NAME:

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* + State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the high court.

 ARRAIGNMENT AND PLEA;

The arraignment process involves the calling-forth of the accused person formally by name before the court, at the beginning of the criminal proceedings, to read to him the charges brought against him and to ask him to make his plea, whether guilty or not.

They are different plea an accused may invoke

AUTREFOIS ACQUIT; autrefois acquit- a plea ha has been tried for the same offense before and has been acquitted. This plea is an application of the rule against double jeopardy which states that a person cannot be tried twice for the same offense. It is a fundamental right under the fair hearing provisions of the Nigerian constitution.

AUTREFOIS CONVICT; autrefois convict- a plea that has been tried and convicted for the same offence on a previous occasion. He cannot be tried again. The rule of double jeopardy has this as an application.

HE MAY STAND MUTE; Where an accused stands mute, that is; without saying anything, a plea of not guilty is normally entered for the accused. This is so because the law provides that where an accused stands mute, a plea of not guilty has to be mandatorily recorded for him by the court.

PLEA OF GUILTY TO A LESSER OFFENSE; However, while intending to plead “not guilty” to the offence charged, an accused party may plead guilty to a lesser offence which is not on the information. Where this plea is accepted by the prosecution, the court may pass its sentence accordingly. Here the prosecution usually drops the instant charge. Thus, paving way for the court to sentence the accused to a lesser offense admitted. Thus, there is room for “plea bargain”

HE MAY PLEAD GUILTY- to the offence charged; the prosecution reads out a summary of the evidence together with the details of the accused person’s background, including criminal records (if any). The defense courts pleads for mitigation of sentence and the court passes judgement.

HE MAY NOT PLEAD GUILTY-the trial recommences if the accused plea not guilty.

PLEA BARGAINING; most times the defense and prosecution come together under the approval of trial judge and reach a bargain, the trial continues and the accused cannot be sentenced on the basis of his plea of guilty to a lesser crime

MENTALLY ILL PERSONS; as a general rule, every accused person is presumed to be sane until the contrary is proved. Some accused persons may be too mentally ill to make a plea to a criminal charge, this is usually known as “unfitness to plead”, if this insanity is proved by substantial medical evidence and evidence of relevant witnesses or a hospital for necessary supervision, as the case may be until the person is fit to be released.

PROSECUTION; the counsel of prosecution always opens a criminal proceeding by calling evidence for the prosecution. His witnesses are each examined in chiefs and handles any exhibit he may have, the witnesses are in turn cross examined by the defense counsel and then re-examined by the prosecuting counsel. In a criminal proceeding the burden of proof lies on the prosecution where he has to prove beyond reasonable doubt. This burden of proof which rests on the prosecution is never lowered down, this is because, it is better for a guilty person to escape justice than for an innocent person to be punished unjustly. When the burden of proof is not discharged, the charge is dismissed and the accused is usually discharged and acquitted. CHUKWUNWEIKE IDIGBE JSC in UKORAH v STATE said that:

“the romans had a maxim that is better ten guilty people to go unpunished than for one innocent person to suffer”

DEFENSE; here the accused and his witness are led in examination in chief by the counsel for the defense and cross examined by the prosecuting counsel and re-examined by the counsel for the defense if necessary, after this the case of the defense closes

SUBMISSION OF “NO CASE TO ANSWER”; after the prosecution has made his case, the defense may submit that the prosecution has not produced sufficient evidence against the accused and therefore the case should not proceed further. The judge may accept the submission and make a ruling that the accused has no case to answer. Thus being that the accused has been found not guilty and is then discharged or acquitted based on merit, or just discharge the accused and not acquit him based on technicalities not on merit. However, if the judge rejects no case submission, the trial proceeds and if the accused still chooses to stand by his NO CASE submission, which had earlier failed, he’ll be found guilty with the reason being that the accused failed to defend himself against a prima facie case made out against him.

CLOSING ADDRESS; after the close of the case of defense, the counsels for both sides then make closing speeches by addressing the court from their filed written addresses. The prosecution counsel is always the first to address the court. The general rule of law here is that the case of the prosecution counsel must succeed on its own, because the burden of proof lies in the prosecution to prove beyond reasonable doubt. This is why the accused is not bound to put up a defense but rather rest his case on the prosecutions case. The counsel for the defense addresses the court next, he points out the weakness in the prosecutions case, if it’s a mere lie or a fabrication, if a sufficient case has not been made out, enough to prove beyond reasonable doubt which is required by law to discharge the burden of proof that rests on the prosecution. If the defense counsel can argue this out in his own favor then he can surely urge the court to discharge and acquit the accused, as the case may be. Another general rule here is that the accused is entitled to the last word or say.

JUDGEMENT;

COMMENT ON REMEDIES AVAILABLE TO THE ACCUSED AFTER IMPOSITION OF SENTENCE

Post-conviction remedies are a specific and complicated legal proceeding that challenges the legality of some aspects of the criminal trial or sentencing.

A criminal defendant has limited opportunities to challenge a conviction or sentence;

Direct criminal appeal

Sentence modification

Clemency

Pardon

Post conviction relief proceedings

Direct criminal appeals are not like trial proceedings, they are completely different even though they arise from the same conviction. At the appeal stage, the goal is to convince the appellate court that an error at the trial court made the conviction or sentence unfair or contrary to law, warranting a different outcome.

Sentence modification is a separate and quite different process from criminal appeal. Though both may feel like the same, the court involved, the available grounds that can affect a criminal sentence, and the procedure involved are quite different. While criminal appeal must be filled with strict deadlines, a sentence modification petition can be filled any time while an offender is serving a sentence

Clemency; also commutation of a sentence, is a form of relief that may reduce or alter a sentence but does not affect the conviction

Pardon; a type of post conviction relief that the president or governor can give an individual serving time in prison or facing other criminal consequences, that essentially forgives the remainder of the sentence

Other remedies include remission, respite, expungement.

COMMENT ON THE VARIOUS METHODS BY WHICH CIVIL PROOCEEDINGS MAY BE COMMENCED IN THE HIGH COURT

An action may be commenced in the high court by a counsel filing one or a combination of the following papers or originating processes in court

A WRIT OF SUMMONS; 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 the substantial disputes of fact are commenced by way of a writ. These include (contractual actions-claim for damages resulting from breach of contract. Tort actions-claims for damages in respect for damage to property resulting from negligence fraud and defamation. Personal injury actions- claims for damages resulting personal injuries or death resulting from accidents

ORIGINATING SUMMONS; an action is commenced by the way of originating summons where it is required by statute. The dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of facts. An originating summons may be in inter parties or Ex-parte of the rules of court

Originating summons is heard based on affidavits filed in support. Originating summons is a simpler procedure for the resolution of disputes as it is determined generally on the filed affidavits and doesn’t involve pleadings and many interlocutory proceedings

ORIGINATING MOTIONS; used only when provided for by a statute or a rule of court. When a statute provides that actions be commenced by application but does not specifically provide the procedure, originating motions should be used

e.gs

application of habeas corpus

order of mandamus

prohibition of certiorari application of judicial review

enforcement procedure rules 2009

PETITION; a written application made to court setting out a party case. It is only used where a statute or the rule of court provides for its use.