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**TITLE:** CIVIL AND CRIMINAL PROCEEDINGS

**COURSE:** NIGERIAN LEGAL SYSTEM II

**COURSE CODE:** LPI 204

**Question 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.

**Answer**

There are various steps that are observed prior to the imposition of sentence in a criminal trial in the high court. These steps are as follows, first and foremost is;

1. **Arraignment:**

Arraignment is a formal reading of a criminal charging document in the presence of the defendant of the charges against the defendant. In a layman’s word, it a legal document calling someone to court to answer an indictment.

Arraignment is the first step carried out in a typical criminal proceeding. During this process, once the court has advised the defendant of the charges against him, the judge will ask how he pleads to those charges. The defendant can plead not guilty, guilty or no contest.

If the defendant pleads **‘Not guilty’**, it comes with an advantage, the defense attorneys usually recommend that criminal defendants plead not guilty at arraignment, and defendants often plead not guilty because this requires the prosecutor to gather sufficient evidence against the defendant and this gives the defense an opportunity to review the evidence, investigate the case and determine whether the evidence proves that the defendant committed the crime. A not guilty plea means simply that the defendant is going to make the state prove the case against him.

If the defendant pleads **‘Guilty’** to a minor crime at arraignment, such as disorderly conduct, the judge may sentence the defendant at arraignment, the prosecutor and the defense attorney may negotiate the guilty plea and agree on a sentence during arraignment. In a more serious case, the judge would set a sentencing hearing and request a pre-sentence report.

If the defendant pleads **‘No contest (Nolo contendere)’**, he acknowledges that the prosecutor has enough evidence to prove he committed a crime but does not admit guilt, in order words, that he did it. When a defendant enters this plea at arraignment, the court proceeds in the same way it would proceed if the defendant pleaded guilty.

The right of the defendant to be heard during this proceeding is pursuant to SECTION 36 1999 CONSTITUTION FRN.

1. **Pretrial Proceedings:**

This involves any meeting held prior to trial, with the parties, that is, the judge and both counsel, to handle matters that need to be settled before proceeding to the trial.

1. **Trial:**

Basically, a trial is a formal examination of evidence by a judge, in order to decide guilt in a case of criminal proceedings. However, in a criminal trial, a judge examines the evidence to decide whether, “beyond all reasonable doubt”, the defendant committed the crime in question. A trial is the state’s opportunity to argue its case, in the hope of obtaining a “guilty” verdict and a conviction of the defendant. It is also a chance for the defense counsel to refute the state’s evidence, and to offer its own in some cases. After both sides have presented their arguments, the judge considers whether to find the defendant guilty or not guilty of the crime(s) charged.

Although a trial is the most high-profile phase of the criminal justice process, the vast majority of criminal cases are resolved well before trial.

**Order of Trial** in Nigeria are as follows;

* **Opening Statements:** It is a known legal rule that the burden of proof is on he who assets, thus, the burden of proof lies on the state/Plaintiff, the plaintiff’s opening statement is given first and is often more detailed than that of the defense. During this process, the plaintiff would present its facts of the case and try to prove what the defendant did, how and why. Meanwhile, the defendant would give the judge its own interpretation of fact and present any legal defense to the crimes charged.
* **Witness Testimony and Cross-Examination:** This is also known as the “case-in-chief” stage, whereby the plaintiff tries to convince the judge beyond all reasonable doubt that the defendant is guilty. It is at this point that eyewitnesses and experts to testify are called. The plaintiff may also introduce physical evidence, such as photographs, documents, medical reports.

Whether the witness is called by either parties, witness testimony process adheres to the following timeline:

* The witness is called to the stand and is “sworn in”, taking an oath to tell the truth
* The party that called the witness, questions the witness through “direct examination” eliciting information from the witness through question and answer to strengthen the party’s position in the case.
* After direct examination, the opposing party has a chance to question the witness via “cross-examination” – attempting to poke holes in the witness’s story or credibility or otherwise cast doubt upon the testimony offered.
* After the cross-examination, the side that originally called the witness has a second opportunity to question him or her, through “re-direct examination” and attempt to remedy any damaging effects of cross examination. This is pursuant to SECTION 214 OF EVIDENCE ACT.

After this, no more evidence is brought forth.

* **Closing Arguments:** both parties try to relate given evidence and all fact to each of their favor.

