

WEEK 3.

The idea of criminal litigation differs from the criminal law taught at the university. Criminal litigation is the procedural and criminal law is substantive. The applicable laws as regard statute to criminal litigation are broadly divided into two. These are **PRINCIPAL ENACTMENTS AND SECONDARY ENACTMENTS.**

PRINCIPAL ENACTMENTS

1. The Criminal Procedure Act (CPA): this is the principal statute applicable in all states in Southern Nigeria excluding Lagos state. These states have domesticated the CPA, thus each state now having a Criminal Procedure Law. Up until 1963, it was of general application after its enactment in 1946 as Criminal Procedure Ordinance.
2. The Criminal Procedure Code (CPC): this is the principal statute applicable in the Northern Nigeria.
3. The Administration of Criminal Justice Law (ACJL): this is applicable only in Lagos state. It came into force in 2011. First one in 2007 and the extant one in 2011. The extant one is the ACJL 2011.
4. ACJA 2015.

The foregoing statutes are the primary enactments because they are the statutes devoted to criminal litigation in Nigeria. Criminal litigation started from the time complaint is laid to the relevant authority such is investigated, arrest is made, the trial, conviction, sentence and appeal of the decision of the court.

The legality of the ACJL of Lagos cannot be questioned because **CRIMES AND CRIMINAL TRIALS** are local. In other words, the State House of Assembly is empowered to legislate on procedure. Hence s. 4(5) of CFRN 1999 will not apply to cover the field.

SECONDARY ENACTMENTS.

The secondary enactments are not devoted to criminal litigation but they contain provisions that relate to criminal litigations. They are:

1. The Constitution: the CFRN, 1999 being the grundnorm has certain provisions on criminal litigation for instance, chapter 4 on Fundamental Rights is sacrosanct on trial of an accused person. Aside the foregoing, the constitution confers validity on other statutes, for instance if certain provisions of the primary enactments are inconsistent with the constitution to the extent of their inconsistency, by virtue of section 1(1) & (3), they will be void.
2. Criminal Code and Penal Code: these contain substantive law on crime. They define the various crimes and prescribe their punishment. In addition their provisions do not deal directly with procedures. Example, s. 12 of the Criminal Code and s. 4(2) of the Penal Code elucidate the territorial jurisdiction of SHC.
3. The Evidence Act: its relevance is evidenced in trial proceedings. It determines where burden of proof lies and the onus of proof.

4. The Police Act
5. The Armed Forces Act (Disciplinary Proceeding Special Provisions) Act
6. Coroner's Law
7. Children and Young Person's Act
8. Supreme Court Act
9. Supreme Court Rules
10. Court of Appeal Act
11. Court of Appeal Rules
12. Federal High Court Act
13. Federal High Court Rules
14. High Court Laws
15. Magistrate Court Laws

Settings of court

In the setting of a court, the following are found.

- 1. The Bench:** this is where the judge or magistrate sits
- 2. The Registrar's Desk:** where registrar and other court clerks sits. It is beneath the bench
- 3. The Bar:** this is where lawyers who are ready for litigation business sit. They must be robed. Robbing is not compulsory in Magistrate court. Rule 45 RPC provides for robbing in High Court, Court of Appeal and Supreme Court. There is the
 - **Inner Bar** – for SAN and Attorney Generals, Life Benchers, Body of Benchers
 - **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 new Lagos High Court rooms now have inner bar different from the outer bar on the side.

4. The Dock: this is where an accused person sits/stands. It is to the left hand side of the judge. An accused cannot give evidence from the dock. He can only make a statement of which he cannot be cross-examined as it is not evidence. When an accused person wants to give evidence, he will move to the witness box.

5. Witness box: this is where witnesses stand to give evidence after they might have sworn to oath or affirmed. This is to the right hand of the judge. The witness can decide not to swear on oath and affirm and still give evidence – s. 207 & 208 Evidence Act.

6. Gallery: this is where lawyers that are not robed sit and complainant and other spectators sit.

Sittings of court

The court usually sits on juridical days that is days that the court sit to hear matters. This usually includes Monday to Friday and depending on the practice and procedure of the court,

the court can sit on a Saturday. The court start sitting from 9 O'clock in the forenoon till 4 O'clock in the afternoon or until the court rise for the day. The courts do not usually sit on non-juridical days. These days include Sundays and public holidays. However, the court can sit on such non-juridical days if the parties consent to it. See *Ososanmi v. C.O.P* (1952) 14 WACA.

NB: Apart from statutes there are other sources of criminal litigation. There is judicial interpretation or decisions of the court.

Application of English High Court Rules of Practice and Procedure. This source is important when there is lacuna.

- Section 363 of CPA provides for its application when lacuna exists in the CPA. See *Board of Customs & Excise v. Hassan*, *Simidele v. C.O.P*, *Ikomi v. Police*.
- Section 35 of the High Court Law of Northern Nigeria expressly prohibited the application of the English rules and in case of lacuna; other laws should be looked at.
- Section 262 of ACJL (Lagos) provides that when there is a lacuna, the court shall adopt such procedure which will in its view do substantial justice between the parties concerned.
- SECTION 492(3) ACJA. When there is a lacuna, recourse should be had to a procedure that will do substantial justice to the case.

WEEK 7(2016/2017 ACADEMIC SESSION

Jurisdiction:

If an information or charge is to be filed, the jurisdiction of the court must be determined.

What does it mean for a court to have jurisdiction?

Power of the court to hear and determine a matter. There are various types of jurisdiction:

- Original or appellate
- Concurrent and exclusive
- Co ordinate and supervisory: supervisory is the power of judicial review.
- Limited and unlimited:
- Substantive or subject matter and
- Territorial: A court may have substantive jurisdiction without having territorial jurisdiction. Example robbery at Imo state cannot be tried in the Enugu state High Court albeit it has substantive jurisdiction of robbery.
- Difference between procedural and substantive jurisdiction: substantive jurisdiction is the power of the court to hear that particular subject matter while Procedural jurisdiction is the process by which the complainant institutes or initiates the subject matter before the court. A defect in the procedure of commencement can be waived or

amended but a Subject matter jurisdiction cannot be waived as the court ought to strike off such matter. Parties cannot confer jurisdiction on a court

- General and special.

Bar Part II Question: Generally, Criminal trials are territorial. Why? It is because courts are only seised with criminal matters that was committed in that state. Secondly, Offences in a state are created by laws of the House of Assembly of the state. Thus, a state cannot legislate or make laws for another state.

Assuming an offence is committed across states, which court will have jurisdiction? Any of the courts where the series of offence was committed. Look at the case study in your class note.

Thus, a crime may be partially, substantially or conclusively committed in one state. In such case, only that state will have jurisdiction to hear such criminal matter- section 12A(1) CC
An element or some elements of the crime may be committed in different jurisdictions,

SEE THE FOLLOWING PROVISION: 12A criminal Code, section 11 Criminal Law of Lagos, Section 4(2)(b) of Penal Code, Section 93,96-98 ACJA, Section 58-63 ACJL.

As a general principle, where a crime is committed in an area and all the ingredients and elements of the offence was committed in the area, only the state of the area will have jurisdiction- **Section 12A(1)**

- **Section 12A(2)(a)- where** several elements of the crime are committed in different states, or several offences are committed in different states, those states all have jurisdiction. **Patrick Njovens &ors v state**
- By virtue of section 12A(2)(b) CC where all persons who committed an act or makes an omission come into another state thereafter, where no element of the offence occurs,(eg in our Scenario the offenders relocate to Enugu) upon the authority of Section 12A2(b) the state where the offenders relocated to will have jurisdiction to try the matter as the offence will be deemed to have occurred in the state.

Where an OFFENCE is only constituted under the Penal Code, it cannot be instituted in the South upon the authority of *Aoko v Fagbemi*, Section 36(12) of the 1999 Constitution. The court in the south will not have substantive jurisdiction.

PLEASE NOTE: the principle that offences are territorial has its application to the Federal High Court albeit there is only one federal High court with judicial divisions by virtue of section 19 of the FHC Act, ABIOLA V FRN. However, where an offence with all its elements was committed in a particular judicial division, then that judicial division will be seised of such matter. Except the chief judge makes an order that the matter be heard in another judicial division. Section 45 FHC Act. IBORI V FRN.

However, where offences have initial and subsequent elements in different states..the matter can be instituted in any of the states.

Jurisdiction as it relates to criminal litigation is the power of a court to entertain a criminal matter. There is a difference between criminal jurisdiction of court and criminal liability of an accused person. Criminal liability has to do with culpability of an accused person. When there is no criminal jurisdiction, the question of criminal liability will not arise. There is a difference between substantive and territorial jurisdiction. In ***Ibori v. FRN***, the Court of Appeal distinguished it as follows: substantive jurisdiction refers to matters over which the court can adjudicate and it is usually expressly provided by the constitution or enabling statute. Territorial or geographical jurisdiction refers to the geographical area in which matter brought before the courts for adjudication arose. Substantive jurisdiction has to do with subject matter. Territorial or geographic jurisdiction has to do with area where the matter arose. When a court lacks substantive jurisdiction, it cannot hear the matter, if it does, it will amount to a nullity. Also, in territorial jurisdiction, courts are usually not seised of matters that occur outside their territory. Thus where ingredients of an offence occur outside the territorial jurisdiction of the court asked to adjudicate over the matter, such court will not assume jurisdiction over the offence for apparent lack of jurisdiction. See *R v. SHODIPO*. However, where the offence is partly committed in one state and partly committed in another, both states have territorial jurisdiction to try the offender. **See OSOBA v. QUEEN; PATRICK NJOVENS v. STATE; section 12A Criminal Code; section 4(2)(b) Penal Code.**

Territorial jurisdiction of the State High Court

Section 272(1) of CFRN provides that the High Court of a state shall hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. The foregoing covers the substantive jurisdiction of the State High Court. Section 12A of Criminal Code and s. 4(2)(b) of Penal Code are the relevant provisions on territorial jurisdiction. When an act or omission which would constitute a crime occurred within the territory of a state, the SHC would have jurisdiction. There are however instances where the elements of the crime occurred in different territorial jurisdiction. **The law seems to be firmly settled that where the initial elements of an offence occur in one state and other elements of the offence occur in another state both states would have jurisdiction to try the offence.** In *Osoba v. The Queen*, where the offence for which the accused was charged with cut across Lagos, Nigeria; New Zealand and Australia. The Supreme Court held that the Lagos SHC have jurisdiction to try the offence as initial element of the offence took place in Lagos. In ***Okoro v. AG Western Nigeria***, the Court of Appeal was quick in holding that **where the element of the offence occurs partly in another region; the courts in both regions have the concurrent jurisdiction to try the offence.** In *Njovens & ors v. State* where the accused persons were tried and convicted by the Kwara SHC with the abetment of an offence committed in Kwara state, meanwhile the act of abetment was committed in Ibadan. The defense counsel argued that the Kwara SHC has no jurisdiction to try the accused persons under the Penal Code. The Supreme Court while interpreting s. 4(2)(b) Penal Code held that the Kwara SHC has territorial jurisdiction to try the accused persons.

Territorial jurisdiction of the Federal High Court

Section 249 of CFRN provides that there shall be one FHC for the federation of Nigeria- *Abiola v FRN*. Section 251(2) & (3) CFRN and section 7 of FHC Act provides for its substantive criminal jurisdiction. The constitution is however silent on its territorial jurisdiction. However the FHC Act has relevant provisions on its territorial jurisdiction. Section 19 FHC Act empowers the chief judge of the FHC to divide the federation into such number of judicial divisions for administrative convenience. Section 45 of FHC Act provides that:

- a. An offence will be tried by the court with jurisdiction in the area or place where the offence was committed or where it has been done or omitted to be done. See *IBORI v. FRN*; section 45(a) FHC Act
- b. By the court exercising jurisdiction where the offence happened or is connected or where the offence is connected to several areas, the court in any such area will exercise jurisdiction.

In *Abiola v. FRN*, where the accused has been charged before the FHC, Abuja judicial division for treason and treasonable offences alleged to have been committed in Lagos state, the Court of Appeal had stated that the territorial jurisdiction of the FHC is nationwide and it shall exercise jurisdiction throughout the federation. However, in *IBORI v. FRN*, where the offence had been committed in Delta state and the accused was brought before the Kaduna division of the FHC. The Court of Appeal held that in accordance with **section 45(a) of FHC Act**, such was forum shopping in the absence of any direction from the chief judge. The Court of Appeal had relied on s. 19 and 45 of the FHC Act.

In reconciling the decisions of the Court of Appeal in *Abiola* and *Ibori* which seems to have different ratio decidendi, it is submitted that: if the crime is not localized, like that of treason, the position of *Abiola v FRN* will prevail, if the crime is localized that is only affecting a particular state or area of the federation, then the position in *IBORI v. FRN* will prevail. *Ibori*'s case dealt with resources.

Please Note: The NIC has about the same principles with the FHC.

Courts of criminal jurisdiction

There are the Courts of General Criminal Jurisdiction, and the Courts of Special Criminal Jurisdiction. Under the Courts of General Criminal Jurisdiction, there are courts of Original General Criminal Jurisdiction and Courts of Appellate General Criminal Jurisdiction. The Courts of General Criminal Jurisdiction are:

- Area/Customary Courts
- Magistrate Court
- High Courts of State/FCT, Abuja
- Court of Appeal}
- Supreme Court} Appellate General Criminal Jurisdiction

They are so called because they have power over all crimes and all persons, but there are still areas related to persons and subject matter that are removed from their jurisdiction. Thus it is for the purpose of convenience.

The Courts of Special Criminal Jurisdiction are:

- Federal High Court
- National Industrial Court
- Court Martial
- Juvenile Court
- Coroner's Court
- International Criminal Court

They are so called because they only have power over specific subject matter and persons.

SUPREME COURT: In criminal matters, it has only appellate jurisdiction. But in civil matters it has both original and appellate jurisdiction.

COURT OF APPEAL:

In criminal matters, it has only appellate jurisdiction over matters from the FHC, NIC, State High Courts and Court martial. Section 240 1999 CFRN, SECTION 183 ARMED FORCES ACT.

Courts of General Criminal Jurisdiction in the south

Customary Courts – Lagos: they have power to try

- Bye-laws of local government
- Contempt in face of the court
- Jurisdiction expressly conferred upon it. E.g. the Environmental Sanitation Laws of Lagos
- Customary Court Grade A – 1 year or N200
- Customary Court Grade B – 6 months or N100
- Customary court Grade C.

Note, appeals from customary court go to the High Court. In Lagos state, appeals from the customary courts go to the Magistrates Court.**Section 41 Customary Law of Lagos state.**

MCQ: the CUSTOMARY COURT OF APPEAL HAS NO ORIGINAL OR APPELLATE JURISDICTION Over CRIMINAL MATTERS.

Magistrate Court – Lagos, governed by Magistrate Court Law 2009

- There is no grades of Magistrate court in LAGOS, only one cadre. The hierarchical order has been abolished. s. 93(1) MCL
- There is a uniform Magistrate court

- They can try all offences except capital offence. MANSLAUGHTER is not a capital offence. Only culpable homicide punishable with death in the north and murder are capital offences. Culpable homicide not punishable with death in the north is not a capital offence.
- In Lagos, There is a limitation on the sentences they can impose, which is 14 years – s. 29(5) MCL
- They can try other offences in other statute aside from those stipulated in the schedule of the Magistrate Court Law – s. 29(6) MCL
- Magistrate courts in Lagos, must not impose a fine or sentence exceeding that provided for the law creating the offence.

If the sentence provided for by the law creating the offence is 20 years, a Magistrate court cannot impose a 20 years sentence, it has to be 14 years or less than. The sentencing power of the Magistrate court is limited to 14 years imprisonment. There is a difference between jurisdiction to try offences by the magistrate court and jurisdiction to impose punishment or sentences. If a Magistrate court which possess the jurisdiction to try offence, impose a sentence more than the 14 years stated by s. 29(5) MCL, an appeal can be made against the sentence to the High court, on the ground that the magistrate court has exceeded the 14 years maximum. The relevant order to be sought in that instance would be an order to reduce the sentence and not an order to quash the conviction. When the appeal is against conviction, it is a different matter. EMONE V POLICE, QUARTEY V IGP.

- Magistrate court have jurisdiction in respect of summary trial – section 29(2) MCL.
- The power to increase the jurisdiction of the magistrate to impose punishment exceeding that prescribed shall be exercised by the AG of the state on recommendation of the Judicial Service Commission of the Lagos state. section 27 MCL. OTHER STATES, INCREASED on the recommendation of the Chief Judge by a law passed by the SHOA duly signed by the Governor.
- In Lagos, When a magistrate is to impose consecutive sentences (run one after the other), the sentences must not exceed 14 years. It cannot be $10 + 4 + 5 = 19$. It may be $10 + 1 + 2 + 1 = 14$ years.
- **The jurisdiction is over indictable and non-indictable offences, other than capital offences.**

MAGISTRATE COURTS IN THE NORTH

Four grades of magistrate courts and their jurisdiction generally under CPC.

Chief magistrate

Magistrate grade 1

Magistrate grade 2

Magistrate grade 3

CONSECUTIVE SENTENCE

When a person is convicted of more than one offence and the magistrate orders the sentences to run consecutively, the aggregate term shall not exceed twice the limit of the sentencing power of the magistrate. SECTION 24 CPC.

UNDER ACJA

SECTION 418(2)ACJA provides that a magistrate court may pass two or more sentences on a defendant to run consecutively. Where this is the case, the aggregate term of imprisonment shall not exceed four years of the limit of jurisdiction of the magistrate. Where a sentence of imprisonment is imposed, the sentence takes effect from the date the sentence is imposed pursuant to section 419 ACJA.

High Court

- Section 272(1) CFRN confers criminal jurisdiction on the state high court. It has jurisdiction in the following cases:
- **All indictable offences contained in an information**
- Where the constitution or any other law creating an offence expressly confer jurisdiction on it
- **All non-indictable offences brought by complaint or any other mode provided/prescribed by law. See DPP v. Aluko, R v. Onubaka**
- Criminal appeal from magistrate court.
- Federal offences within its jurisdiction – section 286(1)(b) CFRN 1999
- It hears appeals from magistrate courts.
- The magistrate may also state a case to the HC under section 295 CFRN.
- In the north, SECTION 257 CPC, a magistrate court may refer a case to the High Court for stiffer punishment where the magistrate is of the opinion that it cannot adequately punish for the offence

The state high court share concurrent criminal jurisdiction with the federal high court in the offences created under s. 251(3) CFRN. Also, with the National Industrial Court in s. 254C-(1) CFRN (3rd alteration) Act.

Courts of General Criminal Jurisdiction in the North

Area courts - the area courts are constituted by Area Courts Edict and established by warrant under the hand of the chief judge of the state. In FCT, Abuja, there are two grades.

- Upper area court – unlimited except homicide. That is, the jurisdiction to impose punishment of upper area courts in Abuja is unlimited except in homicide cases. It cannot try homicide cases and other capital offence.
- Area court grade 1 - 5 years or N1, 000 fine, or both

- Area court grade 2- 3 years imprisonment or 600, or both
- Area court grade 3, 9 months imprisonment, 100 fine or both.

They have jurisdiction to try offences in column 7 of Appendix A to the CPC. In FCT, it is only when the judge of the Area Court is a qualified lawyer that it can have jurisdiction over criminal matters and are bound by the rules of evidence.

The Area court shall have jurisdiction over the following persons – s. 15(1)(a)-(c) ACL:

- 1) A person whose parents were members of any tribe indigenous to some parts of Africa and the descendants of such person.
- 2) A person, one of whose parents was a member of a tribe indigenous to Africa; and
- 3) A person who consent to be tried by the court- A Britain can be tried before the area court where he consents to.
 - ✓ Note: an African-American can be subject to the jurisdiction of an area court because his parents were a member of any indigenous tribe to Africa.
 - ✓ Note the power of the Governor or president to direct that any person or class of persons may not be subject to jurisdiction of Area Court.

By section 6 of ACE (ACL) proceedings in area courts are conducted according to substantial justice without undue regard to technicalities.

By section 387 CPC, there is no need for the framing of a formal charge in an Area Court. Accordingly, in *ALABI v. COP*, it was held that framing of formal charges are not necessary.

Criminal appeal from the Area Court Grade 1 and 2 in the north lies to the Upper Area Court. Area Court Grade 1 goes to Upper Area Court and Upper Area Court to High Court. If it is civil appeal, it goes to Sharia Court of Appeal. In Abuja appeal from Upper Area Court goes to the High Court of the FCT

- The Area Court inspector appointed under the Edict have power either on application of any person aggrieved or of its own to appeal to the High Court – s. 50 ACL
- An aggrieved person can on its own appeal.

By virtue of s. 36(6)(c) CFRN and the decision of Supreme Court in *UZODINMA v. The COP*, a legal practitioner has a right of audience in an Area court, thus the provisions of section 390 of CPC and section 28 of the Area Court Edict to their extent of inconsistency is void.

Magistrate court – there are four grades of Magistrate court in the north – s. 8(1) CPC.

- **Chief Magistrate**
- **Magistrate Grade I**
- **Magistrate Grade II**
- **Magistrate Grade III**

In FCT, there are five grades.

- Chief Magistrate Grade I – 15 years or N5, 000, summary: 3 years or N1, 000
- Chief Magistrate Grade II – 12 years or N4, 000, summary: 3 years or N1, 000
- Senior Magistrate Grade I – 10 years or N3, 000, summary: 30 months or N600
- Senior Magistrate Grade II – 7 years or N2, 000, summary: 2 years or N500
- Magistrate Grade I – 5 years or N1, 000, summary: 18 months or N400

Jurisdiction over offences in Column 6 to Appendix A of CPC: There are provisions in the CPC that relate to sentencing that apply to **Magistrate** court in the north ONLY.

- Section 257 CPC on reference by the Magistrate to the High Court for punishment of an accused: Where after conviction, the court is of the opinion that the accused ought to receive a more severe punishment than that which it can impose; it shall record such facts and refer the accused to any court or the High court in the state for punishment. There must however be a valid trial and conviction by the Magistrate court.
- Section 24 CPC on punishment by the Magistrate: under section 24(1) when a Magistrate convicts an accused on different counts the sentence passed on each count charges shall run **consecutively** unless the court direct that it should run concurrently. Thus, the default mode is that sentences are to run consecutively unless if the court orders that they should run concurrently. Under section 24(2), when the sentences are to run consecutively, it should not exceed twice the maximum sentences which that Magistrate court has power to impose. Hence in a Chief Magistrate Grade I in FCT, the maximum is 15 years; consecutive sentences should not altogether exceed 30 years. For Magistrate Grade I which is 5 years, consecutive sentences should not exceed 10 years.

Court of Appeal – the court of appeal, though a court of general criminal jurisdiction, have no original criminal jurisdiction but appellate. It takes appeal from High Court, Federal High Court, National Industrial Court and Court Martial.

Supreme Court(section 230 CFRN) – the Supreme Court is a court of appellate general criminal jurisdiction. It receives appeal from the Court of Appeal pursuant to section 233

Courts of special criminal jurisdiction:

Criminal Jurisdiction

Federal High Court

- Section 251(2) 1999 Const- treason, treasonable felony and allied matters
- Section 251(3) 1999 Const- jurisdiction in respect of criminal causes and matters over which it has civil jurisdiction.
- The FHC has exclusive jurisdiction to try treason, treasonable felony and allied matters offences because the offence was initially tried by a treason tribunal which subsequently in 1999 transferred their jurisdiction to the FHC exclusively. Please

note: any allied matters to treason should be tried exclusively by the FHC. **Mandara v A.G Federation.**

- **Any matter or cause listed in Section 251(1) that is an offence the Federal High Court shall have concurrent jurisdiction with the state high Court based on judicial pronouncements- Momodu v State, Abass v COP. This is because of the express omission of exclusive in Section 251(3).**
- **However, even if the FHC and the state High Court have concurrent jurisdiction, other enabling statutes may confer exclusive jurisdiction on the FHC, in such case recourse will be had to such enabling statute.**
- **For example, in section 251(1)(m) which deals with drugs, based on the fact that jurisdiction is statutory and the NDLEA Act, section 26(1) and section 26(2) has exclusively conferred jurisdiction on the FHC and it is only the FHC that should entertain such matters. In such case, the state high court will not have concurrent jurisdiction over drugs and poisons matters.**
- **Section 32(1) of the Terrorism Act(Miscellaneous Offences Act.**
- **Section 20(1) Money Laundering(Prohibition) Act 2011(as amended)**
- **Section 8, Counterfeit Currency(special Provisions) Act, section 8**
- **Section 19 EFCC vests concurrent jurisdiction on both the FHC and SHC.**
- **Advanced Fee Frauds-concurrent jurisdiction.**
- **ROBBERY AND Firearms Act- state Jurisdiction**
- **Please Note: it is not all federal offences that will be tried in the Federal High Court.**

National Industrial Court:

- **section 254C (5) CFRN 1999 (3rd alteration) confers criminal jurisdiction on the National Industrial Court. It provides that: the NIC shall have and exercise jurisdiction over criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the NIC by this section or any other Act of the National Assembly or any other law. The jurisdiction in criminal matters pertain to matters arising from Labour and industrial disputes.. This criminal jurisdiction of the NIC is not exclusive.**
- **Appeal from the decisions of the national industrial court in criminal matters shall lie as of right to the court of Appeal. SECTION 254C(6)1999 CFRN(Third Alteration)Act, 2010.**

Juvenile Court:

- **Most states have family courts in replacement of juvenile courts.**
- **it is constituted by the Children and Young Persons Law. The Juvenile court has jurisdiction over young persons or juvenile offenders which are categorized into two**
- **Children – a child under the age of 14 years**
- **Young person – a person who has attained the age of 14 years and under the age of 18 years. Section 2 CYPL, section 30 Criminal Code.**

The jurisdiction of the court is determined by the age of the offender. There are two cases where the juvenile court will not have jurisdiction over a juvenile offender. These are:

- Where the charge is one of homicide/capital offence – s. 8(2) CYPL. The juvenile can be charged in the regular courts. However, the Juvenile courts can make preliminary enquiry.
- Where a juvenile is charged together with an adult, the young person will be charged with the adult in the regular courts – s. 6(2) CYPL. GUOBADIA V STATE

Determination of age can be through:

1. Birth certificate; direct/documentary evidence
2. Oral evidence of parents or guardian
3. Expert Evidence- Medical evidence from a registered medical doctor in a government hospital.- This would be preferred to oral evidence of parents where they conflict. See GOUBADIA v. STATE (2004) 6 NWLR (Pt. 869) 360; MODUPE v. COP; R v. OLADIMEJI
 - Proof of age can be determined by either of the above.
 - STATE V OLATUNJI, In the event of conflict between a sworn affidavit of a child and the medical evidence of a registered doctor, the latter will prevail.
 - Section 264 ACJA

Features of Juvenile courts are:

1. The proceeding is not to be held in public UNLESS WITH THE LEAVE OF THE COURT – s. 6(5)
2. The identity of the offender not to be published without the leave of court – s. 6(6)
3. The words 'Sentence' and 'conviction' are not to be used, rather a FINDING OF GUILT IS MADE – s. 16/17. See Modupe v. State.
4. No child shall be imprisoned – s. 12(1).
5. No young person shall be ordered to be imprisoned unless he cannot otherwise adequately be dealt with. See State v. Guobadia.
6. No young person imprisoned shall be allowed to associate with adult prisoners.

Modupe v. State, the Supreme Court held that by virtue of s. 368 CPA, if the evidence on record shows that at the time the offence was committed, an accused charged with capital offence had not attained the age of 17 years, it will be wrong of any court not only to sentence him to death but also to even pronounce such sentence.

- ✓ Guobadia v. State, the relevant age is the age of commission of the offence.

Coroner's court:

- It is a court of inquest not trial. Inquiry into death and circumstances of death. Eg of mandatory inquest: **Lunatic asylum, police custody, execution of death sentence, violent or unnatural death, died a sudden death- Section 4 and 6 Coroners' System Law Lagos.**

- The coroner(magistrate sitting in the court) calls witnesses to take evidence. However, they cannot sentence any person **but upon the verdict, an application can be given to the AG to institute criminal proceedings**. Why must an inquest be conducted for the execution of death sentence. ? The state must comply with death sentence given by the court. otherwise it will be unlawful.
- It is not a real court of law because it does not hold or conduct trials. It holds an inquest into the cause of death of a person who died in public place. **Where the person is already charged to court or about to be charged for the offence, coroner cannot commence or continue any inquest into the death of the deceased until the determination of the case.** See ADEPETU v. STATE Coroner is usually a magistrate within whose jurisdiction the body of the deceased was found. **Inquest may be conducted any day including a Sunday or public holiday.** Coroner court is not bound by the provisions of the Evidence Act but may take evidence on oath.
- Inquest is subject to review by the high court
- A criminal charge need not necessarily follow an inquest
- Where the verdict of the coroner necessitate one, the AG may institute proceedings
- **Nolle prosequi is not applicable. That is, the AG cannot exercise his powers of nolle prosequi in respect of proceedings in a Coroner's court**
- **What the Coroner must determine?**
 - ✓ **Identity of deceased**
 - ✓ **Time and place of death**
 - ✓ **Cause of death**

ACRONYM: ITPC

- ✓ **POST VERDICT:**
 - **The AG may institute an action based on the verdict of the coroners court and upon application.**
 - **Aggrieved party may ask for review of findings of coroner**

Synagogue case trial of the trustees and construction engineers.

Court martial:

- The court martial entertains only matters against persons subject to SERVICE LAW as provided for in section 130 AFA. Service Law here entails Nigerian army, navy, or Air Force. Such person must be subject to service law. Upon retirement **within 3 months** such persons can be tried in the court martial. However, where it is the offence of mutiny and failure to suppress mutiny, there is no time limit within which to try the person in the court martial. – NAF V OBIOSA.
- The court martial is established by the Armed Forces Act. The Act was a consolidation of pre-existing legislation on the subject.
 - ✓ Nigerian army Act
 - ✓ Air Force Act
 - ✓ Navy Act

- There are two types of courts martial
 - a. **General court martial consisting of a president and not less than four members, a waiting member, a liaison officer and a judge advocate.**
 - b. **Special court martial consisting of a president and not less than two members, a waiting member, a liaison officer and a judge advocate.**

The Waiting Member, and liaison officer are not to be counted as they are regarded as adjuncts to the court. In *OBISI v. CHIEF OF NAVAL STAFF*, the SC stated that ‘A waiting member shall be likened to a spare tyre, if he is not a member of the panel exercising judicial function’. The term, liaison officer as used in the Act means nothing more than an officer. He is not a member of the CM. They are necessary adjuncts meant to situate the court martial in its proper context of the military. For the purpose of the proceedings and trials in court martial cases, they are not members of the panel. Accordingly, the absence of a waiting member and a liaison officer does not nullify the proceedings. See *OBISI v. CHIEF OF NAVAL STAFF*

The court martial has jurisdiction over persons subject to service law. These are Navy, Air force and Military - Section 130 Armed Forces Act. **Thus the Police and Custom officers are not subject to service law. See OLATUNJI v. STATE.** The court has jurisdiction over military offences and civil offences that are not military in nature. Military offences includes: insubordination, absence from duty, drunkenness.

