CRIMINAL LITIGATION --- WEEK 3

INTRODUCTION AND GENERAL COURSE OVERVIEW

✓ **MAJOR TYPES OF PROCEEDINGS IN NIGERIAN COURT—CIVIL AND CRIMINAL**

Civil proceedings deal with formal case claim of rights that have been infringed and ends in declaratory relief and award of damages while Criminal proceedings deal with the infraction of a particular statute by an individual; it starts from arraignment and ends in conviction and sentencing. Any matter that does not fall under criminal proceedings falls under civil proceedings. The major purpose of criminal proceedings is to melt out punishment on an alleged offender when found guilty; be it custodial sentence or otherwise.

IS CRIMINAL LITIGATION SAME AS CRIMINAL LAW?

N.B: Where there is no prescription concerning a particular infraction, there can be no Criminal litigation. Reference to crime in Nigeria must relate to an enactment. Where a statute does not provide for an offence, it means such an act is not culpable or punishable. See the definition of crime or offence under the following statutory provisions —Section 2 Criminal Code, Section 28 Penal Code, Section 371 Administration Criminal Justice Law , Section 494 Administration of Criminal Justice Act, Section 2 of the criminal Procedure Act or (Criminal Procedure Law)- and Section 36(12) the Constitution of the Federal Republic of Nigeria. QUERY:

WHAT IS CRIMINAL LITIGATION?

It is the gamut of the procedure from commencement to conclusion employed to establish the guilt or innocence of the person suspected/alleged to have committed an offence. **It is also the process and or procedure by which a person who commits an offence may be brought to justice.** Criminal litigation starts from the time complaint is laid to the relevant authority and runs through the investigation of the offence, arrest of the suspect, trial of the accused person/defendant, conviction of the accused person/ defendant, sentence of the convict and appeal of the decision of the court.

SOURCES OF THE LAWS OF CRIMINAL LITIGATION

There are two sources; **primary/principal enactments and secondary enactments**.

PRIMARY ENACTMENTS: These are statutes that are primarily targeted/enacted to the cause of criminal litigation.

1. **CRIMINAL PROCEDURE ACT LFN 1958 (CPA):** initially it has general application to the whole of the country up till independence but as from 1963, the CPA ceases to be applicable to Northern Nigeria because CPC was enacted. **Now we have Criminal Procedure Laws of the various states in the south replacing CPA to the exclusion of Lagos State**. (ACJL is applicable in Lagos state). Note that S. 33 (1) of the FHC Act Cap F12 LFN 2004 on the application of the CPA to Criminal proceedings in Nigeria is no longer operative with the promulgation of the ACJA 2015. Previously, the CPA was the Criminal procedural law that applies in FHC but now ACJA has replaced it.

2. **THE CRIMINAL PROCEDURE CODE (CPC) CAP 30 LAWS OF NORTHERN NIGERIA 1963:** It governs proceedings in the North with the Penal code as the major substantive law. It is largely applicable in the North and has been domesticated by all Northern states. It is now usually referred to as the Criminal Procedure Code Law (CPCL) of the various states in the North.
3. **ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL) 2011**.

It governs criminal proceedings in Lagos state. Its applicability commenced on the 8th of August 2011. The CPA used to be the applicable Criminal Procedural Law in Lagos state but ceases application in Lagos on the 28 May 2007 vide section 374 ACJL 2007. It regulates Criminal proceedings in High Courts and Magistrate Courts in the State. The current version is ACJL 2011. It repeals the ACJL 2007. See S. 370 of the Law.

4. **ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015**

The law regulates criminal proceedings in FCT (both the HC of the FCT and the FCT Magistrate Courts), also it regulates proceedings in the National Industrial Courts and Federal High Courts. See Ss. 2(1) and 493 ACJA 2015. **(CPA as applied by Federal High Courts and Abuja is repealed)**. It has rendered otiose the provision of section 33(1) of FHC ACT, ACJA is now the applicable for every criminal trials in Federal courts and the FCT. **It applies to trials throughout the federation involving offences created by an Act of National Assembly irrespective of the court. S. 2(1) ACJA. QUERY:**

SECONDARY ENACTMENTS: they are not made primarily for criminal procedures but their applicability in criminal proceedings cannot be over-emphasised.

1. **CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, (CFRN) 1999 (AS AMENDED). — THE CFRN,** 1999 has certain provisions on criminal litigation. For example, Chapter 4 on Fundamental Rights is very vital to be observed in criminal trials of an Accused Person. Provisions on *nolle prosequi* and prerogative of mercy in sections 174, 211; 175; 212, 308 for both state and federal government are instructive on criminal litigation.
2. **CRIMINAL CODE AND PENAL CODE:** these contain substantive laws on crime. They define the various crimes and their punishments and are generally applicable as the criminal laws of all the states in Nigeria.
3. **EVIDENCE ACT 2011**: the Evidence Act governs rules on admissibility and relevance of evidence as well as other rules of evidence in proceedings before a Nigerian Court other than proceedings before an Arbitral Tribunal and the Field General Court Martial.
4. **CRIMINAL CODE LAW:** this is criminal code as domesticated by the various southern states with slight or no modification to the law.
5. **PENAL CODE ACT:** this is the substantive criminal statute that regulate criminal offences in the FCT.
6. **PENAL CODE LAW: t**he Penal Code law as domesticated by the various Northern states with slight or no modification as the case may be.
7. **PRACTICE DIRECTIONS**: Often issued by the Chief Justice/Judge of a particular Court to govern Procedural matters not expressly stated for under the rules of procedure applicable to the court. See for example the Supreme Court Practice Direction, 2013 and the Court of Appeal (Fast Track) Practice Direction, 2014.
8. **THE SUPREME COURT ACT AND RULES**: they are laws/rules regulating conduct of both criminal and civil proceedings of the Supreme Court.
9. **COURT OF APPEAL ACT AND RULES**: they are laws/rules regulating conduct of both criminal and civil proceedings of the Court of Appeal.
10. **FEDERAL HIGH COURT ACT:** Regulates Practice and Procedure before the FHC.
11. **HIGH COURT LAWS OF VARIOUS STATE**
12. **MAGISTRATES' COURT LAWS OF VARIOUS STATES**
13. **CUSTOMARY COURT LAWS OF THE VARIOUS STATES**
14. **AREA COURT LAWS OF THE VARIOUS STATES.**
15. **CHILDREN AND YOUNG PERSONS LAWS**
16. **CORONERS LAWS**
17. **ARMED FORCES ACT/DECREE**
18. **POLICE ACT CAP P19 LFN 2004**
19. **NATIONAL INDUSTRIAL COURT:** See 254 (f) (2) of the 1999 CFRN on the applicable procedural law in the NIC.

SOURCES—C

- **Judicial interpretation of enactments. See BANK OF ENGLAND V VAGLIANO BROTHERS (1891) AC; 107 … Case Laws**

APPLICATION OF ENGLISH HIGH COURT RULES OF PRACTICE AND PROCEDURE IN CRIMINAL MATTERS IN NIGERIA

The rules are often applied where there is no provision for a particular mode or method of criminal procedure in the Criminal Rules of Procedure of a particular Court in Nigeria. THIS IS CALLED A LACUNA. The rules may be applied vide direct incorporation (this is where it is expressly provided for in the Rules of Court that the rule will apply alongside the provision of the procedural

Law; see section 72 of the CPL and indirect incorporation (where the law permits recourse to England Rules of Procedure where the procedural law is silent. See s. 363 CPL).

Note that by section **35 of High court laws of Northern Nigeria**, there is an exclusive bar for the application of the English law to procedures in criminal proceedings in Northern Nigeria. See the case of ACHADU V STATE. Section **262 of ACJL** is to the effect that courts should adopt procedure that will do substantial justice to the parties, hence the courts in Lagos are at liberty to either adopt England rules or not. See also **492 (3) ACJA (courts are at liberty to apply any law that will do substantial justice to the case)**. In **Cross River state**, the English procedure must have been in force since **1900 before it can be applied**.

NOTE THE FOLLOWING:

1. Applicable in the South where there is lacuna in the law. S. 72 and 363 CPL
2. Not applicable in the North see **s. 35 High courts Laws of the Northern Nigeria 1963**. Other rules of Procedure should be adopted or made to that effect.
3. GENERALLY Inapplicable in Lagos but at the judge's discretion and as the circumstances of the case demands to do substantial justice between the parties. **S. 262 ACJL.**
4. GENERALLY Inapplicable in FCT but may be applied at the judge's discretion and as the circumstances to meet the justice of the case demands See **S. 492 (3) ACJA.**

INSTANCES OF APPLICATION OF THE PROCEDURES OF THE HIGH COURT OF ENGLAND IN CRIMINAL MATTERS

1. Change of plea by an accused before judgment: ***Board of Customs & Excise v Hassan (1978)2 LRN 56 HE CAN!***
2. In ***Simidele V COP (1966) NMLR 116***—issues on the processes to be used when applying to the High court for bail after appellant's application for bail to the magistrate court has been refused, held; either **Motion on Notice or Summons for bail. (summons was held to be the appropriate procedure as obtainable in England)**
3. Application to the high court for leave to file an information in line with **section 340 CPL**, ***Ikomi v State (1986) 5 S. C. 342: it was held that relying on the provisions of Section 363 of the CPA, the indictments (Procedure) Rules 1971 of England was applicable.***

OTHER INSTANCES OF APPLICATION

1. North-- Application for leave to prefer a charge in the High court Rules 1970
2. Lagos—whether consent/fiat of the AGF is required to prefer an information in respect of federal offences which ingredient has been committed in LAGOS state? NO CONSENT IS REQUIRED SEE **S. 69 ACJL 2011.**

TERMINOLOGIES IN CRIMINAL LITIGATION

1. **PARTIES IN CRIMINAL TRIAL**:
a. **The State**—Prosecution (Complainant) used by all the states of the federation except Lagos.
b. **The State of Lagos**—Prosecution (Complainant)—used only in Lagos state for offences prosecuted under Lagos state laws …
c. **Federal Republic of Nigeria (FRN)** (Complainant)—used at the HC of the FCT and FHC, and in any court where the offence prosecuted is a federal offence.
d. **Inspector General of Police (IGP)** (Complainant)—used when prosecuting Federal Offences at the MC
e. **Commissioner of Police (COP)** (Complainant)—used at the MC and is widely applicable.
f. **The Defendant/ Accused person**: in southern state including Lagos, it is called Defendant. In the north except Abuja it is referred accused person. Previously, before the promulgation of the ACJA, in Abuja and other states of the North, the defence is referred to as the Accused Person but it now referred to as DEFENDANT in Abuja under the new ACJA. See ***COP v TOBIN (2009) All FWLR (pt. 483) 1319.***
2. **CASE NUMBER** is used on the charge sheet and the court processes in Criminal Proceedings in the North.
3. In the south including Lagos and even FCT, the charge sheet and processes of court in criminal proceedings is numbered as **CHARGE NUMBER**

TYPES OF CRIMINAL COURTS

A. COURTS OF GENERAL CRIMINAL JURISDICTION: Courts that are empowered to entertain criminal matters generally. They include:

- High court;
- Magistrate Courts/customary courts
- Area Court
- Court of Appeal and;
- Supreme Court.

B. SPECIAL CRIMINAL JURISDICTION:

- Federal High Court,
- National Industrial Court 254 C (5) 254(1)(c)(i) and 254 F (2) CFRN;
- Court Martial;
- Juvenile Court;
- Coroner's court and; (they check death in cases of death sentence and they make coroner's inquest into the cause of death)
- Other tribunals. E.g. code of conduct tribunal. **N.B. the ACJA is not applicable to A Court Martial.**

SITTINGS OF THE COURT: The court is open for business throughout the year-Juridical days and non-juridical days.

1. **Time of Sitting**: Courts sits from 9:00 am in the forenoon or so soon thereafter (it may extends to 4pm).
2. **Days of Sitting**: There are juridical and non-juridical days. The court officially sits on juridical days. Juridical days include Monday to Friday. Saturdays, Sundays, the week succeeding Easter and public holidays are non-juridical days. **Section 40 Magistrate Court Laws of Lagos 2009** and section 42 MCL, Lagos state. And section 52 of the High Court Laws of Lagos state. The general rule is that Proceedings held on non-juridical days is a nullity. See. ***Balogun V Odumosu.*** **However, note the following exceptions:**

a. Where it is subject to **agreement of the parties** that the court sits on non-juridical days- ***Ososanmi v COP (1952) 14 WACA, valid.***

b. Courts may sit on non- Juridical days if statutes authorize it. See. **S.40 (2) MCL 2009** (it must be within the confine of cases on **remand, bail and non-custodial dispositions**), see also ***Falae v Obasanjo No 1 (1999) 6 NWLR (pt. 606) 283 at 290.***

c. Call over cases unknowingly adjourned to public holidays can be continued on such days if need be.

SETTING OF A CRIMINAL COURT

1. The Bench: this is an elevated podium above other places in the court room where the judge(s)/ Magistrate sit to dispense justice. Where there are more than judge, collectively they are referred to as the bench.

2. The Registrar's Desk: this is the place below the judge(s) seat at the front of the judge sit where the clerk/registrar of the court sits.

3. The Bar: this is where the lawyers sit to address the court. There is the:

- **Inner Bar** – for SAN and Attorney Generals, Life Benchers, Body of Benchers etc.
- **Outer Bar** – other lawyers: In court the first roll is left for those meant to sit in the inner bar. (This is when there is no inner bar). The old Lagos High Court rooms now have inner bar different from the outer bar on the side. The bar is between the Registrar's Desk and the Gallery.

4. **The Dock**: this is where an accused person sits/stands. **It is to the left hand side of the judge.** Kindly note that the use of the Dock is in Criminal Proceedings. Unless the court decides otherwise the accused stands in the dock.

5. **The Witness Box (judge's right)**: this is where the witnesses to testify in the court room give their testimonies. It is to the right hand side of the judge. It is also called witness stand.

6. The Gallery: this is reserved majorly for spectators that have come to observe proceedings of the court. Usually the witnesses that have given their testimonies and lawyer that are not robbed do sit at the Gallery. It is at the back of the bar. **QUERY: can an accused person testify from the dock?**

MODE OF DRESSING AND DECORUM IN THE COURTS

- **SUPERIOR COURTS:** Judges and lawyers are robed: red gown during trial of capital offences and black cap during pronouncing such sentence. winged collar-less white shirt with a bib, black shoes,
- **LOWER COURTS: no robes, dark coloured suits, black tie, black shoes**

JURISDICTION/VENUE OF CRIMINAL TRIALS

Criminal trials are territorial i.e. according to state of commission of the offence. for offences committed outside Nigeria; See ***Mattaradona v ALIU (1995)*** - country where the offence is committed has jurisdiction.

Offence cutting across several states. See ***Njovens V state (1973), Nyame v FRN (2010), Haruna v State(1972***). All the states have jurisdiction - exception to the rule that criminal trials are territorial. see section 12A of the Criminal Code.

WEEK FOUR

PRE-TRIAL INVESTIGATION AND POLICE INTERVIEW

Investigation means a process of inquiring into a matter through research, follow-up, study or formal procedure of discovery. Criminal investigation involves everything done by the police or other persons within the ambit of the law for the purpose of determining what crime has been committed, who committed the crime, where the crime was committed and how it was committed.

WHO CONDUCTS PRE-TRIAL INVESTIGATION?

a. **THE POLICE**: See the CPL ss. 3-10; ACJL SECTIONS 1-10; CPC ss. 117-133 and ACJA ss. 3-18 recognised the investigatory powers of the Nigerian police.
b. Other law enforcement agencies such as the NDLEA, EFCC, NAFDAC, SSS, DSS, ICPC, NIGERIAN CUSTOMS SERVICE etc. also conduct pre-trial investigation. The personnel who conduct the investigation in these agencies are the police on secondment.

EXCEPTIONS TO POLICE POWERS:

A. DEBT COLLECTION: QUERY: Does the duty of police extend to debt recovery? No. see **MCLAREN V JENNINGS (2003) FWLR (pt. 154) 528; see also s .8(2) ACJA 2015**

B. **ARREST IN LIEU**: SECTION 7 ACJA, section 4 ACJL, **Not Allowed. No person shall be arrested in place of a suspect.**

C. **CIVIL WRONG/BREACH OF CONTRACT Section 8(2) ACJA**: the police power does not extend to civil wrongs and/or breach of contract. NB: where issues are such that a civil act may eventually lead to the break of law and order, the police may intervene in line with the powers of the police to maintain law and order in the society according to section 4 of the Police Act.

DUTIES OF THE NIGERIAN POLICE

SECTIONS 4 & 23 Police Act; 52(1) ACJL; 50 ACJA.

1. Pre-trial investigation. See ***Onyekwere v State (1973); Hassan v EFCC (2014)***

2. Prevention and detection of crime … 52 (1) ACJL

3. Arrests of offenders … section 54 ACJL

4. Preservation of law and order

5. Protection of life and property

6. Enforcement of laws and regulations

7. Prosecution of offenders

QUERY: the prosecutorial power of the police, does it extend to superior court? Generally it does and they need not be legal practitioners See: OLUSEMO v COP (1998) 11 NWLR (pt. 575) 547 and FRN V OSAHON & 7 Ors. (2006) 5 NWLR (pt. 973) 361 but the exercise of the power is subject to the power of the Attorney-General either of the State or of the Federation depending on the type/jurisdiction of the offence.

INVESTIGATION PRELIMINARY POINTS TO NOTE

- It must be carried out within the confines of the law
- It determines whether or not a suspect will be tried
- If not properly handled, it may result in the conviction of an innocent person or acquittal of a guilty person.
- Police must be prosecutors not persecutors.
- If not property handled, it may lead to non-prosecution of criminals at all.
- Law enforcement agents rely heavily on information/complaints therefore there is need for investigation
- The complaint/information may be oral or in writing-SECTION 117 CPC

- Such information will be entered in a book kept for that purpose at the police station.

PROCEDURE AFTER RECEIVING COMPLAINT/INFORMATION

- Commence investigation; Section 118(1)CPC
- May effect arrest
- Note that police have discretion whether or not to investigate/prosecute. ***Fawehinmi V IGP (2002)***
- Police may invite person (s) for interview/questioning- Section 123(1) CPC.

PERSONS WHO MAY BE INVITED FOR QUESTIONING

Persons that may be questioned/interviewed in the course of police investigation:

- Suspects
- Witnesses
- Experts (pathologists, finger print experts, medical experts in general)
- Victims
- Complainants

TORTURE: Is it a recognized mode of questioning? **NO**. See. S. 34(1) (b) 1999 CFRN. Section 8(1) (a) (b) ACJA 2015 and see also Article 5 of African Charter on Human and People's Right (ACHPR).

RULES GUIDING POLICE INTERVIEWS

1. Notify a suspect as to his status during the interview-
2. Inform the suspect about the crime
3. The suspect should be treated with dignity **and respect because he is still a suspect not yet proven guilty.**
4. An interpreter should be present if need be.

MODES OF QUESTIONING

- Personal (face-to-face)
- Telephone communication
- Written representation

Note the requirements where the person to be questioned or interviewed is the suspect. **It should be face-to-face.** His rights should be read to him. **MIRANDA V ARIZONA. Things like; He has** Right to remain silent, Right to a legal practitioner of his choice. Read generally the "Judges Rules".

STAGES OF POLICE INTERVIEW

- Rapport building stage
- Information exchange stage
- Challenge/ confrontation stage
- Concluding stage.

CONDUCT OF POLICE INTERVIEW

This may be done DURING or AFTER investigation upon evidence of crime. This is subject to the **Judges Rules** made by the Queen's Bench division in 1912 and modified in Nigeria in 1964 in the SOUTH. In the NORTH, custodial interrogation is governed by **S. 125 &126 CPC and the CPC (statement to police officers rules, 1960).**

FACTORS HINDERING PROPER POLICE INVESTIGATION IN NIGERIA … SEE IGBINOVIA V STATE -

- Lack of adequate training of police personnel/lack of professionalism.
- Poor remuneration for the police officers

- Lack of adequate facilities to enable proper investigation
- Lack of adequate information/logistics
- Insufficient number of experts to help in detection of crime
- Governmental interest and political favouritism
- Poor database/information system/poor record keeping.
- The habit of implicating the complainant.
- Job security/insecurity.
- Corruption in the polity.

QUERY: What is the difference between a statement made to the police during investigation and a confessional statement?

Confessional statements admit guilt of the offence and are required to be made voluntarily while ordinary statement does not admit guilt it is only a narration of the facts to the IPO. See sections 15(4) and 17(1) ACJA.

- **Confessional statement may be formal or informal i.e. judicial or extra judicial see OMISADE V QUEEN**
- **Are such statements admissible in court?** See ***Igbo v state (2000) 2 SCJN 63***—both statements are admissible. **THEY CAN BE TENDERED and admitted if the requirement of the law is passed/fulfilled.**

STATEMENTS BY SUSPECTS

- Police has a duty to obtain statements from suspects/witnesses. See. 17(1) ACJA 2015 (but the suspects are at discretion to make such statements or not whether they would demand the presence of a legal practitioner or stand mute till the trial which is dangerous anyways.)
- The statements must be made under caution following the judges' rules
- Statement must be verbatim recording of the language used by the suspect to be interpreted to English. **See Ahmad V State (1999) 2 SCJN 63.**
- Must be recorded in the first person singular or plural {I or We} (AHMAD V STATE) in the language spoken by the suspect. No joint statement.
- Statement made to the police by the suspect during investigation must be tendered by the prosecution at the trial. **See GARBA DANDARE & ANOR V THE STATE**
- A written statement of the suspect to the police is the **foundation** of his case. See Olayinka V state (2007) 9 NWLR (pt 1040) 561. And Olalekan V State and Adeyemo v State (2013).

NATURE OF CONFESSIONAL STATEMENT

- It must be positive
- It must be direct
- It must point irresistibly to the guilt of the accused person. i.e. (Unequivocal). **STATE V ENABOSI (1966)**
- Must relate to the ***actus reus*** and ***mens rea*** of the alleged offence— **OMISADE V QUEEN**. (It must relate to the reason for the commission of the crime with both the intention and the acts). See also the case of **IGBO V STATE**.

PLEASE NOTE THAT:

- Statement that admits guilt i.e. confessional statements can only be made by person charged/alleged and not on his behalf. See -- S. 28 EVIDENCE ACT 2011 for the definition and the case of **SULE V STATE (2009) ALL FWLR**.
- Confessional statements can only be made during investigation or close of it. See ***Onungwa v State*** (1976) 2 SC 169; Confessional statement made after investigation is a plea of guilty or an admission.

VITIATING FACTORS (SECTION 29 (2) EVIDENCE ACT 2011)

Confessional statement made under **duress, compulsion, threat or promise of an advantage** may not be admitted. (Because Confessional Statement is personal to the maker.) **NB: under section 29(3) of the Evidence Act**, the court has the duty to inquire into the voluntariness of the confessional statement sought to be tendered by the prosecution. It is not good practice for the defence counsel to wait for the court to do this. **Therefore any objection on the admissibility or otherwise of the statement must be raised timeously.**

FORMS OF CONFESSIONAL STATEMENT: Confession may be oral. See 15(5) ACJA; FRN v IWEKA (2013); IGBINOVIA v STATE (1981) 2 SC 5.

It may also be in writing. See AROGUNDADE v STATE (2009) All FWLR; Igbinovia v State (1981). S. 15(4) ACJA—Note that judicial confession is (made formally in court) & Extra-judicial confession (made to the police during investigation). See OMISADE V QUEEN (1964) 1 All NLR 233 on the types of confession. **NB: it must be made by the suspect against whom it is to be used. You cannot confess on someone else's behalf. See Section 29 (2) & (4) Evidence Act 2011 and see Mbang v state (2010) All FWLR (pt. 508) 379; R v. IYANG (1931) 10 NLR 33;**

CONFESSIONAL STATEMENT + INTERPRETER: Note the procedure where an interpreter is used in taking down a statement. See Bello v State (2012) 8 NWLR (pt. 1302) OLALEKAN V STATE (2002) FWLR (pt. 91) 1605 SC.

- **The interpreter who interpreted the confessional statement must be called as witness before the tendering of the evidence. (OLALEKAN v STATE). If not called, the evidence will not be admissible. It out rightly becomes hearsay evidence.**
- **However, if there are reasonable explanations for the absence of the interpreter, the court may admit such statement provided proper foundation as to the whereabouts of the interpreter is laid. Before the evidence is tendered. See section 39 and the proviso to 83(1) EA. See also s. 17(3) ACJA on the proper foundation to be laid and the manner required to tender such evidence.**

EFFECT OF CONFESSIONAL STATEMENT ON CO-ACCUSED - S. 29 (4) EVIDENCE ACT

- Generally confessional statements made only bind the maker and no one else. (IGBO v STATE)
- However in certain circumstances confessional statement can bind a co-accused if he adopts it by word or conduct. See Ozaki v state (1990); ADEBOWALE v STATE (2013) 16 NWLR (pt. 1379) 104; COP v UDE (2011). See s. 29(4) EA.
- The consequence is different if made on oath before the court. See GBOHOR v STATE (2013) All FWLR (pt. 709) 1061 at 1089. In this case, it becomes binding on the other parties on their failure to deny such a statement before the court. It is now a judicial confession and no more extra judicial.
- **Also an extra-judicial confessional statement incriminating a co-accused if corroborated by other evidence(s) may be used by the court. See GBOHOR v STATE (supra). But in all a confessional statement must be voluntary.**

VOLUNTARINESS OF CONFESSIONAL STATEMENTS

The court may suo moto inquire into THE VOLUNTARINESS OR OTHERWISE OF THE CONFESSION see section 29(3) EA and COUNSEL MAY RAISE such OBJECTION then Trial- Within – Trial would commence.

CHALLENGE OF CONFESSIONAL STATEMENTS

- May be challenged on ground of involuntariness (Trial Within Trail would be conducted) and
- May be challenged based on denial. (retraction)
- CAN IT BE CHALLENGED ON THE ABOVE GROUNDS IN LAGOS? No more! See. S. 9(3) ACJL **See also 15(4) ACJA.**
- **TRIAL WITHIN TRIAL** relates primarily to the issue of involuntariness. The above sections of ACJL and ACJA have tried to curb the issue of involuntariness to the barest minimum, therefore it may no more be applicable.

CHALLENGE BASE ON DENIAL OR RETRACTION:

- That the statement was not signed
- That the signature was not that of the accused or suspect.
- That the content of the confessional statement had been altered or doctored.
- That the recording was not done correctly.

EFFECT OF DENIAL OR RETRACTION: the confessional statement is still admissible only that the court determines the weight to be attached. See **EGBOHONOMI V THE STATE**.

- **Confessional statements obtained through 'threat' or other forms of 'oppression' are not admissible.**

WHEN THE STATEMENT IS CHALLENGED ON THE GROUND OF RETRACTION THE COURT WILL DO THE FOLLOWING/ TAKE THE FOLLOWING CAUTION BEFORE ACTING ON THE CONFESSIONAL STATEMENT

1. the court may admit it then,
2. Ascertain whether the statement was made or not.
3. Ascertain the truthfulness of the statement by adducing/considering other evidence from those led during trial.
4. The court will now determine the weight of evidence to be attached to the statement. **SEE OGUNO V STATE**

Query: Assuming there has been a torture/threat prior to the recording of the statement, what will be the position of the law?

On the face of it, the court will admit the confessional statement because of its compliance with the law. However, when the defence is about to open his case, he will lead evidence to show that the state of mind of the accused has been manipulated prior to the obtainment/taking of the statement or recording it.

TRIAL WITHIN TRIAL

- It is necessary only where the accused alleges involuntariness
- Not necessary when he denies making the statement. **SEE MOHAMMED V STATE (2007)**
- Conviction not to be quashed because it was based on retracted Confession statement. Kazeem V State (2009)
- In retraction, the statement is admissible without conducting TWT. Because it is a question of fact not of law.

PROCEDURE IN TRIAL WITHIN TRIAL (TWT)

- The general criminal proceeding would be put to a halt
- The prosecution would then be called to prove the voluntariness of the statement. In line with section 29 (3) of the Evidence Act.
- The prosecution has the right to call witnesses (which are subject to rule of examination under the Evidence Act) to prove the voluntariness of the statements sought to be tendered.
- He may proffer/tender further exhibits or evidence to establish the voluntariness of the statement.
- After the close of evidence by the prosecution the defence opens his case and also has a right to call witnesses and give evidence subject to rule of examination.
- Both parties are given right to address the court on the evidence adduced to establish or to debunk the voluntariness of the statement.
- The court after listening to the address of both parties takes a decision or gives a ruling on the case.
- The ruling of the court can be that the confessional statement is tendered and hereby admitted and marked exhibit … and it may be marked tendered and rejected.
- The ruling in TWT is an appealable decision.
- On who does the evidential burden lies in TWT. **On the accused?**
- **Where the statement is rejected/admitted, the defence/prosecution has a right of appeal.**

NB:

TIME TO RAISE OBJECTION: as soon as it is sought to be tendered. See **EKE V STATE** and it must be raised at the trial court not the appeal court see **OLALEKAN V STATE**.

STANDARD OF PROOF IN TWT: it is proof beyond reasonable doubt. **(BRIGHT V STATE)**

BURDEN OF PROOF: it is on the prosecution to prove in such instance the voluntariness. In Effiong v State the court held that the onus is on the prosecution to prove that the confessional statement was free and voluntary. The prosecution also gives evidence first.

CAN **THE RULING OF THE TRIAL WITHIN TRIAL (TWT) TERMINATE THE WHOLE TRIAL: NO, it only affects the admissibility or otherwise of the confessional statement. The general trial would continue. (GBADAMOSI v STATE).**

LAWS REGULATING CONFESSIONAL STATEMENT IN THE SOUTH: It is regulated by the Judge's Rule of 1964, The CPL, Case Laws, ACJL (Lagos) and Evidence Act (EA) 2011.

IN THE NORTH EXCLUDING ABUJA: It is regulated by the Criminal Procedure (statements to police Officers) Rules 1963, The CPC or CPCL, Case laws and the Evidence Act 2011.

IN ABUJA: ACJA, CPC in some instances, Case laws and Evidence Act 2011.

PROCEDURE IN THE NORTH WHERE A SUSPECT IS TAKEN TO THE POLICE- s. 126 (1) CPC PROCEDURE WHERE SUSPECT TAKEN TO Justice of the Peace- section. 125(2) & (3) CPC

EFFECT OF NON COMPLIANCE WITH THE PROCEDURES OF THE JUDGES RULES

In Usman v state the court held that the breach of the Judges' rules or failure to comply does not affect the admissibility of the statement at best it will affect the weight the court attach to the evidence. See rule 9 of the criminal procedure (statements to police officer) Rules 1964. **See also sections 3 ACJL and section 6 ACJA on the codification of the Judges rules.**

- Contrast with section 31 EA 2011 and the case of **GREGORY V STATE**

PROCEDURE IN THE SOUTH: Regulated by the Judges rule 1963

PROCEDURE IN LAGOS SECTION 9(3) ACJL 2011

- **Confessional statement to be recorded on video to be produced at trial**
- **Or in writing and in the presence of a legal practitioners of the suspect's choice**
- **Therefore Trial-Within-Trial is no longer subsisting because of the above provision of the law.**

PROCEDURE IN ABUJA: SEE 15(4) ACJA.

- It could be in writing or
- Recorded electronically or
- on a retrievable video compact disc or
- such other audio- visual means
- It need not be made in the presence of a Legal Practitioner

JUDGES RULE

- Police may question any person
- Caution must be administered
- The officer taking the statement is expected to take the confessional statement together with the suspect to a superior police. But failure to take such action does not render the Confessional Statement inadmissible. See DIBIE v STATE.

ALIBI (ELSEWHERE)

Meaning; not at the scene of the crime as at the time the crime was committed, it is a defence and not a plea. See AZEEZ V STATE (2008) ALL FWLR (pt. 424) and USUFU V STATE (2008)

- **WHAT IS THE EXACT TIME MATERIAL TO RAISE DEFENCE OF ALIBI?** – It must be raised at the earliest opportunity/possible time—**EBEMEHI V STATE.**
- It must be raised timeously during the arrest/ pre-trial investigation. **IKOSI V STATE (1989)** or as soon as the suspect is apprehended by the police or other law enforcement agencies. **SEE ALSO MOHAMMED V STATE (2015) ALL FWLR PT 782 …**

PARTICULARS OF ALIBI/ HOW TO RAISE

- The suspect must state orally or in writing that he was not at the scene of the incident/crime as at the time of the commission of the alleged offence.
- The suspect must give particulars of his where about at the time of the commission of the offence.
- He must state the place/venue he was.

