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The Arraignment and Trial Process

A criminal process may be initiated in any of the following ways:

Bringing a person arrested without a warrant before a court upon a charge by a police officer. Laying a complaint before a Magistrate or High Court. 3. Filing information before a High Court with the consent of the judge. 4. First information report before a court.

For more details, read the following: The Criminal Procedure Act (CPA) Sections 77, 78, 340 and Criminal Procedure Code (CPC) Section 143. The choice between a “charge or “information” depends on the nature and seriousness of the crime and what the law stipulates.

The charge or the information sets out the particulars of the accused, the act or omission which forms the subject matter of charge, time, place, date of the act or omission and the law contravened or the law specifying punishment. The original copy of the charge sheet or information is retained by the court. A copy is usually served on the accused.

Mode of Trial

A trial may take any of the following forms or modes:

A summary trial for a summary offence 2. A summary trial for an indictable offence 3. Trial following a preliminary inquiry.

Statutes permit some indictable offences to be tried summarily. The motivation of the prosecutor in this regard may range from convenience, expedition, and desire to obtain a plea of guilty. Note Lord Parker’s caveat, “there is above all, the proper administration of criminal justice to be considered, question such as the protection of the society and the stamping out of the sort of criminal enterprise, if it is possible. In serious cases therefore, it may not be acting in the best interests of the society by inviting summary trial”. See Coe (1969), Also Broad (1979)

Appearance in Court

At the court, the registrar calls on the accused. He goes to the dock; the registrar confirms his name, reads the charge aloud, asks him if he understands and wants to be tried summarily or on indictment at the high court, takes his plea if he elects summary trial and having confirmed that the accused understood the charge(s). The court provides an interpreter at State expense, as appropriate. Having elected trial, the accused may plead as follows:

i) Guilty

The police prosecutor thereat gives a resume of evidence. The court may confirm the plea and find him guilty if it satisfies itself that the accused clearly understands the meaning of the charge in all its details and essentials and also the consequence of his/her plea. The court may yet find him not guilty despite his admission of guilty in appropriate cases.

ii) Not Guilty

The court then records it, considers his bail or remand and adjourns for trial.

iii) Autrefois Acquit

This is pleaded if the accused person had earlier been tried and found “not guilty” for the same offence.

iv) Autretois Convict

By this defence, the accused says that he had already been tried, and convicted for the same offence.

v) Pardon

This is a claim that he had been tried, convicted and pardoned by the State for the same offence.

vi) Keeping Mute to Malice

He may keep mute to malice, that is not saying anything and the court enters a plea of “Not Guilty”.

The Trial

That is the hearing of evidence by a magistrate or judge and the full inquiry into a case culminating in a verdict. Parties and their witnesses are present in court. The case is called, the accused enters the dock while the witnesses leave the court and out of hearing. The prosecutor opens his case. He may or may not make a statement. He calls his first witness, leads him/her in evidence-in-chief. The accused or his counsel crossexamines and the prosecutor re-examines. The process is repeated for each witness. At the conclusion of the case for the prosecution (i.e when the court is done with his last witness), the accused must be warned of his right. These rights include:

i) His right to elect to keep mute, remain where he is at the dock, not saying anything. ii) His right to elect to give evidence from where he is at the dock and he will neither be sworn nor questioned. iii) His right to elect to testify on oath in the witness box and be cross examined.

The accused must elect and his election recorded. Where he testifies in the witness box as a witness, he, like any other witness or witnesses, is led in evidence-in-chief, cross examined and re-examined. Should he introduce new matters, in the course of re-examination, the prosecutor will be given opportunity to rebut it. The magistrate/judge has power to call any witness or call on an earlier witness. At the conclusion of the case for the defence, the counsels on both sides address the court.

The court serves as both judge and jury. As a jury, the court must set out the facts of the case as it finds. As a judge, the court applies the law to the facts. There are general as well as special defences for a crime. You will learn more of this in your criminal law course.

The Verdict

The court must give a verdict of either “guilty” or “not guilty” Upon a verdict of not guilty, the accused must be discharged and acquitted. Where the court finds that the prosecution has proved its case “beyond reasonable doubt” it would pronounce a verdict of “guilty”, if the accused is sane or “not guilty by reason of insanity” if he/she is insane.

The Sentence

Upon a finding of “guilty” the court asks the accused (now a convict) if he/she has anything to say why a sentence should not be passed on him/ her according to law. This is what is usually referred to as “allocutus”. The court receives evidence of the accused’s antecedent. This comprises evidence of anything in the convict’s favour, previous conviction, date of birth, education, employment, domestic and family life, circumstances, general reputation and association, date of arrest, whether he/she has been on bail or remand or if previously convicted, the date of last discharge. The totality of this information enables the court to arrive at an appropriate sentence. The sentence of court may be one or more of the following Death sentence (under 17, or pregnant women cannot be sentenced to death) Imprisonment Flogging (i.e. caning) Fines Forfeiture Seizure Disqualification Probation Discharge (absolute or conditional) Compensation Restitution Costs Damages Reconciliation Deportation Binding over Destruction

Except where it is mandatory, the choice and question of sentence is discretionary. In theory, the objective of sentence ranges from retribution, deterrence, to reformation and rehabilitation, or reparation. In practice the magistrate or judge considers such factors as:

Where the crime was planned Whether the offender is a habitual criminal Prevalence of the particular form of crime Whether violence was employed Public interest Nature of the crime Previous conviction for similar offence (if any).

The sentence is the gist of criminal proceedings and as Justice Stephen Brown has noted:” it is to a trial what the bullet is to a gun”.