- **WHO CAN CONVENE A COURT MARTIAL?** To convene means to set up a court martial.
 - ✓ By virtue of s. 131 of Armed Forces Act, the following persons can convene a court martial
- The President of FRN
- The Chief of Defence staff
- Service Chiefs
- A general officer commanding a brigadier, a colonel or lieutenant colonel or corresponding rank having command of a body of troops or establishments, or a commanding officer of a battalion
- An officer acting in place of the above officers.
- **CAN THE POWER TO CONVENE BE DELEGATED?**
 - ✓ Yes it is delegable. **Nigerian Air Force v Obiosa** the Court of Appeal held that the power to convene a court martial was delegable. The constituting authority can delegate to superior officers
 - ✓ However see section 131(4) ARMED FORCES ACT. The delegation cannot be done orally, as there must be a convening order in writing which is mandatory- **BAKOSHI V CHIEF OF NAVAL STAFF. Subsequent order in writing, validates the oral instruction which is defective.**
- **CONSTITUTION OF A GENERAL COURT MARTIAL- SECTION 129(a) AFA**
 - ✓ President
 - ✓ At least 4 members

- ✓ A waiting member
- ✓ Liaison officer
- ✓ Judge advocate
- **Constitution of a Special Court Martial: 129(b)**
 - ✓ **President**
 - ✓ **At least 2 members**
 - ✓ **A waiting member**
 - ✓ **Liaison officer**
 - ✓ **Judge advocate.**
- Please Note that the members **must be of 5 years in service**. Section 133(2)
- Note, the absence of a judge advocate and the liaison officer will not affect the constitution of the court as they are adjunct members- *Obisi v chief of naval staff*.
- The responsibility of the liaison officer liaises between the Convening officers and the members composing the tribunal.
- The judge advocate must be a **commissioned officer and legal practitioner of not less than 3 years post call**. A judge advocate guides and advises the court on rules of evidence, practice and procedure.
- Who is a commissioned officer? A **second lieutenant** as provided in the third schedule to the Armed Forces Act.
- Please note: for the constitution of the court martial to be proper, the president must be above or of the same or equivalent rank and seniority of the accused while the members must be of the same rank and seniority of the accused. SECTION 133(3)(B) AFA. *Okoro v Nigeria Army Council*. Seniority in this case is that the officer must have been appointed before the accused in the case they are of the same rank.
- Section 133(7) solves the lacuna where there are no members of senior or equal rank. In this case, the convening officer may appoint any service officer as president of the court martial in lieu, and any other members in lieu after consent of the superior authority.
- Read the 3rd schedule to the AFA, to know the hierarchy in the various service Law.
- If you convene the court martial, you cannot be a member of the court based on the principle of *nemo Judex in causa sua*. **SECTION 134 AFA.**
- **JURISDICTION**
 - ✓ **Offences: both military and civil offences**
 - ✓ **What constitutes military offence? s. 45-103 AFA**
 - ✓ **What constitutes civil offences? S. 104-114 AFA.**
 - ✓ **Can a person subject to service law be tried in the civil court? Yes.**
 - ✓ **But the person cannot be tried for military offence in a regular court.**
 - ✓ **BAR PART II- Look at the scenario to know the court that is seised of the criminal matter first.**
 - ✓ **Civil offences section 104-114 AFA: A person subject to service law commits a civil offence example assault, such person can be tried by a court martial because it is provided for in the Armed forces Act and it has jurisdiction. Thus, such person can be tried and sentence meted out.**

- ✓ **He can be tried by the regular courts thereafter for the civil offence but the civil court can also punish but will take into consideration the punishment given by the court martial in awarding punishment. (Thus a plea of autrefois convict or acquit/double jeopardy based on section 36(9) of the 1999 Constitution will not be taken). SECTION 170(2) AFA.**
- ✓ **Trial first by a competent civil court- it will oust the jurisdiction of the court martial- Section 171 AFA.**
- The decision of the court martial is by vote of majority and where there is equality; the president of the court martial has a second vote. Section 140.
- The decision can be appealed to the Court of Appeal and then the Supreme Court.
- By virtue of s. 169 of the Act, a person who has ceased to be subject to the service law can still be tried by the court martial within 3 months of his hearing.

In *BAKOSHI v. CHIEF OF NAVAL STAFF*, it was held that a convening order by the appropriate authority is the life and blood of the jurisdiction of a court martial. In the absence of a proper convening order from an appropriate authority, the proceedings is a nullity.

PRACTICE AND PROCEDURE

- ✓ **Rules of evidence and fair trial. Please note that a person who convenes CANNOT constitute the court martial.**
- ✓ **ACJA not APPLICABLE- Section 2(2)**
- ✓ **Officer convening shall not be the President or member pursuant to Section 134(1) AFA.**
- ✓ **Judge advocate has no voting rights.**

International criminal court (ICC)

The international criminal court is an international court with criminal jurisdiction over individuals only, as against the international court of justice with jurisdiction over states and other entities (excluding individuals). The international criminal court was established by the Rome statute of the International Criminal Court in July 1, 2002. The ICC has jurisdiction as regard certain specified offences, crimes in Article 5 of the Rome statute. These crimes are:

- War crimes
- Crimes against humanity
- Crimes of genocide
- Crimes of aggression yet to be defined

The ICC sits in Hague in Netherlands but can still sit elsewhere. The jurisdiction of the ICC over crimes relates to crimes committed after the Rome statute came into force. The ICC's jurisdiction can be triggered by three mechanisms.

- Referral by party state

- Referral by the Security Council of United Nations under chapter VII of the United Nations Charter.
- Investigation by the Prosecutor of the ICC suo motu

The ICC can only exercise jurisdiction over persons above 18 years of age. The ICC does not respect the immunity enjoyed by head of state that is President, Vice- President, Governor and Deputy-Governor in Nigeria). The ICC can only impose sentences of imprisonment with maximum of 30 years and fine. The death sentence is not recognized by the ICC – Article 77.

The structure of the ICC is as follows:

- The Assembly of state parties
- The Presidency
- The Judicial division with pre-trial, trial and appeal division
- The Prosecution – office of the prosecutor
- The Registry

It had its first conviction in 2012 – Dylo Lubanga

WEEK 6

SEARCH AND ARREST

Search: search simply means the examination of a person's body, premises or thing.

For the purpose of criminal litigation, search would mean looking for what has been concealed. Search could be of:

1. A person
2. A premises
3. Things

THE PURPOSE OF A SEARCH IS TO OBTAIN EVIDENCE OF THE COMMISSION OF A CRIME.

SEARCH OF PERSONS: the following points should be noted:

- 1) A police officer can detain and search any person whom he reasonably suspects to have anything in his possession, which he has reason to believe may have been stolen or otherwise unlawfully obtained. See section 29 Police Act
- 2) A police officer making an arrest or receiving an arrested person who was arrested by a private individual, may search the arrested person or cause him to be searched (CPA & ACJL adds that the police officer can use such reasonable force as is necessary to conduct the search). See section 5(1) ACJL; section 6(1) CPA; and section 44(1) CPC, section 9(1) ACJA..

After such search is conducted, the police officer shall place, in safe custody, all articles recovered from the person searched, except his necessary wearing apparel

(CPC adds that the police shall make a list of the items found. ACJL provides for this in section 6(a) ACJL). See section 6(a) ACJL; section 6(1) CPA and section 44(2) CPC, 10 ACJA

- 3) The law permits medical or scientific examination of any person reasonably suspected of concealing incriminating item in any latent part of his body on request of a police officer. However, where no such medical practitioner is procurable, then the police officer **or any person acting in good faith in aid and under the direction of the police officer may conduct the medical examination.** see section 5(6) ACJL and section 6(6) CPA, 11 ACJA, section 4(4) NDLEA Act.

Under CPC, by section 127(1) thereof, the medical examination is conducted **at the request of either a police officer or a Justice of the Peace.** Where no such medical practitioner is available, then the medical examination is to be conducted by a **dispensary attendant.** See section 127(1) CPC.

- 4) Where the person to be searched is a woman, the search shall only be conducted by another woman. See section 6(2) CPA and section 44(3) CPC. Further, section 82 CPC provides that whenever it is necessary to cause a woman to be searched, the search shall only be made by another woman, **with a strict regard to decency.** It must be noted that under CPA and CPC, there is no provision for the search of a man by a man, but in practice, a man is usually searched by a man. **Note that under CPA and CPC, the search of a man by a woman is not unlawful, but it is unlawful under ACJL.**

On its part, the ACJL provides in section 5(2) thereof that whenever it is necessary to search a person, he shall be searched by a person of same sex with due regards to decency. Thus, a man is to be searched by a man and a woman is to be searched by a woman. Section 9(3), 149(3) ACJA.(for ACJA, unless the urgency of the situation or interest of justice makes it impracticable for the search be carried out by the person of the same sex).

However, by section 5(3) ACJL and section 6(3) CPA, the limitation on the search of a woman is only limited to her person and does not apply to the things she is carrying like her handbag etc. see section 5(3) ACJL and section 6(3) CPA, 9(4) ACJA.

SEARCH OF PREMISES:

As a general rule, a premises cannot be searched without a search warrant. Thus any search of any premises without a search warrant is unlawful and a breach of section 37 CFRN, 1999..

The exceptions to this rule are:

- a) Where a police officer acting under a warrant of arrest or otherwise having authority to arrest has reason to believe that the person to be arrested has entered into or is within any premises, the police officer can enter into the premises to search for the person to be arrested, notwithstanding the fact that he had no search warrant. See section 7 ACJL; section 7 CPA and section 34(1) CPC, 12 ACJA.

1. Who can issue a search warrant? There are four categories of persons that can issue a search warrant. They are Magistrate, Judge, Justice of the Peace, and subject to some restrictions, a Superior Police officer above the rank of a Cadet ASP. Note the details as follows:

- i. Under CPA and ACJL, by section 104 ACJL and section 107 CPA, a Magistrate or a High Court Judge can issue a search warrant. It is procured upon information on oath and in writing.
- ii. Under CPC, by section 74 and 76 of CPC, a court (which includes Magistrate and Judge) or Justice of the Peace can issue a search warrant. See section 74 and 76 of CPC. Thus, it is issued by Judge, Magistrate and Justice of the Peace.
- iii. Under ACJA, section 144 provides that a judge, magistrate or justice of peace may issue a search warrant upon an information on oath and in writing.
- iv. A police officer above the rank of a cadet ASP can issue a search warrant in limited circumstances. See section 28(1) of Police Act which provides **that a superior police officer may by authority under his hand, authorise any police officer to enter into any premises in search of stolen property and he may search therein and seize and secure any property he may believe to have been stolen.** See section 28(1) Police Act. The term “superior police officer” is defined by section 2 of Police Act as a police officer above the rank of Cadet ASP. Therefore any person below that rank is not a superior police officer and cannot issue a search warrant. See Regulation 273 of Police Regulations for the Table of Precedence of Police Officers. However, by section 28(3) Police Act, the power of a superior police officer to issue a search warrant is limited. Accordingly, by the said section 28(3) Police Act, a superior police officer can only issue a search warrant where the premises to be searched is, or within the preceding twelve (12) months has been in the occupation of any person who has been convicted of:
 - Receiving stolen property
 - Harboursing thieves
 - Any offence relating to fraud or dishonesty and punishable by imprisonment

From the foregoing, it is clear that the power of the police to issue a search warrant is limited both in terms of the persons who can issue it and the instances where it can be issued. Therefore, the conditions for the validity of a search warrant issued by a police officer are as follows:

- It must be issued by a superior police officer. That is, a police officer above the rank of a Cadet ASP. See section 2 and 273 of Police Act for definition of superior police officer and table of precedence for police officers respectively.

- What is to be searched for must be **stolen property**. See section 28(1) Police Act
- the premises to be searched is, or within the preceding twelve (12) months, has been in the occupation of any person who has been convicted of:
 - o Receiving stolen property
 - o Harboursing thieves
 - o Any offence relating to fraud or dishonesty and punishable by imprisonment

Note that where a superior police officer issues a search warrant, the occupant of the premises searched may be arrested and taken to a Magistrate. See section 28(2) Police Act.

2. Every search warrant issued must be signed by the Magistrate or other issuing authority that issued it. See section 106(1) ACJL; section 109(1) CPA, section 146(1) ACJA, section 76 CPC.
3. Every search warrant shall remain in force until it is either executed or cancelled by the Court which issued it. See section 106(2) ACJL; section 109(2) CPA, section 146(2) ACJA . Once it is executed, it can no longer be subsequently used.
4. A search warrant may be directed to more than one person and when directed to more than one person, it may be executed by **any or all** of them. See section 107 ACJL; section 110 CPA, section 147 ACJA.
5. When can a search warrant be issued or executed? A search warrant can be issued or executed on any day including a Sunday and a public holiday and may be executed between the hours of 5:00am and 8:00pm, **but the court may, in its discretion, order that the warrant be executed at any hour.** See section 108(1) ACJL; section 111(1) CPA
By section 108(2) ACJL and section 111(2) CPA, where a magistrate authorises the execution of a search warrant at any hour other than between the hours of 5:00am and 8:00pm such authorization may be contained in the warrant at the time of issue or may be endorsed thereon by any Magistrate at any time thereafter **PRIOR** to its execution. See section 108(2) ACJL; see section 111(2) CPA.
NOTE: By virtue of section 148 of ACJA, a search warrant may be issued and executed **at any time and day including Sunday or public holiday.**
6. On demand by a police officer or other person executing the search warrant, the person in occupation of the premises to be searched must give free access (free ingress and egress) and afford all reasonable facilities for the search. See section 109(1) ACJL; section 112(1) CPA, section 149(1) ACJA .However, if the person in occupation refuses to grant free access (free ingress and egress), the police officer has the right to break into the premises to conduct the search and break out. See section 109(2) ACJL; section 112(2) CPA
7. When any person in or about the premises so searched is reasonably suspected of concealing on his person any article for which search should be made, such person may be searched. If the person to be searched is a woman, then she shall, if possible, be searched by another woman and may be taken to the police station for that purpose.

See section 81(1) & (2) CPC; section 109(3) ACJL; section 112(3) CPA, 149(3) ACJA.

8. The following apply only to CPC states:

- a) By section 78(1) CPC, unless the court otherwise directs, the search made pursuant to a search warrant (i.e. the execution of a search warrant) must be conducted, whenever possible, in the presence of two respectable inhabitants of the neighbourhood to be summoned by the person to whom the warrant is addressed. See section 78(1) CPC; MUSA SADAU v. STATE
SECTION 149(4) ACJA, provides that a search is to be made in the presence of two witnesses and the person to whom The warrant is addressed may also provide a witness within the neighborhood unless the court otherwise directs owing to the nature of the offence.
- b) By section 78(2) CPC, a list of all the things seized during the search and of the place where they were found shall be prepared by the person carrying out the search **and shall be signed or sealed by the witnesses.** See section 78(2) CPC, section 149(5) ACJA.
- c) Woman in Purdah: By section 79 CPC and 149(6) ACJA, if any place to be searched is in the **actual occupation of a woman, not being the person to be arrested,** who according to custom, does not appear in public, the person making the search shall, before entering the apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then enter the apartment. See section 79 CPC. **However, where she is the person to be arrested, OR SHE IS NOT AROUND this provision will not apply.**
- d) By section 80 CPC, the occupant of the place to be searched or any person on his behalf shall be permitted to be present at the search and shall, if he so requires, receive a copy of the list of the things seized therein as signed or sealed by the witnesses.

MATTER OF PRACTICE: Finally, the person executing the search warrant should submit himself to a search before carrying out the search, in order to ensure transparency.

SEIZING GOODS NOT SPECIFIED IN THE SEARCH WARRANT

Generally, only items specified in the search warrant should be seized. However, where the person executing the search warrant comes across incriminating items which he reasonable believes to have been stolen or are relevant in respect of other offences, he can lawfully seize them. **REYNOLD V Commissioner of police for the Metropolis.** Upon seizure, all the things seized should be taken to the person that issued the search warrant.

Admissibility of illegally obtained materials

The position of the law is that incriminating items recovered in the course of an illegal search is **admissible in evidence once it is relevant to the facts in issue** UNLESS the desirability of admitting the evidence is outweighed by the undesirability of admitting the evidence. SECTION 14 & 15 Evidence Act. See Kuruma v. R; Musa Sadau & anor v. The State,

Liability for wrongful procurement of a search warrant.

A police officer or a law enforcement officer who obtained any item through an illegal search and not being relevant to the criminal charge against the person searched may be liable in damages to the aggrieved person in a civil suit. In ELIAS v. PASMORE. He will be liable for the MALICIOUS PROCURATION OF A SEARCH WARRANT.

PROCESSES FOR SECURING THE ATTENDANCE OF ACCUSED

There are three ways by which an accused person can be brought to court, namely:

- Summons
- Arrest with Warrant
- Arrest without Warrant

Summons

With regards to summons, note the following points:

- 1) Under CPA and ACJL, summons is issued by a Judge or Magistrate. See sections 79, 80 & 81 CPA; sections 79 & 80 ACJL, 113 ACJA. Under CPC, a summons is issued by a Judge, a Magistrate or a Justice of the Peace. See sections 47 & 154(1) CPC.
- 2) **A summons is an alternative to a warrant of arrest and is usually issued for misdemeanors and simple offences or where the person whose attendance is required is not likely to refuse to attend court. Where the offence is a serious one by nature, a warrant of arrest will be issued.**
- 3) A court (that is Judge or Magistrate) has the power to issue criminal processes (that is, summons or warrant of arrest), even if it has no jurisdiction to try the offence, **provided that a Court within the state has the jurisdiction to try the offence.** See section 79 ACJL; section 79 CPA; and section 139 CPC., 113 ACJA.
- 4) By section 82 ACJL; section 83 & 87 CPA and section 47 (2)CPC,120 ACJA the contents of a valid Summons include:
 - a. A concise statement of the alleged offence
 - b. The name of the individual charged with the alleged offence
 - c. An invitation to the named individual to attend the court or police station at a particular date and time being **not less than 48hours after the service** of the summons on him
 - d. The date the summons was issued
 - e. The signature of the issuing authority, whether Judge, Magistrate or Justice of the Peace. See GOODMAN v. EVANS

See section 82 ACJL; section 83 & 87 CPA and section 47 CPC, 120 ACJA.

- 5) **Issuance and service of summons:** Under CPA, by section 82 thereof, a summons may be issued or served on any day, including a Sunday or public holiday. See section 82 CPA.

Under ACJL, the position is slightly different. By section 81(a) ACJL, a summons may be issued or served on any day from **Monday to Saturday between the hours of 8:00am to 6:00pm**. See section 81(a) ACJL. However, by section 81(b) ACJL, **a summons issued or served on a Sunday or a public holiday shall not be invalid but shall take effect from the next working day**. See section 81(b) ACJL. CPC seems to be silent.

Under ACJA, section 116 provides that a summons may be served or issued on any day including a Sunday and public holiday.

- 6) The life span of a summons is that it remains in force until it is either executed or cancelled. See section 100 ACJL; section 103 CPA; and section 383 CPC. Which all provide that a summons, warrant or other process issued under any written law shall not be invalidated by reason of the death of the person who signed it or his ceasing to hold office or have jurisdiction. See section 100 ACJL; section 103 CPA; and section 383 CPC.
- 7) By section 48 CPC; section 86 ACJL; and section 88 CPA, a summons must be served either by a police officer, by any officer of the court issuing the summons or by any public officer authorized to serve summons. See section 48 CPC; section 86 ACJL; and section 88 CPA.
- 8) By section 49(1) CPC; section 87 ACJL and section 89 CPA, 123 ACJA the summons is to be served personally on the person named on it. However, by section 52 CPC; section 88 ACJL; and section 90 CPA, where personal service is impossible, **then substituted service may be resorted to with leave of court**. See section 52 CPC; section 88 ACJL; and section 90 CPA
- 9) The manner of substituted service is thus:
- ✓ By leaving a copy of the summons with an adult male member of the accused family in the North. Section 52 CPC.
 - ✓ Affixing it in a conspicuous part of the premises in which the accused ordinarily resides. Section 90 CPL, 88 ACJL, 124 ACJA.
- 10) INTRA-STATE EXECUTION OF SUMMONS/SERVICE OUTSIDE JURISDICTION: by section 54 CPC; section 91 ACJL and section 92 CPA, 126 ACJA where a summons is required to be served on a criminal defendant who is outside the Jurisdiction of the court that issued the summons, but within the same State, the court issuing the summons **will send the summons in duplicate to** the other court within whose jurisdiction the criminal defendant is to be served and that other court will direct service as if it had issued the summons itself. See section 54 CPC; section 91 ACJL and section 92 CPA
- 11) INTER STATE EXECUTION OF SUMMONS: by section 478 CPA, a summons issued in one state may be served in another state. The service of such a summons in the other state may be made in the same way as a summons in that state may be served **as the law does not require the endorsement of a Magistrate in the state**

where the summons is to be served. A summons so served shall have the same force and effect as if it was served in the State in which it was issued. See section 478 CPA.

12) EFFECT OF FAILURE TO OBEY SUMMONS: Under CPA and ACJL, the effect of a failure or refusal to obey a summons is that where the defendant disobeys a summons, and the court is satisfied that he was duly served with it and he disobeyed, the court will issue a warrant for his arrest. See section 94 ACJL, section 96 CPA and section 70(1)(b) CPC, section 131 ACJA which provides that where the court is satisfied that the defendant has been served with the summons and the defendant does not appear at the time and place stated in the summons, the court shall issue a warrant for his arrest (warrant of arrest).

13) It must be noted that a PUBLIC SUMMONS is not a SUMMONS. A public summons is issued when a person against whom a warrant of arrest has been issued has absconded or is concealing himself. See section 67 of CPC for public summons and it applies only in the North. See also section 41 and 42 ACJA.

14) Under the CPA and ACJL, ACJA acknowledgment/endorsement of receipt of summons by the person when personally served is mandatory – s. 94 CPA & s.92 ACJL, section 129 ACJA.. Failure to endorse can lead to arrest of such person and committal to prison for more than 14 days in s. 95 CPA and under s. 93 ACJL for such time as the court may think necessary. Under CPC in s. 49(2), acknowledgment of receipt of summons is not mandatory.

Ordinarily, a person summoned ought to appear in person but under certain circumstances, his appearance can be dispensed with under s. 154(2) CPC if:

- He is represented by a counsel; or
- He pleads guilty in writing

But if he is to be sentenced upon conviction, he must be present – s. 154(3) CPC.

Under CPA, by section 100(1) CPA, the personal attendance of the defendant can be dispensed with in a magistrate court where:

- When penalty not exceeding N100 or 6 months imprisonment is annexed to the summons; and
 - He pleads guilty in writing ; or
 - Appears and pleads guilty by his legal practitioner.
- See section 100(1) CPA

The presence of such accused can subsequently still be required by the magistrate – s. 100(2) CPA

DRAFTING: SUMMONS OF DEFENDANTS

IN THE MAGISTRATE COURT OF LAGOS STATE

IN THE IKEJA MAGESTERIAL DISTRICT

HOLDEN AT IKEJA

SUMMONS

TO MR. AKINYEMI OLUWADE of 17, Ahmadu Bello Road, Victoria Island, Lagos.

Complaint on oath has been made this day by EFE EZE that you on the 12th day of September 2010 at _____ in the _____ aforesaid did slap MR. EZE EFE.

You are hereby summoned to appear before the magistrate court sitting at IKEJA On the 17th day of January 2013 at the hour of 10 in the fore noon to answer to the said complaint.

Dated this 13th day of January, 2013.

Magistrate

ARREST WITH WARRANT

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. Under the CPA and ACJL, s. 22(1), 35 ACJA, an arrest warrant is issued by a judge or a magistrate. Under the CPC, in s. 56(1), an arrest warrant is issued by the judge, magistrate or justice of peace.

By section 23 CPA and ACJL, 37 ACJA, warrant of arrest is issued upon receiving complaint on oath and it may be issued on any day including a Sunday or public holiday – s. 24 of CPA and ACJL, 38 ACJA.. A warrant of arrest is issued in the following circumstances:

- the law creating the offence provides that the offender cannot be arrested without warrant; or
- Where a summons is disobeyed - s. 94 ACJL, s. 96 CPA, s. 70(1)(b) CPC.
- Where the offence alleged to have been committed is a very serious offence.

- 1) Who can issue a warrant of arrest? Under CPA and ACJL, a warrant of arrest can only be issued by a Judge or a Magistrate. See section 22(1) ACJL and section 22(1) CPA, 35 ACJA. However, under CPC, by section 56(1) CPC, a warrant of arrest can only be issued by a Judge, Magistrate or Justice of the Peace. See section 56(1) CPC. **From the foregoing, it is crystal clear that a Police officer, no matter the rank cannot issue a warrant of arrest. In all cases, the warrant of arrest must be signed or sealed by the authority issuing it.**
- 2) Under CPA and ACJL, a warrant of arrest shall NOT be issued at first instance unless the complaint upon which it is made was a complaint on oath by the complainant

himself or a material witness. See section 23 ACJL; section 23 CPA;37 ACJA, IKONNE v. COP. **However, under CPC once the complaint discloses a criminal offence, a warrant of offence may be issued and the complaint need not be on oath.**

- 3) By section 22(1) & (2) ACJL and section 22(1) & (2) CPA,36 ACJA, the following are the contents of a warrant of arrest:
 - a. It must be in writing
 - b. The name and particulars of the alleged offender
 - c. The concise statement of the alleged offence
 - d. An order directing the police officer(s) or other person, to whom is addressed, to arrest and bring the offender named in the warrant. Thus, addressed “to whom it may concern” is wrong.
 - e. The date of issue of the warrant
 - f. Signature of the issuing authority. That is, whether judge or magistrate or justice of peace in the north
 - g. The warrant must be in duplicate.
- 4) A warrant of arrest is executed when the police officer or other person to whom it is addressed arrests the person named in the warrant.
- 5) A warrant of arrest may be issued on any day including Sunday and public holiday pursuant to section 24 ACJL, 24 CPL, 38 ACJA.
- 6) Execution of WOA: a warrant of arrest may be executed on any day including a Sunday and a public holiday. See section 27(1) ACJL and section 28(1) CPL., 43 ACJA.

However, section 27(2) ACJL and section 28(2) CPA, 43(2) ACJA provides that a warrant of arrest may be executed **AT ANY TIME** and **in any place within the State EXCEPT** within a court room in which a court is sitting.

Also, warrant of arrest cannot be executed in a legislative house while it is sitting except with the consent of the President/speaker of the house. See **section 31 of the Legislative Houses (Powers and Privileges) Act; see also TONY MOMOH v. SENATE OF THE NATIONAL ASSEMBLY (1981) 1 NCLR 21**

Further, by the new privileges recently conferred on **MEMBERS** of the National Assembly (Senators and Fed. Reps.), they cannot be arrested within the precincts of the National Assembly.

- 7) By section **27(3) ACJL**, section **28(3) CPA** and section **60 CPC**, 43(3) ACJA, before executing the warrant (i.e., making the arrest) the police officer or other person executing the warrant shall inform the person to be arrested of the existence of the warrant, but where there are reasonable grounds for believing that the person to be arrested may escape or resist arrest then the person executing the warrant can choose not to inform him of the warrant. That is, **except where there are reasonable grounds for believing that the person to be arrested may escape or resist arrest;** then the person making the arrest shall inform the person to be arrested of the

existence of the warrant and shall show it to him if so required. See section 27(3) ACJL, section 28(3) CPA and section 60 CPC

However, where the warrant is not immediately available with or in the possession of the person effecting the arrest, he can still carry out the arrest, **but the existence of the warrant must be made known to the person to be arrested and upon his demand**, the warrant must be shown to him as soon as soon as practicable after his arrest. See section **28 ACJL**; section **29 CPA**; and section **61 CPC**, 44 ACJA,

- 8) Life span of a warrant of arrest: section 25(2) ACJL; section 25(2) CPA and section 56(2) CPC, 38(2) ACJA 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. A person arrested on the authority of a warrant cannot be re-arrested based on the same warrant. See **R v. AKINYANJU where the accused was arrested on a previously executed arrest warrant**. The court held that as soon as arrest warrant has been executed, it loses its life span. Hence the act of re-arresting the accused on a warrant which had been earlier executed is irregular.

As a corollary to the above, section 100 ACJL; section 103 CPL; and section 383 CPC provides that a summons, warrant or other process issued under any written law shall not be invalidated by reason of the death of the person who signed it or his ceasing to hold office or have jurisdiction.

- 9) a warrant of arrest for a capital offence, may be endorsed with bail. See section 29 ACJL; section 30 CPL and section 57 CPC, 45 ACJA. The endorsement of bail shall contain the following:
- a. Number of sureties, if any
 - b. The amount in which they are to be bound
 - c. The court before the person arrested is to appear or attend
 - d. The time within which he is to attend
- 10) Issuance of WOA : A warrant of arrest may be issued on any day including a Sunday and a public holiday. See section 24 CPA; section 24 ACJL, 38 ACJA.
- 11) A warrant of arrest is issued to, directed to and addressed to a police officer by name or to all police officers. See section 25(1) CPA; section 25(1) ACJL; and section 58(1) CPC, 39 ACJA.

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.

- 12) INTRA-STATE EXECUTION OF WOA: under CPC, there are two procedures, but there is only one procedure under CPA and ACJL, ACJA . The difference in the procedures is that under CPC, the WOA must be taken to a Judge or Magistrate in the judicial division where it is to be executed so that such judge or magistrate may

endorse it and direct execution. There is no such requirement under CPA and ACJL. The procedures are:

- a. Where a WOA is to be executed within the state of issue but outside the local jurisdiction of the issuing authority, then under section 64 CPC, where a WOA is to be executed outside the jurisdiction of the court issuing it, **such court may, instead of directing the WOA to a police officer or other person, may forward it directly by post or other means to the court within whose jurisdiction it is to be executed. The receiving court shall ENDORSE the warrant and direct that it be executed accordingly. See section 64 CPC**
- b. Under section 65 of CPC, the police officer or other person to whom the WOA is addressed to shall take it for endorsement by a Judge or Magistrate or Justice of the Peace in the judicial division in which it is to be executed and after the endorsement, he executes it.

In either case above, pursuant to section 66 CPC, after the execution, except if the arrested person has given security under section 57 CPC, he will be taken to the court in whose jurisdiction he was arrested and when the court is satisfied that he is the one named in the warrant, the court may admit him to bail, provided that he was not arrested for a capital offence, on grounds that he must appear before the issuing court on a specified date or may order that he be taken before the issuing court. See section 66 CPC

- c. Under section 30 ACJL; and section 31 CPA, 46 ACJA there is no requirement for endorsement. The procedure is after the execution, except if the arrested person has given security, he will be taken to the court in whose jurisdiction he was arrested and when the court is satisfied that he is the one named in the warrant, the court may admit him to bail, provided that he was not arrested for a capital offence, on grounds that he must appear before the issuing court on a specified date or may order that he be taken before the issuing court

13) Execution of warrant of arrest outside the state of issue (INTER STATE EXECUTION)

The procedure to be adopted in executing a warrant of arrest outside the state of issue is provided for under section 482 CPA; and section 365 ACJL. This procedure also applies to CPC areas (Northern Nigeria) because section 7(b) of the Criminal Procedure (Northern Region) Act of 1960 provides that the provisions of section 482 CPA shall apply to northern Nigeria. Thus, the procedure is uniform throughout Nigeria. The procedure is as follows:

- a) The first step is the taking of the warrant of arrest to the magistrate within whose jurisdiction, the accused/offender resides or is found, **for endorsement.**
- b) The magistrate will endorse the warrant after satisfying himself that
 - i) That the alleged offence is known to the law of the state that issued the warrant. See *AOKO v FAGBEMI*
 - ii) That the warrant was issued by a competent authority, that is, by a magistrate, judge or justice of peace. See *COP v. APAMPA*
- c) Once the magistrate is satisfied on the above, he shall endorse the warrant.

- d) The warrant so endorsed gives the police officers executing the warrant the power to arrest the person named in the warrant.
- e) Upon the arrest of the offender, he or she is to be brought before the magistrate who endorsed the warrant. The magistrate can do either of the following:
 - i) Order that the offender be taken to the state that issued the warrant.
 - ii) Where the offence for which the warrant is issued is bailable, he may admit such person to bail, on condition that he is to appear before the issuing magistrate, judge or justice of peace within a specified time **not exceeding one (1) month** from the date of the order admitting him to bail.
 - iii) Order that the offender be discharged if he is satisfied that the offence for which the offender was arrested is unknown to law. In *COP v. APAMPA*.
- f) 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 CPA.**

PUBLIC SUMMONS – section 67 CPC, 41/42 ACJA.