- The time he got there/ the time he was there and the time he spent there
- The Person (s) he was with or persons with him
- **Note that the time must correspond with the time of the commission of the offence see Okosi v State and Ndidi v State (2007).**
- **In EBEMEHI v STATE the Supreme Court stated that if it is raised during trial it does not merit consideration it must be raised at the earliest opportunity.**

DUTY OF THE POLICE WHEN THE DEFENCE OF ALIBI IS RAISED

- Evidential burden is on the suspect/accused (see section 136 EA and 137), while the legal burden is on the prosecution to disprove the defence as established by the accused defence. ATTAH v STATE (2010) All FWLR (pt. 540) 1224.
- The defence (suspect or accused person) is asserting he must prove
- Once alibi is properly raised by the suspect, the police has a duty to investigate before taking the suspect to court. But it is at their discretion to do so or not. See ***Fawehinmi V IGP (2002)***

EFFECT OF BREACH OF POLICE DUTY

- It renders the alibi unrebutted, which may vitiates the proof beyond reasonable doubt expected from the prosecution. The court resolves it in favour of the accused person.
- Suspect may again raise it on trial.
- The court can also suo motu after having seen the defence of alibi being raised by the defence and that the prosecution has failed to investigate; the court can order any material witness to be called to prove or disprove the alibi. See ABUDU V STATE.

HOW THE PROSECUTION DISCHARGE THE BURDEN OF DISPROVING ALIBI

- By adducing material evidence to convince the court that the accused was at the scene. See Azeez V State.
- By connecting the accused person with the commission of the offence that his defence of alibi cannot be true.
- The above can be done by production of the result of the investigation, adducing of the evidence of eye witnesses etc.

DUTY OF THE COURT TO CONSIDER ALIBI: Once properly raised, the court must consider it no matter how frivolous- see Ogoala v State. When properly raised but was not properly investigated by the police, the court must still consider it.

EFFECT OF CONFESSIONAL STATEMENT ON PLEA OF ALIBI: Confession once voluntarily obtained destroys or shuts out the plea of alibi. See **OGOALA v STATE.**

WHEN ALIBI NEED NOT BE INVESTIGATED

- When used as a ploy to send the police on a wide goose chase. OLAIYA v STATE (2010)
- When it is to divert the attention of the police.
- Where the alibi lacks material facts worthy of investigation
- When the plea consists vague accounts which are stated to make the court believe the alibi. SAKA v SATE.
- When suspect was arrested at the scene of the crime
- Where the accounts or particulars are vague.

IDENTIFICATION PARADE (WHEN TO CONDUCT): Conducted where the identity of the suspect is in issue or mistaken or in doubt by the victim/the eye witness to the offence. ANI V STATE (2009) 16 NWLR and ARCHIBONG V STATE (2006)

INSTANCES OF IDENTIFICATION PARADE

- Where the victim did not know the accused prior to the offence. However it is settled law that identification parade is not necessary where the witness knew the accused person before the incidence. Alufohai V The State (2015) ALL FWLR (Pt 765) 198.
- Where he was confronted by the accused for a very short time.
- Where the victim due to time and circumstances might not have had opportunity of observing the identity of the accused person

- In the case of Ikemson V State (1989) 3 NWLR (PT 110) 455: the Supreme Court laid down what can be regarded as: **ESSENTIALS OF AN IDENTIFICATION PARADE. THEY ARE:**
- The description of the accused given to the police by the witness shortly after the commission of the offence.
- The opportunity the witness had for observing the accused.
- The features of the accused noted out by the victim and communicated to the police which marked the accused out from other persons. See also R V Turnbull for the guidelines on the admissibility of identification evidence.

OTHER TYPES OF IDENTIFICATION

- Dock identification
- Video identification
- Voice identification
- Photographs identification
- Fingerprints identification

RULES GUIDING IDENTIFICATION PARADE

- Code of practice for identification of persons by police officers (Code D) pursuant to the police and criminal Evidence Act 1984 England
- Nigerian police training Manual for Basic and Advance Studies; the forms are Form D 48, 49, 50.

PROCEDURE FOR CONDUCTING IDENTIFICATION PARADE

1. A Senior Police officer is to be in charge of the process.

2. The accused is put in the midst of eight other persons or twelve when parading two suspects.

3. They must be of similar description in terms of height, age, complexion, appearance and status in life with the suspect.

4. All persons other than those directly concerned are excluded.

5. Police officers can participate in the parade but they will not be in uniform but in the event they are in uniform, they should remove their force numbers.

6. The suspect will be handed FORM D 48 prior to the commencement of the parade.

7. No officer is permitted to speak to the witness except the officer in charge who must give instructions in audible voice.

8. Witnesses are not to see the suspect before the parade.

9. A photograph of the line-up of the persons including the suspect will be taken before the victim is invited. A repeat will be constituted with different set of people and the identified….

10. If identified again, a photo will be taken with the victim/witness hand on the shoulder of the suspect.

11. Where there are two or more witnesses to identify a suspect, they must do it separately.

12. At the end of the parade, the officer will fill Forms D 49 and D 50 and make a brief report at the station diary. **SEE. MUSTAPHA V STATE (2007): ESSENTIALS OF IP: FOR IP to be resorted to or deemed to be properly conducted the d**escription given to the police by the witness must be well noted after the offence was committed and there must have been no opportunity available to the witness to observe the accused properly.

HANDLING EXHIBITS

- At the conclusion of the search during Police Investigation, police may seize any incriminating items found at the premises or scene of the crime.
- The items are handled and kept by the exhibits keeper in safe custody. See s. 9(1)(b) ACJA 2015

- Must be kept in an exhibit room or designated place by the exhibit keeper and properly labelled.
- The police is required to draw an exhibit list which chronicles the items seized from the suspects.
- Must maintain an exhibit register, section 10 (1) ACJA
- The police must maintain a case diary. See 121 (1) CPC. Are case diaries admissible in evidence? NO
- Where exhibit is to be taken to a laboratory for scientific test, it must be handled by an officer with utmost care. See **SHOLA V STATE.**

CONSTITUTIONAL RIGHTS OF A SUSPECT AT THE POLICE STATION

- Right to legal representation /Access to counsel. See s. 35(2) CFRN 17(2) ACJA
- Freedom from Unnecessary/unreasonable restraint. 34(1) CFRN, 4 CPL, s. 5 ACJA and section 2 ACJL
- Right to silence/ right against self-incrimination. 35(2) CFRN; s. 6(2) ACJA (mandatory), 3(2) ACJL
- Right to be informed of the offence alleged or the reason for the arrest. 35(3) CFRN, 6(1) ACJA, 3(1) ACJL
- Right to respect of dignity of his person. 34(1) CFRN, 8(1) ACJA
- Right to free legal aid with legal Aid council. 3(3) ACJL; 6(2) (c) ACJA… section 16 (1) LEGAL AID ACT
- Right to bail. S. 35(1) CFRN, s. 9(2) ACJL, ss. 17,18 CPL, ss 129 &340 CPC, 158 ACJA, EDA v COP bail is free.
- Right to arraignment section 35 (4) CFRN
- Right to presumption of innocence – 36 (5) CFRN
- Right to receive compensation and public apology for unlawful arrest or detention. See 35(6) CFRN
- Right to decent cell condition & facilities. 8(1) ACJA 2015, 35 (1) CFRN see also WRIGHT V MCCANN, section 17 ACJL
- Right to adequate time and facilities to prepare for defense. 36(6)(b) CFRN, 8 (1) ACJA, 9 (2) ACJL Uket v State (2008)
- Not to be arrested or detained in place of another. 4 ACJL; 7 ACJA 2015.
- Right to have confessional statement recorded or in writing section 15 (4) ACJA, 9 (3) ACJL

POLICE BAIL

(BAIL PENDING INVESTIGATION)

- Bail is constitutional right. S. 35(1) CFRN, ss. 17,18 CPL; 129 & 340 CPC, 158 ACJA

TYPES OF BAIL

- Bail pending trial
- Bail pending investigation
- Bail pending appeal.
- The police cannot grant bail to a suspect arrested for capital offence or an offence punishable with death. 17 CPL, 341 CPC, 17(1) ACJL, 161(1) ACJA, 30 (3) and 34 ACJA. Though in some instances the court may grant such. May be on the ground of ill health see the case of BAMAIYI V STATE.

PROCEDURE FOR APPLICATION FOR POLICE BAIL

1. No statutory provision for the procedure

2. Made to the DPO/DCPO or the Head of the Police station in the where the suspect is arrested.

3. it may be oral or written: In practice, it is in writing, by the suspect, his counsel or surety.

4. Once granted, it remains in force **until the suspect is arraigned** in court, by which time it lapses or unless revoked for breach of bail conditions by the police.

Bail cannot be granted without a surety. Though a surety may apply to be excused due to one reason or the other. It can also in the popular language be granted on liberal terms.

NB; it must be drafted in your letter head paper. **You can use a letter head paper for application for more than one person.**

TERMS OF BAIL

- Self-recognizance (note the difference between popularity and **status**. The law is more particular about status rather than popularity)
- Entering into a bond
- Provision of surety/ sureties
- Note that deposit or payment of money is not one of the terms/conditions of this type of bail.

OPTIONS AVAILABLE TO A SUSPECT DENIED POLICE BAIL

- Application to court (MAGISTRATE) for release from custody (only applicable in Lagos, especially magistrate court, section 18 ACJL).
- Enforcement of FUNDAMENTAL HUMAN RIGHTS pursuant to Enforcement Procedure Rules 2009 (general application).
- Habeas corpus Procedure (general application).

APPLICATION FOR ASSISTANCE UNDER LEGAL AID ACT 2011

- Legal Aid Council is responsible for the operation of a scheme for the grant of free legal aid in certain proceedings to persons with inadequate resources or indigent persons. See 8(1) (2) Legal Aid Act 2011
- **SCOPE**: in respect to matters in 2nd schedule to the Act or as may be directed by the President. 8(1)(2).
- **Legal advice is free:** legal advice to be given free in any office of the council nationwide, court, police station or prison in any civil or criminal matters.
- ANY Legal Practitioner willing to act for persons receiving legal aid may register with the council. S. 14 LAA 2011
- Legal practitioners serving (on NYSC) shall be subject to the council's directives to be able to act for persons receiving Legal aid for free. S. 16 LAA.
- NGO and Law clinics participate in legal aid.
- It is the duty of the court and police to notify persons of their access to legal aid. See sections 3(3) ACJL, 6 (2) (c) ACJA.

APPLICATION PROCEDURE

- **Application is by a simple formal letter.**
- All applications for Legal Aid be directed to the Director General of Legal Aid or State Coordinators.
- The application must state the personal details of the applicant
- It must state the Particulars of expenditures to be made.
- It must state the particulars of asset/income and expenditures of the parties
- It must state other relevant Particulars of the defendants
- It must state the particulars of financial waiver WHERE APPLICABLE.
- It must be Signed and dated.

ELIGIBILITY FOR LEGAL AID

- No income of any type
- Annual income does not exceed Normal Minimum Wage
- Court refers case vide direction to Legal Aid Council.
- He is placed by the council in their estimation as falling under (paras A- B)
- Though his income exceed Normal Minimum Wage in which case he will be required to make contribution for cost of legal service.
- Where it is reasonable in all circumstances to provide him for legal Aid
- **See section 9 – 11 Legal Aid Act, 2011.**
- **DRAFTS: POLICE BAIL AND APPLICATION FOR LEGAL AID**

DIAMOND CHAMBERS

(LEGAL PRACTITIONERS & CHARTERED ARBITRATORS)

56 LAW SCHOOL DRIVE, VICTORIA ISLAND- LAGOS

Phone no: 08073562156 **Website:** www.diamondchambers.com

Email: diamondchambers@gmail.com

Our ref: ……

Your ref: ……...

14 September 2009

The Divisional Police Officer

Kasuwan Kawo Divisional Headquarters

Kasuwan Kawo,

Kaduna.

Dear Sir,

APPLICATION FOR BAIL

We are solicitors to Mrs Atutuwa Adamu of No 5 Oduwole Street, Kasuwan Kawo, Kaduna (hereinafter referred to as "our client") who is currently under arrest and detention at your station. She was arrested on the 10 September 2009 for allegedly stealing a golden ring and she has been detained since then.

We humbly apply for her bail pending further investigations or trial.

The Chairman of Kasuwan Kawo Landlord Association, Kaduna Alhaji Balarebe Baba is hereby recommended as surety for our client's bail and he undertakes to produce her upon request to your station for further investigation or trial.

As we expect your kind consideration of this application, we thank you for your usual cooperation.

Yours faithfully,
____~~**rifwieo**~~____
Clement Owolabi Esq.
Principal Counsel
Diamond Chambers
For: Diamond Chambers

DRAFT TWO:

ADAM JONES

24 SUMBAWA AVENUE

GARKI,

ABUJA

14 April 2017

The Director General

Legal Aid Council

National Headquarters

Area 3 Garki

Abuja.

Dear Sir,

APPLICATION FOR LEGAL AID

Kindly refer to the above subject matter.

I am Mr Adam Jones of No 24 Sumbawa Avenue Garki Abuja. I hereby humbly apply for the legal assistance of the Council in defence of the case against me.

I was arrested and detained on the 10 April 2017 at Alabama Police Station Garki, Abuja for allegedly assaulting one Mr. Barbados Cletus of No 20 Sumbawa Avenue Garki Abuja. The case has been filed before the High Court of the Federal Capital Territory Abuja and the court documents have been served on me today 14 April 2017.

I am a 300 level Economics student of the University of Abuja, I have no income or earnings at all. I only receive stipends from my relatives for maintenance and my parents are late. I will be very glad if my request is granted.

Kindly find attached the photocopy of my student identity card and the copies of the court documents.

Thanks.

Yours faithfully,
____**~~rifwico~~**____
Adam Jones
Phone No: 08073562156

WEEK FIVE

ARREST, SEARCHES AND CONSTITUTIONAL RIGHTS

ARRESTS AND SEARCHES

A search is an examination of the body, thing or premises of a person. Routine checks are forms of search whether at the ports or parks. Searches and arrests are both intertwined because one can lead to the other. Arrest can lead to a search while a search can lead to an arrest. A search must have a legal purpose it must either be for obtaining evidence or retrieving it.

It is usually conducted by a law enforcement agent. E.g. police and other officers of the law enforcement agencies (NDLEA, SSS, DSS, IMMIGRATION OFFICERS, Customs etc.) it also includes other officers empowered by enabling statute to conduct such. Examples of enabling statutes include: Customs nd Excise Management Act, Police Act, National Drug Law Enforcement Act, Immigration Act etc.

A search may be needed before or after arrest see sections 29 Police Act, Section 107 CPA, 74 CPC, 104 ACJL, 144 ACJA and section 32 NDLEA Act empowering the Army to conduct search and make arrest. **In all, any person carrying out a search must be empowered to do so under a law or enactment**

TYPES

A. Search of persons: human beings
B. Search of premises: buildings and dwellings
C. Search of things: receptacles, cars, ships, appurtenances etc.

SEARCH OF A PERSON

The police has power to search persons arrested. See sections 9 (1) ACJA, 5(1) ACJL, 6(1) CPL, 44 CPC, 25 & 29 Police Act.

- **No warrant is needed for the search of a person. However, in the search of things or premises, a warrant is needed.**
- Other law enforcement agents can also search persons section 4 (4) NDLEA Act, 133 CEMA (upon entrance within the country)
- Police can conduct search on anyone in lawful custody. 5(6) ACJL, 6(6) CPL and 127 CPC
- A private person may also search a person. See Section 12 CPA, 20 ACJA.

SEARCH BY PERSONS OF THE SAME SEX

- Search of people of the same sex must be done by the person of their sex. Its purpose or purports ***is to enhance the right to dignity of human person in accordance section 34 CFRN***, a man should be searched by a man while a woman should be searched by another woman. ***For the purpose of emphasis: A woman must be searched by another woman:*** See section 9 (3) ACJA, 5 (2) ACJL 44(3) CPC, 150(1)(b) CEMA, 82 CPC, 6 (2) CPL: See 149 (3) ACJA, …
- **During search, regards must be had to sense of decency … Search must be with strict regard to decency. SEE Section 82 CPC, Section 4 (2) ACJL, Section 9 (3) ACJA…**

NOTE THE EXCEPTION IN S. 9(3) ACJA.

- It does not include the woman's appurtenances things she is carrying like her handbag, purse, or goods …
- And she may be searched by any officer on duty in the cases of emergencies.

The CPA and CPC is silent on who can search a man.

- ***Note also that the power to conduct search includes power to conduct medical examination. See Section 6 CPA.***

The difference between retrieving and obtaining evidence? There is certainty in the former not in the latter. in the sense the officer has a clear information and intelligence that the exhibit being sought is in the possession of the person to be searched while in the latter it may and may not be.

Nothing wrong in a CPL state for a woman to search a man though not same in Lagos under (ACJL). Under the ACJA with special regard to the exception provided, *a woman can similarly search a man with regards to the exigencies of the situation and strict regard to decency must be maintained.*

SEARCH OF PREMISES

Search of premises must be with a warrant. Search conducted without warrant is unlawful. See Section 37, CFRN see also Section 45 (1) CFRN. **Note that Premises may also be searched without warrant. See SECTIONS 32 NDLEA ACT and 147 (1) CEMA. The materials may be taken out of the premises if search warrants are sought for. Also Where a person to be arrested suspected to be in a building Section 7 (1) CPA, Section 7(1) ACJL Section 12(1)**

- **Justice of the peace may direct a search to be conducted in his presence in any place where he can issue a search warrant SECTION 85 CPC.**

AUTHORITIES THAT MAY ISSUE SEARCH WARRANT

A. A Magistrate
B. A Judge
C. A justice of the peace in the North CPC
D. A Superior police officer in limited circumstances (cases bothering on fraud, dishonesty and where the premises to be searched is or within the preceding 12 months had been in the occupation of a person convicted of receiving stolen property, therefore to recover the stolen property and/ or the person is harbouring thieves) see SECTIONS 28 (1) and (3) and Section 2 of the Police Act and see also Section 7(1) CPL, 7(1) ACJL, 34 CPC**.**

- **Note further that anyone within premises may be searched. S. 28 POLICE ACT**

TIME LIMIT FOR THE EXECUTION OF SEARCH WARRANT

In Lagos and under CPA, it operates between 5:00 am to 8:00 pm save further endorsement by the magistrate for the extension of time when need be. See section 108 (1) and (2) respectively of ACJL and section 111 (1) and (2). **Under the ACJA, there is no time limit.** See Section 148 ACJA.

SEARCH OF WOMEN IN PURDAH

SECTION 79 CPC, SECTION 7(3) ACJL, SECTION 149 (6) ACJA

a. if a man wants to search the premises of a woman he must give her adequate Notice to withdraw

b. and he must give her opportunity/time for her to withdraw

Therefore Notice is not necessary if the person making the arrest is a woman. See Section 7(3) ACJL section 12 (3) that is If the suspect is a woman hiding the item… see section 112(3) CPA

TIME OF ISSUANCE OF AND EXECUTION OF SEARCH WARRANT

a. Search warrant may be issued and executed on any day including a Sunday & public holiday Section 111 CPA, Section 108 (1) ACJL, SECTION 148 ACJA.

ILLEGALLY OBTAINED EVIDENCE: admissible, see sections 14 and 15 of the Evidence Act and the cases of MUSA SADAU V STATE and KURUMA V QUEEN. Note also section 101 CPL

WAYS TO SECURE ATTENDANCE OF A SUSPECT TO COURT

A. By summons
B. Arrest with warrant
C. Arrest without warrant

SUMMONS

Simpliciter it IS A DOCUMENT by a court to invite or direct a person. In criminal summons? It is an Invitation of suspect to appear in court (within 48 hours).

Who can issue summon? By a Magistrate, Judge or Justice of the peace in the north

CONTENTS OF SUMMONS

a. Brief statement of the offence
b. Name of the offender
c. Date, time and when to appear
d. Date of issue
e. Signature of the issuing authority … stamp may represent signature… See Evans v Good Man

WHO MAY SERVE SUMMONS

a. Police officer
b. Officer of the court issuing the summons
c. or any public servant authorized to so do see Section 88 CPL

Summons may be issued on any day including Sunday or public holiday. Note that Service of summons is personal. See section 89 CPL, when a summons is disobeyed **WARRANT OF ARREST may issue:** an order directed to a police officer or any other person to arrest the offender named therein see section 96 CPL

ARREST

What is an arrest?

An arrest is the taking or keeping of a person in custody by legal authority upon a criminal complaint or suspicion of commission of an offence. Arrest is usually the beginning of a criminal investigation. S. 3 ACJA 2015

WHAT CONSTITUTES AN ARREST? MEANS OR MODE OF ARREST.

The officer or any other person making the arrest shall actually touch or confine the body of the person to be arrested unless the suspect submits to custody by word of mouth or by action after being informed that he is under arrest. See S. 4 ACJA, 1 ACJL, S. 3 CPL and the case of **SADIQ** V **STATE**

TO WHAT EXTENT CAN A PERSON BE CONFINED IN EFFECTING AN ARREST. (NATURE OF RESTRAINT IN ARREST)

Generally when effecting or carrying out the arrest of a person by the police, the person arrested shall not be handcuffed, bound (leg chain) or be subject to (unnecessary) restraint. S. 5 ACJA, S. 2 ACJL; S. 4 CPL

WHEN RESTRAINT IS LEGAL (CASES OF USING HANDCUFF ETC.)

It has been earlier said that restraint while effecting an arrest is as a general principle of law not allowed, however, the law permits the arresting authority to use reasonable authority in effecting an arrest in certain circumstances— the circumstances are as contained under sections 5 ACJA, 2 ACJL, 4 CPL and 31 CPCL.

1. When there is **reasonable apprehension of violence or attempt to escape** by the person to be arrested.
2. Where the use of the restraint is **considered necessary for the safety of the suspect or defendant.**
3. Where the arresting officer is directed **by order of the court** to use restraint in effecting the arrest.

DUTY OWED TO THE SUSPECT AFTER ARREST

1. **Duty to notify him of the cause of his arrest:** The officer of the law carrying out the arrest of a suspect has a duty to the person arrested immediately after effecting the arrest to inform him of the cause of his arrest. See s. 6 ACJA, s. 3(1) ACJL, s. 5 CPL and s. 38 CPCL. Kindly note that all the laws applicable in the four criminal jurisdictions are uniform with respect to this issue. However, the law has permitted some instances where it will not be necessary to inform the person arrested of the cause of his arrest. The exceptions are as follows:

1. When the arrest is made while the suspect is **in the actual course of committing the crime**; or
2. If he is **pursued immediately after the commission of a crime**; or
3. He has **escaped from lawful custody.**

2. **Duty to notify him of the constitutional of his constitution rights:** The **arresting officer or the officer in charge of the police station where the suspect is detained or any other law enforcement agency officer** after effecting the arrest of the suspect have an additional duty to notify the person arrested of the his constitutional rights. This is contained under s. 3(2) & (3) ACJL and s. 6(2) ACJL. Under the CFRN 1999, these rights are contained under the fundamental rights to Dignity of Human Person and Right to Personal Liberty respectively. See s. 34 and 35 CFRN 1999. The rights are as follows:

a. Right to remain silent

b. Right to avoid answering any question put to him until after consultation with a legal practitioner or person of his choice

c. Right to consult a legal practitioner of his choice before making or endorsing any statement or answering questions put to him after the arrest

d. Right to free legal aid representation by the Legal Aid Council of Nigeria.

NB: INNOVATION BY THE ACJA.: the ACJA introduces a further duty that the authority having custody of the suspect must notify his next of kin or other relative of his detention without any cost being incurred by the suspect in that regard.

ARREST IN LIEU

QUERY: Can a person be arrested in an attempt to secure the arrest of another? CAPITAL NO: No person can be arrested in lieu of another person. see Sections 7 ACJA and section 4 ACJL. No provision is made for this in the CPCL or under the CPL, however, its applicability can be stretched to the North and south respectively.

N.B:

WAYS OF MAKING AN ARREST?

- Arrest with warrant
- Arrest without warrant

A warrant is an authority in writing issued by a COMPETENT superior officer compelling the person(s) stated therein to do or oblige the doing of certain activities. In like vein, a warrant of arrest is an authority in writing to a police officer or any other person directing the officer or person to arrest a named offender. There is a difference between a summons and a warrant of arrest. **Summons is issued and directed or addressed to the offender while an arrest warrant is issued to the police officer or any other person**.

ARREST WITH WARRANT

Who Can Issue: A warrant of arrest is a judicial process, hence only judicial officer so recognized can issue a warrant of Arrest. This goes to the conclusion that ***a police officer no matter his rank cannot issue a warrant of Arrest. Even an IGP cannot issue a warrant of Arrest.*** The judicial officers that are recognised by the various laws on criminal procedure to issue warrant of arrest include, **a Judge, a Magistrate**. See s. 22(1) ACJL and 22(1) CPL. Kindly note that this is similarly the position under the CPCL but the law add to list of persons that can issue the warrant to include **a Justice of Peace.** See s. 56(1) CPCL.

NB 1: a Judge or Magistrate issuing the warrant of arrest must do so in his capacity as a Judge or Magistrate not when acting in other capacity. In the case of IKONNE V COP, a Judge issued a warrant of arrest while acting in his capacity as a chairman of a judicial commission of inquiry. The warrant was challenged and was quashed on appeal.

N.B 2: Don't mix a warrant of arrest with a Search Warrant. A search warrant may be issued by a superior police officer above the rank of cadet Assistant Superintendent of Police subject to certain conditions or certain instances.

NB 3: Also note that an Alkali of a lower Sharia Court in the North cannot issue a warrant of arrest – COP V. APAMPA

WHEN TO ISSUE?

A warrant of arrest may be issued by the appointed authority in any of the following instances:

a. Where the Law creating the offence states that an offender cannot be arrested without warrant.
b. Where a summons is disobeyed.—see s. 94 ACJL, s. 96 CPL and s. 70(1)(b) CPCL.
c. Where a serious offence is alleged against the offender.

WHEN TO ISSUE?

A warrant of arrest cannot be issued at first instance **UNLESS** there is **a complaint made on oath by the complainant himself or a material witness**. See section 23 ACJL; section 23 CPL and IKONNE v. COP. This is the position in the CPL and ACJL Jurisdiction. However, under CPCL once the complaint discloses a criminal offence, a warrant of arrest may be issued and the complaint need not be on oath.

NB: A magistrate can **lawfully** issue a warrant of arrest irrespective **of the fact that he lacks jurisdiction** to try the alleged offender for the offence.

CONTENT OF A WARRANT OF ARREST—SECTIONS 22(1) & (2) OF ACJL AND CPL

The following are the contents of a warrant of arrest issued by a judicial officer:

1. Date of issue
2. Person to be arrested—indicating the name and particulars of the alleged offender.
3. Concise statement of the alleged offence.
4. Place of execution
5. Officers to effect the arrest
6. Order directing the police officer or the authority to arrest the person named in the warrant and bring him before the court.
7. It must be duly dated and signed by the issuing authority. To some authority, the rubber stamp of the judge will suffice as a signature.
8. The warrant must be in duplicate

PERSONS WHO CAN EXECUTE A WARRANT OF ARREST

A warrant of Arrest may be executed by any of the following:

a. **A police officer**
b. **All police officers (if directed to them)** and
c. **Any police officer** See. Sections 43(2) ACJA, S. 25 CPA/ACJL S. 58 CPC.

PLEASE note as follows: However, the warrant of arrest may be addressed and directed to other public officers who may be authorized to make an arrest. Also, if immediate execution is necessary and no police officer or other public officer is immediately available, the warrant of arrest may be directed to other person or persons. See s. 26(1) ACJL, s. 27(1) CPA and s. 58(1) CPC. **In essence, a warrant of arrest addressed "TO WHOM IT MAY CONCERN" or other such addresses is wrong.**

EXECUTION OF WARRANT OF ARREST

A warrant of arrest is executed when the officer directed in the warrant carries out the arrest of the person named and bring him before the court.

LIFE SPAN OF A WARRANT OF ARREST

It is important to note that there is no time limit to execution of the warrant of arrest. It is either executed or cancelled by the issuing authority. **It remains valid even after the death or retirement of the judge that issued the warrant. The lifespan of a warrant of arrest last for its execution. A warrant once executed cannot be used for the same purpose again.** S. 25(2) CPL and s. 56(2) CPCL provides that once a warrant of arrest is issued, it shall remain in force until it is either executed or cancelled by the authority that issued it. Once executed, the warrant lapses and cannot be subsequently used. **See R V AKINYANJU**

It is as well vital to note that the death, retirement or transfer of the issuing officer does not otherwise nullify or invalidate a warrant of arrest issued. The warrant remains valid against all irregularity till executed. See s. 103 CPL, s. 98 ACJL and s. 383 CPCL 8

ISSUANCE OF WARRANT OF ARREST: An arrest warrant can be issued at any time and any day including Sunday or public holiday- S 38 ACJA; s. 24 ACJL, 24 CPL

ON THE PLACE AND TIME OF EXECUTION OF THE ARREST?

A warrant of Arrest may be executed on any day, including a Sunday and a public Holiday. Execution may similarly be carried out in any place in the state at any time- s. 43(1)&(2) ACJA, 27(1) & (2) ACJL, 28(1) & (2) CPL and s. 63 CPCL. However, execution as to place is subject to the following exceptions. **A warrant of Arrest cannot executed in the Legislative House or in a sitting court room.**

PROCEDURE WHEN EXECUTING WARRANT

1. The Offender must be informed that there is warrant for his arrest by the officer or authority effecting the arrest. S. 27(3) ACJL, s. 43(3) ACJA, s. 28(3) CPL

QUERY: Must a warrant of arrest be shown to a suspect before he is arrested? If the warrant is demanded by the person to be arrested, it must be shown. It may not be in possession of the arresting officer. In Lagos if not in his (arresting officer)'s possession, it must be shown to the suspect within 24 hours after his arrest. 28 ACJL, However, under the ACJA, CPC and CPL it must be shown to the person as soon as practicable after his arrest. See S. 44 ACJA, section 61 CPCL and 29 CPL.

It is important to note that the law have earmarked specific circumstances in which a person to be arrested need not be informed or shown the warrant for his arrest. The instances are as follows:

If there is Reasonable cause that if the warrant is shown or the suspect is informed of the warrant it might:

a. Likely occasion escape
b. likely Occasion resistance
c. Likely Occasion rescue from his accomplices.

See. Ss. 43(3) ACJA, 27(3) ACJL and 60 CPC, NB: under the CPC, a warrant may be directed to a public officer where expediency demands.

SIDE CLASS: Question: Who are Justice(s) of Peace? They are laymen i.e. not necessarily legal practitioners given limited judicial power. They are majorly in the North.

NB: PLEASE KINDLY NOTE THE FOLLOWING:

a. You can arrest legislative members in the legislative houses subject to the consent of the presiding officer. See. *TONY MOMOH V SENATE*.
b. Note the difference between a court sitting and the one not on seat. Because a suspect may be arrested in a court provided it is not on seat.
c. Note also that the principle of inviolability of the premises of the mission is applicable in the execution of an arrest. See Article 1 Vienna Convention on Diplomatic Immunity
d. On section 63 of the CPC? The phrase 'any place' contained therein does not applies to places mentioned above. This means that the places mentioned though not expressly stated under the provision of the CPC are still exception to where a warrant of arrest may be executed.

EXECUTION OF WARRANT OF ARREST OUTSIDE THE PLACE OF ISSUE

See. Ss. 46 &47 ACJA, 365 ACJL, 482 CPL 64 and 65 CPC

STEPS TO BE TAKEN:

a. The executing officer takes the warrant of Arrest to a Magistrate/Judge within the district or judicial division where the suspect is to be arrested for endorsement of the warrant.

b. The magistrate/judge in the state of Arrest endorses the warrant and directs that the suspect be brought before him.

- He must be cautious that the warrant is issued by the appropriate authority.
- He must be satisfied that the offence alleged is known to the law within the jurisdiction where the warrant is issued. ***COP V APAMPA and AOKO V FAGBEMI***

c. The Magistrate may make an order that the suspect be arrested and brought back before the endorsing Magistrate.

- He can direct that he be taken back to the jurisdiction where he is wanted or he may grant bail if the warrant contains a provision for bail in line with the conditions contained in the warrant or if the offence is a bailable offence OR on condition that he is to appear before the issuing magistrate, judge or justice of peace within a specified time not exceeding 28 days from the date of the order admitting him to bail.

NB: **Where the arrest is challenged, the endorsing Magistrate in that scenario has jurisdiction.,** When the person apprehended is dissatisfied with the order of the Magistrate, he may apply to a Judge of the High Court of the state in which he was apprehended for a review of the order - s. 484 CPL …See ***R V OLOWU (1971) NMLR 213***. ***MATTARADONA V ALIU (1995) 8 NWLR (PT 412) 225.*** **Also Note that a warrant of Arrest issued by a FHC Judge is executable in any place in Nigeria and this same procedure will be adopted. See s. 47 ACJA**

INTRA STATE EXECUTION OF WARRANT OF ARREST

- No need for endorsement
- The arresting officer arrests the suspect and bring him before a Magistrate/Judge in the division where the arrest is affected or to be effected.
- The Magistrate/Judge may order for bail of the suspect or make an order for his return to the Division of issue. (s. 30 ACJL, Section 66 (2) CPC and s. 46 ACJA.)

