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**Matric No: 18/LAW01/160**

**Question**

1. State clearly the procedure from arraignment to imposition of sentence in a criminal trial in 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 maybe commenced in the High Court.

**Question 1**

Criminal procedure is the process (commencing, conducting and concluding) by which a criminal case is prosecuted in court. It is also the process of administration of criminal justice in Nigeria where the body of laws and rules are used. **An arraignment** is a court proceeding at which a criminal defendant is formally advised of the charges against him and is asked to enter a plea to the charges. The Supreme Court, ***per Tabai JSC*** said: “the **arraignment** and taking the plea of an accused person is the very commencement of a criminal trial. It is the stage when the accused person appears at the court; the charge explained to his understanding and pleads thereto in person and not even through his counsel”.

Many countries refer to the first appearance as “arraignment”, while others use terms like “initial appearance”. No matter how they describe it, they all prohibit law enforcement agencies from confining suspects indefinitely, without judicial oversight. It is a mandatory statutory requirement that when an offence is alleged to have been committed, the complainant must report to the police who has the duty of investigating allegations of the commission of an offence. It is based on this statutory injunction that the courts have consistently maintained that once there is an allegation of the commission of an offence, report must be lodged with the police. Once investigation is completed, a charged would be prepared and the suspect arraigned before a court of law which could be either a magistrate court or a high court depending on the gravity of the offence. If the gravity of offence is beyond the jurisdiction of the magistrate court, through the advice of the **Director of Public Prosecution** the case would be transferred to be heard at the high court. In ***Udo v State (2006),*** the Supreme Court reiterated the requirement of a valid arraignment as follows;

* The accused person must be placed before the court unfettered
* The charge of information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and
* The accused shall then be called upon to plead instantly to the charge, unless there is a valid reason not to do so.

After arraignment comes **the plea of not guilty or guilty**. Where an accused person pleads guilty, the counsel for prosecution will give the court a summary of the evidence together with the details of the accused person’s background, that is, character and his criminal record, if any. After this, the counsel for the defense usually makes his plea in mitigation of sentence and the court then passes its sentence. But when an accused pleads not guilty, the trial then proceeds. However, 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 a quick disposal of the entire criminal proceedings. Accordingly, in recent years, there have been plea bargaining in a number of cases, especially in criminal charges brought by the **Economic Financial Crime Commission (EFCC)** in order to expeditiously dispose of the potentially lengthy criminal proceedings.

During the trial stage, **prosecution commences**. The counsel for the prosecution always opens a criminal proceeding by calling evidence for the prosecution. He calls his witnesses and examines each in chief, and tenders any exhibit they may have. The witnesses are in turn cross-examined by the defense counsel and re-examined by the prosecuting counsel as maybe necessary and the case for the prosecution closes. The burden of proof on the prosecution in criminal proceedings is proof beyond unreasonable doubt. Where the burden of proof is not discharged, the charge or information is usually dismissed and the accused is legally entitled to be set free and is accordingly usually discharged and acquitted. This burden of proof which rests on the prosecution to prove the guilt of the accused beyond reasonable doubt is never lowered or watered down. The principle that the guilt of an accused be proved beyond reasonable doubt has its root deep in Roman law. Stressing the need for the prosecution to discharge the burden of proof required by law in criminal proceedings, **Chukwuma Idigbe JSC in *Ukorah v State***  said that: “ The Romans had a maxim that it is better for ten guilty persons to go unpunished than for one innocent person to suffer.”

**Submission of “No Case To Answer.”** At the close of the case for the prosecution, the defense counsel may submit that the prosecution has not produced sufficient evidence or made out a ***prima facie*** against the accused and consequently, the accused has no case to answer and therefore the case should not proceed further. The judge may accept the submission and make a ruling that the accused has no case to answer. The ruling is a verdict of not guilty and the court may thereupon discharge and acquit the accused on merit. However, 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 defense. Where the accused refuses to give evidence in his defense and chooses to stand by his no case submission, which had earlier failed, the court would usually convict the accused; the reason being that the accused failed to defend himself against a prima facie case made out against him.

**Defense-** After the close of the case of for the prosecution and the failure of a no case submission, the case for defense then opens. The accused and his witnesses if any are led in one by one by the defense counsel and cross examined by the prosecuting counsel and re-examined by the counsel for the defense as may be necessary. Each witness undergoes the whole process till the next witness is called, it never mixes up.

**Closing Address-** After the close of the case for the defense, the counsel for both sides then makes speeches by addressing the court from their filed written address. The prosecution counsel is always first to address the court. He sums up or reviews the case on both sides. He points out the strength of the case for the prosecution and identifies the weaknesses if any of the defense and then urges the court to convict the accused as charged. However, the general rule is that the case for the prosecution must succeed on its own. Next, the counsel for the defense addresses the court. In his addresses, he points out the weakness of the case for the prosecution. If the case for the prosecution is a pack of lies and merely fabrication, the defense can state it so. If a prima facie case has not been made out or sufficient evidence has not been adduced as required by law to discharge the burden of proof that rests on the prosecution in criminal proceedings, which is proof beyond unreasonable doubt, he points it out to the court and finally, he urges the court to discharge and acquit the accused on the charge or charges as the case may be.

**Judgment-** After theclosing addresses by counsel for both sides, the judge fixes the judgment 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. However, where a trial is by summary procedure, the judge may deliver judgment there and then or he may retire to his chamber to consider judgment and resume sitting to deliver it on that same day. In the judgment, the judge sums up, weighs or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either sides and shall give 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 maybe.

