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ASSIGNMENT TITLE: CIVIL AND CRIMINAL PROCEEDINGS

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.
2. Comment on the various methods by which civil proceedings may be commenced in the High Court.

1

Criminal procedure is the method or procedure of commencing, conducting and concluding criminal proceedings or matters in court.

The sources of the rules regulating criminal procedure in Nigerian courts are the:

1. Criminal Procedure Act and its equivalent laws in the southern states.
2. Criminal Procedure Code and its equivalent laws in the northern states.
3. The Nigerian Constitution; section 36 of the 1999 Constitution makes provision for the fundamental right to fair hearing.
4. Criminal Code and the Penal Code; and
5. Statutes establishing tribunals.

A trial on indictment or information in a High Court is similar to a summary trial, except for the elaboration of certain procedures which are:

1. Indictment
2. Proofs of evidence
3. Arraignment and plea
4. Plea of guilty
5. Plea of not guilty
6. Prosecution
7. Submission of ‘‘no case to answer’’
8. Defence
9. Closing address
10. Judgement
11. Discharge
12. Finding of guilt and sentence.

This writer will be writing on the above listed procedures, starting from arraignment to the imposition of sentence.

**ARRAINMENT AND PLEA**

Arraignment is the calling of an accused person formally before the court by name at the beginning of a criminal proceedings, to read to him the indictment or information brought against 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.

**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 person’s character and his criminal record, if any. After this, the counsel for the defence usually makes his 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.

**PROSECUTION**

The counsel for the prosecution always opens a criminal proceedings by calling evidence for the prosecution. He calls his witnesses and examines each in chief, and tenders any 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.

The burden of proof on the prosecution in criminal proceedings is beyond reasonable doubt where the burden of proof is not discharged, the charge is usually dismissed and the accused is legally entitled to be set free and is accordingly usually discharged and acquitted. This is because, according to the Roman law, 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. Stressing the need for the prosecution to discharge the burden of proof required by law in criminal proceedings, Chukwunweike Idigbe JSC in Ukorah v State said that: ‘‘The Romans had a maxim that it is better for ten guilty persons to go unpunished than for one innocent person to suffer.’’

**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 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 on this 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 technicality 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 chooses 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 prima facie case made out against him.

**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. 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 may not be readily available to testify, or who lives in a distant place, or who is suffering from ill-health, 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 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 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 of the defence, if any, and then urges the court to convict the accused as charged. However, the general rule of law is that the case of the prosecution must succeed on its own. This is because in criminal proceedings, the burden of proof on the prosecution is proof beyond reasonable doubt. 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 of the prosecution.

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, malicious and an abuse of court process, he calls it so. If sufficient evidence has not been adduced as required by law to prove the guilt of the accused person 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 his counsel is entitled to the last word, that is, it is his right to round off the addresses.

**JUDGEMENT**

After the closing addresses by counsel for both sides, the judge fixes the judgement for a date provided that it is not a summary trial, and the court rises in adjournment 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 on the case. In his judgement, the judge sums up, weighs, or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also gives 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. Conclusively, 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 not been found guilty, on merit, the judge will dismiss the 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 technicality, then the court will usually discharge the accused, but not acquit him.

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

1. Dismissal order; dismissing the charges
2. Order of discharge of the accused on the charges
3. Order of acquittal; and
4. Order of compensation, as the case may be for the false or malicious prosecution 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 defence. After the allocutus, the judge passes sentence on the accused.

Sentencing of an accused person after conviction is a very important part of the criminal justice system or administration of justice process. Punishment should not be the driving motive in sentencing. Apart from capital offences, reformation of the accused and his eventual rehabilitation back into normal life and society, should be the main motive in sentencing. In the case of ***Ambard v A.G*** for Trinidad and Tobago, an article titled ‘‘The Human Element’’ criticising the inequality of sentences passed by two judges in respect of the same kind of offence was the basis of a charge for contempt of court. The defendant appellant author said one of the judges was habitually lenient and the other habitually harsh. The Privy Council of the House of Lords set aside the conviction for contempt.

The discretion of judges and the human element, that is, the compassionate disposition or harsh disposition or personality of a judge are realities of life and are important factors in sentencing.

