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 **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 accused after the imposition of sentence.

 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 Nigeria courts are mainly the: Criminal Procedure Act and its equivalent laws in the southern states, Criminal Procedure Code and its equivalent laws in the northern states the Nigerian constitution, criminal code and penal code and statues establishing tribunals. In examining criminal procedure in Nigeria, we shall consider the criminal procedure of two courts namely: magistrate court and high court of the state.

 **Our main focus is criminal procedure in the high court.** We will be looking at the criminal procedure in high court of Lagos state. We have twelve procedures under this which are: **what is an indictment or information? Proof of evidence, arraignment, plea of guilty, plea of not guilty, prosecution, submission of “no case to answer”, defence, closing address, judgment, discharge and finding the guilt and sentence.**

**STATE CLEARLY THE PROCEDURE FROM ARRAIGNMENT TO IMPOSITION OF SENTENCE**

1. Arraignment and plea
2. Plea of guilty
3. Plea of not guilty
4. Prosecution
5. Submission of no case to answer
6. Defence
7. Closing address
8. Judgment
9. Discharge
10. Finding of guilt and imposition of sentence.
11. **ARRAIGNMENT AND PLEA**: arraignment is the calling of an accused person formal 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.

An accused person may plead as follows:

* Autrefois acquit: Autrefois acquit means a plea that he has been tried for the same offence before and has been acquitted.
* Autrefois convict: Autrefois convict means a plea that he 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: however, 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.
* He may plead guilty to the offence charged.
* He may plead not guilty.
1. **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 background, that is, character and his criminal record, if any. After this the counsel for the defence usually makes his allocutus or plead in mitigation of sentence and the court them passes its sentence.
2. **PLEA OF NOT GUILTY:** where an accused person pleads not guilty, the trial then proceeds.
3. **PROSECUTION:** The counsel for the prosecution always opens a criminal proceedings by calling evidence for the prosecution. He calls his witness and examines each in chief, and tenders any exhibit they may have. The witnesses are in turn cross-examined by defense 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 proof beyond reasonable doubt. Where the burden of 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 for, 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. The principle or requirement that the guilt of an accused be proved beyond reasonable doubt has its root deep in Roman law.
4. **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. The defence counsel makes the submission by addressing the court. The prosecuting counsel usually replies. The judge then makes a ruling on this submission.
5. **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 witness, 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 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. There are some good reasons to call a witness out of turn. After the witnesses for the defence have testified and tendered any exhibit they may have, the case for defense closes.
6. **CLOSES 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. The prosecution counsel point 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. The counsel for the defence addresses the court. He points out the weaknesses of the case for the prosecution. The general rule is that the 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.
7. **JUDGEMENT:** after the closing addresses by both counsel, the judge fixes a date for judgement provided that it is not a summary judgment and the court rises in adjournment to enable it deliberate, consider or evaluate the totality of evidence in the case. O the adjourned date the court resumes sitting, the case is called and the judge begins to pronounce judgement. Where it is a summary procedure trial, the judgment is delivered there and then. The judge sums up, weighs, or reviews the evidence of both sides. He states reasons for believing, disbelieving, accepting and rejecting the case of either sides. The judge finally, find the accused not guilty or guilty as the case may be. It must be done according to law.
8. **DISCHARGE:** where an accused person has not been found guilty, on merit, the judge will dismiss the information or charges and discharge and acquit the accused person as provided under the criminal procedure law. Where a person has not been found guilty, a court makes one or more of the following: dismissal order, order of discharge of the accused on the charge, order of acquittal and order of compensation.
9. **SENTENCE:** when 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. When an accused is found guilty of a crime, the court may pass any of the following orders, these are the types of sentences: imprisonment with hard labour, fine, death sentence, caning, deportation, and order of detention, order of disposal of property, order of costs, award damages and probation order.

