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**COURSE TITLE: NIGERIAN LEGAL SYSTEM (NLS)**

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**ANSWERS**

**CIVIL AND CRIMINAL PROCEEDINGS**

1. **CRIMINAL PROCEDURE**

Criminal procedure is the process (commencing, conducting and concluding) by which a criminal case is prosecuted in the court.

**Stages of Criminal Proceedings**

Criminal prosecution develops in a series of stages. The majority of criminal cases terminate when a criminal defendant accepts a plea bargain offered by the prosecution. In a plea bargain, the defendant chooses to plead guilty before trial to the charged offenses, or to lesser charges in exchange for a more lenient sentence or the dismissal of related charges.

1. **Pre-Trial Investigation**
* **Complaints:** Usually the victim lodges complaints with the police officer at a police station at his/her locality. Based on information of the complaint the police officer will ascertain whether it is a matter that could be handled in his jurisdiction. If the offence is criminal offence deserving further investigation and possible prosecution where it is satisfied on these points the officer enters complaints in a record known as The First Information Report contains details about the victim.
* **Investigation:** The police officer in charge of the station gives instruction to as the investigation to the investigation of the alleged offence.
* The crime scene would be visited
* Evidence would be gathered & witnesses will be sought
* In the case of death, medical practitioner would be asked to carry out forensic investigation
* After all the findings of the investigation the police officer gives detailed report of all the findings

When the record of the criminal investigation is completed, the police will send it to the prosecutor. Both the accused and the suspect are entitled to obtain a free copy of the record. If the plaintiff does not wish the suspect to know his/her contact details, he/she can request the police not to include them in the record.

* **Arrest:** A person may be arrested at any of the following stage :
1. While attempting to commit a crime
2. While committing crime
3. After committing the crime. The case of ***Ikonne V. Cop (1986) 4 NWLR Pt.36 Pg. 473***

An arrest can be made by:

1. The police
2. Private individuals
3. Special government agencies e.g. SARS, EFCC, DSS etc.
4. Judicial officers

Forms of an Arrest

1. By Summons: the summons is directed to the accused, commanding the person to appear in court ***(Criminal Procedure Law [Lagos Laws 1973, Cap 32], ss. 78 And 79.)***
2. Arrest with Warrant: a warrant of arrest is not to be issued in consequence of a complaint unless the complaint is one made under oath by the complaint him/herself or material witness. ***(Criminal Procedure Law [Lagos Laws 1973, Cap 32], s. 23.)***
3. Arrest without Warrant
* **Bail**: If a suspect in police custody is granted bail, the suspect may pay the bail amount in exchange for a release. Release on bail is contingent on the suspect's promise to appear at all scheduled court proceedings. Bail may be granted to a suspect immediately after booking or at a later bail review hearing. Alternatively, a suspect may be released on his "own recognizance." A suspect released on his own recognizance need not post bail, but must promise in writing to appear at all scheduled court appearances. Own recognizance release is granted after the court considers the seriousness of the offense, and the suspect's criminal record, threat to the community and ties to family and employment.
* **Arraignment:** The suspect makes his first court appearance at the arraignment. During arraignment, the judge reads the charges filed against the defendant in the complaint and the defendant chooses to plead "guilty," "not guilty" or "no contest" to those charges. The judge will also review the defendant's bail and set dates for future proceedings.
* **Preliminary Hearing or Grand Jury Proceedings:** The government generally brings criminal charges in one of two ways: by a "bill of information" secured by a preliminary hearing or by grand jury indictment. In the federal system, cases must be brought by indictment. States, however, are free to use either process. Both preliminary hearings and grand juries are used to establish the existence of probable cause. If there is no finding of probable cause, a defendant will not be forced to stand trial.

A preliminary hearing, or preliminary examination, is an adversarial proceeding in which counsel questions witnesses and both parties makes arguments. The judge then makes the ultimate finding of probable cause. The grand jury, on the other hand, hears only from the prosecutor. The grand jury may call their own witnesses and request that further investigations be performed. The grand jury then decides whether sufficient evidence has been presented to indict the defendant.