In pronouncing the sentence, the court considers various factors in reducing the sentence a convict receives at the end of a criminal trial. These factors include:

1. The age of the convict.
2. First offender status of the convict.
3. Reasonable, repentant or humane behaviour of the offender after commission of the crime.
4. Plea of guilty by the accused
5. Illiteracy or level of education of the accused, e.t.c.

The accused, on the discretion of the judge, can also be eligible for bail.

**2**

Civil procedure is the method, or procedure of commencing, conducting and concluding civil matters, trials, or claims in court.

The sources of the rules regulating the civil procedure and practice of courts in Nigeria are:

1. The Nigerian Constitution; it establishes the judiciary and provides for procedure rules to be made for the higher or superior courts.
2. Statutes establishing the relevant courts.
3. Civil procedure rules of the relevant courts; which are subsidiary legislations that provide civil procedure rules for the relevant court.
4. Rules of practice and procedure of English courts; which may apply where there is a lacuna, because there is no statutory provision in Nigerian law.

The High Court civil procedure rules of the various state High Courts make provision for procedure for the conduct of civil matters in each state. the civil procedure rule of a High Court is usually made up of so many orders, many of which are divided into rules, and sub-rules. A High Court civil procedure rules includes the following:

1. The pre-court stage and consultation of a lawyer
2. Form and commencement of action
3. Appearance
4. Stay of proceedings
5. Discontinuance
6. Settlement
7. Summary judgement
8. Pleadings
9. Pre-trial conferences and scheduling
10. Discovery and inspection
11. Issues, inquiries, accounts and references to referees
12. Special case
13. Proceeding at trial; trial
14. Filing of written address: closing address
15. Judgement
16. Enforcement of judgement.

**THE PRE-COURT STAGE AND CONSULTATION OF A LAWYER**

A party who is aggrieved and wishes to seek relief in a High Court usually consults a lawyer for legal advise, who takes down the facts of his case and instructions. If the matter does not need immediate action in court to forestall irreparable damage, the lawyer may as a first step write a letter of demand to the would be defendant demanding that a wrong be put right or a debt be paid to his aggrieved client as the case may be, and giving a period of time for the demand to be met, failure of which action is thereafter filed, with or without giving further notice to the would be defendant.

**FORM AND COMMENCEMENT OF ACTION**

An action may be commenced in a High Court by a counsel filing one or a combination of the following papers or originating processes in court:

1. Writ of summons, or originating summons, together with a statement of claim; or
2. Ex parte motion, with or without a writ of summons and a statement of claim, which may be filed later.
3. Petition, as may be necessary, such as, in a matrimonial proceedings for divorce and so forth, or winding up of a company for its inability to pay its debts in a Federal High Court and so forth.

A writ of summon ns when filed is sealed or stamped with the courts name on it for service by a bailiff on the defendant to give him notice of the claim made against him and requiring him to acknowledge service and to defend it, if he does not admit the claim. A statement of claim may be filed along with the writ, or later on within 14 days of the service of the writ to the defendant.

A writ or other originating process usually contains the following information:

1. The names and addresses of the parties to the suit.
2. An endorsement of the claim against the defendant

A writ is required to be served on the defendant personally. The life of a writ is usually 12 months. Where an action is commenced by any other originating process, such as a motion or a petition, it must also contain the above mentioned particulars or information.

**APPEARANCE**

A defendant may acknowledge the service of a writ, and then enter appearance in the case by instructing his solicitor or counsel to file a memorandum of appearance, and then show up to defend it or settle the case as he may wish to do. However, where a defendant fails to enter appearance, within the time limited, the plaintiff, may by a motion on notice obtain interlocutory or final judgement against the defendant in default of appearance and or failure to defend the action.

**STAY OF PROCEEDINGS**

A court may order a stay, that is, a suspension of proceedings in an action temporarily, until something requisite is done or until a party has complied with an order. However, a stay of proceedings may be permanent by way of strike out or dismissal of the claim, such as where to proceed with the action would be improper, or the suit is scandalous or an abuse of court process, e.t.c. A court has an inherent jurisdiction or power to stay proceedings in a claim for any of the above reasons.

