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***Question 1***

***CRIMINAL PROCEDURE AT A HIGH COURT***

Criminal procedure is the procedure of commencing,conducting and concluding criminal proceedings or mattersin court.

A trial on indictment in high court is an amplification of a summary trial at the magistrate court.The following are salient stages of criminal procedure at a high court

***INDICTMENT***

An indictment is an accusation of crime brought against an accused for trial in a high court.

***Example of an indictment:***

NDLEA vs Bad man

Crimes under the National Drug Law Enforcement Act are tried in the federal high court.

***PROOFS OF EVIDENCE***

The proofs evidence means the names,addresses and written statement of the witness,that the prosecution wishes to call and the list of exhibits if any,that the prosecution wishes to put in evidence at the trial.

***ARRAIGNMENT AND PLEA***

Arraignment is the calling of an accused person family before court by name at the beginning of a criminals proceedings to read to him the indictment 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:*

1) Autrefios convict: Autrefios convict means a pleat hat he has been tried and convicted for the same offense on a previous occasion.

2) Autrefios acquit:Autrefios acquit means a plea that he has been tried for the same offense before and has been acquitted.

3) He may stand mute:Where an accused stands mute,that is without saying anything,a plea is usually entered for the accused.

4) He may plead guilty to the offense charged.

5) He may plead not guilty.

***PLEA OF GUILTY***

Where an accused person pleads guilty,the court for the prosecution will give the court a summoned the evidence together with details of the accused persons background,that is character and his criminal record if any.

***PLEA OF NOT BARGAINING***

Where an accused person pleads not guilty, the trial then proceeds.

***PLEA BARGAINING***

Plea bargaining is negotiating and agreeing for an accused to plead guilty to lesser crime,in exchange for the dismissal of the serials criminal charge brought against him and a quick disposal of the entire criminal proceedings.

***MENTALLY Ill PERSON***

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 persons may then be referred for psychiatric examination and treatment.

***PROSECUTION***

The counsel for the prosecution always opens a criminal proceedings by calling evidence for the prosecution.He calls his witnesses and examines each in chief,and tenders any exhibit they may have.

The witnesses are in turn cross-examined by the defense counsel and re-examined by the prosecuting counsel as may be necessary and the case for the prosecution closes.

***SUBMISSION OF “NO CASE TO ANSWER”***

At the close of the case of the prosecution,the defense 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 defense counsel makes the submission by addressing the court.The prosecuting counsel usually replies.The judge then makes ruling on this submission.

However where the judge rejects the no case submission,in his ruling,the trial proceeds and the accused has to state his case by giving evidence in his defense.Where the accused refuses to give evidence in his defense and choose to stand by his “No submission,” which had earlier failed,the court will usually convict the accused.

***DEFENSE***

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 cross-examined by the prosecuting counsel and re-examined by the counsel for the defense as may be necessary.Each witness undergoes the whole process,before another witness is called.It is never mixed up.After the witness for defense has testified and tendered any exhibit they may have,the case for the defense closes.

***CLOSING ADDRESSEES***

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 written addressees.The prosecution counsel is always the first to address the court.He sums up or reviews the case on both sides.

He points out the strength of the case for the prosecution and identifies the weakness if any of the defense and then urges the court to convict the accused as charged.The case for the prosecution must succeed on its own strength.Thus the case of the prosecution cannot rely on the weakness of the defense to succeed.For this reason the accused person is not bound to put up a defense and may in appropriate circumstances in his case or defense on the case of prosecution.

***JUDGMENT S***

After the closing addresses by counsel for both sides,the judge fixes the judgement for a date provided that it is not a summary trial,and the court rises in adjournment to enable it deliberate,consider,or evaluate the totality of evidence in the case.On the adjourned date the court resumes sitting,the case is called and the judge begins to deliver his judgment on there and then,or he may retire to his chamber to consider his judgment and resume sitting to deliver it on that same day ,as the case may be,or on an adjourned date.