* **Pre-Trial Motions:** Pre-trial motions are brought by both the prosecution and the defense in order to resolve final issues and establish what evidence and testimony will be admissible at trial.
1. **Trial**

At trial, the judge or the jury will either find the defendant guilty or not guilty. If the defendant pleads “guilty” the court may convict and impose sentence. If the accused pleads “not guilty”, the court must proceed to hear the witness and to determine the case.***(Criminal Procedure Law [Lagos Laws 1973, Cap. 32], s. 364.)*** The prosecution bears the burden of proof in a criminal trial. Thus, the prosecutor must prove beyond a reasonable doubt that the defendant committed the crimes charged. The defendant has a constitutional right to a jury trial in most criminal matters. A jury or judge makes the final determination of guilt or innocence after listening to opening and closing statements, examination and cross-examination of witnesses and jury instructions. If the jury fails to reach a unanimous verdict, the judge may declare a mistrial, and the case will either be dismissed or a new jury will be chosen. If a judge or jury finds the defendant guilty, the court will sentence the defendant.

The district court normally summons all parties and possible witnesses to the trial. The summons will indicate if personal attendance is necessary. If one of those who have been summoned to appear in person is missing, it may be necessary to postpone the trial. The schedule and other practical questions related to the trial can be discussed with the staff of the district court and the prosecutor or the prosecutor's secretary before the trial. Court sessions are open to the public, but the court can, if the case concerns for example a sex offence, hear the case completely or partially without any public present, i.e. in camera. A request to this effect can be made to the district court judge. If the court obliges the victim to appear at the trial in person, the victim will be paid per diem allowance and compensation for travel expenses and loss of income. If somebody is absent from the trial without a legal excuse, the court can impose a fine on him or her. A legal excuse can be, for instance, illness preventing attendance. A medical certificate of this must be presented later. The court must be notified of an impediment as early as possible.

1. **Judgment(sentencing)**

During the sentencing phase of a criminal case, the court determines the appropriate punishment for the accused. In determining a suitable sentence, the court will consider a number of factors, including the nature and severity of the crime, the accused criminal history, the accused personal circumstances and the degree of remorse felt by the accused. The district court either pronounces the judgment immediately after the trial or announces when it will be issued. In a written procedure, the judgment of the district court is sent to the parties in the case. The judgment of the district court may be appealed against to a court of appeal. As a rule, leave for continued consideration is required for the matter to be taken up for full-scale consideration at the court of appeal

1. **Appeal**

If any of parties are not satisfied with the judgment, they must inform the district court of this within a week after the judgment has been issued. The appeal must be submitted to the district court within 30 days of the judgment. Appeal instructions will be appended to the judgment of the district court. An individual convicted of a crime may ask that his or her case can be reviewed by a higher court. If that court finds an error in the case or the sentence imposed, the court may reverse the conviction or find that the case could be re-tried. But if the higher court reviews the case and sees no error in the lower court judgment the judgment still stands.

1. **CIVIL PROCEDURE**

Civil procedure is the method of commencing, concluding or conducting civil matters in court of law.

**Methods of Commencement of Proceedings in a High Court**

1. **Petition**

An action may be commenced by petition. Petitions can be used in matters like Divorce, Election and Whining of a company.

1. **Originating Notice Of Motion**

An originating notice of motion by which an action commences.in general, where leave to apply for an order of *mandamus*, human rights*, habeas corpus*, prohibition or *certiorari* has been granted, the application must be made by notice of motion. ***(Order 40 And 53 of the High Court [Civil Procedure] Rules Of Lagos State.)***

1. **Originating Summons**

An originating summons is a summons other than a summons in a pending cause or matter.it is a summons (a writ of summons) which originates an action.it is expressly provided in the high court rules that any person who claims to be interested in a deed, will or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested. ***(High Court [Civil Procedure] Rules [Lagos Laws 1973, Cap.*** ***52), ord.44, r.1)***

1. **Writ Of Summons**

A writ of summons usually called “a writ” is a command to the defendant to enter an appearance in an action brought by the plaintiff. It contains the name of the high court, the judicial parties and the names of the parties to the case. It commands the defendants to enter an appearance personally or by a solicitor and states that in case of default of appearance the plaintiff may proceed with the action and judgment may be given in the defendant’s absence. Writ of summons is used for contentious matters. Writ of summons also contains some indorsement—indorsement of claim and formal indorsement.

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