COURSE CODE: LPI 204

COURSE TITLE: NIGERIAN LEGAL SYSTEM II

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LEVEL: 200

COLLEGE: LAW

MATRIC: 18/LAW01/049

DATE: 15th April, 2020.

Question 1

Criminal procedure is the method or procedure of commencing, conducting and concluding criminal proceedings or matters in court. Sometimes, there may be a matter that is a mixed, for instance, a civil matter or claim may have a criminal issue or element, in which case, the civil aspect will be decided according to the weight of evidence required by the Evidence Act in civil matters that is proof on a balance of probability, whilst the criminal issue is likewise decided according to the weight of evidence required by the Evidence Act.

***Sources of Criminal Procedure.***

The sources of the rules regulating criminal procedures in Nigerian courts are mainly the:

1. Criminal Procedure Act and its equivalent in the southern states
2. Criminal Procedure Code and its equivalent in the northern states
3. The Nigerian Constitution
4. Criminal Code and the Penal Code
5. Statutes Establishing Tribunals

***The procedure for criminal proceedings in a High Court includes:***

1. What is an indictment or information
2. Proofs of Evidence
3. Arraignment and Plea
4. Plea of guilt
5. Plea of no guilt
6. Prosecution
7. Submission of ‘No case to answer’
8. Defence
9. Closing Address
10. Judgment
11. Discharge
12. Finding of Guilt and sentence

***Arraignment and plea***: Arraignment is the calling of an accused person formally before the court by name at the beginning of a criminal proceeding, 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 meant the registrar or other officers 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. An accused person may plead as follows:

1. ***Autrefois acquit***: which means a plea that he has been tried for the same offence before and has been acquitted. This could be seen in ***Rabiu vs. the State***. It is also a fundamental right under the fair hearing provisions of the Nigerian Constitution.
2. ***Autrefois convict:*** which 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.
3. ***He may stand mute***: Where an accused stands mute, that is, without saying anything, a plea of not guilty is usually entered for the accused.
4. ***Plea of Guilty to a Lesser Offence***: Where this plea is accepted by the prosecution, the court may pass its sentence accordingly. Here the prosecution usually would drop the instant charge. Thus there is room for plea bargain.
5. ***He may plead guilty to the offence charged***
6. ***He may plead not guilty***.

***Plea of Guilt:***  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 this, the counsel for the defence usually makes his allocutus or plea in mitigation of sentence and the court then passes its sentence.

***Prosecution:*** The counsel for the prosecution always opens criminal proceedings by calling evidence for the prosecution. He calls his witness and examines each in chief, 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 many be necessary and the case for the prosecution closes. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt. When the burden of proof is not discharged, the accused is set free, discharged and acquitted.

***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 of an earlier 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 judge may accept the submission and make a ruling that the accused has no case to answer. Where the judge rejects the no case submission, in his ruling, the trial proceeds and the accused has to state his case by giving evidence in his defence. Where the accused refuses to give evidence in his defence and chooses to stand by his ‘no case submission’, which had earlier failed, the court would often usually convict the accused.

***Defence:*** After the close of the case for the prosecution and the failure of a no case submission, if such submission was made, the case for the defence then 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 to be necessary. Each witness undergoes the whole process, before another witness is called. After witnesses for the defence have testified and tendered any exhibit they may have, the case for the defence closes.

***Closing Defence:*** After the close of the case for the defence, the counsel for both sides then make closing speeches by addressing the court from their field written address. The prosecution counsel is always the first to address the court. He sums up or reviews the case on both sides, pints out the strengths and weaknesses of any of the defence and urges the court to convict the accused as charged. The case for the prosecution must succeed on its own strength. Thus the case for the prosecution cannot rely on the weakness of the defence to succeed. An accused person is not bound to put up a defence and may in appropriate circumstances rest his case or defence on the case for the prosecution. In the address for the defence, he points out the weakness of the case for the prosecution. If the case for the prosecution is a pack of lies and a mere fabrication, conjecture, imaginative, malicious, frivolous, vexations 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, it is his right to round off the addresses.

***Judgement:*** After the closing addresses by counsel for both sides, the judge fixes the judgement for a date provided that it is not a summary trial and the court rises in adjournment to enable it deliberate, consider or evaluate the totality of evidence in the case. In the judgement, the judge sums up, weights or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also gives his reason for disbelieving and rejecting the evidence for the other side. In conclusion, the judge may find the accused not guilty or guilty as the case may be. This must be done according to law.

