**IDHUGWE FAVOUR OVOKEROH (18/LAW01/115)**

1. **State clearly the procedure from arraignment to sentence in a criminal trial in the high court comment on the remedy available to the accused after the imposition of sentence.**

A trial on indictment or information in a high court is really an elaboration or amplification of a summary trial at the magistrate court. In its pure essence, it is not much different from a summary trial, except for the elaboration of certain procedures.

The following are stages of criminal procedure at a high court :

* Arraignment and plea
* Plea of guilty
* Plea of not guilty
* Prosecution
* Submission of “no case to answer”
* Defence
* Closing address
* Judgement
* Discharge
* Finding of guilt and sentence

**ARRAINGMENT**

Before anyone is arraigned in a high court the person has been indicted which means an accusation of crime brought against an accused for trial in a high court. An indictment or information is a criminal charge brought against a person by the attorney general or any of his subordinate legal officers on behalf of the state or country and which is for trial at the high court. After indictment here follows what is called proof of evidence which encompasses the names, addresses and written statements of the witnesses that the prosecution wishes to call and list of exhibits, if any that the prosecution wishes to put in evidence at the trial. Photocopies of the list of the witnesses the written statements they made to the police and the list of exhibits, if any are usually attached to the information filed by the state.

 Arraignment is the calling of an accused person formally before the court by name at the beginning of criminal proceedings to read to him the indictment or information brought against him and to ask him whether he pleads guilty or not guilty. In other words arraignment means the registrar or other officer of court calling the accused by name while the accused is standing in the dock and reading over and explaining the charge or information to the accused in a satisfactory way and asking the accused to make his plea thereto instantly.

An accused person may plead as follows

* AUTREFOIS ACQUIT: a plea that has been tried for the same offence before he has been acquitted.
* AUTREFOIS CONVICT: a plea that has been tried and convicted for the same offence on a previous occasion.
* HE MAY STAND MUTE: where an accused stands mute that is without saying anything a plea of not guilty is usually entered for the accused
* PLEA OF GUILTY TO A LESSER OFFENCE: while intending to plead not guilty to the offence charged an accused person may 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 accordingly her the prosecution usually drop the instant charge.
* HE MAY PLEAD GUILTY
* HE MAY PLEAD NOT GUILTY

**Plea of guilty**

Where an accused person pleads guilty the counsel for the prosecution will give the court a summary of the evidence together with details of the accused persons background that Is character and his criminal record if any. After the counsel for the defence usually makes his allocation of plea in mitigation of sentence and the court then passes its sentence.

**PLEA OF NOT GUILTY**

Where an accused person pleads not guilty, the trial then proceeds

**PLEA BARGAINING**

It is negotiation and agreeing for an accused to plead guilty to a lesser crime in exchange for the dismissal of the serious criminal charge brought against him and for quick disposal of the entire criminal proceedings. Thus an accused person who does not intend to plead guilty to the serious offence charged may plead guilty to a lesser offence which is not an indictment or information. The plea is usually as result of a bargain reached between the defence counsel and the counsel for prosecution often with the judge’s approval. The accused is then sentenced in respect of the lesser offence. However where the prosecution fails to reach an agreement with the defence and therefore refuses to this lesser plea of a lesser offence then the trial proceeds and the accused person as a rule of law cannot be sentenced on the basis of his plea of guilty to the lesser offence this is so for the plea to a lesser offence is regarded withdrawn if it is not accepted by the prosecution. Where an accused changes his plea from guilty to not guilty, the trial proceeds.

Where a person has not been found guilty, a court usually makes one or more of the following orders

* Dismissal order: discharging the information or charges
* Order of discharge of the accused on the charges
* Order of acquittal
* Order of compensation as the case may be for the false , frivolous ,vexatious or malicious prosecution or false imprisonment of the accused and so forth as may be relevant according to the circumstances of the case

**SENTENCE**

Where an accused is found guilty before passing sentence an allocutus plea for mercy or leniency is usually made by the counsel for the defence. After the allocutus the judge passes sentence on the accused

**Types of sentences court may impose**

When an accused has been found guilty of a crime, a court may under the criminal procedure act or law pass sentence and make one or more appropriate orders as follows

* Imprisonment usually with hard labour
* Fine
* Death sentence
* Caning
* Deportation

Other orders could be:

* Binding over order (and suspended sentence and community service is western countries)
* Order for detention during pleasure of the president or governor as the case may be
* Order for disposal of property
* Order for costs
* Award of damages
* Probation period

Note: whenever imprisonment is imposed in default of payment of fine the term of imprisonment must not exceed the maximum term stated for the corresponding amount of fine in the scale of fines and imprisonment provided in **(Section 390(2) of the criminal procedural acts and laws).**

**FINE**

It is a sum of money which a court orders an offender to pay to the government treasury as a penalty for the commission of an offence. most summary offences usually stipulate an amount of fine as an alternative to the term of imprisonment imposed for the same offence so the offender may pay the fine and not go to prison.

