**NAME: CHUKWUMA BLESSING**

**MATRIC NUMBER: 18/LAW01/065**

**COURSE: NIGERIA LEGAL SYSTEM**

**LEVEL: 200**

**QUESTION 1**

*CRIMINAL PROCEDURE FROM ARRAIGNMENT TO IMPOSITION OF SENTENCE:*

Criminal Procedure can be defined as the method of commencing, conducting, and concluding criminal proceedings in the court of law. There are certain stages or procedures to be followed for an action under criminal procedure to be successful.

The stages of criminal procedure in high court as follows:

1. THE ARRAIGNMENT AND PLEA: this is the initial stage in court where the court official calls out the name of the accused and the allegation brought against him in order for him to make a plea. The accused may plead either of the following:

Autrefois acquit: the provisions of section 221(1) (b) Criminal Procedure Act provides that a person may plead that he has been tried for the same offence before and has been pardoned.

may stand mute: the law provides that where an accused stands mute, that is, without saying anything, it is recorded as plea of not guilty by the court.

Plead guilty to a lesser offence: an accused can plead guilty to a lesser offense other than the accusation made against him. If the plea is accepted, the instant charge will be dropped and the court will pass its sentence accordingly.

He may plead guilty and a sentence will be passed accordingly

He may plead not guilty and the trial shall continue

1. THE PLEA OF GUILTY: if the accused pleads guilty, the court shall record his plea as nearly as possible in the words used by him and if satisfied that he intended to admit the trust of all the essentials of the offence of which he pleaded guilty, the court shall convict him of that offence and pass sentence upon him or make an order against him unless there shall appear sufficient cause to contrary.
2. THE PLEA OF NOT GUILTY: section 217 Criminal Procedure Act provides that where a person pleads not guilty, the trial shall continue.
3. PROSECUTION: the prosecution shall open his case by calling evidence. He may call evidence by calling a witness and tendering the exhibits they may have. He shall carry out the examination in chief, the defense shall do the cross examination and the prosecution shall take the examination. The burden of proof is on the prosecution to proof beyond reasonable doubt. If he fails to do so it will lead to dismissal of the charge and the accused shall be acquitted. The position of law as to the burden of proof originated from Roman law where the Romans believed in the notion that it is better for 10 criminals to go unpunished than for 1 innocent person to go punished.
4. THE SUBMISSION OF ‘NO CASE TO ANSWER’: this stage enjoins the defense council to make a submission of no case to answer. What this means is that the defense counsel will address the court stating that the prosecution has not provided sufficient evidence that the accused is guilty. Moving on, the prosecution will give a reply to the submission and the judge will give his verdict. If the verdict is in favor of the defense, then the accused shall be discharged. Also, if the verdict is in favor of the prosecution, then the trial will proceed and the accused will have to state his case by giving evidence or else the court will be left with no choice but to convict him.
5. THE DEFENCE: In line with section 241-243 of CPA, the accused and his witnesses, if any, are called for chief examination by the defense counsel, cross examination by the prosecuting counsel and examination by the defense counsel. This is an opportunity for the defense to prove innocence.
6. THE CLOSING ADDRESSES: in this stage, both parties are to make an oral address to the court from the written address they have filed as a way of rounding off the case. This is a chance for them to give their remarks based on the evidence in the case and urge the judge to give judgment in their different favors.
7. THE JUDGMENT: after the closing address, the judge fixes a date for the judgment to be issued. In the judgment, the judge sums up, weighs or reviews the evidence of both sides. He also gives reasons for his judgment. He is obliged to give reason for his judgment.
8. THE DISCHARGE: by virtue of section 301 Criminal Procedure Act, where an accused person has not been found guilty, on merit, the judge will dismiss the charges and accordingly discharge and acquit the accused person. Also, if the prosecution failed on a technicality, then the person will be discharged but not acquitted.
9. THE IMPOSITION OF SENTENCE: after a person is found guilty, before passing the sentence, an allocates, a plea for mercy or leniency is usually made by the counsel for defense. After that, the judge passes the sentence. The types of sentences the judge may give are imprisonment, fine, death sentence, caning and deportation. Orders may also be given.

**QUESTION 2**

MODES OF COMMENCING CIVIL ACTION IN HIGH COURT:

ORIGINATING THE 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 defense are 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: An affidavit setting out the facts relied upon; All the exhibits to be relied upon; and a written address in support of the application.

WRIT OF THE SUMMONS:

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)**

THE 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;

 List of witnesses to be called at the trial;

 Written statement on oath of the witnesses; and

 Copies of every document to be relied upon at trial

THE 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.