This applies only in the north and is issued when a person against whom a WOA has been issued is concealing himself or has absconded. Under section 67(1) of CPC, where there is evidence that a person against whom a warrant of arrest has been issued has absconded or is concealing himself, **the High court judge may publish a public summons in writing requiring the person to appear at a specified date and time within thirty (30) days from the date of publication.**

The public summons is published/executed by:

- a) Reading it orally in a conspicuous part of the town or village where the alleged offender resides
- b) Affixing a copy of the summons to a conspicuous part of the house where the alleged offender resides
- c) Affixing it to a conspicuous part of the High Court building.

See section 67(2) CPC

By section 67(3) CPC, a statement in writing by the High Court Judge attesting to the publication of the public summons on a specified day shall be conclusive proof that the requirements of section 67 of CPC has been complied with.

Only a High court judge can issue a public summons in the NORTH. Under ACJA, both a high court judge and magistrate may issue a public summons.

Arrest without warrant

An arrest without warrant can be made by three categories of persons, namely:

- Police officers
- Judicial officers
- Private person

The police officer

Cases in which police officer may arrest without warrant are provided under:

- **s. 24 Police Act,**
- **Section 10 CPL.**
- **10 ACJL,**
- **SECTION 18 ACJA**
- **s. 26 and column III of Appendix A to CPC.**

Section 10 CPL provides that a police officer may without an order from a magistrate and without a warrant of arrest, arrest a person:

- a. When he reasonably suspects a person of having committed an indictable offence (punishment exceed 2 years imprisonment or fine of.....) under any federal or state law unless a warrant is provided for
- b. When an offence is committed in his presence whether an indictable or non-indictable, even when the law says a warrant should be issued.
- c. When a person obstruct a police officer while carrying out his duty
- d. When a person has escaped lawful custody.
- e. When property with a person is reasonably suspected to be stolen or commit an offence with reference to that thing
- f. When he suspects a person to be a deserter from any of the Armed Forces of Nigeria
- g. When he reasonably suspects a person of having committed an offence outside Nigeria of which if committed in Nigeria would amount to an offence
- h. When a person is having in his possession instrument of house-breaking without excuse.
- i. When he reasonably believes that a warrant of arrest has been issued against such person by a competent court.
- j. A person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself
- k. When a person is found taking precaution to conceal himself and it is reasonably believed that he is taking such precaution with a view to committing a crime - whether felony or misdemeanour.

Section 10(3) CPA did not provide that the powers conferred upon a police officer are exercisable within a state by a member of the police force. The text to be applied in reasonableness is that of a reasonable man test. See Chukwu v. COP.

Even when 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.

Judicial officers

Judge, magistrate, Justice of the Peace

- ❖ **Section 15,16 CPL**
- ❖ **29(1),30(1)CPC**

❖ 15 ACJL

❖ 25 AND 26 ACJA.

A judge or magistrate or justice of peace(north) may himself arrest or order any person to arrest anyone who commits an offense in his presence within the division or district to which he is assigned (only under CPA).

Also they may arrest or direct the arrest in their presence of a person whose arrest upon a warrant can be validly issued by them - s. 16 CPA, s. 16 ACJL and s. 30 CPC.

Private persons

Under section 12 CPA and section 12 ACJL, a private person may arrest without warrant, any person who commits an indictable offence (i.e. an offence triable on information) in his presence or any person who he reasonably suspects of having committed an offence which is a felony or of having committed by night, an offence which is a misdemeanour. Under CPC in s. 28, there are categories of persons which a private person may arrest:

- a. A person whom arrest warrant has been issued against or directed by justice of peace to be arrested.
- b. A person who has escaped from lawful custody
- c. **A person required to appear by public summons**
- d. Any person committing an offence in his presence for which the police are authorized to arrest without a warrant.

A private person effecting arrest without warrant must without unnecessarily delay deliver the suspect to a nearest police officer or in the absence of a nearest police officer must take the suspect to the nearest police station. See section 12(2) & 14(1) ACJL, section 14 CPL, and section 39 CPC, 23 ACJA. See also DALLISON v. CAFFERY; JOHN LEWIS & CO Ltd v. TIMS.

A private person effecting an arrest may render himself liable in damages for false imprisonment if he fails to hand over the person arrested to a police officer or take him to the nearest police station without undue delay. See JOHN LEWIS & CO Ltd v. TIMS.

When the person arrested is taken to the police officer or police station, the police officer shall **re-arrest him**.

If a police officer arrests a person without a warrant, he shall take such person with all reasonable dispatch to a police station or other places for the reception of arrested persons. SECTION 9(1)ACJL, 9(1) CPL, 14 ACJA.

PROCEDURE FOR ARREST (HOW TO MAKE AN ARREST)

- 1) The question has been asked whether mere words can constitute arrest? In making an arrest the police officer or other person effecting the arrest shall actually touch or

confine the body of the person to be arrested, **unless there be a submission to the custody by word or conduct.** See section 1 ACJL and section 3 CPL, SECTION 4 ACJA. Therefore, mere words do not constitute an arrest. See also SADIQ v. STATE. The reason for the foregoing is that an arrest involves the authority to arrest, the assertion of that authority with the intent to make an arrest, and the restraint or confinement of the person to be arrested.

- 2) By section 4 of ACJL and 7 ACJA, there shall be no arrest in lieu or by proxy. The said section provides that no person shall be arrested in place of a suspect. See section 4 ACJL. It must be noted that CPA and CPC seem to be silent on this point.
- 3) A person arrested shall not be subjected to unnecessary restraints. See section 2 ACJL; section 4 CPL and section 37 CPC, section 5 ACJA. The provisions of CPC in this regard is slightly different from that of CPA and ACJL. Section 37 of CPC provides that a person arrested shall not be subjected to more restraint than is necessary to prevent his escape. On their part, section 2 ACJL and section 4 CPA , 5 ACJA both provide that a person arrested shall not be handcuffed, otherwise bound or be subjected to unnecessary restraint, except in the following instances:
 - Except with the order of a Judge, Magistrate or Justice of the Peace
 - Reasonable apprehension of violence
 - An attempt to escape
 - Necessary restraint for safety of his person

Although all the other exceptions, except attempts to escape, are not expressly provided for under CPC, it is submitted that, in practice, they would also apply to the CPC States.

- 4) By section 3(1) ACJL, Section 6 ACJA Section 5 CPL, and section 38 CPC, an arrested person must be informed of the cause of arrest except:
 - Where the offender is arrested while actually committing the offence
 - He is pursued immediately after
 - He escapes from lawful custody.
- 5) By section 12(2) & 14(1) ACJL; section 14 CPA and section 39 CPC, 23 ACJA, a private person effecting arrest without warrant must without unnecessarily delay deliver the suspect to a nearest police officer or in the absence of a nearest police officer must take the suspect to the nearest police station. 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.

A private person effecting an arrest may render himself liable in damages for false imprisonment if he fails to hand over the person arrested to a police officer or take him to the nearest police station without undue delay. See JOHN LEWIS & CO Ltd v. TIMS.

When the person arrested is taken to the police officer or police station, the police officer shall re-arrest him.

- 6) By section 37 CPC, where the person to be arrested resists arrest or attempts to evade arrest, the police officer or other person making the arrest may use all means necessary to effect the arrest.

- 7) By section 9 CPL and section 9(1) ACJL, 14 ACJA, any person who is arrested, whether with or without warrant, shall be taken with reasonable dispatch to a police station, or other place for the reception of arrested persons and shall without delay be informed of the charges against him. Further, by the same section 9 CPA and section 9(2) of ACJL, the person so arrested shall, while in custody, be given all reasonable facilities for obtaining legal advice, take steps to furnish bail and otherwise make arrangements for his defence or release.14(2) ACJA.

Effect of irregularity in procedure for arrest

The trial of an accused person shall not be affected by reason of any defect in the issuance of the warrant with which he was arrested or the irregularity in the procedure of his arrest or his custody after his arrest – s. 101 CPA, s. 98 ACJL and s. 384 CPC. OKOTIE v. COP. Thus, it is only the arrest that is unlawful.. At best if the fundamental rights of the accused was breached, civil action can be maintained against the arresting officers for damages.

Rights of the suspect

During searches and arrest, the suspect has certain rights under the CFRN based on the fact that searches and arrest touches on the provisions of the fundamental rights in chapter IV CFRN. E.g.

1. Rights to dignity of human person, thus no person should be subject to torture or inhumane or degrading treatment – s. 34 CFRN.
2. Right to personal liberty. Every person is entitled to personal liberty even though under certain circumstances, he can be deprived of it – s. 35 CFRN
3. Right to private life and family life – s. 37 CFRN
4. **S. 35(2) CFRN 1999** (as Amended): Remain to remain silent or avoid answering any question until after consultation with a Lawyer or person of his choice.
5. 3. **S. 35(3)** Information in writing within 24 hours and in the language he understands of the facts and grounds for his arrest and detention.
6. 4. **S. 35 (4)** charge the accused to court within a reasonable time means a period of one day where a court is within 40km or a period of two days or longer where necessary in any other case – **S. 35 (5)**
7. 5. **S. 35(6)** Public apology and compensation from the appropriate authority or person to a person who is unlawfully arrested or detained.

. Where any of the above occurs, the suspect can bring an action for redress.

DRAFT FOR WARRANT OF ARREST:

IN THE HIGH COURT OF JUSTICE OF KADUNA STATE

IN THE KADUNA JUDICIAL DIVISION

HOLDEN AT KADUNA

CASE NO:

BETWEEN:

THE STATE COMPLAINANT

VS.

ALHAJI ATUTUWA ACCUSED PERSON

WARRANT OF ARREST

To Corporal Ado Musa, Police officer.

Compliant on oath has been made on the 28 day of September 2011 that Alhaji Atutuwa of No. 5 Oduwole Street Kakuri Kaduna State have in his possession a fake currency printing machine and thereby committed an offence punishable with life imprisonment under section 2 of the Counter-feit Currency(Special Provision) Act.

You are therefore hereby commanded to bring the accused before the High Court sitting at Kaduna forthwith to answer the said complaint and to be dealt with according to Law.

DATED THE DAY OF NOVEMBER, 2013.

.....

JUDGE

WEEKS 4 AND 5

PRE-TRIAL INVESTIGATION AND POLICE INTERVIEW

This is the first step that the police will carry out before arraignment in court. The police and other law enforcement agencies are responsible for conducting pre-trial investigation. Generally, the duties of the Nigerian police is conducting a pre-trial investigation and conducting of trial in court.

Where the police had reasonable ground to believe a person had committed an offence, it may be necessary to curtail such person. *ONYEKWERE V STATE*

The powers of the Police to conduct pre-trial investigation and to conduct cases in court are derived from the provisions of Section 4 & 23, respectively, of the Police Act, which provide:

Section 4: “the Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.”

Section 23: “subject to the provisions of sections 174 and 211 of the CFRN (which relate to the power of the AG of the Federation or of a State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria), any police officer may conduct in person all prosecutions before any court, whether or not the information or complaint is laid in his name”

Section 52(1) and (2) ACJL, provides that every police officer may intervene for the purpose of preventing crime and may intervene for the purpose of protecting property.

The duty of the police does not however extend to collecting debt for it is a civil wrong. In **MCLAREN V. JENNINGS**, where the plaintiff was arrested and detained by the police for debt owed to another, the court held that the police officers were liable for false imprisonment as their duties did not extend to collecting debt.

SECTION 8(2) ACJA, provides that a suspect shall not be arrested merely on a Civil wrong or breach of contract.

Note: the conduct of police investigation must be carried out within the confines of the law. If at the end of pre-trial, there is no sufficient evidence against the suspect, no charge will be made **against him. Hence pre-trial investigation will determine whether an accused can be convicted. It also affects the trial.**

Procedure for pre-trial investigation

- Complaint is made to the police orally or in writing either by the victim or a witness to the crime
- The complaint is registered in the **case book diary**
- Investigation is then commenced into the matter

The police have discretion as to investigation of a suspect – Fawehinmi v. IGP. The police can invite any person related to the offence and the following persons can be invited by the police for questioning; a suspect, victim of the offence, witness to the offence, experts, complainants, any person who may aid proper investigation of the complaint.

The modes of questioning/interview can be:

- Personal that is face to face through invitation to the police station
- Telephone conversation
- Written representation can be accepted from any member of the public who has an idea about the incident.

STAGES OF POLICE INTERVIEW: done by the Investigating Police Officer.

- 1) Rapport building stage
- 2) Information exchange stage
- 3) Confrontation/ challenge stage

4) Concluding stage

Factors hindering effective police investigation in Nigeria

- Lack of trained personnel
- Corruption
- Inadequate protection of witnesses
- Lack of basic investigative skills
- Poor record keeping
- Poor remuneration
- Impatience on the part of officers leading to early closure of case files.

Requirement for interview of a Suspect

A suspect must be invited to the police station for questioning except in a minor offence. The suspect is then expected to make statement to the police. **The purpose of police interview is to obtain enough evidence/information to prosecute the suspect.** There are rules guiding the obtainment of statement from suspect, these are:

1. Statement must be made under caution. The suspect should be cautioned as to his rights
2. Statements should be obtained in English language except the accused does not understand English, then the police should allow the suspect to make his statement in that language. With an interpreter, it can be translated at a later stage to the language of the court.
3. Recording of statement should be in singular pronoun that is first person singular or plural narration – 'I' 'we'. Ahmed V State.
4. **In tendering statement recorded by an interpreter, the interpreter must be present and it must be admitted through him.** OLALEKAN V STATE, R V OGBUEWU otherwise the statement will become inadmissible hearsay evidence
5. **Under the ACJA, SECTION 17(3), where an interpreter records and read the statement of the suspect over to him to his understanding, the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement..**
6. All material evidence must be made available to the suspect.

Statements made to the police by the suspect during investigation must be tendered by the prosecution at trial and it is the foundation of the case. And such statements are admissible as held in IGBO V STATE.

Statement under undue influence, duress, threat, promises may not be admissible. SECTION 29(2) EA 2011.

ASSUMING THE INTERPRETER IS DEAD, cannot be found, incapable of giving evidence or his attendance cannot be procured without an amount of delay or expense

which to the court appears to be unreasonable WHAT BECOMES OF THE STATEMENT MADE?

ANSWER:

The prosecution would lay proper foundation in court through its witness, that the person who interpreted the statement and recorded same is dead, and then seek to tender the recorded statement. Failure to do so, it will amount to inadmissible hearsay evidence and would not be admissible. SEE SECTION 39 EA.

CONFESSIONAL STATEMENTS

In the process of interviewing a suspect, confessional statement can be obtained from the suspect. Confessional statement is regulated under s. 28 & 29 Evidence Act, 2011. **No confessional statement can be made during trial as held in UDO V STATE.** It can only be made during police investigation or at the close of police investigation. Should an accused confess to committing the crime during trial, it shall amount to a guilty plea and not a confession.

Procedure for taking confessional statement

In the south the procedure includes:

- Criminal Procedure Law
- Case law
- Administration of Criminal Justice Law – Lagos

In the North, the procedure includes:

- Criminal Procedure (Statement to Police Officers) Rules 1963
- Criminal Procedure Code
- Case law
-

The Judges' Rules is not applicable in the North because the rule has been re-enacted in the North as CRIMINAL PROCEDURE (STATEMENT TO POLICE OFFICERS) RULES 1963.

Procedure in the North

Confessional statement can be elicited from a suspect by a police officer at the police station **or by a justice of peace.** The following must be complied with:

1. Questions are put to the suspect as to whether the statement was made voluntarily. The suspect is brought to the justice of peace after he has made confessional statement.

2. The justice of the peace record the statement in his writing in the presence of the suspect
3. The statement is read to the suspect
4. The justice of peace sign or seal the statement

With regard to a police officer obtaining such statement both the police officer and suspect will sign.

Procedure in the south

There is no laid down procedure in the south, but the judges rules applies. Also is the provision of the ACJL in s. 9(3) which states that statement must be taken by video, in the absence of a video facility, in writing in the presence of the legal practitioner of suspect choice . Under the ACJL, if the foregoing is not done then confessional statement whether voluntary or otherwise would not be admissible.

UNDER THE ACJA, SECTION 15(4), provides that where a suspect volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other Audio visual means.

PLEASE NOTE: Oral confession of arrested suspect shall not be admissible in Lagos, However, it is admissible UNDER ACJA pursuant to SECTION 15(5) ACJA.

Under the Judges Rule, There is a practice of taking confessional statement of a suspect by the officer who took it to a superior police officer for confirmation and endorsement in the presence of suspect. No matter how good the practice is, it is just a practice and failure to take such statement to superior officer to counter-sign it, will not render the statement inadmissible. The Supreme Court in IKPO V. STATE still restated the point where the voluntary confessional statement was read over to the accused and counter-signed by a superior officer by stating ‘it is of course not the law that a true and voluntary statement not read over or confirmed before a superior officer ceases ipso facto to be true or voluntary confessional statement or that it is thereby rendered weightless or inadmissible. See also AKPAN V. STATE.

The confessional statement must be made by the suspect (accused) and confessional statement of suspect (accused) A cannot be used against suspect B except the other suspects in whose presence it was made adopts same by words or conduct – s. 29(4) Evidence Act. See OZAKI V STATE, MBANG V STATE..

Judge’s rules

It is pertinent to note that the judges rules are for administrative convenience and purposes of which have no force of law but have been recognized by the court. In one word, failure to comply with the judge’s rules by the police officers does not or will not render a voluntary confessional statement inadmissible except where the statement was not voluntarily made. In **OJEGELE V. THE STATE**, the Supreme Court stated that the Judges rules are the

rules made by English judges for the guidance of English police officers. Nobody however disputes the wisdom behind those rules but having said that, it is necessary to add that the rules are not rules of law but merely rules of administrative practice. They are rules made for the more efficient and effective administration of justice and therefore should never be used to defeat justice.

A confessional statement is relevant only when it is admitted or else proved to be voluntary. IGBO V STATE.

JUDGES RULES

Because of the strict proof which is required of a confessional statement before it may be admitted the judges of the Kings Bench Division in England in 1912 formulated what is generally referred to as the Judges Rules for the guidance of police in obtaining statements from persons in custody or suspected of criminal offences. The Rules which had in 1964 been replaced by another set of Rules, by the Queen's Bench Division have always been applied in Nigeria See R v. ANYA UGWUOGO & ANOR (1943) 9 WACA 73; R v. AFOSE (1934) 2 WACA 118; R v. AJANI (1936) 3 WACA 3; EVBUOMWAN v. POLICE (1961) NMLR 257.

The most relevant of the rules are:

(i) When a police officer is trying to discover whether, or by whom an offence has been committed, he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained, whether that person has been in custody or not. But once the police officer has evidence which gives reasonable ground for suspecting that a particular person committed the offence, he should caution him before putting further questions to him. The caution should be as follows: **"You are not obliged to say anything unless you wish to do so but what you say may be put in writing and given in evidence"**.

(ii) When the person has been charged and informed that he may be prosecuted, he should be cautioned in the following words: "Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence". Care must be taken not to give the impression that what the suspect says can only be given in evidence against him and question should not be asked which are not intended to extract information from him. Questions may however be asked to correct ambiguities and obvious mistakes. QUESTIONS RELATING TO THE OFFENCE

MAY BE PUT TO THE SUSPECT FOR THE PURPOSE OF PREVENTING OR MINIMIZING HARM OR LOSS TO SOME OTHER PERSON OR TO THE PUBLIC.

(iii) after being cautioned, where the suspect makes a statement or elects to make a statement, a record of the time, the place at which the statement was taken and the person(s) present at that time shall be kept.

(iv) If a suspect intends to write his own statement, he should be asked to write and sign the following statement before he starts writing out his statement: "I make this statement of my own free will and volition. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence". And if it is written by a police officer the accused must state at the end of the statement thus: "I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will and volition".

(v) If a person has been charged and the police wishes to bring to his notice a written statement made by a co-accused who in respect of the offence has been charged or informed that he may be prosecuted, the police should hand over a true copy of such written statement, but nothing should be said or done to invite any comment or reply. But if that person says he wants to make a statement in reply, he should be cautioned as indicated above.

Persons other than police officers, such as EFCC and NDLEA officials, charged with the duty of investigating offences must as much as possible comply with the Judges' Rules. Apart from complying with the Judges' Rules, the Nigerian police have evolved the practice of taking an accused person who has made a confessional statement to a Superior Officer or a District Officer at the earliest possible time for endorsement. This is to give the accused the opportunity to deny or retract his statement. This practice has been highly commended. See *R v. OMOREWERE SAPELE* (1957) 2 FSC 24; *NWIGBOKE v. R* (1959) 4 FSC 26; *ADAMU v. A.G. BENDEL* (1986) 2 NWLR (Pt. 22) 284.

However, failure to take the confessional statement and the suspect for a superior police officer will not render the confessional statement inadmissible, if it is voluntary. See *IKPO v. STATE*; *AKPAN v. STATE*.

PLEASE NOTE failure to warn an accused person of the fact that he is not bound to make such statement and that evidence of it might be given does not render a voluntary confessional statement inadmissible where it is relevant. It also does not affect the weight to be attached to it. SECTION 31 EA 2011

But in asking the accused to confirm or deny his statement taken down in a language other than English, the proper thing to do is to read the statement in its original form and not its English translation if the accused is illiterate. See *R v. NWANGBO IGWE* (1960) FSC 55.

NOTE THAT WHERE AN INTERPRETER IS USED IN RECORDING AN ACCUSED'S CONFESSION SUCH CONFESSION IS INADMISSIBLE UNLESS BOTH THE INTERPRETER AND THE PERSON WHO RECORDED THE STATEMENT ARE CALLED AS WITNESSES. SEE NWAEZE v. STATE; OLALEKAN v STATE,section 17(3) ACJA.

It has been held that before an accused person can be invited to pose for a photograph which would strengthen the case against him, he should be cautioned and told he is not bound to pose for such photograph. See *UGAMA v. R* (1959) 4 FSC. 218.

Confession of a co-accused

A confession is only admissible against the person who makes it. See S. 29(4) of EA 2011; *MBANG V STATE*. Even where it is made in the presence of a co-accused, unless the co-accused adopts the confession, either expressly or by conduct, it is not admissible against him. See S. 29(4) of EA 2011;,, *OZAKI V STATE*.

However, where a statement is made on Oath, during trial before the court which incriminates a co-accused, and there are other corroborative evidence, the court may rely on it and convict the co-accused. *GBOHOR V STATE*.

Note that a confessional statement alone is sufficient to ground a conviction once the court is satisfied with the truth of the confession. *YUSUFU v. STATE* (1976) 6 SC 167; *GABRIEL v. STATE* (2010) 6 NWLR (Pt.) 280

BAR PART II- WHAT IS THE DIFFERENCE BETWEEN A STATEMENT AND A CONFESSIONAL STATEMENT

ANSWER: An ordinary statement is a mere narration of the facts of the case as held in *Igbo v State*, while a confessional statement is an admission of guilt made by the arrested suspect pursuant to Section 28 Evidence Act 2011.

Effect of Confession

A confessional statement is sufficient to ground a conviction without corroboration provided the court is satisfied with the truth of the confession even if it is inconsistent with the accused's statement in court. See *EGBOGHONOME v. STATE* (1993) 7 NWLR (Pt. 306) 383. In determining the truth of the confession, however the Court must ask itself certain questions see *IKPO v. STATE* (1995) 12 SCNJ 64 at 75. These questions include:

- a) Is there anything outside the confession to show that it is true?
- b) Is the confession corroborated?
- c) Are the statements of facts contained in the confession true, as far as they can be tested?
- d) Did the accused person have the opportunity to commit the offence?
- e) Was the confession possible?
- f) Is the confession consistent with other facts which have been ascertained, admitted and proved at the trial?

See *SULE v. STATE* (2009); *GABRIEL v. STATE* (2010);

Trial within trial – s. 29 Evidence Act

Trial within trial is usually conducted to determine the voluntariness of confessional statement before admitting same. Trial within trial is usually carried out when the accused upon the process of admitting a confessional statement made by him, objects on the ground that it is not voluntary. **However should the accused claim that the confessional statement was not made by him or signed by him, then trial within trial will not be conducted. In this case the accused is RETRACTING the confessional statement.**

If the voluntariness of the confession is raised by the accused, the prosecution is under the onus to prove the voluntariness of the confession. In other words, the prosecution must prove that the statement was not obtained under inducement, threat or promise. See s. 29(2) Evidence Act generally. Should the prosecution succeed in proving beyond reasonable doubt

that the statement was voluntarily made, that is, it was not under inducement, threat or promise, then the court would admit it, else it would not (if not voluntarily made). Under s. 29(3) Evidence Act, the court can on its own motion (suo motu) request the prosecution to prove that the confessional statement was not obtained under inducement, promise or threat before it is admissible.

RETRACTION.

Specie of Retraction

- Statement not signed
- Denial that signature is not his
- Where he states that the STATEMENT was incorrectly recorded
- Where he alleges he never made an oral confession credited to him.
- Allegation that the statement was doctored.

On RETRACTION, when an accused retracts confessional statement, it will still be admissible only that in relying on it, as to its truthfulness, there would be need for corroboration. See OGUNYE v. STATE, where it was held that a retraction does not go to the admissibility of the statement and the trial court is entitled to admit the confession in evidence as a statement the prosecution claims to have obtained from the accused and thereafter to decide or find out as a matter of fact whether or not the accused person in fact made the statement at the conclusion of the trial.

Therefore, in determining whether a retracted confessional statement is true, the court has always considered the following questions spelt out in Voluntariness. :

See SULE v. STATE (2009); GABRIEL v. STATE (2010);

Time to raise objection

An objection to an involuntary confessional statement should be made timeously. It should be made at the point the prosecution seeks to tender the statement as evidence.

STANDARD OF PROOF IN TRIAL WITHIN TRIAL

- Bright v State, Effiong v state
- The evidential burden rests with the prosecution and it is the prosecution that testifies first and the defence will rebut.
- The ruling in trial within trial cannot terminate the proceedings as held in GBADAMOSI V STATE.

BURDEN OF PROOF

BEYOND REASONABLE DOUBT. Section 29(2) Evidence Act.

Alibi – Elsewhere

This is one of the commonest defense usually raised by an accused person or suspect. By raising the defense of alibi, the suspect is saying that he was not at the scene of the crime at the material time the crime was being committed and that it was practically impossible for him to have committed the crime.

There is a duty on the accused to properly raise the defense of alibi. This duty includes raising the defense at the earliest possible opportunity – during investigation and not at the trial. *EBEMEHI V STATE* **IF THE DEFENSE IS RAISED DURING ARRAIGNMENT, THE PROSECUTION IS NOT BOUND TO DISPROVE IT.** The court will only consider such defense with material evidence in order to determine whether the defenses will avail him.

HOW TO RAISE ALIBI

- The suspect states that he was not at the place when the offence was committed
- The time he was there, as held in *OKOSI V STATE*, the time must correspond to the time of the crime.

The evidential burden is on the accused pursuant to SECTION 136 AND 137 EA 2011.

- Again the SUSPECT MUST SUPPLY THE PARTICULARS OF ALIBI. Particulars of alibi will include the place where he was at the relevant time adequately stated, time and person who was with him or saw him. See *OKOSI v STATE*. That is, the particulars of the place where the suspect was, the persons he was with, the time and other relevant facts that will substantiate the alibi must be given.

Once alibi has been properly raised, in that the particulars were supplied, the police are required to investigate the alibi. **In certain cases even if the particulars have been supplied, it would be irrelevant to investigate e.g. where the accused was caught/arrested while committing the crime, or at the scene of the crime, or was pursued and arrested immediately after committing the offence** OR the confessional statement made voluntarily by the suspect may destroy the defence of alibi. . On trial, the evidential burden of proving the defense of alibi is on the accused while the primary burden of proving the guilt of the accused beyond reasonable doubt is on the prosecution. When the accused raise the defense of alibi and particulars are supplied, the prosecution should lead evidence to disprove such alibi by:

- Calling strong evidence which connect the accused to the crime – MATERIAL EVIDENCE. *AZEEZ V STATE*. *Olaiya v state*
- Leading superior evidence

If the prosecution is unable to disprove the defense of alibi raised, the court will **discharge** the accused. When alibi is not properly raised, the police need not investigate the alibi. This is when the particulars of alibi are not supplied. **When a defense of alibi raised by suspect is not investigated by the police, the court on trial can suo motu call witness(s) mentioned in the alibi, notwithstanding that the witness was not called by the prosecution or defense.** In *ABUDU V. THE STATE*, where the alibi raised by the appellant

was not investigated by the police, the trial court had called the person mentioned by the appellant. The Supreme Court found nothing wrong with such and held the prosecution did not disprove the defense of alibi hence the appellant was discharged and acquitted. IT HAS BEEN ASKED whether confessional statement and the defense of alibi can stand together. They are both in opposite direction; confessional statement once made destroys the defence of alibi. In OGOALA v. STATE, where the accused who has made confessional statement claimed at the SC that his defense of alibi was not considered, the court had stated that the defense raised amount to no issue.

Identification parade

It is possible that mass arrest has been made in connection to an offence committed and the victim of the crime is not able to pin-point the suspect, hence an identification parade can be constituted. Identification parade is usually conducted when the identity of the suspect is in doubt or to defeat a defence of mistaken identity. See IKEMSON v. STATE. However, an identification parade is not a sine qua non in all cases where there is a fleeting evidence on the identity of the suspect. In IKEMSON v. STATE, the SC stated that identification parade is only essential in the situations enunciated in R v. TURNBULL & Ors and they are:

- The victim or witness did not know the accused before and his first contact with was during the commission of the offence
- The victim or witness was confronted by the offender for a very short time
- The victim in the time and circumstances might not have had full opportunity of observing the features of the accused

INSTANCES WHERE AN IDENTIFICATION PARADE WILL NOT BE NECESSARY

- Where by his confession, an accused person identifies himself as the offender
- Where the offender is arrested at the scene of the crime while committing it or was pursued and arrested immediately thereafter
- Where the offender was well known to the witness or victim before the commission of the crime. Where this is the case, any parade conducted would be for RECOGNITION and not an identification as in SAMUEL BOZIN v. STATE
- Where a case of alibi has been put forward by the suspect
- Where there is strong and uncontradicted eye witness account showing the offence was committed by the accused person
- Where the circumstances of the case has sufficiently and irresistibly married the offender to the crime and the crime scene

THERE ARE OTHER TYPES OF IDENTIFICATION OF A WITNESS

- Dock identification: if the accused is in the dock, the witness can be asked if he knows the accused.
- Voice identification: if the accused/suspect made a lot of speech while committing the crime
- Photograph identification/visual identification

- Spontaneous identification
- Fingerprints identification: this can be the best mode of identification of a suspect as not two persons have the same thumb impression. It is not predominant in Nigeria due to lack of facilities.
- Handwriting
- Palm prints

On the various types of identification evidence, see *EMENEGOR v. STATE* (2010) ALL FWLR (PT511) 884; *ARCHIBONG v. STATE* (2006) ALL FWLR (pt 323) 1747

DIFFERENCE BETWEEN RECOGNITION AND IDENTIFICATION:

Where the victim or the eye witness knew the suspect before the incident either by name or may have had contact with him before the incident, then it may raise the question whether there was an identification or a recognition. See *SAMUEL BOZIN v. STATE*.