***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 provided under the criminal procedure law. On the other hand, if the prosecution failed on a technicality, then the court will usually discharge the accused, but not acquit him. Where a person has not been found guilty, a court usually makes one or more of the following orders:

1. Dismissal order, dismissing the information, or charge
2. Order of discharge of the accused on the charge
3. Order of acquittal
4. Order of compensation, as the case may be for the false, frivolous, vexatious or malicious prosecution or false imprisonment of the accused, and so forth as may be relevant according to the circumstances of the case.

***Sentence:*** Where an accused is found guilty, before passing sentence an allocutus, plea for mercy or leniency is usually made the counsel for the defence. After the allocutus, the judge passes sentence on the accused.

***Types of sentences court may impose***

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:

1. Imprisonment, usually with hard labour: This is a punishment of criminal offences which consists of the detention of the offender in a prison. It includes the restrain of a person’s liberty by another. There is a debate whether imprisonment has succeeded in reducing crime. Imprisonment may be imposed with or without hard labour and imprisonment when imposed, may or may not put with a type of labour then the labour usually assumed is hard labour.
2. Fine: This is a sum of money, which a court orders an offender to pay to the government treasury as a penalty for the commission of an offence. Most summary offences usually stipulate an amount of fine as alternative to the term of imprisonment imposed for the same offence, so that an offender may pay the fine and not go to prison. Although law may stipulate both a fine and an imprisonment may be imposed.
3. Death sentence: A death sentence is a judgement of court which stipulates that an offender should suffer death for the offence committed. Death penalty as a punishment is imposed for certain offences in Nigeria as compared to Britain where the sentence has been abolished. An offence which carries a death sentence is called a capital offence, because they impose the highest penalty for crime, which is the taking of the life of the offender. In Nigeria, offences which carry the death sentence include; treason, armed robbery and murder.
4. Caning: Under the Criminal Procedure, caning is part of the punishment that may be imposed. It may be an order for caning only or in addition to other sentences. However the following rules apply in respect of an order for caning.
5. A male who has attained 45 years and above
6. A female
7. Canning is to be effected with a light rod or cane
8. The number of strokes is to be specified and it must not exceed 12 strokes
9. Where a person is convicted for more than one offence and caning is imposed, the number of strokes must not exceed 12.
10. Order of caning must not be imposed more than once for the same offence.
11. Deportation: This generally refers to expulsion from one country. Where a person for instance is not a citizen of Nigeria, under the Criminal Procedure Act and Laws is convicted of a crime punishable by imprisonment, without the option of fine, the court may alternatively or in addition add a deportation of the alien by the appropriate Minister, which may be the minister for Internal Affairs if it appears that it may be in the interest of peace, order and good governance of the country. Powers of deportation are contained in the Immigration Act.

***Others include:***

1. Binding over order
2. Order for detention during the pleasure of the President or governor as the case may be;
3. Order for disposal of property
4. Order for costs
5. Award of damages
6. Probation order

***The remedies an accused person may seek after sentencing has been imposed***

The remedies could also be regarded as mitigating factors. These factors are ones brought up for the consideration of a court to reduce the sentence it may pass on a convict are numerous and cannot be enumerated. The issues, facts or factors commonly considered in mitigation of sentence are:

1. Age of the convict: The court here can take into consideration the age of the convict in question. If he is too young or too old and the reasonable punishment to be given to avoid an unreasonable sentence destroying an entire life beyond reformation and if an unreasonable or excessive sentence may be ground of appeal, where it may be set aside, reduced or substituted and so forth.
2. First offender status of the convict: Though a sentence should not be unreasonably harsh or unreasonably lenient, however as circumstances may warrant, a convict may in deserving and appropriate cases, be cautioned and discharged, especially, if he is a fist offender.
3. Provocation: Provocation is statutory regarded as a mitigating factor in Nigerian Law in the sense that when a plea of provocation succeeds. It reduces in cases of murder or culpable homicide punishable by death. The mandatory death sentence which follows conviction to terms of imprisonment the maximum of which is life imprisonment.
4. Length of time spent in custody: Our courts in recognition of the delay which is at times inevitable if justice is to prevail reflect his recognition while sentencing so that an offender is not worse off for being detained in the course of his trial, especially when a prison sentence is to be imposed.
5. Membership of the same family by the parties concerned: The court have shown that where parties involved in crime both as accused and victim are all members of one big family, it will be reluctant in imposing full sentence because of the fact that the hardship it will occasion will still fall on the same family.
6. Plea of guilty as accused: When an accused person pleads guilty, he not only saves time for the prosecution, he also saves time for the court and witnesses. This also leads to saving moving for the state as a whole.
7. Human behaviour of the offender after commission of the crime: Courts in sentencing at times are moved by the conduct of the offender, for instance, in ***(Abdu Dan Sarkin Norma V Zaira Native Authority, 1963)*** where the accused was charged with causing death by dangerous driving. In sentencing him the court took into consideration the fact that he reported the accident to the relatives of the victim and later took him to the hospital after some persuasion though he died later.
8. Effect of the sentence on the wife, children or dependents of the convict, and by extension the cumulative effect of the sentence on society as a whole.
9. Illiteracy or level of education of the accused: The fact that one of the parties to an offence is an illiterate led the court in imposing a lighter sentence.
10. Good work record of the convict
11. Good antecedents of the convict generally
12. Minor role played by the accuse
13. Accidental nature of the offence

