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MATRICULATION NUMBER:17/LAW01/043
COURSE: NLS 2
ASSIGNMENT

QUESTION

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.

ANSWER

Criminal trials must follow certain procedures that are intended to maximize the court system's efficiency while protecting defendant's rights. The criminal procedure in Nigeria involves the following;

- **An indictment or information:**

This is an accusation of crime brought against an accused for trial in a high court, it is a criminal charge brought against a person by the attorney general or any of his subordinate legal officers on behalf of the state or country and which is for trial at the high court.

- **Proofs of evidence:**

The proofs of evidence could be in form of the names, address and written statement of the witness and the list of exhibits, if any, that would be admitted into evidence of the case. This is important in order to keep the accused aware of the nature of the case against him, to enable him take steps to prepare and state his defence as included as a fundamental right under the fair hearing provisions of the Nigerian constitution.

- **Arraignment and plea:**

Arraignment is the calling of an accused person formally before the court by name at the beginning of a criminal proceeding, to read him the indictment or information brought against him and to ask whether he pleads guilty or not guilty. This is when the registrar or other officer of the court calls the accused by name while the accused stands in the dock and reading over and explaining the charge or information to the accused in a satisfactory way and asking the accused to make his plea instantly, the plea would determine the steps to be taken next. The accused can plead the following;

- **Autrefios acquit:**

This plea is an application of the rule against double jeopardy, which states that a person cannot be tried twice for the same offence. It is a fundamental right under the Fair hearing provisions of the Nigerian Constitution. A person pleads this if he has been tried and acquitted for the offense.

- **Autrefios convict:**

This means that he has been tried and convicted for the same offence on a previous occasion. He cannot be tried again; this is also a rule against double jeopardy.

- **He may stand mute:**

Where an accused doesn't say anything, a plea of not guilty is usually entered for the accused. This is because the law provides that where an accused stands mute, a plea

of not guilty has to be mandatorily recoded for him by the court.

- **Plea of guilty of a lesser offence:**

An accused might plead not guilty to the original offence, while pleading guilty to an offence that is not stated in the information, the court may then pass judgment

accordingly if the prosecutors accept the plea and drop

the initial charges.

-He may plead guilty to the offence charged:

If the accused pleads guilty to the charges, his counsel would not need to argue his innocence as the court would now address the accused as a proven offender and the judge issues a sentence.

-He may plead not guilty:

If the accused pleads not guilty, then his counsel may go ahead to defend him and prove he is innocent of the charges.

- **Plea Bargain/Plea Negotiation:**

This is agreeing for the accused to plead guilty for a lesser crime, in exchange for the dismissal of the criminal charge brought against him for a quick dismissal of the entire criminal proceedings. If the prosecution fails to reach an agreement with the defense, refusing to accept the plea to lesser offence, then the trial proceeds.

- **Mental illness:**

The law recognizes that a person's mental illness should be taken into account when they are tried for a serious crime and when they are sentenced. As a general rule of

the law as provided in **Section 27 of the Criminal Code**, every accused is presumed sane until proven otherwise. It is the defendant's right to bring up the defense of

insanity in a criminal trial so as to influence the sentence, that is, if it can be proven beyond reasonable doubt.

- **Prosecution;**

The counsel for the prosecution always opens first, calls on the witnesses examines them and also tenders any exhibits they have. The defense counsel also

examines the witnesses as may be necessary called a cross-examination. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt, where this can't be done, the charge is usually dropped, the accused is legally set free.

- **Closing Address:**

After the prosecution and the defense have presented all of their evidence, each side may make closing arguments. The prosecutor speaks first, usually summarizing the evidence that has been presented and highlighting items most beneficial to the prosecution. The defendant's attorney speaks next. The defense counsel usually summarizes the strongest points of the defendant's case and points out flaws in the prosecutor's case. The prosecutor then has one last opportunity to speak.

- **Instructing the Jury:**

After closing arguments in a jury trial, the judge reads instructions to the jurors, explaining the law that applies to the case. Jury members must follow these instructions in reaching a verdict.

- **Jury Deliberations;**

The jury goes to a special jury room and elects a foreman to lead the discussion. Jurors must consider all of the evidence presented, review the facts of the case, and reach a verdict. When the jury makes its decision, the court is called back into session.

- **Verdict;**

The foreman presents a written verdict to the judge, and

either the judge or the court clerk reads the jury's verdict to the court. The court then enters a judgment based on the verdict, and the jury is released from service. If found not guilty, the defendant is released immediately. If the defendant is found guilty, a date is set for sentencing. The defendant may be held in custody or remain on release status until sentencing.

- **Sentencing:**

As defined in *Ichi v. State*, a sentence is the judgement formally pronounced by the court or judge on an accused person after their conviction in a criminal prosecution imposing punishment. The judge hears testimony from the prosecution and the defense regarding the punishment that each side feels the convicted defendant should receive.

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

ANSWER

There are four different ways or methods of commencing actions in the High Court including;

- **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.

Under the **Lagos High Court (Civil Procedure) Rules. 2004.** All civil actions commenced by writ of summons shall be accompanied by:

1. Statement of claim;
2. List of witnesses to be called at the trial;
3. Written statement on oath of the witnesses; and
4. Copies of every document to be relied upon at every trial

- **By petition:**

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. A petition as the **Uniform Procedure Rules** provides, shall include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby and at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served a statement to that effect.

- **Originating Summons:**

Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of

construction arising under the instrument and for a declaration of the rights of the persons interested.

An originating summons is accompanied by:

1. An affidavit setting out the facts relied upon;
2. All the exhibits to be relied upon;
3. A written address in support of the application.

- **Originating motion or application:**

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.