**REMEDY AVAILABLE TO AN ACCUSED AFTER IMPOSITION OF SENTENCE**

 After a person has been found guilty of an offence and the court has delivered his or her sentence, there are some remedies that are available to an accused person. Post-conviction remedies are specific and complicated legal processing that is a problem that affects the legality of some aspects of the criminal trial or sentencing. A criminal defendant has limited opportunities to challenge a conviction or sentence. There are some remedy available to an accused person after imposition of sentence, which are: a direct criminal appeal, sentencing modification, clemency, pardon, post-conviction bail

1. **DIRECT CRIMINAL APPEAL**

 The federal government and all states provide the opportunity to appeal a criminal conviction. A person that has been convicted of a crime, has the right to appeal against the decision of the trial court, if they believe an error has occurred. They usually appeal to a higher court to look into the decisions of the trial proceedings. Direct criminal appeals are completely different from the trial proceedings, although they arise out of the same conviction. At the appeal stage, the goal is to convince the appellate court that an error at the trial court made the conviction or sentence unfair or contrary to law, warranting a different a different outcome.

1. **CLEMENCY**

 Clemency, or the communication of a sentence, is a form of relief that may reduce or alter a sentence but does not affect the conviction. It is different from pardon. Clemency is the act of reducing a penalty for a particular criminal offence without clearing the person’s criminal history. **In section 175(1) and 212(1) of the 1999 constitution as amended**, the President and a Governor are empowered to grant clemency to those convicted of federal and state crimes.

1. **SENTENCE MODIFICATION**

 Sentence modification has quite a different process from a criminal appeal. Although both may feel like the same, the court involved, the available grounds that can affect a criminal sentence, and the procedures involved quite differs. While criminal appeals must be filed by strict deadlines, a sentence modification petition can be filed any time while an offender is serving a sentence. However, there are cases in which a modification may actually be required. Some of these circumstances include:

* An error being made during sentencing that needs correcting, such as obvious clerical errors;
* The defendant assisting in another, separate criminal case by cooperating with prosecutors and providing necessary information or testimony;
* The offender’s age, such as the offender being too elderly and considered not a dangerous threat to the community;
* The offender having a terminal illness or disability that would cause the offender to be unable to serve their prison sentence;
* Changes in state sentencing guidelines, such as reducing fines or prison time; or
* The sentence having absolutely no legitimacy, as in failing to adhere to the proper sentencing.
1. **REMISSION**

 Partial or complete cancellation of the penalty for a crime, whilst still being considered guilty of a said crime. It can be also known as a remand, the proceeding by which a case is sent back to a lower court from which it was appealed, with instructions as to what further proceedings should be.

1. **PAROLE**

 Parole is a temporary release of a convict who agrees to certain conditions before the completion of his sentence. A parole officer is usually attached to the convict and any violation of the conditions of his parole will result in his return to prison. This is provided in **section 468 of the Administration of Criminal Justice Act 2015.** The release may be ordered with or without conditions.

1. **SUSPENDED SENTENCE/ PROBATION**

 **Section 460 (1) of the Administration of Criminal Justice Act** provides that a sentence can be suspended by a court where it sees reason to do so and the convict will not be required to serve the sentence in accordance with the conditions of the suspension. Suspended sentence or probation is a sentence or punishment given to a criminal in a court of law to the effect that such criminal would go to prison if he commits another crime within a particular period of time. It has regard to age, character, antecedents, health or mental condition of the person charged or the trivial nature of the offence.it simply means that the sentence has been withdrawn for the time being. It is different from a respite. A respite is a delay of an ordered sentence, or the act of temporarily imposing a lesser sentence upon the convicted, as investigations, actions or appeals are conducted.

 In conclusion, we can see that even after an imposition of sentence, the accused person have some remedies available.

**QUESTION 2**

**COMMENT ON THE VARIOUS METHODS BY WHICH CIVIL PROCEEDINGS MAY BE COMMENCED IN THE HIGH COURT.**

 Civil procedure is a method of commencing a civil matter in a court. It is a procedure by which a person whose legal rights and interest are adversely affected and may have recourse to the court of law for the resolution and determination of the dispute. It consist of rules and procedure applying to conflict in resolving dispute in which legal right and legal duties are in issue. It involves the legal mechanism required for the enforcement of such rights including court system, adjudicatory process and personnel.