In *EMENEGOR v. STATE*, it was held that the recognition of an accused person arises when the victim or witness sees or acknowledges the identity of a person well known to him committing the offence. The value of this acknowledgment or recognition is that it dispels any scintilla of doubt not only about the accused person's physiognomy but also his personae. On the other hand, the identification of an accused person arises when a person unknown to a witness commits a crime in his presence. In such a situation, the identity of the accused is a fact in issue or a relevant fact. Similarly, in *SAMUEL BOZIN v. STATE*, there is a world of difference between the following questions:

- 'I have known the appellant before, he was among those who robbed me' and
- 'I saw one of those who robbed me and if I see him again, I will recognize and identify him.'

It is only in the latter instance that an identification parade is necessary and is thus usually conducted. Therefore, the law is settled that where the suspect was known to the witness before the commission of the offence, the witness must mention this fact at the earliest possible opportunity, and does not have to wait for an identification parade. See *ISAH v. STATE* (2008) ALL FWLR (pt 443) 1243. Where the victim or witness omits to mention at the earliest possible time the name of the person who committed the crime, where such person was known to him before the commission of the crime, the court must be wary of actin on such evidence given later unless a satisfactory explanation is given. The effect of such delay is that it makes the evidence of identity suspect and reduces the truth value of the evidence below acceptable and probative level.

PROCEDURE FOR CONDUCTING IDENTIFICATION PARADE: THE NIGERIAN POLICE TRAINING MANUAL FOR BASIC AND ADVANCED STUDIES PROVIDES FOR THE PROCEDURE

- A senior officer must be present and he is not to take part in the identification parade, his presence is only required
- The identification parade must consist of at least eight persons including the suspect who as far as possible resemble the suspect in age, height, build, complexion, general appearance and position in life.
- If a police officer forms part of the identification parade, their badge number must be removed
- The suspect must be handed Form D48. The form consists of information in relation to his rights during the identification parade. These rights are:
 - ✓ Right to have his legal practitioner/friend or family member present (adult) at the identification parade.
 - ✓ Right to take any number/position in the identification parade
 - ✓ Right to be asked whether he is satisfied with the identification parade. That is, whether he has any objection to the arrangement for the identification parade or to any of the participants in it and to state the reasons for his objection.
- No officer is permitted to speak with the witness or complainant, except the officer in charge and any such communication with witnesses/complainant must be audible.
- All persons except those directly involved are excused. That is, persons present must be those directly related to the crime and the parade is not open to the press
- The witness must not see the persons (or suspects) to be paraded before the parade
- Photographs of all the persons to be paraded must be taken. That is, a photograph of the line-up is taken before the parade begins
- Witnesses are not to communicate with each other before the parade
- If there is more than one witness, they must be brought in one after the other – identification must then be done individually
- If the witness identifies any of those paraded, the witness must place his hand on such person's shoulder and photograph of such will be taken.
- After identification, another identification parade is to be taken with the person identified with different persons for the purposes of verification.
- There should be separate entry and exit to the venue for the identification parade
- The room for the identification parade must well illuminated
- Where the suspect has an unusual physical feature such as a facial scar, a tattoo or a distinctive hairstyle or hair colour which cannot be easily replicated by the other participants in the identification parade, steps should be taken to conceal that special feature.
- After the entire parade, FORMS D49 and D50 will be completed by the police officer in charge

Failure to follow the laid down procedures for identification of a suspect does not render the evidence inadmissible but it goes to the weight to be attached to such identification. However, if the irregularity is grievous, such as a recognition and not an identification, the identification parade may be quashed. See **R v. BUNDI, OMEGA v. STATE.**

Identification parade may be judicial or extra-judicial. Dock identification is judicial.

Handling exhibit

During the police investigation certain items might have been seized from suspects. Such items are to be preserved for the purpose of conducting trial/prosecution. There is usually an **exhibit list** which would itemize all the materials collected from a suspect(s). There is also the **exhibit register** where exhibits collected and in police custody are recorded - a particular police station or division. There is the **exhibit keeper** who keeps custody of all the items in the custody of the police. There is then **exhibit room** where the exhibits are kept. The exhibit room can only be entered by authorized/designated officer. A tag is to be placed on each exhibit. **Items which are seized by police officer requiring laboratory or forensic test is usually packed in an exhibit pouch.**

RIGHTS OF AN ACCUSED/SUSPECT – CHAPTER 4 CFRN

The suspect or accused person has the following rights during investigation by the police – police investigation

1. Right to remain silent or avoid answering question until consultation with legal practitioner or any other person of his choice – s. 35(2) when he is arrested or detained.
2. Right to be informed in the language he understands, the facts and grounds of his arrest or detention, in writing and within 24 hours – s. 35(3) CFRN
3. Right to be brought to court within a reasonable time – 24 or 48 hours depending on the distance of the court to the police station – s. 35(4) CFRN. This does not apply to capital offence.
4. Right of access to counsel of one's choice – s. 35(2)
5. Right not to be subject to torture that is dignity of human person – s.34 CFRN
6. Right to free legal aid upon fulfillment of certain conditions
7. Right to bail, if is a bailable offence by the police – s. 35(4) & (5). The police have no power to grant bail in capital offence.
8. Right to presumption of innocence – s. 36(5)
9. Right not to be subject to unnecessary and unreasonable restraint when being arrested except under certain circumstances – no handcuffs unless permitted
10. Right to decent cell, condition and facilities
11. Right to adequate time and facilities to prepare for defense. Section 36(6)(b) CFRN
12. Right to receive the information for which he is being charged
13. **Right to compensation and apology when unlawfully arrested by the appropriate authority** – s. 35(6)

Types of Bail:

1. Bail by the police - that is pending investigation

2. Court bail- pending trial

3. Court bail- pending appeal

POLICE BAIL

Bail is a constitutional right. See section 35(4) and (5) CFRN. The police have powers to grant bail other than for an offence of a capital nature. Section 17(1) and (2) ACJL

Police cannot grant bail for capital offences: see section 35(7)(a) CFRN, S. 17 CPL/118 CPL, S. 341 CPC, S. 17(3)/115) ACJL, 161 ACJA.

Police bail is the temporary release of a person arrested and detained in connection with a crime. Bail by the police is that pending investigation as earlier noted, a suspect has the constitutional right to be granted bail if it is a bailable offence. The first thing a legal practitioner should do when a suspect is arrested is to apply for bail if it is a bailable offence.

Procedure for bail

Bail is or may be granted upon application for bail. There are no laid down procedure for application for bail before the police station. It can be made by the suspect/accused person or by another person. If the offence is not punishable with death, the police can grant bail – s. 17 CPL. It can be in writing or oral application. section 18(3) of ACJL and section 32(3) ACJA provides that an application for bail may be orally or in writing. In practice, it is usually in writing. **Bail pending investigation is revocable. Once an accused has been arraigned in the court, the police bail elapses. The legal practitioner should then apply for bail from the court. The police bail can be revoked by the police if the terms upon which the bail was granted was not fulfilled. Once the bail has been revoked by the police it is only the court that can grant the bail again.** Rule 37 RPC provides that a legal practitioner shall not stand or offer to stand bail for a person. Thus a legal practitioner shall not stand bail for a suspect.

TERMS OF BAIL-That is, conditions to fulfill: section 17(2) ACJL.

1. Self recognizance - this is based on social status of the of the suspect and integrity
2. Entering into a bond for a fixed sum
3. Provisions for surety/sureties

NB: Accused person is not expected to deposit money in court for bail, only in money laundering. The sum is forfeited when the accused person breaches the term of the bail. Bail pending trial is free, no position of law require deposition of money.

When a suspect is refused bail, the following are available options:

- **He may apply to the high court of the state where he is being detained under the Fundamental Rights (Enforcement Procedure) Rules 2009 to enforce his right to liberty. Regulated by section 46(1) of CFRN and the Fundamental Rights (Enforcement Procedure) Rules 2009**
- **He may apply to the HC of the state where he is being detained for release from unlawful detention under Habeas Corpus procedure.**
- **In Lagos state, he may make an application to a magistrate having jurisdiction over the offence for release from custody. That is, he may apply to a magistrate having jurisdiction over the offence for which he is detained for an order of the court directing the officer to bring him before the court – s. 18(1) ACJL. This applies only to Lagos.**

Under the FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES, application is made by an originating motion. **The application is to be accompanied by a statement setting out the name and particulars of the applicant and should be accompanied by an affidavit deposed to by the applicant.**

No limitation of time within which to commence. See order 3 rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009

The respondent has 5 days to respond by way of a counter affidavit supported by a written address. See Order 2 rule 6 of the Fundamental Rights (Enforcement Procedure) Rules 2009

Applicant may further file a written address on points of law

The court has 7 days to fix the date for hearing from date of filing application. See Order 4 rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009

HEBEAS CORPUS

Regulated by civil procedure rules. Order 42 of Lagos Rules 2012

Application is by way of motion ex parte, supported by affidavit deposed to by suspect and a written address. Response is to be filed within 2 days.

Sample draft of application for bail:

K. O. OKWOR & Co
Legal practitioners and solicitors
Plot 555 Balarabe Crescent, Victoria Island, Lagos
Email: kennethokwor@gmail.com
07064793812

Our ref: AAC/201/2013

Your Ref

14th January, 2013

The Divisional Police Officer,
Alagbado Police Station,
Alagbado, Lagos

Dear Sir,

APPLICATION FOR BAIL

I apply for the bail of Godwin Abas (my client), who was arrested by the police on the 1st January, 2013 on allegation of theft, and is currently in police custody.

My client undertakes to be present at the police station or in any court whenever his presence is required.

The brother to my client, Mr. Micheal Abas, the secretary of the Ido Local Government Council, is available and willing to stand as surety and promises to fulfill all bail conditions.

Thank you.

Yours faithfully,

(signature)

K. O. Okwor Esq

Associate

K. O. Okwor & Co.

LEGAL AID SCHEME

The legal aid scheme is set up by the Legal Aid Act. It is only available to indigent citizens and not in all proceedings. BY SECTION 7(1) AND THE SECOND SCHEDULE TO THE ACT, legal aid is available only for the following criminal offences

1. In south – murder, manslaughter, maliciously wounding or inflicting grievous bodily harm, assault occasioning actual bodily harm.
2. In north – culpable homicide punishable with death and that not punishable with death, grievous tort, criminal force occasioning bodily hurt
3. Generally: Affray, stealing, common assault and Rape

Eligibility

Section 9(1) provides that only persons whose annual salary does not exceed the national minimum wage are eligible for legal aid; and by section 9(2) persons who are entitled to receive legal aid on a contributory basis not minding that their salaries exceed the minimum wage. Automatically, person who do not earn any wages are entitled to legal aid.

Application for legal aid is made to the **DIRECTOR-GENERAL** of the Legal Aid Council stating the income of the client; belief that the person is entitled and that the matter is justiceable (supply particulars of indigent).

Court can also refer a matter to the legal aid council through **FORM NO LAC 1**

Legal aid is absolutely free

The legal aid scheme is administered by the legal aid council and its main responsibilities are legal aid and advice through criminal defence.

In Lagos state in addition to Legal Aid Council, there is the office of the public defender – s. 3(3) ACJL.

There is a difference between legal aid and pro bono service, in that pro bono service is rendered by any legal practitioner while legal aid is rendered by the Legal Aid Council. Also a legal aid counsel may be paid while in pro bono services, the services rendered are free. The leave of the court is not needed for enforcing fundamental rights and any of the rules of court can be used under the Fundamental Rights (Enforcement Procedure) Rules, where there is a lacuna.

DRAFT: APPLICATION FOR LEGAL AID

NOTE THAT THE APPLICATION FOR LEGAL AID SHOULD NEVER BE DRAFTED BY A LEGAL PRACTITIONER. THIS IS BECAUSE THE PRESUMPTION IS THAT THE APPLICANT IS INDIGENT AND CANNOT AFFORD A LEGAL PRACTITIONER

THEREFORE, THE LETTER WILL NOT BE IN A LAWYER'S LETTER HEAD PAPER.

THE APPLICATION MUST STATE THAT THE APPLICANT DOES NOT EARN UP TO THE MINIMUM WAGE AND THE OFFENCE MUST BE ONE STATED IN THE SECOND SCHEDULE.

THAT, THE FACTS QUALIFYING HIM FOR LEGAL AID MUST BE STATED IN THE APPLICATION.

NOTE THAT WHEN YOU ARE WRITING ANY LETTER, IF YOU ARE NOT USING A LETTER HEAD, THEN YOUR NAME WILL APPEAR IN YOUR ADDRESS. IN SUCH A CASE, YOU DO NOT NEED TO INTRODUCE YOURSELF IN THE FIRST PARAGRAPH ANYMORE.

Godwin Abas,
No 3, Angwa Rogo Road
Abuja.
January 14, 2013

The Director General,
Legal Aid Council,
No 5 Maitama Street,
Abuja.

Dear Sir,

APPLICATION FOR LEGAL AID

I apply for legal representation from the Legal Aid Council to assist me in conducting my defence.

I was arrested for the offences of stealing and affray and I have been informed that I will be charged to court.

My annual income is #12, 500, as shown on my annual payment slip which is attached to this letter.

Thank you.

Yours faithfully,
(signature)
Godwin Abas

WEEK 7.

INSTITUTION OF CRIMINAL PROCEEDING

When an offence has been committed, such offence is said to have been committed against the state. However, there are few exceptions to this general rule. The exceptions are:

Thus it is the state and not the victim of such offence that can institute criminal proceeding. However, certain persons are authorized by statute to institute a criminal proceeding on behalf of the state.

Generally, there are four category of persons that can institute criminal proceedings in Nigeria. These are:

- The Attorney-General; whether of federation or state
- The police
- Private persons; and
- Special prosecutors

Attorney-General

The office of the AG is created by the constitution of the FRN 1999. The AG of federation is provided for in s. 150(1) CFRN. The AG of states is provided for s. 195(1) CFRN. The AG of federation is regarded as the chief law officer of the federation and the minister of justice of the Government of the federation. While that of a state is regarded as the chief law officer of the state and the commissioner of justice of the Government of that state – s. 150 & 195 CFRN.

The qualification for an AG is a legal practitioner who has practiced in Nigeria for at least ten years - s. 150(2) & 195(2) CFRN.

Thus, the following points are sacrosanct:

- The offices of the Federal and states Attorney General are the creation of statutes and are as such jurisdiction personalities or corporation sole with perpetual succession unless such offices are abrogated by an amendment to the constitution.
- The person who is to occupy such office plays a dual role. That is the role of a chief law officer and the role of the minister for justice or COMMISSIONER of justice for AG Federation and AG state respectively.

The constitution empowers the AG with regards to instituting and commencing criminal proceedings in three respect - s. 174(1)(a)-(c), 211(1)(a)-(c) CFRN with respect to federation AG and the state AG respectively. These are:

- SECTION 174(1)(A), 211(1)(A)
- The Attorney general shall have power to institute and undertake criminal proceedings against ANY PERSON before ANY COURT OF LAW in Nigeria **except court martial in respect of an Offence created by an Act of the National Assembly.**
- **Similarity between the powers of prosecution between the AG fed and State is that both cannot institute and undertake criminal proceedings in a court martial.**
- **The prosecutorial power lies in the Attorney General except he delegates such power to a law officer in his department or he authorises a legal practitioner to conduct the proceedings.—Section 104(2) and 106 ACJA, section 227 CPC.**
- **The Attorney General of the state can only institute criminal proceedings in relation to an offence created by a law of the state House of Assembly. The AG of the state cannot institute proceedings in a court martial. Section 211(1)(a) 1999 Constitution. Adali v State.**
- **Where the offence is in relation to an offence created by NASS, Prima facie the state cannot institute a criminal action-----Anyebe v State. The AG of the state can however institute criminal proceedings in respect of an offence created by an Act of the National Assembly where there is an express delegation of authority from the AG of the federation by way of fiat. Such delegation can be either generally or with respect to any offence or class of offences and such offence shall be prosecuted in the name of the Federal Republic of Nigeria—SECTION 268(4) ACJA, 104(2) ACJA.**
- **HOWEVER, where the tenor Act of NASS is created in a manner as to operate as a state law, the law will be treated as if it is the law of the state and the AG state DOES NOT need the express delegation of the AG Federation to institute such criminal proceedings for an offence under any such Acts because they are deemed to be state Laws. An example is the Robbery and Firearms Act---Emelogu v State. Mohammed v state.**
- **The power of the AG to institute and undertake criminal proceedings is sacrosanct and cannot be curtailed by means of an injunctive relief restraining the AG from prosecuting an offender- AG Anambra State v Uba.**

- The Attorney General be it federal or state can delegate his powers to any of the officers of his department pursuant to section 174(2) and 211(2) of the CFRN,104(2) ACJA. Thus, even in the absence of an incumbent Attorney General, with the exception of the powers of nolle prosequi, the officers of the AG's department can carry out the functions of instituting a criminal action. **State v obasi, A.G of the federation v ANPP, SARAHI V FRN.**

B. SECTION 174(1)(B) AND 211(1)(B) 1999 CONSTITUTION

- Power to take over and continue any such criminal proceedings that may have been instituted by any other authority or person.-SECTION 174(1)(B)
- It is pertinent to note that proceedings are commenced upon arraignment and the defendant is called upon to take his plea.
- Thus where proceedings have not been commenced the power to take over and continue proceedings cannot be ignited, and at best the only power of the AG that can be exercised is the power to institute and undertake the proceedings under section 211(1)(b) 1999 Constitution.
- This power is exercised in criminal proceedings that may have been instituted by any person(example police, special prosecutors, private person) in any court other than court martial.
- The rationale for excluding the court martial is that the AG ab initio does not have power to institute or undertake criminal proceedings in a court martial pursuant to section 174(1)(a) 1999 Constitution.

Power to take over and continue proceedings

- ❖ When a criminal proceeding has been commenced by any authority or person, the AG can take over and continue such criminal proceeding instituted by him or any other person or authority. - s. 174(1)(b) & s. 211(1)(b) CFRN for federal and state respectively.
- ❖ It can be delegated to a private prosecutor.
- ❖ Note: there must not be two proceedings going on simultaneously to prevent abuse of court process----State v Edet. 174(3),211(3) CFRN 1999.
- ❖ Thus, the AG can take over the proceedings commenced by the police to prevent such abuse. Such circumstances that may necessitate the take over are:
 - ✓ Where the AG has received a petition from the complainant or the victim of crime in the case being handled by the police prosecutor based on incompetence or bias.
 - ✓ Where the police prosecutor in a criminal proceedings has any affinity or personal relationship with the accused and the likelihood of bias or poor conduct of trials.
 - ✓ For public interest. For example unrest.

NOTE: THIS TAKE OVER OF PROCEEDINGS OCCURS WHERE THE PROSECUTORIAL AUTHORITY IS DIFFERENT FROM AN OFFICER OF HIS

DEPARTMENT. WHERE IT IS AN OFFICER FROM HIS DEPARTMENT, HE MERELY REASSIGNS TO ANOTHER OFFICER RATHER THAN TAKE OVER THE PROCEEDINGS.

- ❖ The AG Fed and state has discretion to issue legal advice to the police or any other authority- SS 105 ACJA, 74 ACJL
- ❖ Note: the Ag cannot take over proceedings in a court martial as Section 174(1)(a) of the 1999 Constitution expressly precludes the AG from undertaking criminal proceedings in a court martial.
- ❖ In Amaefule v. State, the accused persons had been charged before the magistrate court for indictable offence. The magistrate adjourned the case sine die. While it was still pending, the AG filed an information at the state HC against some of the accused. The SC held that he can validly do so, only that it was desirable to withdraw the one at the magistrate court. Edet v State.

C. SECTION 174(1)© AND 211(1)© 1999 cONSTITUTION(as amended)

- Power to discontinue at any stage before judgment is delivered, any criminal proceeding instituted or undertaken by him or any authority or person.
- ❖ The power of the AG to discontinue at any stage of any proceeding instituted or undertaken by him or any other person or authority any stage is otherwise known as NOLLE PROSEQUI-----section 73 CPL, 71 ACJL, 107 ACJA, 253(2) CPC, State v Illori.
- ❖ Nolle prosequi literally means one no longer prosecute - s. 174(1)(c) & 211(1)(c) CFRN with regard to federal and state respectively. State v. Illori.
- ❖ The power can be exercised orally or in writing---State v Chukwurah.
- ❖ He need not give reasons for entry of Nolle Prosequi-----State v Illori
- ❖ How is the power exercised? The Attorney General of the federation in person can orally ask the court to discontinue the proceedings or by an officer of the AG's department armed with a WRITTEN AUTHORITY of the ATTORNEY GENERAL. STATE V ILLORI.
- ❖ The power of Nolle Prosecui can it be delegated? It is not delegable. The AG can either orally in court enter a nolle or an instrument under his hand given to an officer in his chambers to take to court to discontinue proceedings. AG kaduna v Hassan.
- ❖ Consequently, the power of nolle cannot be exercised where there is no incumbent A.G.-----AG kaduna v Hassan, State v Obasi
- ❖ Difference between nolle prosequi and withdrawal of charge? 75 CPL, 73 ACJL, 108 ACJA.
- ❖ Can the judge inquire into the reasons for the discontinuance? No the judge cannot as the AG is not mandated to give reasons for the Discontinuance. State v illori
- ❖ State counsel cannot enter a Nolle orally unless he presents a written authority signed by the attorney general.....state v Chukwurah.

- ❖ The power of nolle prosequi can be exercised at any stage of the proceedings before judgement. Thus, even the day the judgement is to be read, he can exercise this power.

KENNETH'S NOTE

The power of nolle prosequi can be exercised by the AG in two ways, namely:

1. Orally: ONLY the AG can appear in court and orally inform the court of his intention to discontinue the proceedings- A.G KADUNA V HASSAN.
2. Writing: written authority of discontinuance will be written and signed. by him and presented by any officer in the AG's office. This officer must be a law officer – s. 2 Law Officer's Act. Thus, a clerk cannot bring such instrument to court as he is not a law officer pursuant to section 2 of the Law officers Act and he does not have right of audience in court pursuant to section 8 LPA which provides that only legal practitioners have the exclusive right of audience in court.

Upon entering a nolle prosequi, the court makes an order. It results in fait accompli which is that the thing accomplished is presumably irreversible.

Effects of Nolle Prosequi

When a nolle prosequi is entered by the AG in criminal proceedings, the accused is merely DISCHARGED and not acquitted---Clarke v AG lagos state. Thus, the defendant cannot raise the plea of Autrois acquit or convict because a mere discharge cannot ground such plea---SECTION 36(9) 1999 Const.

Nolle prosequi is just to suspend the criminal proceeding and the criminal proceeding can be re-instituted almost immediately – s. 73(3) CPA and s. 71(3) ACJL, 107(4) and 108(5) ACJA. Section 73(3) CPA provides that a nolle prosequi entered with effect of discharge of accused person does not mean that accused cannot be charged again on the same fact. In Clarke v. AG of Lagos state, a nolle prosequi was entered by the AG to discharge the accused persons of the charge of conspiracy. The accused persons were re-arrested and tried for the same offence. The court held that the effect of a discharge upon nolle prosequi is a discharge only and not acquittal.

It has been said that it can be entered as many times as possible and the following proceeding can still be revived without filing a new information or charge. The AG usually enters nolle prosequi when more time is needed to gather information needed for the prosecution of the accused person.

Check of the discretionary powers of the AG via-a-vis Section 174(3)- administrative actions

- Removal by his Appointer's---President or Governor
- Adverse criticism from the public which may necessitate the removal of the AG

- Instituting a civil action against the AG, but the plaintiff must be able to show the damages suffered.

WITHDRAWAL OF A CASE: EFFECT

- Section 75(1) CPL, section 73 ACJL, 108 ACJA
- The power of withdrawal is available to any prosecutor. Which includes withdraw a particular charge, substitution of a charge unlike nolle which can only be exercised by the AG.
- Withdrawal of a charge can amount to an acquittal which can sustain a plea under section 36(9). Depending on the stage entry is made.
- For a withdrawal the consent of the court must be sought where it is a private prosecutor as it is an application to the court. However, the consent of the AG IS NOT sought. However, where it is an officer in the office of the AG the instruction of the AG.

DELEGATION OF POWERS OF THE ATTORNEY GENERAL

Note: Where it is not practical for the AG to institute and undertake all criminal proceedings and sign all court processes for the criminal trial what happens? The AG can delegate such power to an officer in his Chambers or department . The office of the AG is constitutionally created. Section 174(2) CFRN,1999.

- ❖ How is the delegation or donation of this power under section 174(1)(a) 1999 Constitution done? The means by which the delegation is done is by the official gazette(an instrument) of the federation or the state. He delegates the power to law officers in his chambers... section 106 ACJA.. The consequence is that even if there is vacancy or the AG leaves office, the powers conferred on the law officers inures in their favour as long as the instrument remains in force until another AG assumes office and another official gazette comes into existence revoking the instrument.
- ❖ Who is a law officer? SEE AWOBOTU V STATE, SECTION 371 ACJL, 494 ACJA, SECTION 2 OF Law officers Act.
- ❖ Section 174(2) and s. 211(2) CFRN provides that the powers of the AG can be exercised by him in person or through officers of his department. 104(2),106 ACJA, State v obasi.
- ❖ The power to commence and institute criminal proceedings and take over proceedings is not dependent on whether there is an Attorney General incumbent in the office.
- ❖ Delegation may be express or implied...**Ibrahim v State**; The AG is free to delegate all his powers to law officers. However, where he delegates same to say the DPP, it would be wrong for the DPP to delegate same to his subordinates based on the maxim DELEGATUS POTEST NON DELEGARE.

Police

- ✓ The police officer has power to prosecute criminal cases in any court in Nigeria- SS 4 AND 23 Police Act, Section 381(b), 268(2) ACJA, Olusemo v COP, FRN v Osahon & ors
- ✓ The power to prosecute is subject to that of the AG Fed and State power to take over and discontinue-section 23 police act, Section 174(1)(b) and (c) and 211(1)(b)(c)
- ✓ In which court can the police prosecute? The Police can prosecute in all Courts with criminal jurisdiction except Court Martial(subject powers)
- ✓ Must the police officer be a legal practitioner before he can appear in superior courts? In the case of FRN v Osahon, the police need not be a legal practitioner to have right of audience in court but where he is a legal practitioner it is an addition.
- ✓ It was earlier stated that the police has the power under the law to commence criminal proceedings. The power of the police to institute and prosecute criminal proceedings is found in s. 4 & 23 Police Act. Section 23 is to the effect that subject to the powers of the AG under the constitution, any police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name. The Nigerian police officers were not aware of their powers and limited prosecution to inferior courts (Area, Customary and Magistrate courts) while staying clear of the superior courts. Apart from s. 23, other laws mentioned the police as being capable of presenting offences in court e.g. **s. 98 of HC of FCT Act.** In Olusemo v. COP, where the accused had objected to the appearance of a police officer (commissioner of police and a lawyer) as a prosecuting counsel. The Court of Appeal relying on relevant sections held that the police have the power to prosecute at the HC of FCT.

Also in FRN v. Osahon, the competence of Nuhu Ribadu and other police officers who were prosecuting offences before the FHC was challenged by the respondent. The court dismissed the application. The Court of Appeal relying on s. 56 FHC Act which excluded police from prosecuting criminal proceedings found for the applicants. At the SC, the court held that the police can institute and prosecute criminal proceedings in any court notwithstanding the provision of s. 56 of FHC Act. In sum, a police officer whether or not he is a lawyer can prosecute a criminal proceeding in any court in Nigeria subject to power of the AG.

Prosecutor's power to withdraw criminal proceedings – s 75 CPL

- A prosecutor is empowered to withdraw criminal proceedings instituted and being prosecuted by him. This is provided for in s. 75 of CPA and s. 73 ACJL. The prosecutor in this regard may withdraw from the prosecution of the accused person with the consent of the court or on the instruction of an AG with respect to state law at any time before judgment is made by the court. Section 108 ACJA
- The effect of a withdrawal by a prosecutor is dependent on the stage which the withdrawal was made. If the withdrawal is made before the accused person made his defence, the effect is a mere discharge. If however the withdrawal is after the defendant/accused had made his defence then the effect would be an acquittal. Before making an order of acquittal, the judge or magistrate is to be satisfied that such is the

proper one. **Under the CPL, only magistrate court is mentioned while in the ACJL, both the HC and the magistrate court is referred to. Under the ACJA it is any Court.**

- Where the prosecution is leading evidence a withdrawal will amount to a discharge, but where the defence has opened his case and has called witnesses, an entry of withdrawal will amount to an acquittal- section 73(1)(ii) ACJL., 75 CPL, 108 ACJA.

Difference between Nolle Prosequi and Withdrawal

1. A nolle prosequi can only be entered by the AG while a withdrawal is made by a prosecutor.
2. A nolle prosequi entered even on the day of judgment will still be a mere discharge but a withdrawal by prosecutor on the day of judgment would have the effect of an acquittal.
3. In withdrawal by prosecutor, the consent of the court is needed while in nolle prosequi, the consent of the court is not needed.
4. In nolle prosequi, the court will not demand for reasons from the AG but in withdrawal by prosecutor, the court in making an acquittal must be satisfied that it is the proper order thus would demand for reasons as to the application for withdrawal.
5. Withdrawal is based on the discretion of the court. The court has the final say in the withdrawal but in nolle prosequi, the AG does not answer to anybody in exercising the power – *Ilori v. State*.

All prosecutors – police officers, private prosecutors and special prosecutors may apply to withdraw. The similarity is that a discharge of an accused under a withdrawal does not bar subsequent proceedings against him on the same fact – s. 75(3) CPA and s. 73(8) ACJL.

Private person

- ✓ Under the CPA and Code, a private person has power to commence criminal proceedings. Ss 59,342 CPA, 254 ACJL
- ✓ The right of a private person is subject to provision of any law specifying certain persons to institute criminal proceedings. Before a private person can institute and commence criminal proceedings, certain obligations are to be fulfilled – Ss. 59, 342 CPA, s. 254 ACJL, 143(e) CPC.
- Consent from the AG
- Endorsement of private information by a law officer that he has seen such information, and the law officer declines to prosecute and thus empowering the private person to prosecute on behalf of the state. Ss 381(D) ACJA, section 56 FHC, 98 FCT High Court Act.
- Enter into a recognizance for the sum of N100 for CPA and N10, 000 for ACJL together with one surety undertaken to prosecute the said information diligently.

See *Fawehinmi v. Akilu & ors* (1987). Where the AG refuses to endorse a private information or charge, he may be compelled by an order of mandamus.

In Lagos, the right of a private person to institute criminal proceedings is now limited to the offence of perjury AND steps must be taken as the information to be filed must be presented to the AG .

- ❖ A fiat is an instrument given to a private person to prosecute on behalf of the AG. This is because the power of prosecution lies solely on the Attorney General and the private person signs on the particular procedure to be used for the proceedings.
- ❖ Distinction between private person and private legal practitioners right to prosecute. The private person commences the action while the private legal practitioner is briefed by the AG after he commences the action but all the charge sheet must be signed on behalf of the AG.
- ❖ Private person on authority of AG files information and sign his name.
- ❖ Private legal practitioner is authorised by AG to continue prosecution on behalf of the state.
- ❖ SEE Nafiu Rabi v State-----Private legal practitioner.

The DPP or officers of his department may institute criminal proceedings and thereafter brief a private legal practitioner to continue the prosecution on behalf of the DPP – DPP v. Akosor. But a private legal practitioner is not competent to institute a criminal proceeding on behalf of the AG because he is not an officer in Ministry of Justice – Tukur v. Government of Gongola state. In northern part of Nigeria, there is no need for any endorsement or recognizance. In Lagos, regarding indictable offences, a private person can only file information on offence of perjury. He may however charge an offender with non-indictable offence in accordance with the law – Atake v. Afejuke.

