NAME: Etimbuk Essien Isonguyo

MATRIC NO: 18/LAW01/095

COURSE CODE: LPI 204

COURSE TITLE: Nigerian Legal System II

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.

QUESTION 1

ARRAINMENT AND PLEA

Arraignment 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 him and to ask him whether he pleads guilty or not guilty. This is called the arraignment of a person before a court.

An accused person may plead as follows:

- **Autrefois acquit:** this means a plea that he has been tried for the same offence before and has been acquitted. The plea is an application of the rule against double jeopardy, which stated that a person cannot be tried twice for the same offence.
- **Autrefois convict:** this 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**

Under Part 24 of the Criminal Procedures Act 1990 states:

215. The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not be been duly served therewith.

If You Are Charged With A Felony: If you are charged with a felony you will not be arraigned at your first court date. When you are charged with a felony you are entitled to a preliminary examination of the case before you will ever be arraigned on felony charges. At that preliminary examination, the State must prove that probable causes exists that a crime was committed and that you committed that crime. This all must be proven before the judge will arraign you on felony charges. If the judge finds that the State has meet their probable cause burden, then the judge will “bind over” the defendant. This is just way of saying that the State can go forward

prosecuting you for the crime charged. Usually immediately after you are, "bound over" the judge will perform the arraignment.

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 back ground, that is, character and his criminal record, if any. After this the counsel for the defense usually makes his plea in mitigation of sentence and all court then passes its sentence

PLEA OF NOT GUILTY: Where an accused person pleads not guilty, then the trial proceeds.

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 plead". Such accused person may then he is referred for psychiatric examination and treatment.

PLEA BARGAINING: Plea bargaining or plea negotiation is negotiating and agreeing for an accused to plead guilty to 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.

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. (See Ukorah v State)

SUBMISSION OF "NO CASE TO ANSWER": At the close of the case for the prosecution, the defense counsel may submit that the prosecution has not produced sufficient evidence or make 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.

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 defense then opens. The accused and his witnesses, if any, are one after the other, led in evidence-in-chief by the counsel for the defense and are cross-examined by the prosecuting counsel and re-examined by the counsel for the defense as may be necessary.

CLOSING ADDRESSES: After the close of the case for the defense, the counsel for both sides then make closing speeches by addressing the court from their filed witness address. The prosecution counsel is always the first to address the court. He sums up or reviews the case on both sides.

JUDGEMENT: After the closing addresses by counsel for both sides, the judge fixes the judgement for a date is provided that it is not a summary trial, and the court rises in adjournment to deliberate, consider, or evaluate the totality of evidence in the case.

DISCHARGE: Where an accused person has not been found guilty, onmerit, the judge will dismiss the charges and accordingly discharge and aquit the accused person as provided under the criminal procedure law.

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

Remedies Available to an Accused Person after Imposition of Sentence

If you are found guilty after a trial, you have the right to an appeal process. There are many reasons for an appeal of a criminal case, but appeals are also very difficult, so consulting a legal practitioner is often the best starting point for this course of action if he or she agrees with the notion of appealing then you can embark on it

There are also important deadlines that apply to appeals. If you miss the deadline, your appeal will most likely be dismissed.

For misdemeanor cases, you must file a Notice of Appeal (Misdemeanor) within 30 days of the date of the judgment or order.

For felony cases, you must file a Notice of Appeal — Felony (Defendant) within 60 days of the date of the judgment or order.

Keep in mind that the appeal is not a new trial. The appellate court can review the evidence (testimony and exhibits) presented at your trial to see if the trial court made a legal error in how the testimony or exhibits were received. The appellate court does NOT decide the facts of the case as the judge or jury in the trial court does.

You can only appeal if:

1. You say there was not enough evidence in your trial to justify the verdict or judgment; and/or

2. You say there were mistakes of law during or before the trial that hurt your case.

If you say there was not enough evidence in your trial to justify the judgment, the appellate court will review the record and decide if there was substantial evidence to support the judgment. If you say mistakes of law were made, the appellate court will hold a hearing to listen to both parties. Then they will decide if there was any irregularity or mistake that prejudiced (hurt) your case.

In addition to appealing after a trial, there are other situations when you can file an appeal, like appealing the validity of a plea or probation violations. Talk to your lawyer to learn more about your options to appeal.

• If you are appealing a misdemeanor conviction, you can appeal to the appellate division of the superior court.

• If you are appealing a felony conviction, you can appeal to the Court of Appeal in your appellate district

QUESTION 2

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

Under the High Court of Lagos State (Civil Procedure) Rules 2004 Order 3 which states the form and commencement as follows:

1. Subject to the provisions of these rules or any applicable law requiring any proceedings to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings

(a) Where 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 injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.

(b) Where the claim is based on or includes an allegation of fraud, or

(c) Where an interested person claims a declaration.

2. (1) All civil proceedings commenced by writ of summons shall be accompanied by:

(a) Statement of claim.

(b) List of witnesses to be called at the trial,

(c) Written statements on oath of the witnesses and

(d) Copies of every document to be relied on at the trial.

(2) Where a claimant fails to comply with Rules 2 (1) above, his originating process shall not be accepted for filling by the Registry

3. Except in the cases in which any different forms are provided in these Rules, the writ of summons shall be in Form 1 with such modifications or variations as circumstances may require.

4. A writ of summons to be served out of Nigeria shall be form 2 with such modification or variations as circumstances may require.

5. Any person claiming to be interested under a deed, Will, enactment 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 of the persons interested.

6. Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of Construction and for a declaration as to the right claimed.

7. A Judge shall not be bound to determine any such question of construction if in his opinion it ought not to be determined on originating summons but may make any such Orders as he deems fit.

8. (1) an originating summons shall be in the Forms 3, 4 or 5 to these rules, with such variations as circumstances may require. It shall be prepared by the applicant or his Legal Practitioner, and shall be sealed and filed in the Registry, and when so sealed and filed shall be deemed to be issued.

(2) An originating summons shall be accompanied by:

(a) An affidavit setting out the facts relied upon:

(b) All the exhibits to be relied upon:

(c) A written address in support of the application.

(3) The person filing the originating summons shall leave at the Registry sufficient number of copies thereof together with the documents in sub-rule 2 above for service on the respondent or respondents.

9. Subject to the provision of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by the court for service in Nigeria outside Lagos State shall be endorsed by the Registrar of the Court with the following notice

"This summons (or as the case may be) is to be Served out of Lagos State of Nigeria and in the ……. State"

10. (1) The Registrar shall indicate the date and time of presentation for filing on every originating process presented to him and shall arrange for service thereof to be effected.

(2) An originating process shall not be altered after it is sealed except upon application to a Judge.

In other words an action may be commenced in the High Court by a counsel filing one or a combination of the following papers in court:-

(i) Writ of Summons, or originating summons, together with a statement of claim, or

(ii) Ex-parte motion, with or without a writ of summons and a statement of claim, which may be filed later.

(iii) Petition, as may be necessary, such as in matrimonial proceedings for divorce and so forth, or winding up of a company for its inability to pay its debts and so forth. A writ of summons when filed is sealed by embossing the court's name on it for service by 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 on the defendant.

A writ usually contains the following endorsements:

(i) Names of the parties to the suit, and

(ii) 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 12 months, within which time it has to be served, although its life may be renewed before it expires to enable it to be served.

Citation

- https://www.courts.ca.gov/1069.htm
- Ese Malemi 'The Nigerian Legal System: text and cases'
- www.nigeria-law.org