NB: under s. 64 of CPC, the issuing magistrate may instead of directing the warrant to a known officer to be executed outside the judicial or district of issue may forward it by post to any court within the division or jurisdiction it is to be executed. Upon receiving such warrant, the magistrate in district of execution shall endorse the warrant and cause it to be executed.

NB: A court issuing a warrant of arrest in respect of offences other than capital punishment may endorse on the warrant that the suspect be released on bail on such terms and conditions as contained in the warrant. The endorsement shall specify:

a. The number of sureties

b. The amount in which the sureties and the suspect are respectively bound or are to provide in cash security on request of the surety or the suspect

c. The court in which the suspect arrested is to attend

d. Time in which the suspect is to appear before the court, including an undertaking to appear at a subsequent time as may be directed by any court before which he may appear.

e. See sections, 29 ACJL, 45 ACJA, 30 CPL and 57 CPCL.

PUBLIC SUMMONS—S. 67 CPCL

The procedure on public summon is mostly applicable in North. It is used in situation where a person with respect to which Warrant of Arrest is issued is in the opinion of the court CONCEALING or ABSCONDING such that the warrant of Arrest will not be executed. **It is only issued by a High Court judge.** The judge will cause a Public summon to be issued in writing to the person to

be arrested to appear before the court within 30 days from the date the Summon was published at a specified place and time. It shall be executed/published in the following manner:

1. Public reading of the summon orally in a conspicuous place in the town or village in which the suspect ordinarily resides
2. Affixing the Summons to conspicuous part of the home or home stead of the suspect or a conspicuous part of his town or village.
3. A copy of the summons will be affixed to some conspicuous part of the High Court Building.

Proof of compliance: the above provision will be deemed to be duly complied if judge of the HC make a statement in writing that the public summon was duly published on a specified day.

ARREST WITHOUT WARRANT.

Who may arrest without arrest? There are three categories of persons that may arrest without warrant viz.

1. The Police (General power of police men- section 4 and 24 Police Act)
2. Judicial officers
3. Private person. ***NWEKE V THE STATE (1965)***

The last two categories have the duty to hand over the perpetrator of the offence to the police station or the police man for proper re-arrest. See section 23(3) ACJA-immediately hand over. 39(1) CPC and 14(1) CPL- without unnecessary delay.

THE POLICE

A police man may arrest a person without a warrant of Arrest issued for that purpose. Ss. 10, 11 and 54 ACJL, ss. 10, 11 and 55 CPL and Column III of Appendix A to the CPCL. The police may effect an arrest without warrant in any of the following instances:

1. Persons reasonably suspected to have committed an offence unless the law creating the offence demand that the arrest of the person be made with warrant.
2. Persons that commits an offence in his presence
3. Persons who obstruct the police man in the execution of his duty or persons who has escaped or attempt to escape from lawful custody
4. Persons suspected to be in possession of stolen item or suspected to have committed an offence with reference to items found in his possession
5. Persons reasonably suspected to have deserted from any of the Armed forces in Nigeria
6. Persons suspected to have committed an offence outside Nigeria/state of operation which is punishable in Nigeria/his state of operation.
7. Persons having possession of house breaking instrument, firearms or any offensive or dangerous weapon without lawful excuse.
8. Persons reasonably believed that warrant of arrest has been issued against by a competent court.
9. Persons taking precaution to conceal his presence for the purpose of committing a felony or misdemeanour
10. A person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself
11. When a person is arrested in a bid to prevent the commission of a crime.

NB: where the law creating an offence states that a warrant must be issued before an arrest can be made, a police officer can arrest any person without warrant where he can reasonably suspect the commission of crime which cannot be prevented - s. 55 CPA, s. 54 ACJL and s. 24 Police Act

NB: s. 10(3) CPL provides that power of arrest without warrant conferred upon the police is exercisable within a state by a member of the police within a state—within his state command not outside.

LIABILITY FOR WRONGFUL ARREST WITHOUT WARRANT

1. If no offence was actually committed, and although an offence was committed, the arrested person was not responsible for it, the Police Officer is not liable for unlawful arrest.-**Wiltshire v. Barrett;**

2. Where a policeman detains a suspect in order to confirm his alibi or to investigate the case further, he would not be liable for **false imprisonment**-**Dallison v. Caffery**

JUDICIAL OFFICERS

Judges, Magistrates and Justices of Peace in the North are given the power to arrest a person who committed an offence in their presence within the division or district in which they sit as a Judge/Magistrate by themselves or by directing another person to carry out the arrest.—s. 15 CPL, s. 15 ACJL and s. 29 CPCL. Similarly, they may arrest or direct the arrest of a person in their presence who's a warrant of arrest can be lawfully issued by them.—s. 16 CPL, s. 16 ACJL and s. 30 CPC.

PRIVATE PERSONS: Private persons may carry out a lawful arrest without warrant in certain circumstances permitted by law. After an arrest by a private person, the arrested person must be immediately handed over to the police.-- **See section 12(2) & 14(1) ACJL, section 14 CPA, and section 39 CPC. See also DALLISON v. CAFFERY; JOHN LEWIS & CO Ltd v. TIMS.** The list of instances in which a private person may effect a lawful arrest without warrant can be conveniently addressed under three major headings viz.—

Under the ACJL—ss. 12 & 13, a private person may make a lawful arrests in the following circumstances:

1. Arrest of persons who commit an offence triable on information in his presence
2. Arrest of persons whom he reasonably suspects of having committed an offence triable on information
3. Arrest of persons found damaging his property
4. Arrest of persons found damaging public property.

Under the CPL—s. 12 & 13, the circumstances are as follows:

1. Arrest of persons he believes commits an indictable offence
2. Arrest of person he reasonably suspects of having committed a felony
3. Arrest of persons, he reasonably suspects of having committed a misdemeanour by night.
4. Arrest of persons he found damaging his property

Under the CPCL—s. 28, the circumstances are as follows:

1. Arrest of persons he is directed by warrant to arrest
2. Arrest of persons he is directed by justice of peace or a superior police
3. Arrest of person who has escaped from lawful custody
4. Arrest of person required to appear before a court by public summon
5. Arrest of persons committing an offence in his presence that does not required warrant of Arrest.

GABY NOTED AS FOLLOWS: NB- **NWEKE v. THE STATE**- a private person can arrest without warrant any person whom he reasonably suspects of having committed a felony and a person who resists by force an attempt by a private person to arrest him in the exercise of his right cannot claim the benefit of self-defence- **Abdullahi v. Borno Native Authority**

POST ARREST REQUIREMENT BY A PRIVATE PERSON

1. He must proceed without unnecessary delay, to hand over the arrested person to a police officer.
2. Where not possible, the private person must take the arrested person to the nearest police station.
3. The Police Officer to whom the person is handed over must thereupon re-arrest the arrested person.

ASSISTANCE OF JUDICIAL OFFICERS BY PRIVATE PERSONS

Upon reasonable demand, every person is bound to assist a Judge, Magistrate or Police Officer in effecting an arrest or preventing the escape of any person whom such a Judge, Magistrate or Police Officer is authorized to arrest- **S. 34 CPA** NB-Failure to so assist without reasonable excuse and knowledge is a misdemeanour punishable by imprisonment for one year**. 34 CPL.**

LIABILITY FOR UNLAWFUL ARREST BY PRIVATE PERSON: Where the private person fails to comply with the above requirement after exercising his power of arrest, he may render himself liable to **damages for false imprisonment—JOHN LEWIS v. TIMS**. see also **OJO V LASISI**

WEEK SIX

JURISDICTION OF CRIMINAL TRIAL

- **INTRODUCTION**: JURISDICTION IS THE authority a court has to hear a matter. Jurisdiction is statutory i.e. a statute or legislation must confer jurisdiction on the court. Jurisdiction is the authority of the court to decide matters litigated before it. Inherent jurisdiction does not confer jurisdiction on a court to hear a particular matter rather it means by virtue of the jurisdiction conferred on the court by a statute, the power to hear matters and other sundry issues flows from it which are supplementary in nature, therefore a court has the jurisdiction to determine whether it has jurisdiction. Note that parties cannot confer substantive jurisdiction on the court but the substantive law itself.

HOW TO DETERMINE JURISDICTION IN CRIMINAL MATTERS

- The law setting out the jurisdiction---- the constitution or statute
- The charge sheet or information filed by the prosecution before the court

TYPES OF JURISDICTION

- **ORIGINAL** (court of first trial or first instance) and **APPELLATE** (entertain appeal cases)
- **CONCURRENT**(two or more courts having the power over the same subject matter) and **EXCLUSIVE** (the matter can only be entertained by the court alone)
- **CO-ORDINATE** (courts having the same power and level of hierarchy no superiority of one over the other) and
- **SUPERVISORY** (when a court has power to make order of judicial review over the lower court or court below)
- **LIMITED** (the jurisdiction of the court is restrained to the trial of certain types of offences) and **UNLIMITED** (court having wide power to try virtually all types of offences and there is no limit to the level of punishment to be imposed).
- **SUBSTANTIVE** or **SUBJECT MATTER** (it is a statutory jurisdiction) and **PROCEDURAL** (things done or procedures followed in exercise of the substantive jurisdiction). Procedural jurisdiction can be waived but substantive jurisdiction cannot.

NB parties cannot confer jurisdiction on courts.

- **GENERAL** (it is wider/ expansive) and **SPECIAL** (limited to some categories of accommodation)
- **TERRITORIAL JURISDICTION: dealing or connected to a particular territory:** Criminal trials are territorial. This is a Jurisdiction over criminal matters cases arising within the geographical areas or venue of the offence. Generally, trials of offence must be where it occurred.
- Assuming an offence is committed across state, which court will have jurisdiction? All the states will have jurisdiction to try the offence. - Crime partially, substantially or conclusively committed in one state and the suspect arrested in another state.
- An element or some elements of the crime in different jurisdiction. See these laws: S. 12A CRIMINAL Code, 4(2) (b) Penal Code; 11 Criminal Law of Lagos State. S. 93, 96,97, 98 ACJA and sections 58-63 ACJL
- **Every competent court in the state that the person commit the act or omission has jurisdiction even** If the offence comprises several elements or acts: ***Njovens v State, Haruna v State; Osoba v Queen, Okoro v AG (West)***
- Note that in the cases of the FEDERAL HIGH COURT AND the NATIONAL INDUSTRIAL COURT- there is only one FHC & NIC in the country the judicial division is for administrative convenience see Sections 19 and 45 FHC ACT.
- From the administrative convenience stated above the poser that will be appropriate is whether this affects the territorial jurisdiction of the court i.e. when an offence within the jurisdiction of LAGOS NIC or FHC is committed in Lagos whether it must be tried in LAGOS or can it be tried in IBADAN or elsewhere in Nigeria since there is only NIC and one FHC?
- **The answer is Generally Yes, see *ABIOLA V FRN* (treason and treasonable felony is triable in all the divisions of the federal high court because the element of treason is not circumscribed in a particular location).**
- **However, in *IBORI V FRN* and by virtue of section 45 FHC ACT. The jurisdiction of the FHC is territorial since Ibori was being charged for corruption and mismanagement of a particular state and all the elements of the offence which he committed within the confines of Delta State.**
- **Therefore Abiola's case can be distinguished from Ibori's case.**

COURTS OF SPECIAL CRIMINAL JURISDICTION

1. FEDERAL HIGH COURT

- Criminal jurisdiction of the court: **(1)- SECTION 251 (2)** CFRN 1999.**- treason, treasonable felony and allied offences. (The jurisdiction to try these offence is exclusively conferred on the FHC). See TRIBUNAL (CERTAIN CONSEQUENTIAL AMENDMENTS) ACT 1999 with effect from 29th May 1999**. See also s. 7(2) and (4) FHC ACT

On Section 251 (3) it has jurisdiction in respect of criminal causes and matters over which the civil jurisdiction of the FHC is exclusive but it is generally concurrent with the State High Court's

IS THE JURISDICTION EXCLUSIVE IN CRIMINAL MATTERS?

Generally NO, it shares concurrent jurisdiction with the SHC. However, where there is a Criminal subject under 251(1) covered by a statute that confers exclusive jurisdiction on the FHC, the FHC will have exclusive jurisdiction. NOTE: MANDARA V AG FED (1984) 4 SC 8, ABASS V COP (1998) 12 NWLR also note MOMODU V STATE (2008) ALL FWLR PT 447 103-105.

NOTE SPECIFIC STATUTES CONFERRING EXCLUSIVE JURISDICTION ON THE FHC

- S. 26 NDLEA Act confers exclusive jurisdiction in drug matters on the FHC
- S. 32(1), Terrorism (prevention) Act 2011 (as amended) confers exclusive jurisdiction on FHC
- S. 19 (1) (2) Money Laundering (prohibition) Act 2011 as amended confers exclusive jurisdiction on FHC
- S. 8 Counterfeit Currency (Special Provision) Act confers exclusive jurisdiction on FHC
- **In the face of specific provisions, will the state high court have jurisdiction?**
- **NO, the State High Court will not have jurisdiction anymore because of the specificity and exclusivity.**
- **Note that offences under the EFCC act are for both the SHC and FHC concurrently and also offences under the ROBBERY and FIRE ARMS ACT. The two laws were meant to operate as state laws though they are Federal enactments.**

2. NATIONAL INDUSTRIAL COURT

- Section 254 C (5), 1999 CFRN as amended, Note the absence of the word **exclusive**, Contrast s. 254C (1) where the civil jurisdiction was exclusive.
- **Appeals lie to the court of appeal as of right see 254C (6)**
- Note the applicable substantive laws and adjectival/procedural laws- CC, PC, CPC, ACJA & Evidence Act, see Section 254F (2)- contrast with section 33 FHC Act and section 2 & 493 ACJA on the tussle between CPA and ACJA in the NIC.

3. COURT MARTIAL:

Court Martial is exclusively for persons subject to service law and not their privies or relatives. If such persons cease to be subject to service law they cannot be tried by Court Martial. They can only be tried in the court martial 3 **months after retirement** with **reservations** in **MUTINY**, **FAILURE TO SUPPRESS MUTINY** and **DESERTION (in the highlighted offences they can be tried anytime they are caught after their retirement). See the cases of Olatunji V State and Nigerian Air Force V Obiosa**

TYPES:

1. **GENERAL COURT MARTIAL**- President not less than 4 members, a waiting member, liaison officer, judge advocate.
2. **SPECIAL COURT MARTIAL**- president not less than 2 members, a waiting member, liaison officer, judge advocate

- **NB:** for proper constitution of the court, the General Court Martial must be composed **of at least 5 persons**—the president and not less than 4 members. For a Special Court Martial, the president and not less than 2 members—**at least 3 persons.** Section. 129 Armed Forces Act.
- **A judge advocate must be a Commissioned officer and a Legal Practitioner of not less than 3 years post call experience. He is to advise and guide the court on the rules of evidence and the practice and procedure of the court of law.**
- **NB: PERSONS THAT ARE NOT SUBJECT SERVICE LAW CANNOT CONSTITUTE A PANEL OF THE COURT MARTIAL. ALSO Note that a waiting member, Liason officer and judge advocates are ADJUNCT MEMBERS.**

JURISDICTION OVER PERSONS: only persons subject to service law. S. 130 Armed Forces Act; ***OLATUNJI V STATE,*** After ceasing to be subject to be service law- 3 months except mutiny, failure to suppress mutiny and desertion- ***Nigeria Armed Forces v OBIOSA.*** **The court has no jurisdiction over civilians or person not subject to service laws.**

JURISDICTION OVER OFFENCES: They have jurisdiction in both military and civil offences (note the difference between the two) over persons subject to service laws. See sections 45 – 104 AFA for the military offences and sections 105-114 AFA, for the civil offences

- **PLEASE NOTE THAT A POLICE OFFICER IS NOT SUBJECT TO SERVICE LAW. Because he is not a member of the armed forces of Nigeria, he is an only a member of the Nigerian Police Force and they are not subject to service law.**

NOTE THE DIFFERENCE BETWEEN: CONVENING AND CONSTITUTION OF A COURT MARTIAL:

- The interpretation of sections 170(**2**) and 171 of the Armed Forces Act: The provision refer to a court martial and a civil court. Take note of the nature of the offence (military and civil). Court martial cannot reopen a civil offence tried by the civil court. The procedure is that a Court martial should have been the court of first instance then the case can now be heard by a civil court but if its the other way round it (the court martial) cannot revisit the punishment. **The civil court in awarding the punishment would consider the punishment given by the court martial.** The issue is targeted more at the approval of the finding of any disciplinary measures taken against a service man. **See R V JINADU.**

- **The difference between convening which means (to set up a court martial) and constitution (the actual composition of the court martial). NOTE THAT CONVENING POWER IS DELEGABLE AND THE DELEGATION MUST BE IN WRITING. SEE *NAF V JAMES* (2002)18 NWLR PT 798 295)**

CONVENING A COURT MARTIAL

- **WHO CAN CONVENE A COURT MARTIAL: SECTION 131 AFA,:**

a. PRESIDENT,
b. CHIEF OF DEFENCE STAFF
c. SERVICE CHIEFS
d. GENERAL OFFICER COMMANDING,
e. COLONEL,
f. BRIGADE COMMANDER,
g. LIEUTENANT COLONEL OR THEIR CORRESPONDING RANKS HAVING COMMAND OF A BODY OF TROOPS OR ESTABLISHMENTS; OR
h. AN OFFICER FOR THE TIME BEING ACTING IN PLACE OF THOSE OFFICERS.

THIS POWER IS HOWEVER DELEGABLE SEE SECTION 131 (4) AFA AND NAF V JAMES.

- **CONVENING ORDER IS MANDATORY for the court to have and exercise jurisdiction over the offence alleged see the case of *BAKOSHI V CHIEF OF NAVAL STAFF*.**

CONSTITUTION OF A COURT MARTIAL

- A Court Martial shall be dully constituted if consists of the President, not less than 2 other officers and a waiting member, Members not less than 5 years in service. Least rank- major or equivalent rank- s. 131 AFA
- **Presiding judge + members should be of above/ of higher or the same or equivalent rank and seniority to the accused. S. 133(3)(b)- OKORO V NIGERIA ARMY COUNCIL.**
- **APPLICABILITY OF ACJA: SEE 2(2) ACJA WHICH STATES THAT ACJA IS NOT APPLICABLE TO COURT MARTIAL.**
- **Where the court-martial consists of less than seven members it shall not impose a sentence of death. 130(1).**
- **A special court-martial shall have the powers of a general court-martial, except that, where the court-martial consists of only two members it shall not impose a sentence that exceeds imprisonment for a term of one year or of death. 130 (3)**

PRACTICE AND PROCEDURE

- Rules of Evidence and fair trial i.e. the Evidence Act and the Constitution are both applicable
- ACJA not applicable. S. 2(2) ACJA, PLEASE DON'T FORGET!
- AG OF THE FEDERATION OR OF THE STATE CANNOT ENTER A NOLLE IN ANY COURT MARTIAL SEE SECTIONS 174 AND 211 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 AS AMENDED.
- Officer convening shall not be the President or member of the Court Martial. Section 134(1)

COURT MAY SIT IN OPEN COURT OR IN CAMERA

- Evidence are to be taken and witnesses may be called.
- Sentence given is subject to confirmation by the President OR BASICALLY the convening authority. See Sections 137-146 AFA and the case of NIG. ARMY V JAMES. **NB: Confirmation of the findings of Court Martial or other military tribunal is majorly on individual cases even when the officers are charged jointly.**

4. JUVENILE COURTS:

Mainly FOR THE PROTECTION OF CHILDREN AND YOUNG PERSONS

- Juveni**le courts are headed by or presided over by Magistrates. Family courts take the position of juvenile courts in jurisdictions like Lagos. Especially states that have Child Rights Laws** (Family Courts in states with child rights Law/ Act).

WHO IS A JUVENILE?

- Child- an individual less than 14 years
- Young person-above- 14 years but less than 18 years, See the Children and Young Persons Law, **NB: don't mix it with criminal liability (*doli incapax*) in the criminal substantive laws.**

EXCEPTION TO TRIAL BY JUVENILE COURT

- Capital offences (punishable with death or life imprisonment), e.g. charge of homicide or murders. S. 8(2) CYPL.
- Juvenile charged or tried with adults for the capital offence. see section 6(2) CYPL

JUVENILE COURTS HAVE SOLE JURISDICTION- TRY YOUNG OFFENDERS and NO OTHER!

FEATURES

- Court not open to public. 6(5) CYPL except the parties and their Legal Practitioners
- **Identity of the offender not published without leave of court**
- Expression 'conviction'/SENTENCE are not used
- And they are usually put at the Governor's pleasure not stricto senso imprisonment like adults.

DETERMINATION OF AGE: see generally section 264 ACJA

a. Birth certificate- documentary evidence.
b. Evidence of parents- oral evidence or affidavits sworn to by the parent.
   - Medical evidence- expert evidence …R V OLATUNJI; GUOBADIA V STATE, See also section 206 and 207 ACJL and section 208 CPL… Contrast definition of age of a child in Child Rights Act and the Children and Young Persons Law, under Child Rights Act, a person under the age of 18 years

5. CORONER'S COURT

This is a Court of inquest not for trial they are usually presided by Magistrates.

- Who may hold inquest: Every Magistrate. In the state or other appropriate/appointed persons in the area where the dead body is found- see section 3 Coroner's Law, the Magistrate is called a Coroner for the purpose of the inquest.
- **The Coroner cannot sentence but they only file their report to the Attorney- General's office.**
- **Even where nobody is found, an inquest can be held to determine circumstance of death.**

WHEN TO HOLD AN INQUEST: it is held when an individual

- Dies a violent or an unnatural death
- Dies a sudden death caused by an unknown event
- Dies in lunatic asylum, police custody, prison custody, or while executing a death sentence.
- See Sections 4 & 6 Coroner's Law Lagos state.
- The inquest determine compliance with the provisions of the law in the execution.

WHAT CORONER DETERMINE?

- Identity of the deceased
- Time and place of death
- Cause of death and circumstances of the death of the deceased.

KEY POINTS ON THE PRACTICE AND PROCEDURE

- Burial and exhumation
- Taking of evidence during trial
- What to do with findings- note fact finding role- ***Synagogue's Case***
- Duty of AG to commence proceedings
- Power of review by High Court.
- **Please note the effect of a pending criminal proceedings or a proceeding about to be instituted in competent court of law. Coroner's inquest is required to stop.**

POST-VERDICT

- The Attorney General may file a charge based on findings
- Aggrieved party may ask for review of findings of coroner see the Synagogue's case IN LAGOS STATE.

6. HIGH COURT

- IT HAS ORIGINAL CRIMINAL JURISDICTION: See section 272(1), 1999 CONST.
- They may try FEDERAL OFFENCES (Created by Acts of the National Assembly but made to operate as state laws). – see Section. 286(1) 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA and robbery and firearms Act, and EFCC ACT etc.
- It determines APPEALS FROM MAG. COURT- S. 272(2) 1999 CONSTITUTION; S. 28 and 29 Magistrates' Courts Laws of Lagos State.

EXAMPLES OF LAWS OPERATING AS STATE LAWS:

- Section 33 Trafficking in persons (prohibition) law enforcement and administration Act, 2003
- S. 14 Advance Fee Fraud and other Related Offences Act
- Section 9 Robbery and Fire arms (Special Provision) Act cap R11
- S. 27(5) Firearms Act, cap F28
- Although Acts of National Assembly but are triable by the SHC (including High Court of the Federal Capital Territory) and FHC.
- **QUERY**: is the jurisdiction of the high court unlimited? To a certain/greater degree, it has unlimited jurisdiction. See majorly jurisdiction over persons, punishment.

CUSTOMARY COURT, MAGISTRATE COURTS (SOUTH AND NORTH), LAGOS + OTHER SOUTH STATES

LAGOS

- There are no longer cadres of magistrate in Lagos state.
- The hierarchical order has been abolished. S. 93 MCL.
- Therefore, any reference to grades of magistrate is no longer applicable in Lagos State. All Magistrates are empowered to exercise criminal jurisdiction as stated in the law.

- Magistrate Courts in Lagos can try all offences save murder and offence which has maximum sentence of 14 years
- **Other state of the South (cadres are applicable)**

Jurisdiction to trial offence (3 factors to be considered)

Impose maximum sentence. i.e. the maximum sentence that can be imposed by the court.

Where the statute creating the offence makes it to be on summary trial (in the above two instances, consent is not required): **EDUN** v **COP**.: Where he did not have jurisdiction to impose maximum sentence, if the maximum sentence within his jurisdiction will suffice, he need the consent of the accused and the prosecution.

JURISDICTION OF AREA COURT—SEE SECTION 15 AREA COURT EDICT

- **Persons whose both parents belong to a tribe indigenous to any part of Africa and descendants of the person.**
- **Persons whose one of the parents belongs to a tribe indigenous to any part of Africa**
- **Persons who consent to the jurisdiction of the court.**

MAGISTRATES COURTS IN THE NORTH- 4 grades, Criminal Matters- 5 yrs.

JURISDICTION OF MAG IN THE NORTH

- NB: any sentence by MAG in north if not expressly stated to run concurrently runs consecutively. Section 12(2)CPC
- Jurisdiction over offence, see 6th column of appendix A to CPC
- The Statute conferring jurisdiction on the court, See 24 CPC

HIGHER GRADE OF MAGISTRATE: Power to impose sentence if not more than twice the one conferred on him can be imposed. Jurisdiction to punish- highest is a SENTENCE, Higher sentence than empowered by statute- what to do? See Section 257 (1) CPC, Consecutive sentences s. 24(2) CPC (it arises on two or more count)

WEEK SEVEN

INSTITUTION OF CRIMINAL PROCEEDINGS

WHO CAN COMMENCE CRIMINAL PROCEEDINGS?

HOW ARE CRIMINAL LITIGATIONS COMMENCED?

PERSONS AUTHORIZED

a. The Attorney General of the Federation and the Attorney General of the State
b. The police
c. Private persons
d. Special prosecutors

THE ATTORNEY GENERAL OF THE FEDERATION AND STATES

- **The powers of the Attorneys General are derived from the Constitution. Ss. 174(1) (AGF) and 211 (1) (AGS) CFRN as amended. It can be added but cannot be decreased. the powers include:**
- **To institute and undertake criminal proceedings**
- **To take over and continue**
- **To discontinue at any stage of the proceeding before judgment is delivered (power of *nolle prosequi*) ss. 174(1)(c) & 211(1)(c) …**
- **And to delegate such powers as reasonably allowed 174(2) & 211(2)**.

POWER TO INSTITUTE CRIMINAL TRIALS

- The Attorney-General has power to commence criminal trials in any court except Court Martial
- AGF prosecutes federal offences created by the Act of National Assembly. ss. 2, 104(1), 106 ACJA, 174 (1)(a) CFRN. AGS prosecute state offences by laws of the Houses of Assembly see section 211(1)(a)CFRN, **AG Ondo V AGF & Ors, Anyebe V The state and EMELOGU V THE STATE.**

QUERY: can an AGF institute a charge in a SHC without the leave/FIAT of the AGS? YES, see 104 (1) and 106 ACJA, see similar provision on in the EFCC Act. This power is however restrictive to prosecution of offences created by an Act of NA, it does not so apply with respect to state offences created by the SHA of each state. – SEE equivalent provision under s. 69 of the ACJL

POWER TO TAKE OVER PROCEEDINGS

- **Attorneys General can take over proceedings from any authority or person at any stage before judgment is delivered ss. 174(1) (b) & 211 (1) (b) CFRN.**
- The AGF and AGS have the discretion/power to issue legal advice to the police or any other authority. Ss 105 ACJA 74 ACJL. But there is need to avoid abuse of court process. See AMAEFULE V STATE, Edet v State (1988) 12 SC (pt.1) 103. **Please note that NB: AG of the State cannot enter nolle in respect of a case instituted by the AGF.**

Side class take note: Nolle is usually entered when it is discovered that it will be foolish to continue when there is no sufficient evidence to continue the case or on want of evidence simpliciter. -- Kindly note that the equivalent of the power by the police is power of withdrawal under the criminal procedure laws though there are consequences on the police and the accused person himself.

- **CFRN enjoins the AGs to be considerate of some conditions before entering a power of nolle. The constitution provides that the AGS in the exercise of their powers should have regard to public interest, interest of justice and abuse of court processes. See 174(3) and 211(3) CFRN respectively.**

- **The AG need not adduce any reason while exercising the power to takeover. but when in the exercise of power to take over, if the case in question is pending in a court and he wants to continue in another court, he must discontinue in the court of first instance before commencing to the subsequent court to avoid abuse of court process. – see EDET v STATE.**

POWER TO DISCONTINUE *(NOLLE PROSEQUI)*

- Power of nolle prosequi is the AG's power to discontinue proceedings any time before judgment. Ss. 174(1)(c) a& 211(1)(c) CFRN, 73(1) CPL, 71 ACJL, 107 ACJA, STATE V ILORI.
- The power can be exercised orally or in writing. State v Chukwurah (1964) NMLR 64
- He need not give reasons for entering a nolle prosequi, State v Ilori

EFFECT OF NOLLE PROSEQUI

- It amounts to a mere discharge not an acquittal. Ss. 73(3) CPL, 71 (3) ACJL, 107 (4) 108 (5) ACJA, Clarke V AG Lagos state.
- There must be an incumbent AG before power of nolle can be exercised. AG Kaduna State V Hassan (SG), State V Obasi (DPP).
- Compare power of nolle with withdrawal under ss. 75 CPL, 73 ACJL, 108 ACJA.
- **If withdrawal is made before opening of the defence, it is a discharge**
- **If made after the defence has opened his case, it is an acquittal**
- **The court may order acquittal even before the opening of the case of the case where it just and equitable to do so**
- **Cost may be awarded against a private prosecutor where he withdraw from the case.**

Nolle is unique because;

- It is not exercisable in the event of vacancy in the seat of the AG KADUNA V HASSAN.
- It is personal to him.

NB: in the event of absence of an AG, if the prosecution so which to discontinue a case, the best alternative is application for withdrawal. See 73 ACJL, 108 ACJA and 75 CPL Reasons must be adduced for court to grant the withdrawal subject to the discretion of the court to grant. However, the leave or consent of the court is not needed to bring the application to withdrawal.

QUERY: can a nolle be entered when granted by an acting AG but the AG was withdrawn prior to effecting the power of the nolle? The nolle will still be valid, the officer with the instrument can tender it in court. It valid irrespective of the time frame provided the date is included. The reason being that the delegation has been completed, signed and sealed. It is akin to a judgment already written and signed before, removal, retirement or death of the judge. The scenario would have been different, if he has just put the officer on oral notice prior to his removal.

- Compare the power of nolle with withdrawal?

POWER TO DELEGATE

Delegation of power

- The AG has authority to delegate his powers to law officers in his department or private legal practitioner ss. 174(2) & 211(2) CFRN 1999 as amended, 104(2), 106 ACJA, State v Obasi. He can delegate power to institute, to take over and while in office power to discontinue.
- Delegation may be express or implied. See Ibrahim v the State (1986) NWLR (pt. 18) at 687, AGF v ANPP 2003

Express Delegation: it must be in writing by the AG conferring power on the law officer. It is not in every case that a gazette if issue, what is important is that it is written doe, e.g the power of delegation under the CFRN. The gazette is more specific that the later.

Implied Delegation: it is exercisable in the absence of the AG with respect to all the powers save power to discontinue. Not necessarily to be in writing. It is inferred from the circumstances surrounding the nature in which the power is being exercised.

THE POLICE

- The police officer has power to prosecute criminal cases in any court in Nigeria ss. 4 & 23 Police Act. Cap P.19 LFN, 381(b), 268(2) ACJA, OLUSEMO V COP (1998), FRN v OSAHON & ORS 2006
- The power is subject to that of the Attorney General to take over/discontinue. sections 174(1)(b) (c), 211 (1)(b)(c) CFRN 1999 as amended.
- The power of the police withdraw under 75 CPL, 73 ACJL, 130 CPC, 108 ACJA
- What is the effect of the withdrawal? 108(3) & (5) ACJA.
- It will be discharged when the prosecution is entering or during the cause of presenting their case.
- After the defendant has open his case, it will be an acquittal.
- The court may out of discretion grant acquittal in situation in (1) above.
- it depends on the stage of the proceedings
- Must give reasons for withdrawal /court consent, Before and after defence 73(a) (i)(iii) ACJL, 75 CPL.

PRIVATE PERSONS

- A private persons (not working in the ministry of justice, not law officers or otherwise, it include those that are legal practitioners) can commence criminal proceeding under 59,342 CPL, 254 ACJL, 142(2) CPC, 383,384 ACJA, see FAWEHINMI V AKILU (1987).
- A PP may prosecute where it is a case of serious public concern but the AG is not showing willingness, he may approach the AG for a leave to prosecute.
- He must seek the FIAT of the AG to prosecute charge of such information.
- The AG must endorse such information
- Refusal to endorse may attract mandamus
- Private persons may sign and must enter into a recognizance. 254(a)(b) ACJL, 384 ACJA.