Special prosecutors

Because generally prosecutorial authority does not lie with them and the powers to prosecute is in relation to special matters

Special prosecutors are persons given enabling power by a statute to prosecute crimes under it. Thus when persons are so authorised, they are regarded as special prosecutors and can validly institute and prosecute criminal proceedings. The following are the ready examples:

- ❖ Statutes creating offences provide for persons to prosecute them----Section 12(2)EFCC, ss. 7(1)(b), 8(2)(a) NDLEA Act, section 180 Customs and Excise Management Act.
1. The Economic and Financial Crimes Commission Act empowers the EFCC to prosecute offences under the Act – s. 12(a) EFCC Act. There is a legal unit in that regard.
 2. National Drug Law Enforcement Agency Act: s. 7(1) empowers the prosecution unit to be established to institute and prosecute criminal proceedings.

3. The Factories Act: s. 66(1) empowers any inspector of the factory to institute criminal proceeding even though he is not a lawyer.
4. The Corrupt Practices and other Related Offences Act: s. 6(1) empowers the ICPC to prosecute offenders in appropriate cases.
5. The Custom and Excise management Act: s. 180(1) empowers any officer of the department of customs and excise to institute criminal proceedings.
6. Sexual Offences under s. **387, 388 and 389 of Penal Code can only be prosecuted upon** complaint by the husband if victim is a married woman and if the victim is unmarried, her guardian or any other person in similar description – s.142 CPC.

The special prosecutors in this regard have their powers subject to the overriding powers of the AG to take over and continue or discontinue any criminal proceeding – s. 174(1)(b)&(c) and s. 211(1)(b) & (c) CFRN. The special prosecutors can also withdraw criminal proceedings instituted by them subject to the conditions stated in s. 75 CPA & 73 ACJL.

Note: Judicial officer; in the north, the magistrate frames the charges after determining a prima facie case - this is only limited to framing or drafting of charges.

Modes of instituting criminal proceeding

There are different ways of bringing criminal proceedings in the north, south and Lagos state with regard to the different courts of original jurisdiction

MAGISTRATE AND AREA Courts IN THE NORTH including FCT

1 FIRST INFORMATION REPORT

- Commonest way of commencing proceedings in Magistrate courts in the North including FCT---Section 117-119 CPC
- By laying a First Information Report(FIR): A direct complaint from the victim to the police in writing endorsed by the police thereafter it is taken to magistrate and the suspect is brought to the court and the particulars of the offence contained in the First information report will be read to the accused as framed by the police—SECTION 112(6)(F). ACJA.
- The defendant will be asked if he has any cause to show why he should not be tried by the Magistrate.
- Where the defendant admits, his admission shall be recorded as nearly as possible in the words used by him and if he shows no sufficient cause why he should not be convicted by the court. Failure to show cause, the magistrate will convict him accordingly. the court after sifting for summary of evidence may convict such person. **This is called a Summary trial based on the First information Report---SS 157(1) CPC** and it is not necessary to frame a formal charge. Section 112 ACJA.
- Where the suspect denies the allegations and states that he intends to show cause why he should not be convicted, the magistrate will require evidence from the police from their witnesses---SECTION 158 CPC. It is important to note that the magistrate

MUST take prosecution witnesses before attempting to draft a formal charge--- IBEZIAKO V COP, Section 112(9),(10) ACJA. Failure to do this may lead to the conviction being quashed on appeal---- Harunami v Borno N.A

- At the end the magistrate will determine whether a prima facie case has been made against the defence, the magistrate will frame his own charge and read again to the accused and plea is taken and the defendant will enter his defence. Thereafter the court will give judgement.---Section 160 CPC
- Where no prima facie case is made against the defendant upon taking evidence of the police, the magistrate will discharge the accused---Section 159 CPC, Harunami v Borno N.A
- Section 158-160CPC, 112(6)(f)-10 ACJA.

2 BY LAYING A COMPLAINT

- Trial by complaint is not recognized in Lagos state but recognized in the North and South. In lagos it is by way of charge----Ss 78(1) ACJL 2011
- In other southern states you can lay a complaint or file a charge sheet----Section 77 and 78(a) and (b) CPL. Recognized in the magistrate and hIgh courts but mots likely in the magistrate court
- The charge sheet in LAGOS will contain name of defendant, the offence committed, time, date and place of commission
- Signed by police or law officer..Ss 78(2) ACJL.
- In the North, a charge is framed after the first information report is made first.
- Definition of complaint---section 2 ACJL, SECTION 371 ACJL, Section 1 CPC.
- A complaint is made directly to the magistrate orally or in writing and the magistrate can issue summons to the named suspect or reduce it to a charge
- A police officer can draft a charge directly and in such instance he has commenced the action.
- A charge is used in the magistrate court while an information is used in the High Court.

MAGISTRATE COURT

In Magistrate court generally, there are three modes of commencing criminal proceeding against an accused. These are:

- By laying a complaint before the magistrate: not applicable in LAGOS
- By bringing a person arrested without a warrant before a magistrate upon a charge – south/Lagos. NOT APPLICABLE IN THE NORTH.
- By laying a first information report (FIR) before a magistrate - north/ACJA.

Upon a charge

When a person is arrested usually without a warrant, the person is brought to the Magistrate upon a charge which in practice the charge is prepared and signed by the police officer

together with all the necessary particulars – s. 78(b) CPA, s. 78(1) ACJL. The following are what a charge should contain:

- Name and occupation of the person charged
- The offence committed – charged against him
- The time, date and place where the offence was committed
- The charge is signed by the police officer or law officer in charge of the case

This is the most common method of instituting action in the southern states and it is the only applicable mode under the ACJL, Lagos.

By laying complaint(RARELY USED) AND FOR BAR PART 11 THEY WONT TEST US ON IT.

KENNETHS NOTE

By laying a first information report (FIR)

This is the commonest method of commencing action in the north and it is peculiar/applicable only in the north. Once a suspect is arrested by the police whether on warrant or not and the police officer is satisfied that there is need to draft an information, the first information is then drafted. The suspect and the first information is taken to the magistrate. The magistrate will ask the accused if he admits to the guilt of what is contained in the FIR. If he admits, he will be summarily convicted by hearing of summary of evidence without the necessity of drafting a charge. If the accused denies, and magistrate is of the opinion that there is ground for presuming that the accused has committed the offence will now draft a formal charge yet. In other words, the magistrate upon FIR will determine whether there is a prima facie case against the accused. If no prima facie case then no charge will be drafted and the accused will be discharged except otherwise. See s.156-160 CPC.

Prima facie case to be determined by the magistrate is not the determination of the guilt of the accused person. It is only to see whether the ingredients of the offence are adequately stated to link the accused person to the offence in order for him to proceed to trial. Prima facie case is imperative in instituting any criminal proceeding. The mere fact that the magistrate drafts a charge upon determination of prima facie case is not an infringement of the accused's right to fair hearing under s. 36(2) CFRN. In *Ibeziakor v. COP*, the accused had contended that the procedure of commencing criminal proceeding against him was unconstitutional as the magistrate who is to try him had already presumed him guilty. The SC in dismissing his appeal stated that the magistrate was only determining whether a prima facie case was made out and not his guilt or innocence. It is mandatory for the magistrate to listen to prosecution witnesses and their cross examination if any before he frames a charge. Where he fails to do so, the trial will be a nullity. See *Harunani v. Borno Native Authority* (1967) NNLR 19.

State High Court

Essentially there are two main modes reported in state high court which are:

- By information
- By charge

Information

CONDITIONS PRECEDENT

- ❖ An information shall be filed at the High court Registry before which the prosecution seeks to prosecute and shall include
 - a. Proof of evidence. This proof of evidence shall consist of the following stipulated in section 379 ACJA
 - b. A copy of the form for information on legal representation.
- ❖ In some jurisdiction, the leave of the court must be sought to prefer the information and this is subject to the discretion of the judge. Such jurisdiction include southern states and Northern states.
- ❖ IN LAGOS HIGH COURTS ONLY ON INFORMATION----SECTION 77(B)(I)-(III) ACJL.
- ❖ COMPLAINT IS NO LONGER RECOGNIZED IN LAGOS
- ❖ IN FCT HIGH COURTS, commencement is either by information or charge..Section 109 ACJA
- ❖ Leave of court to **file the information or prefer a charge must be sought failure to do so**
 - a. **Such charge or information will be rendered incompetent and same will be quashed before the trial court on the application of the accused upon his arraignment; or**
 - b. **The proceedings of the trial court will be quashed on appeal thereby such proceedings will be a nullify.....AG Federation v Clement Isong, Okafor v state**
- ❖ CONSENT TO FILE AN INFORMATION IS NOT NEEDED IN LAGOS AND FCT or anywhere an offence created by an Act of NASS is tried.
- ❖ Note: Where there is no prima facie case, the court will not grant leave.
- ❖ In other states, filing of information with consent of the High Court judge---SS 77(b), 340(2)CPL southern state **is silent on procedure to adopt when applying for leave to file information**
- ❖ **Section 363 CPA allows recourse to English Rules of the High Court of England example English Indictment Rules 1971 of England therefore applies.**

PROCEDURE FOR OBTAINING CONSENT OR LEAVE

- o The application shall be in writing or by motion ex parte, signed by counsel and shall be accompanied by the following:
 1. A copy of the charge or information in respect of which leave or consent is sought,
 2. An affidavit accompanying same, **where the application is not made by or on behalf of the ATTORNEY GENERAL.**

3. The application should be accompanied with the following:
 - Proof of evidence
 - List of witnesses
 - Unedited statement of the defendant
 - List of exhibits to be relied upon.WABARA V FRN.
4. The application shall state whether a previous application has been made and the result thereof.

ACJA

- ❖ Information is used under ACJA.
- ❖ Section 379 ACJA, accompanied processes to information, which is the proof of evidence
- ❖ Contents of Proof of evidence----Wabara vFRN(2013)5 NWLR.
- ❖ See the following cases:
 - ✓ Ikomi v state
 - ✓ Abacha v state
 - ✓ Egbe v state
 - ✓ They are to the effect that where the proof of evidence does not disclose a prima facie case or connect the defendants to the offence charged, the defendant or accused can take an objection to the proof of evidence when his plea is to be taken and the court must rule on such objection, or a motion to quash the information may be made,.

CPCL

- ❖ See section 185(b) CPC provides that the charge must be with the leave of the court in respect of state high court in the north. Such application for leave is regulated by the Criminal Procedure(Application for leave to prefer a charge in the High court) Rules of 1970.
- ❖ NOTE
 - ✓ The application to prefer a charge is made ex parte in the NORTH
 - ✓ The applicant must inform the court in his application that no previous application for leave has been made in the case IN THE SOUTH
 - ✓ An application for consent to file an information or prefer a charge in the SOUTH must be accompanied by the following documents:
 - a. A copy of the proposed charge or information for which leave is sought
 - b. An unedited statement of the alleged offender
 - c. The proof of evidence
 - d. Lists of exhibits to be tendered and relied upon
 - e. Confessional statement of the accused, if any
 - f. Summary of evidence of the witnesses

- g. List of witnesses.
- h. Post mortem report in the case of a capital offence
- i. Report of scientific examination for rape cases
- j. Such other documents as may be necessary.

OPTIONS AVAILABLE WHERE AN APPLICATION IS REFUSED BY A JUDGE

- 1. Successive applications may be brought before other judges in the same jurisdiction as the judge who refused the initial application. *Gali v state*.**
- 2. Similar application may be made to the court of appeal to grant leave. The Court of Appeal will grant leave where it is of the opinion that the ground of refusal of the application is wrong.**

KENNETHS NOTE

In bringing an accused person for trial through filing information, the consent of a HC judge is a condition precedent in the states under CPA. This is mandatory. In *AG federation v. Clement Isong* where information containing two counts of offences was filed against the accused at the HC without prior consent of a HC judge. He was tried on the counts but at the conclusion of trial, the defence counsel raised objection to the filing of the information without consent of a HC judge. The court quashed the information. Also in *State v. Akilu & anor*.

By laying complaint

Criminal proceedings commenced by laying complaints are only for non-indictable offences and it does not require consent. Under the CPA, the complaints may be or not be in writing and may or not be on oath. In *DPP v. Aluko*, the SC held that HC has power to try non-indictable offences and proceedings brought for non-indictable offence by complaint are valid.

NB: Commencement of criminal proceedings by complaint is no longer applicable to Lagos state.

By a charge filed with the leave of a HC judge - s. 185(b) CPC

This is the commonest mode of commencing criminal proceeding in the north. The charge is to be filed with the court directly. Seeking leave of the HC is a condition precedent. In ***Bature v. State*** the leave of a HC judge was not obtained before the charge was filed. The appellant was tried and convicted. He appealed against his conviction inter alia on non-obtainment of leave of a HC judge. The SC while quashing his conviction rejected the contention that the non-compliance with s. 185(b) CPC was an irregularity curable by the provisions of s. 382 CPC. The procedure for obtaining leave is provided for in the criminal procedure (application for leave to prefer a charge in the HC) Rules 1970. It is the

same with that of HC in southern states (English Rules). The information in the north is prepared by way of charge.

Remedy when application is refused

Application can be made to as many HC judges as possible, only that it is to be stated there that an application had been earlier made of which was refused. Thus a proposed prosecutor/police officer can make application for consent or leave to another HC judge. See *Gali v. State*. After exhausting application to all judges of the same jurisdiction, an appeal to the court of appeal.

- It is pertinent to note that the discretion of the judge to grant leave to prefer a charge is discretionary and in order to exercise such discretion the judge should insist that proof of evidence be submitted to determine whether a prima facie case is made against the alleged offender or not.

Lagos state

In Lagos state by virtue of s. 77 ACJL commencing criminal proceeding in the HC is only by information. Consent of a HC judge is not included in the provision. With regards to the magistrate court by virtue of s. 78 ACJL, it is by charge only.

Federal High Court

- ❖ **ACJA now replaces CPA in FHC proceedings----SS 2(1), 493 ACJA**
- ❖ **Offences are still triable summarily-----section 33(2) FHC Act, SECTION 86 ACJA, *Uwazuruike v AG Fed...***
- ❖ **Thus it does not try matter on information but a mere charge---Section 494 ACJA**
- ❖ **Thus the consent is not required to file charges in FHC.**
- ❖ **Purpose of FHC and FCT High court Practice direction rules 2013? Specific offences is more in the nature of proof of evidence. However, a practice direction cannot amend a statute**
- ❖ **Who are those authorised to prosecute in FHC? AG fed is the prosecutorial authority Section 56 FHC Act.**
- ❖ **It is similar to a charge filed at a magistrate court in the south.**
- ❖ **Designation of the prosecutor is Federal Republic of Nigeria.**
- ❖ **Leave of the court to prefer a charge before the FHC is not required because the charge is to be tried summarily.**

Proceeding at the FHC is by charge only and leave of a judge not being needed. This is because the criminal jurisdiction of the FHC is summary. Section 33(2) of FHC Act provides that all criminal causes and matter shall be tried summarily. The charge at the magistrate court in the south is the same as the Federal High Court..

Distinguish the following summary jurisdiction, trial, conviction and judgment.

Limitation period for commencement of criminal proceedings

In criminal proceedings unlike civil proceedings, the general rule is that in criminal proceedings there is no limitation of time for instituting criminal proceedings save for statutory exceptions.

However there are exceptions to the general rule. These are:

- Treason and treasonable felonies: the time limit for the offences is 2 years. Section 43 Criminal Code.
- Offence of sedition is 6 months. Section 52(1)(c) Criminal Code.
- Defilement of a girl under 13 years, above 13 years and below 16 years must be prosecuted within 2 months. Section 218 and 221 Criminal Code.
- Custom offences 7 years---176(3) C&EMA. Proceedings under the Customs and Excise Management Act, must be commenced within 7 years of commission of the offence.
- Military offences to be tried in the court martial must be commenced within 3 YEARS AFTER THE COMMISSION OF THE OFFENCE except offences of Mutiny, failure to suppress mutiny and desertation.. SECTION 169(1) AFA.
- **For a retired Service officer for Military offences other than mutiny, failure to suppress mutiny and desertation-----3 months, Olatunji v state, section 169(2) AFA.**

Conspiracy to commit the above offences is not within the time limit---R v Simmonds even where the main offence is statute barred.

Public Officers

- ❖ Time does not run against offences committed by public officers in the case of criminal proceedings.
- ❖ THE three months limitation as specified in section 2(a) POPA does not apply to criminal proceedings. Yabugbe v COP.
- ❖ For the protection to afford public officers, the officer must have discharged his duties in good faith.

Although criminal proceedings are not time bound generally, such proceedings may not likely be instituted after a lapse of such a long time and the court cannot safely rely on the recollections of the witnesses, as some may have died or not be procurable.

WEEK 8.

CHARGES DRAFT

- A charge is a document containing the statement and particulars of offence which a person is accused and tried in a court of law. Section 2 CPL, 1 CPC, 371 ACJL, 494 ACJA.
- The offender in the south and the High Court in the FCT AND THE FHC is the defendant while the offender in the North is an accused person. In the north we refer to head/s of charges, in the south and under the ACJA we refer to counts.
- Contents of an information----section 379 ACJA
- Who can file a charge?
 - ✓ A drafting authority is the person that can draft a charge while a prosecutorial authority is the authority in whose name a charge should be brought.
 - ✓ Mag Court South-Police or law officer, Sections 78(b) CPL, 77(1)(A) ACJL, 109(a) ACJA
 - ✓ Mag Court North—Magistrate, Section 160 CPC; *ibeziako v COP*
 - ✓ ABUJA---Magistrate, Section 109(a) ACJA
- Who can file an information?
 - ✓ High Court south, North, Fct Abuja, FHC
 - ✓ Ag Law officer, police officer and private prosecutor
 - ✓ S. 174(1), 211(1), 1999 Const. Ss 341 and 343, CPL s. 78(2), 253 acjl, 109(b), 381 ACJA, 117-119 CPC
 - ✓ FHC---DRAFTING AUTHORITY IS THE AG OF THE FEDERATION. OTHER OFFICERS LIKE DPP DRAFTS FOR THE AG FED.
- PROSECUTORIAL AUTHORITIES
 - ✓ THE STATE(USED ON INFORMATION IN THE HIGH COURT IN ALL STATES EXCEPT LAGOS)
 - ✓ COMMISSIONER OF POLICE(Police instituting the action in a state High Court for a state offence and in magistrate court)
 - ✓ INSPECTOR GENERAL OF POLICE(Mgst CourtAn offence created by an Act of the Nass and instituted by the police.)
 - ✓ FEDERAL REPUBLIC OF NIGERIA(High Court in FCT or FHC)
 - ✓ THE STATE OF LAGOS(SEE Section 249 of ACJL)
 - ✓ High COURT OF FCT---FEDERAL REPUBLIC OF NIGERIA
 - ✓ S. 249 ACJL; 268(2)(3) ACJA.
 - ✓ Note the difference between prosecutorial authority and drafting authority.
 - ✓ *JOLLY NYAME V FRN, KALU V FRN*
 - ✓ Federal offences, offences created by an Act of the National Assembly irrespective of the state court... the PROSECUTORIAL AUTHORITY IS THE FEDERAL REPUBLIC OF NIGERIA in so far as it is one that the AG Federation could institute. SECTION 268(4) ACJA.
 - ✓ However, if the Act is meant to operate as a state law then the STATE will be the Prosecutorial Authority.

- **Rule against Ambiguity**
 - **Rule Against Duplicity**
 - **Rule against Misjoinder of Offences**
 - **Rule Against Misjoinder of offenders**
 - ❖ **Please note language used for drafting must be clear and unequivocal in order to furnish information to the accused and enable him prepare for his defence. This is a constitutional provision pursuant to section 36(6)(b) 1999 Constitution. Also Section 36(6)(a) provides that the defendant must be informed promptly in the language that he understands and in detail of the nature of the offence.**
- 1. Rule against Ambiguity**
- **The charge must be clear enough as to give the accused/ defendant adequate notice to prepare for his defence.**
 - **This rule deals with the individual heads of count and not the entire charge sheet or information. Thus the court may decide to strike out a particular head or count.**
 - **NO EXCEPTION TO THIS RULE**
 - **Section 194-196 ACJA, section 147 and 148 ACJL.**
 - ❖ **The particulars of the charge must include the following:**
ADPOPSE

Charges in criminal litigation are what writ of summons, originating summons, petition and originating application are to civil litigation. Charges give the accused person notice of the offences against him. There are three definitions given to charges under the CPA, CPC and ACJL. Section 2 CPA, defines it as the statement of offence or statement of offences with which an accused is charged in a summary trial before a court. This definition is quite restrictive as it relate only to summary trial. Section 1 CPC defines it as including any head of charge when the charge contains more heads than one. This definition only distinguishes between the charge sheet being the entire document and charges contained in the charge sheet. Section 3 ACJL defines it as the statement of offence or statement of offences with which a defendant is charged in a trial whether by way of summary trial or trial by way of information before a HC or any court or tribunal established by law. The above is an holistic definition of charges. The form of a charge depends on three main considerations:

- The place of trial
- The court of trial
- The person or authority drafting the charge or instituting it.

Persons that can draft charges

- In the magistrate court in the south, it is the police officer or law officer that can draft a charge. **STATE v OKPEGBORO**

- In the magistrate court in the north, it is the magistrate that is competent to draft a charge. S. 160 CPC
- In the HC, BOTH POLICE OFFICERS AND LAW OFFICERS. It is a police officer by virtue of Osahon v. FRN, Olusemo v. COP and law officer that can draft a charge.

It is the person drafting the charge that has power to sign such charge. When an officer in the AG department drafts a charge, such officer signs the charge; he can sign on his own or on behalf of the AG (not necessary).

Prosecutorial authority

- In the magistrate courts in any state of the federation, including Abuja, the prosecutorial authority is COMMISSIONER OF POLICE.
- High courts: In other states of the federation apart from Lagos, it is STATE. In Lagos state, it is the STATE OF LAGOS by virtue of s. 249 ACJL.
- In the FHC, it is the FEDERAL REPUBLIC OF NIGERIA.
- In the High Court of FCT, it is also the FEDERAL REPUBLIC OF NIGERIA.
- Importantly in State High Court, when it has to do with federal offences or offences created by the Act of National Assembly, the prosecutorial authority is the FEDERAL REPUBLIC OF NIGERIA.

Description of accused

In the parties clause of a charge the accused person is described differently in the north and south. In the magistrate court of the south, high court of the south and federal high court, the accused person is described as DEFENDANT.

In the magistrate court and high court in the north, the accused is described as ACCUSED OR ACCUSED PERSON.

Forms of charges

1. Heading of the court: this consist of the name of the court, its judicial or magisterial district and where the court is sitting. E.g.

IN THE MAGISTRATE COURT OF KANO STATE
IN THE KANO MAGISTERIAL DISTRICT
HOLDEN AT KANO.

2. Reference Number: this is written beneath the heading. Its importance is on proper identification of a case/charge against an accused. It is possible that an accused has against him different charges in the same court. In the southern courts and federal high court and Abuja, it is CHARGE NO. In the northern courts it is CASE NO. E.g.

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KANO JUDICIAL DIVISION

HOLDEN AT KANO

CHARGE NO:

3. Parties: this refers to the litigants in a criminal matter. As earlier noted the accused is DEFENDANT in the southern courts and federal high court, the prosecutorial authority is the FEDERAL REPUBLIC OF NIGERIA in the federal high court, high court of FCT and state HC when it is a federal offence, in Lagos state it is THE STATE OF LAGOS; and in other states, it is the STATE. E.g.

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA

CHARGE NO:

BETWEEN

THE STATE OF LAGOS

COMPLAINANT

AND

AHMED MUSA

DEFENDANT

4. Preamble: a preamble is only required in the high court's in southern states where an offence is to be tried by information. Some northern states now uses information, thus the charge contains preamble. Preamble comes after the parties' clause.

IN THE HIGH COURT OF ENUGU STATE
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU

CHARGE NO:

BETWEEN

THE STATE

COMPLAINANT

AND

AHMED MUSA

DEFENDANT

At the session holding at the Enugu Judicial Division of the High Court of Enugu State on the _____ day of _____, _____, the Court is informed by the Honourable Attorney General on behalf of the state that:

AHMED MUSA

is charged with the following offences.

5. Head of offence

- Every head of offence in southern courts and federal high court is COUNT.
- Every head of offence in northern courts is CHARGE
- In the southern high courts where information is used, the head of offence - COUNT has two paragraph
 - a. Statement of offence
 - b. Particulars of offence

In the southern magistrate court, northern magistrate and high courts, and federal high court, the head of offence is in one paragraph. Examples below

IN THE HIGH COURT OF EDO STATE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN

CHARGE NO:

BETWEEN

THE STATE

AND

AHMED MUSA

COMPLAINANT

DEFENDANT

At the session holding at the Benin Judicial division of the High Court of Edo state on the _____ day of _____, _____, the court is informed by the honourable attorney general of the state that:

AHMED MUSA

is charged with the following offence.

STATEMENT OF OFFENCE

Stealing contrary to s. 390 Criminal Law of Edo state, 2010

PARTICULARS OF OFFENCE

AHMED MUSA (M) on the 20th January, 2013 at Plot 555 Ugbowo Road, Benin City, Edo state, in the Benin Judicial Division took a purse, the property of one Nkem Dike with the intention of permanently depriving him of it.

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KANO JUDICIAL DIVISION

HOLDEN AT KANO

CHARGE NO:

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

AHMED MUSA

DEFENDANT

That you, Ahmed Musa (M) on 20th January 2013 at Plot 555 Kano street, Kano state in the Kano Judicial Division was in possession of firearms punishable under s.____ of the Firearms Act, LFN 2004.

IN THE MAGISTRATE COURT OF KOGI STATE
IN THE LOKOJA MAGISTERIAL DISTRICT
HOLDEN AT LOKOJA

CASE NO:

BETWEEN

THE COMMISSIONER OF POLICE

COMPLAINANT

AND

AHMED MUSA

ACCUSED

I, DANA AZEEZ, Chief Magistrate Grade 1, hereby charge you AHMED MUSA
as follows:

CHARGE ONE

That you AHMED MUSA.....

AND I hereby direct that you be tried on the said charge by this court,

Note that the magistrate court in the north there are usually three paragraphs - the introductory paragraph, introducing the magistrate who drafted the charges, the main body and the directional paragraph, directional paragraph - directing the person to be charge. In the magistrate court, in the north, the charges have INTRODUCTORY PARAGRAPH, while in the HC in the south, it has preamble.

6. Date and signature of the drafting authority. Example is

DATED THIS _____ DAY OF _____ 20____

Danazi Azeez

Chief Magistrate

Content or format of a charge

The format for drafting a charge is as follows: ADPOPSE

1. A-Accused :The name of the accused person – the name stated in the heading should be the one in the body of the charge. The name must be the correct name of the accused and could be followed by an alias if any
2. D-Date: The date on which the offence was committed: The precise date on which the offence was committed should be stated. Do not use ‘on’ or ‘about’. If the date is given, use it, if not don’t use ellipses. However,If it a case of CONSPIRACY, where the conspiracy has spanned through a period of time, on’ or about can be used. ALSO CRIMINAL MISAPPROPRIATION OF MONEY or STEALING OVER A LONG PERIOD OF TIME ‘from one date to about” could be used.
3. P- Place: The place of commission of the offence: The place where the offence was committed should be stated along with the magisterial district or judicial division in that state as the case may be. Description of the place of commission must be full. Where the particulars of place are not provided for the student can use Ellipses or improvise an address.
4. O-Offence: the name of the offence should be used in describing the offence or much description like for rape; having unlawful carnal knowledge without consent. In the north, the act done by the accused is used more often than not as a form of description of the offence.
5. P-Person against whom the offence is committed: this is the victim of the offence. There may be offences where no ‘victim’ exists. Importantly, the word VICTIM should not be restricted to persons suffering from an injury as THE STATE is generally regarded as the victim.
6. S-Section of the law: there is argument as to which section of the law should be used; the definition section or the punishment section. **Generally the punishment section should be used but.** However, where both the definition and punishment are stated in a particular section, then it can be used. Where there are various provisions that define an offence stated with only one omnibus punishment then in that case you say the OFFENCE IS CONTRARY TO SECTION 419 AND PUNISHABLE BY SECTION 456.
7. E- Enactment : the statute itself

Rules of drafting chargesThere are four rules that guide the drafting of charges namely:

1. The rule against ambiguity
2. The rule against duplicity
3. The rule against misjoinder of offences; and
4. The rule against misjoinder of offender

The rule against ambiguity: ambiguity means when something is capable of having more than one meaning or it is not clear. The essence of a charge is to enable an accused person prepare for his defence. This is a fundamental right under s. 36(6)(b) CFRN. The rule against ambiguity has no exception. A charge is either ambiguous or it is not. Ambiguity relate to individual count or head charge. If it is said that a charge is ambiguous, it must be in relation to a head of charge or count in a charge sheet.

In one word, a charge will be said to be ambiguous when it does not meet the requirements of ADPOPS as found in s. 151 & 152 CPA, 201 & 202 CPC and s. 147 & 148 ACJL. When a charge is said to be ambiguous because of non-compliance with the required particulars of a charge, such will not invalidate the charge if the offender knows the offence itself. He was not misled.

However if the offender was misled by the ambiguity in the charge – s. 166 CPA and s. 222 CPC, s. 158 ACJL. the purpose of the rule is to give an accused adequate notice of the charge against him thus not all defect will nullify the proceeding. Non-compliance with requirement of the statutes is regarded as a fundamental error. In *Enahoro v. The Queen* where there was non-compliance as regard stating the section of law and the defendant requested for particulars of account of which was refused by the judge. The SC while stating that the refusal was wrong held that there was no miscarriage of justice because the section was stated in previous count. In *Okeke & anor v. IGP* where the appellants were charged with stealing property belonging to their employer and conspiracy to commit felony contrary to s. 390 & 516 Criminal Code. The magistrate stated on record that they were charged under the Criminal Act. At the high court, the case was remitted to the magistrate for retrial as the law under which they were charged was not exclusive. In *Ogbomor v. State*, mere omission of (Special provisions) from Robbery and Firearms was regarded as minor and technical.

Rule against duplicity

Simply put: 2 in 1. Thus, do not put two offences in one count. This rule relates to a particular head of charge or count. If the defendant killed 5 people, 5 different counts.

S.152 ACJL. S. 156 CPA, S. 212 CPC, Section 209 ACJA

This rule is to the effect that every offence with which a person is charged must be contained in a distinct count or charge. It has to do with having more than one offence in a count (south) or charge (north). For instance, if in the course of armed robbery, A killed B and C, the charge or count cannot be drafted containing both killings. Two offences cannot be in one count or charge. Again A kidnapped B, a girl of 18 to the nearby bush and raped B. When he is to be charged for both the offence of kidnapping and rape and they are charged together, that would be duplicity. In *R v. Ugo Chima*, the accused was charged with the murder of her

two children (twins) in one count. The court held that two murders were committed and that the charge was bad for duplicity.

Whether a court will on a appeal quash the conviction made on a charge, bad for duplicity and an acquittal entered for the appellant, depends on whether such duplicity resulted in miscarriage of justice or the accused was prejudiced by it. See ONAKOYA V. FRN; AWOBOTU V. STATE

Objection to a charge bad for duplicity should be raised at the appropriate time. This is when the charge has been read over to the accused person, but before he takes his plea

EXCEPTIONS TO THE RULE AGAINST DUPLICITY

There are however exceptions to the general rule that an offence must be in a count or charge or one count or charge should contain only one offence namely:

1. Where statutory forms are used: sections 150, 463 CPA & s. 200 CPC; Ss 146 & 353 ACJL provided for the use of the forms set out in the schedule to the Act. However variation can still be done to the forms where necessary – s. 463 CPA. Thus if in the statutory forms, a count or charge is drafted to contain two or more offences, so be it. In Willie John v. The State, the SC justified the use of Form 11 to charge for housebreaking and stealing in one count, or BURGLARY and STEALING.

