NAME: OMUKORO TAMARAEBI ANGEL

COURSE TITLE: NIGERIAN LEGAL SYSTEM

MATRIC NUMBER: 17/LAW01/236

LEVEL: 300

ASSIGNMENT TITLE: Civil and criminal proceedings.

***QUESTIONS***

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.

2) Comment on the various methods by which civil proceedings may be commenced in the high court.

1...The following are the procedures involved from arraignment to imposition of sentence in a criminal trial in the high court:

(a) The arraignment: a charge is filed in the registry of the trial court by the prosecutor. On the day fixed for the hearing of the case, the registrar of the court calls out the names of the parties to the criminal case. The accused person or persons then proceed to the dock. The registrar of the court reads out the allegations against the accused person as contained in the charge sheet to him.

(b) Interpreter: where the accused does not understand the language of the court, an interpreter must be provided for the accused at the expense of the state. ***Section 36(6)(e) of the CFRN 1999*** provides as follows;

“Every person who is charged with a criminal offence shall be entitled to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

(c) Plea: According to section 215 of the criminal procedure act

“The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith”.

(d) Witnesses: every person charged with a criminal offence is entitled to obtain the attendance and carry out the same examination of witnesses to testify on his behalf before the court, on the same conditions as those applying to the witnesses called by the prosecution. If a court is satisfied that any person is likely to give material evidence for the prosecution or the defense, it may issue a witness summons against such a person. At the commencement of the trial, witnesses are ordered out of court and out of hearing by the court registrar. The law permits the permits the parties to the action to remain in court, even though they intend to give evidence for themselves as witnesses. This is in accordance with ***Section 187 of the Evidence Act 2011***.

(e) Presentation of case for prosecution: the prosecutor may open his case by a summary of the evidence he intends to adduce in support of the charge. After a plea of not guilty has been taken or no plea has been made the prosecutor may open the case against the accused person stating shortly by what evidence he expects to prove the guilt of the accused.

(f) Testimony on oath or by affirmation: the constitution calls witnesses, who normally testify on oath or affirmation in accordance with the law. Section 205 of the Evidence Act 2011 states that;

“save as otherwise provided in sections 208 and 209 of this Act, all oral evidence given in any proceeding must be given upon oath or affirmation administered in accordance with the Oaths Act or Law as the case may be”

(g) Section 287 of the Criminal Procedure Act provides;

(1) At the close of the evidence in support of the charge if it appears to the court that a *prima facie* case is made out against the defendant sufficiently to require him to make a defense the court shall call upon him for his defense and-

(1)If the defendant is not represented by a legal practitioner, the court shall inform him that he has three alternatives open to him, namely-

(I) he may make a statement, without being sworn from the place where he then is; in which case he will not be held liable to cross examination; or

(II) he may give evidence in the witness box after being sworn as a witness; in which case he will not be liable to cross examination; or

(III) he need say nothing at all, if he so wishes,

And in addition, the court shall ask him if he has any witnesses to call but that they are not present, the court may, in the circumstances set forth in sections 186 to 193 of this Act, take the steps therein mentioned to compel their attendance.

(h) Concluding address: at the end of the case for the defense, both parties will have presented their case. The accused or his counsel is entitled to address the court even where the accused rests his case by replying to the address of the accused or his counsel. The right of reply of the prosecutor depends on the course of conduct of the case of the defense and the status of the prosecutor. The essence of an address at the conclusion of evidence is to enable both the defense and the prosecutor (where he has a right of reply) to present to the court the facts which have been proved by evidence. Counsel for each party will make his submission as to the innocence or guilt of the accused. Finally he will urge the court to consider his submission and return a verdict in his favour.

(i) Conclusion of trial: after the presentation of the case for the prosecution and the case for the defense and addresses have been delivered by counsel to both parties, the court delivers judgement. The court may deliver judgement immediately or it may reserve delivery of judgement until some fixed date. It is customary for judgement to be reserved to enable the court to deliver a reasoned judgement.

(j) Judgement: section 245 of the CPA provides that;

“The judge or magistrate shall record his judgement in writing and every such judgement shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the judge or magistrate at the time of pronouncing: provided that in the case of a magistrate in lieu of writing such judgement it shall be sufficient compliance under this section if the magistrate;

\* Records briefly in the book his decision thereon and where necessary his reasons for such decision and delivers oral judgement, or

\* Records such information in a prescribed form.

\*\*\*In the event that the accused is not satisfied with the sentence imposed upon him/her, such a person has the right to appeal. An appeal is any proceeding taken by an aggrieved party to rectify an alleged erroneous decision of a court by bringing the decision before a higher court. A right of appeal exists only where it is provided for under an enactment. Where there is no act, law, decree or edict providing for a right of appeal, an aggrieved party cannot appeal against the decision of the trial court. A party aggrieved by the decision of a trial court may appeal against that decision to a superior court. The parties to a criminal proceeding are the accused person and the prosecutor- either or both may appeal if dissatisfied with the decision of the trial court, the accused may appeal and the prosecutor may cross-appeal. Thereby both parties are exercising on their right of appeal.

2...The High Court of the Federal Capital Territory, Abuja (civil Procedure) rules state that;

“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 on allegation of fraud;

(c) Is made by the plaintiff for damages for breach of any 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 propriety interest of whatever kind;

(e) For a declaration made by an interested person,

(2) Proceedings may be begun by originating summons where-

(a) the sole or principal question at issue is, or likely to summon, be, one of the construction of a written law or any instrument made under any written law, or of any deed, will, contract or other document or some other questions 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.

**FOOTNOTES**

1. Cases and materials on criminal law by Hon. Justice P.A. Onamade

2. 1999 constitution of the federal republic of Nigeria

3. Criminal Procedure in Nigeria by Oluwatoyin Doherty 1990