***All the above listed mitigating factors, can be raised in an appeal by the accused to lessen a sentence imposed on him although he may also claim that the sentence is unfair and should be reconsidered using the mitigating factors if not considered by the court***.

Question 2

High Court civil procedure in Nigeria makes provision for procedure for the conduct of civil matters in the high court of states. One can institute action in a High Court using the following:

1. ***Writ of summons***: Writ of summons is a formal document issued by a court stating concisely the nature of the claim of a plaintiff against a defendant, the relief or remedy claimed and commanding the defendant to “cause an appearance to be entered” for him in an action at the suit of the plaintiff within a specific period of time, usually eight days, after the service of the writ on him, with a warning that, in default of his causing an appearance to be entered as commanded, the plaintiff may proceed therein and judgment may be given in defendant’s absence. Generally, all actions are to be commenced by the writ of summons except where there is any express legislation prescribing another mode ***Order 5 Rule 1 & 2 Lagos High Court (Civil Procedure) Rules 2019.***  This is used in contusions matters ( matters involving dispute)
2. ***By originating summons***: This is a summons that initiates proceedings. However, a summons in a pending matter does not initiate proceedings but it is used for making interlocutory applications in a pending cause or matter. Generally, originating summons is used for non-contentious actions, that is, those actions where the facts are not likely to be in dispute (a question of law rather than disputed issues of facts).It is used in construction of laws, wills, deed etc. When the principal question in issue is or is likely to be one of construction of a written law or any instrument or of any deed or will or contract, originating summons may be used for the determination of such questions or construction. I.E ***Doherty v. Doherty (supra)***; In ***Unilag v. Aigoro (1991) 3 NWLR (Pt. 179) 376***, it was held that originating summons is used where it is sought to correct errors in a judgment; In ***Orianwovo v. Orianwovo (2001) 5 NWLR (Pt. 752) 548***, it was held that an action for declaration of title to land ought not to be commenced by originating summons. ***Order 5 Rule 4 Lagos High Court (Civil Procedure) Rules 2019.***
3. ***Petition:*** This is a written application in the nature of pleading setting out a party’s case in detail and made in open court. It is, however, only used where a statute or Rules of court prescribe it as such a process. For example, ***section 410(1) of Companies and allied Matters Act (CAMA) 2004*** provides that *an application to the court for the winding-up of a company shall be by a petition.* Also, ***section 54(1) of Matrimonial Causes Act, 1970*** provides that proceedings for dissolution of marriage are commenced by petition. **The Electoral Act** also states that petitions are the only modes of procedure in election litigations. An election petition has been said to be similar to pleadings in civil matter as it is in that the practitioner sets out all the material facts he relies on for his petition ***Egolum v. Obasanjo (1999) 5 SCNJ 92 at 125.*** ***This are usually used in Divorce, Winding up of a Company, Election Petition etc.***
4. ***Originating Motion:***

This is the last of the originating processes. Unlike a petition, this may be used where a statute has not provided for it. Originating application is used when facts are not in dispute and it is used when the action relates to the interpretation of a document. ***In an application for prerogative orders of certiorari, prohibition, mandamus, Habeas Corpus or enforcement of Fundamental Human Rights, originating motion may be used.***  Significantly, where a state has not provided for a method for enforcing a right conferred by that statute, originating motion should be used. It is rarely used in the Magistrate Court. Its use was highlighted in the case of ***Chike Arah Akunna v. A-G of Anambra State & Ors (1977) 5 SC 161.*** It was held that the appropriate method of making an application to the court, where a statute provides that such an application may be made but does not provide for any special procedure, is an originating motion.

REFERENCE

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