2. Allegation of Criminal Misappropriation of MONEY over a period of time: this is provided for in s. 152(2) CPA, S. 203 CPC & S. 148(2) ACJL, 197 ACJA where the accused is charged with criminal breach of trust, fraudulent appropriation of MONEY, fraudulent falsification of account or fraudulent conversion. In that case, a gross sum is to be stipulated and duration or period of commission without specifying each particular item and exact date. **This is used for only money belonging to one person and not property or goods stolen over a period of time.** See R v. Aniemeka. Domingo v. R, where the accused had been charged with offence relating to stealing property and goods over a period of time, the court held that the charge containing all the offences was bad for duplicity. **PROPERTY CANNOT BE AGGREGATED.** It does not matter if the property is that of one person, it must not be JOINED TOGETHER.

3. Offences defined in the alternative – s. 154(5)(a) CPA, S. 150(5)(a) where the statute creating an offence defines it in the alternative, it can be stated in a charge or count in the alternative. Examples are s. 356(2) & 406 Criminal Code.

4. Similar or identical offences committed in a single transaction. This is where the offences are not just similar or identical but also committed in one transaction. In Police v. Oyewusi, where the accused, a police officer had demanded money from the five complainants in order not to prosecute them. They gave him the money and on his charge, he was charged on two counts for official corruption and demanding money with menaces. Upon his conviction, he

contended on appeal that since the offences were against five different persons, there should be separate count for each. The court found otherwise.

5. Overt Acts in respect of treason and treasonable felonies: s. 37, 38 & 41 Criminal Code and s. 410, 411, 412 of Penal Code, provides for proof of two overt acts before a person can be convicted for treason. Thus these overt acts can be in one count or charge.

EFFECT OF DUPLICITY:

- It does not invalidate charge or trial except occasions a miscarriage of justice.

3.Rule against misjoinder of offences

The General rule is that for every offence committed it should be the subject of a charge or information.

However this rule admits of more exceptions than the general rule.

This rule is to the effect that for every distinct offence for which an accused is to be charged, such should be in a separate charge sheet (not charge or count) s. 156 CPA, s. 152 ACJL and s. 212 CPC. Thus if Mr. A commits the offence of rape, stealing and arson, he should be charged in a separate charge sheet for each of the offence and tried separately.

EXCEPTIONS TO THE RULE AGAINST MISJOINDER OF OFFENCES

There are however exceptions found in provisions of CPA, CPC and ACJL, section 209 ACJA. They are:

1. Offences committed within one year or twelve months – s. 157(1) CPA. S. 153(i) ACJL. The section is to the effect that if the offences were committed within 12 months, whether against one person or different people, the offender can be tried on a single charge sheet for any three of those offences
2. **Offences committed in the course of the same transaction – s. 158 CPA, s. 214(1) CPC and s. 153(iii) ACJL, Section 209(C) ACJA.** These are offences even though distinct but are committed in same transaction. For instance A with intention to rob a bank snatched B's car after the robbery; at a police check point, shot at C, a police man killing him. Thus the offences arising from this transaction can be one charge sheet and tried together armed robbery and murder. Example in the course of executing a common purpose, other offences may be committed. In this case, it can be brought in one charge sheet or information. However, where that transaction has broken subsequent offences will be subject of a different charge sheet. If one of the offenders, deviate from the common purpose and commits a different offence but in the same transaction, he will charged separately on a different count or head of charge but on the same charge sheet. **HARUNA V STATE.** Note when there is a break in the common purpose.
3. Proximity as to time, place, continuity of action).

4. Where it is doubtful which of the several offences the facts which can be proved constitute – s. 161 CPA and s. 216 CPC. Where doubt arises as to the offence which a single fact or omission or series of facts or omission if proved will constitute. It is possible a single fact can lead to stealing, criminal breach of trust, obtaining by false pretence, being in possession of stolen property. When there is doubt, these offences can be contained in one charge sheet in the alternative.
5. Offences comprising acts or omissions which by themselves or in conjunction with others constitute a different offence – s. 160 CPA is to the effect that several acts or omission of which one or more by itself constitute an offence and in conjunction with others, constitute a different offence. These offences can be on the same charge sheet. For instance A enticed B into his house on the pretext that he had an urgent message for her. He then ripped off her clothes and forcefully had carnal knowledge of her. Individually the acts constitute an offence and in combination they constitute the offence of abduction.
6. An offence which may be committed in any of several occasions may be charged in the alternative in same charge sheet. Section 215 CPC is to the effect that if a series of acts is of such a nature that it appears that an offence was committed on one of several occasions and the facts is not certain as to the occasion, the offence can be charged alternatively – burglary and house breaking.
7. Offences of the same or similar character – s. 158 CPA and s. 213 CPC. Offences are said to be of the same kind where they are identical; similar is if they share or exhibit some common features. They are so similar if evidence for one offence would be admissible to prove the other offence. *Dan v. Kano Native Authority* 12 WACA 14, in this case, the accused was charged with seven counts which are failure to issue receipt for money paid, charging excessive interest on money lent, and failure to keep proper account. The accused contention that the charge was bad for joinder of offences was disregarded by the court.
8. Acts or omission that constitute an offence falling within two or more separate definitions-constituted under separate laws e.g Road traffic Law/ Federal Highways Act and criminal Code(causing death by dangerous driving and manslaughter)(North culpable homicide not punishable with death). DRAFT FOR BOTH but in different counts.---SECTION 212 ACJA.

Rule against misjoinder of offenders

The general rule is that every person who is alleged to have committed an offence shall be charged and tried separately for the offence alleged against him. If XYZ & A committed the offence of stealing, they should all be charged separately. (Principal offender, accessories after the fact, receiver of stolen property)

EXCEPTIONS TO THE RULE AGAINST MISJOINDER OF OFFENDERS: The following are the exceptions:

- o Note sections 7, 8 and 9 of Criminal Code.

1. Persons accused of jointly committing the same offence – s. 155 CPA, s. 151 ACJL and s. 221(1)(a) CPC. For instance if A, B & C beat up D, A, B & C should be charged together in the same charge sheet. In *Okojie v. COP*, the accused persons being police officers had assaulted the complainant. They were charged on the same charge sheet and their contention that the charge sheet was bad for misjoinder of offenders was disregarded.
2. Persons accused of committing different offences in the course of the same transaction – s. 155 CPA, s. 151(a) ACJL and 221(d) CPC. For instance A, B & C went into a house and robbed the occupants; B raped one of the occupants. In that case, they can be charged in same charge sheet for stealing and conspiracy to steal and B should be charged separately for rape (in a separate count not charge sheet). See *Haruna v. The state*.
NB: that were A, B, C & D had agreed to rob a bank and had actually robbed the bank and after they had gone their separate way, A decides to rob the neighbouring house, they will all be charged for conspiracy and robbery of the bank on the same charge sheet. However A that robbed the neighbouring house will have a separate charge sheet in addition to the other one. The important point to note is that there should not be break in transaction. A's subsequent robbery is a break in transaction. The test laid down in *Haruna's* case are:
 - Proximity of time or place; or
 - Continuity of action; or
 - Community of purpose or design
3. Persons accused of committing an offence and persons accused of aiding, abetting or attempting to commit the said offence – s. 155 CPA, s. 221 (b) CPC and s. 151(b) ACJL. In *Njovens v. State*, in this case, the police who aided and abetted the offence were charged with those that committed the offence. The police officers had raised objection on such joinder. The court upheld the validity of the charge as the police officers fall into the category of those that aided and abetted the offence. This is where there is complicity as found in s. 7 Criminal Code on parties to an offence.
4. Persons accused of committing the same offence in the course of the same transaction - s. 151(a) ACJL, s. 155 CPA & s. 221(d) CPC.
5. Persons accused of committing offences that are related one to the other. Section 151(b) ACJL is to the effect that a person is accused of theft, criminal misappropriation, criminal breach of trust and another person is accused of receiving or retaining or assisting in the disposal or concealment of the subject matter of such offence – s. 155 CPA, s. 221(e)&(f) CPC
6. Persons accused of offences committed during a fight or series of fights arising out of another fight and person accused of abetting any of these offences may be charged and tried together – s. 221(g) CPC.

Note that even though accused committing offences falling under the foregoing can be charged together, the court can order separate trials. In *Madayi & anor v. State*, it was held that the court has discretion to order separate trials and conviction cannot be quashed because separate trial were not ordered.

WEEK 9.

OBJECTION TO DEFECTIVE CHARGES/AMENDMENT OF DEFECTIVE CHARGE

A charge will be said to be accurate when it complies with all the rules of drafting, leaving the accused person and the court in no doubt as to the nature of the charge against the accused. A defective charge is when a charge is not in compliance with the rules of drafting (ambiguity, duplicity, joinder of offences and joinder of offenders). The effect of a defective charge is dependent on whether the defect is minor or fundamental. **The general rule is that a defect in a charge will not lead to the setting aside of a trial unless the defect is fundamental as the accused was prejudiced in the conduct of his defence.** Thus s. 166 CPA provides that no error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission. See s. 206 CPC.

In AG Western Region v. CFAO where the law under which the accused was charged was not provided for and a conviction obtained. On appeal, the court quashed the conviction on the ground that such failure was a fundamental error. In Ogbomo v. State, the court held that failure to include (Special Provisions) to the Robbery and Firearms Act 1970 was not fundamental and the appellant was not prejudiced in his defence.

Grounds for objections

Fundamental objection

- **Non existent law pursuant to section 36(12) Constitution, Aoko v Fagbemi. PLEASE NOTE FOR EXAM IF THE PUNISHMENT SECTION IS NOT GIVEN DO NOT DRAFT ESPECIALLY FOR CONSPIRACY WHERE THE PUNISHMENT IS NOT GIVEN.**
- **Note the effect of plea to a defective charge-submitting to jurisdiction.**
- **AMADI V FRN(2008)**
- **OBAKPOLOR V STATE**

Apart from grounds arising from non-compliance with the rules of drafting, the following are extant

- Where leave or consent of court to be obtained is not obtained before preferring charge
- Where the offence is unknown to law – s. 36(12) CFRN
- Where accused has been previously charged on same count or charged and acquitted or pardoned
- Where the accused lacks legal capacity
- Violation of jurisdiction

- Against the rules of drafting

Time for raising objection

Where a charge is defective, the defence counsel can raise objection. Objection is to be raised timeously – before taking plea by the accused person. *EGBUJOBI V FRN*, Where an accused has taken plea or pleaded to the charges, he is taken to have submitted to the jurisdiction of the court. *AMADI V FRN*, *ADIO V STATE*. However, there are some defects that goes to the jurisdiction of the court, objection in that regard can be raised at any time. For the defect that does not go to the jurisdiction of the court, it must be raised before the accused takes his plea. The above is the extant position as it relates to the states under CPA and CPC and the federal high court. Section 167 CPA provides that any objection to a charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused and not later. In *Abacha v. The State*, upon arraignment of the appellant and before taking his plea, the appellant counsel had moved that the indictment against the appellant be quashed. At the SC, the court held the application (objection to charge) was properly made. In *Ikomi & ors v. The State*, the accused persons had objected to the information before their plea was taken.

In Lagos, under the ACJL, the position is different. Section 260(2) ACJL provides that an objection to the sufficiency of evidence disclosed in the proof of evidence attached to the information shall not be raised before the close of the prosecution's case. The above states that if the objection is on insufficiency of evidence disclosed in the proof of evidence, then it can only be raised after prosecution has close his case and not before the defendant pleads to the charges. Proof of evidence is as relate to the documents which are to accompany information at the High Court of southern states like the unedited statement of the accused, a copy of the proposed charge, list of witnesses and exhibits. This determines whether the prosecution has a prima facie case. In southern states, the judge looks at these in granting consent. In Lagos unlike other southern states, consent is not required for filing information.

Thus on the day fixed for hearing, the prosecution ask the court to take cognizance of the information. If the court takes cognizance, ordinarily the accused can raise objection(s) but s. 260(2) ACJL provides otherwise. The desirability of this section can be seen from the fact that unlike before where in high profile case, the accused counsel will bring application to quash the indictment of which can be appealed up to the Supreme Court. Hence opportunity is given to prosecution to lead evidence to prove his case. This does not derogate from the right of the accused to object. There is however an exception when the objection is based on the jurisdiction of the court. It can be raised before plea is taken.

Note the following as relate to Lagos alone. In Lagos, prima facie case is raised only once and not twice unlike other jurisdictions.

Under the ACJA, section 221 provides that objections shall not be entertained during proceedings or trial on the ground of an imperfect or erroneous charge.

Amendment of charges

When an objection is raised as to a defective charge, the prosecution counsel can make an application for amendment. Generally, amendment of charges can be made before arraignment and after arraignment. Amendment is to be made by the drafting authority, that is, magistrate (in the north), the police officer and law officer. In *State v. Chief Magistrate, Aboh Mbaize Ex p Onukwu*, where a magistrate had amended a charge, the court held that he does not have such power. In the magistrate court in the north, only the magistrate can amend. Generally, amendment can be made before judgment. Section 162 CPA provides that when any person is arraigned for trial or an imperfect or erroneous charge, the court may permit or direct the framing of a new charge or add to or otherwise after the original charge. The new charged must be related to the previous one. See *Okwechime v. IGP* and *Elumeh v. IGP*.

Courts can amend a charge. Section 163 CPA provides that any court may alter or add to any charge at any time before judgment is given or verdict returned and every such alteration or addition shall be real and explained to the accused. See *Uket v. FRN*. Generally when an accused has not been arraigned and there is need for amendment, the prosecution need not seek the leave of court via an application. However if charges have been filed and the amendment is substantial, the leave of the court should be sought. After arraignment of the accused (the accused has taken his plea) there should be an application for amendment of the charges.

Procedure for amendment before arraignment

- The leave of court generally is not required except as otherwise provided. Example High court in the south and North especially where the character of the offence is markedly different from the first charge filed.. Magistrates court no leave is sought where the charge is to be amended before arraignment.
- This is because trial commences upon arraignment.
- It is possible to seek leave to prefer another charge, file it and on the day fixed for hearing, present both before the court and seek to withdraw the old one.

Procedure for amendment after arraignment(POST-AMENDMENT)

- **Where the plea has been taken and trial has commenced, leave of the court must be sought to amend the charge.**
- Application (by motion on notice) for leave of court to amend the charge. This can be oral or in writing. Oral is for clerical errors.
- The defence can object to the amendment. The court has discretion to grant or refuse the application for amendment.
- After the grant of application for amendment and the charges have been amended. The amended charges are to be read and explained to the accused person(s). SECTION 163 CPL, 154 ACJL, 208(2) CPC, 216 ACJA, *AYODELE V STATE*. Where the defendant is to be tried in the magistrate court, and the accused has the

right of election whether he should be tried before the court, a fresh consent must be obtained. s. 164(2) CPL

- After reading the new charge to the accused person, he takes his plea afresh – s. 164(1) CPA, 156 ACJL, 217(1) ACJA, ATTAAH V STATE.
- Thereafter, the court must ask the defendant whether he is ready to be tried on the amended charge. If the accused says he is not ready, the court shall consider his reasons. Section 156(2) ACJL, 164(1) CPL. .
- The defence counsel or prosecution can make an application (simple application not on motion) for adjournment. The party seeking adjournment is entitled to it if proceeding immediately with the trial on the amended charge will be prejudicial to him. Section 156(3) ACJL, 164(2)(3) CPL, 209&210 CPC, 218 ACJA. Section 36(6) (b) 1999 CFRN(as amended).
- Either the prosecutor or accused person may call or recall any witnesses who may have given evidence to testify again – s. 165 CPA, 211 CPC, 157 ACJL, 219 ACJA.
- A note of the order for amendment shall be endorsed on the charge which in its amended form is deemed to be the original charge. COP V ALAO.

When an accused is convicted on a defective charge, an appeal can be made against the conviction seeking for it to be quashed.

Plea means you are submitting yourself to the jurisdiction of the court. Defect could be typographical errors or minor omissions. The effect of the defect on the accused person in the conduct of his defence would determine whether the conviction upon such defective charge will be set aside or upheld - WAS THE ACCUSED MISLED?

In amendment after taking of plea or arraignment the court must comply with post-amendment procedure. Effect of failure to comply with post-amendment procedure will depend on whether there was a miscarriage of justice, failure to comply with the statutory requirements render the trial null, void and of no effect. The appeal court on appeal against conviction will set the conviction aside.OKOSUN V STATE.

However, where there are sufficient or overwhelming evidence at the trial, the appellate court may order a retrial. See Echeazu v. COP (1974) 2 SC.

Ethical issues on drafting of charges

Rule 37(4) & (5) RPC – the primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. A public prosecutor shall not institute or cause to be instituted a criminal charge if he knows or ought reasonably to know that the charge is not supported by the probable evidence.

A draft in magistrate in the north

IN THE MAGISTRATES COURT OF KANO STATE
IN THE KANO MAGISTERIAL DISTRICT
HOLDEN AT KANO

CASE NO:

BETWEEN

COMMISSIONER OF POLICE

COMPLAINANT

AND

1. MUAZE SULE

2. AHMED KWALI

ACCUSED PERSONS

I, AZEEZ ABDUL, Chief Magistrate Grade 1 hereby charge you

1. MUAZE SULE

2. AHMED KWALI

As follows:

1ST CHARGE

That you, Muaze Sule and Ahmed Kwali on 21st August, 2000 at Wuse within the Kano Magisterial District agreed to do an illegal act to wit; conspiracy to forge a cheque leaf being property of Alhaji Aminu Keffi thereby committing an offence punishable under section 97(2) of the Penal Code, Laws of Kano state and triable by this court

2ND CHARGE

That you Muaze Sule and Ahmed Kwali on 30th September 2000 at Union Bank Plc, Wuse, Kano, within the Kano Magisterial District presented a forged cheque leaf to Union Bank Plc, being property of Alhaji Aminu Keffi thereby committing an offence punishable under section 364 of Penal Code, Laws of Kano state and triable by this court

I, hereby direct that you be tried by the said court on the said charge

Dated this _____ day of _____ 2013

Azeez Abdul

Chief Magistrate

Grade 1

A draft in magistrate in the south

IN THE MAGISTRATE COURT OF THE RIVERS STATE
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

CHARGE NO:

BETWEEN

COMMISSION OF POLICE

COMPLAINANT

AND

1. MUAZU SULE

2. AHMED KWALI

DEFENDANT

1ST COUNT

That you Muazu Sule and Ahmed Kwali on 21st August 2000 at Wuse within the Port Harcourt Magisterial District conspired to forge a cheque leaf belonging to Alhaji Aminu Keffi, thereby committing an offence punishable under section____ of the Criminal Code, Laws of Rivers state.

2ND COUNT

That you Muazu Sule (M) and Ahmed Kwali (M) on 30th September 2000 at Union Bank Plc, Wuse, within the Port Harcourt Magisterial District presented a forged cheque leaf to Union Bank Plc being property of Alhaji Aminu Keffi, thereby committing an offence punishable under section____ of the Criminal Code, Laws of Rivers state.

Dated this____ day of____ 2013

Kenneth Okwor
Police Officer (ASP)

A draft at the high court of FCT, Abuja

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

CHARGE NO:

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

1. MUAZU SULE

2. AHMED KWALI

DEFENDANTS

1ST CHARGE

Muazu Sule (M) and Ahmed Kwali (M) on 21st August 2000 at Wuse within the Abuja Judicial Division agreed to do an illegal act; to wit conspiracy to forge a cheque leaf being property of Alhaji Aminu Keffi, thereby committing an offence punishable under section 97(2) of the Penal Code.

2ND CHARGE

Sule (M) and Ahmed Kwali (M) on 30th September 2000 at Union Bank Plc which within the Abuja Judicial Division presented a forged cheque leaf to Union Bank Plc being property of Alhaji Aminu Keffi, thereby committing an offence punishable under section 364 of the Penal Code Act.

Dated this _____ day of _____ 2013

Kenneth Okwor
Principal State Counsel
For the Attorney-General
Of the Federation

A draft in high court of Lagos state

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

CHARGE NO:

BETWEEN

THE STATE OF LAGOS

COMPLAINANT

AND

1. MUAZU SULE

2. AHMED KWALI

DEFENDANTS

At the session of the High Court holding in Lagos state on_____day of_____2013, the court is informed by the Honourable Attorney-General of the State on behalf of the state that the following persons

1. MUAZU SULE

2. AHMED KWALI

are charged with the following offences:

1ST COUNT

STATEMENT OF OFFENCE

Conspiracy to forge document punishable under section____of the Criminal Code Law of Lagos state.

PARTICULARS OF OFFENCE

Muazu Sule (M) and Ahmed Kwali (M) on 21st August 2000 at Wuse within the Lagos Judicial Division conspire to forge a cheque leaf being property of Alhaji Aminu Keffi.

2ND COUNT

STATEMENT OF OFFENCE

Forgery punishable under section____of the Criminal Code Law of Lagos state

PARTICULARS OF OFFENCE

Muazu Sule (M) and Ahmed Kwali (M) on 30th September at Union Bank Plc, Wuse, within the Lagos Judicial Division presented a forged cheque at Union Bank Plc being property of Alhaji Aminu Kano.

Dated this_____day of_____2013

Kenneth Okwor
Senior State Counsel
For the Attorney-General
Of Lagos State

A draft at the federal high court

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA

CHARGE NO:

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

1. UMARU OBI}

2. EHI SHEHU}

3. REX BOLA}

DEFENDANTS

4. BEN KIO}

5. ALIYU GARKI}

1ST COUNT

That you Umaru Obi (M) on 2nd November 2000 at the Julius Berger roundabout, Kaduna within the Kaduna Judicial Division, rode recklessly a motorcycle with registration number XL14GWA thereby causing the death of Miss Rose Ogun, thereby committing an offence punishable under section 5 of the Federal Highways Act 1971.

2ND COUNT

That you, Ehi Shehu on 2nd November 2000 at the Julius Berger roundabout, Kaduna within the Kaduna Judicial Division rode recklessly a motorcycle with registration number XD36KWL thereby committing an offence punishable under section 6 of the Federal Highways Act 1971.

3RD COUNT

That you Rex Bola (M), Ben Kio (M) and Aliyu Garki (M) on 2nd November 2000 at the Julius Berger roundabout Kaduna, within the Kaduna Judicial Division assaulted Mallam Abass Yaya thereby committing an offence punishable under section_____of the_____

Dated this_____day of _____2013

Kenneth Okwor
Senior Counsel
For the Attorney-General
Of the Federation

WEEK 10.

BAIL PENDING TRIAL

SLIDES

- What is bail? Bail simply means a temporary release of an accused person/defendant from custody on condition that he would attend court on days required of him.
- As a general rule, we have three types of bail namely:
 - ✓ **Police bail**
 - ✓ **Bail pending trial(court bail): this means that the accused has been arraigned before the court and counsel seeks a temporary release, so that the person can come from his house during the course of trial.**
 - ✓ **Bail pending appeal**

BAIL PENDING TRIAL

- **Bail pending trial or court bail is granted only by the court after proceedings have commenced.**
- **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. Counsel can notify the court as to the fact that the accused person has a subsisting police bail and the court may grant that the bail subsists without any formal application for court bail.

MAGISTRATE COURTS

- In a magistrate court, bail application can be made orally. This is the common practice.
- The grant of bail by a magistrate is dependent on the type of offence.

- A magistrate court does not have jurisdiction as to capital offences. However, they can try felonious offences UNLESS one punishable with death.

CLASSIFICATION OF OFFENCES

- For misdemeanor/simple offences the court shall grant bail. Ss 118(3) CPL(unless it sees good reason to the contrary), 158 ACJA, 115(3) ACJL unless there is good reason not to do so. 340 CPC.
- For felonies other than capital offences bail is at the discretion of the court. Ss 115(2) ACJL, 162 ACJA, 118(2) CPL, 341(2) CPC.
- For very serious offences such as capital offences, bail shall not be granted pursuant to section 35(7)(a) 1999 CFRN, 341(1) CPC, except by a High Court Judge by virtue of section 118(1)CPL, 115(1)ACJL,161 ACJA
- Magistrates MAY grant bail to accused persons in all other cases except capital offences.
- High court is a court of unlimited jurisdiction and can therefore grant bail in all cases even capital offences.

MODE OF APPLYING FOR BAIL

- No provision in statutes as to mode of application for bail in both North and South. Ss 363 CPA, 262 ACJL, 35 High court Law of Northern Nigeria, section 492(3) ACJA.
- Application may be made orally for simple offences or misdemeanor. **Abiola v FRN., section 18(3) ACJL, Section 32(3) ACJA.** However, as a matter of practice, it is **best that such application be brought by summons in writing.**
- In practice applications in the SOUTH and LAGOS and ABUJA is usually by summons SUPPORTED BY AFFIDAVIT.
- In the north, application may is by motion supported with affidavit
- In the high court, the summons is accompanied by a written address and an affidavit..

BAIL APPLICATION AFTER REFUSAL BY MAGISTRATE COURT

- No express provision in the statutes on procedure to adopt.
- Where bail has been applied for before the Mgst. Court and it has been refused, an application can be made to the High Court by way of summons(in the SOUTH supported by affidavit attached with the following:
 - a. CTC of charge against accused person
 - b. CTC of Mgst's ruling refusing the bail. Simidele v COP, State v Utah, Ss 123 CPL, 119 ACJL.

FACTORS THE COURT WILL CONSIDER BEFORE GRANTING HIM BAIL

- They are conditions the court must consider before granting bail. Section 341(2)(a)-(c) CPC, 161-163 ACJA.

- Most of the factors are laid down in decided cases rather than statutes. Such factors as held in **the following cases: Bamaïyi v State, Abacha v state, Fawehinmi v state, Ganiyu Adams v AG federation, Asari Dokubo v FRN include:**
 - ❖ The gravity of the offence and the punishment stipulated.
 - ❖ The circumstances surrounding the offence, **Section 161(2)© ACJA**
 - ❖ Whether the accused will disrupt the investigation of the case: Ganiyu Adams v AG Federation.**section 162(c) ACJA.**
 - ❖ **Attempt to conceal or destroy evidence. Section 162(d)ACJA.**
 - ❖ Whether the accused standing in life will disrupt the investigation of the case
 - ❖ The antecedents of the accused. The criminal record of the accused
 - ❖ Whether the accused will jump bail or evade trial. **Section 162(b) ACJA.**
 - ❖ How rampant the offence is being committed, Ajuda v state, Felix v State
 - ❖ The quality of evidence against the accused.
 - ❖ The likelihood of the accused committing another offence while on bail. R v Jammal, SECTION 162(a) ACJA.
 - ❖ The health of the accused person. Abacha v state, Fawehinmi v State, S. 161(2)(a) ACJA
 - ❖ Detention for protection of accused person.
- PLEASE NOTE: FACTORS ARE DIFFERENT FROM TERMS OF BAIL. The difference lies in the fact that it is after the court has considered these aforementioned factors and has made up its mind to grant bail that the issue of terms of bail arises. The terms of bail must not be onerous such that the accused cannot met them..
- FURTHER NOTE that the judge cannot use his personal grievances to determine whether to grant the bail or not just the punish the accused persons. Thus, the exercise of bail has be exercised judicially and judiciously as held in the case of **bamaïyi v state**

TERMS OF BAIL

- These are conditions or security required by court or police for granting bail. **Ss 116 ACJL, 120 CPL, 349(1) CPC, 165 ACJA**
- Bail must not be refused just to punish the accused person. **Dogo v COP.** Where the terms of bail are onerous, the purpose of the bail so granted will be defeated.
- The terms must not be onerous or excessive. **Eyu v state, Ss 116(1) ACJL,120 CPL, 349 CPC, SECTION 165 ACJA**

Note: For court bail, where a lawyer is acting for two accused, in the SOUTH he must bring 2 different summons and 2 affidavits.

Before trial commences and upon the arraignment of the accused, the defense counsel would seek a temporary release of the accused from the court. This is called BAIL PENDING

TRIAL. The police bail granted to the accused usually elapse upon arraignment of the accused person in court. A bail is the process by which an accused person is released from state custody to sureties (or on personal recognizance) on conditions given to ensure his attendance in court whenever he is required to do so until the determination of the case against him. A bail is considered a constitutional right meanwhile no provision of the constitution specifically states so. However the conclusion is drawn from s. 35(4) &(5) of CFRN 1999 on the constitutional right of liberty. Even though bail is a constitutional right, it is still subject to the discretion of the court. How the discretion must be exercised judicially and judiciously- GEORGE V FRN

Generally only the court and police are the authority to grant bail to an accused and the object of a bail is principally to secure the presence or attendance of the accused person in police station for investigation or the court to face trial. Bail is a constitutional right based on the right to personal liberty in s. 35(1) (4) CFRN and the presumption of innocence of an accused person in s. 36(5) CFRN.

Type of bail

1. The police bail – bail pending investigation – s. 27 Police Act, s. 17 CPA and s. 129 CPC
2. Bail by court – bail pending trial
3. Bail by court – bail pending appeal

The magistrate and high court are enjoined to grant bail to accused person after proper arraignment and taking of plea. The power to grant bail pending trial is primarily depended on:

- a. The type of court; and
- b. The nature of offence

Types of courts

The courts of first instance as regard granting of bail pending trial are the magistrate court and high court. The magistrate cannot grant bail in capital offences (these are offences punishable with death penalty) as they do not have jurisdiction to try such offences – s. 118(1) CPA. See Ewere v. COP, Dogo v. COP. The high court can grant bail in all offences including a capital offence. Only a judge of the high court can admit to bail a person charged with offence punishable with death. Thus in seeking bail of an accused, it is important to consider the court in which the accused is arraigned.

Nature of offence

Offences are divided broadly into:

- a. Capital offences
- b. Felonies other than capital offences; and

- c. Misdemeanour, and
- d. other simple offences

Capital offence

These are offences carrying death penalty upon conviction. Examples Murder, homicide punishable with death, rape, kidnapping, treason and treasonable felony, armed robbery e.t.c. in the south under this category of offence only high court have power to grant bail and not the magistrate court – s.118(1) CPA and s. 115(1) ACJL, section 161 ACJA. **In the north under s. 341(1) CPC as a general rule, persons accused of an offence punishable with death shall not be released on bail. However under sub-section 3 where there are no reasonable grounds for believing that the accused has committed the offence but there exist sufficient grounds for further inquiry, such person can be released on bail.**

Thus under the southern and northern statutes, capital offences are bailable. In **Ukatu v. COP**, the Court of Appeal held that a magistrate has no power to release a person charged with capital offence on bail. There is a practice adopted by the police in order to circumvent the provision of s. 85(4) CFRN. The practice is holding charge. Holding charge involves an accused who is charged with a capital offence being brought to a magistrate court. The magistrate then makes an order that it has no power to try the accused and that the accused be remanded in prison. The police in doing this buy more time for themselves for investigation and upon investigation, the accused is brought before the high court. The practice is not known to the Nigerian law and in *Enwerem v. COP* inter alia, the Court of Appeal condemned the practice. *LUFADAJU V JOHNSON*

Felonies other than capital offences

Felonies are capital offences punishable with three years or more terms of imprisonment. Under the CPA in s. 118(2), s. 341(2) CPC and s. 115(2) ACJL, section 161 ACJA the offence of felony is a bailable offence. Thus both the magistrate court and high court are empowered to grant bail to an accused charged with such offence. Under the CPA and ACJL, no condition is provided for granting the bail, only as the court deems fit. Under the CPC in s. 341(2), there are conditions. The court will only grant the bail if it considers:

- That by reason of granting of bail, the proper investigation of the offence would not be prejudiced; and
- That no serious risk of the accused escaping from justice would be occasioned; and
- That no grounds exist for believing that the accused if released would commit an offence.

The above conditions have been incorporated into general factors to be considered by the courts in granting bail to an accused person.

Misdemeanour and simple offences

These are offences whose terms of sentence does not exceed three years (north) or below three years (south) – s. 118(3) CPA, s. 115(3) ACJL and s. 340 CPC, section 158 ACJA. Under the CPC, two conditions are stated for refusal to grant bail, namely:

1. Proper investigation of the offence will be prejudice, and
2. A serious risk of the accused escaping from justice be occasioned.