***DISCHARGE***

Where an accused person has not been found guilty,on merit,the judge will dismiss the information or charges and accordingly discharge and acquit the accused person as provided under the criminal procedure law.On the other hand,if the prosecution failed on a technicality,then the court will usually discharge the accused,but not aquit him.

***SENTENCE***

When an accused is found guilty,before passing a sentences an allocutus,plea for mercy or leniency is usually made by counsel for the defense.After the allocutus,the judge passes sentence on the accused.

***Types of sentences court may impose;***

When accused has been found guilty of a crime,a court may under the criminal procedure Act or law pass sentence and make one or more appropriate orders as follows

1. Imprisonment,usually with hard labor.
2. Fine,in lieu of,that is ,instead of imprisonment or both fine and jail.
3. Death sentence.
4. Caning.
5. Deportation

***QUESTION 2***

***MODES OF COMMENCING CIVIL ACTION IN HIGH COURT***

***WRIT OF SUMMONS***

A writ of summons is a formal document issued by a court stating concisely the nature of the claim of a plaintiff against a defendant, the relief or remedy claimed and commanding the 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 on him, with a warning that, in default of his causing an appearance to be entered as commanded, the plaintiff may proceed therein and judgment may be given in defendant’s absence.

Generally, all actions are to be commenced by the writ of summons except where there is any express legislation prescribing another mode. A writ of summons is the appropriate mode for commencing an action which by its nature is contentious. Usually, action commenced by a writ of summons requires the filing of pleadings and possibly a long trial.

All civil actions 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 statement on oath of the witnesses; and

d)     Copies of every document to be relied upon at every trial – **order 5 rule 2 (a-e) High Court of Lagos Civil Procedure Rules (2019)**

***ORIGINATING SUMMONS***

It is a summons that initiates proceedings. However, a summons in a pending matter does not initiate proceedings but it is used for making interlocutory applications in a pending cause or matter.

Generally, originating summons is used for non-contentious actions, that is, those actions where the facts are not likely to be in dispute (a question of law rather than disputed issues of facts). When the principal question in issue is or is likely to be one of construction of a written law or any instrument or of any deed or will or contract, originating summons may be used for the determination of such questions or construction. In the case of  **SSS v. Agbakoba (1999) 3 NWLR (Pt. 595) 425;** it was held that originating summons is used where it is sought to correct errors in a judgment.

Where proceedings are commenced by originating summons, pleadings are not used, that is, no statement of claims or defenceare filed.  Rather, affidavit evidence in support of originating summons and counter affidavit will take the place of pleadings.

In Lagos, an originating summons shall be accompanied by:

a)      An affidavit setting out the facts relied upon;

b)      All the exhibits to be relied upon; and

c)      A written address in support of the application

***PETITIONS***

A petition is a written application in the nature of a pleading setting out a party’s case in detail and made in open court.

It is, however, only used where a statute or Rules of court prescribe it as such a process. Most times petitions are used for marriage proceedings, winding up of companies and election cases. Petitions are filed in the same manner as writ of summons.

When filing petitions, these documents must accompany it:

Statement of claim;

b)      List of witnesses to be called at the trial;

c)      Written statement on oath of the witnesses; and

d)     Copies of every document to be relied upon at trial

**ORIGINATING MOTIONS**

This is the last of the originating processes. Unlike a petition, this may be used where a statute has not provided for it. Originating application is used when facts are not in dispute and it is used when the action relates to the interpretation of a document. In an application for prerogative orders of certiorari, prohibition, mandamus, Habeas Corpus or enforcement of Fundamental Human Rights, originating motion may be used.  Significantly, where a state has not provided for a method for enforcing a right conferred by that statute, originating motion should be used – Order 40 Rule 5(1) Lagos; Order 43 Rule 5(1) Kano; and Order 42 Rule 5(1) Abuja.  It is rarely used in the Magistrate Court..

This rule was also stated in Kasoap v. Kofa Trading Co. (1996) 2 SCNJ 325 at 335, that where it is sought to enforce a right conferred by a statute, but in respect of which no rules of practice and procedure exist, the proper procedure is an originating notice of motion.