PRIVATE PERSONS AND PRIVATE LEGAL PRACTITIONER RIGHT TO PROSECUTE

- Differentiate between private person and private Legal practitioner's right to prosecute
- Private person on authority of the AG can file information and sign name 254 ACJL, 384 ACJA
- Private legal practitioner is authorized by the AG to prosecute cases on behalf of the state. Ss. 381(c) ACJA, 56 FHC Act, 98 FCT HC, ACT.
- A private legal practitioner requires AGs fiat to step into his shoes. Nafiu Rabiu V State.

NB: where an AG commissioned a private legal practitioner to prosecute a case, he steps into the shoe of the AG and the case is funded by the state money.

SPECIAL PROSECUTORS

- Statute creating offences provides for persons to prosecute them. E.g ss. 12(2) and 13(2)(a) EFCC ACT, 7(1)(b), 8(2)(a) NDLEA Act, ICPC, S. 180 CEMA
- Adultery under the penal code, husband will be prosecutors ss. 387,388 PC, 142 CPC

NB: a wife does not have prosecutorial power.

- Factory offences by inspector of factories. S.66 of Factories Act.

MODE OF INSTITUTING CRIMINAL PROCEEDINGS

MAGISTRATE COURT- 3 MAIN METHODS

1. By bringing a person arrested with or without warrant upon a charge. S. 78(b) CPA, 78(1) & (2) ACJL, 110(a) ACJA, STATE v okegbero 1980. It will include name of the accused persons, offence committed and the area of commission

2. By laying complaint (an application either orally or in writing that an offence has been committed. It drafted by the magistrate in the north) ss. 77(a), 78 a CPA, 143d CPC, 109a. 110 a ACJA
3. By filling a FIR(First Information Report a document in writing containing allegation of an offence, name of the offender, time and place of commission of the offence and it is filed by the police) in a magistrate court (North) 143b CPC, 112 ACJA. It is equally applicable in Area court.
4. Trial by complaint is not recognized in Lagos state except by charge ss. 78(1) ACJL 2011
5. In other southern state, you can lay a complaint or charge s. 78

AREA COURTS AND CUSTOMARY COURTS

1. In Area courts commencement may be by FIR and by complaint as in the North and FCT Magistrate court

Customary court

2. By bringing an accused arrested without warrant upon a charge
3. By complaint as obtainable in the MC in the south, North and FCT.

FIRST INFORMATION REPORT

- FRI- the commonest way of commencing proceedings in magistrates' court in the north ss. 117, 118 CPC
- The police reduces the complaint into the prescribed form and takes it ot court 112(6) f (7-11) ACJA
- If he admits his guilt he will be convicted accordingly, ss. 157(1) CPC. If he denies it, the Mag will draft a formal charge for trial and sign. (Mag draft charges in the north, the police officers in the south)
- If he has jurisdiction, he will try the offence, where he short of jurisdiction, he direct that the offender be tried in the court that have jurisdiction. (he determines whether there is a prima facie case of the accused, i.e to determine whether there is evidence linking the accused to the offence not to determine his guilt) see Harunami v Borno NA
- NB: admission will be recorded in the exact word used by the accused.

STATE HIGH COURT

1. By filling information with the consent of the High court judge. Ss. 77b 340(2) CPA-- southern state to include lagos.

Content of the information
name of accused
particulars of the offence
court of trial/ division
prosecutions
Victims of the offence.

- Consent of the HJ is mandatory in filing information, AGF V Clement Isong, state V Akilu & Anor.
- CPA is silent on the procedure to adopt when applying for leave to file information
- S. 363 allows recourse to English rule. It may be by application ex-parte supported by an affidavit or letter to the high court judge.

Documents to accompany the application

- Written application accompany with
- - a copy of the proposed charge
- Proof of evidence/ unedited statement of witnesses that they will be available at the trial
- List of exhibits
- Previously made application if any see GAJI V STATE

2. By preferring a charge with leave of court ss. 185 b CPC common in the northern state
3. By laying complaint before the High court specially for non-indictable offences. No consent is required . ss 77b CPA, 143 d CPC, DPP v Aluko 1963 North and south
4. Complaint may or may not be in writing or oath

5. Exhibition of information by AG-south

HIGH COURT OF LAGOS & FCT

- Proceedings are commenced by information in LHC 77b i-iii ACJL complaint is no longer recognized in Lagos state both MC and LHC
- In the FCT court, commences is either by information or a charge 109 ACJA
- Common to both, consent is no longer required to file information or charge.

NB: application for leave to file an information or charge may be by letter, recital or application… EX PARTE

FEDERAL HIGH COURT

- ACJA now replaces CPA in FHC Proceedings – 2(1), 493 ACJA
- Offences are triable summarily, ss, 33(2) FHC Act, 86 ACJA, Uwazurike v AG Fed 2013

Query: FHC is a court of summary jurisdiction, ACJA recognize commencement by Information or preferring a charge. Reconcile? See 33 of FHC Act LFN cap F12, the law establishing the FHC has prescribe ways of commencement of proceeding is by CHARGE, the ACJA will not alter the former procedure. This is the position under the former CPA;

33. (1) Subject to the provisions of this section, criminal proceedings before the Court shall be conducted substantially in accordance with the provisions of the Criminal Procedure Act, and the provisions of that Act shall, with such modifications as may be necessary to bring it into conformity with the provisions of this Act, have effect in respect of all matters falling within the jurisdiction of the Court. (2) Notwithstanding the generality of subsection (1) of this section all criminal causes or matters before the Court shall be tried summarily.

- Consent is not required to file charges in the FHC
- Purpose of the FHC Practice Direction 2013? It will hasten prosecution of certain offences, they are used to facilitate proceedings in the FHC. For which offences? Terrorism, kidnapping, rape, trafficking in persons, corruption and money laundering cases. etc. NB: Rape is an offence under the CC, in this scenario, it is related to rape emanating from the offences mentioned.
- Persons authorized to prosecute in FHC? AG Fed and law officers in his office or people authorized by the AG etc. 56 FHC Act.

SUMMARY Trial?: it does not include all the other requirement for information to file a charge. E.g, there is no need to serve proof of evidence. Etc. no wasting of time, cases are decided side lining some procedures.

LIMITATIONS OF TIME IN CRIMINAL PROCEEDINGS

- Generally, time does not run against an offence once committed unless the statute creating it provide otherwise
- There are some exceptions to this general rule;

1. Treason/ Treasonable felonies- 2 years- s. 43 CC
2. Sedition- 6 months, s. 52(1) CC
3. Custom Offences- 7 years- s. 176(3) C&EMA
4. Defilement of girl under 13- 2 months- 218, 221 CC
5. Criminal complaint by private persons- 6 years, 92 ACJA
6. Military offences except mutiny- within 3 months after retirement, 169(1)AFA
7. Time does not run against conspiracy, **R v Simmonds** 1967 51 CAR 316. Main offence barred e.g treason.
8. Public officer protection Act.

- Time does not run against offences committed by public officers. Ss. 2 (a) POPA, **Yabugbe v COP (1992) 4 NWLR (pt 234) 152 at 170, AGF V AG Bayelsa 2013 All** FWLR(pt. 699), S. 2 of POPA applies only to civil proceedings.

WEEK 8

WHAT IS A CHARGE?

A document containing the statements and particulars of offence or offences with which a person is accused and tried in a court of law. Section 2 CPL, Section 1 CPC, Section 371 ACJL and Section 494 ACJA.

NB: in the North, heads of charges are referred to as charge while in the Southern states, it is called count.

In a Summary trial: there is no need for consent before the magistrate tries. It is a short OR SUMMARY TRIAL; there is no much formality for commencement, no too many documents, since the Magistrate is aware of the charge but not the evidence. Also; no knowledge of potential witnesses and the nature of evidence are to be given or filed.

Trial on information: there is need for consent, there is proof of evidence, and the accused is more likely to know the evidence to be put against him, See **UWAZURUIKE V AG FED (2013), Section 375 ACJL and 494 ACJA, See Section 292 ACJA**

The dichotomy is on the knowledge of the proof of evidence.

INFORMATION

A comprehensive document which guides the court in the prosecution of the accused during trial

CONTENT OF INFORMATION

- Charge, statement of offence and particulars
- Proof of evidence:

See 379(1) ACJA

WHO CAN FILE A CHARGE

MC South, Police or Law officer, 78(b) CPL, 77(1)(a) ACJL and 109 ACJA

MC North, Magistrate, s. 160 CPC and IBEZIAKO V COP

Abuja, Magistrate. 109 (a) ACJA

Charge is drafted on existence of a prima facie case

There are exceptions where police can prefer charge without a FIR and will be signed by them not the magistrate.

WHO CAN FILE INFORMATION?

High court south, North or FCT Abuja FHC

- AG. Law officer. Police officer and private prosecutor
- S. 174 1), 211 1) CFRN, ss. 341 and 343 CPL. 78 2), 253 ACJL 109 b) 381 ACJA: 117-119 CPC
- FRN v OSAHON
- AGF for Abuja and FHC

PROSECUTORIAL AUTHORITY

a. THE STATE (All HC excluding Lagos) and THE STATE OF LAGOS (Lagos) S. 249 ACJL, 268(2)(3) ACJA

b. FEDERAL REPUBLIC OF NIGERIA {FRN}(FHC and HC FCT AND WHEN THE HC is prosecuting federal offences where ACJA is applicable) **JOLLY NYAME V FRN…**

c. COMMISSIONER OF POLICE {COP}- MCs, STATE OFFENCES

d. INSPECTOR GENERAL OF POLICE (IGP) (Federal offences in MC under the ACJA)

- Any difference between prosecutorial authority and the drafting authority? Yes

PARTIES

COMPLAINANT not CLAIMANT

Law officers

- AWOBUTU V STATE
- How Law officer signs?
- Note the delegation of powers to officers in AG's department. 174(1), 211(1) CFRN, 252(1) ACJL and 494(1) ACJA
- see IBRAHIM V STATE. 150 CPL deals with charges in the MC while 338(2) deals with information in the High court.

USE OF STATUTORY FORM

- Forms in the schedule may be used subject necessary modifications- second and third schedule to the CPL, ACJL … S. 200 CPC, 338(2) CPL 146, 251(2) ACJL, s. 193 & 377 ACJA
- NOTE DRAFTING IN THE FHC: s. 33 FHC Act
- Note difference in format between a charge and an information. S. 380 ACJA.

DRAFTING IN FHC

- Applicable law is ACJA, s. 33(1) FHC
- Summary trial in FHC s. 33(2)
- Applicable law to summary trial in the ACJA is s. 193
- Charges to be as in the MC in the South- 2nd Schedule.

DRAFTING LANGUAGE

- Ordinary language =, no technical terms except necessary
- Terms used to be in the sense attached to them in statute creating the offence
- S. 152(3)(4), 153, 154 CPL
- S. 148, 149, 150 ACJL; 378(1)(c) ACJA

RULES OF DRAFTING

1. RULE AGAINST AMBIGUITY: the content of the charge must not be equivocal, it must be clear enough as to contain all the particulars to put the accused/ defendant on notice as to the offence complained against him. It attacks the individual count or head of charge. It must be taken one after the other. 151, 152 and 153 CPL

A- Accused persons

D- Date: it must be stated.

NB: on or about is used only in cases of conspiracy due to its nature. Don't use it, ellipses is better of or the date of the exam.

P- Place of commission of the offence: take note of the magisterial district or judicial division. The division must be stated.

O- Offence: note the need for explicit in the description of offences in the North as opposed to being concise in the south.

P- Person against whom it is committed: if there is a named person put it. If not leave it.

S- Section of the offence committed: it is only the punishment sections that must be used **and the descriptive word to use in drafting charges is punishable under**. **For statement of offence while drafting an information, the word to be used is contrary to.**

Effect on Non-Compliance: whether it invalidate the charge or set aside conviction depends on whether the error is fundamental or not. See OGUDU v STATE, OGBOMOR V STATE.

2. RULES AGAINST DUPLICITY: it means two in one. Two offences in one count or head of charge. It similarly relates to a count or head of charge.

Meaning: no count or head of charge to contain more than an offence except in permitted circumstances. S. 209 ACJA

Exceptions:

1. Statutory exception.
2. **General deficiency of money over a period of time but to one person and not for property.** S. 152(2) CPL, 203 CPC, 148(2) ACJL, 197 ACJA. Note, there will be a change in the draft of the date and it will read, between……and …… date
3. Overt Acts in treason- 37, 38 and 41 CC Adoption of statutory forms. See WILLIE JOHN V STATE. S. 150, 463 CPL, note the situation between house breaking and burglary.
4. Offences defined in the alternatives. S. 356(2); 406 cc, 50 CCLL
5. Identical offences in the same transactions

Effect: it will not invalidate the charge save where it will occasion miscarriage of justice. See AWOBUTU v STATE

3. **RULES AGAINST MISJOINDER OF OFFENCES**:

Not more than one offence should be in a charge sheet. i.e. ought not to have join the offence. Every distinct offence for which any person is accused shall be charged separately. A separate charge sheet for each offence to be charged

Exception- 157-161 CPL; 213-216 CPC; s. 153 ACJL; 209 ACJA.

Offences of the same or similar character. 158 CPL, 211 ACJA

-- Acts or omission that constitute an offence falling within two or more separate laws. E.g Road Traffic Law and Criminal Code (causing death by dangerous driving and manslaughter); Federal Highway Act and Penal code or Criminal Code Sect 212 ACJA… 20

4. RULE AGAINST MISJOINDER OF OFFENDERS:

Every offender must be charged separately.

Exceptions

4. Where more than one person committed same offences. 7, 8, 9 CC i.e participate criminis committed in furtherance of common purpose. there must be proximity of time and place, continue of action, there must be common purpose.
5. Where more than one person commit different offences in the course of the same transaction. The offences will be in different count
6. It relates to the entire charge sheet. Only offender in an action may be joined. It relates to the participate criminis
7. offences of receiving stolen property

NB: note the use of that you in drafting. It is applicable for MC south and FHC. Not applicable to High court in the north. FEDREAL HIGH COURT: court of summary trial, it is a one paragraph drafting that start with that you followed by ADPOPS

WEEK 9

AMENDMENT OF CHARGES

Amendment can involve substitution…

Arraignment means bringing an accused to the court to listen and plead to the charge against him. Please note that criminal trials start with arraignment and a charge may be served with summon depending on the court. Where an accused defaults answering to the summon, the court issues a warrant of arrest.

Amendment before arraignment: the prosecution can amend a charge between issuance of warrant/ summon and the date of hearing. He may even bring an entirely new charge. It can be made orally, and the court will order that the plea of the accused be taken on the new charge. NB: any drafting authority can amend and the justice of the case as well. **NB: a plea is taken only in the dock, no need for fresh plea in pre-arraignment.**

POST AMENDMENT PROCEDURE

- Prepares the charge or information once more, filing the information, after the leaf has been given by the court. The new charge will be read over to the defendant and his fresh plea be taken 217(1) ACJA, 208(2) CPC
- The court ask if he is ready to be tried on any new charge, 218(1)ACJA, 164(1) CPL, 156 (1) ACJL. No provision to this point in the CPC. Note that this is related in a court of summary jurisdiction like the MC and FHC not applicable in the HC.
- The court shall endorse the note of amendment. 218(2) ACJA
- The prosecutor or the accused shall be allowed to recall or resummons any witnesses. S. 165 CPL, 211 CPC, 157 ACJL, 219 ACJA
- Not the obligation of court to accused of this option if unrepresented by counsel but if represented, no obligation
- ADISA V W.G (W.N)

EFFECT OF FAILURE TO COMPLY WITH PROCEDURE AFTER AMENDMENT

8. Trials will be null and void
9. In some cases on appeal a retrial will be ordered if justice of the case demands.
1. Amendment after arraignment.

Procedure or Bringing application to amend and what will the court do thereafter?

10. Defect may be minor or fundamental
11. Minor if deals with typographic errors or minor omission
12. Amendment may come before or after plea of the accused- with the attendant consequences- s. 162 CPL, 207 CPC, 154 ACJL, 216 (1) & (2) ACJA (BEFORE) s. 163

Mode of Application: is it oral or in writing by formal application?

No formal application is necessary, s. 155(3) ACJL, 208(1) CPC, 163 CPL, 216 (1) ACJA.

NB: check Rule 37of the RPC.

NB: under ACJA and ACJL, no need for leave to prefer an information, hence no need for pre-arraignment of amendment.

In order part of the south it is needed. In area where leave was sought before filing, if you are substituting in pre-arraignment, you need leave but after arraignment, there is no need, the normal processes will be used.

WEEK 10

BAIL

SIMPLICITER, bail is a temporary release of the accused from custody on condition that he attend court on days required of him.

Generally, bail is a constitutional right of the accused.

Also, bail is a temporary release of the accused person pending trial or investigation upon the condition that he will be attending the court or police station at his comfort on the dates fixed for hearing of the appeal.

TYPES OF BAIL

1. Police bail
2. **Bail pending trial or court bail**
3. Bail pending appeal

Simply put, temporary release of an accused person from custody on the condition that he would attend the court on the days required of him

POLICE BAIL

The accused while in police custody may be released on bail free of charge

The police bail is granted pending conclusion of investigation and before arraignment. It terminates at the commencement of trial. See Section 35 of the Constitution of the Fedearl Republic of Nigeria.

BAIL PENDING TRIAL OR COURT BAIL.

Bail pending trial or court bail is granted only by the court after proceedings have commenced. It is a constitutional right as to freedom from restriction from right of movement.

Application for bail pending trial can only be made after suspects have been arraigned in court. If the suspects are on police bail before, upon arraignment the bail lapses. Suspects or counsel have to apply for bail pending trial.

Usually it depends on the court. It may be made orally generally in a magistrate court.

It also depends on the nature of the offence. No wonder offences are grouped into different types.

CLASSES OF OFFENCES

a. Misdemeanour/ simple offences: according to Section 3 of the Criminal Code defines and divided offences in to three: namely, felonies, misdemeanours, and simple offences. A felony is any offence which is declared by law to be a felony, or is punishable, without proof of previous conviction, with death or with imprisonment for three years or more. A misdemeanour is any offence which is declared by law to be a misdemeanour, or is punishable by imprisonment for not less than six months, but less than three years. Therefore all offences, other than felonies and misdemeanours, are simple offences.

For this purpose, the court shall grant bail. i.e. they are bailable offences. 118(3) CPL, 158 ACJA, 115(3) ACJL unless there is good reason not to do so. 340 CPC

b. For felonious other than capital offences bail is at the discretion of the court. 115(2) ACJL, 162 ACJA, 118(2) CPL, 341(2) CPC. Manslaughter will be part of the felonies because it does not carry death penalty.

c. For very serious offences such as capital offences, bail shall not be granted. 35(7)(a) CFRN, 341(1)CPC, except by a High Court judge 118(1) CPA, 115(1) ACJL.

NB: A judge of the HC may grant bail for capital offences under the ACJL upon special circumstances

Magistrate may grant bail to accused persons in all other cases except capital offences. High court is a court of unlimited jurisdiction, can grant bail in all cases even capital offences.

MODE OF APPLYING FOR BAIL

In the Magistrate Court, bail can be applied for orally even in the high court until the case of ABIOLA v FRN.

No provision in statutes as to mode of application for bail both in the Magistrates and High Court. For all CPL states, 363 CPL is recourse to the English Rules of Practice and procedures therefore (Summons + affidavit) are used, Section 262 ACJL and Section 35 High Court Laws of Northern Nigeria including the ACJA.

Application may be made orally for simple offences or misdemeanour. See ABIOLA v FRN. In practice, application is usually by summons or motions supported with affidavit.

In South and Lagos= Summons supported by Affidavit

In Northern State, some of the states take any of the method, for the purpose of Law school and Abuja, Motion or Summons can be adopted. It is advisable to come by way of Motion in the North.

When applying for bail for two accused persons, you are to draft two summons and two different affidavit to the court. The reason is clear the facts to be averred differ or may differ. It is safer to have two applications and different affidavits a matter of proper practice and due diligence. Therefore do not lump two accused persons on the same application. Even if it is a motion as obtainable in the north it requires to separate it is better. For the purpose of bar part two.

Though the hearing of the application may be consolidated.

But if it is a police bail, a written application for a bail is enough for both parties.

Where there are four applicants at the same trial or charge on the same sheet and application for bail are in respect of two, all the names of the accused must be put on the application paper. Signify defendant/ applicant in front of the ones in which application for bail is being made and the name of the other two are to be designated as only defendants.

Where there are two or 4 accused persons applying for bail, never use the same application paper for them. Different application and different affidavit. Each summon/motion must signify the name of the accused person applying.

Oral application in respect of simple offences may be made at the Magistrate Court generally. At the High Court and Federal High Court it may be allowed because there is no express provision of the law stating the mode but as a matter of practice it is required to be in writing. ABIOLA v FRN.

BAIL APPLICATION AFTER REFUSAL BY MAGISTRATE COURT

No express provision in the statutes on procedure to adopt but use an application or a summon depending on the jurisdiction

Application is made to the high court by way of summons supported by affidavit attached with the following;

a. Certified True Copy of Magistrate's ruling refusing the bail. SIMIDELE v COP, STATE V UWAH, 123 CPL, 119 ACJL.
b. Certified True Copy of the charge against accused.

Application for bail to HC after Refusal is not by way of Appeal. It is a simple application. It is the duty of the HC to do it. Section 119 ACJL It is also by way of Summons supported by affidavit.

FACTS TO BE AVERRED:

a. Same has been made to the MC and refused
b. Also in the North, Motion supported by the affidavit and the two documents mentioned above.

NB: that application to the high court is not in respect of a substantive suit, the substantive suit is still pending at the MC.

Take further notice that: an address can also be added to the or attached to the affidavit or application for the counsel to explain the content of the bail or the reasons why the court must grant the bail.

FACTORS GUIDING GRANT OF BAIL

The fact that the application was made is not automatic that the bail must be granted. It depends on certain factors. They are condition that the court must consider before granting bail. 341(2) (a) (b) (c) CPC and 161-163 ACJA

Most of the conditions are laid down in decided cases RATHER than statutes. See BAMAIYI V STATE, ABACHA V STATE (2002) < FAWEHINMI V STATE (1990), DOKUBO-ASARI V FRN (2007).

1. Nature of the offence/ gravity of punishment: the offence committed and the punishment attached. The high the punishment, the most likelihood that the court will be reluctant to grant bail. E.g. kidnapping.
2. Availability of the accused to stand trial: the likelihood of the accused not being sure of attending trial, the reluctant the court will be in granting bail.
3. The quality of evidence against the accused: the more likelihood of the accused being convicted for the offence charged, the chances of refusal for the grant of bail. The court may however be inclined to grant bail if the quality of evidence in the proof of evidence is poor.
4. The likelihood of the accused committing another offence while bail. R v JAMMAL: it occur also in situation where there is a pending bail during the duration of which he commit the present offence on which application for bail is being brought.
5. The criminal record of the accused person: a first offender may be favoured than a recidivist offender. Bail is likely to be granted to the former than the later. Evidence of previous conviction is a strong proof on criminal record.
6. The likelihood of the accused interfering with investigation/ prosecution of the case: where from the nature of the case, the accused is highly influential to halt the process of justice, the court may refuse bail.
7. Prevalence or rampancy of the offence. **Felix v state (1978) LRN 308, AJUDUA v FRN**
8. Detention for protection of accused person: if he is released he may at danger or in imminent danger.
9. Medical ground or ill-health. **Ani v State, Fawehinmi v State**: illness that is grave and the medical facilities in the prison is not adequate to take care of the ailment. See section 161 (1) (2) (a) ACJA

Note the factors are not exhaustive. Other factors may be formulated depending the circumstance of each case.

Take further notice that factors are different from the terms of the bail: the terms are discussed when the court has decided to grant the bail. The court will have to determine on what terms will the accused be granted bail and on what security.

TERMS OF BAIL: It only come up when the court has exercise his jurisdiction to grant bail to the accused persons. They are conditions or security required by court or police for granting bail. Ss. 116 ACJL, 120 CPA, 349(1) CPC, 165 ACJA. Bail must not be refused just to punish the accused person. (Because it's a constitutional rights) therefore the personal grievances of the judge or court against the accused is not a ground. DOGO V COP (1980). The terms must not be excessive or onerous. EYU v STATE. 116(1) ACJL, 125 CPL, 344 CPC.

TERMS OF BAIL

1. Self- Recognizance- surety or bond not required. Can be undertaken by the accused himself. Putting into play the standing (it can be subjective) of the accused in the society. His integrity and position is considered not popularity. He cannot ordinarily jump bail. **It is not Self-Recognition**

2. Execution of a bond for a fixed sum- this a kind of undertaking to be executed. No physical cash is paid at the stage of the undertaking. It is only made in the event of failure to appear (if he defaults, no money has been collected or deposited) the accused may also do this. The sum of the money to be in the bond will be executed. Accused finances must be checked if he is the one executing the bond. Therefore, money may be deposited in lieu of bond: money is deposited. In the event of failure to appear, the money deposited is forfeited to the state.
3. Bond with surety for a specified amount: bond with one or more sureties undertaking to pay due sum upon default. Someone stands for the accused with a specified sum. 118 ACJL, 122 CPL, 345 CPC, 167 ACJA.

Other conditions may be added. E.g. that the surety or sureties must have title deeds or land or properties in certain area of the country also deposit of passport photographs etc.

Surety: a person standing for the assurance of the presence of the accused on the date required for his trial in the failure of which he may hold to ransom. Undertaking that certain sum of money will be paid upon the default of appearance of the accused person.

NB: no physical sum is paid at the point of execution. Other conditions like, photographs, International Passport, Title Deed etc of the surety may be demanded

4. Deposit in lieu of Bond: actual money will be deposited. The money remains intact until the accused jumps bail. If he didn't jump bail, then the money at the end of the day is returned. 120 CPL, 347 CPC. See the amount of money treated under ACJL 116(3) (4) and 165(2) and (3) ACJA.

REGISTRATION OF BOND-PERSON: under the procedural laws there are requirements for registration.

- In Lagos state and FCT, individuals or corporate bodies can apply to be registered and licensed as bond-persons to legally stand as sureties for applicants. 138(1) ACJL. It is different from private persons
- There are requirements for registrations. 138 ACJL, 187 ACJA generally
- Must be persons of integrity and unquestionable character among other things. 138(6) ACJL, 187 (6) ACJA
- See Bond Person Regulation Law 2011.
- CJ of Lagos State, Federal High Court and FCT are empowered to make regulations for licensing of bond- persons. 138(1) ACJL, 187(1) ACJA
- There are consequences for acting as sureties without registration. 138(4) ACJL and 187(3)ACJA
- Can a woman be a surety? 118(3) ACJL, 167(3) ACJA. Yes under the ACJL. Before this law came into existence, women were not eligible to be sureties. **In all or other jurisdictions the constitution suffices as a proof against discrimination.**

REVOCATION OF BAIL

WHEN WILL A BAIL BE REVOKED?

1. If an accused on bail by magistrate is indicted for an offence on information at the High Court. See Sections 132 CPL and 127 ACJL. **Take notice that the information indicting the accused for the offence must have been filed at the High Court before the bail can be revoked. This indicates that the Magistrate Court has a wind of it and for the pendency of the suit at the HC the MC will revoke the bail granted.**
The initial bail must be in respect of a Misdemeanour at the Magistrate Court and the subsequent indictable offence committed must be at the High Court.
2. Failure of the accused to appear in court without good reason. (Sickness, bereaved,) Section 184 ACJA, 139 ACJL.
3. Where surety applies to be discharged. (the surety can no longer guaranty the presence of the accused or the availability) SECTIONS 19 ACJL, 134 CPL, 351 CPC, 177 (1) ACJA. **ONYEBUCHI V FRN (2009)**
4. WHEN THE COURT SUO MOTU

Therefore, bail is not ordinarily revoked except the court has a good reason.

ETHICAL ISSUES

1. A lawyer cannot stand surety for his client in criminal matters 37(1) RPC
2. A prosecutor should not supress facts that he knows will be favourable to the accused person's case 37(6) RPC

Note the difference between holding charge and remanding order:

See the case of Lufedaju v. Johnson (2007): the Supreme Court said remand order is legal in Nigeria.

Section 293 ACJA and Section 264 (1) ACJL

DIFFERENCE BETWEEN HOLDING CHARGE AND REMAND ORDER.

HOLDING CHARGE: the MC does not have jurisdiction for the offence

REMAND ORDER: the MC have jurisdiction to entertain the offence and the power to grant remand order.

NB: sections 264(1) ACJL and 295 ACJL. In Holding Charge, the order is made indefinitely while in the remand order under the ACJL it last only 30 days renewable for another 30 days.

In FCT, the MC in the FCT the remand order last 42 days. 14 days renewable at an other 14 days and for the last 14 days. See LUFEDEJU V JOHNSON (2007) 3 SC Part 2 at 134/ ALL FWLR PT 871 at 1532

WEEK 11

CONSTITUTIONAL SAFEGUARDS TO ENSURE FAIR TRIAL OF A DEFENDANT/ACCUSED PERSON

Constitutional safeguards are placed to ensure the fair trial of a person brought or about to be brought before a court of competent jurisdiction. These rights are circumscribed in chapter 4 of Constitution of the Federal Republic of Nigeria as amended. A legal practitioner should be well acquainted with these rights so as to ensure the proper conduct of the case. **FAJEMIROKUN v COMMERCIAL BANK (CREDIT LYONNAIS) NIG. LTD {2009}.**

Fairness of any trial is fundamental to the administration of criminal justice as it enhances judicial integrity and boost societal confidence. Breach of either of these rights may invalidate a trial irrespective of how well conducted.

LIST OF CONSTITUTIONAL SAFEGUARDS

a. Right to fair hearing
b. Right to be informed of the crime alleged
c. Right to adequate time and facility to prepare for defence
d. Right to counsel
e. Right to examine prosecution witness
f. Right to interpreter
g. Right to be presumed innocent
h. Right to be tried only for an offence known to law
i. Right to silence
j. Right to one trial for one offence
k. Right against trial upon retroactive legislation
l. Right against trial for an offence for which the accused has been pardoned

1. RIGHT TO FAIR HEARING 36(1) & (4) CFRN

Fair hearing is a judicial/administrative hearing/trial conducted in accordance with due process. (Black's Law Dictionary, 7th edt. p. 725). Due process must be followed. Due process is the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal. P. 517 Black's Law Dictionary.

In **AUDU V FEDERAL REPUBLIC OF NIGERIA (2013) LPELR-19897** SC defined fair hearing as a trial or hearing conducted according to legal rules formulated to ensure that justice is done to the parties. Fair hearing is akin/likened to issue of JURISDICTION. Once an accused person or a defendant raises the issue of fair hearing and fair trial the court must hear that complaint or objection. It is fundamental and foundational cornerstone of Nigerian jurisprudence and legal system. Complaint of lack of, want of, or deficiency in fair hearing must be urgently resolved before proceeding proceeds.

The Court/tribunal must be constituted in such a manner to secure its independence and impartiality. The judicial officer should not have any interest in the case or be connected or related to the parties involved.

