**NAME: AMAH PRECIOUS**

**MATRIC NO: 18/ LAW01/036**

**COLLEGE; LAW**

**COURSE CODE: LPI 204**

**ASSIGNMENT TITLE: CIVIL AND CRIMINAL PROCEEDINGS**

**QUESTION 1**

**Stages of a Criminal Case**

Criminal prosecution develops in a series of stages, beginning with an arrest and ending at a point before, during or after trial. The majority of criminal cases terminate when a criminal defendant accepts a plea bargain offered by the prosecution. In a plea bargain, the defendant chooses to plead guilty before trial to the charged offenses, or to lesser charges in exchange for a more lenient sentence or the dismissal of related charges.

**Arraignment**

The suspect makes his first court appearance at the arraignment. During arraignment, the judge reads the charges filed against the defendant in the complaint and the defendant chooses to plead "guilty," "not guilty" or "no contest" to those charges. The judge will also review the defendant's bail and set dates for future proceedings.

**Preliminary Hearing or Grand Jury Proceedings**

The government generally brings criminal charges in one of two ways: by a "bill of information" secured by a preliminary hearing or by grand jury indictment. In the federal system, cases must be brought by indictment. States, however, are free to use either process. Both preliminary hearings and grand juries are used to establish the existence of probable cause. If there is no finding of probable cause, a defendant will not be forced to stand trial.

A preliminary hearing, or preliminary examination, is an adversarial proceeding in which counsel questions witnesses and both parties makes arguments. The judge then makes the ultimate finding of probable cause. The grand jury, on the other hand, hears only from the prosecutor. The grand jury may call their own witnesses and request that further investigations be performed. The grand jury then decides whether sufficient evidence has been presented to indict the defendant.

**Pre-Trial Motions**

Pre-trial motions are brought by both the prosecution and the defense in order to resolve final issues and establish what evidence and testimony will be admissible at trial.

**Trial**

At trial, the judge or the jury will either find the defendant guilty or not guilty. The prosecution bears the burden of proof in a criminal trial. Thus, the prosecutor must prove beyond a reasonable doubt that the defendant committed the crimes charged. The defendant has a constitutional right to a jury trial in most criminal matters. A jury or judge makes the final determination of guilt or innocence after listening to opening and closing statements, examination and cross-examination of witnesses and jury instructions. If the jury fails to reach a unanimous verdict, the judge may declare a mistrial, and the case will either be dismissed or a new jury will be chosen. If a judge or jury finds the defendant guilty, the court will sentence the defendant.

**Sentencing**

During the sentencing phase of a criminal case, the court determines the appropriate punishment for the convicted defendant. In determining a suitable sentence, the court will consider a number of factors, including the nature and severity of the crime, the defendant's criminal history, the defendant's personal circumstances and the degree of remorse felt by the defendant.

The remedy available to the accused after the imposition of sentence

***Habeas Corpus***  
A defendant who has filed all possible appeals may thereafter petition the courts for *habeas corpus* relief. *Habeas corpus* relief can consistof a new trial, a new sentence, or outright release from incarceration. *Habeas corpus* relief is available only to defendants who are incarcerated.  
A *habeas corpus* petition is a civil suit filed against the prisoner'sjailer. In the suit, the prisoner must allege that she was deprived of a constitutional right in the case, and that continued incarceration is unlawful. Typical bases for *habeas corpus* petitions include complaints about thetrial, including ineffective assistance of counsel, discrimination in the jury selection, juror misconduct, prosecutorial misconduct, violation of the right to be free from self-incrimination, and similar issues pertaining to constitutional rights. Notably, a prisoner may not challenge a Fourth Amendment (unreasonable search and seizure) violation in a *habeas corpus* petition.Furthermore, a claim of actual innocence based on newly discovered evidenceis not a basis for *habeas corpus* relief.  
State court defendants may file a round of *habeas corpus* petitions inthe state courts and, if a federal constitutional question is involved, another round in the federal courts. Many states limit the number of times that aprisoner may file *habeas corpus* petitions to one round. In most states, this means one petition at the trial court level, one petition to an appeals court, and one petition to the state's highest court. Some states have onlytrial courts and a high court, which effectively limits the possible numberof *habeas corpus* petitions in state court to two.  
A prisoner whose conviction came from federal court may file *habeas corpus* petitions only in the federal court system. In 1996, Congress passed restrictions on *habeas corpus* petitions in federal court. The statutes created strict filing deadlines for state prisoners filing *habeas corpus*petitions in federal court, limited the time that a court may spend on petitions, limited the opportunities for evidentiary hearings, limited the capacity to challenge facts determined at trial, required federal courts to give deference to the legal conclusions of the state courts, and made it more difficult for prisoners to file successive *habeas corpus* petitions.  
Under the federal act, the filing deadlines for state prisoners filing in federal court are determined beginning with the date of the last direct review by a court. For prisoners who come from states that provide counsel to prisoners, the filing deadline is six months after the date of the "direct review" of the state court's final judgment. The term "direct review" is not defined in the legislation, but commentators believe that it refers to the date of thelast review in state court. For prisoners petitioning from states that do not provide free counsel, the filing deadline is one year. The statute of limitations, or limited amount of time during which actions can be brought or rights enforced, is tolled (overwritten), however, by certain events, including the discovery of new evidence for a constitutional claim.

**QUESTION 2**

Subject to the provisions of any enactment, **civil proceedings may be begun** by writ, originating summons, **civil proceedings** originating motion or petition, or any other **method** required by other rules of **court** governing any special subject matter as provided in these Rules. Form and Commencement of Action 1. Subject to the provisions of any enactment, civil proceedings may be begun by writ, originating summons, civil proceedings originating motion or petition, or any other method required by other rules of court governing any special subject matter as provided in these Rules. 2. (1) Subject to the provisions of any enactment or of these Rules by virtue of which any proceedings are expressly required to be begun otherwise than by writ, proceedings in which a claim- (a) is made by a plaintiff for any relief or remedy for any tort or other civil wrong; (b) made by the plaintiff is based on an allegation of fraud; (c) is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a law or independently of any contract or any such provision) or where the damages claimed consist of or include damages in respect of death of any person or in respect of personal injuries to any person or in respect of damage to any property; (d) is made by the plaintiff in respect of the infringement of a patent, trade mark, copyright, intellectual or any other proprietary interest of whatever kind; (e) for a declaration is made by an interested person, (2) Proceedings may be begun by originating summons where – (a) the sole or principal question at issue is, or is likely to summon, be, one of the construction of a written law or of any instrument made under any written law, or of any deed, will, contract or other document or some other question of law; or (b) there is unlikely to be any substantial dispute of fact. (3) Proceedings may be begun by originating motion or maybe begun by petition where by these Rules or under any written law the proceedings in question are required or authorized to be so begun, but not otherwise.