Under this category of offence, bail is ordinarily granted as it requires no discretion of court, however it can be denied under CPA and ACJL on good reasons.

Factors to be considered in granting bail by the courts in Nigeria.

The following factors which were developed by judicial precedents apply to application for bail on offences and in any court whether in north or south, magistrate or high court. The factors are:

In *Bamaiyi v. The state*, the Court of Appeal stated the following: as a matter of law, courts have discretion to grant or refuse bail. Such discretion must however be exercised judicially and judiciously. The guiding principles for court's consideration in granting or refusing are among others:

1. The nature of the charge
2. The gravity of the offence/ severity of the punishment- *DOGO V COP*
3. The character of the evidence
4. The criminal record of the accused- *EJU V STATE*
5. The likelihood of repetition of the offence by the accused or committing another offence. *R v Jamal*
6. The likelihood of the accused jumping bail-- *ORJI V FRN*
7. The likelihood of the accused interfering with the evidence or police investigation: *BAMAIYI V THE STATE*
8. The prevalence of the offence- *STATE V FELIX*, *Aguda v state*
9. The health condition of the accused-- *FAWEHENMI V THE STATE*, *ABACHA V STATE*.

1. The likelihood of the accused interfering with the evidence or investigation: under this factor, the status of the accused person in the society is usually taken into consideration and interference with evidence could relate to both documentary evidence and witnesses to be called by the prosecution. In *Bamaiyi's* case where the accused was Chief of Army Staff of Nigerian army and some of prosecution witnesses were persons who served under him. The prosecution had opposed the application for bail on that ground among others and the high court refused the bail. The Court of Appeal upheld the decision of the trial court. In *Abacha v. The state*, application for bail had been refused on the ground that some of the witnesses have expressed great fear and some had been issued threats, the driver of the accused had been taken into protective custody for his safety. In *Dantata v. IGP*, the refusal of grant of

application was on the ground that the accused had offered to give the police officer money in order to retrieve evidence against him in the police custody.

2. The gravity or severity of the offence and its punishment: the court do not usually grant bail in offences punishable with death or life imprisonment or long term of sentence, based on the fact that the accused would want to escape trial. This is a factor which the prosecution can project to oppose an application for bail in capital offence. See *Dogo v. COP, State v. Felix*.

3. Likelihood of the accused committing an offence while on bail: this could be the same type of offence or another one entirely. The question is usually considered – whether the accused will commit another offence. The onus is then on the defense counsel that the accused person will not commit another offence. In *R v. Jammal*, the accused committed the offence that was being tried while he was on bail for another offence. His application for bail was refused. See *Fred Ajudua v. FRN (2005) All FWLR (240) 1274*.

4. The criminal record of the accused person: when an accused person has been personally tried and convicted on the same offence or distinct offences, the court would put that into consideration. Criminal record has to do with previous conviction. Thus in *Eyu (Mrs.) v. The state*, the appellant application for bail was granted even though there were several charges against her.

5. The prevalence of the offence: where the offence with which the accused is charged with is rampant, re-occurring or habitually being committed in a particular locality, the judge or magistrate may withhold his discretion to grant bail. In the *State v. Felix*, where the accused was charged among other counts with theft of motor vehicle and theft of motor vehicles were prevalent in that locality, the court refused his application for bail.

6. Health condition of the accused person: see *Fawehinmi v. State, Abacha v. State, ofulue v. FGN (2005) 3 NWLR 913*. When an accused person relies on ill-health as a ground for bail, the following must be considered:

- The ill-health must be such that will affect other inmates in detention.
- There must be positive, cogent and convincing medical report issued by an expert in that field of medicine to which the accused person suffering the ill-health is referable.
- The authorities have no access to such medical facilities as are required in treating the accused's ill-health.

Conditions for granting bail on ill-health

- Everyone is entitled to be offered access to good medical care whether he is being tried for a crime or has been convicted or is simply in detention
- Whatever the stage at which bail is applied for by an accused person, ill-health of the accused is a consideration weighty enough to be reckoned as special circumstances.

- The mere fact that a person in a custody is ill does not entitle him to be released from custody or allowed bail unless there are really compelling grounds for doing so.

7. Likelihood of the accused jumping bail: where there is likelihood of accused jumping bail, the court may refuse the application. This is based on the fact that bail is granted on both the presumption of innocence and presence of an accused in court during his trial while on bail.

8. The nature of the charge: the class of offence which the accused is charged will be considered; whether it is capital, felony or misdemeanour or simple offence.

9. **The strength of the evidence in support of the charge: the court will consider whether the proof of evidence accompanying the charge is weighty enough to secure conviction if no evidence is made by the accused. Ukatu v. COP, the court had stated that where no proof of** evidence even if the charge is of murder, the court will grant bail as such will be regarded as special circumstances stated by the law. The foregoing factors are not exhaustive and the court in Dogo's case had named that bail should not be refused as a form of punishment.

Terms of bail

Terms of bail differ from the factors or guiding principles in exercising discretion to grant bail by the court. **Terms of bail are what the court after the grant of application for bail requires the accused person to do or produce (after grant of bail).** Thus the order of bail may be granted on certain conditions known as terms of bail. The terms of bail imposed on an accused are dependent on the circumstances of each case. **The terms are imposed in other to secure the attendance of the accused in court for his trial as held in the case of Askari Dokubo v FRN** Thus the terms of the bail must not be onerous. If terms of bail are onerous, it would mean that the accused had been denied bail. In Eyu's case where bail had been granted to the appellant on the deposit in the court, the sum of N400, 000, 000 being the amount for which she was charged with. The Court of Appeal found it odd and offensive. The following are terms of bail. It could be the combination of all or just one

1. Bail on self recognizance: under this the accused is granted bail based on his standing and integrity in the society and no bond is needed. Surety or bond is not required. In Fawehinmi's case, FRN v. Babalakin, the accused were granted bail in self recognizance. Bails are hardly granted on this term, only when the accused is a reputable member of the society and undertakes not to jump bail.

2. Bail on the execution of bond for a fixed amount: in this, the accused is admitted to bail upon executing a bond for a fixed amount, amount of which he will forfeit if he jumps bail. The accused finances must be checked where the accused is the one undertaking the bond. section 122 CPA, s. 118 ACJL and s. 345 CPC, 167 ACJA

3. Bail on a bond with a surety for a specified amount: The accused is admitted to bail upon executing a bond and producing surety(ies). This is a bond with one or more sureties

undertaking to pay due sum upon default. The court can require the surety to execute a bond in addition to other terms imposed. See Onughi v. Police. The amount paid on bond is to be paid into an interest yielding account by the Chief Registrar of the court – s. 116(4) ACJL.

The court can request for further terms like international passport, landed properties within the jurisdiction among others.

In Lagos under the ACJL, there are BOND PERSONS. These are persons registered by the chief judge to act as bond person within the jurisdiction of the court in which they are registered – s. 138 ACJL. The bond person which can be an individual or corporate bodies take accused on bail acting as their surety, guarantor. If a bond person takes an accused on bail and the **accused acts contrary to the terms of bail, he can apply to court for his discharge as a surety.**

4. Deposit of money instead of a bond: this is when the accused is asked to deposit certain sum of money instead of executing a bond **paid into an INTEREST YIELDING ACCOUNT** of the court. Nothing happens to the money until there is default on the part of the defendant. It therefore follows that if at the end of the trial, the defendant did not jump bail or default, the money will be refunded to him. Section 120 CPL, 349 CPC, 116 ACJL, 165 ACJA.

REGISTRATION OF BOND PERSONS

- In Lagos State and FCT, Individuals or corporate body can apply to be registered and licensed as bond persons to legally stand as sureties for applicants. Section 138(1) ACJL
- There are requirements for registration. Section 138 ACJL, section 187 ACJA
- Such persons must be of integrity among other things. Section 138(6) ACJL., 187(6) ACJA.
- See the Bonds Person Regulation Law 2011.
- The chief Judge of Lagos state, FHC and FCT are empowered to make regulations for licensing of bonds persons. Ss 138(1) ACJL, 187(1) ACJA.
- **There are consequences for acting as sureties without registration. Ss 138(4) ACJL, 187(3) ACJA. The consequence is that a person who engages in bail bond services without registration of his license is liable to a fine of five hundred Thousand Naira or imprisonment for a term not exceeding 12 months or to both fine or imprisonment.**
- Can a woman be a surety? S 118(3) ACJL, 167(3) ACJA. Previously, women were prevented from standing as surety and this was contrary to section 42 of the CFRN. However, based on the position of the law, a woman can stand as surety. Note that section 42 of the CFRN applies to prevent against discrimination on the basis of sex, thus, although CPC and CPL are silent on whether a woman can stand surety, section 42 of CFRN will be instructive.

Review of bail.....SECTION 168 ACJA

When an accused is not satisfied with the terms upon which the bail was granted, he can appeal to the higher court for the terms to be reviewed – see Eyu’s case. In Bamaiyi’s case, the Court of Appeal stated that the practice of tying the entitlement of an accused person to bail to his first depositing a percentage of the amount stated in the charge to have been stolen by him is a negation of the constitutional provision which presumes an accused innocent until found guilty.

REMAND ORDER

Section 264 ACJL- the maximum time the court(Magistrate) can allow the prosecution retain the person in police custody before arraignment is 30 days which can be renewed upon application to the magistrate for a further period of thirty days. See Section 264(6) ACJL.. In this instance, the court has denied impliedly the right of the accused to apply to the police for bail. For bail to be granted, it is only the court that can grant such.

Section 293 AND 295 ACJA- the maximum period the court will allow the prosecution retain the person in police custody before arraignment is 42 days.

READ Lufadeju v Johnson(2007)ALL FWLR (Pt.871)@ p 1559

Note the distinction between holding charge and remand order

Revocation of bail

When will a bail be revoked?

- **If an accused on bail by magistrate is indicted for an offence on information at the High Court. SS 132 CPL, 127 ACJL**
- **Failure of accused to appear in court without good reasons. Ss. 184 ACJA, 139 ACJL**
- **Where a surety applies to be discharged. Ss. 129 ACJL, 134 CPA, 351 CPC, 177(1) ACJA. Onyebuchi v FRN.** Once a surety is not always a surety as the surety can, before the forfeiture of bond or at any time in the trial proceeding against the accused bring an application for him to be discharged from his obligations under the terms of bail of the accused. Upon application of the surety, an order is issued for the arrest of the accused.
 - The surety is then discharged
 - The accused if he is still interested in the bail order in his favour, must bring another surety before he is released again on bail.

If a surety dies, his estate is discharged and the accused will be re-arrested until he provides another surety.

Application for bail

Under the Nigerian statutes on criminal litigation, there is no provision for the procedure for applying for bail before the court. Thus there is a lacuna. Section 363 CPA provides that where a lacuna exists, the procedure and practice in force in the court of justice in England in criminal trials shall apply. Section 262 ACJL provides that where a lacuna exists, a court shall adopt such procedure as will in its view do substantial justice between the parties concerned. Section 35 of High Court Laws of Northern States prohibits the application of English rules and procedures where lacuna exists. Section 492(3) ACJA.

Magistrate Courts

Most times in the magistrate, application for bail is usually made orally. Thus the defense counsel after arraignment makes an oral application for bail and the magistrate invites the prosecution to state his objections if any. In Dogo's case, the high court stated that application for bail to the magistrate court must not be in writing – no rule provides for a written application.

Application to high court after refusal by the magistrate court – s. 123 CPA, s. 119 ACJL and s. 342(1) CPC, **SIMIDELE V COP, STATE V UTTAH**. When a magistrate court refuses an application for bail, the accused can apply to the high court. Application for bail must have been made at the lower court. In Abacha v. The State, on application for bail made for the first time in the Supreme Court, the court while dismissing the application stated that the normal practice was for the application for bail to have been made at the trial court. In the south, the procedure is by a summons supported with:

- Summons
- Affidavit stating the grounds upon which you are relying
- Written Address
- Certified true copy of the charge
- Certified true copy on ruling of the lower court on the refusing bail

In the north, the procedure is by motions

- Motion
- Affidavit stating the grounds to be relied upon
- Written Address
- Certified true copy of the charge
- Certified true copy on ruling of the lower court refusing bail application

The affidavit is to exhibit the certified true copy of the charge and certified true copy on ruling of the lower court. In Simidele v. COP, an application to the high court in the south by motion was rejected. If the court had applied the decision of Falobi v. Falobi, the application would have been heard.

High Court (at first instance)

In the high court by virtue of *Abiola v. FRN*, application for bail can be made orally. However not the practice of each court. Generally, in the south, application is by way of summons supported by affidavit setting out the grounds for the application. See s. 363 CPA, *Simidele's case* and *Okeke v. COP*. Any material documentary evidence can be attached.

In the north, the procedure is by motion supported by affidavit setting out the grounds for application. See s. 35 High Court Laws of Northern Nigeria, *Offiong v. COP*. Note that the prosecution can oppose to a bail application by counter-affidavit stating the grounds of its objection. The affidavit of the accused should contain the conditions for the grant of application for bail ((factors that favour him). When drafting application for bail of two accused person, such should be in different documents. The rules governing affidavit are the same as in civil. A written address is needed in motion. When there are two defendants applying for bail, the prosecution counsel can oppose by two counter-affidavits and one written address.

Once a court has refused to grant bail, application for bail should be filed at the higher court not in any court of the same co-ordinate jurisdiction. See *State v. Uwa, Anaekwe v. COP*.

An application before High Court after refusal by a Magistrate

IN THE HIGH COURT OF BAUCHI STATE
IN THE MAKURDI JUDICIAL DIVISION
HOLDEN AT MAKURDI

CHARGE NO.:

MOTION NO:

BETWEEN

STATE

COMPLAINANT/RESPONDENT

AND

1. IKPO UDO

DEFENDANT

2. BURAGO MUSA

DEFENDANT/APPLICANT

MOTION ON NOTICE FOR BAIL

BROUGHT PURSUANT TO SECTION 342 OF THE CRIMINAL PROCEDURE CODE AND SECTION 35(4), (5) AND SECTION 36(5) OF THE CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) AND THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that the Honourable court will be moved on the_____day of____2013 at the hour of 9’O clock in the forenoon or so soon thereafter as applicant’s counsel will be heard on behalf of the defendant/applicant praying for the following orders:

1. AN ORDER admitting the defendant/applicant to bail pending his trial.
2. AND such further orders as this Honourable court may deem fit to make in the circumstances of this case.

Dated this_____day of_____2013

K. O. D. Okwor Esq.
Defendant/Applicant’s
Counsel
Okwor & Co
Plot 111 Mary Close,
Victoria Island, Lagos

FOR SERVICE ON
The Hon. Attorney-General of Bauchi State
Ministry of Justice
Bauchi State.

Affidavit in support

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

CHARGE NO.....

MOTION NO:.....:

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT/RESPONDENT

AND

1. IKPO UDO

DEFENDANT

2. BURAGO MUSA

DEFENDANT/APPLICANT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR BAIL

OKWOR KENNETH ONONEZE DOMINIC – CRIMINAL LITIGATION

I, Burago Musa, male, adult Nigerian, resident at 15, Udeh Street, Surulere, Lagos, do hereby make oath and state as follows:

1. That I am the accused/applicant in this case and by virtue of my position, I am conversant with the facts of the case and the circumstances leading to this case.
2. That I was arrested along with Ikpo Udo by the police officers of the Bwari Division, Abuja on Friday the 2nd of January 2013 on the allegation of robbery of one Mrs. Ene Agbo on the that date.
3. That we were arraigned before the Bwari Chief Magistrate in the Bwari Magisterial district, Abuja on 20th January 2013 on a charge of robbery. The charge sheet is hereby attached and marked as EXHIBIT K1
4. That I have never been arrested, charged nor convicted of any offence before.
5. That I was with my wife on the said day and the time in which the offence was said to have been committed.
6. That I am a bus driver plying the route of Bwari to Lokoja before the arrest.
7. That I am an out-patient at the Gwagwalada Specialist Hospital where I have been undergoing treatment for renal failure. The report is hereby attached and marked EXHIBIT K2.
8. That the prison which I am kept has no facilities for the treatment of the kind of ailment
9. That the nature of this ailment is contagious and may affect other prison inmates if not adequately treated..
10. That an application for bail was before the Bwari Chief Magistrate of the Bwari Magisterial District which was refused. The ruling of the Magistrate refusing bail is hereby attached and marked EXHIBIT K3
11. That I make this affidavit in good faith believing same to be true by virtue of the Oaths Act.

Deponent

SWORN to at the High Court Registry, Abuja
This.....day of_____2014

BEFORE ME

COMMISSIONER FOR OATHS

QUESTION 2 WEEK 10

SUMMONS:

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA

CHARGE NO:
SUMMONS NO:

BETWEEN

THE STATE OF LAGOS
AND

COMPLAINANT/RESPONDENT

1. BOLANKE MANITOBA

DEFENDANT/APPLICANT

2.KAMANGA ZAKI

3.FAKINAMA ABUNGA

4.ZAMPARI BUNGU

5.BRUTUS SAFOROVA

DEFENDANTS

6.YANSIBE CANTONA

SUMMONS FOR BAIL FOR BOLANKE MANITOBA

BROUGHT PURSUANT TO SECTION 115(1) ADMINISTRATION OF CRIMINAL JUSTICE LAW OF LAGOS STATE 2011, SECTION 35(4) AND (5) AND SECTION 36(5) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999(AS AMENDED) AND UNDER THE INHERENT JURISDICTION OF THE COURT

LET ALL PARTIES concerned appear before this Honourable Court on the day of,2017 at the hour of 9'clock in the forenoon or so soon thereafter in the hearing of an application by counsel to the defendant/applicant's praying for the following orders:

1.AN ORDER admitting the defendant/applicant to bail pending his trial.

2 AND SUCH FURTHER ORDERS as this Honourable court may deem fit to make in the circumstances of this case.

DATED THIS DAY OF 2017

K. O. D. Okwor Esq.
Applicant's Counsel
Okwor & Co
Plot 111 Mary Close,
Victoria Island, Lagos

ON NOTICE TO:

The Hon. Attorney-General of Lagos State
Ministry of Justice
Lagos

AFFIDAVIT IN SUPPORT

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

CHARGE NO.....

MOTION NO:.....:

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT/RESPONDENT

AND

1. IKPO UDO

DEFENDANT

2. BURAGO MUSA

DEFENDANT/APPLICANT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR BAIL FOR BOLANKE MANITOBA

I, BURAGO MUSA, adult, male, Christian, Nigerian citizen, Mechanic, resident at 15, Udeh Street, Surulere, Lagos, do hereby make oath and state as follows:

1. That I am the accused/applicant in this case and by virtue of my position, I am conversant with the facts of the case and the circumstances leading to this case. (That I am the elder brother to the defendant/applicant and by virtue of

2. That I was arrested along with Ikpo Udo by the police officers of the Bwari Division, Abuja on Friday the 2nd of January 2013 on the allegation of robbery of one Mrs. Ene Agbo on the that date.

3. That i were arraigned before the Bwari Chief Magistrate in the Bwari Magisterial district, Abuja on 20th January 2013 on a charge of robbery and that the court ordered that he be remanded in prison . The charge sheet is hereby attached and marked as EXHIBIT K1

4. That I was with my wife on the said day and the time in which the offence was said to have been committed.

6. That I am a bus driver plying the route of Bwari to Lokoja before the arrest.

7. That I am an out-patient at the Gwagwalada Specialist Hospital where I have been undergoing treatment for renal failure. The report is hereby attached and marked EXHIBIT K2.

8. That the prison which I am kept has no facilities for the treatment of the kind of ailment

9. That the nature of this ailment is contagious and may affect other prison inmates if not adequately treated..

10. That an application for bail was before the Bwari Chief Magistrate of the Bwari Magisterial District which was refused. The ruling of the Magistrate is hereby attached and marked EXHIBIT K3

11. That I make this affidavit in good faith believing same to be true and correct and in accordance with the provisions of the Oaths Act.

Deponent

SWORN to at the High Court Registry, Abuja

This.....day of_____2014

BEFORE ME

COMMISSIONER FOR OATHS

ETHICAL ISSUES

- A lawyer can not stand surety for his client in criminal matters. Rule 37(1) RPC.
- A prosecutor should not suppress facts that he knows will be favorable to the accused person's case. Rule 37(6) RPC
- Where an accused person discloses facts that clearly shows his guilt, the lawyers in making an application for bail, shall not present any evidence inconsistent with those facts. Rule 37(3) RPC.
- Rule 15.
- Rule 1.
- Rule 30.

WEEK 11.

CONSTITUTIONAL SAFEGUARD TO ENSURE FAIR TRIAL OF AN ACCUSED PERSON.

- **The legal safeguards to ensure the fair trial of an accused/defendant is circumscribed in Chapter 4 of the CFRN 1999(as amended). See FAJEMIROKUN V COMM. BANK(CREDIT LYONNAISE).**
- **The fairness of any trial is fundamental to 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.**

An accused person is in a disadvantage position when compared with the prosecutorial authority which is the state. Thus the constitution and some statutes have certain provisions to safeguard the interest of the accused person during trial. The constitutional safeguard aside from other things give a good face to the Nigerian Criminal Justice System. The constitution, FRN 1999 (as amended) in chapter IV, the Criminal Procedure Law, the Criminal procedure Code and the Administration of Criminal Justice Law of Lagos state are the relevant statutes. Generally depending on the right of an accused that was breached, it can nullify the entire criminal proceeding no matter how well it was conducted.

The constitutional safeguards are as follows:

- Right to fair hearing – s. 36(1) & (4) CFRN
- Right to be presumed innocent – s. 36(5) CFRN
- Right to be informed of the crime alleged – s. 36(6)(a) CFRN
- Right to be given adequate time to prepare for his defence – s. 36(6)(b)
- Right to a counsel – s. 36(6)(c)
- Right to examine prosecution witnesses – s. 36(6)(d)
- Right to an interpreter – s. 36(6)(e)
- Right to be tried only for an offence known to law – s. 36(12), Aoko v. Fagbemi
- Right to one trial for one offence – right against double jeopardy - s. 36(9)
- Right against trial for an offence for which accused has been pardoned – s. 36(10)
- Right to remain silent – s. 36(11)
- Right against trial upon legislation – s. 36(8)

1. Right to fair hearing – s. 36(1) & (4)

This right available to an accused person is contained in s. 36(1) & (4). Section 36(1) provides that accused person shall be entitled to fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence. Under the constitution and other statutes, the definition of fair hearing is not provided for. The Black's Law Dictionary defines is as a judicial or administrative hearing conducted in accordance to **due process – Due process is the conduct of legal proceedings in** accordance with laid down procedure of the law (rules and principles) for the protection and enforcement of **private rights**, including notice and the right to a fair hearing before a tribunal. Thus, where due process has not been followed by the trial court, that conviction may be quashed by the appellate court no matter how well the trial was conducted.

In the case of AUDU V FRN, the SC defined fair hearing as a trial or hearing conducted according to all legal rules formulated to ensure that justice is done to all parties.

Fair hearing may be likened to the issue of jurisdiction. It can be raised at any time of the proceedings even on appeal which once an accused person has raised the issue of fair hearing, the court must urgently entertain same before proceeding further with the trial as held in **Babalola v Oshogbo Local Government.**

The court/tribunal must be constituted in such a manner as to secure its independence and impartiality.

Parties cannot waive the Right to fair hearing as held in **Jang v INEC, Nwokoro v Onuma.** **A party cannot waive the independence of the tribunal..** This is because right to fair hearing is fundamental and the constitution of the tribunal to ensure independence is sacrosanct.

The crux of fair hearing is on the procedure leading to the determination of the case and not on the correctness of the decision as held **in Orugbo v Una.** This is because justice must not only be done, but must be manifestly and the undoubtedly seen to be done. **Sussex Justices, Ex parte McCarthy, Agha v IGP.** The test is a reasonable man who observed the proceedings.

From the provision of s. 36(1), it can be said that fair hearing is encapsulated in two principles of law, namely:

- Audi alterem partem meaning the other party shall or must be heard
- Nemo judex in causa sua meaning a person shall not be a judge in his own case

The first pillar which states that the accused must be heard as held in **Unibiz v Credit Lyonnaise** and such is an opportunity to be heard. It does not state that the defendant must be heard at all cost. Also it means that the trial is to be completed within a reasonable time and judgment should be given within a reasonable time as well. An accused person who failed to use the opportunity cannot complain on appeal as held in **Section 36(2)(a) CFRN 1999, Sule v Ebene, NBA v Akintokun.** The other party is entitled to foreclose the defendant where he fails to utilize the opportunity to be heard only to frustrate the proceedings.

Also, that the accused person must be given the opportunity to get a counsel of his choice and this must not be denied the defendant as held in **Akabueze v FRN.** The accused should also be given the opportunity to react to any issues raised suo moto by the judge as held in **Odessa v FRN. Thus, where the court raises an issue, it must hear both parties especially where the issues so raised by the court is fundamental that it affects the mind of the court. Failure to hear both parties, the court is said to have denied the parties the right to fair hearing. However, where the issues are not so fundamental, failure to hear a party, does not amount to absence of fair hearing.**

Importantly in proceedings for capital offence, an accused must be represented by a legal practitioner. See **Jonah v. State.**

Furthermore, this first pillar further revolves around absence or likelihood of bias as held in **Umar v Onwudine**. A judge must not make unguarded comments through conducts or words. In this like, a reasonable man after witnessing a trial proceeding of an accused should go home with the impression that justice has been done. Thus fair hearing is an objective test (reasonable man). Hence a judge is not expected to be interested in the matter before it; must not be interested in the outcome of the proceeding; must not be unnecessarily attached to subject matter or any of the parties. Every court must adhere to the elements of fair hearing with no exception of any court. Falodun v. Ogunse.

The defendant must be given opportunity to call his witnesses. Section 36(6)(b), 1999 Constitution. However, where a defendant had been given an opportunity to call a witness on a next adjourned date and he defaults, the defendant cannot be heard to complain that an opportunity was not given to him, thus the opportunity to call that witness is foreclosed. IGBALE V STATE.

The defendant must be allowed to cross examine prosecution witness. Section 36(6)(d) 1999 CFRN.

Fair hearing entails that the proceedings of the court should be concluded within a reasonable time. **Section 36(1)(4) Constitution, Section 382 ACJA, Article 7(1) African Charter of Human and Peoples Right, Okeke v State**. SEE **Effiom v State**, where it was held that reasonable time is dependent on the circumstances of the case.

Query: **Does Accelerated hearing negate the principles of fair hearing? See FHC(PD), CA(PD), SC(PD), Oyakhere v State. It does not negate the principle of fair hearing provided the parties are given an opportunity to be heard. Thus, where the accelerated hearing leads to a miscarriage of justice, the principle to fair hearing will be said to have been violated.**

Does shielding of witnesses amount to denial of fair hearing?

- Judge must accord equal treatment to all parties as held in GITTO V ETUK
- Fair hearing applies to all court and tribunal, it is not court sensitive as held in FALODUN V OGUNSE
- The test for fair hearing is objective as held in YABUGBE V COP, ALOBATERE &ORS V FASENU &ORS.

NEMO JUDEX IN CASUA SUA

- **No judge** should preside over a matter in which he has a personal interest in or remotely connected as held in , Orugbo v Una.
- **Rule against bias**—Garba v UniVERSITY of Maiduguri. Womiloju v Anibiri.
- The judge must not be interested in the parties, subject matter, outcome of the proceedings and pecuniary interest in the matter.

- It was established in the SC in the case of *Effiom v State*, *Ekwureku v State*, *Ozoemene v Ozoemene* that the following must be observed to ensure fair hearing
 - ✓ **The parties should be given the right to be heard**
 - ✓ **Trial must be held within a reasonable time**
 - ✓ **The court must be established by law**
 - ✓ **Adjudication must be independent.**
 - ✓ **Adjudication must be impartial**
 - ✓ **Easy access to court**
 - ✓ **Equal treatment and opportunity to all concerned.**
 - ✓ **Proceedings should be held in public.**
 - ❖ **The exceptions to holding the proceedings in public include:**
 - ❖ In the interest of defence of public safety, public order or public morality – s. 203 CPA, section 36(4)(a) 1999!CFRN
 - ❖ When a young person who has not attained the age of 18 years is to give evidence in the case of an offence which is contrary to decency and morality – s. 204 CPA, section 36(4)(a) 1999!CFRN
 - ❖ When it is considered necessary due to special circumstances to protect the private lives of the parties to the proceedings. section 36(4)(a) 1999!CFRN
 - ❖ When a minister of the federation or a commissioner of a state satisfies the court that it will not be in the public interest for any matter to be publicly disclosed, the court may hear the evidence in relation to such matter in private. section 36(4)(b) 1999!CFRN
 - ❖ When statute expressly provides that trial should not be open to the members of the public. See section 6(5) Children and young person law

How do you prove denial of fair hearing?

- Miscarriage of justice is inherent in denial of right of fair hearing
- A party who establishes denial of his right to fair hearing is not required to prove miscarriage of justice. *Mpama v FBN plc*.

EFFECT OF BREACH OF FAIR HEARING: *Audu v FRN*, *Akinfe v state*

- Proceedings and the outcome of the decision arrived at by the court becomes a nullify.
- Importantly, it is immaterial if that same decision would have still been reached in the absence of the violation.

See the following cases:

NBA V. Akintokun, the Legal Practitioners Disciplinary Committee held that the *audi alterem partem* rule is not breached if the appellant was given adequate opportunity to appear and present his case or defence to the case against him but he chose not to avail himself of the opportunity. .

2. Right to be presumed innocent – s 36(5) CFRN

It provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty as held in *Okoro v State*. The above provides for a rebuttable presumption of law and the prosecutor has the burden of proving the guilt of the accused beyond reasonable doubt pursuant to section 135 EA 2011,. This is the legal burden. In *Okoro v. State*, it is the duty of the prosecution to prove the guilt of the accused person beyond reasonable doubt.

However, the provision of s. 36(5) provides that nothing in the section is to invalidate any law which imposes upon any such person (accused person) the burden of proving particular facts. This is the evidential burden which can be on the accused. See SECTION 139(3)(C) AND 140 EA 2011. Pursuant to section 139(3)© the defendant has the burden of proving the defence of insanity and intoxication. Section 140 provides that when a fact is within the knowledge of a person, the person shall have the burden of proving same. **In Agbiti v. Nigerian Navy, the court had stated that there is presumption of innocence in favour of the accused which entails the proper consideration of his defence even if the defence is weak, stupid, fanciful and improbable.**

3. Right to be informed of the crime alleged – s. 36(6)(a) CFRN, section 215 CPL, 287(1)CPC, 211(1)ACJL, 271(1), 356(1)ACJA

It provides that the accused shall be entitled to be informed PROMPTLY as held in **Ibrahim v State** in the language that he understands as held in **Okeke v State** and in DETAIL of the nature of the offence. Section 211(1) ACJL.

The accused has the right to have the charge/information explained to him before his plea as held in *OKEKE V STATE*.

There is a difference between s. 35(3) and s. 36(6)(a) as s. 35(3) relate to pre-arraignment constitutional rights (police arrest, detention and investigation). Section 36(6)(a) is dealing with arraignment of an accused.

An accused should not be convicted for an offence not charged with or for which he did not take a plea as held in *YAHAYA V STATE*.. In other words, as a general rule an accused cannot be convicted of the offence that he did not plead to. IN CRIMINAL MATTERS, IT IS PLEA THAT ACTUALLY GIVES THE COURT JURISDICTION, THEREFORE, WHERE ACCUSED DID NOT TAKE A PLEA, THE COURT IS ROBBED OF ITS JURISDICTION.