Parties cannot waive the right to fair Hearing. JANG V INEC (2004) and NWOKORO V ONUMA (1990)

The crux is on the procedure leading to the determination of the case. The propriety or otherwise is in question hear not the decision/ outcome itself. Fair hearing does not focus on the correctness of the decision. ORUGBO v UNA (2002). Justice must not only be done, but must be undoubtedly and manifestly seen to have been done. See EX Parte MC Carthy and Agha v IGP. A party cannot waive the right to an impartial tribunal. UMENWA v UMENWA (1987)

PRINCIPLES OF NATURAL JUSTICE: *Audi alteram partem, and Nemo judex in causa sua*

INDICES OF AUDI ALTEREM PARTEM

- Each party to the trial must be heard … where an opportunity has been given and the party concerned waived it or slept over it. Unibiz v Credit Lyonnais (2003), Univeristy of Uyo v Essel. Emphasis is on opportunity to be heard. See section 36 (4) (a) Sule v Ebune, NBA v Akintokun, Odunlami v Nigeria Navy (2014) ALL FWLR.
- Opportunity to engage counsel of his choice and such must not be denied the defendant. Akabueze v FRN, PADAWA V JATAU
- Opportunity to react to any issues that the court raised suo motu by the judge. Issues raised by the court without the parties notice or pre-information. The issue must be fundamental enough to affect the case, in this circumstance the parties must be heard on the issue. Odessa v FRN.
- Absence of bias and/or likelihood of it. Umar v Onwudine (2002) and 36(1) CFRN
- Judge must not make unguarded comments through conducts or words. The presiding officer must not make such comments in a matter before him. E.g. that the accused is a liar or no! No! No! the devil is a liar, that eewooo! Wonders shall never end!
- Defendants must be given opportunity to call his witnesses section 36 (6) (b) CFRN
- Must be allowed to cross examine prosecution witnesses see Section 36 (6) (d) CFRN
- Trial to be conducted within a reasonable time. 36(1) CFRN, Article 7(1) African Charter Human & Peoples Right. Ozuluonye & ors v State. Okeke v state (2003) , Section 382 ACJA
- What is reasonable time? See Effiom v state (1995)
- QUERY: does accelerated hearing negate the principles of fair hearing? See Federal High Court Practice Direction, FHC (PD), SC (PD), CA (PDF) Oyakhere v State (2006) All FWLR (pt. 344)1; EJEKA V STATE (2003) FWLR (pt. 163) 1893.
- Accelerated hearing does not mean the witnesses to the accused person, it only set time limit for calling of witnesses. Provided that opportunity has been given for parties to hear their case. It does not affect fair hearing save where any of the process affect the fundamental right of the defence.
- Shielding the witnesses does not negate the principle of fair hearing depending on the circumstances of the case. It is to protect the witnesses.
- Equal treatment to all parties. Gitto v Etuk (2013)
- Fair hearing applies to all court. It is not court sensitive or specific. Falodun v Ogunse
- The test is an objective test. Objectivity test. See Yabugbe v COP (1992), Atobatere & ors v Faseru & ors (2012)

NEMO JUDEX IN CAUSA SUA

➢ No judge should preside over a matter in which he has a personal interest or remotely connected or involved. General Electricity Co. V Akande(2010); Orugbo v Una (2002)

➢ Rule against bias/likelihood. (be careful of the way it is stretched) Womiloju v Anbiri (2010); Sussex Justices, Ex- Parte McCarthy (1924)

a. Judge should not or must not be interested in either of the parties
b. Judge must not be interested in the subject matter
c. Judge must not be interested in the outcome of the proceedings. Garba v University of Maiduguri (1986)
d. Judge must not have pecuniary interest in the matter. (Any form of financial interest)

ESSENTIAL ELEMENT OF FAIR HEARING

Established by the SC in Effiom v The state. Ozoemene v Ozoemene, Efiom v The State, Ekwuruekwu v state

a. Right to be heard 36(4)
b. Trial to be conducted within a reasonable time 391 1 ACJA
c. The court must be one established by the law
d. The adjudicators must be independent
e. Adjudicators must be impartial
f. Easy access to court
g. Proceedings in public
h. Equal treatment and opportunity to all concerned

PROOF OF LACK OF FAIR HEARING

- Miscarriage of justice is inherent in denial of right to fair hearing
- A party who establishes denial of his right to fair hearing he need not prove miscarriage of justice. See The Regency Council of Olota of Otta v Sodeinde.
- On effect of breach of hearing…. Sambo & ors v Oko & ors (2013), Audu v FRN 2013. Akole v Alonge
- The whole proceedings and the decision arrived at by the court becomes nullified. It is immaterial that the same decision would have still been reached in the absence of violation.

2. RIGHT TO BE INFORMED OF THE CRIME ALLEGED

Section 36 (6) (a) CFRN, 271 (1) ACJA. Section 215 CPA, 187 1 CPC and 211 (1) ACJL

a. To be informed promptly of the nature of the offence. Ibrahim v state (2015) 11 NWLR (pt. 1469)187.
b. To be informed in the language he understands. Okeke v State (1995) 4 NWLR (pt.392) 676, Ogunye v state (1995)
c. To be informed in detail the nature of the offence.
d. Right to have the charge or information explained to him before plea. Okeke v State.

QUERY: IS THERE ANY RELATIONSHIP BETWEEN SECTION 36 (6) (a) –TRIAL AND arraignment (charge sheet proper) 35 (3) CFRN---BEFORE TRIAL AT THE POLICE STATION, pre-trial investigation.

Information of crime alleged: It relates directly to arraignment. Accused not to be convicted for an offence not charge or for which he did not plea. See **Yahaya v State.**

EXCEPTION TO NON CONVICTION FOR AN OFFENCE NOT CHARGED

✓ Conviction for a lesser offence than the one charged. 218 (2) CPC, 179 (2) CPA, 171 (1) and (2) ACJL (kindred offences, that can be constituted within same provision). Adava v State 2006 All FWLR and Maja v The State, 166 ACJL; 217 CPC; 179 CPL. Eg. Armed robbery and robbery, murder and manslaughter and culpable homicide. Defilement and indecent assault. Note section 233 ACJA.

✓ Accused may be convicted for another offence where evidence at the trial discloses another offence from which he was charged. Odeh v FRN (offences that are not similar) See KAREEM v FEDERAL REPUBLIC NIGERIA (2002) All FWLR; NWACHUKWU V STATE.

RATIONALE FOR THE RULE

- Once a person have information of a grave offence he is deemed to have information of a lesser offence. NWACHUKWU V STATE and EZEJA V STATE (2008).
- To forestall multiplicity of suits

EFFECT OF BREACH OF 36 6 A

Breach of this section renders the trial a nullity no matter how well it is conducted. Yahaya v State and Timothy v FRN. www.Ciarbnigeria.org or info@ciarb.ng

3. RIGHT OT ADEQUATE TIME AND FACILITY TO PREPARE FOR DEFENCE. 36 (6) (B)

An accused person/ defendant is entitled to reasonable adjournment to secure attendance of witness. Both adequate time and facility runs conjunctively. Entitled to reasonable adjournment. to secure attendance of witness.

APPLICATION FOR ADJOURNMENT

CONDITION PRECEDENTS:

a. Must show that the witness is a material witness—200 evidence act; 201-204 ea—it does not matter on the number of prosecution the witnesses called.
b. He is not guilty of delay/neglect.

c. Witness must be available on certain date next adjourned date

3. Access to counsel even where he is in custody- 271 2 ACJA.
4. Right to apply to issue witness summons to compel any witness to testify for him. 186 (1) CPL, 177 ACJL, 193 CPC.
5. Entitled to adjournment to secure the attendance of his lawyer. AKABUEZE V FRN, UNILORIN V AKINROGUNDE (2006) and JOSIAH V STATE (1985).

TIME AND FACILITY IN CAPITAL OFFENCES

In the trial of capital offence, court must adjourn once the accused counsel is not in court. See UDO V STATE

In cases other than capital offences are at the discretion of the court. SHEMFE v COP depending on the circumstance of the case. GOKPA V IGP.

Accused is entitled to have copies of proof of evidence and witnesses statements. Uket v FRN and Uwazurike v FRN

4. RIGHT TO COUNSEL 36 (6) (c), section 271 ACJA, section 209 (1) ACJL and section 211 CPL

- Right to defend himself in person
- Right to be defended by a legal practitioner of his choice. Uzodinma v COP (1982), section 390 CPC and section 28 Area court Edict (nullified by uzodinma's case).
- Accused is not be denied the right to counsel. AKABUEZE V FRN
- Court is duty bound to inform the accused of his right see section 349 (1)

QUERY: when an accused elected to defend himself in person and he later opt for an application to be represented by a lawyer? No ground of objection because the constitution did not stipulate bar for the exercise of the right. The only remedy for the prosecution is cost in jurisdiction where applicable.

- Adequate opportunity to be represented by counsel. OGBOH v FRN.
- Counsel cannot be imposed on the accused except in capital offences. Rational for mandatory Legal Practitioner: gravity of the offence, technicality and gravity of the punishment.
- Right to counsel is available in all criminal cases.
- Accused inability to pay counsel does not mean denial of right to be represented by a counsel. See AMANCHUKWU v FRN

Accused insistence on hiring a practitioner suffering disability does not mean invalidate this right. Section 2 LPA. See Awolowo v Minister of internal Affairs, Registered Trustees of ECWA Church v Ijesha.

Entitled to adjournment to secure the service of another counsel

5. RIGHT TO COUNSEL IN CAPITAL OFFENCES

See section 33 (1) CFRN, section 352 CPL, section 186 CPC, section 259 ACJL, section 267 (4) ACJA

Mandatory requirement. Okotobo v state (2004)

Ordinarily, there must be mandatory representation in capital offences. See JOSIAH V STATE it will nullify the trial. Failure render trial a nullity under 259 ACJL ACJA. 267 (4) ACJA yes, 267 (4) and 349(6) (b).

Ordinarily, where the accused elected not to be represented, he will be warned of the danger and his right under the caution but no right of election in capital offences or offences punishable with life imprisonment.

If a legal practitioner is the accused person he cannot enjoy the right of appearing for himself as a legal practitioner but he shall have the right to represent himself personally provided it is not a capital offence, see section 259 ACJL.

Under ACJA 349(2) mandatory represatntion in capital offences.

Right to adjournment to secure is for a reasonable time. What amounts to reasonable time? 349(3) ACJA- shall not exceed 30 days

6. RIGHT TO BE PRESUMED INNOCENT, 36 5 CFRN,

- An accused is presumed innocent. Okoro v State. And Ibrahim v state. Hence every of his defence must be considered. Agbiti v Nigeria Army.
- Until guilt is established is presumed innocent. Okoro v state, ibraahim v state. Hence every of his defence must be considered.
- Duty on prosecution to prove the guilt of the accused/ defendant beyond reasonable doubt. Burden of proof on the prosecution always. 135 EA and Uso v COP
- Burden is on the accused to proof certain facts. Proviso 36 5 cfrn, 139 3 c and 140 ea
- Note legal burden of proof and evidential burden of proof. Chukwu v state.

WEEK 12

CONSTITUTIONAL SAFEGUARD II

RIGHT TO EXAMINE PROSECUTION WITNESS. S. 36 (6) (d) CFRN

- Right to call and examine his own witness
- Right to cross-examine prosecution witness.
- He need not be represented by counsel (the court must inform him of his right to cross- examine the Prosecution Witnesses at the close of each of the testimony of the witnesses not at the close of the prosecution case). see Tulu v Bauchi N. A , Hamrunami v Borno NA, Idrisu v state.
- In every criminal trial both parties have the right to cross examine the witnesses called by the adverse party. It is an undeniable right once the parties elected to exercise.
- No need for cross-examine when all the ingredient of the offence have not been proved.
- Court is duty bound to inform the accused of this right at the close of the testimony of each prosecution witness. TULU v BAUCHI NA.
- Can court take over the examination on behalf of the accused where he is unrepresented by counsel? See 189 (2) CPCL: the court cannot cross-examine any of the witness, it can only examine the prosecutor's witness in the absence of the prosecution and not for the accused. The proper thing to do is inform the accused his right to cross- examine the Prosecution Witness and no more.
- Note the three categories of examination of the witnesses in criminal trial in Nigeria. See 214 and 215 Evidence Act

➢ **Examination in chief (by the party calling the witness)**

NB: note the exception in hostile witnesses. It is only the court that declare a witness hostile. The party calling may cross-examine the witness after bringing it to the notice of the court after making the application to the court that the court should declare him a hostile witness.

➢ Cross examination
➢ Re- examination

What are the order of examination of witnesses? See 216 & 217 EA.

➢ It goes in order of examination
➢ The witness is first called
➢ The adverse party is given opportunity to cross examine at the close of testimony (applicable where there is more than one defendant is charged. It must be done in order of how their names appear on the charge sheet. 216 EA It is similarly applicable to witnesses called by the defendant's as well. Each defendant have the right to cross examine the witnesses called by the other defendants. This is done before cross examination by the prosecution 217 EA. It contemplates a situation where the case of the prosecution has already been closed)
➢ The party calling will now re-examine where necessary.

7. RIGHT TO AN INTERPRETER 36 (6) (e) CFRN; s. 195 ACJL

The interpreter must not be related to any of the party

Must not be connected to any of the parties

Must not be interested in the subject matter

Must be impartial.

- An interpreter means a person who translates especially orally from a language to another. See Black's Law dictionary,
- Any adult person knowlegable able enough in the accused language and that of the court. There is no special qualification is required.
- The language of the court is English language see. FRN v Mohammed (2014),, Madu v State ().
- The court can only record what is interpreted to it and not the exact words used by the accused. See FRN v Mohammed, Madu v state.

- Accused is entitled to understand the language of the court:
- The court must also understand the accused language. BAYO V FRN (2008) ALL FWLR (pt 428) 304.
- Right to interpreter for free where he doesn't understand the language of the court. Section 36 (6) (e). Uwakweghinya v State.
- Court cannot interpret the proceedings. OKORO V STATE (2012) 4 NWLR (pt 1290) 351 at 389: once the accused is testifying in language other than that of the court, it must be interpreted, the fact that the court is learned in the language is immaterial.
- Adequate interpretation is required. Ajayi v Zaria NA.
- Query: what is the position where there is an interpreter outside the jurisdiction of the court and the accused is asked to facilitate attendance in the court? In practice, for the purpose of protecting the interest of the Accused, then it is apt to facilitate the attendance of the interpreter.
- Where he understands language in which evidence was given, interpretation is not required. ONYIA V STATE (2009).
- Duty on the accused to inform the court of knowledge of the language of the court. See BAYO V State. Especially if represented by a counsel.
- Right to interpreter cannot be raised first time on appeal, except it was raised and denied at the lower court.
- It may be raised be raised first time on appeal if it is shown that it was raised but the trial court deny same. See UDESEN V STATE
- Where represented by a counsel, he cannot complain on appeal right to denial of interpreter. NWACHUKWU V STATE. The counsel is deemed to know the law and the necessary principles.

Who is an interpreter? Persons qualified to interpret the language of the court to the accused and vice versa? Must he be an officer of the court? Not necessary once he can give a perfect interpretation of the proceeding and is sworn. Who is an officer of the court?

- Is the right waivable? Yes, where the court see no need for it or at the instance of the accused, provided it will not do injustice to the case. If the court is of the opinion that interpretation is not necessary. see Onyia v state.

8. RIGHT TO BE TRIED ONLY FOR AN OFFENCE KNOWN TO LAW SECTION 36(12) CFRN

Offence must be known to a written law. Trial only for an offence know to law. Aoko v fagbemi

Trial only for an offence which penalty is prescribed. AGF v ISONG, KALU V NIGERIAN ARMY. It also applies to persons that are subject to military Triubunal. See ASAKE V NIG ARMY COUNCIL (2007)

The law must be an Act of the National Assembly, State Assemblies, Local Government Legislative Council or a subsidiary legislation.

The provision abolishes customary criminal law.

Same law must provide for the offence and also for the punishment. AGF v ISONG and KALU V NIGERIAN ARMY

9. RIGHT TO SILENCE. 36(11)(during trial and 35(2) before trial); 180(a) EA; 236(1) CPCL; 287(1)CPL 240 (a)(iii) ACJL and 244 ACJL

It is the right of an accused to elect whether or not to give evidence. 180(a) Evidence Act. He may elect not to call any witness. Section 36(11) CFRN

Accused is a competent witness but not compellable. It is his right to elect to whether or not to give trial. Section 179 and 180 Evidence Act, Abidoye v FRN (2014)

Prosecutor cannot comment that the silence of the accused suggests guilt section 181 Evidence Act

Can the court or the prosecution comment on the silence? Yes they can but cannot draw conclusion of guilt on the silence. See 181 Evidence Act … Prosecution can comment. The Court can comment and draw inference. The comment shall not infer or suggest the guilt of the accused. 181 Evidence Act

Section 236(1) (c) CPC (the prosecution may not comment but the court shoukd); Audu v State (2003) FWLR (Pt. 153) 325; IGABELE V STATE (2006) All FWLR (Pt. 311) 1797.

POSSIBLE EFFECT OF ELECTION NOT TO TESTIFY

a. Failure to testify may lead to conviction. MBANG V STATE
b. Duty on the prosecution to prove guilt beyond reasonable doubt
c. Accused is presumed innocent. 36(5)….Compare 181 EA and 236(1)(c) CPCL…Compare 35(2) and 36(11)?

TERMINUS A QUO

13. At what stage of the trial does the right to silence begin? It starts at the close of the prosecution case when the accused is call to open his case.
14. Can accused elect not to testify and be allowed to call witnesses? Yes.

10. RIGHT TO ONE TRIAL FOR ONE OFFENCE. 36(9) CFRN

This right relates to *Autro fois acquit or autro fois convicted.* 221(1) &18191)(a) CPL; 223(1) CPCL; 173(1)(a)& 216(1) ACJL and 238(1)(2) ACJAhb

Save upon the order of a superior court.

- Cannot be raised on appeal after conviction. See EDU V COP
- It relates to the Bar Plea.
- Note trial based on retrial order
- Emphasis is on criminal proceedings not on disciplinary proceedings. See Musa v FMTNO (2013) NWLR (pt 1363)

CONDITION PRECEDENT

a. Must be a court of competent jurisdiction. UMEZE V State ans section 176 ACJL chief of Air staff v Iyen.
b. Trial must be on a criminal charge based on a legal code. R v JINADU
c. Previous trial ended in an acquittal or conviction. 211 and 174 CFRN
d. The charge must be with that for which he had previously been charged or it has the same ingredient. Section 218 (2) CPC
e. Conditions/factors are cumulative

11. RIGHT AGAINST TRIAL UPON RETROACTIVE LAW. SS 36(8) and 4(9) CFRN

- Retroactive legislation is prohibited. EGUNJOBI V FRN AND FRN V IFEGWU
- Cannot be charged for an act not constituting an offence when it was committed.
- Penalty to impose must not be more than the one to be imposed when the act was committed. It starts at the commencement of trial
- Cannot be charged for omitting to do an act which did not constitute an offence at the time it was omitted AND ALSO cannot be punished.

12. TRIAL FOR AN OFFENCE FOR WHICH ACCUSED HAS BEEN PARDONED… S.. 36(10), 175 and 212 CFRN, 211(b) CPA, 216(1) (b) ACJL; 27791)(b) ACJA

PREROGATIVE OF MERCY

A. May be granted conditionally or unconditionally.
B. Does it relate to offences that has not been charged? Yes, amnesty.
C. Offence charged but not conviction yet? Nolle Prosequi (can subsequently be re-arraigned).
D. Offence charged and conviction secured? Pardon- prerogative of mercy.
E. Is pardon an acquittal? No it is not. Atke instance of aure foi acquit/convict. The record of the proceedings remain in court when acquitted but in case of pardon, it is as if the has never committed the offence. All the bad record will be expunged.

F. Is pardon a grant of amnesty? Amnesty relates to group, a sort of a class action not an individual per se. but pardon is usually exercised individually.

G. Can the state prosecuted for the same offence after the grant of amnesty? An amnesty cannot be used as a plea of autre fois acquit. The state may prosecute the offence if there is insistence of the offence amnesty is granted. The state can retract the amnesty and trial the offence.

H. Pardon presupposes conviction must have been secured.

I. If already convicted and subsequently pardoned cannot be referred to as an ex-convict again. See FALAE V OBASANJO (No 2). See 182(1)(d)&(e) CFRN

J. It mitigates or obliterates punishment.

PROOF OF PARDON

a. Proof by presenting an instrument of pardon. OKONGWU V STATE. Tender the instrument before the court.
b. Burden of Proof: onus is on the person relying on it. OKONGWU v THE STATE (1986)

WEEK 13

ATTENDANCE OF PARTIES AND ARRAIGNMENT

The accused or the defendant is brought to court through a summons and if he disobeys the due summons his warrant of arrest would be issued. But if the trial has begun and he refuses to appear a bench warrant would be issued.

Who are parties in a criminal trial: The prosecutor/complainant and the Accused/ Defendant; a complainant should be present in court when the case is fixed hearing.

THE PRESENCE OF THE COMPLAINANT in court is an evidence of the willingness to prosecute. When in effect of the absence of the complainant the court may make possible orders. See section 232 ACJL.

The effect of the absence is provided for in sections 280 CPL, 165 CPC, 232 ACJL and section 351 ACJA

The court may dismiss the case or complaint and consequently the defendant may be discharged or the court may adjourn the case to a future date upon reasonable excuse and upon terms subject to the above provisions.

CAN ANY TRIAL GO ON IN ABSENCE OF THE ACCUSED: As a general rule, trial in absential is unknown to our criminal jurisprudence. ADEOYE V SATE. Therefore the accused must be in court at all times. But in certain provisions his presence or attendance may be dispensed with: SECTION 100 CPL

a. Only in magistrate courts
b. The punishment must be an imprisonment of six months or a fine of #100
c. The accused must have pleaded to the offence either in person or through his legal practitioner in writing.

See also LAWRENCE V KING. 210 CPL; 153 CPC; 208 ACJL; 266 ACJA

But under the ACJA, where the offence committed is punishable by a fine not exceeding 10, 000 or imprisonment not exceeding six month or both. The Magistrate may dispense with the attendance of the defendant. See 135 ACJA and 100 CPL(note that this power is discretionary)

WHEN THE ACCUSED IS OF UNSOUND MIND... The court has the duty to investigate the unsoundness of the mind of the defendant/ accused **person. See sections** 100, 223(2) CPL; 154(2), 320 CPC; 217 ACJL; 135, 352 ACJA

MISCONDUCT AT THE TRIAL: The Accused **misconduct himself** that his presence interrupt the full trial (the misconduct must be tied to undesirability or impracticability) (see 266(a) ACJA)

Peculiar provision under the ACJA: The defendant may subject to 135 be absent in an interlocutory application before the court

CONSEQUENCE AND STEPS TO BE TAKEN AFTER FAILING TO ATTEND COURT s. 352 ACJA

Compelling Attendance Of The Accused And Likely Effect Of Absence

a. Initial process- issuance of summon.
b. When an accused fail to appear on issuance of summon and the presence has not been dispensed with, the court issue a Bench warrant for his arrest to be brought before the court. See 96 CPL, 94 ACJL; 352 ACJA
c. Warrant may be issued at first instance (Section 95 ACJL 97 CPL)
d. Adjourn hearing of case (for proof of service or arrest) 352 ACJA
e. After arrest, commit to prison or confine to custody as may be apt to secure his attendance at the pleasure of the court. When arrested shall be brought to court at the adjourned date when an adjourned order has been made or immediately when it has not.
f.

Does jumping bail truncate trial? 352(4) & (5)

g. Assuming that the defendant is on bail and defaults in coming to court, what will the court do? Section 352 (4) ACJA—the court continue the trial of the case and may convict in the absence of the defendant unless the court sees reason otherwise.
h. Note that sentence is only pronounced if he is found and brought before the court. The court will give two adjournments before proceedings can continue.
i. The defendant fail to show reasonable cause for absence: Ordinarily bail should be revoked and bench warrant issued

After the revocation and issuance of bench warrant, can the court go ahead and continue hearing and order that surety should show cause why the bond should not be forfeited? No, the court cannot, the court will give two adjournments before trial can be proceed?

- Conviction may be given during the adjournment.
- Sentence can only be given upon his presence.

ABSENCE OF THE COMPLAINANT

Dismiss the case where no reasonable cause of absence is shown 165 CPC

Adjourn the case if cause is shown. 280 CPL; 232 ACJL; 351 ACJA

PRESENCE OF BOTH PARTIES

The court proceeds to arraignment 354 ACJA

NON APPEARANCE OF DEFENCE COUNSEL/ABSENCE OF COUNSEL

Section 233 ACJL, 349 ACJA compare with section 36 (6) (c)

OPTIONS:

a. To engage another counsel or get legal aid
b. Defendant to make private arrangement if wishes
c. Adjournment to engage another counsel
d. If the defendant fails to unable to secure counsel, legal aid to be provided:
e. Adjournment to secure another LP or legal aid

NON APPEARANCE/ ABSENCE OF BOTH PARTIES

A. If it is for good reason, the case will be adjourned.
B. Make order as the justice of the case demand
C. THE court may adjourn to compel attendance by both complainant and accused
D. Order cost as necessary 353 of ACJA and 282 CPL

ARRAIGNMENT

MEANING: process of taking the plea of an accused to the charge before the court. Stage where charge is read and explained to the accused in the language he understand and taking of plea. It is the beginning or commencement of criminal trial- GRANGE V FRN and FAWEHINMI V IGP.

1. BY SECTION 269 ACJA: he appears before a court by summons. The defendant stands in the dock not in the witness box. he stands unless the direct in the circumstance otherwise.
2. He takes his plea in the dock unless the court states otherwise see 356 (1) and (8)

Taking plea of the accused to the charge before the court

PROCEDURE

a. Accused must be placed before the court unfettered in the dock (plea only in the dock save where the court direct otherwise)
b. Registrar inquires on the language of the Defendants and that of the court and make report of same to the court and the court record same
c. Charge or information read over and explained to the accused in the language that he understands to the satisfaction of the court by the registrar or other officer of the court.

The accused to be called upon to plead instantly to the charge: 215 CPL; 187(1) CPC; 211 ACJL; 269, 271, 356(8) ACJA

For the purpose of reading the charge to the accused person or taking their pleas the lawyers, police officers are not officers of the court so they can't.

Note exception when he will not plead instantly:

Absence of service s. 211(2) ACJL; 215 CPL; 271(2) (b) ACJA

Other available objections such as lack of jurisdiction KAJUGBO v STATE; KALU v STATE; OGUNYE v STATE.

Taking a plea mandatory

Accused submits to jurisdiction of the court- OKEGBUE v STATE: Note the peculiar situation in Lagos under s. 260(2) ACJL: All the conditions must apply

a. All pleas must be taken in person by the accused
b. Where there several accused persons, each individual must take their pleas individually- ADAMU v STATE
c. No proxy plea: no one can plea on your behalf
d. There may be block reading but separate charge therefore there is no block plea in several counts. The plea is a nullity. AYINDE V SATE 271 (3)
e. Counsel cannot plea on behalf of the accused. R v PEPPLE

Plea be recorded by the court in as nearly as possible in the words used.- s. 271(3) ACJA

Failure to record plea is a nullity EDE v STATE

If more than one count, plea on each count to be recorded see DUVAL v STATE

OPTIONS OPEN TO AN ACCUSED UPON ARRAIGNMENT

The way an accused will react upon taking of plea:

1. PRELIMINARY OBJECTION:
a. Lack of jurisdiction- AG FED v ABUBAKAR
b. Defect in charge -s. 166& 167 CPL; 158 ACJL; Cf: 221 ACJA
c. Effect- discharge or amendment. S. 154 CPL; 206 CPC; OBAKPOLOR v STAT
d. BAR PLEA- *autre fois acquit or autre fois convict or pardon.* Section 216 ACJL; 221 CPL; 277 ACJA

e. Statute barred- treason and treasonable felonies-2yrs section 34 CC,

f. Sedition-6 months Section 52 CC, customs and excise management offences – 7years section 176 (3) CEMA, unlawful carnal knowledge of a girl under the age of 13 years, section 218 CC two months.

STANDING MUTE AND REFUSAL TO PLEAD:

Silent, not speaking: If the accused stands mute, he does not speak, Court investigates the cause of muteness; out of malice or visitation of God- medical evidence to determine the reason for such attitude. See sections 220 & 223 CPL; 188 CPC; 215, 217, 218 ACJL; 276 ACJA

If malice is the reason a plea of not guilty would be entered for the accused. If act of God, detained at the Governor's pleasure YESUFU v SATE

Enquiry into state of mind. S- 276(3) (4) ACJA

REFUSAL TO PLEAD

A deliberate withhold of plea the court ask the accused of the reason of refusal and examine the reasons. If reason is valid, the accused is asked to plead again, If he still refuses, plead of not guilty to be entered and trial to proceed. GAJI V STATE. 215 ACJL; 220 CPL; 188 CPC; 276 ACJA

NB: distinction between muteness and refusal is the exhibition of an overt act in case of the later

DUMB AND DEAF

Mere disability as to deaf and dumb will not prevent the accused from being tried so long as communication can be had with the person.

Plea will be taken on means of communication available to them

Communication may be by sign language

If able to follow proceedings, trial continues

If unable to comprehend the proceeding,

If he can give an intelligible answer.

N.B: inability to comprehend the proceedings does not terminate the trial.

PLEA OF GUILTY

218 CPL; 161(2) & 187 (2) CPC; 213 ACJL; 274 ACJA

i. Court to record plea as nearly as possible in the words used by the Accused. OSUJI V IGP

ii. Prosecution states facts of the case (note scientific proof or expert evidence they must be tendered) see Stevenson v Police and ESSIEN V KING

iii. Court enquire from the defendant whether the plea of guilty is to the fact as stated by the prosecution

iv. Satisfaction of the court that accused intended to admit essential ingredients/ elements of the offence for which he has pleaded guilty. Conviction and sentence. AREMU V COP

v. When plea of guilty is in respect of a capital offence, plea of Not guilty is entered for him

vi. Plea of guilty must be made by the Accused not through his counsel R v PEPPEL

vii. Plea must not be ambiguous. E.g. guilty with reason

PLEA OF GUILTY IN CAPITAL OFFENCES

Plea of guilty to be recorded notwithstanding the plea see section 213 (3) ACJL, 187 (2) CPC, 274(3) ACJA and the cases of OLABODE V STATE and R V KOFI MANSU; Chukwu V State.

PLEA OF NOT GUILTY BY REASON OF INSANITY

At the time of the alleged commission of the offence the accused was insane and therefore lacks mental capacity to commit the offence… *Actus reus but no mens rea.*

The trial will continue… the accused was saying he is not guilty because he was insane while the offence was committed.

The court determine the following:

a. Whether the offence was committed
b. Whether the accused committed the offence
c. If committed the offence, whether was sane or insane at the time
d. If sane, accused to be convicted
e. If it is the accused, was he sane or insane at the time
f. If sane, accused to be convicted
g. If not sane, the plea of not guilty by reason of insanity is entered.
h. Where plea is upheld, the accused to be kept in custody in a mental health asylum, prison or other suitable place of safe custody until Governor's pleasure (AGF under the ACJA Section 286)

PLEA OF GUILTY TO ANOTHER OFFENCE NOT CHARGED

A. The court can convict subject to :
1. Jurisdiction over the offence
2. Consent of the prosecutor
3. Court accepts plea
4. If the court rejects the plea for the new offence and proceeds to trial for the earlier offence, cannot go back to convicting for the new offence admitted
5. If prosecution agrees and court satisfied of guilt, to convict on the offence admitted
6. Section 219 CPL; 214 ACJL; R V KELLY.
7. If court accepts plea, the court to follow the steps:
A. Record plea as nearly as possible in the words used
B. Invite prosecution to state fact of case
C. Defendant to confirm facts as stated
d. Prosecutor election: objection to plea to another offence; whether can ask for conviction on main offence if found not guilty.

UNDER ACJA

e. SECTION 275
Where the defendant pleads guilty to an offence not charged, court to direct the prosecution to amend the charge or information to include the admitted offence
f. Fresh plea to be taken on amended charge or information
g. Procedure in section 274 to follow

PLEA BARGAIN

Definition-s. 494 ACJA: FIRST step to a comprehensive provision on this concept… Note: Must be in criminal proceedings. The parties: the Prosecution and the defendant/ accused person. The prosecution receives while he may also enter in certain circumstances.

Acceptable disposition: shortening full trial

a. imposed by the prosecution

b. Lighter sentence Conditions
c. Higher charge
d. Court approval
e. Victim (494 ACJA omits this) but see 270 ACJA, 75&76 ACJL

STATUTORY RECOGNITION BEFORE NOW

SEE: 14(2) EFFC ACT and FRN V IGBINEDION (2015)2 NWLR (Pt 1444) 475; ROMRIG (NIG) LTD V FRN (2015) 2NWLR (pt 1445) 62

SOURCES 270(1): From the defendant or on his behalf,

FROM THE PROSECUTOR

PROCEDURE:

Prosecution may enter bargaining with the consent of the victim: --- 270 (2) ACJA

a. During the pendency of the case not necessarily at the commencement
b. At the open or close of the prosecution's case
c. Not at the open of the defendant's case
d. With consent of the victim or his representative

CONDITIONS.

e. Not sufficient evidence to prove the offence charged beyond reasonable doubt
f. Defendant agreed to return the proceed of the offence or restitution to the victim or his representatives.
g. In conspiracy case, defendant has fully corporate with investigation and prosecution and has offered for providing information for prosecution and investigation
h. Offer or acceptance is in public interest, interest of justice, public policy and abuse of legal process 270(3)

CONDITIONS 270(5)

After consultation with the police and the victim

NATURE AND CIRCUMSTANCE OF THE CASE RELATING TO PUBLIC INTEREST (FACTORS):

- Defendant's willingness to corporate and aid in investigation and prosecution
- Defendant's criminal history
- Defendant's remorse and willingness to accept responsibility for his conduct
- Desirability and prompt disposition of the case
- Likelihood of obtaining conviction and probable effect of the witness
- Probable consequence of sentence upon conviction
- Avoid delay of pending cases
- Expense of trial and appeal
- Willingness to restitution and compensate the victim.