1. **Verdict/ Conviction:** After the deliberations, the judge may either find the defendant guilty or not guilty, if the court finds the defense counsel not guilty, the party would be free from the allegations and be a free man, but in cases where the defendant is found guilty, the next proceeding is observed. However so, it is at this point that what the judge reaches a verdict upon may become a ratio decidendi which may be applied in preceding cases.
2. **Imposition of Sentence:** This is the inherent power of the court to restrict one’s freedom and rights. This is the case whereby a court of competent jurisdiction finds a party guilty of certain accusations and put forth the required sanction for such crime.

Most at times the sanction for criminal offences range roughly as follows;

* **Death Penalty:** This is highest form of capital punishment, it’s the highest form of retribution, most times involving paying for a life with a life as in the case of murder. This can be seen via SECTION 319 Criminal Code Act CAP. 8, SEC. 220 Penal Law CAP89, Law of Northern Nigeria 1963, Laws of the Federation.
* **Imprisonment:** SEC. 377, 381 & 395 Criminal Procedure Act, SEC. 24(2) Criminal Procedure Code.
* **Fines:** SEC. 382 CPA & SEC. 23 CPC
* **Canning and Whipping:** usually common among the Northerners, this doesn’t usually exceed 12 strokes. SEC. 386(1) CPA & SEC.77 Penal Code
* **Forfeiture:** This is when the court compels the convict to forfeit a certain property or function, as seen in, SEC. 19 Criminal Code & SEC. 111 Penal Code.

**Remedies available to the accused after the imposition of sentence.**

**The Writ of *Mandamus*:** A court of superior jurisdiction can issue a writ of Mandamus to the high court to review its decision if the party is not satisfied with the court’s decision. The highest court with the final decision in Nigeria is the supreme court.

***Allocutus*/Allocution:** This is when the party accused or found guilty pleas for a reduction of sanction, thus, the party is appealing to the good conscience of the court, this is somewhat the ideal of equity.

**Question 2**

Comment on the various methods by which civil proceedings may be commenced in the high court.

**Answer**

There are four major proceedings the high court may be commenced by; these are:

1. Writ of Summons
2. Originating Summons
3. Originating notice of motion
4. Petition
5. **Writ of Summons:**

This is a way of starting a legal action by someone who has a claim against a particular person, that orders that person to come to court unless they admit the claim.

The Writ of Summons (WOS) 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.

It contains the name of the High Court, the judicial divisions and the names of the parties to the case. It commands the defendant 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 judgement may be given in the defendant’s absence. A writ also contains certain indorsements; indorsement of claim and formal indorsement. The indorsement may be a special indorsement or general indorsement. A special indorsement is a statement of claim appearing on the writ, which statement serves as the statement of claim in the action. Where a writ is so indorsed, it is unnecessary to serve another statement of claim unless an amendment is desired. When a writ is so indorsed, it is said to be specially indorsed. One advantage of the indorsement is that it saves time. Under ORDER 10 of the High Court (Civil Procedure) rules of Lagos State, once the defendant has entered an appearance, the plaintiff may apply to the court for summary judgement.

1. **Originating Summons:**

Originating Summons is one of the two modes in commencing a civil action. An action is commenced by an Originating Summons when it is required by a statute and/or a dispute, which is concerned with matters of law, is unlikely to be any substantial dispute of fact. It is a summons that originates an action.

It is expressly provided in the High Court rules that any person who claims to be interested under 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. Similarly, where a person claims any legal or equitable right and the determination of the question whether he is entitled to the right depends upon a construction of an enactment, he may apply by originating summons for the determination of the question of construction and for a declaration as to the right which he claims, as seen in the High Court (Civil Procedure) Rules (Lagos Laws 1973, CAP 52) Order 44.

1. **Originating Notice of Motion:**

An originating notice of motion is a notice of motion by which an action commences. In general, where leave to apply for an order of *mandamus*, prohibition or *certiorari* has been granted, the application must be made by notice of motion.

1. **Petitions:**

Petition can also be the title of a legal pleading that initiates a legal case. The initial pleading in a civil lawsuit that seeks only money (damages) might be called a complaint. An initial pleading in a lawsuit that seeks non-monetary or “equitable” relief, such as a request for a writ of mandamus or habeas corpus, custody of a child or probate of a will, is instead called a petition.

Act or petition is a “summary process” used in probate, ecclesiastical and divorce cases, designed to handle matters which are too complex for simple motion. The parties in some case exchange pleadings until a cause for a hearing is settled.