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MATRIC NO: 18/law01/039

COURSE: NIGERIAN LEGAL SYSTEM

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COLLEGE: Law.

ASSIGNMENT ANSWERS:

1. The question here says I should comment on the procedure from arraignment to the imposition of sentence below are the list of the procedure from arraignment to the imposition of sentence in a criminal trial in a high court:

a) Arraignment and please

b) Plea if guilty

c) Plea of not guilty

d) Prosecution

e) Submission of “ No case to answer”

f) Defence

g) Closing address

h) Judgement

I) Discharge

j) Sentence

k) Imprisonment.

EXPLANATION OF THE PROCEDURE LISTED ABOUVE.

a). ARRANGEMENT AND PLEA: arraignment can be explained as the calling out of the accused person before the court by name at the beginnings of a criminal proceedings to read to him the information brought against him to ask him whether he pleads guilty or not guilty. This is usually done by the registrar or other officer of the court and the accuse normally stands in the dock and the charge is explained to him. Thus, this is known as arraignment of a person before a court.

An accused person may plead only in the following outlined cases:

1. Autrefois acquit: means a plea where a person has been tried for same offense before and in application of the rule if double jeopardy, a person cannot be tried twice for same offence.

2. Autrefois convict: this means it is a plea that a person has been tried for same offence and cannot be tried again.

3. He may plead guilty.

4. He may plead not guilty.

5. He may stand mute that is when an accused stand mute without saying anything, a plea of guilty is usually entered for the accused.

6. Plea for guilty for a lesser offence.

b). PLEA OF GUILTY: A situation where a person pleads guilty, the counsel will give the cour a summary of the evidence together with details of the accused person’s background that is for character and his criminal record if there is any and then the counsel for the defence makes his plea in the mitigation of sentence and then the court finally passed its sentence

c). PLEA OF NOT GUILTY: an instance where a person pleads not guilty, the trial then start or proceeds.

e) PROSECUTION: the counsel for the prosecution starts the proceedings by calling out the evidence for prosecution. He examines his witnesses each in chief and tenders any exhibit they may have. The witnesses are cross-examined by the defence counsel and re-examined by the prosecuting counsel as it may be necessary or the case. Note that the burden of proofing criminal proceedings is “proof beyond reasonable doubt”. Where there is no proof the case is discharged and the accused is set free. The Roman Law was the one that brought a principle that a criminal proceeding must be proven beyond reasonable doubt. And the Roman stated that it is better for a guilty person to go unpunished than an innocent person condemned. The case of Ukorah v State, Chukwunweike Idigbese states the Roman law’s maxim.

f). SUBMISSION OF “NO CASE TO ANSWER”: When the case is about to end for prosecution, the defense counselor submit that the prosecution has not produced sufficient evidence or make out prima facie case against the accused and the defense counsel makes the submission by addressing the court and prosecuting counsel replies and then the judge would make a ruling on the submission. The judge may accept the submission and make a ruling that the accused has no case to answer and the judge may discharge or acquit the accused, if submission succeeded just in technicality and not merit but a case where he rejects, in his ruling the trial proceeds and the accused has to state his case by giving his evidence in his defence. And if an accuse refuses to give evidence in his defence and chooses to stand by no case submission which had earlier failed, the court usually, would convict the accused and the reason is because he failed to defend himself.

g). DEFENCE: if there was a case of submission, the case for defence opens and the accused and his witnesses if he has, are ushered one after the other by the counsel for the defence and are cross-examined and re-examined by the prosecuting ourself and the counsel respectively of which it is for the defence as it may be necessary. The witness are never mixed up as each witness undergo the whole process before another is called except there are good reasons to do so. They may a witness out of turn for reasons like: a witness may be sick,lives in a distant town, travelling to a far place e.t.c. After witnesses have testified, the defence then closes.