■ 270(4) ACJA. Before plea is taken (before Arraignment), parties may enter into agreement in respect of:

a. Term of plea bargain:
b. sentence recommended within the range of the punishment stipulated (sentence bargain).
c. plea of guilty to the offence charged or lesser offence upon which he may convicted.(charge bargain)
d. appropriate sentence to be given by the court on the charge pleaded guilty

■ Is the victim of the crime a party to a plea bargain? Yes. 270(6)

Victim to be afforded representation to:

- Make contribution on the content of Plea Bargain Agreement

- Inclusion of restitution or compensation in the agreement order
- Content of the Plea Bargain Agreement 270(7)

Shall be reduce into writing and shall contain:

a. State before conclusion defendant's right:

Right to remain silent

Consequence of not remaining silent

Not obliged to make confession that might be used against him

State terms of the agreement and admission made

Signed by the parties or their representatives (LP for defendant) and interpreter where necessary

A copy sent to the AGF

- **INVOLVEMENT OF THE COURT? 270(8)**

Judge/magistrate to hear the case **shall not** participate in the plea bargain agreement. Prosecutor shall inform the court of the agreement and the court shall ask the defendant to confirm content of the agreement. 270(9)

Court is not duty bound to adopt the agreement sheepishly.

The judge/magistrate shall ascertain admission of guilt by the defendant and the voluntariness of the defendant or duress in the agreement

THE COURT MAY:

a. If satisfied that the defendant is guilty convict the defendant on his plea of guilty and award compensation to victim in accord with the term of the agreement to be delivered in accord with section 308
b. Of the opinion that conviction in respect of the agreement not proper or the agreement conflict one the defendant's right referred to in (6) record plea of not guilty and order proper trial.

SUBSECTION (11)

In conviction in sentence bargain under s. 9(a), the court shall considered sentence agreed upon and may:

a. Impose sentence when appropriate
b. Impose lesser sentence when appropriate
c. Impose higher sentence when appropriate upon notice to the defendant and his consent signified

- **SUB-SECTION 15**

When the defendant is informed of higher sentence as under (11)(c), he may elect:

a. Abide by his plea of guilt and have right to lead evidence and present argument relevant to the sentence and the court sentence
b. Withdraw his plea and the trial starts de novo before another judge/magistrate as the case may be.

- **SUBSECTION 16**

When the trial start de novo before other judge, the following must be observed:

a. No reference shall be made to the agreement in the course of prosecution
b. Admission in the agreement are not acceptable against the defendant
c. The parties may not enter into similar plea and sentence agreement.

- **SUBSECTION 17**

When convicted on plea bargain, the defendant shall not be charged again on the same fact for the greater offence to which a lesser plea has been given.

- **SUBSECTION 18**

Judgment given on the term of the agreement of the plea bargain is final not subject to appeal save where fraud is alleged.

PLEA BARGAIN IN CAPITAL OFFENCE? No express provision prohibiting them, i.e. they are plea bargain able, it is left for the court to determine if it justifiable to accept it or not.

WEEK 14

CRIMINAL TRIAL PREPARATION

CASE THEORY AND TRIAL PLAN:

A line of argument which if accepted by the court will lead the court to give judgment in your favour. When you are asked what the case is all about and the trial has not started, it is still case theory. It is a story, case hypothesis appreciation of the case etc. It is based on the facts and relevant laws. The adaptation of story to the legal issues in the case-conclusion that client will win the case. The case theory at all times must be to win the case. **The trial plan is how to effect the case theory practically.** Focuses on building a line of argument against a background of facts sought to be presented and proved.

ELEMENTS OF SUCCESSFUL THEORY

a. Logical
b. Speaks to legal elements of the case
c. Simple.
d. Easy to believe

These two principles or concepts are different from that in a civil case because of the burden of proof the law prescribes. The fight is more and stronger just like in a football match where the referee will be the twelfth player of the opposing side. The versions of the prosecution and defence of the case bearing in mind the burden of proof. I.e. proof beyond reasonable doubt. The idea of theory is that the idea has not been tested. The summary of the case of the prosecution and the possible defence of the defence. In short, the trial plan is a graphic statement of how to actualise the case theory.

OPENING ADDRESS:

It is a means of getting the judge to understand the case you are about to present. Usually a short summary of the case the prosecution or the defence will present based on the trial plan. It is given when an evidence has not been led at all. It is at the stage of opening of the prosecution's case (before the prosecution opens his case). "The nature of the case, the particulars of the offence, witnesses to call and evidence to rely upon,"

i. Number of counts in the information
ii. Number of witnesses intended to be called as shown in the list of witnesses
iii. You can mention the nature of evidence but not who to give it
iv. It usually based on the trial plan
v. If the record shows that will be all for the prosecution's case, it signifies the close of the case and can only be reopened only after the leave of court. It will be "that will be all for the prosecution"
vi. For the defence it is appropriate to say: that is the case for the defence.
vii. Defence opening Address is done before it opens its case

- The defences to raise
- The number of witnesses
- At the end of the defence the court will be inclined to rule in favour of the defence. NOTE—240 CPL

It is a means of getting the judge to understand the case you are about present, it is usually a summary of the case the prosecution or the defence will present based on the trial plan. Contrast final address. 240 & 241 CPL, 189&192 CPC; 268 &269 ACJL and 300 ACJA

SECURING ATTENDANCE OF WITNESS

- Subpoena- more appropriate for officials in the government department that will not ordinarily come unless compelled. And in practice used by the High court. A party on subpoena is a witness in the court. Most related to persons in a particular office.
- Witness summons in magistrate court, any court with criminal jurisdiction can issue a witness summons. See section 177 ACJL. Persons who are ordinarily required to testify or simpliciter to give evidence.
- When a summons is disobeyed then a warrant of arrest.

PREPARING A WITNESS FOR TRIAL AND A CLIENT INTERVIEW?

Pre- trial interview: when to conduct? Why not within the court premises: it's between the client and the counsel.

- Purpose of pre-trial interview:
- Acquaint of method of presenting case
- Recollection of what to say
- Story concise and direct to point
- Maintain consistence in Examination In Chief and cross-examination

STAGES INVOLVED

1. Tell the client the first question in EXAMINATION IN CHIEF
2. Tell the client all the set of questions in the EXAMINATION IN CHIEF
3. Have your sets of questions written down
4. The witness must answer it the way you want him to say it in court
5. Never Tutor A Witness To Lie
6. Tell the extent in which you want the witness to answer the question
7. Tell him the likely area he may be prodded and what is expected of him in such circumstance.
8. Tell the witness the possible questions to be asked in cross examination.
9. Questions to be asked will depend on the nature of evidence to be interviewed

LIKELY QUESTIONS FOR PREPARING AN INVESTIGATING POLICE OFFICER

1. Name address and occupation
2. Year of service in the police force
3. Preliminary duties
4. Years of experience as an IPO
5. The work of an IPO
6. Narration in relation to the case
7. After taken statement of the suspect, the steps taken
8. Inform him of the likely evidence to be tendered through him
9. Tender likely statement
10. Ask steps taken in relation to the statement

PROOF EVIDENCE—S. 379 ACJA

1. List of witness
2. Unedited statement of the defendant/accused
3. Summary of statement of the witnesses

4. List of exhibits to be tendered
5. Copies of documents the prosecution will rely upon during trial
6. Particulars of bail if already granted
7. Particulars of custody of the accused
8. Particulars of plea bargain
9. Particulars of previous interlocutory applications
10. Other documents the court may require.

ETHICAL CONSIDERATIONS

1. Pre-trial interview for coaching a witness to tell lies or suppress the truth
2. Build up confidence but not invent a defence for the accused
3. Prosecuting counsel not to invent a defence for accused
4. Prosecuting counsel not to secure conviction at all cost. ODOFIN BELLO V STATE… Rule 37 RPC

TRIAL PLAN

CHARGE	LAW	**INGREDIENTS**	EVIDENCE	PROOF	WITNESSES	REMARKS

BURDEN OF PROOF AND STANDARD OF PROOF—135 AND 139

a. General burden--- prove beyond reasonable doubt- on the prosecution

b. Evidential burden- on preponderances of evidence- on the defence when he raises the defences. Burden of Proof: the ultimate burden of establishing a case; the proof will be done by an aggregation of facts and circumstances to prove charge- beyond reasonable doubt section 131- meaning of burden of proof

c. Note section 36(5) 1999 CFRN. This imposes general burden of proof on the prosecution. IBEH V STATE Contrast 135 & 139 EA and AREH V COP

d. Note the exception in 141 EA—burden of proving exemption, exception and qualification is on the defendant or accused as the case may be. Pardon—evidential burden …

TO DISCHARGE BURDEN OF PROOF

a. Direct evidence
b. Circumstantial evidence
c. Confession

Note that prosecution has no duty to call a particular number of witnesses except in certain offences like treason, sedition etc but can be a material witnesses

NUMBER OF WITNESSES

Number of witnesses is not material, what is material is calling the material witness see ADAJE V STATE and STATE v AJIE

See section 200-204 EA: generally,

CORROBORATION/DISCHARGE OF BURDEN

Section 200 EA: Discharge of this burden is not dependent on the number of witness except in specific cases- e.g. treason, perjury, road traffic, offences, seditious words, Section 200, 201, 202, 203, 204.

Materials witnesses to be called to prove:

- the commission of offence

- that the accused committed it

S. 198 and 199 Evidence Act

EVIDENCE OF AN ACCOMPLICE

An accomplice is somebody who participates in the commission of an offence but not charged formally. Whether before or after the fact. Co-accused is charged formally for the offence.

- It is admissible and can secure conviction but the court must warn itself that it is not safe so convict.
- Competence and corroboration. 198 (1)
- Need to warn itself therefore Corroboration not mandatory section 198 (2)
- Evidence of accomplice not corroborate that of another, independent evidence: corroboration is drawn from the new evidence
- Judge's warning to convict uncorroborated evidence is mandatory
- Evidence of a Co-Accused will not be same as Accomplice and hence may not ground conviction except corroborated by another independent evidence. See section 199...

ADMISSIBILITY

Based on relevancy.- see s. 1 EA

IMPROPERLY OBTAINED EVIDENCE

- Section 14 & 15 EA
- Desirability outweigh undesirability of admitting
- MUSA SADAU V STATE- good law
- KURUMA V QUEEN
- Note : 15
- It is admissible.

COMPUTER GENERATED EVIDENCE—s. 84 EA

- It is admissible subject to the conditions laid down under the EA.
- Section 84(4) certificate must be tendered

INTERNET GENERATED DOCUMENT

Document generated on the internet is not a public document. In Proof, reliance on section 84 Evidence Act is necessary as foundation under 84(2) & (4) EA. AKEREDOLU V MIMIKO. KUBOR V DICKSON

TENDERING A PHOTOGRAPH

Both the film and the photograph are different categories of primary evidence --- see 258 EA. If it is a uniform process, they are primary evidence.

Primary evidence – 285

Compare definition of document in (a) & (c) 258

Secondary evidence

Proof of content of documents- 85

Secondary - 87

TAPE RECORDING

Section 258 Evidence Act It is similarly a category of Primary Evidence

A. Necessary Foundation: whether he was the one who recorded it: Maker to testify except dead, not find, etc.
B. Tape recording is authentic and original
C. Voice in the tape is that of the accused
D. Tape always in custody of maker/ witness and no possibility/ opportunity of tampering
E. FED POLY EDE V OYEBANJI (2012) LPELR 19696

TYPES OF EVIDENCE

a. Oral Evidence 125, 126
b. Real Evidence-127
c. Documentary evidence
d. Hearsay Evidence
e. Circumstantial Evidence- Cogent, unequivocal, overwhelming and must be lead to one conclusion.

COMPETENCE AND COMPELLABILITY

Section 175 Evidence Act:

ACCUSED COMPELLABILITY

Not compellable. Subject to comment but limited extent –not comment on culpability section 181 Evidence Act.

Extent of cross-examination 180 (b).

WEEK 15

EXAMINATION OF WITNESSES: THE CASE FOR THE PROSECUTION

POWER AND ORDER OF CALLING WITNESSES

- The prosecution has power to determine how many witnesses he wants to call in the order in which he wants to call them
- The prosecution is not bound to call all material witnesses listed in his proof of evidence
- He is only required to call material witnesses to support his case.

Other witnesses to be out of court and out of hearing see section 212 Evidence Act 238 (1) ACJL.

This may not include professional witnesses. Because his testimony is an expert opinion depending solely on what he knows and not what he was told or influenced to say.

What is the effect of a witness that remains in court see section 356 (3) ACJA

EXAMINATION IN CHIEF

What is Examination in Chief?

- Questions put to a witness by the party that called him. Ss. 214(1) Evidence Act, 196 ACJL and 199 CPL
- Purpose- to put before the court clearly, the story of that party.
- Questions to be limited to relevant facts in issue not extraneous matters. **SADAU** v **STATE**
- Aim- to elicit from witness evidence that support his case
- Both parties can examine their witness in chief.
- Prosecution examine to prove his case
- Defence carry out examination to establish his defence.

DUTY OF THE COURT

- Listen and examine the demeanour of the witness
- Record the testimony and the demeanour of the witness

LEADING QUESTIONS

- Questions that suggest the answers which examiner wishes to receive. Ss 221(1) Evidence Act
- Not allowed in Examination In Chief and Re-Examination. SECTION 221(1)(2) Evidence Act 2011

EXCEPTIONS: questions relating to undisputed facts- introductory matters, name, etc. —221(3) EA. May be allowed in cross examination. Section 221 (4)

- Hostile witness—s. 230 EVIDENCE ACT
- Where court permits—SECTION 221(2) Evidence Act

EFFECTIVELY QUESTIONING TECHNIQUES

1. OPEN QUESTIONS:

- Allows a witness to tell the story without undue interruptions
- Start with who, How, Where, What, When etc. Good for EIC…
- How did it happen?
- Describe what you saw on that

2. CLOSED QUESTION: better used in cross examination

- It puts the witness on check
- Allow succinct, direct answer only

- Are, Do/Did, were you etc

CROSS EXAMINATION

What is Cross- Examination?

- Questions put to witness by other party after examine in chief. Ss. 214(2), 215(1) EVIDENCE ACT 2011
- Questions must be for the benefit of the cross-examiner's case
- Questions must always have a purpose
- To test the veracity, credibility and accuracy of witness testimony. Ss 223 EA, ONUOHA V STATE, OKORO V STATE, AKINFE V STATE
- To weaken and demolish opponent's case and strengthen his own case.
- Where accused are tried jointly but defended by different counsel, each accused will cross-examine prosecution witnesses, before re-examination by the prosecution. S. 216 EA
- Where tried jointly, each defendant may cross examine another co-defendant or his witness before cross examination by prosecution. S. 217 EA.
- If you fail to cross examine the court may take whatever is said before as the truth.
- As a party you may waive your right to cross examination.
- Questions need not be confined to facts raised in the EIC. Ss. 215(2) EA
- Questions may be relevant or irrelevant if they serve the purpose. S. 223 EA
- Leading Questions are allowed in CE. S 221(4) EA
- It is the right of the accused to cross-examine prosecution witnesses. S. 36 (6)(d) CFRN 1999

OBJECTIONABLE QUESTIONS

The following questions are not allowed in cross-examination without reasonable grounds. 225 Evidence Act

1. Indecent or scandalous questions. S. 227 EA
2. Questions intended to insult or annoy. S. 228 EA
3. Questions needlessly offensive. S. 228 EA
4. Questions that affect credit of the witness by injuring his character. S. 224(1) EA

RE-EXAMINATION

- Re-examination comes up after Cross-examination by a party that calls the witness. 214(3) EA
- Purpose: clear ambiguities or inconsistency that arise from cross-examination. 215(3) EA
- It is not an opportunity to Examination In Chief again
- Leading Questions are not allowed. 221(2) EA

REFRESHING MEMORY

- A witness may need to refresh his memory when testifying. 239(1) EVIDENCE ACT
- He may do so by referring to a document he made relating to the transaction or made by someone else. Ss 239(1)(2) EA
- Expert witness may do so by referring to professional treaties. 239(3) EA
- Other party may be shown such documents and he cross- examine on it.

HOSTILE WITNESS

- Who is a hostile witness?
- This is a witness who turns adverse to party that called him and is unwilling to tell the truth
- Court shall upon application by a party declare witness hostile. ESAN V STATE, Shofolahan v state section 230 Evidence Act
- Party is then permitted to cross-examine his own witness and ask leading questions to discredit him.

POWER OF COURT TO PUT QUESTIONS

- Court has power to put questions to witnesses at any time in the trial, before judgment is given. 246(1) EA
- May order production of documents or things through the witness. 246
- Must be for clearing ambiguities or clarifying points raised in evidence
- Court also has power to call or recall any witness at any time during trial. Ss. 200 CPL, 237 CPC, 197 ACLJ, see 256 ACJA
- He is not to enhance the case of either parties when calling the witness
- It is to be done simply for just determination of the case before him
- The power is for just determination of the case. ss. 197 ACJL, 200 CPL and 237 CPC
- It's not opportunity to take over the case of the parties or strengthen the case of either party. UNUOHA V STATE, AKINFE VS STATE
- Parties cannot object to such questions being put to the witness by the court but can cross-examine such witness with the leave of the court. 246(1) EA
- Court shall not ask questions that is intended to injure the character of the witness only, or considered irrelevant under the Act—S. 246(2)(3) EA
- Witness cannot be compelled to answer questions put to him by the court. Ss. 246(3) EA

PROCEDURE

1. The court will inform the parties to the case
2. The ambiguities in which the court intends to clear must be stated
3. **A date will be fixed for examination of the witness**
4. The counsels will make a proper research to guide the court in the questions to be asked
5. Any questions asked outside the ambiguities stated is a good ground of appeal.

ADMISSIBILITY OF DOCUMENTARY EVIDENCE

- Document must be relevant to be admissible see the case of Agunbiade v Sasegbon
- Confessional statement, expert evidence and police report must follow laid down rules to be admissible in criminal trials.
- Confessional statement is an admission by the accused that he committed the alleged offence. S. 28 Evidence Act
- Confessional statement must be voluntarily made to be admissible. S. 29 Evidence Act
- Confessional statement are tendered through the IPO with proper foundation laid by prosecution.
- Where obtained by oppressive torture inhumane and degrading treatment including threat, it would be inadmissible. Ss. 29(2)(3) EA, 9(3) ACJL 2011
- Confessional Statement is the best evidence if it is relevant and voluntarily made
- Confessional statement must be tendered on whole and not in part, including part favourable to the accused. See R V ITULE
- It must be direct, unequivocal and point irresistibly to the accused as the perpetrator and no other. See YESUFU V THE STATE and STATE V ENABOSI and Gabraiel v state 2010

EXPERT EVIDENCE

WHO IS AN EXPERT?

- Generally opinion evidence is inadmissible. S. 67 EA 2011
- Expert opinion is an exception and is therefore admissible in evidence once relevant. S. 68 Evidence Act
- To present expert witness proper foundation as to qualifications and experience must be laid. See AZU V STATE
- The court has power to determine whether a person before it is indeed an expert or not
- Note that an expert witness may put in report or document in evidence without being called. S. 83(2)(a)EA
- Upon application by other party, he may be summoned by court to be cross examined. 250(1)(2) CPC

POLICE REPORT (CASE DIARY)

- What is police report? (case diary):
- Is it admissible in evidence? Not admissible
- The court can only call for it for inspection of the content, the court can only inspect it

- The police may also be allowed to use it to refresh his memory. See s. 122(1), 144 CPC; GAJI V THE STATE.

HEARSAY EVIDENCE

- What is hearsay evidence? It refer to statement of facts oral or documentary by a person other than the maker. S. 37 Evidence Act, IJIOFOR V THE STATE and OKORO V STATE
- Generally, It is not admissible in evidence, direct evidence is preferable. 38 Evidence Act
- There are exceptions to this general rule. S. 39, 40, 41, 42, 43 Evidence Act

EXCEPTIONS TO HEARSAY EVIDENCE

- Evidence of a person who cannot be called as a witness. E.g. dead person
- Person who cannot be found or has become incapable of giving evidence. Ss 39(a)(b)(c) (d) EA
- Other exceptions in the evidence include but are not limited to:
- Statement made by a dying person section EA,
- Evidence of a witness in former proceedings Section 46 EA note the proviso:
- Confessions Section 28-32 EA
- Opinion experts expressed in a treatise Section 68-71
- Admissibility of document under section 83 EA
- Note: each of the exceptions must meet certain conditions before it can be admissible.
- It can be oral or written

ETHICAL ISSUES

1. **DUTY OF THE PROSECUTING COUNSEL;**
- To be fair candid and impartial- Rule 32 RPC
- Not to seek for conviction at all cost, ENAHORO V STATE
- not to withhold any material evidence favourable to the accused persons, see generally Rules 32 and 37 RPC
- He must not ask scandalous questions just to annoy the witness. Ss. 227 and 228 EA.

2. **DUTY OF THE DEFENCE COUNSEL;**

WEEK 16

PRESENTATION OF CASE FOR THE DEFENCE

- At the end of the prosecution's case, the court out of his volition or on application by the defence determine whether he would do any of the following options:
  - Make a no case submission
  - May rest his case on that of the prosecution.
  - Enter a defence for the accused person by calling witnesses/evidence

MAKING A NO CASE SUBMISSION

- A no case submission made on behalf of the accused person where no prima facie case is made against him.
- Whether the prosecution makes a prima facie case against the accused that will warrant calling the accused for proving his defence. The submission is made at the end of the prosecution's case either by the defence counsel or the court suo motu. See IBEZIAKO V COP, MAIDUGURI V R, OKORO V THE STATE .

GROUNDS

a. Submission is made on behalf of the accused where no prima facie case is made out against him. Ss. 286 CPA, 191(3)(5) CPC, 239 ACJL and 302, 303 ACJA

b. When the prosecution's case has been discredited during cross-examination that it is dispossessed of all its credibility. It leaves no material evidence upon which the court can call the defence to establish his defence. See UBANATU V COP, DABOH & ANOR V THE STATE

c. Where the prosecution's case is manifestly unreliable and weak that no reasonable tribunal will convict on the evidence adduced by the prosecution—see Ossai Emedo v. State, Ugwu v state , Tongo v Cop.

Note that where any of the above is present a no case submission may be made on behalf of the accused person. This submission is made at the end of the prosecution's case before defendant enters his defence.

WHO CAN MAKE THE SUBMISSION?

1. Defence counsel or;
2. Court can suo motu make the submission. Maiduguri v R, OKORO v STATE

PURPOSE OF NO CASE SUBMISSION

1. To save defendant from entering needless defence where prosecution have failed. Section 36(5) CFRN 1999
2. To save the time of the court where the prosecution has failed.
3. To save the cost of needless prosecution and defence

EFFECT OF A NO CASE SUBMISSION

- Effect depends on whether it is rightly upheld or wrongly overruled

a. Where upheld rightly, the accused will be discharged and need not enter his defence. Ss. 239(1)(2) ACJL, 286 CPL, 191(3)(5) CPC, 302 and 357 ACJA

- The discharge is an acquittal. See Mohammed v STATE, Nwali v IGP

b. Where it is wrongly overruled, the accused may enter his defence or withdraw from further proceeding by resting his case, see MUMUNI v The Sate and Okoro v state

Conviction on a wrongly overruled no case submission is a nullity and will quashed on Appeal.

c. Where it is rightly overruled, the accused is called upon to enter his defence.

RULES ON RULING OF THE COURT IN A NO CASE SUBMISSION

- Ruling of the court must be brief where submission is to be overruled. See EKANEM V R, UBANATU V COP

- It must not be so lengthy as to fetter the discretion of the court. See ODOFIN BELLO V THE STATE.
- Court must confine its ruling to the submission of the no case.
- The length of the ruling alone will not vitiate the trial. See ODOFIN BELLO V STATE unless it prejudices the interest of the parties
- When no case submission is overruled, the Accused or his counsel is called upon to enter his defence.
- Where no case is to be upheld by the court, ruling must contain reasons for the decision.

RESTING ON THE PROSECUTION'S CASE

Defence may choose to rest his case on that of the prosecution. Where the accused chooses the third option, he is said to have rest his case on that of the prosecution. Ss. 287(1)(a)CPA, 36(11)CFRN 1999.

The defence may rest his case where:

- Prosecution has failed to prove their case.
- Where his no case no case submission has been wrongly overruled.
- Where the case of the prosecution is manifestly weak that no reasonable tribunal possibly convict on it. See EMEDO V STATE.
- By so doing he is calling upon the court to convict or acquit him based on the prosecution's evidence see SULEMAN v STATE
- NOTE: Before prosecution is not allowed to comment on accused failure to give evidence in his own trial. S. 236(1)(c) CPC but the position under 2011 EA, he may comment but not use such comment as to impute the culpability of the Accused. See 181 EA
- Court can however draw any inference on silence of the accused.
- Where there is overwhelming evidence against the accused it is not advisable to rest his case. See BABALOLA V STATE, NASIRU V THE STATE, AKONA V STATE, NAFIU RABIU V THE STATE, AJIBADE V STATE, NWEDE V STATE.

ENTERING HIS DEFENCE

OPENING ADDRESS

The defence may go straight to his defence by way of an opening address like the prosecution or just proceed to call witnesses. 241 CPL, 192 CPC etc

- Summary of the case for the defence, facts and nature of evidence to adduced including number of witneses and
- Whether the witnesses are ready to proceed. .

OPTIONS OPENED TO THE ACCUSED:

- There are three options open to the accused in his defence. S. 287(1)(a) CPL, 191(1) CPC, 240(1)(a)(i)(ii)(iii) ACJL and 358 ACJA attached

i. He may make statement from the dock, where he would not be sworn and would not be liable to cross- examination
ii. He may choose to give evidence from the witness box, where he would be sworn and be liable to cross-examination
iii. He may choose to remain silent. He need not say anything at all if he so wishes. If he chooses this option, the court shall proceed further to ask whether or not he has witnesses and evidence to give in his defence.

- Where represented by a legal practitioner, the court only give direction that the defence of the accused be opened.—no need to explain options available to the accused again. See 287(1)(a) CPL, 36(6)(d) CFRN 1999, 20(1)(a)(iii) ACJL, 358(1)(c) ACJA
- Where the accused is unrepresented by counsel it is the duty of the court to inform him of the options. ADIO v STATE , EDET AKPAN V THE STATE
- Failure of the court to comply with the procedure/informing the accused of options available to the Accused. See 358(2), 360 ACJA
- Where represented, counsel is deemed to know the law:
- Non complication with the laid down procedure per se will not vitiate the trial/. Sectin 288 CPA, 360 ACJA.

- Before if it will affect the proceeding or vitiate it the Accused must show he has suffered miscarriage of justice. See EME V the state. Saka V THE STATE,

It will not vitiate the proceeding if: 360 ACJA

a. Called on the defendant for his defence
b. Asked the defendant if he has witnesses
c. Heard the defendant and his witnesses and any other evidence if any.

See KAJOLA V STATE. The mere fact that the court inform the Accused of the option is not enough, it must be shown that it is explained to the understanding of the Accused. Accused must show that he suffered miscarriage of justice. See EMEZ V STATE and JOSIAH V STATE

Note that any of the option he chooses he would be asked whether he has any witness to call .

THE EX-IMPROVISO RULE

- Where the defence raises new matter in its evidence. 241 ACJL and 36 ACJA. Which prosecution could not have possibly foreseen. It was not part of the prosecution's evidence or case. The defence is deposed to answer the case as submitted by the prosecution.
- The prosecution may with leave of court be allowed to call or recall witnesses in rebuttal of such new issue raised. Ss. 289 CPA, 241 ACJL, 361 ACJA.
- The new matter must be such the prosecution will not for see the likelihood of the defence raising it.

EXAMPLES OF NEW MATTERS:

- That one of the witnesses of the prosecution are supposed to be part of the accused persons.
- That the accused person was not properly identified by the prosecution witnesses.
- The leave of the court must be granted with caution.
- Court must be convinced that new issues has in fact been raised before granting such leave to prosecution
- May amount to prosecution opening his case again, which is not allowed in criminal litigation. Therefore there must be sufficient cause.

POWER OF THE COURT TO RECALL WITNESSES. 200 CPL, 237 CPC and 246 EA Ally v state	**POWER OF THE PROSECUTION TO CALL WITNESSES AFTER CLOSE OF HIS CASE 289 CPL, 361 CPA**
The court may call or recall witnesses any time before judgment for clarification and just determination of issue before it.	It only arise and exercisable where new issues not reasonably foreseen by the prosecution arise in the evidence of the defence.
The witness called is witness of the court not witness of the parties.	It is in rebuttal of a new, matter not to reopen his case again. Read; BALA V COP
Parties can only cross examine the witness called by the court with the leave of the court	See ONUOHA V THE STATE
It is exercisable any time before the final judgment is given	

VISIT TO LOCUS IN QUO

a. It refer to inspection of movable/immovable evidence by court for proper determination of the case before it. Ss. 127(1)(a(b) EA, 205 ACJL, 207 CPA, 243 CPC(1) ACJA]
b. It similarly means locus criminis, it may be a thing or person that cannot be moved to the court
c. It may be the application of either parties or suo motu by the court.
d. Visit can be carried out at any time during proceedings either of prosecution or defence

e. It is advised that the visit should be done at the earliest time (during the proceedings for the court) to have a better appreciation of the evidence to be adduced by the parties.

PROCEDURE

Two procedures are laid down in conducting visit: See 127(2)(a)(b) EA 2011

a. The court may adjourn to locus and continue trial there by taking evidence from the witnesses and later reconvene back in court. See s. 127(2)(a) EA, COP v OLAOPA

b. Court with parties visit locus, inspect, take note of things and reconvene back in court to continue proceedings. s. 127(2)(b)p EA. R V DOGBE

c. It is important that the accused person(s) must be present at the scene of the crime. ADUNFE V IGP

Non-compliance with laid down procedure will not vitiate a trial unless the accused person can show that he suffered miscarriage of justice owing to the effect of the non -compliance. See Aboyeji v Momoh , Aremu V AG WEstetern Nigeria

DEFENCES AVAILABLE TO THE DEFENDANT

1. **ALIBI**. See ODIAKA V THE STATE

- Accused must prove that he was at some other place and it was impossible for him to have committed the crime.
- He must raise the alibi early in the trial to enable police investigation. See YANROV THE STATE
- No limit to the witnesses the defendant can call to support his evidence
- Defendant should always be called first where he intends to give evidence in his trial. IGWE & ORS V THE STATE.
- It has been advised that the Accused/Defendant should be called first in his order of calling witnesses.
- All the witnesses of the defence are subject to the rule of examination in accordance with the Evidence Act
- All the rule of burden and standard of proof are similarly applicable to the defendant's case.

FINAL ADDRESSES

- It is summing up the facts and the evidence adduced before the court applying the law to them and each party asking the court to return verdict in his favour
- Purpose it serve in criminal Trial?
- To assist the court in the just determination of the case. Ss. 269(2) ACJL, 241 CPL, 192 CPC, 304(1) ACJA. Failure to Address will not vitiate trial though it is important and advisable, see NDU V STATE.
- In criminal matters or trials it is the defence that addresses the court fists at the closeo f eveidence. 241 CPA, 269 (1) ACJL, 304 ACJA.
- Ordinarily the time for writing judgment begins to run after the final Addresses
- Order of delivering final addresses in a criminal trial

➢ It is the defence that addresses the court first in criminal trial 241 CPL

➢ The prosecutor's right of reply depends on how the accused conducts his case/ status of the prosecutor. 271 ACJL.

a. If no witness is called except the Accused or witness solely as to his character and NO document is put in evidence; NO reply unless he is a law officer. See section 241 CPA, 269 ACJL 304(1) ACJA, Alhaji v COP.

b. Where the defence introduced new matter in his opening address which was nto supported by evidecne the court in its discretion may allow the prosecution ot e right to reply. Section 241 CPA, 194 (1) CPC

c. Where other witnesses except the accused or witnesses solely as to character were called and document is tendered, prosecution SHALL HAE right of reply sections 242 CPA, section 270 ACJL 2011, State v Sanusi

d. Note : where prosecutor is a law officer he will always have a right of reply. Sections 1 Criminal code, 202, 243 CPA, Awobutu V state, 271 ACJL, 304 (3) ACJA.

ETHICAL ISSUES:

Duty of defence counsel

He must defencd the accused erson to the best if his ability. See rule 37 (1) (2) (3) RPC Rule 38 RPC and Rule 32 (1) (2) RPC, Udofia v state and Udo v state.

No unreasoanlbe adjournment

WEEK 17&18

JUDGMENT (VERDICT) AND SENTENCING

JUDGMENT

- Judgment is defined as a court's final determination of the rights and obligation of the parties in a case.—Black's Law Dictionary. See s. 6(6)(b) 1999 CFRN as amended. Judgment marks the end of a trial before a competent court.
- Judgement in criminal matters in Nigeria is regulated: 245 CPA, 268 (1) and 269 CPC, 275 ACJL, 308 ACJA, 294 CFRN.
- At the close of evidence by the parties and final addresses court proceeds to judgment., 90 days
- The writing and delivery of judgment/sentencing by a competent court on all the issues raised by the parties signifies the end of criminal trial.