**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.

**Sentence-** where an accused is found guilty, before passing sentence, plea for mercy or leniency is usually made by the counsel for the defense. After the allocutus, the judge passes sentence on the accused. There are types of sentence the courts may impose; when an accused has been found guilty of crime, a court may under the Criminal Procedure Act pass sentence and make more appropriate orders as follows:

* Imprisonment usually with hard labour
* Fine instead of imprisonment or both fine and imprisonment
* Death sentence
* Caning
* Deportation.

**Comment on the remedy available to the accused after the imposition of sentence.**

The remedy available after the imposition of sentence in the high court is to appeal to the Court of Appeal. By virtue of ***section 243 of the CFRN1999,*** the Court of Appeal shall have as of right to receive appeals from the high court in the case of criminal proceedings at the instance of an accused person. Also an appeal shall lie as of right in the case of final decisions in any civil or criminal proceedings before the federal high court or high court sitting at first instance.

**Question 2**

Comment on the various methods by which civil proceeding maybe commenced in the high court

Commencement of a civil action is the process taken to institute an action before a competent court to determine the issue between parties. A civil case is a lawsuit that usually deals with contracts or torts. Torts generally speaking, are wrongful acts that result in damage or injury. Civil procedure is the body of law that sets out the rules and standards the courts will follow when adjudicating on civil matters. These rules govern how a lawsuit or case maybe commenced; the types of pleadings or statements of case, motions or applications and orders allowed in civil cases; the timing and manner of depositions and the discovery or disclosure; various available remedies; and enforcement of action.

**Forms of Commencement of Action**

Actions are commenced in the following ways;

1. Originating motion
2. Originating summon
3. Petition
4. Writ of summons
5. **Originating Motion-**

This is used only when provided for by a statute or a rule of court. It is used when facts are not in dispute and when the action relates to the interpretation of a document. Examples of actions to be commenced by this way are;

* Application for habeas corpus,
* Order for mandamus,
* Prohibition or certiorari,
* Application for judicial review
* Action for the enforcement of fundamental right under the Fundamental Enforcement Procedure rules 2009. Significantly, where a state has not provided for a method for enforcing a right conferred by that statute, originating motion should be used.- **order 40 rule (1) Lagos; order 42rule 5(1) Abuja.**

In the case of **Chike Arah Akunna v AG Anambra state & Ors,** 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. This rule was also reinstated in **Kasoap v Kofa Trading Co,** that where it is sought to enforce a right conferred by a statute, but in respect of which no rules of practice and procedure exists, the proper procedure is an originating notice of motion.

1. **Originating summons**

This is used whenever there is interpretation of a written law, etc. it is used generally for non-contentious matters i.e. those matters where the facts are not likely to be in dispute. Examples of actions to be commenced by this mode are;

* Actions for interpretation of a written law, documents, company proceedings
* Interpretation of any instrument or deed, will contract agreement or some other questions of law.

Compared to writ of summons, the originating summons is simpler and swifter procedure for the resolution of disputes as it is determined generally on affidavits filed and does not involve pleadings or many interlocutory proceedings. However, many of the requirement concerning issuance, duration, renewal and service with regard to a writ may apply, with the necessary modifications, to an originating summons. Originating summons is heard based on affidavits filed in support. Originating summons cases are heard by registrars or judges in chambers or in open court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support or in opposition to the Originating summon

1. **Petition**

A petition is a written application in the nature of a pleading setting out a party’s case in detail and made in open court. However, it is 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 matters as it is in that the practioner sets out all the material facts he relies on for his petition- ***Egolun v Obasanjo.*** A petition shall include a concise statement on the claim made or the remedy required in the proceedings begun thereby and at the end thereof a statement of the names of the persons, if any, required to be served therewith or if no person is required to be serves a statement to that effect- **order 7 R2(1) of the union civil procedure rules.**

**Endorsement of petition**

It shall be endorsed with the name and addresses of the petitioner and his legal practioner, or where the petitioner brings a petition in person and corresponding to those made in the case of writ, with the endorsement of the name and address of the plaintiff and his legal practioner.

1. **Writ of summons**

A writ of summons is a formal document issued by a court stating concisely the nature of the claim of a plaintiff against the defendant, the relief 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 the defendant’s absence. Civil actions involving substantial disputes of fact are commenced by way of writ. These include, but are not limited to:

* Contract actions, eg claim for damages resulting from breach of contractual terms and obligations
* Tort actions, eg, claim for damages in respect of property damage resulting from road accidents and defamation
* Personal injury actions, eg, claim for damages in respect of personal injury or death resulting from road and industrial accidents or negligence
* Intellectual property actions, eg, claim for damages resulting from the infringement of copyright, trademark or patent
* Admiralty and Shipping actions.

Writ of summons is the appropriate mode for commencing an action which by its nature is contentious. Under the Lagos High Court (Civil Procedure) rules 2004, all civil actions commenced by writ of summons shall be accompanied by:

1. Statement of claim;
2. List of witnesses to be called at the trial;
3. Written statement on oath of the witnesses; and
4. Copies of every document to be relied upon at every trial- **Order 2 Rule 1, Lagos**

Where a claimant fails to comply with the above, his originating process shall not be accepted for filing by the Registry- **order 2 rule 2, Lagos.**

**Endorsement of the Writ Of Summons**

All writ of summons must have endorsed on it by the claimant the nature of the claim being made or the relief. If a party types his claim on a separate sheet of paper and affixes to the writ, that will be an improper endorsement and the writ will be invalid and is liable to be struck out. In ***Alatede v Falode,*** it was held that typing on a separate paper and then fixes the same to the writ was an irregularity and not in compliance with the rules. Therefore the writ will be struck out as not being properly endorsed.