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**Question 1**

**The procedure for arraignment of in high court**

I. Proof of evidence: A Proof of Evidence is a written summary of what a witness will say in evidence during a hearing. Often a Claimant solicitor will get the client to produce a full story about the accident and the impact that it has had. A Proof of Evidence contains information which will help or hinder the claim and this is how it differs from a Witness Statement.

II. Arraignment and plea:

Although the initial appearance of the arrested person before a magistrate is sometimes referred to as an arraignment, it is not a true arraignment, which only comes after the defendant has been both arrested and formally charged. In all but extremely rare cases, arraignment also takes place before any suppression hearings and the trial itself. The interests at issue in an arraignment are the defendant's right to know of the charges against him or her and the defendant's right to have adequate information from which to prepare a defense. The state also has an interest in having the defendant make a plea so it can prepare accordingly.

III. Plea of guilt

IIII. Plea of not guilty

V. Prosecution : the institution and continuance of a criminal suit involving the process of pursuing formal charges against an offender to final judgment or can be explained as the party by whom criminal proceedings are instituted or conducted.

VI. Submission of “no case to answer “ : case answer refers to a submission made by a defendant or accused in a court, which states that the claim or prosecution is not sufficient for conviction or judgment. The defendant supports his/her submission by pleading that that the case is based on insufficient legal grounds or insufficient factual evidence. In this submission, the accused asks the judge to tell the jury to find that s/he is not guilty. When a no case submission is made, it basically means that the defendant is asking the court for an acquittal without it having to present a defence. The defendant is literally saying to the court that there is no case to answer i.e. the prosecution has not sufficiently proven the legal threshold to establish the commission of a crime in the court of law.

VII. Defense: in civil proceedings a defence maybe one of the following:

(i) a traverse, i.e. a formal denial of an alleged fact

(ii) a denial of the plaintiff's claim

(iii) an allegation of counterclaim(iv) a confession and avoidance

Viii . Closing address: the final address to the jury by the attorney for each side of a case in which the attorney usually summarizes the evidence and his or her client's position . Also called closing statement, final argument, summation, summing-up NOTE: Rule 29.1 of the Federal Rules of Criminal Procedure requires the prosecution to open the closing argument after the closing of the evidence. The defense replies, and the prosecution may offer a rebuttal.

ix. Judgement: decision by a court or other tribunal that resolves a controversy and determines the rights and obligations of the parties. A judgment must be in writing and must clearly show that all the issues have been adjudicated. It must specifically indicate the parties for and against whom it is given.

X. Discharge : in any obligation, the termination of that obligation without liability on either party. In the Scots law of contract, discharge maybe by performance or novation, compensation, confusion, acceptance payment or delegation.

Xi. Finding of guilt and sentence : A finding of guilt is a ruling made by a judge. A judge will make a finding of guilt in one of two situations: An accused has pled guilty and accepts facts that amount to a criminal offence; OR the Crown has proven at a trial that an accused committed a criminal offence.

Also, there are Criteria’s for the imposition of sentence in a criminal trial in high court which are;

After all witnesses are heard and all statement are considered the Court, shall take all the necessary aggravating and mitigating evidence or information in respect of each convict that may guide the Court in deciding the nature and extent of the sentence to impose on each of the respective convicts.

It is to be noted that the Act provides that, in pronouncing sentence on the convicts, the factors in Section 311(2)(a)-(d) that must also be considered by the Court in addition to Section 239 and 240 are;

(a) The objectives of sentencing, including the principles of reformation and deterrence,

(b) The interest of the victim, the convict and the community; and

(c) The appropriateness of non custodial sentence or treatment in lieu of imprisonment, and

(d) Previous conviction of the convict.

In the course of the sentencing proceeding, the court may take into consideration any other offence that is also pending against the convict at the time of passing sentence, however such pending charge will only be considered where the convict admits the pending charge and expresses a desire that such charge be taken into consideration, in such a situation, the prosecutor must also consent that the pending charges can be taken together by the Court, Section 313(1)(2). This provision is in line to the consolidation in civil suits, it is a time saving procedure which will ultimately reduce the criminal cases, where the Judge considers a pending charge together with a charge before him and he proceeds to sentence on both charges, the convict, subject to sections 236 and 237 of the Act shall not be charged or tried again Section 313(3).