**Death sentence**

It is a judgement of court which stipulates that an offender should suffer death for the offence committed. Death penalty as a punishment is imposed for certain offences in Nigeria as compared to Britain where death penalty has been abolished. An offence which carries a death sentence is called **capital offence** because they impose the highest penalty for crime which is taking the life of the offender. In Nigeria offences which carry death sentence includes Treason, armed robbery, murder.

Mentally ill persons

Some accused persons may be too mentally ill or disordered to make a plea to a criminal charge. This is usually referred to as **Unfitness to plea**. Such accused person may then be referred for psychiatric examination and treatment. in a proven or clear case of murder if the accused is unfit to make a plea by reason of insanity a variety of hospital and guardianship orders may be made and the accused may be committed to a mental or psychiatric hospital for necessary case at the pleasure of the president or governor as the case may be until the person is mentally fit to be releases. alternatively the defence may set up the defence of insanity and if successful the accused is usually acquitted on grounds of insanity the leading case of insanity is **R V. M’NAGHTEN** in this case the accused person was charged with murder a plea or defence insanity was successfully made for the accused and the house of lord held that the accused was not guilty and was acquitted on the ground of insanity.

**PROSECUTION**

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 nay exhibit they may have. The witnesses are in turn cross-examined by the defence counsel and re-examined by the prosecuting counsel as may be necessary and the case for the prosecution closes.

**DEFENCE**

After the close of the case for the prosecution and the failure of a no case submission. If such submission was made the case for the defence then opens. The accused and his witnesses if any are one after the other led in evidence in chief by the counsel for the defence and are cross examined by the prosecuting counsel and re-examined by the counsel for the defence as may be necessary. Each witness undergoes the whole process before another witness is called. It is never mixed up. This is always the procedure. Generally unless a witness has finished his testimony and undergone necessary cross examination and re-examination if any another witness may not be called except there are good reasons to do so. Some good reasons to call a witness out of turn include the need to take the evidence of a witness who is obviously very busy or who is obviously very busy or who may not be readily available to testify or who lives in a distant town or place or who is suffering from ill –health travelling to a far place and so forth. After the witnesses for the defence have testified and tendered any exhibit they may have the case for the defence closes.

**CLOSING ADDRESSES**

After the close of the case for the defence the counsel for both sides then make closing speeches by addressing the court from their filed written addresses. The prosecution counsel is always the 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 defence and then urges the court to convict the accused as charged. However the general rule of law is that the case for the prosecution must succeed on its own. This is so for in criminal proceedings the burden of proof on the prosecution is proof beyond reasonable doubt. It must be proved beyond reasonable doubt but not beyond the shadow of doubt. The case for the prosecution must succeed on its own strength. Thus the case for the prosecution cannot rely on the weakness of the defence to succeed. For this reason an accused person is not bound to put up a defence and may in appropriate circumstances rest his case or defence on the case for the prosecution. The burden of proof on the prosecution in criminal proceedings is 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. This is so far, for it is better for a guilty person to go scot free and escape justice than for an innocent person to be unjustly punished due to a lowered standard of proof.

**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 of primia facie case against the accused and consequently the accused has no case to answer and therefore the case should not proceed further. The defence counsel makes the submission by addressing the court. The prosecuting counsel usually replies. The judge then makes a ruling in the submission. The judge may accept the submission and make a ruling that the accused has no case to answer. This ruling is a verdict of not guilty and the court may thereupon discharge and acquit the accused on merit or discharge but not acquit the accused if the submission succeeded just on a technically and not 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 defence. Where the accused refuses to give evidence in his defence and choses to stand by his ‘no case submission’ which had earlier failed the court would often usually convict the accused. The reason being that the accused failed to defend himself against a primia facie case made out against him. Next the counsel for the defence addresses the court. In his address he points out the weaknesses of the case for the prosecution if the case for the prosecution is a pack of lies and a mere fabrication, conjecture, imaginative, malicious vexatious and an abuse of court process. He calls it so. If a primia facie case has not been made

Out or sufficient evidence has nor been adduced as required by law to discharge the burden of proof that rests on the prosecution is criminal proceedings which is proof beyond reasonable 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 . the general rule of closing speeches is that the accused or counsel is entitled to the last word that is it is his right to round off the addresses.

