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COURSE TITLE: NIGERIAN LEGAL SYSTEM II

1. STATE CLEARLY THE PROCEDURE FROM ARRAIGNMENT TO IMPOSITION OF SENTENCE IN A CRIMINAL TRIAL IN THE HIGH COURT.

COMMENT ON THE REMEDY AVALIABLE TO THE ACCUSSED AFTER THE IMPOSITION OF A SENTENCE

1. COMMENT ON THE VARIOUS METHODS BY WHICH CIVIL PROCEEDINGS MAY BE COMMENCED IN THE HIGH COURT.
2. Arraignment, this 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 the accused and to ask him whether to plead guilty or not guilty. An Arraignment can also be called a “Charge”. In the northern Nigeria both in the magistrate and high court it is known as charge sheets. In the southern Nigeria it’s called charge at the magistrate court and information at the high court. It is usually drafted in the magistrate courts by the police in the south but it is done by the magistrate in the north.

The charge shall be endorsed with the name of the accused, date of commission of offence, his age, sufficient description of the offence, the place of commission of the offence, the section of the law under which it is brought and where under punishable. Note that section 36(12) of the CFRN deprecates, and renders nugatory a charge that does not state the law alleged to have been violated as every offence must be prescribed and described and the penalty therefore stated in a written law. The authority drafting it must sign it.

PRELIMINARY OBJECTION

The accused or his counsel can raise a preliminary objection to the jurisdiction/competence of the court to try/hear the matter. It remains a trite legal principle that once the jurisdiction of a court is questioned, proceeding is temporarily halted pending a decision or ruling thereon.

 PLEA

After the charge of the accused comes the plea whether or not to plead guilty or not guilty

Under plea there are various types of plea, which the accused may plead as follows

1. Autrefois Acquit: this plea is also known as the plea for double Jeopardy, which states that a person cannot be tried twice for the same offence committed. According to sec 36 (9) of the CFRN it states that a person cannot or should not be tried twice for the same offence committed which has been acquitted for.
2. Autrefois convict: this is 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: when an accused stands mute that is without saying anything, the court automatically takes it as a plea of not guilty. This is so because the law provides where and accused stands mute, a plea of guilty has to be mandatorily recorded for him by the court.
4. Plea of guilty for a lesser punishment/offence: However, while intending to plead “not guilty” to the offence charged, an accused can plead guilty to a lesser offence which is not on the information. Where this plea is accepted by the prosecution, the court may pass its sentence according.
5. Plead guilty: where an accused pleads ‘Guilty’ to the charge, such a plea must be recorded in almost or exactly the words used. Where an accused person pleads guilty, the counsel for the evidence together with details of the accused person’s background, that Is the character and his criminal record.
6. Plead not guilty: section 217 CPA and section 188 CPC allows an accused to plead not guilty to charge where he then puts himself on trial he takes umbrage or cover under the constitutional presumption of innocence as stated in section 36(5) and dares the prosecution to prove his guilt.
7. Plea Bargain: also known as plea Negotiation in this case the accused and the prosecution would agree that the accused plead not 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.
8. Mentally ill persons: an accused in this case may be mentally ill or disordered to make a plea to criminal charge. This is usually referred to as “Unfit to plead”. Such accused person may then be referred for psychiatric examination and treatment.

PROSECUTION Then comes the prosecution, the counsel for the prosecution always opens a criminal proceeding by calling evidence for the prosecution. He calls his witness and examines each chief, and tenders any exhibit they may have. The presentation of the evidence of each witness follows a consistent pattern of examination in chief by the prosecutor, cross-examination by the Defence counsel are made to the witness and re-examination by the prosecuting counsel as may be necessary and the case for the prosecution closes.

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 a prima facie case against the accused and consequently, the accused has no case to answer and therefore the case should not proceed further, by it the defence is saying to the court even if you believe the prosecution, there is no evidence so far adduced by it which the court can safely convict. Where a no case submission is upheld it tantamount or translates to an acquittal as it is a discharge on the 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. Where the accused fails to defend himself and keeps on relying on his no case submission the which the judge had rejected he is then convicted this is because the accused failed to defend himself against the prime facie case made against him.

DEFENCE

After the prosecution’s case or the over ruling of a no case submission the judge calls on the accused to open his defence. Where he represented by the counsel, the court need not inform the counsel formally to proceed with his defence for he is presumed to know. Where unrepresented the court must inform him of the options opens to him:

1. He can testify from the docks that is give unsworn evidence and he will not be liable to cross-examination or
2. He can give his evidence from the witness box on Oath and be liable to cross-examination
3. He may decide to say nothing. Here he/she rest his case on prosecution

CLOSING ADDRESS

After the close of the case for the defence, the counsel for both sides then make closing Speeches by addressing the court from their filled written addresses. The prosecution counsel is always the first to address the court. He sums up or reviews the case on both sides. Sec 241 CPA; Sec 194 CPC dispenses with any reply address by the prosecution after the address of the defence where the defence calls no other witness apart from the accused and the defence tendered no document in evidence or where specifically witness solely as to character testify for the defence.

JUGDEMENT

After the closing addresses for both sides, the judge fixes a date for judgement provided it’s not a summary trial. And the court rises in adjournment to enable it deliberate, consider, or evaluate the totality of evidence in case. On the date of judgement, the judge delivers his judgement on the case. But if the case happens to be a summary trial the judge passes his judgement there and then or probably retires to his chamber and resume sitting to deliver the judgement on that same day.

DISCHARGE

Where an accused has not been found guilty, on merit the judge will dismiss the information or charges and accordingly discharge and acquit the accused person provided under the criminal procedure law.

SENTENCE

Sentence is given to the accused after he has been proven guilty, before passing judgement an allocutus (plea for mercy) is usually made on behalf of the accused by the counsel of defence. After the plea for mercy the judge passes sentence on the accused. The sentences may come as follows:

1. Imprisonment, usually with hard level
2. Fine or probably in some cases both fine and jail.
3. Death sentences
4. Caning
5. Deportation.

 1b. Remedy available to the accused after imposition of sentence are:

1. PLEA OF ALLOCUTUS

This is mitigation plea made by the accused or his council or any other interested party after the accused has been convicted/sentenced, urging the court to tamper justice with mercy and impose a light punishment on the accused.

1. APPEAL TO A HIGHER COURT

This is a situation whereby a party who is not satisfied with/by the judgement proclaimed or administered by the court can seek an appeal to higher court in other to carry on the case.

MODES OF COMMENCEMENT OF ACTIONS IN THE HIGH COURT

1. Writ of summon
2. Originating summons
3. Originating motion or
4. Petition.

Writ of summon: a writ of summons when filled is sealed or stamped with the courts name on it for service by a bailiff on the defendant to give him notice of claim, made against him and requiring him to acknowledge service and defend it, if he does not admit claim.

Originating summons

It is used where a statutory provision expressly allows it. It is usually employed in the contentious matters that is where the facts or circumstances of the matter are not in dispute and the problems relate merely to construction or interpretation of law, instrument, deed, will etc.

Or in situation where there might be no apparent dispute as to the facts or circumstances giving rise to the action

Originating Motion: The use of originating motion must be directed expressly by statue. For example, the fundamental right enforcement procedure rules make this the vehicle for enforcement of fundamental rights breaches or violation as stipulated by Sec 46 of the 1999 Nigerian constitution.

Petition: Election petitions and Matrimonial petition are the most conspicuous in this context. However, a statue must expressly provide for its use as a mode of commencing action. Also applications for the liquidation or winding-up of companies may also be brought by means of petition.