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**18/LAW01/078**

**NIGERIA LEGAL SYSTEM**

**ASSIGNMENT**

QUESTION

1. **State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the high court.**

* **Arraignment:** This is the beginning of a criminal proceeding in a court, wherein the accused person is brought to the court, and placed in the dock unfettered. The charge is read over to him by the registrar of the court in the language he or she understands, and he instantly takes his plea. Thus the pleas available to the accused person varies from: plea of guilty, plea of not guilty, plea of guilty for a lesser offence, etc.

It is pertinent to note that when an accused person pleads not guilty, he has put himself into trial.

This doctrine of arraignment is vividly in the spirit of **Section 36** **of the Constitution of the Federal Republic of Nigeria.**

* **Trial:** This encapsulates the whole process of giving either documentary evidence or evidence by witnesses called in other to prove the prosecution’s case or prove the accused case (by way of no case submission or resting the case on that of the Prosecution’s or opening his defence).

Also, the Court herein, tests the admissibility of a Confessional statement as to know its voluntariness or otherwise and conduct a trial-within-trial where it has been given involuntarily as in **Section 14 of the Evidence Act.**

Furthermore, this encompasses the ideology of subpoena either by subpoena deuces tecum or subpoena ad testificandum.

Hence, Examination, cross-examination and re-examination are played in, at this juncture as defined in **Section 214 of the Evidence Act.**

* **Conviction:** After the processes in the trial of the accused person, and when the Prosecution has proven his case beyond all reasonable doubt, the court goes further to convict the accused. Hence, this is the findind of guilt of the Accused person.

Over time, the notion of conviction and sentencing have been misunderstood. Consequently, it is imperative to note that conviction comes before sentencing.

The conviction words are usually quoted as **“I hereby find you guilty of…”**

* **Allocutus:** This is a plea for the mitigation of punishment on the Accused after being found guilty.

However, it is of no value when an Accused have been found guilty of a capital offence requiring mandatory punishment. For instance; murder.

* **Sentencing:** This is the pronouncement of the punishment on the Accused when found guilty. There are three types of sentence; Mandatory sentence, Maximum sentence and Minimum sentence.

Furthermore, such sentences ranges from; Imprisonment, Death penalty(It is noteworthy to know that Nigeria has joined the league of nations that do not exercise capital punishment, rather life imprisonment is administered), Fines, canning, Haddi lashing.

1. **Comment on the remedy available to the accused after the imposition of sentence.**

After the imposition of sentence of an Accused person, he has at his grasp, appeal to remedy his conviction.

Appeal is an invitation to a higher court to review the decisions of a lower Court, to find out whether on the proper consideration of those facts placed before it and the applicable law that the Court arrived at a correct decision.

It is pertinent to note that an appeal is a rehearing and not a retrial as stated in the case of **Oredoyin v Arowlo.**

The Constitutional backing of this remedy is set out in **Section 272 and 241 of the Constitution of the Federal Republic of Nigeria** to the effect that the High Court of a State shall have appellate jurisdiction on criminal matters and appeal shall lie as of right to the Court of Appeal on any final criminal decision of the Federal High Court or the State High Court at the first instance or where a death sentence has been imposed respectively.

However, while the option of appeal is at the grasp of the Accused, he shall do so timeously by filing a Notice of Appeal signed by either him or his counsel at the registry of the Court that gave the judgement (Magistrate or High Court) and if refused, he may file it at the registry of the Court being appealed to.

Pursuant to section 69 of the Magistrates’ Court Law, a criminal appeal to the High Court shall be filed within 30 days after the delivery of the judgement by the Magistrate Court.

With respect to the Court of Appeal, a criminal appeal shall be filed within 90 days after the delivery of the judgement by the High Court or the Federal High Court as enshrined in **Section 24 of the Court of Appeal Act**, and further appeal to the Supreme Court shall be within 30 days after the delivery of judgement of the Court of Appeal.

Conclusively, when the Accused person (Appellant) has taken advantage of appealing his conviction to a higher Court, and the appeal is heard in his favour, his conviction and sentencing by the lower Court is set aside. Hence, he is discharged and acquitted of all criminal liabilities.

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

Upon the identification of a civil wrong the claimant’s counsel is obliged to identify the appropriate court with the jurisdiction to hear the suit. Hence the claimant’s counsel may commence the action by way of the most appropriate means listed, viz: Writ of summons, Originating summons, Originating Motion, and Petition.

* **Writ of summons:** This is the most common mode of commencing a civil action on contentious matters. i.e. when there is a disagreement between the Parties with respect to the subject matter of the suit. For example, dispute on title to land.

It is pertinent to know that the Party who commenced a suit by writ of summon is called “Claimant”, while the person whom the suit is against is called “Defendant”.

Furthermore, when filing writ of summons at the Court Registry the Counsel has to file it with the following: Statement of claim, list of witnesses to be called at the trial, List of documents (exhibits) to be relied on, written witness statement on Oath, Certificate of pre-action counselling form 6/ pre-action protocol form 01. This is encapsulated in **Order 2 rule 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018.**

* **Originating summons:** This is used for non-contentious matters like interpretation of laws or deeds or agreements. That is to say, the Parties in the suit are not disputing on a subject matter rather on the purported meaning of a paragraph of a law or deed.

Pursuant to **Order 2 rule 3 of the High court of the** **Federal Capital Territory (Civil Procedure) Rules, 2018**, when commencing an action with Originating Summons, the Counsel has to file it with the following: Affidavit selling out the fact relied upon, written address in support, all exhibits to be relied upon, certificate of pre-action counselling/ pre-action protocol form 01.

* **Originating motion:** This is used only when provided for by a Statute or a Rules of Court.

For Example: Prerogative writ of an order for Mandamus, Prohibition or Certiorari, and also for the enforcement of Fundamental Human Rights.

When commencing an action with Originating Motion, the Counsel has to file it with the following: Statement setting out the name and description of the applicant, the relief sought and the grounds upon which the reliefs are sought, an Affidavit setting out the facts upon which the application is made, written address in support.

* **Petition:** This is used where the law governing the wrong says so. For example; Pursuant to **section 133 of the Electoral Act**, Electoral matters are to be commenced by Petition. Matrimonial causes are commenced by Petition as well as some matters under the Companies and Allied Matters Act. It is pertinent herein to note that the Party who commence such matter is called “Petitioner” while the Party whom the matter is against is called the “Respondent”.