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**COURSE CODE: LPI 204**

**COURSE TITLE: NIGERIAN LEGAL SYSTEM II**

**QUESTIONS
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.**

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

**PROCEDURE FROM ARRAIGNMENT TO SENTENCE IN A CRIMINAL TRIAL FOR THE HIGH COURT**

Arraignment is the calling of an accused person formally before the court by name at the beginning of a criminal proceedings to read to him the indictment or information brought against him and to ask him whether he pleads guilty or not guilty. In other words, arraignment means the register 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 which is known as the arraignment of a person before the court. In a court of law an accused person may plead as follows;

1. **Autrefois acquit:** *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.
2. **Autrefois convict:** This means a plea that he has been tried and convicted for the same offence on a previous occasion.
3. **He may stand mute:** When an accused person stands mute, a plea of not guilty is usually entered for the accused.
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. Here the prosecution usually drops the instant charge. Thus, paving the way for the court to sentence the accused person on the lesser charge which makes room for a plea bargain.
5. **He may plead guilty**
6. **He may plead not guilty**

**PLEA**

1. **PLEA OF GUILTY:** When an accused person pleads guilty, the counsel for the prosecution will give the court a summary of evidence and character of the accused along with his criminal record, if any. The counsel for defence, after this, usually makes his plea of mitigation of sentence and the court passes its sentence.
2. **PLEA OF NOT GUILTY:** When an accused person pleads not guilty, the trial proceeds.
3. **PLEA BARGAINING:** Plea bargaining is negotiating and agreeing for an accused person to plead guilty to a lesser crime, in exchange for the dismissal of the serious criminal charge brought against him and for quick dismissal of the entire criminal proceedings.
4. **PLEA IN REGARDS TO MENTALLY ILL PERSONS:** Some accused 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 persons may be referred for psychiatric examination and treatment. Alternatively, the defence may put up the defence of insanity and if successful may be acquitted on the grounds of insanity. As a general rule of law, every accused person is presumed to be sane until the contrary is proved. 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 medicinal evidence.

**PROSECUTION**

The counsel for the prosecution always opens a criminal proceeding by calling evidence for the prosecution. He may call in witnesses and examine each and tenders any exhibit they may have. The witnesses are in turn cross-examined by the defence 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 proof beyond reasonable doubt. The burden to prove the guilt of the accused by the prosecution is never lowered or watered down.

**SUBMISSION OF “NO CASE TO ANSWER”**

At the close of the case for the prosecution, the defence 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 no case to answer and therefore the case should not proceed further. The defence counsel makes the submission by addressing the court. The prosecuting counsel usually replies. The judge then makes a ruling on the submissiom.

**DEFENCE**

After the close of the case for the prosecution and the failure of a no case submission, if such was made, the case for the defence opens. The accused and his witnesses, if any are one after the other, led in evidence-in-chief by the counsel for the defence and are cross-examined by the prosecuting counsel and re-examined by the counsel for the defence as may be necessary. Each witness undergoes this process. After the witnesses for the defence have testified and tendered any exhibit they may have, the case for the defence closes.

**CLOSING ADDRESSES**

After the case for the defence closes, the counsel for both sides then make closing speeches by addressing the court from their filed written addresses. The prosecution is first to address the court, who reviews the case from both sides. He points out the strength of the case for the prosecution and identifies the weaknesses if any of the defence and then urges the court to convict the accused as charged. However, the general rule of law is that the case for the prosecution must succeed on its own. This is so because in criminal proceedings, the burden of proof on the prosecution is proof beyond reasonable doubt but not beyond the shadow of doubt. The case of the prosecution cannot rely on the weakness of the defence to succeed.

The counsel for the defence addresses next. He points out the weakness of the case for the prosecution. If there is not sufficient proof to convict the accused beyond reasonable doubt, he points it out to the court and urges the court to discharge ab acquit the accused on the charge or charges. As a general rule of law, the accused or his defence is entitled to the last word to round off the addresses.

**JUDGEMENT**

In his judgment, the judge sums up, weighs or reviews the evidence for both sides. He states the reasons for believing and accepting the case for either side and also gives his reasons for disbelieving and rejecting the evidence of the other side. This must be done in accordance of the law.

**DISCHARGE**

When an accused person has not been found guilty, the judge will dismiss the charges and accordingly discharge and or acquit the accused person in lieu with the criminal procedure law. When a person has not been found guilty, the court makes one or more of the following orders; dismissal order, order of acquittal, order of discharge and order of compensation

**SENTENCE**

When an accused person is found guilty, a plea of mercy or leniency is made by the counsel for the defence. After this, the judge passes sentence on the accused. A court under the Criminal Procedure law or act may pass sentence and make one or more of the following appropriate orders;

1. Imprisonment
2. Fine that is, in the place of imprisonment or fine and jail
3. Death sentence
4. Deportation
5. Caning

Other orders may include; order for detention, order for disposal of property, order of costs, award of damages and prohibition order.

**REMEDY FOR AN ACCUSED PERSON AFTER SENTENCING**

The remedy available for an accused person after sentencing is an appeal. In law, an appeal is the process in which cases are reviewed, where parties request a formal change to an official decision. Appeals function both as a process for error correction as well as a process of clarifying and interpreting law.

**MITIGATING FACTIORS AFTER SENTENCING**

Appealing for a case can lead one to mitigate on the sentence of one’s charge or charges. To mitigate means to make something less serious or less harmful. Mitigating factors are therefore the various factors a court considers in reducing the sentence of a convict at the end of a criminal trial. Those factors are;

1. The age of the convict
2. First offender status of the convict
3. Provocation
4. Reasonable, repentant or humane behaviour of the offender
5. Plea of guilt by accused
6. Illiteracy or level of education of the accused

**VARIOUS METHODS BY WHICH CIVIL PROCEEDINGS CAN BE COMMENCD IN HIGH COURT**

Proceeding can be commenced in the High Court by;

1. Originating process
2. Writ of Summon
3. Originating motion
4. Petition

In accordance to Order 1, Form and Commencement of Action, civil proceedings may be begun by writ, originating summons, civil proceeding originating summons or petition or any other method required by other rules of court governing any special subject matter as provided in these rules.

**REFRENCES**

* Ese Malemi, *the Nigerian Legal System,* Princeton Publishing Company, Pages 451-458
* Order 1, *Form and Commencement of Action*