**METHODS BY WHICH CIVIL PROCEEDINGS MAY BE COMMENCED IN THE HIGH COURT**

 The methods by which civil proceedings may be commenced in the high court are:

1. Originating summons.
2. Writs of summon.
3. Originating motion.
4. Petition.
5. **ORIGINATING SUMMONS**

 It is used for non-contentious actions. An action is commenced by an originating summon when it is required by a statute or a dispute which is concerned with matters of law, is unlikely to be any substantial dispute of fact. It may be *Inter partes or Ex-parte* of the rules of court. An originating summons is usually suitable for cases where there is only little or no dispute of fact and the parties only raise issues of law, or interpretation of certain terms in a legal document, for the court’s determination. In other word, if the parties only have different interpretations on certain terms or wordings in a legal document (or the existing ordinance provisions) without having any dispute over the facts of the case, the legal action should be commenced by an originating summon. Examples of actions to be commenced by this mode are; action for interpretation of a written law, documents, company proceedings, interpretation of any instrument or deed, will, enactment or other written agreement or some other question of law. Originating summons is a simpler and swifter procedure for the resolution of disputes as it is determined generally on affidavit filed and does not involve pleadings or many interlocutory proceedings. **ORDER 5 RULE 4 Lagos High Court (Civil Procedure) Rules 2019** is an example. In the case of **Unilag v. Aigoro (1991) 3 NWLR (Pt. 179) 376**, it was held that originating summons is used where it is sought to correct errors in a judgement.

1. **WRITS OF SUMMONS**

 A writ of summon is used for contentious actions or matters relating to dispute and there is need to go through trial. A writ of summon is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. It is a formal document issued by court stating the nature of the claim of a plaintiff against a defendant to “cause an appearance to be entered” for him in an action at the suit of the plaintiff within a specific period of time, usually eight days, after the service of the writ to him, with a warning that, in default of his causing an appearance to be entered as commanded, the plaintiff may proceed therein and judgement may be given in defendant’s absence. Civil actions involving substantial disputes of facts are commenced by way of a writ. It must be used to commence an action based on contract, tort, fraud, damages for personal injuries or death, damages to property arising out of a breach of duty, and generally for all actions which would involve a substantial dispute of facts (examples of such disputes include whether the defendant owes you money and how much; whether the defendant has damaged your goods/property; whether the defendant has failed to perform a contractual obligation). As you can see, the majority of civil actions are begun by a writ of summons.

 For example, According to **ORDER 5 Rule 1 and 2 of the Lagos High Court (Civil Procedure) Rules 2019**, a writ of summons shall be the form of commencing all proceedings where:

a. A claimant claims:

i. any relief or remedy for any civil wrong or;

ii. damages for breach of duty, whether contractual, statutory or otherwise, or;

iii. damages for personal injury to or wrongful death of any person, or in respect of damage or injury to property;

b. the claim is based on or includes an allegation of fraud.

c. An interested person claims a declaration.

 Generally, all actions are to be commenced by the writ of summons except where there is an expressed legislation prescribing another mode.

1. **ORIGINATING MOTION**

 This is used only when provided for by a statue or a rule of court. Actions to be commenced by this way are: **application for habeas corpus, order of mandamus, prohibition or certiorari, application for judicial review, action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure rules 2009.** Where a statute provides that action be commenced by application but does not specifically provide the procedure, originating motion should be use. An application (motion) that commences a proceeding in a court. It is used only when it is specifically required by law.

1. **PETITION**

 This is a written application made to court setting out a party case. It is only used where a statute or the rule of court provide for its use. A written application from a person or persons to some governing body or public official asking that some authority be exercised to grant relief, favors, or privileges. A formal application made to a court in writing that requests action on a certain matter. A petition is the first official document that is filed in a legal action. The document provides a basic outline of the case, and its main purpose is to provide the defendant with notice of the impending losses. Exactly what most be included in a petition varies slightly by state but in all jurisdiction the petition most contain a brief summary of what wrongs the plaintiff is claiming, and against whom the civil lawsuit is filed. **Matters that have to with petitions are divorce cases, election petitions, winding-up of a company.** **For example, section 410(1) of the Companies and allied Matters Act (CAMA) 2004** provides that an application of the winding-up of a company shall be by a petition. **Section 54(1) of the Matrimonial Causes Act 1970** provides that the proceeding for dissolution of marriage are commenced by petition.

**REFERENCES**

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