**DISCONTINUANCE**

Parties to an action may also settle the dispute for valuable consideration, or without consideration and withdraw the action without filing terms of settlement in which case the action will be struck out by court or by filing terms of settlement in cpourt, and the terms of settlement will be pronounced as consent judgement of the court in conclusion of the action.

**SUMMARY JUDGEMENT**

Summary judgement is a procedure or device available for promptly and expeditiously obtaining judgement and disposing off a controversy, case or matter without going to trial. It is usually available where: there is default of appearance, failure to file a defence, where the defendant has no defence, e.t.c.

This procedure permits any party to a civil action to move for a summary judgement on a claim, counter claim or cross claim, strike-out or dismissal of a claim, where he believes that there is no genuine issue of material fact to be tried, and that he is entitled to judgement as a matter of law, in any of the above mentioned situations.

A motion for summary judgement may be directed toward all or part of a claim and it is usually on the basis of facts averred in the pleadings. It must be supported with an affidavit stating the facts on which summary judgement is claimed together with any exhibits that are relied upon.

**PLEADINGS**

Pleadings are written statements of material facts a party is relying on for his claim, defence or reply in a suit, and which are filed and exchanged by parties to a suit. A pleading is a comprehensive statement or narration of a party’s claim or case.

The pleadings filed in court and exchanged between a plaintiff and a defendant are:

1. Statement of claim by a plaintiff,
2. Statement of defence by a defendant, which may contain a set off and a counter claim; and
3. Reply

No pleading subsequent to a reply may be filed without the leave of the court, such as an amendment and so forth. Every pleading must state:

1. Facts, that is, every and all material facts that the party is relying on to establish his case; and
2. Statements in a summary form, but without omitting necessary facts.

The object of pleading includes:

1. To state the claims of the parties;
2. To give notice of a party’s claim to his opponent and time for a considered reply;
3. To ascertain the issues in dispute between the parties, which require trial and decision by court;
4. To eradicate irrelevant issues; and
5. To avoid a party springing a surprise during the trial by raising an issue he did not plead.

**DISCOVERY AND INSPECTION**

Any party may in writing request any other party to any cause or matter to make a discovery on oath of the documents that are or have been in his possession or control, relating to the case. Request for discovery shall be served within 7 days of the close of pleadings and shall form part of the agenda of pre-trial conference. The party on whom such a request is served shall answer an oath completely and truthfully within 7 days of the request and it shall be dealt with at pre-trial conference.

Every affidavit in answer to a request for discovery of documents shall be accompanied by copies of documents referred to therein, and the affidavit made by any person in answer to a request for discovery of documents shall specify which of the listed documents he objects to produce if any, stating the grounds of his objection.

**ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES**

In all proceedings, issues of facts in dispute shall be defined by each party and filed within 7 days after close of pleadings. If the parties differ on the issues, the pre-trial judge may settle the issues.

In any legal proceeding the judge may at any time order the whole cause or matter or any issue of facts arising therein, to be tried before an official referee or officer of the court. Notwithstanding that there is a special or other relief sought or some special issue to be tried, which make it proper that the cause or matter should proceed in the ordinary manner.

A judge may order or direct an account to be taken, and or by any subsequent order give directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account, the books of accounts in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of their contents, with liberty to the interested parties to object.

**SPECIAL CASE**

At the pre-trial conference parties may concur and state the questions of law arising in their case in the form of a special case for the opinion of the judge. Every such case shall be in paragraphs numbered consecutively and concisely state such facts and documents as may be necessary to enable the court to decide the questions. Upon argument of such case the judge and the parties may refer to all the contents of such documents and the judge may draw from the facts and documents any inference, whether of fact or law, which might have drawn from them if proved at a trial.

Alternatively, if at the pre-trial conference it appears to the judge that there is a question of law, which could be conveniently decided before any evidence is given or any question or issue of fact is tried, the judge may make an order accordingly, and may raise such questions of law or direct them to be raised at trial, either by special case or in such manners as the judge may deem expedient, and all further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed. Every special case agreed to shall be signed by the several parties or their legal practitioners and shall be filed by the claimant or other party having conduct of the proceedings.