CONTENTS OF A VALID JUDGMENT

1. Judgement Must be in writing
2. Judgement Must contain points (issues) for determination
3. Judgement must contain the decision of the court on the points for determination
4. Judgement must contain Reasons for the decision of the court.
5. Judgement must be dated and signed and or sealed by the Judge or Magistrate (only required in the North)

JUDGEMENT MUST BE IN WRITING

ORAL JUDGMENT: generally, oral judgment in any court is not allowed in Nigeria. See 294 CFRN 1999 as amended however, exception has been admitted under the CPL and ACJA where a magistrate may deliver oral judgment. It does not apply to High Court, Federal High Court. By section 245 CPL and s. 308(2) ACJA a magistrate may deliver an oral judgment, see **UNAKALAMBA** V **COP**

- **CONDITION PRECEDENT**
- The magistrate must have recorded briefly his decision and reason for the decision before delivering the oral judgment.—by so doing the magistrate becomes *functus officio.* Not applicable in HC, FHC, CA and SC.
- **Only applicable in the south excluding Lagos and FCT.**
- **Not applicable in the CPCL and ACJL state.**

CONFLICT OF LAWS ON ORAL JUDGMENT

- Note that there is no conflict between ss. 245 CPL; 308(2) ACJA and 294(1) of 1999 CFRN because if the Constitutional Provision are complied with, it is ordinarily in writing as required by the constitution.
- It will be in conflict if the Constitution Practice is not complied. See OKORUWA V STATE.
- Oral judgment delivered in open court and later reduced in to writing in judge's chambers remains an oral judgment. See STATE V LOPEZ. Judgement to be delivered when the accused person is present in court.
- The substance of the judgement must be explained to the accused person in the language he understand section 36 (6)(e)
- If the accused is not in court when judgement is delivered, the entire proceedings will be a nullity. See Audu v state (2016) and Mohammed v State (2015)
- QUERY: What is the rationale? Court becomes *functus officio* upon delivery of the judgement.
- Judgment read from notes made by the judge during the course of the trial is an oral judgment. See QUEEN V FADINA (1958)
- Judgement read from notes made by the judge's son or daughter is an oral judgement. Ajayi v State (1978)
- Judgement dictated in court by judge to a stenographer/typist remains an oral judgement Okoruwa v state.

- Judge may write his judgment at the close of evidence but cannot be delivered before final addresses. See R V COBOLAH. Judge must not deliver such judgment before final addresses Judge may make any subsequent amendments on the written judgment upon hearing final addresses. R v Cobolah.

DELIVERY OF JUDGEMENT BY ANOTHER JUDGE

- A written and signed judgment by a judge may be delivered by another if the trial judge is ill or unavoidably absent. See 251 CPL, 262 CPCL, 281 ACJL, and 315 ACJA. See AGF V ANPP (2003) and IYELA V COP. A written and unsigned judgment cannot be delivered by another judge. No requirements as to the dating of the judgement why?

JUDGMENT MUST CONTAIN THE POINTS FOR DETERMINATION

The judgment must indicate whether or not the accused committed the offence charged or a lesser offence which he was not charged but in appropriate cases may be convicted. In criminal proceedings, it centres on the culpability or innocence of the accused person. The court considers whether the accused committed the alleged offence and the evidence adduced before the court or he committed a lesser offence.

The questions to ask would be: was the offence committed? Are the ingredients of the offence proved with reference to the evidence led? Is the accused the person who committed offence?

Regard must be had to the substantive criminal law to identify the ingredients of the offence. Regards must be had to the evidence adduced. These are the basis for the determination of the guilt or innocence of the accused See TANKO V STATE (2009) …

JUDGMENT MUST CONTAIN DECISION OF THE COURT ON POINTS FOR DETERMINATION.

- A judgment must make a specific decision on each of the point or questions raised.
- The decision of the court on each point amounts to the ultimate verdict of the court.
- A verdict pronounced either convict or discharge the accused on each point.
- See BOLANLE V STATE
- The judge must analyse or review evidence before him to establish if there is proof beyond reasonable doubt. See ONAFOWOKAN V STATE. Willie John v state.
- The court must evaluate carefully the evidence of the prosecution and the defence
- Where the trial judge prefers a version of the evidence to the other, the reason must be stated. See STATE V AJIE

JUDGMENT MUST CONTAIN REASONS FOR THE DECISION

- The trial court must carefully evaluate the evidence of the prosecution. It involves evaluation of both parties. Where the trial court prefers a version of the evidence to the other, the reason must be stated. STATE V AJIE (2000)
- The court must state reason why the evidence adduced by one side is preferred over that adduced by the other. Reasons for the decision is not court sensitive .See NIGERIAN ARMY V AMINUN KANO—giving reason similarly applies to decisions given by court martial, Bakoshi v Chief of Naval Staff. FAILURE will lead to quashing the decision on appeal. Nwaefu v State, ADAMU V STATE.

EXTRACTS:

"the case is one of facts. The evidence against each of the accused is overwhelming. It is a surprise that none of them pleaded guilty. I find each of them guilty on the 2 counts."

The phrase 'I believe' or 'I do not believe' has been held not to be a conclusive satisfaction of the reason behind a verdict

- REASONS for the decision is not court sensitive.—applicable before all court. Decisions reached without reason is subject to be quashed on Appeal. See WILLIE JOHN V STATE

JUDGMENT MUST BE DATED AND SIGNED OR SEALED BY THE JUDGE:

- Where judgment has no date and signature, it is invalid—HARUNA V UNIVERSITY OF AGRIC, MAKURDI, BAKOSHI V CHIEF OF NAVAL STAFF

- Sealing is not a strict requirement rather, alternative to signature IN THE NORTH 269 CPCL. Sealing in an alternative to signature in the North.—s. 269(1) CPC
- The relevant date is the date of delivery of the judgment or date of pronouncement. Signature must appear immediately after the judgment. An undated and unsigned judgment is worthless. Signature in an ancillary order attached or accompanying a judgement shows sufficient compliance.—OBASEKI V STATE
- **REASONS: TO KNOW THE DATE OF APPEAL.**

Where judgment is given but reason reserved, when is the computation of time?—if it is at the SC, date is not relevant. If it is at the CA, it is advisable to enter appeal even if it is the omnibus grounds and state need to file additional ground to save running out of the statutory time. Ss. 245 CPL, 275 ACJL, 269(1) CPCL, 308(1) ACJA, AGF V ANPP

The trial judge may write and sign a judgment and another judge will deliver and date it. AGF V ANPP, see s. 251 CPL, s. 262 CPC, s. 281 ACJL. Another judge who delivers a judgement must date and sign it irrespective of the previous signature of the previous judge. See AGF V ANPP.

EFFECT OF NON- COMPLIANCE

- Generally, non-compliance renders the judgment a nullity but it depends on the missing points.—WILLIE JOHN V THE STATE.

TIME LIMIT TO DELIVER A JUDGEMENT. Section 294 (1) CFRN

- Judgement to be delivered not later than 90 days after conclusion of evidence and close of final addresses by counsel.
- Where there are no final addresses, time starts to run at conclusion of case for the defence and the court adjourns for judgement.

TIME LIMIT

- compliance with section 294 (1) CFRN is mandatory. See SHEHU V STATE (1982).
- All parties must be furnished within 7 days after the delivery of the judgment of the copy of the judgment.
- Time start running after the final address by the parties or any last event by the party to the case or at the instance of the court i.e. any event that occurs even if final address has been given. E.g. application for further address, recall of witnesses or arrest of judgment
- Where there are no final addresses, time start running after the last witness is called and the court adjourn for judgment. Failure to observe the time frame is not constitutional—SHEHU V STATE
- Failure use to render the judgment null and void under the 1979 CFRN, however, under the 1999 CFRN, failure will not ordinarily nullify the judgment unless it is proved that failure occasion miscarriage of justice by reason of the delay to the appellant. —s. 294(5) CFRN 1999 and OGBU V STATE. APOSI v THE STATE. Does not render the judgement void but voidable.
- Onus is therefore on the appellant. Non-compliance is a mere irregularity, it does not vitiate the Proceeding.

ARREST OF COURT JUDGMENT

Generally, the judgment of the court cannot be arrested. See NEWS WATCH COMMUNICATIONS LTD v ATTAH (2006). However the delivery may be suspended by the application of the parties.

EXCEPTIONS:

a. Under extreme and cogent reasons
b. The reasons must be compelling
c. Reasons on ground of fraud or deception that may affect interest of either party if the judgment is given.

CONVICTION

- Conviction is the act of judicially finding someone guilty of a crime. YALEKHUE V OMOREGBE. (1991). A finding and/or pronouncement by the court of "guilty "

- It does not matter that accused was not given a custodial sentence. YALEKHUE V OMOREGBE. (1991).
- The Judgment must convict the accused before he is sentenced. R V EKPO

EFFECT OF FAILURE TO RECORD CONVICTION BEFORE SENTENCE

It depends on the circumstance of the case, If the finding of guilt can be gleaned from the records, court will see it as an irregularity that can be remedied by the appellate court. Onyejekwe v State. R v Ekpo.

- If it is not discernible from the records, failure to enter a conviction may invalidate the judgement and lead to an order of retrial. The court may also nullify the proceeding. And discharge and acquit the accused person. ADAMU V SATE

PRELIMINARIES ON CONVICTION

- The court must deliver a verdict on each count where accused is charged for more than a count.
- The court must deliver a verdict in respect of each count where more than one accused is charged. See OYEDIRAN & ORS V THE REPUBLIC (1967)
- The court must pronounce its sentence or on each accused or The court must also pronounce sentence on each count or on each accused. BANKOLE V STATE

ALLOCUTUS—SS. 247 CPL, 277 ACJL, 197(1) CPCL and 310(1) ACJA

- Court inquiry from the convict as to any reason why the sentence should not be passed.
- **An unsworn** statement from a convicted person to the judge in which he pleads for mercy, explains his conduct, apologises for the crime or says anything else in effort to lessen the impending sentence. Black's Law Dictionary
- Allocutus is only made after judgment has been delivered and not at any time before – THE STATE V JOHN. It is made after conviction or plea of guilty before sentence
- Under the ACJL, it is the duty of the registrar to ask the Defendant convict for Allocutus—s.27 ACJL, if not, the judge or Magistrate ask
- Omission to call for allocutus does not affect the proceeding—s. 277 ACJL, 247 CPL, 197(1) CPC and 310 ACJA
- It is a plea in mitigation and does not absolve the convict of the punishment. Ogbeide V COP .
- Allocutus is ineffective where the law relating to an offence provides a mandatory punishment or minimum punishment.
- An Allocutus is not a defence. No amount of allocutus will mitigate a capital punishment or minimum sentence offences.
- Ethics: a lawyer must be well prepared in cases where the court allows him to make Allocutus.
- Statements made by a convicted person in allocutus is not subject to cross-examination.
- Where there is mandatory punishment in an offence, an Allocutus is of no effect. See THE STATE V JOHN (2013)—like in murder case that carries mandatory death sentences.

After allocutus the court proceeds to sentence.

EFFECT OF FAILURE TO CALL FOR AN ALLOCUTUS

Failure to call o the convicted person to make an allocutus will not vitiate the judgement .

POWER OF THE TRIAL COURT TO TAKE OTHER OFFENCE INTO CONSIDERATION WHEN CONVICTING OR SENTENCING THE ACCUSED.—

- This is regulated by s. 249(1) CPL, s. 258(1) CPCL and 279(1) ACJL
- The court may take cognisance of other offences pending against the convicted person before pronouncing the sentence.

CONDITIONS PRECEDENT

a. The person making the application must have been found guilty of the present offence
b. The person must have admitted guilt of those other offences
c. He must have agreed that the other charges be taken in to consideration in passing sentence on him
d. The prosecutor of the other charge/AG (north) must have consented.
e. The offence must have been charged.

f. The court must have jurisdiction to try the offence.

- The accused or his counsel may make the application.

CAVEATS ON TAKING OTHER OFFENCES INTO CONSIDERATION

- The court must not pass a greater sentence that exceeds his jurisdiction.
- The maximum sentence to be imposed on the accused shall not exceed that for the offence which he has been convicted.
- Where a sentence is passed on the accused after considering other offences, he cannot again be tried for those other offences unless the conviction is set aside on appeal. Section 279 ACJL, 249 (2) CPL…..**AUTRO FOIS CONVICT**
-
- Admission of guilt cannot be used in subsequent proceeding provided he is not convicted for the offences

CONVICTION FOR AN OFFENCE NOT EXPRESSLY CHARGED

- Accused can only be tried and convicted for an offence which he has pleaded and expressly charged. See ss. 215 CPL and 36(6)(a) 1999 CFRN
- The court can convict for a lesser not charged provided it is supported by evidence where accused.
- An accused who is charged with a greater offence is deemed to have notice of the lesser offence. NWACHUKWU V STATE
- An accused charged with manslaughter cannot be convicted from murder. See s. 228(1) ACJA… lesser offence.
- The offence convicted must carry a lesser punishment 169 ACJL
- Accused charged with an offence may be convicted for an offence of attempt to commit that offence.
- An accused convicted of attempt to commit a substantive offence cannot be prosecuted again for the substantive offence. See 171 CPL, 162
- Prosecution may at the close of evidence but before judgment apply to amend the charge to include the substantive offence. 155(1)ACJL.
- Where the charge is amended to include the substantive, conviction is deemed to be in the alternatives. AZI V THE STATE
- The grave and the lesser offence must be provided for under the same law. OKOBI V STATE

AMENDMENT OF JUDGMENT

- Once a judge pronounce judgment in a case, he becomes *functus officio UNAKALAMBA V COP.*
- *However a judgement may be amended in certwin circumsances. See section 254 CPL and 318 ACJA.*
- As a general rule, once judgment is delivered, every party to the judgment including the judge is bound by the judgment.—BAKARE V APENA

Exceptions

a. Correction of clerical errors—254 CPL

b. Errors on accidental slip in judgment

c. To make the intention of the court clear to the parties. Necessary to carry out court's meaning and clarification of the court's intention—OVENSERI V OSAGIEDE

d. In the case of execution of sentence of canning based on medical eveidence Amendment substituting a punishment if the convict is found unfit for the punishment given by reason of medical evidence—309 CPCL

e. On conviction for competent in facie curie. in contempt in facie curie where the court is exercising his discretion—317 CPC

f. On the case of execution of sentence of caning based on medical evidence. S. 309 CPCL

Under the ACJA, the court may at any time amend any defect in an order or warrant.—s. 318 ACJA—NB: defect in order or warrant as to omission in time or place will not render unlawful any act done pursuant to it provided it can be reasonably inferred that the order or warrant is lawfully directed.

MODE OF DELIVERY OF JUDGMENT

- Composition of trial court must remain constant from commencement to judgement.
- If composition is altered, case start de novo. IYELA V COP

- Where trial start de novo, evidence in previous trial is abandoned. UGURU V STATE

Exceptions—s. 315 ACJA, 251 CPL, 262 CPCL and 281 ACJL, See. Especially, 396 (7) ACJA

Pre heard criminal matter

JUDGMENT AT THE CA AND SC

- Every justice who heard the case must express and deliver his opinion in writing
- Alternatively, he may state that he adopts the opinion of any other justice who delivers a written opinion.
- it is not mandatory for justices of the CA or SC who heard the case to be present while delivering the judgment.—s. 294(2) CFRN 1999
- opinion of the judge may be presented or pronounced by another judge that does not constitute the panel that heard the appeal.—OKINO V OBANIBERA.
- all justices who sat for the case need not be present to deliver judgment
- one justice of the court suffices and it does not matter whether or not he is among the justices that sat for the hearing
- if he ceases to a be a justice of the court before the date fixed for judgment, his opinion cannot be read/delivered but pronounced. See SHITTA-BEY V AGF and AJIBOYE V ISHOLA

SENTENCING: "THE SENTENCE OF THIS COURT UPON YOU IS THAT YOU BE HANGED BY THE NECK UNTIL YOU BE DEAD AND MAY THE LORD HAVE ON YOUR SOUL …"

- Sentence is defined as the punishment imposed according to law on a criminal wrongdoer after his conviction. Yalekhue v Omoregbe.
- **It** is the next stage after conviction of the Accused/defendant
- **It** is the imposition of the punishment prescribed by law on the Accused person if found guilty.
- **Asakitipi v the satet .. sentence must be pronounced in the open court.**
- Omission to pronounce sentence after conviction is a mere irregularity may be corrected at the appeal court. —AZABADA V THE STATE (2014)—the Appellate court may impose the sentence
- Sentence must be pronounced in court and in the presence of the Accused person
- Sentence of the court must be in accordance with those prescribed by the statute—court cannot impose a higher sentence than the one prescribed nor can they impose a sentence not provided for by the statute.—EKPO V STATE.
- The court is not bound to impose the maximum sentence of the …
- The court can impose a lesser sentence than the one prescribed by the statute—provided it is a non-mandatory sentence or offences with minimum penalty.—ISAAC SLAP V AGF and 17(1) Interpretation Act, olani[ekun v the state.
- No discretion to go below the minimum penalty. DADA V BOARD OF CUSTOM & EXCISE. see 23(5) CPC
- Where penalty is a term of imprisonment without an option of fine, upon conviction the court lacks the power to impose option of fine in lieu of imprisonment where the law provides penalty and is silent on the option of fine, the court can exercise discretion to impose fine in lieu of penalty. 23(1) CPCL, 382(1) CPL, 216(1) ACJL
- The sentence of court msutc accored woth that created in the statute Ekpo v state
- Where penalty is a term of imprisionemn without an option of ine, upon conviction the court lacks the power to impose option of fine in ;ieu of imprisionemnt . DADA V BOARD OF CUSTOMS & EXCISE. (1982)
- **Where the law provide s penalty and is silent on the option of fine the court can exercise discretion to impose fine in lieu of is silent**
- Where
- Sentence takes effect upon pronouncement
- May be postponed to start in a particular date.
- **The** sentence must be pronounced in the open court and in the presence of the accused
- **The sentence must be the one prescribed for the offence in law creating the offence. EKPO V STATE**
- **O**mission to pronounce sentence is a mere irregularity
- The court is not bound to impose the maximum sentence except in mandatory punishment
- Appeal against mandatory sentence will fail. EGUNJOBI V FRN

LIMIT OF DISCRETION TO IMPOSE LESSER PUNISHMENT

- Mandatory sentence. EGUBJOBI V FRN-
- Minimum penalty, AFOLABI V STATE
- Difference between mandatory and minimum, note section 416 (2) (i) ACJA.
- The sentence may also take effect restrospectively i.e. backdating it.
- The court after conviction may reire to consider sentence or adjourn for sentence … section 278 (1) ACJL, Section 198 CPCL, section 248 CPL,
- Suspended sentence is alien to our criminal justice system … state v Audu (1972) Ekpo V State (1982)

MANDATORY SENTENCE:

- Discretion to give lesser sentence is not exercisable in offence carrying mandatory punishment. –AMOSHIMA V THE STATE
- Examples include, murder, treason, armed robbery and instigating invasion of Nigeria—DEATH SENTENCE. Attempted Armed Robbery—Life Imprisonment.

MINIMUM PENALTY

- Court have no discretion to give lesser sentence than the minimum prescribed in minimum penalty offences
- See DADA V BOARD OF EXCISE AND CUSTOM
- E.g offences where option of fine is not stated. Fine cannot be given as penalty in such offences. The statute is specific as to imprisonment not fine.
- **See also AFOLABI V THE STATE**

MAXIMUM SENTENCE

- It is the highest sentence provided for an offence
- The judge has limited discretion in imposing not more than the maximum offence prescribed
- See AMOSHIMA V THE STATE
- The court has discretion to impose a sentence minimum but not more than the one prescribed.

POINTS ON SENTENCE

- The sentence may also take effect retrospectively
- The court after conviction may retire to consider sentence and adjourn for sentence
- Suspended sentence is alien to our criminal justice system.—STATE V AUDU and EKPO V STATE. See 460 ACJA—recognised under the ACJA but not applicable in offences involving arms, offensive weapon, sexual offences and offences with punishment above 3 years.
- Under the CPL & ACJL a convicted person may be discharged upon self recognixzance with or without sureties to appear and receive sentence on a future date. Section 250 CPL, 280 ACJL.
- A court that pronounces more than one sentence in a trial may direct whether or not the sentence will run concurrently or consecutively. S. 314 ACJL
- Where the court is silent, the sentence will run consecutively. See s. 24 & 312 CPCL
- Concurrently: when serving the term for one it is deemed they are serving the terms for other offences. Serve the highest among the terms.
- But consecutively: the aggregate

ACJA AND SENTENCING OBJECTIVES. 401(2)

Purpose for which the sentence is meant to serve. What is the achievement of the state upon the sentencing?

- **Prevention**
- **Restraint**

- **Rehabilitation**
- **Deterrence**
- **Education of the public**
- **Retribution**
- **Restitution**

Note the factors the court will consider in s. 416(2) ACJA and introduction of sentence hearing.

TYPES OF PUNISHMENT

1. DEATH SENTENCE

- It is a mandatory sentence for capital offences therefore capital offences attract death penalty. The Supreme court has held that death sentence is legal in Nigeria, Kalu v state (1998).

List of capital offences in Nigeria

a. **Murder/ culpable homicide punishable with death**
b. **Treason**
c. **Treachery**
d. **Armed Robbery**
e. **Presiding in unlawful trial by an ordeal which result to death**
f. **Fabricating evidence which results to death of an innocent person**
g. **Instigating invasion of Nigeria**
h. **Abatement of suicide of a child or insane person.**
i. **Any other offences so designated by ACT of the NA**

Death sentence is usually by hanging though not mandatory

- Under the ACJA, it may be by lethal injection
- Format under the CPA and ACJL, usually employed in the CPC jurisdiction

"the sentence of the court upon you is that you be hanged by the neck until you be dead and may the Lord have mercy on your soul"

- Format under the ACJA jurisdiction is:

"the sentence of the court upon you is that you be hanged by the neck until you are dead or by lethal injection"

- Armed robbery is via firing squad. Section 1(2) (a)(b) Robbery & Fire Arms (special provisions) Act 1984
- Execution of sentence of death is by hanging. See 402 ACJA—lethal injection.
- **Failure** to comply with the format is not fatal—see GANO V STATE—it is regarded as clerical error rectifiable by the trial judge or the court of Appeal.

PERSONS EXEMPTED FROM BEING SENTENCED TO DEATH:

Exception Death Sentence

a. **Pregnant omen**

- Death sentence on pregnant women is suspended till they give birth and their child weaned—s. 404 ACJA
- If she is found guilty Under the CPL, CPC and ACJL state, she will be sentenced to life Imprisonment—s. 368 CPL, 270 and 272(3) CPC and 302(2) ACJL
- The relevant status is the status of a woman at the time of sentencing/conviction not at the time of commission of the offence.
- The duty is on the court where the convict allege pregnancy to determine the question as to whether she is pregnant or not.
- Evidence of allegation of pregnancy shall be admitted if laid down by the woman convict or the prosecution
- Standard of proof of pregnancy is to the satisfaction of the court
- Compare 404 & 415(4) ACJA with s. 221(2) Child's Right Act.—ACJA Prevails.

SENTENCE OF DEATH AND PREGNANT WOMAN UNDER THE CRA

- Pregnant woman or nursing mother shall not be sentenced to death. S. 221(2) CRA

- Court to non-institutional sentence
- The pregnant woman should be kept at special mother centres after the expiration of which she will be brought before the court to give directives.

INFORMATION OF PREGNANCY

- It is the duty of the woman to inform the court of her pregnancy
- If the woman got pregnant between sentencing and execution, the execution will be stayed pending the time she deliver and wean the baby.
- Appeal as to whether or not a woman convict is pregnant lies direct to the SC. S. 376(4) CPL, 271(4) CPCL(this position is faulty) but see s. 311 ACJL
- Consider the constitutionality of ss. S. 376(4) CPL, 271(4) CPCL with s. 233(1) CFRN 1999

b. **CHILDREN AND YOUNG PERSONS**

- Infant, child and young persons are not subject to death sentence.
- Persons who has attained 14 but not yet 18 yrs. S. 2. CPL & CYPL
- The relevant date is at the time of commission of the offence not at the time of sentence.
- Under the CPL and CPC state, a person under the age of 17 years cannot be sentenced to death. He will be detained at the pleasure of the Governor.—s. 368(3) CPL and 270 and 272 CPC—MODUPE V STATE, see GUABADIA V THE STATE
- He may be discharged during pleasure by the president/governor on license—s. 401(1)(2) CPL, s. 330(1)(2)ACJL, s. 303(1)(2) CPCL
- Under the ACJL- the age is 18 years—s. 302(3) ACJL
- Under the ACJA, the age limit is 18 years and the punishment in lieu is life imprisonment or such other term of imprisonment as the court deems fit—s. 405 ACJA

PROCEDURE AFTER DEATH SENTENCE HAS BEEN PASSED

- Death sentence does not take effect upon pronouncement
- Time is given to convict to exercise his right of Appeal

STEPS TO TAKE

a. Certificate of death sentence shall be issued by the pronouncing judge.—ss. 307 ACJL, 371 B CPL and 407 ACJA

b. The Registrar of court do the following:

- Give 2 Copies of the Certificate to prison authority
- give one copy of the certificate to the sheriff
- file one copy of the certificate in the record of proceeding

c. The judge do the following:

- As Soon as Possible Transfer a CTC of the record of proceeding and a copy of the certificate to the AG
- Forward a written report to the Advisory committee on prerogative of mercy on his observations and recommendations with respect to the sentenced person

d. The AG will consider the record of proceedings and the certificate sent to him and if he thinks the case be consider forward the record and the certificate to the Advisory council who in turn will act on it and make report to the AG.

e. upon receipt of the Advisory Council report, the AG recommend the following:

- **that the convict be pardoned**
- **sentence be commuted to life imprisonment**
- **sentence commuted to any specific period**
- **Sentence to be carried out.**

- notify the Governor who in turn do the following:

- consider the report made
- obtain and consider the advice of the Advisory committee
- decide whether to commute the sentence to imprisonment for life, or any specific period or the prisoner should be pardoned or reprieved

f. if the governor thinks otherwise in (e) above,

- He shall inform the Sheriff and the death sentence will be carried into effect.—313 ACJL
- If the governor intend to pardon or commute the offender to prison, he shall issue an order to that effect and copy will be sent to the sheriff and another to the superintendent in charge of the prison
- The superintendent in charge of the prison custody of the offender and the sheriff shall comply with the order.

**see Section 407-414 of the ACJA for the procedure.

- The federal advisory council on the prerogative of mercy. See OKEKE V STATE—application Prerogative of mercy to the SC was refused.

EXECUTION of SENTENCE

- Sentence shall not be carried out unless when confirmed by the president or governor
- Appeal against death sentence act as a stay of execution.— see the notorious case of BELLO V AG OYO STATE
-

2. IMPRISONMENT

- Known as a custodial sentence
- The convict is to be remanded in prison until the expiration of the term of imprisonment. The court may order that the imprisonment shall be with or without hard labour.
- It denotes that the accused will be committed to prison
- It may be made with hard labour or without hard labour.
- Where a sentence is silent on hard labour, it is deemed that the imprisonment is with hard labour.—377 CPL and 312 ACJL.

The term of imprisonment prescribed

Hard labour? Have physical labour imposed in addition to mere sentence for convicts sentenced for serious crimes or misconduct while in prison.

- Note the MC in the north may punish and refer to the HC for punishment/sentencing. 257 CPCL.
- MC in the south cannot exceed the limit of its power to impose punishment. S. 308 CPL.
- Note the power of the HC under s. 272 of the CFRN and MC to impose punishment in the South and the North.
- Can a magistrate make consecutive sentence that will exceed his jurisdiction?
- For Lagos it must not exceed 14yrs. S. 314 ACJL and s. 29(5) MCL
- MC in the North, the aggregate shall not exceed twice the limit of its power. S. 24(2) CPCL.—note that a general law, cannot confer jurisdiction not conferred by the statute creating the court. FASHUSHI V POLICE

CONCURRENT AND CONSECUTIVE SENTENCE: section 24 (1) CPCL; 314 ACJL

Concurrent Sentence:

- It comes into play when after conviction for different offences, the sentence is said to run at the same time for the offences or with another sentence imposed at an earlier proceeding
- all the term imprisonment run at the same time
- convict serve highest of all the term

Consecutive Sentence:

- The term of the sentence runs disjunctively.
- one term begin after the expiration of the other.—see 314 ACJL
- if sentencing order is silent on running terms for conviction on several offences, it is deemed to run consecutively.—380 CPL and 24 CPC
- Under the ACJA, consecutive sentencing is not applicable in respect of offences committed in the same transaction.—416(2)(i) ACJA

- Where a magistrate passes consecutive sentence, the aggregate shall not exceed 4 years or limit of his jurisdiction.—418(2) ACJA
- Convict serve the aggregate of the term.

COMMENCEMENT OF SENTENCE OF IMPRISONMENT

- It takes effect from the whole of the day from which it was pronounced.—419 ACJA and 381 CPL
- Accused may be committed to prison within 3 month from the day the judgment was pronounced—393(3) CPL
- In the computation of prison term under the ACJA, the period, the Accused used in awaiting trial will be counted to the term of imprisonment—416(2)(e)ACJA
- Under the ACJL, the time of detention must be stated

LIFE IMPRISONMENT: it takes 20 years unless the court state otherwise see section penal code.

A convict who defaults in the payment of fine in lieu shall serve 2 years term maximum see section 390 (3) CPL, 316 (3), 319 (3) ACJL, 422 ACJA,

Warrant of Commitment: An order, authorising the prison authority to admit the accused person to custody.—s. 252 CPL

3. SENTENCE OF FINE

4. 389 CPL, 318 ACJL, 427 ACJA and 74 PC

- Payment of money as punishment
- Entails the payment of money as punishment
- It may be independent or additional sentence to a term of imprisonment.
- Where a convict defaults in the payment of fone as punishment, he will be leab;e to
- Jurisdiction to impose fine sentence is inherent in every court
- The court may impose fine in lieu of imprisonment in the CPL and CPA jurisdiction.—see 382(1)CPL and 23(1) CPC
- Power to impose fine in lieu of imprisonment where the statute provide for minimum sentence to be a term of imprisonment or where the statute expressly oust imposition of fine
- See DADA V BOARD OF CUSTOM AND EXCISE
- Factors in imposing fine: ability of the convict to pay. Person that do not pay may be committed to prison till payment is made
- The ACJA recognises install mental payment of fine.
- The amount to be paid if not stated in the law is at the discretion of the court
- Court must have regard to the means of the convict 3911 CPA, section 320 ACJL & 427 (1) ACJA
- Convict may appeal on grounds of excessive fine imposed on him. See Goke v COP
- The proceeds of the fine is payable to the victim/informant to offset expenses. payment of any court fees and remainder goes to general revenue. Section 391 CPA, section 320 ACJL.

5. CANING—385 & 386 CPA AND 308 & 309 CPC

- It is available in both North and the south
- There is no sentence of caning in Lagos state.
- It may be in addition or in lieu of imprisonment.
- Under the CPL sentence of canning in certain cases may be in addition toother punishment section 387 CPL, section 77 penal code.
- The offence have must carry an imprisonment term not below 6 months.
- Regard must be had to the preva;ence of the offnec
- Prevalence of the offence
- Antecedent of the convict must be examined.
- Not available to all classes of cases and offenders

GUIDES ON CANING

- It shall be done with light rod or a light rattan cane or birch and usually does not exceed 12 strokes—386 (1)(2) CPA, section 308 (5) CPC & 77 penal code
- it shall not be passed on a woman/female offender, 385 CPL, 308 (4)(a)CPCL
- it shall not be passed on a man of 45 years and above 385 CPL & sEction 309(1)(2) CPCL
- it shall not be passed on convict under the sentence of death 308 (4) (b) CPCL
- it shall not be executed in instalment.
- Note that the convict must be medically fit. Section 309 (1)(2)CPCL
- it shall not be executed on a convict not in a fit physical state.

➢ **In the south east, sentence of canning is only retained as punishment for juvenile offenders.Criminal procedure laws of Eastern Region 1963.**

➢ **Execution caning shall not be carried out by instalment section 308 (3) CPCL**

➢ **Appeal against sentence of canning is 15 days 281 (1) CPCL**

6. HADDI LASHING—307(1) CPC

➢ **Applies only to muslim faith practitioners in the North 307 (2) CPCL**

➢ **Essence is to inflict disgrace on the offender rather than pain. Section Criminal Procedure (Haddi lashing) Order in Council 1960**

➢ Bothers on immoral offences committed by Muslim men under the PC

➢ It is imposed in offences of adultery, defamation, injurious falsehood and drunkenness

➢ It merely a symbolic sentence to disgrace the convict.

➢ Not applicable Muslim outside the North—the Non CPCL jurisdiction

➢ It is an additional penalty to and already imposed

HADDI LASHING NOT AVAILABLE IN THE FOLLOWING CIRCUMSTANCES

Offences, 387, 388, 401, 402, PC

➢ Morality

➢ Adultery by a man

➢ Adultery by a woman

➢ Drunkenness

➢ Taking alcoholic for medicinal purpose is not an offence under the PC

PROCEDURE

➢ To be carried out in an enclosed place accessible to the public

➢ Done with a soft tingle thronged leather whip

➢ To be done by a person of moderate physique

➢ Striking arm should not be raised above shoulder level, must hold the whip with 3rd 4th

➢ Physical injury must be avoided

➢ Striking arm not to be raised above shoulder level.

