with complaints, are considered pleadings at the onset of a lawsuit.

In conclusion, the procedure for both criminal and civil matters are structured in a manner to achieve justice.

#### Reference

For clear and complete explanations of many aspects of criminal law and procedure, get *The Criminal Law Handbook: Know Your Rights, Survive the System*, by Paul Bergman and Sara J. Berman (Nolo).

<https://www.nolo.com/legal-encyclopedia/criminal-trial-procedures-overview-29509.html>

<https://nigerialii.org/content/practice-direction-issued-chief-judge-federal-capital-territory-hon-justice-ishag-usman>