h) CLOSING ADDRESS: when the case for defence is closed, the lawyers for both sides give their closing speech from their filed written address to the court and most times the prosecution counsel is the first to address the court of which he adds up the case on both sides. He highlights the strength of the case and identifies the weakness if any of the defence and then urged the court to convict the accused as charged. The case must be proven beyond reasonable doubt but not beyond the shadow of doubt. The case must succeed on its own strength and thus the case of prosecution cannot rely in the weakness of the defence to succeed. And because of this an accused person is not bound to put up a defence and may in appropriate circumstances rest his case. And then the next counsel for defence addresses the court on the weaknesses of the case and if the case is a pack of lies and a mere imaginative and abuse of court process, he calls it so. If the evidence is not sufficient to proof beyond reasonable doubt, he points it out to the court and finally urges that they discharge and acquit the accused on the charges as the case may be. The general rule for closing address is that the accuse or his counsel is made to say a the last speech as it his right to round off the addresses.

i) JUDGEMENT: after the closing address, the judge would then fix a date for the judgement and then the court is adjourned for enablement if deliberation, consideration and evaluation of the total evidence brought in the case. Then on the day of judgement, the judge begins to deliver its judgement on the case. But if the trial is by summary procedure, the judge may deliver judgement there and then retire to his chamber to consider the judgement and resume sitting to deliver it in that same day as the case may be or on an adjourned date. Note the judge weighs, sums and reviews the evidence for both sides and shalll state his reasons for his judgement in details. The judge may find the accuse guilty or not guilty but his judgement must be done according to the law.

j) DISCHARGE: where a person has not been found guilty on merit, the judge will dismiss the the charges accordingly and acquit the person as provided under the criminal procedure law but if the prosecution failed on technicality, then the court will discharge the accused but not acquit him. If a person is not found guilty the court make either of the following orders: order of acquittal, order of discharge of the accused on the charges, dismissal order, order of compensation.

k) SENTENCE: a situation where the accused is found guilty the defence counsel plead for mercy. Most times they use this phrase “ temper justice with mercy@ and then the judge. The types of sentences a judge can give are: imprisonment with hard labor, fine, death sentence(although no longer used), deportation, award for damages, probation order, order for disposal of property as well as cost e.t.c.

l) IMPRISONMENT: this is a punishment for criminal offenses which consist of detention of the offender in prison. It restrains a persons liberty by another. It has helped to reduce crime rate although it is a debat and argument to people but many countries are resulting to other measures that can help reduce crime rate also in form of fines and sanctions. A sentence of imprisonment can be with or without hard labour. There are some rules that apply with imposition of imprisonments such as: i) where imprisonment does not specify with hard labor it’s deemed to be with hard labor

ii) also where a court imposes a fine and he defaults, the imprisonments as punishment must not be more than two years.

iii) a term of imprisonment imposed for any offence must not exceed the maximum as prescribed for the offence by law.

iv) where a magistrate imposes a fine the amount must not exceed the financial limit of a magistrate.

1b) REMEDIES AVAILABLE TO AN ACCUSED AFTER IMPOSITION OF SENTENCE.

Remedy in a legal sense is known as judicial relief, which a court of law usually in the exercise of civil jurisdiction, imposes a penalty, enforced right, in order to compensate the harm or sentence inflicted on a person. Below are the following remedies after imposition of sentence. and they are:

i) APPEAL: An appeal is a request made to a higher court to review and change the decision of the original court. After a sentence has been imposed the accused can make an appeal to a higher court for mitigation or less or reduction in punishment. The Criminal Procedure Act 2009 governs or explains the process in which appeals are made against sentences from Magistrate court to the Supreme or even the county court.A person sentenced in the Magistrates' Court can appeal to a single judge of the Supreme Court on a question of law.The application for leave I.e permission may be refused if there is no reasonable prospect that the Court of Appeal would impose a less severe sentence than the original sentence. But what I’m trying to say is that making appeals can also be a remedy available for an accused after imposition of sentence because he may find Favour in the higher of which he is appealing to and as such sentence may be reduced for the accused. If the appeal is made to the court of appeal, they( normally comprising of two or three judges may review the sentence to determine whether the judge who originally sentenced, make a mistake. And when doing this they consider thins like: the seriousness of a mistake, other sentences similar to the case e.t.c .