➢ Note that the health of the convict and season of the year must be considered ... see generally the criminal procedure

OTHER FORMS OF SENTENCE

a. PROBATION section 341 ACJL, 453-458 ACJA
b. RESTITUTION OF STOLEN PROPERTY
c. Section 297 & 341 (3) ACJL section 270 CPl
d. BINDING OVER sections 300 and 309 CPL, section CPCL.
e. PAYMENT OF DAMAGE FOR INJURY OR COMPENSATION section 285, 341 (2) ACJL
f. SUSPENDED SENTENCE , section 460 ACJA
g. COMMUNITY SERVICE section 347

h. CONFINEMENT AT A REHABILITATION AND CORRECTIONAL CENTRE see sectin 348 ACJL; section 68 (1)(d) PC

i. DEPORTATION see section 402 -412 CPA, 331 -339 ACJl 439-

7. FORFEITURE

- Seizure of property as a punishment for criminal behaviour
- It often in addition to another punishment
- Usually imposed in offences of illegally acquired property
- See ABACHA V FRN
- It may be done during plea bargain under the ACJA—271(12)&(13)ACJA

8. Compensation

- It may be made by convict and given to the victim of the crime
- See 365(1)(b) CPC and 78 PC
- **See MARTINS V COP**
- **See 319-325 and 340-342 ACJA**

9. Deportation

- It may be a sole sentence or imposed in addition
- See 331 ACJL
- It be for repatriation of an alien from Nigeria back to his country
- It may be moving a Nigerian from one part of the country to another—402 CPA
- The court does not order deportation, they only recommend to the ministry of internal affairs
- A citizen of Nigeria cannot be deported outside Nigeria.

Other sentencing Alternatives

1. Committal to render community service

- A new innovation under the ACJL and ACJA
- See s. 347 ACJL and 460(2) ACJA
- It should not exceed 6 months
- It is alternative to custodial sentence.
- If the person breach the term of the community service, he may sentenced to prison but must not exceed the remaining of the 6 month.
- A service performed for the benefit of the public or its institution
- It is an alternative to custodial sentence or fine

Factor to consider by the court—460(4) ACJA

a. Reduce prison congestion

b. Rehabilitate prisoners by making them undertake productive work

c. Prevent convict who commit simple offences with mixing with hardened criminal

2. Conditional Discharge 435(1)(b) CPL

- An order vitiating the finding of guilt in which the convict receives no punishment

3. Payment of cost—255 CPL, 365(1)(a) CPC and 319 ACJA

4. Detention in Reformatory—68(1)(d) PC

5. Restitution of Stolen Property.—270 CPL and 342(1) ACJA

6. Probation—454 ACJA, 435 CPL and 341 and 342 ACJL

7. Binding over. Ss. 300 & 309 CPL, s. 25 CPCL

8. Suspended sentence. 460 ACJA

9. Payment of damage for injury or compensation.

10. Confinement at a rehabilitation and correctional centre. S. 348 ACJL

11. Note the conditions for parole to be approved. 468 ACJA

RESTORATIVE JUSTICE (Exodus 21 v 23-25, 22 v 24)

- **Restorative justice is reformatory and rehabilitatory in nature.**
- **It emphasises the remedy available to the victim and community as it is restitutory.**
- Retributive justice is mainly concerned on how to bring the offender to face the wrath of the law.
- Restorative justice is concerned about the rehabilitation of the offender and protection against victimisation.
- It further advocate re-integration of the offender into the society as well as remedy to the victim and community who suffered the direct consequences of the crime rather banishment.
- It is reconciliatory in nature.

COMPONENTS OF RESTORATIVE JUSTICE.

a. **RECONCILIATION**
b. **RESTITUTION**
c. **REINTEGRATION**
d. **RESTORATION**

WEEK 19 & 20

APPEALS I

DEFINITION

To seek review from a lower court's decision by a higher court whether or not the decision accords with the law—
Judicial examination by a higher court of the decision of the lower court. OKPONIPERE V STATE (2013) 10 NWLR PT 1362 …
The court of appeal reviews the records of proceedings in the lower court. This is done for the reconsideration of the decision of the lower. It is not a retrial but a re-hearing. New evidence is not adduced except on certain circumstances. An appeal is a continuation of the original action and not an inception of a new action. ODEDO V OGUEBEGO (2015). An appeal is not a fresh action. Because without an original action there can be no appeal. The appeal court focuses on the correctness of the decision.

PURPOSE:

To rectify an alleged erroneous decision on facts, law, mixed law and fact and to reverse any decision of the lower court not in accordance with the law. OREDOYIN V AROWOLO (1989)

TERMINOLOGIES

APPELLANT: this includes the party and/or the counsel to him. Does it include counsel representing the Appellant? Yes. —OKARIKA V SAMUEL (2013) —counsel to the Appellant is also inclusive in the definition of Appellant.

- Can the Appellant file a Cross Appeal?—an appellant cannot file a cross appeal, only the respondent file a cross appeal.
- Respondent? Can the respondent in an appeal challenge the decision appealed against? It can be done by filing a cross appeal. Then he will be a cross appellant.

POINTS TO NOTE

- An appellate court does not try cases because it is not a trial court—it only considers records of proceedings submitted to it from the lower court. No provision of examination of witnesses but rather, records of proceedings will be evaluated for rehearing.
- Appeal is not a retrial but a rehearing. Argument is based on the brief of argument.
- Evidence are rarely adduced before the appellate.
- The right of appeal is statutory, i.e. conferred by statute or constitution. —STATE V ODILI. Therefore the court cannot suo motu confer power itself. No inherent power to hear an appeal see Rabiu V state. **Procedure for filing interlocutory appeal is same as that for final decision.—a notice of appeal must be filed.**

APPEALABLE DECISIONS

- Final decision—a decision of the court that put to an end the rights of the parties.
- Interlocutory Decision—does not finally determines the rights and liabilities of the parties. It only determines the Court does not become functus officio. S. 318(1) CFRN: Does it include a ruling on a no case submission whether upheld or overruled? It thus include it. **ONAGORUWA V STATE—**it is appealable. **ABRU V STATE**.
- **in criminal trial Note that the procedure for filing interlocutory appeal is same as that for final decision.** Interlocutory appeals may be incorporated into the main appeal, OMBUGADU V CPC (2013). KEJAWA V STATE (2013)
- It is good practice to conjoin the interlocutory appeals with the substantitve appeal. They are better subsumed. See KAJEWA…when doing so you seek leave of court , file out of time and extension of time.

DUTIES OF APPELLATE COURT

- The court must determine whether an error was made in the lower court?
- Whether the error was substantial to occasion miscarriage of justice.
- If it was a substantial error did it occasion a miscarriage of justice? See in addition section 294 (5) CFRN

WHO MAY APPEAL

- The prosecutor/ Attorney General., Prosecutor will include agencies with prosecutorial powers
- The Accused/Convict, s. 243 (1) (a) CFRN 1999 and 97 & 68 MCL Lagos 2009, see the case of **ADELABU v AKINBIYI** on whether a victim can appeal or not.

RIGHT OF APPEAL

Right of Appeal is statutory. Court ADILI V STATE, No court has an inherent jurisdiction to hear an appeal. ADILI V STATE. Where it does not inure in favour of a person he cannot appeal. A victim of does not have a right of Appeal.—AKINBIYI V ADELABU. An interested party or victim cannot appeal. Right of appeal is statutory… AGU V AYALOGU (1999)

APPEAL AND CASE STATED

Cases stated—a reference to a higher court to give its opinion on points of law or interpretation of the constitution. 295(2) CFRN order 5 rule 1 court of appeal rules. It is not an appeal. The opinion of the higher court on the issue will be used to decide the case. FRN V IFEGWU (2003) ABACHA V FRN

CONDITIONS FOR CASE STATED

- Question must relate to interpretation of or application of the constitution.
- The question must have arisen as an issue in the proceedings relation to the case.
- Substantial Question Of Law—Substantiality To Be Decided By The Court Making Reference
- Court making reference is not to give opinion of law on the question referred. FRN V IFEGWU. Can an appeal arise from a decision of the lower court based on case stated.

PROCEDURE FOR CASE STATED FROM MC TO CA

- Case to be stated to the HC.
- Either party may apply for the case to be stated for interpretation
- The MC may suo motu state the case before judgment. 78 MCL Lagos state.
- ONLY THE AG IN LAGOS CAN STATE A CASE FOR REFERENCE AFTER JUDGMENT—THIS MUST BE WITHIN 6 MONTHS AFTER DELIVERY OF JUDGMENT.—S. 76 MCL LAGOS. Content of Case stated. See s. 77 of MCL Lagos

CONTENT OF CASE STATED—s. 77 MCL

1. The charge, information, summon or complaint
2. The facts found by the Magistrate to be admitted or proved
3. Any submission of law made by or on behalf of the complainant during the trial or inquiry
4. Finding of sentence imposed by Magistrate in case of conviction
5. The question of law which the AG requires to be submitted for the opinion of the HC

APPEALS AND OTHER PREROGATIVE WRIT

- Available in the supervisory powers of the HC over inferior courts.
- HABEAS corpus : illegal detention to produce the body
- MANDAMUS.
- Ceteriori: State v Falade
- Prohibition: State v Chief magistrate Aboh Mbaise , Ex parte Onukwe.

FORMS OF APPEAL

APPEAL AS OF RIGHT SECTION 241 (1) CFRN CONSTITUTION
APPEAL WITH LEAVE SECTION 242 1999 CFRN

APPEAL FROM MC TO HC

- HC have both original and Appellate jurisdiction.—s. 28 High Court Law Lagos state ; ss. 257(2) & 272(2) CFRN
- Substantive Appeal to be filed within —30 days from the date of the decision section 485 (4) ACJA 282 (2), CPC 69 (1) MCL. To be filed within 15 days.
- Interlocutory Appeal—14 days.
- Appeal on caning—15 days—s. 281 CPC.
- Notice and grounds of appeal to be signed by appellant or his legal practitioner. See order 2 rule s (2) HCL appeal R. Notice to be filed in the magistrate court.
- Verbal notice may be given either in open court or to registrar who will reduce same to writing. Section 280 (3) CPC..
- **No verbal notice in Lagos section 69 (1) MCL.**
- **No verbal notice in FCT see 485 (3) ACJA**

NATURE OF INTERLOCUTORY APPEAL

- Note that interlocutory appeal may be subsumed into a substantive appeal.—OMBUGADU V CPC, KEJAWA V STATE. Note: it is not every minute decision that need to be appealed against?
- Query: Do you need the leave of court to appeal for interlocutory decision? **No need for leave on point of law**Leave is needed on point of mixed law and facts**.** Subsuming Interlocutory Appeal into final decision?
- Leave must be obtained to appeal against the interlocutory decision.—whether or not point of law or fact
- Apply for an extension of time within which to appeal against the interlocutory ruling
- Ruling must be made on a ground of appeal. See OMBUGADU V CPC

EFFECT OF FAILURE TO APPEAL WITHIN TIME

Appeal is defective an invalid if leave for extension of time is not sought

PROCEDURE ON INTERLOCUTORY DECISION: APPEAL FROM MC TO HC

- Commenced by Notice of Appeal and grounds to be signed by the Appellant or the LP. See O. 2 r 2 HCL(Appeal) R
- Verbal notice may be given either in open court or to Registrar who will reduce it into writing. S. 280(1) & (3) CPC
- Written Notice of appeal may be dispensed with or the requirement of reducing same into writing.—see. s. 280(2) CPC—if given immediately after decision and recorded by the Magistrate.
- No provision for oral notice of Appeal in Lagos and FCT= s. 69 MCL Lagos, s. 485 ACJA
- Statute are silent in the CPL states, hence not applicable

GROUNDS OF APPEAL—s. 279(2) 282(2) CPC and 67 and 68 MCL Lagos state

- Appellant in custody can give Notice of Appeal to officer in charge of prison. It is deemed as the date of filing. EWELIKWU V STATE.
- SEVERAL APPELLANTS—each to give separate Notice of Appeal.

QUERY: suppose all the Appellant are represented by a counsel, what is the procedure? Separate Notice of Appeal must be filed

- **What is the effect of failure to appeal within time: Obtain leave to appeal out of time**

PROCEDURE – motion and affidavit and written address.

OMNIBUS GROUNDS OF APPEAL

"The decision of the trial courts is unreasonable and cannot be supported having regard to the evidence". See SECTION 19 (1) Court of Appeal Act, order 2 rule 9 (1)(h) HCL Appeal Rules section 282 (2) (f) CPC. . 485(9) (f) ACJA

- Note that a ground a ground that alleges: "that the decision is unreasonable, unwarranted and cannot be supported having regard to the evidence filed"—it is not a proper ground of appeal in criminal cases. ENITAN V STATE (1986).

WHEN OMNIBUS GROUND OF APPEAL MAY BE ALLOWED:

- Where the error complained is obvious

- Where no evidence was adduced which if believed will lead to conviction
- Where the evidence though it was believed by the trial court, cannot be believed by a reasonable and fair minded judge. See Ali V State (1988).
- An omnibus ground does not need particulars of error. The particulars of error is subsumed under the grounds of Appeal

PLEA OF GUILTY + CONVICTION + APPEAL

- Query: can a person who pleads guilty against conviction and or sentence? Yes he can, He may appeal against, and they can appeal against certain conviction.
- **BURDEN ON THE COURT**: that the accused understand the charge that the plea is unequivocal, not recorded for capital offence, plea must be recorded in language as nearly as possible, must explain effect of the plea to the accused, must ensure that the accused intends to plead guilty to the offence.
- **BURDEN ON THE PROSECUTION**— state the fact of the case alleged, prove the ingredient of the offence to the standard expected of by the law, where offence is that expert evidence is required, expert evidence must be led—e.g. Persons charged with narcotic substance, drugs and are. STEPHENSON V POLICE; ESSIEN V R.

WHEN APPEAL COURT MAY ENTERTAIN THE APPEAL ….

- Can only entertain the appeal if accused/ appellant can establish that he did not understand the charge, or
- Based on the admitted facts, conviction cannot be secured. Essien V R 13 WACA where the SC established the two conditions.

CONDITION PRECEDENTS

That the accused did not appreciate the nature of charge and could not have intended to admit the offence
Base on the admitted facts, conviction for the offence is untenable
Appeal may be against sentence or conviction and sentence effect?
Ground of appeal to set out the particulars of error—485(8) ACJA, section 282 (1) CPC
Grounds of appeal must be derived from decision of court appealed against ASOGWA V PDP
Ground of appeal without particulars may be struck out. ASOGWA V PDP, KOYA V UBA Ltd
Absence of Notice of Appeal= No Appeal—UROK V STATE

CONSTITUTION OF HIGH COURT ON APPELLATE JURISDICTION

- Appeals from MC—at least 1 judge.—s. 273 CFRN 1999
- In the CPC states, appeal from MC or other inferior courts—usually 2 judges.—s. 63 High Court Law, Laws Northern Nigeria 1963. ISHOLA V ABIOYE. (1994)
- In Lagos, duly constituted with 1 judge except the Chief Judge may direct that it be heard by 3 three judges. See. 29 High Court Laws of Lagos.
- Under the HCL Lagos, where 3 judges are sitting, judgment shall be in ratio 2: 1 or where they have diverse opinions, the decision appealed against shall stand as decision of the HC. See ISHOLA V ABIOYE—decision of appeal is based on majority.

APPEAL FROM HIGH COURT TO COURT APPEAL

- Commenced by Notice of Appeal
- No oral notice of appeal. Defective NA—**NIGERIAN ARMY V SAMUEL (2013)**
- Appeal as of Right—241(1)(a-e) CFRN
- Appeal With Leave.—242 CFRN 1999

PERSONS TO APPEAL

Right of appeal—statutory

- Accused/ the convict
- The AGF and AGS
- Other persons or authorities with prosecutorial powers e.g. EFCC, ICPC. The police private prosecutor with fiat.

TIME

- ❖ Notice of Appeal must be filed within 90 days. S. 24 (2) B Court of Appeal Act 2004
- ❖ Interlocutory appeal: Filing of Notice of Appeal must be filed at the Registry of the HC, lower court order 17 rule 3 (1) CAR 2016.
- ❖ When out of time, Notice of Appeal is filed at Court of Appeal… 90 days., See O. 17 r 3 CAR 2016.
- ❖ Fees payable except in capital offenses or where appellant in on legal aid. O 17 r 8(3) CAR, 2016

COMPUTATION OF TIME

- ❖ Starts from the date the judgment or decision appealed against.
- ❖ May also start from the date the appellant has notice of the judgment or decision.—OHUKA V STATE

SIGNING NOTICE OF APPEAL

- ❖ **Notice of Appeal, Application for leave to Appeal or for extension of time** must be signed by the Appellant himself or by counsel/legal representative —O. 17 r 4 (1) CAR 2016. **See Isiaka V State (2011), Uwazurike V AGF,** IKECHUKWU V FRN, ISIAKA V STATE, See order 18 rule 2 on Court Martial.
- ❖ If it is a company: order 17 rule 4 (6) CAR 2016.
- ❖ Singing of joint Notice of Appeal is unknown. NIGERIA ARMY V SAMUEL.
- ❖ An appellant signing on behalf is not permitted
- ❖ Law firm cannot sign. NIGERIAN ARMY V SAMUEL

EXCEPTION

a. Where the contention at the court below that he convict was insane

b. Where the appellant is a body corporate, See Order 17 rr. 4, sub rule (5) & (6) CAR 2016 and Order 18 rule 2 (1) (3) CAR 2016

CONTENT OF NOTICE OF APPEAL

a. Heading of the Court
b. Names of parties
c. Date of decision
d. Whether the decision is against the whole or part of the decision appealed against
e. Grounds of Appeal
f. Reliefs Sought: CA only grant reliefs sought by the parties. Where it is of the opinion that relief not sought be granted, it must take submissions from the parties on such issue raised suo motu.—**OMOKUWAJU V FRN**
g. Persons directly affected by the Appeal
h. Address for service

HEARING OF APPEAL IN COURT OF APPEAL

- ➢ Hearing of appeal at the CA in By briefs of argument—O. 19 CAR 2016

TYPES OF BRIEFS

- ➢ Appellant Brief—45 days. O. 19 r 2 CAR 2016 but now subject s. 8(3) Court of Appeal Fast Track Practice Direction 2014(14 days)
- ➢ Respondent's Brief—30 days. O 19 r 4(1)—s. 8(5) CAFTPD 2014—10 days
- ➢ Reply Brief 14 days. O. 19 r 5 CAR but see s. 8(7) CAFTPD 2014—5 days
- ➢ In conflict between Rules of Court and Practice Direction—Rules of Court Prevail. UNILAG V AIGORO (2009) 5 NWLR.

EFFECT ON NON COMPLIANCE

- ➢ Appellant in default, appeal to be dismissed from want of diligent prosecution. O.19 r 10(1) CAR 2016. See EVEMILI V STATE and s. 8(4) CAFTPD 2014

- Where the respondent is default, the court will hear the appeal. Order 19 rule 10 () S. 8(6) CAFTPD 2014.
- Reply brief he shall be deemed to have conceded all the new points or issues arising from the respondents.

COURT OF APPEAL FAST TRACK PRACTICE DIRECTION 2014

- Provision for fast track appeal In criminal Applies to :

a. Corruption
b. Human trafficking
c. Kidnapping
d. Money Laundering
e. Rape
f. Terrorism
g. Appeals by or against national human rights, intelligence, ;law enforcement, prosecutorial or security agencies, such as the EFFC, NHRC, SSS, ICPC
h. Interlocutory Appeals arising therefrom

CAN APPELLANTS FILE JOINT BRIEF OF ARGUMENT?

CP

- Interest must be same
- Interest must be identical.
- O. 19 r 6 CAR 2016

CONSTITUTION OF COURT OF APPEAL —S. 247(1) CFRN 1999

- For the purpose of hearing Appeal—duly constituted with 3 Justices.—s. 247(1) CFRN 1999
- Exceptional Cases:

a. When sitting on appeal from decision of SCA—all the 3 justices must be learned in Islamic Personal Law

- When siting on appeal from decision of the CCA, all the 3 justices must be learned in customary Law
- For the purpose of interpretation of the Constitution—5 justices will seat.—full court

PRELIMINARY OBJECTION—Order 10 R. 1 CAR 2016

- Notices of Preliminary .Objection to be filed by the respondent 3 clear days before date of hearing. Does not include filing date .
- Failure to give notice of P.O, court may refuse to hear objection or adjourn on terms. O. 10 r 3 CAR 2016 can order cost.
- At the SC—O. 2 r 9 SCR
- Argument for the support of the P.O may be included in the Respondent's Brief
- Taken together. To fast the proceeding.

COURT OF APPEAL TO SUPREME COURT

- Time to Appeal—30 days from date of judgment. Section 27 (2) (b) Supreme Court Act
- Notice must be signed by the Appellant order 9 Rule 3 Sipreme Court Rules
- Right of Appeal. S. 233(2) CFRN
- Appeal with Leave. S. 233 (3) CFRN
- Note that it not mandatory for the Appellant to be present in Court.
- Wrongly headed notice of Appeal is a mere irregularity—OROK V STATE (1987) !SC 105

BRIEFS OF ARGUMENT AT THE SUPREME COURT

- Appellant- 10 weeks
- Respondent—8 weeks
- Reply—4 weeks

- See generally O. 6 r 5 SCR

SUPREME COURT PRACTICE DIRECTION 2013

- Applicable to cases of Terrorism, Rape, Corruption, Money Laundering and Human Trafficking.
- Records of Appeal must be compiled —15 days by the registry of the CA
- Appellant's Brief 10 days
- Respondent brief—7 days
- Reply Brief—3 days
- Section SCPD 2013

ADDITIONAL EVIDENCE ON APPEAL

- Generally, new evidence is not admissible on appeal . ESOH V COP (1958)3 FSC 37
- Why?—
- There should be an end to litigation
- Successful party is entitled to enjoy fruit of judgment
- Successful party not to be confronted with new case on Appeal
- ESANGBEDO V STATE: order 17 rule 3 (3) CAR 2016.
- Leave must be obtained.

CONDITIONS FOR ADDITIONAL EVIDENCE ON APPEAL

- May be allowed in the interest of justice
- Appellant must show that the evidence sought to be adduced was not available at the trial court. SEE OLADIPUPO V STATE (2013) 1 NWLR ()evidence relevant to issue before the court
- Evidence must be apparently credible though not incontrovertible.
- in exceptional circumstances where allowing will not mean a fresh rehearing—ABIOLA V COP, R V ROWLAND 32 CAR 29
- the Appellate Court may admit the evidence or refer the case to the lower court to take evidence and adjudicate afresh in the light of the evidence or report its finding on such evidence to the court.
- The court of Appeal may direct the lower court to report its findings on such evidence to the court of Appeal. section 45 High Court Law of Lagos State, section 55 High Court Law of NN.
- **ORDER OF RETRIAL**

■ The court why deciding an appeal may make an order of retrial

CONDITIONS

a. Where there is an Error in law or irregularity in procedure such that although the trial was not rendered a nullity it cannot be said to be miscarriage does not render the trial a nullity but only a miscarriage of justice

b. The evidence as a whole discloses a substantial case against the appellant

c. No special circumstances as to make it oppressive to put appellant on trial a second time

d. The offences for which appellant was convicted or consequences is not trivial

e. To refuse an order of retrial would occasion a greater miscarriage of justice—ABODUNDE V R, AIGBE V STATE (1976) NMLR)

REFUSAL

a. Not retrial if it would enable the prosecution to remedy his inadequacies or no retrial if it would enable the prosecution to adduce evidence the absence of which would have enabled the appellant to succeed on appeal. OKAFOR V STATE (1976) 1 ALL NLR (Pt 1)385

ABANDONMENT OF APPEAL

- May be express or implied

- Registrar will notify respondent of the abandonment as in form 12
- File a notice of abandonment as in as in criminal form 11 of second schedule
- Upon service of the court registrar, appeal is deemed dismissed. It d
- Order 17 rule 18 CAR 2016
- Abandonment does not include abandonment of the record of Appeal
- Appellant may withdraw his notice of abandonment of appeal with leve of CA or SC
- Note that an appellant may withdraw his notice of abandonment with leave of the CA or SC
- Accused/Appellant will file Criminal from 13 while prosecutor? Appellant files Criminal form 13A… . BARIGHA V PDP (2013)

BB	BRINGING APPEAL	ENTERING APPEAL
at the trial court	Appeal is brought/filed as soon as the notice of Appeal is	Appeal is entered when the record of appeal has been transmitted to the Appellate court and entered on the cause list
granted	Appeal is deemed brought when leave to appeal has been	When the record of proceedings has been transferred from the lower court to the Appellate court
seized of the proceedings	Appeal is brought at stage before the Appellate court	The Appellate court become seized of the proceedings.
jurisdiction to deal with interlocutory applications.—inc Application for leave to Appeal.	Both appellate and lower court have concurrent	The lower court seise to have jurisdiction on hearing of any Interlocutory application with respect to the Appeal

ABATEMENT OF APPEAL

- Occurs outside the wills of parties
- Upon the death of the appellant or convict the appeal abates. AJILORE V STATE (1993) NWLR (Pt 289) 572
- Note that Prosecution cannot die
- If the appeal is against the sentence of fine, it survives as it will be satisfied by the deceased estate. R v ROWE (1955) 39 CAR 57, d s. 291 CPC

APPEALS II

PRE- CLASS

- Interlocutory Appeal from HC to CA—90 days. S. 24(2)(b) CAA
- Interlocutory Appeal from CA to SC—30 days. S. 27 (2)(b) SCA
- Interlocutory Appeal from MC to HC—30days

NOTICE OF APPEAL

- Notice of Appeal shall be as in Criminal Form I where an accused/convict is appealing
- Where the prosecutor appeals, it shall be in Criminal Form V
- Failure to comply with the form is deemed an irregularity and does not necessarily invalidate the appeal. UDOH V STATE.
- Where there is no notice of appeal, there is no Appeal
- Any purported appeal without NOA is a nullity. See UROK V STATE (1987)
- Defective NOA is ineffective. NIGERIAN ARMY V SAMUEL (2013) 14 NWLR (pt 1375) and it destroys the appeal.
- Grounds of Appeal must be contained in the NOA, failure to include the GOA in the NOA make it defective.

GROUNDS OF APPEAL

- The reason why a decision of a court is challenged, considered by the aggrieved party to be wrong. It may be on point of law, fact and mixed law and fact. See OKPONIPERE V STATE (2013) 10 NWLR (pt 1362) 209
  - It may be that the sentencing is unknown to law
  - It may relates to the cause of action. Etc.

- Grounds must relate to ratio of the case. OGUNBIYI V ISHOLA (1996) 6 NWLR (pt 452), 12; AKPAN B BOB….—not every statement made by the judge during judgment is appealable. GOA must not be based on the obita dictum. Decision on ratio and obita must be distinguished.
- Grounds of appeal is not an argument or a narrative. It must be concise and based on fact of what transpired during the case.
- GOA must be substance, Grounds + Particulars= substance
- The formula may be used to determine the classification whether on law, fact, or mixed law and fact. See OSAHON V FRN (2003)
- Grounds Of Appeal must accompany any notice of Appeal. Any Exception?
- Issues formulated must be distilled from the Grounds Of Appeal
- Failure to formulate issues out of any ground equals abandonment—FRN v IWEKA (2013) 3 NWLR (Pt 1341) 285
- An issue must be tied to a grounds of appeal
- Issue not distilled from a GOA will not be sustained.
- Bad brief writing to tie one issue to all the grounds of appeal
- Appeals are determined on basis of formulated issues
- Court may reframe or re-couch issues.—UGWU V STATE (2013) 14 NWLR (Pt 1374) 257 in order to decide the case in a just manner. The issue to be raised or reformulated must be related to the record of proceedings and argument raised by the party.

CLASSIFICATION OF GROUNDS OF APPEAL

- Grounds of Law
- Grounds of facts
- Grounds of mixed law and facts
- See ABDUL v CPC (2014) 1 NWLR (pt 1388)299
- What is the importance of the distinction? To determine whether appeal is as of right or with leave. Whether leave is required.

CRITERIA FOR DISTINGUISHING

- Where ground is complaining of misapplication of law to proved facts or misunderstanding of law is a ground of law—it must be such that relates to principle of law.
- A ground questioning evaluation of evidence adduced by the parties by the court before the application of law is a ground of mixed law and fact
- A ground questioning only facts is a ground of fact
- Where court holds that an event occurred but no admissible evidence to support the holding is a ground of law
- See generally ABDUL v CPC supra

POWER OF THE COURT TO DISPENSE WITH BRIEF OF ARGUMENT

- Court may in certain circumstances dispense with the BOA—s. O 19 r 10& 11 CAR 2016.
- Joint Briefs.—see O. 19 R 6, CAR 2016—it is permissible for parties to file joint BOA and the conditions to be established include:

a. Interest must be the same
b. It must have been consolidated

CONTENTS OF A BRIEF OF ARGUMENT

- Introduction
- Statements of Facts;
- Grounds of Appeal—not mandatory—may be dispensed with.
- Issues for determination.
- Arguments on the issues.
- Conclusion.—contains relief sought.
- List of authorities.

- Signature, usually that of the Counsel representing the convict.—O. 17 r 4(1) CAR 2016
- Address for service.—O. 19 r 3(1) CAR 2016
- It must not exceed 35 ages see order 19 rule 3 (6) (a) CAR 2016

➢ What is a Brief of Argument?—a summary form of the case put forward by the Appellant or the Respondent before the court.

➢ What are the three types of Brief of Argument?

a. Appellant Brief
b. Respondent Brief
c. Reply

BAIL PENDING APPEAL—s. 28(1) CAA, WHEN IT MAY ARISE?

1. Application for bail at the CA pending his trial at trial court. UKATU V COP (2001)
2. Where Applicant/Appellant has been tried and convicted but has appealed. FAWEHINMI V STATE
3. In exceptional circumstance, Failure to quash a charge.—ABACHA V STATE.

➢ General Rule- at the SC grant of Bail is extremely rare. Bail application may be made to the Court of Appeal and when refused may be appealed to the SC

➢ Bail is predicated on presumption of innocence and liberty. S. 36(5) and 35 CFRN, see s. 138 EA in burden of proof. The right still inures during police bail and bail at the trial court.

➢ Bail at the appellate court is no longer as of right as the applicant has been convicted and hence the right on presumption of innocence is no longer available to him.

➢ What is difference between bail pending appeal simplicita and bail pending appeal after conviction? See NWOKE V FRN. (2005) ALL FWLR pt 245 1983—in the former case, status on presumption of innocence is still subsisting why in later, it no longer subsist.

➢ BPA may be granted only in special circumstances. BAMAIYI V STATE , JAMMEL V STATE (1996)

➢ Where to file application for bail depends on whether appeal has been brought or entered. See order 17 rule 13 CAR 2016.

GUIDING FACTORS FOR GRANT OF BAIL PENDING APPEAL AFTER CONVICTION

1. Nature of the Appeal. R V STARKIE
2. Ill health of the Applicant. – FAWEHINMI V STATE
3. Trial and conviction being manifestly contestable—FAWEHINMI V STATE
4. The duration of the sentence.-- OLAMOLU v FRN (2009) ALL FWLR
5. Convict is a first time offender—BUWAI V STATE (2004) ALL FWLR pt 227 540
6. Convict on bail during trial and did not breach the terms. OLAMOLU V FRN (2009) ALL FWLR

CONDITION PRECEDENT FOR BAIL APPLICATION AFTER CONVICTION

1. Notice of Appeal must have been filed—there must be a pending substantive appeal.
2. Compliance with conditions imposed for due prosecution of the appeal
3. Where the case is complex and there is need for constant contact with the convict.

MODE OF APPLICATION FOR BAIL PENDING APPEAL

➢ Motion on Notice supported by affidavit and written address—**AROYEUN V COP** (1968)

➢ In joint Trial, separate application must be made in respect of each convicts. This is applicable even if represented by same counsel.

NB: Factors: what court looks at to exercise discretion of bail. Terms: conditions the applicant will be made to meet when bail is granted.—

TERMS OF BAIL

- Self-Recognisance
- Execution of bond by the accused

- Production of surety or sureties who will execute a bond in a specified sum
- Deposit in lieu of Bond
- Other conditions as may be imposed by the court.

NB: the terms to be imposed must not be onerous or serve as a punishment.—DOGO V STATE.

BAIL REVOCATION

- Police bail, until he is charged to court—one Application for bail suffices.
- Bail pending trial, until judgment
- Bail pending appeal, until the end of Appeal
- Indicted by a law officer for non- bailable offence
- Where he jumps bail. S. 184 ACJA
- Surety applied to be discharged. ONYEBUCHI V FRN

COURT WITH JURISDICTION

- Application for bail pending Appeal after conviction is made to the Appellate court (CA). The trial court has become *functus offcio*.