**JUDGEMENT**

After the addresses by counsel for both sides the judged fixes the judgement for a date provided that it is nit summary trial, and the court rises in adjournment to enable it deliberate, consider, or evaluate the totally of evidence in the case . On the adjourned to enable it deliberate, consider or evaluate the totality of evidence in the case. On the adjourned date the court resumes sitting, the case is called and the judge begins to deliver his judgement and resume siting to deliver it on that same day as the case may be or on adjourned date. In the judgement the judge sums up weighs, or reviews the evidence for both sides states his reasons for believing and accepting the case for either side and also gives 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 may be. This must be done according to law

**DISCHARGE**

Where an accused person has 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. On the other hand, if the prosecution failed on a technically then the court will usually discharge the accused but not acquit him.

**SENTENCE**

Where an accused is found guilty before passing sentence and allocutus plead for mercy or leniency is usually made by the counsel for the defence. After the allocutus the judgement passes sentence on the accused.

When an accused has been found guilty of a crime, a court any under the criminal procedure act or law and make one or more appropriate other as follows imprisonment fine death sentence, caning, deportation, binding over (suspension), order of detention during the pleasure of the president or governor as the case may be , order for disposal of property , order for costs , award of damages and prosecution order.

 **REMEDY**

The only remedy available to an accused after the imposition of sentence is his right to appeal his appeal may be as of right or must be with the leave or permission of the court. An appeal can be made of a higher court to change the sentence imposed on him or to ask for a retrial. However, a case handled in the Supreme Court cannot be appealed against because the decisions of the Supreme Court are final.

1. Comment on the various methods by which civil proceedings may be commenced in the high court.
2. Writ of summons
3. Originating summons
4. Originating notice of motion
5. Petition

**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 division and the names of the parties to the case. It commands the defendant to enter an appearance the plaintiff may proceed with the action and judgement must be given in the defendant absence. A writ also contains certain indorsements –indoresement of claim and formal indorsement. The indorsement may be a special indoresment (of claim) or a general indorsement (of claim). Special indorsements are 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 amendment is desired. When a writ is so indorsed it is said to be specially indorsed. One advantage of the indorsement is 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. A writ not specially indorsed but accompanied with a statement of claim serves the same purpose as a specially indorsed writ. A general indorsement states in a summary form the nature of the claim made or the nature of the remedy requested. in this case the plaintiff has to serve not only the writ but also the statement of claim which contains the details of the claim. Formal indorsement is a writ whether specially indorsed or not must contain formal indorsement for example if the action is for a debt or liquidated demand (a specific sum of money already ascertained) only the writ must be indorsed with a statement of the amount of money claimed as debt or demand and the amount of costs demand: it must also state that the defendant can pay the amount claimed including costs. other formal indorsements include in the case of a plaintiff suing in person the plaintiffs address for service (an address within the jurisdiction of the high court) and in the case of a person suing by a legal practioneers the name and address of the legal practioneers which address must be the address for service within the jurisdiction of the high court. Another formal indorsement relates to cases in which the plaintiff sues r the defendant is sued in a representative capacity in such cases the writ must be indorsed to indicate the capacity.

**Originating summons**

An originating summons is a summon 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 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. 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 but where a case concerning the construction of a document or statute is commenced by originating summons the court or judge in chambers is not bound to determine the question of construction If the court or judge in chambers is of opinion that an originating summons procedure is not appropriate for the purpose of determining the question. Interpleader proceedings are commenced by originating summons where the applicant is not a defendant in a pending action on the subject matter of the proceedings. Proceedings in the high court of Lagos state must be commenced by writ unless otherwise expressly provided. An originating summons procedure is appropriate where the main or only point in dispute is the construction of a statue or other enactment or the construction of a document or where the main or only point in dispute is some other question of law. It is not appropriate where a substantial dispute of fact is likely to arise. An originating summons dispenses with the need for pleadings.

**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.

**Petition**

An action may be commenced by petition for example divorce proceedings are commenced by petition

**Life of a writ**

Normally a writ of summons is valid for a period of twelve months from the date of issue but where the defendant has not been served it may be renewed from time to time for a period of six months on each occasion from the date of renewal if the court or judge in chambers is satisfied that a good reason has been given for failure to effect