There are time limits for lodging for an appeal for exampleAn appeal from the Magistrates' Court to the County Court must be lodged within 28 days from the date of the original sentence. The same time limit applies to appeals from the County Court or the Trial Division of the Supreme Court to the Court of Appeal. They also have procedural requirements for lodging sentence appeals.

Conclusively, appeals can be a remedy for an accused person after imposition of sentence that’s after the appeal had been reviewed by the higher court and if the higher court sees that there is need for change in the sentence that had already been imposed on the accused by the former court.

ii)EXPUNGEMENT: Expungement is a legal term in which an arrest, conviction are erased from a persons criminal record and a person who had been expunged does not need to disclose that he was arrested and convicted. This is a remedy for an accused after the imposition of a sentence because after serving his jail term, he can leave life as a new being without any criminal record stated since the records has been erased. Expungement can make an accused like a person that had not crime before since all arrest and convictions are erased. For instance the accused person when filling out a  application for a job or apartment, an applicant whose arrest or conviction or s been **expunged** doesn't need to disclose that arrest or conviction. Expungement are always made by parties to court. At the **hearing** for **expungement**, the court has the discretion to determine whether it will grant, or deny, the application for record **expungement** based upon the evidence and arguments presented to it at the **hearing**. There are several factors that the court shall consider during the **expungement hearing and as such the judge just give expungement those factors shall be considered.**

iii) REMISSION: Remission refers to the reduction in the length or time of a punishment without changing the type or character of the punishment to which a convict has been sentenced. Explaining it in simpler terms,it means the rest of the sentence need not be undergone. For instance, rigorous imprisonment for 5 years may be remitted to 2-year rigorous imprisonment.It implies reducing the period of the sentence without changing its character. Remission of a sentence can also come in this form where the President uses the powers vested on him by the constitution and the correctional services act to grant remissions which effectively means cutting the sentence short. Prerogative of mercy, the president exercises this as part of his constitutional powers. So remissions is also a remedy for an accused after the imposition of sentence sentence because it can help to reduce the length from a long period to a shorter period of time.

In conclusion, Appeals,Remission,Expungement, Respite are remedies that can be used

2). VARIOUS METHODS BY WHICH CIVIL PROCEEDINGS MAY BE COMMENCED IN A HIGH COURT

The question above is requesting that I state the various method by which civil proceedings are commenced in a high court and this is not far- fetched and they are listed below:

1. Writ of summons.

2. Originating motions and applications.

3. Originating summons.

4. Petitions.

1. WRIT OF SUMMONS: this is an official order of a person to appear in court when they have been accused for commuting a crime and it is one of the two modes of commencing a civil action against a person. It is a legal document given to a person to come to court to answer a complaint. A **Writ of Summons** must be filed by the plaintiff or either through solicitors or personally, in Court, as the first step in civil proceedings. After the Court accepts the **filing**, it must be served by the plaintiff on the defendant. This happens when the **writ** is delivered to the defendant, or the defendant collects it. The writ of summons can be amended if the summon is completed, clerk must sign, seal, and issue it to the plaintiff for service on the defendant.

2. ORIGINATING MOTIONS: This is used only when it’s provided for or by a statue or rule of a court. There are examples of actions commenced and they are:

a) application of habeaus corpus

b) action for enforcement of fundamental rights under the Fundamental Enforcement Procedure Rules.

c)Application for judicial review.

3. ORIGINATING SUMMONS: this is used when ever there is an interpretation of a written law. It is used for matters that are not likely to be dispute. Examples are: interpretations of deed, will or contract, company proceedings.

4. PETITION: This is an application made to a court to setting out a party case. It’s used where a statue or rule of court provided for its use. There are two types of petitions: the governmental petitions and the non governmental petition.