Upon compliance with the provisions of Sections 310, 311 and 313(1) the Court may pass sentence on the convict or adjourn to consider the sentence which must be announced in open Court, Section 311(1).

**Remedy available to the accused after imposition of sentence are;**

Suspension of Fine:

1. Whenever an offender is ordered to pay fine, such payment should be made forthwith. Section 424 of the code, however, enables the court to suspend the execution of sentence in order to enable him to pay the amount of fine either in full or in installments. It deals with two types of cases which are like this.

2. Sub-section (1) provides that when an offender has been sentenced to fine only and to imprisonment in default of payment of fine and the fine is not paid forthwith, the court may order that the fine should be paid in full within 30 days, or in two or three installments the first of which should be paid within 30 days and the other or others at an interval or intervals of not more than 30 days.

3. Sub-Section (2) refers to a case where there is no sentence of fine but an order of payment of money has been made by the court and for non payment of such amount, imprisonment is awarded. In such cases also, the court can grant time to pay amount. In either case, if the amount is not paid, the court may direct the sentence of imprisonment to be executed at once

4 Correcting Clear Error; Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

5 Reducing a Sentence for Substantial Assistance;

(a) Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

(b). Upon the government's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

i. information not known to the defendant until one year or more after sentencing;

ii. information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing

6 Evaluating Substantial Assistance. In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's presentence assistance.

(4) Below Statutory Minimum. When acting under Rule 35(b), the court may reduce the sentence to a level below the minimum sentence established by statute.

**Question 2**

**Civil proceedings are commenced by way of originating processes issued and served by the state which include:**

1. Originating Summons

Originating Summons is one of the two modes in commencing a civil action. An action is commenced by an OS when (1) it is required by a statute or (2) a dispute, which is concerned with matters of law, is unlikely to be any substantial dispute of fact. An Originating Summons may be in Inter partes or Ex-parteof the Rules of Court.

Originating summons is heard based on affidavits filed in support. OS 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 of or in opposition to the OS. Witnesses may be called to give testimony and pre-trial conferences may or may not be conducted.

An application can be made to convert an Originating summons into a Writ at any stage of proceedings. Alternatively, the Registrar or Judge can decide to convert an OS into a Writ without any application from the parties. Once the decision to convert has been made, the steps relating to a Writ applies. The Registry will assign a new Suit Number to the proceedings and a pre-trial conference will be called for the service of the Statement of Claim.

Examples of originating summons

Judicial Management

This type of OS case can be filed if the selected legislation is Companies Act.

Taxation

This type of OS case can be filed if the selected legislation is Legal Profession Act.

Probate and Administration or Legislation

The applicable legislations for this OS are:

• Probate and Administration Act (Cap. 251)

• Rules of Court with the provision number as Order 71 or Order 72

Accordingly, the Nature of Case is Probate and Administration.

General

Other types of legislation fall under the OS (General) type. No additional fields are displayed when for this OS case.

Enforcement of Syariah Court Order

This type of OS can be filed if the selected legislation is Cap 3 Administration of Muslim Law Act.

Mental Capacity

This OS type is filed under the Mental Capacity Actlegislation.

Guardianship of Infant

The legislation applicable for this OS case is Cap 122 Guardianship of Infants Act.

Division of Matrimonial Assets During Marriage

The applicable legislation for this type of OS is Cap353 Women's Charter Section 59.

OS (To Commence Divorce Within Three Years of Marriage)

The applicable legislation for this type of OS is Cap353 Women's Charter Section 94.

2. Originating motion​

A type of document that starts a civil proceeding. This is often required when:

I. there is no defendant

II. you are making an application to the court under a particular Act, or

III. the Supreme Court (General Civil Procedure) Rules 2015 or the Supreme Court (Miscellaneous Civil Proceedings) Rules 2018 tell you to use an originating motion.

3. Writ of summons

The most common type of document that starts a civil proceeding. A writ is used unless an originating motion is required.

4. Petitions

Petition is a legal document formally requesting a court order. Petitions, along with complaints, are considered pleadings at the onset of a lawsuit.

• A petition is a formal request seeking a specific court order, made by a person, group or organization to the court, typically at the start of a lawsuit.

• A petition is made to the court by a petitioner against a respondent, versus a complaint, which is filed by a plaintiff against a defendant.