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MATRIC NO: 18/LAW01/009

COURSE TITLE: NIGERIAN LEGAL SYSTEM II

LEVEL: 200

ASSIGNMENT:

NLS DUE ON THE 15TH:

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.

Answer:

1. The major steps in processing a criminal case are as follows:

* Arraignment:

Arraignment, this 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 the accused and to ask him whether to plead guilty or not guilty. An Arraignment can also be called a “Charge”. Before the trial, the defendant appears in court and enters a plea. The charge shall be endorsed with the name of the accused, date of commission of offence, his age, sufficient description of the offence, the place of commission of the offence, the section of the law under which it is brought and where under punishable. Note that Section 36(12) of the CFRN (1999) renders null a charge that does not state the law alleged to have been violated as every offence must be prescribed and described and the penalty therefore stated in a written law.

* Plea bargaining between the defense attorney and the prosecutor:

Usually, in plea bargaining, the defendant agrees to plead guilty in exchange for a charge reduction or sentence reduction.

* Trial:

A trial is held before a judge or jury. The standard of evidence for a criminal conviction is guilt beyond a reasonable doubt—less than 100 percent certainty but more than high probability. If there is doubt based on reason, the accused is entitled to be acquitted.

* Sentencing:

If the accused is found guilty, a judge metes out a sentence. Possible sentences include a fine, probation, a period of incarceration in a correctional institution, such as a jail or prison, or some combination of supervision in the community and incarceration. Sentence is given to the accused after he has been proven guilty. Before passing judgement an allocutus (plea for mercy) is usually made on behalf of the accused by the counsel of defence. After the plea for mercy the judge passes sentence on the accused.

* Appeals:

If an appellate court reverses a case, the case returns to trial court for retrial. With a reversal, the original trial becomes moot (that is, it is as though it never happened). Following a reversal, a prosecutor decides whether to refile or drop the charges. Even if a prosecutor drops the charges, the defendant can still be prosecuted later as long as the statute of limitations for the crime the defendant is accused of committing hasn't run out. Such a statute imposes time limits on the government to try a case.

b. Remedy available to the accused after imposition of sentence are:

1. Appeal to a higher court:

This is a situation whereby a party who is not satisfied with/by the judgement proclaimed or administered by the court can seek an appeal to higher court in other to carry on the case.

1. Plea of Allocutus:

This is mitigation plea made by the accused or his council or any other interested party after the accused has been convicted/sentenced, urging the court to tamper justice with mercy and impose a light punishment on the accused.

1. Commencement of a civil action is the process taken to institute an action before a competent court to determine the issues between parties. Essentially, there are 4 modes of commencing a civil action in court in Nigeria:
2. By Writ of Summons,
3. By Originating Summons,
4. By Originating Motion and
5. By Petition.
6. Writ of Summons (Order 6 of the Rules of Court)

A Writ of Summons is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. Civil actions involving substantial disputes of fact are commenced by way of a writ. These include, but are not limited to:

* Contract actions,
* Tort actions
* Personal Injury actions
* Intellectual property actions
* Admiralty and Shipping actions.

1. Originating Summons (Order 7 of the Rules of Court)

An action is commenced by way of an Originating Summons where:

* It is required by statute; or
* The dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of facts.

Compared to a Writ of Summons, the Originating Summons is a simpler and swifter procedure for the resolution of disputes as it is determined generally on affidavits filed and does not involve pleadings or many interlocutory proceedings. However, many of the requirements concerning issuance, duration, renewal and service with regard to a writ may apply, with the necessary modifications, to an Originating Summons. An Originating Summons may be in Forms 4 or 5 of the Rules of Court, depending on which is appropriate.

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  
   Examples of suits to be commenced by petition include
2. Originating Motion:

This is used only when provided for by a statute or a rule of court. Examples of actions to be commenced by this way are:

a. Application for habeas corpus,  
b. Order for mandamus,  
c. Prohibition or certiorari,  
d. Application for judicial review  
e. 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. The use of originating motion must be directed expressly by statue. For example, the fundamental right enforcement procedure rules make this the means for enforcement of fundamental rights breaches or violation as stipulated by Sec 46 of the CFRN (1999).