**TRIAL**

On the date fixed for trial, the parties and their witnesses come to court with the documents or any other thing required to be tendered as exhibit. Where a witness refuses to be in court, a subpoena may be issued on him to attend court. Witnesses who ignore a subpoena are in contempt of court for disobedience and may be punished for such contempt, by a fine or imprisonment.

Where the case is called, if neither party appears, the case may be struck out from the cause list, or may be adjourned, for instance if a letter is sent to court by either party asking for judgement. Where the defendant fails to attend court and is not represented by a counsel, and the plaintiff appears, the plaintiff may prove his case and obtain judgement. Where the plaintiff fails to appear and the defendant appears, the suit may be struck out, dismissed, or if the defendant has a counter claim, he may prove it and judgement may be entered in favour of the defendant. Thus, a judge may on application strike out or dismiss any proceedings not being prosecuted diligently.

Where a case is struck out, either party may apply that the cause be replaced on the cause list on such terms as the judge may deem fit. The judge may, if he thinks it expedient in the interests of justice, adjourn a trial for such time and upon such terms, if any, as he deems fit.

A party shall close his case when he has concluded his evidence. Either the claimant or defendant may make oral application to have the case closed, or the judge may *suo-motu* where he considers that either party has failed to conclude his case within a reasonable time, close the case for the party. The Registrar shall take charge of exhibits, mark all exhibits, and the list of all the exhibits shall form part of the record of the action.

**CLOSING ADDRESS**

Each party is entitled and required by law to file a written address. A written address shall be filed in respect of all applications in court and final address. A written address shall be printed on white A4 size paper, and set out in paragraphs numbered serially and shall contain: the claim or application on which the address is based; a brief statement of the facts with, reference to the exhibit, if any, attached to the application or tendered at the trial; the issues arising from the evidence; a succinct statement of argument on each issue, and the authorities referred to together with a full citation of each such authority.

All written addresses shall be concluded with a numbered summary of the points raised and the party’s prayer. A list of all authorities referred to shall be submitted with the address. Where any unreported judgement is relied upon, the Certificated True Copy shall be submitted along with the written address. Oral argument of not more than twenty minutes shall be allowed for each party.

Two copies of a written address shall be filed by a party in court and a copy thereof served on the other or every party. A closing address when filed may be made thus:

1. The defence counsel makes his closing speech, that is, he addresses court; and
2. The plaintiff’s counsel may address court in reply as he is entitled to do.

**JUDGEMENT**

After the closing addresses of the counsel, the judge considers or evaluates the evidence given in the case and then gives judgement on the same day. Where a judge requires more time to consider the case, he may reserve judgement and adjourn the matter for judgement to such later date.

On the judgement date, the judge then gives his verdict stating the facts and legal issues in the case, explain the appropriate burden and standard of proof and states the basis of the judgement, and enters judgement in favour of the appropriate party and also makes such orders as are relevant in the case, provided that such orders were sought by such party.

**ENFORCEMENT OF JUDGEMENT**

When judgement has been entered in favour of a party, the judgement, declaration of rights, order of reinstatement, order of forfeiture, award of damages, offer of apology, and so forth, if not satisfied within the time limited by law, appealed against or otherwise stayed, the plaintiff may enforce the judgement by one or a combination of the following ways:

1. A writ of Fifa: directing the Sheriff to seize the debtor’s properties, moveable and immovable, as may have been appropriately ordered, for sale in satisfaction of the debt; or
2. A Garnishee order: may be made to attach money which the debtor has with a third party, such as bank, so that a credit balance on the debtor’s bank account will be diverted from him and paid to the judgement creditor until the debt is satisfied. A plaintiff usually applies to court for a garnishee order which is directed to the bank and the debtor, requiring the bank to send a representative to attend court to show why the money or a part of it should not be used to pay the judgement creditor.
3. A charging order: may be made over the debtor’s landed property, shares, or other property for payment of the debt. When the money is not paid, such property may be sold upon application to court, in order to satisfy the debt.
4. A writ of possession, a writ of delivery, an order of specific performance, an order of injunction, a tracing other, and other forms of orders may be enforced.

**REFERENCE**

The Nigerian Legal System, Ese Malemi, 4th edition, pp. 400-469

[www.lawteacher.com](http://www.lawteacher.com)