EXCEPTIONS TO RULE:, There are exceptions:

1. The accused can be convicted of a lesser offence than the one which he is charged – s 218(1) CPC, 179(2) CPL, 171(1)(2)ACJL. In *Adava v. State*, the accused persons who were charged and convicted for homicide punishable with death at the Supreme Court, their appeal was allowed and they were convicted for a lesser offence. The rationale is that where an accused is charged for a grave offence, he is deemed to have notice of the lesser one. See

Maja V State and the ingredients for proving the graver offence is included in proving the lesser offence.

Murder to manslaughter

Rape to attempted rape

2. Also an accused can be convicted of another offence by which he was not charged based on the evidence disclosed at trial. See generally s. 179 CPL, s. 217 CPC and s. 166 ACJL. Odeh V FRN, section 233 ACJA. Nwachukwu v state.

What is the effect of breach of Section 36(6)(a) 1999 Constitution.

The breach of these sections renders any trial a nullity no matter how well conducted. YAHAYA v state, Timothy FRN. The SC held that the trial and conviction of the appellant was a nullity for failure to comply with Section 36(6)(a) CFRN 1999.

For instance, A is charged with stealing biro, if it is proved in evidence that he received stolen biro, he could be convicted for receiving stolen property. In Nwachukwu v. State, the accused was being tried for armed robbery. At the end of the trial, the offence was not proved but he was convicted of robbery. The accused appeal was dismissed. The ingredient of offence for which the accused is to be convicted must be contained in the evidence of the offence for which he is being tried.

4. Right to be given adequate time to prepare his defence – s. 36(6)(b) CFRN, Olabode v state

The right of the accused person to adequate time and facilities to prepare for his defence extends to seeking adjournment. An accused/defendant is entitled to reasonable adjournment to secure attendance of witness. Failure to secure the attendance of the witness, the court can issue WITNESS SUMMONS, Section 186(1) CPL, 177 ACJL, 193(2) CPC.

The courts are enjoined to grant an accused adjournment. However adjournment cannot be granted ad infinitum. Thus an accused is entitled to reasonable adjournment. Where an accused seeks adjournment for the purpose of attendance of material witness or material evidence to be submitted by such witness, the court will grant the adjournment provided certain conditions precedent are present:

- The witness is a material witness. SECTION 200 Evidence Act, SS. 201-204 EVIDENCE ACT.
- The accused was not guilty of neglect in procuring the attendance of the witness.
- That the material witness will be available to attend the hearing on the next adjourned day (certain date).

An accused person has right to proof of evidence and witnesses statements. The counsel is to apply to the police to give the certified true copy of proof of evidence. If police refuse, the

counsel is to make an oral application to the court for an order directing the police to release the certified true copy of the proof of evidence. Where the proof of evidence is not available, that can serve as a ground for an adjournment. *UKET V FRN*, *UWAZURIKE V FRN*

The adjournment could be to secure the attendance of his lawyer. In all adjournment for attendance of an accused person's lawyer in court relating to trial for capital offence must be granted by the court. See **Akabueze v FRN, University of Ilorin v Akirongunde**. The defendant must show the court that he has the means to secure the attendance of the counsel otherwise the court will provide legal representation for the accused from the Legal Aid.

In the trial off capital offence the court must adjourn once accused counsel is not in court **AS HELD IN UDO V STATE**. However, For other offences, the court is not bound to grant an adjournment for the attendance of accused counsel. Adjournment is at the discretion of the court as held in **Shemfe v COP**.

5. Right to counsel – s. 36(6)(c) CFRN

The accused right to be defended by a legal practitioner of his choice. The right to counsel is not court sensitive, thus available to the accused before any court. In *Uzodinma v. COP*, where an accused was denied legal representation before an Area court based on s. 28 Area Court Edict and s. 390 CPC, the Supreme Court held that the above provisions being inconsistent with the provision of the constitution were void.

The accused must not be denied right to counsel as in *Akabueze v FRN*. The court is duty bound to inform accused of this right pursuant to Section 349(1)-(3) ACJA. Counsel cannot be imposed on the accused except in capital offences. Right to counsel is available in all criminal cases.

Where an accused person due to his impecuniosity is unable to pay counsel does not mean denial of right to be represented by a counsel. *Amanchukwu v FRN*.

It is pertinent to note that the accused insistence on hiring a disqualified/unqualified counsel does not validate this right. Section 2 LPA, *AWOLOWO V MIN. INTERIOR AFFAIRS & ORS*,

Thus, the legal practitioner must be that which does not suffer any legal disability. Section 2 of Legal Practitioners Act gave definition of a legal practitioner. Senior Advocates of Nigeria are not to appear before an inferior court (Magistrate, Area and Customary court). See *Registered Trustees of ECWA v. Ijesha*.

Where an accused cannot afford the services of a legal practitioner, application can be made to the Director-General of the Legal Aid Council and a counsel will be assigned to such accused upon fulfilment of the condition precedents. Where an accused appears in court without a counsel, he is entitled to be informed by the court of his right to defend himself personally or through a counsel of his choice. SECTION 349(6)(a) and 267(1) ACJA.

RIGHT TO COUNSEL IN CAPITAL OFFENCE.

Section 33(1) 1999 Constitution, 352 CPA, 186 CPC, 259 ACJL, 267(4), 349(6)(b) ACJA.

ACJA

The general rule is that the defendant charged with a capital offence or an offence punishable with life imprisonment shall not be allowed to represent and defend himself pursuant to section 349(6)(b) and 267(1) ACJA. OKOTOBO V STATE.

However, pursuant to section 267(4) ACJA, the defendant can elect to defend himself in person after being informed of the mandatory requirement of being represented and the court informs him of the risks of defending himself in person. Where the defendant elects to defend himself in person, it is not a ground to void the trial.

ACJL

SECTION 259.

NB: The CPA and CPC provides for mandatory legal representation for capital offences. Where a person charged with a capital offence is not represented by a counsel, he should have one provided for him by the court. See Josiah v. State

6 Right to examine witnesses – s. 36(6)(d) CFRN

- The right to call and examine his own witnesses
Right to cross-examine prosecution witness. This right arises at the end of the testimony of each and not ALL the prosecution witness. TULU V BAUCHI N.A, HARUNAMI V BORNO N.A.
- He need not be represented by counsel
TULU V BAUCHI N.A, HARUNAMI V BORNO N.A
- ❖ The court cannot take over the examination on behalf of the accused person where he is unrepresented by counsel as this will amount descending into the arena. Thus, the only duty of the court to inform the accused person of the right to examine each witness of the prosecution after each testimony.
HOWEVER, section 189(2) CPC, provides that the court shall examine the witnesses of the prosecution where there is no prosecutor in court.
- ❖ There are three categories of examination of witnesses in criminal trials to wit; Examination-in-chief, Cross- examination and re-examination. See 214 and 215 EA.
- ❖ The order of examination of witnesses. See 216 and 217 EA 2011.
- ❖ The party that called a witness can cross examine such witness called when the witness is a hostile witness. The counsel makes an application for leave to the court to declare such witness a hostile witness.
- ❖ Assuming 3 accused persons charged for an accused are represented by the different counsel, what is the order of cross examination where PW1 has testified? All three defendants will cross-examine the PW1 before he can be re-examined pursuant to section 216 EA.

- ❖ Where DW1 has been examined in chief by the 1st defendant, the co-defendants must conclude their cross examination before the prosecution can cross examine the DW1 of the 1st defendant and 1st defendant counsel can re-examine DW1. Section 217 EA.

The accused person has a right to call his own witnesses to testify on his behalf. Also, the accused has the right to cross-examine the prosecution witnesses. The right to cross-examine prosecution witnesses is not at the end of all witnesses' testimonies but one after the other. After examination-in-chief of the first witness, the accused will then cross-examine that witness. In *Tulu v. Bauchi Native Authority*, the trial court after the evidence of the prosecution witness did not allow the accused to cross-examine the witness but put some questions to the witness. The Supreme Court held that the trial was a nullity. Section 189(2) CPC. For instance, if three accused persons are represented by a counsel, then cross-examination may be done at a stretch or randomly by the counsel. However, where different counsel represent the various accused persons, the cross-examination will be done in order of the accused persons, e.g 1st, 2nd, 3rd etc in that order.

7. Right to an interpreter – s. 36(6)(e) CFRN, section 195 ACJL.

Who is an interpreter? An interpreter means a person who translates especially orally from a language to another. An adult person knowledgeable in the accused language and that of the court. No special qualification is required. PLEASE NOTE that the judge can only use its proficiency in the language to ensure that the interpretation is accurate and correct but it cannot interfere for the accused as it cannot descend into the arena

Section 36(6)(a) did provide that the accused has a right to be informed promptly of the charges against him in the language that he understands. Thus where an accused does not understand the language of the court, he has a right to an interpreter. See *Ogunye v. State*.

Thus where an accused is charged with criminal offence, and where he does not understand the language of the court. The accused is entitled to an interpreter at no cost as held in *Uwakweghinya v State*, *Nwachukwu v. State*. Where the accused understands the language in which evidence was given against him, an interpreter is not necessary. See **Onyia v state**

The interpreter before interpreting must be sworn on oath/affirmed, S. 242(1)&(2) CPC. It is the duty of the accused to tell the court or inform the court that he does not understand the language of the court. See *Bayo v FRN*, *state v gwonto*.

The interpreter must be independent and must not be interested in the outcome of the matter. **THUS THE COUNSEL CANNOT INTERPRET TO HIS CLIENT, THE ACCUSED.**

What will the court record? The court can only record what is interpreted to it and not the exact words it heard from the accused as held in *FRN V MOHAMMED*, *MADU V STATE*.

What is the Language of the court? The language of the court is English Language as held in *FRN V MOHAMMED*, *MADU V STATE*. How do we reconcile the local language used in Area Courts and Customary Courts?

The court must also understand the accused language. Bayo v FRN.

The right to an interpreter cannot be raised for the first time on appeal EXCEPT it was raised and denied at the lower court as held in *Udesen v. State*. Thus, the legal practitioner representing the accused is to raise the issue of an interpreter at the trial court and not on appeal. Thus, if represented by counsel, he cannot complain on appeal for denial of right to interpreter as held in *Onyiacha v State*, *Nwachukwu v State*.

Accused may waive this right if the court is of the opinion that interpretation of the proceedings is not necessary. Thus, the right to interpreter can only be waived with the CONSENT OF THE COURT. *ONYIA V STATE*.

As held in *Ajayi v. Zaria Native Authority*, The interpreter must be accurate and comprehensive in his interpretation of the proceedings of the court to the accused. See *Zaria Native Authority v. Bakari*. He must interpret everything said by the witnesses, complainant and the court.

WEEK 12.

8. Right to be tried only for an offence known to law – s. 36(12) CFRN

It provides that subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law AS HELD IN *OLIEH V FRN*, *AOKO V FAGBEMI*.. From the above, for there to be an offence in Nigeria, the following are important:

- The offence must be defined in a written law; and
 - The penalty thereof must be prescribed by the same written law
- Thus, where one element is absent, the court cannot try such person as there is no infraction.

The locus classicus is *Aoko v. Fagbemi*, where the appellant was charged for adultery under the Criminal Code and convicted. The Court of Appeal had held the conviction unconstitutional as the offence of adultery was not defined by any law in southern Nigeria and no penalty prescribed thereof.

In the cases of *AG Federation v. Isong* and *Olieh v. FRN*, the offence was defined but no punishment was prescribed.

The provisions of s. 36(12) also apply to the court martial. In *Asake v. Nigerian Army Council*, where the appellant had borrowed money from his subordinate. He had been charged and convicted for the offence of misconduct to the prejudice of military discipline. The Court of Appeal held that offence of borrowing money from subordinate was not defined in law and no penalty provided there of.

The offence must be an Act of National Assembly, State Assembly, Local government bye laws or a subsidiary legislation made thereof. Also, any international treaty which Nigeria has agreed to and ratified.

Same law must provide for the same offence and punishment as held in AG FEDERATION V CLEMENT ISONG

9.Right to one trial for one offence – s. 36(9) CFRN, sECTION 221(1) & 181(1)(A) CPL, 223(1) CPC, 173(1)(a) & 216(1) (b)ACJL

It provides that no person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence same upon the order of a superior court. The right is also known as ‘autre fois convict’ or ‘autre fois acquit’ or ‘bar plea’.

The plea cannot be raised on appeal after conviction. Edu v COP. The appeal court has the power to order for a fresh trial before a different court where the judge of the superior court is of the opinion that there is a miscarriage of justice from the trial court.

There are four conditions or ingredients which must be fulfilled and must CO-EXIST before the right can avail an accused person – namely:

1. The first trial was before a court of competent jurisdiction as held in Ibeziako v COP. In other to determine a court of competent jurisdiction, the decision of Madukolu v. Nkemdili should be looked at. For instance, the magistrate courts are not empowered to try a person for capital offences. If a magistrate tries a person for the offence of murder and the person is charged before the high court, such person cannot plead autre fois acquit or convict. In Umeze v. State, the conviction of the appellant was set aside by the Supreme Court when it was shown that the magistrate who conducted the committal proceedings was not competent to do so and in such circumstances, a plea of autre fois acquit is not available.
2. That the trial ended in a conviction or acquittal. Thus a nolle prosequi entered by an AG or a withdrawal by a prosecutor before the accused presented his defense would amount only to a mere discharge and not acquittal
3. That the first trial was a criminal charge. Thus where the accused was tried under the provisions of the constitution of an association to which he belongs, that would not be a criminal charge. See R v. Jinadu
4. That the offence for which the accused is now charged is the same with that that he was previously charged. The ingredients are the same. Thus if B is charged for stealing C’s book and convicted by a court of competent jurisdiction, B cannot be charged for stealing C’s book again.

10. Right against trial for an offence for which accused has been pardoned – s. 36(10) CFRN, SECTION 175 & 212 CFRN, section 211(b) CPA, section 216(1)(b) ACJL

It provides that no person who shows that he has been pardoned for a criminal offence shall again be tried for that offence. Thus where a person who was convicted of an offence (criminal) has been pardon, he can no longer be tried for that offence. The right to pardon is the express right of the President and Governor – s. 175 and 212 CFRN.

- a. To an accused who is not yet standing trial – Amnesty
- b. To an accused standing trial – Nolle prosequi
- c. To an accused who has already been convicted – Pardon

Pardon may be granted conditionally or unconditionally. Pardon presupposes conviction. If already convicted and subsequently pardoned he cannot be referred to as an ex-convict again. *Falae v Obasanjo*.

The effect of pardon granted to a convicted person is that it approbates the incident of conviction and it is deemed that the beneficiary has never committed an offence. The proof of pardon is by producing an instrument of pardon granted by the President or Governor called CERTIFICATE OF PARDON as held in *OKONGWU V STATE*. Onus is on the person relying on it as held in *Okongwu v State*.

Proof of pardon goes to the root of the offence. Pardon is different from amnesty, in that in amnesty, the persons involved have committed an offence and the state decides not to prosecute them on the agreement that they would not commit the offence again.

11. Right to remain silent – s. 36(11) CFRN

It provides that no person who is tried for a criminal offence shall be compelled to give evidence at the trial. Section 36(11) CFRN, section 180(a) EA. Thus, it is the right of an accused to elect whether to give evidence or not. (he may call witnesses but he may not testify) (he may testify and not call witnesses, he may testify and call witnesses and he may not testify and he may not call witnesses) This is also provided for in s. 180(a) Evidence Act 2011, s. 236(1) CPC, s. 278(1) CPA and s. 244 ACJA.

An accused person, even though a competent witness is not a compellable witness. Section 179 & 180 EA, *Abidoeye v FRN* (2014)

Where an accused remains silent – elects not to give evidence, the law forbids the prosecutor or court from submitting that the silence amounts to an admission of guilt but the prosecutor may comment but the comment should not suggest that the accused failed to give evidence because he is guilty of the offence charged as held in *EA. IGBALE V STATE*.

DRAFT OF AN ORAL APPLICATION NOT OFFENDING SECTION 181 EA.

MY LORD IT IS ON RECORD THAT THE PROSECUTION CALLED 5 WITNESSES TO PROVE BEYOND REASONABLE DOUBT THE GUILT OF THE ACCUSED. MY LORD, IT IS ON RECORD THAT PARTICULARLY PW3 GAVE AN EYE WITNESS RECORD THAT HE SAW THE DEFENSE STAB THE VICTIM TO DEATH. MY LORD,

IT IS ALSO ON RECORD THAT THE DEFENDANT DID NOT MAKE ANY STATEMENT AS TO HIS DEFENSE. MY LORD, WE HUMBL Y URGE THE COURT TO HOLD THAT THE PROSECUTION PROVED ITS CASE BEYOND REASONABLE DOUBT.

CPC PROVISION.

Query: how do we reconcile section 181 EA and 236(1)(c) CPC. The evidence Act deals solely on the evidence of proceedings and thus any contrary provision relating to evidence will be subsumed under the evidence Act.

Section 236(1)© CPCThe court may draw an inference from the silence of the accused person. It however bars the prosecution from making any comment.

NOTE THE GROUNDS UNDER WHICH A NO CASE SUBMISSION CAN BE UPHELD AND THE IMPLICATIONS WHEN THE NO CASE SUBMISSION IS OVERRULED.

12. Right against trial upon retroactive legislation – s. 36(8), CFRN.

Section 36(8) provides that no person shall be held guilty of a criminal offence on account of any act or omission that did not, at the time it took place constitute such an offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed as held in **EGUNJOBI V FRN, FRN V IFEGWU**. Under this right, there are two limbs:

- a. At the time of act or omission, no law creating such offence but subsequently a law is enacted to punish such act or omission. The constitution says that in that circumstance, no person can be said to have committed an offence.
- b. The second limb is that if the offence was punishable with a fine as at the time it was committed but subsequently an act was enacted making the punishment imprisonment, the constitution says a person can only be sentenced to a fine.

Thus, before a person can be liable for conviction, his act or omission must constitute an offence as at the time of doing or omitting to do so.

13. Right to be tried in public---S. 36(3) CFRN, S. 203 CPA; S. 225(1) CPC; S. 200 ACJL

14. Right to speedy trial--- S. 36(4) CFRN

Accused person is entitled to trial within a reasonable time. Okeke V State. Reasonable time is the time that will make the judge not forget the evidence given by witnesses. The delay being concerned with here is the one at the commencement of trial.

Proof of unreasonable delay is not sufficient to nullify conviction—Okeke v state, Effiom v state. However, proof of unreasonable delay plus miscarriage of justice will lead to setting aside of conviction.

NB: That judge may order sentence to run from the period of detention in order to balance the interest. Also, the C.J may release awaiting inmate.

15. Right to be present at trial--- S. 210 CPA; S. 208 ACJL.

WEEK 13.

ATTENDANCE OF PARTIES AND ARRAIGNMENT

TIJANI

Summons is issued to secure the attendance of the defendant in court. This is because a summons is directed to the defendant to come to court to answer to the charges leveled against him. Where the court is satisfied that the summons have been issued (he has been duly summoned and the defendant refuses to come to court, it issues a warrant of arrest. Section 96 CPL, 94 ACJL, 352 ACJA

WARRANT may however be issues at first instance as in SECTION 95 ACJL,97 CPL. Please Note: a bench warrant is issued when a defendant jumps bail and not when the defendant has been duly summoned but he fails to appear before the court.

Parties to a criminal trial or proceeding are the complainant and the accused person/defendant. The victim is not a party but merely a person who have an interest in the matter. The parties must be present in a trial.

ATTENDANCE OF THE COMPLAINANT

At all times, the complainant must be present when the case is fixed for hearing.

The presence of the complainant in court is an evidence of his willingness to prosecute the case. Thus, where the state is absent but the defendant is present., the court may make possible orders to wit;

- a. Where the complainant has due notice of the time and place of hearing and does not appear in court, The court may dismiss the the complaint. **Consequently, the court will discharge the defendant/accused person. The discharge however does not amount to acquittal. SECTION 165 CPC,** Section 280 CPL, 351 ACJA, 232 ACJL
- b. The court may upon reasonable satisfaction of the reason for which the complainant is absent, adjourn the hearing of the complainant on some future date as the court thinks just. Section 280 CPL, 351 ACJA, 232 ACJL, section 165 CPCL

CPL

Section 280

CPC

SECTION 165

ACJL

SECTION 232

ACJA

351

Attendance of the Defendant

The position of the Nigerian law is that an accused person must always be in court during the whole of his trial – **s. 210 CPL, s. 208 ACJL, s. 153 CPC. Section 266 ACJA**. See Adeoye v. State, Lawrence v. King. Trial of an accused person in absentia is unknown to the Nigerian law as held in ADEOYE V STATE. He must be in attendance from the commencement of the trial to the time he is sentenced or acquitted. Even when the trial leaves the court room, the accused person must be in such place. There are however exceptions wherein the attendance of the accused may be dispensed with as provided for in

SECTION 100 CPL;;

- It is only in the magistrate court
- According to the CPL, where the offence attracts N100 fine or 6 months imprisonment, the accused can plead in writing. **However the accused cannot be sentenced in absentia.**
- The defendant must have pleaded guilty either in person or through his legal practitioner.

Under the ACJA, section 135

- It is only the magistrate court
- The offence attracts a fine not exceeding 10,000.
- Imprisonment for a term not exceeding 6 months.

Another instance in which the court can dispense with the personal attendance of the defendant include:

- The court is investigating into the unsound mind of the defendant. Section 230(2) CPL, 217(2) ACJL. In Lagos, the trial is already commenced. **THE ORDER THE COURT WILL MAKE IS BASED ON THE REPORT OF THE MEDICAL OFFICER.**
- Misconduct at trial. Section 208 ACJL, 266(A) ACJA, section 153 CPC. The defendant misconducts himself in such a manner as to render his continuing presence impracticable or undesirable OR
- UNDER ACJA:
at the hearing of an interlocutory application..**Section 266(a)(b). Thus, in ACJA, a preliminary objection on the jurisdiction of the court, the court can dispense**

with the physical attendance of the defendant. HOWEVER, in other jurisdictions this second provision does not avail the defendant.

Secondly, the record of court must state that the court cannot have the presence of the defendant as it is impracticable to have proceedings undisrupted.

PLEASE NOTE THE DISPENSING OF THE ATTENDANCE IS DISCRETIONARY.

Peculiar PROVISIONS UNDER ACJA

- Hearing of interlocutory application pursuant to section 266(b) ACJA
- Section 352: Consequences and steps after failing to attend court:
 - ✓ Warrant of arrest where the summons have been duly issued and served. SECTION 352(1)(A)
 - ✓ Adjourn hearing of the case (where there is proof that the summons was not duly served) SECTION 352(1)(B)
 - ✓ After arrest, commit to prison
 - ✓ Jumping bail does not truncate trial. SECTION 352(4). The trial will continue in the absence of the defendant after issuing a bench warrant to secure his attendance and the defendant fails to attend the court without reasonable explanation and the court has made an ADJOURNMENT TWO TIMES.
 - ✓ **Trial may be continued in absentia but SENTENCE must be delivered only in the Presence of the defendant. SECTION 352(5) ACJA**

NON APPEARANCE OF DEFENCE COUNSEL

- Section 233 ACJL, 349 ACJA, 267(4) ACJA
- The options are as follows:
 - ✓ To engage another counsel or get legal Aid
 - ✓ Defendant to make private arrangement if he wishes
 - ✓ Adjournment to engage another counsel
 - ✓ If defendant fails or unable to secure counsel, legal Aid is to be provided
 - ✓ NOTE: role of Pro Bono services.

NON APPEARANCE OF BOTH PARTIES

- ❖ Court to make order as the justice of the case requires, SECTION 236 ACJL, SECTION 353 ACJA, SECTION 282(1) CPL.

Such order may entail:

- ❖ Court may adjourn to compel the attendance of both parties
- ❖ Court may make an order as to Payment of costs. SECTION 353 ACJA, SECTION 282(1) CPL.

APPEARANCE OF BOTH PARTIES

The court will proceed to trial pursuant to section 237 ACJL, 283 CPL, 354 ACJA.

ARRAIGNMENT

This is the process of taking the plea of an accused to the charge before the court. Arraignment is the beginning or commencement of a criminal trial as in *GRANGE V FRN*, *FAWEHINMI V IGP*

Section 269 ACJA, provides that where a defendant appears before a court on a summons, he shall be required to enter the dock, to stand or sit in it, except where circumstances do not permit as may be directed by the court. **THE DOCK IS AT THE LEFT HAND SIDE OF THE JUDGE, WHILE THE WITNESS BOX IS AT THE RIGHT HAND SIDE OF THE JUDGE.**

Section 356(1), at the commencement of the hearing, the court shall state or cause to be stated to the defendant, the substance of the complaint and shall ask him whether he is guilty or not. Section 356(8) ACJA provides that the defendant shall take his plea in the dock, except the judge otherwise directs.

The defendant is to be called upon to plead instantly to the charge. SECTION 187 CPC, 211 ACJL, 215 CPL, 271(2)(A) ACJA. THE DEFENDANT MUST BE BROUGHT TO THE COURT UNFETTERED. Note that the standing of the policemen behind the accused persons in the dock is a fetter.

However, the court may direct otherwise that the defendant be fettered,

- Where the defendant is violent, as to do harm to himself or other persons in court.
- Where the defendant has attempted to escape.

The registrar or OTHER OFFICERS of the COURT then reads the charge to the accused person and explained to the accused person to the satisfaction of the court in the language the defendant. SECTION 211 ACJL, 215 CPL, SECTION 271(2)(A) ACJA.

Please NOTE: **for the purpose of court proceedings and taking of a plea, a counsel, Orderly of the judge and other persons in court are not officers of the court for this purpose. The fact that a counsel is an officer of the court is as to the duty he owes to the court.**

PRINCIPLES

- All plea must be taken by the accused person himself as held in *R V PEPPL*.
- Where there are several defendants, each of the accused person should be taken individually. Thus, there is nothing like block plea. There can be a block reading of the charge.
- There is nothing like proxy plea.
- Counsel cannot take the plea on behalf of his client as held in *R v PEPPL*.
- The court records the individual plea of the defendants AS IN SECTION 271(3) ACJA.. When the court records a block plea, the arraignment is a nullity.
- Failure to plead, trial is a nullity as in *EDE V STATE*.

- If more than one count, there is a block reading and the plea on each count is to be recorded as in DUVAL V STATE.
- The registrar must read over and explain to defendants the count read.

Options open to the accused person upon arraignment

When the charge has been read to the accused and he understands it, he can do any of the following:

- Raise preliminary objection to his trial upon the charge
- He may refuse to plead to the charge
- He may stand mute when called upon to enter his plea
- He may plead guilty
- He may plead not guilty
- He may plead not guilty by reason of insanity
- He may make a bar plea of autre fois acquit and autre fois convict..

REFUSAL TO PLEA

There is an outward manifestation of a deliberate act of refusal to plea. He understood the charge read to him. Where the defendant has refused to plea, the court will do the following:, 215 ACJL, 220 CPL, 188 CPC, 276 ACJA, GAJI V STATE.

- The court will ask the defendant why he refused to plead.
- If there are no valid reason for refusing to plead(in the case of malice), the court will ask him to plead again.
- If the accused person refuses again to plead, the court will enter a plea of not guilty for the accused person and the trial will continue. In Gaji v. The State where an accused refused to plead, the plea of not guilty entered by the judge was upheld at the Supreme Court.

Standing MUTE

No deliberate act evincing refusal to plea. If the accused stands mute, he is silent and does not speak. The court will investigate the cause of muteness that is, whether it is out of malice or visitation of God and would use medical or other evidence to determine such. Section 220&223 CPL, 188 CPC, 215, 217, 218 ACJL, 276 ACJA

If malice the court will enter a plea of not guilty as held in the case of Yesufu v state and proceed with the trial, if it is the act of God the defendant will be detained at Governors pleasure as held in the case of R v Ogor. and would be subject to use medical treatment.

Where the accused is found to be deaf and or dumb, the court shall further take evidence to determine whether the accused can be made to understand and follow the proceedings by sign language. If so, trial shall proceed; if not, the accused shall be remanded in custody or released on bail until the visitation is over, or until the Governor pleasure is known.

PRELIMINARY OBJECTION to be raised before plea.

Preliminary objection

FAILURE TO TAKE THE PLEA WITHOUT raising an objection, the defendant would be deemed to have submitted to the jurisdiction of the court.

Raising preliminary objections involves issues that go to the jurisdiction of the court to try the accused person. Such preliminary objections include the following:

1. Jurisdiction of the court: this involves stating that the court is not a competent court to try the offence alleged to have been committed. See Madukolu's case for what constitute jurisdiction of the court and AG Federation v. Abubakar. It could be procedural such as lack of service. Section 271 ACJA.
2. The objection could be as to defect in charges. The charge offends the rules against ambiguity, duplicity, joinder of offences or offenders., SECTION 166 & 167 CPL, 158 ACJL. Contrast s. 221 ACJA
3. Section 206 CPC, 166 CPL, OBAKPOLOR V STATE.
4. Also on the ground of failure of the prosecutor to obtain the consent (south excluding Lagos and under ACJA.) or leave (north) of the court before filing the information or charge in the high court. AG Federation v. Isong and State v. Bature.
5. He could raise bar plea: this is plea of autre fois convict or acquit. Thus the accused had been earlier charge on same offence with a criminal charge before a court of competent jurisdiction and either a conviction or acquittal was obtained – s. 36(9) CFRN. Note that the four conditions stated above must be proved by the accused. **This cannot be raised on appeal. Section 277 and 238 ACJA.**
6. Plea of pardon: the accused can raise preliminary objection as to the fact that he has been pardoned for the offence for which he is being charged either by a Governor or President. Okongwu v. State, s. 36(10) CFRN. The certificate of pardon issued by either the President or Governor must be produced in court.
7. He can plead that the offence has been statute barred. Example treason is 2 years(43 CC, custom offence is 7 years(176(3)CEMA, sedition is 6 months(54 CC, defilement of a girl under 13 is 2 months.(218 CC)

Plea of not guilty by reason of insanity

The plea of not guilty by reason of insanity, is that at the time of the Commission of the offence he suffered from mental infirmity. Thus, the relevant time is at the time of the Commission of the offence and not the time of arraignment. When an accused raise the defence, the court is to consider the following:

- As a general rule, the mere fact that the defendant takes a plea of not guilty by reason of insanity does not mean that the accused/ defendant would be discharged. The court will proceed to trial and a plea of not guilty by reason of insanity will be entered for him. The court will consider thus;
 - 1) Whether the accused did commit the offence ; and

- 2) Whether he was insane at the time of committing the offence. If the accused is found not to have committed the offence, he shall be discharged and acquitted and the court shall not decide the issue of insanity.
- ✓ If the offence was committed by the accused, the court would determine whether the accused was insane or sane at the time of committing the offence. The defendant has the evidential burden to prove insanity pursuant to Section 139(3)(c) Evidence Act.
- ✓ If sane, accused to be convicted upon proof beyond reasonable doubt.
- ✓ If insane, the plea of not guilty by reason of insanity will be upheld and where the insanity still subsists, the defendant will be detained at the Governors pleasure. **Adamu v state.**

PLEA OF GUILTY WITH REASONS

- A plea must be unequivocal. Thus, where the plea of guilty is with reasons, the court will enter a plea of not guilty and proceed with trial. **AREMU V COP.**

Plea of guilty

An accused person can plead guilty to the charge read to him. This is in rare cases – s 218 CPA, s. 187(2) CPC and s. 213 ACJL, 274 ACJA. **For every other offence except capital offences** when an accused pleads guilty, the court is to enter the plea of guilty and observe the following:

- The plea of guilty of the accused must be recorded as clearly as possible in the words used by him. Thus, the plea must be unequivocal and unambiguous as in **AREMU V COP.**
- Invite the prosecution to state the facts of the case again.
- **THEREAFTER**, the court will enquire from the defendant whether his plea of guilty is **IN RELATION** to the facts stated by the prosecution..
- Where the offence to which the accused has pleaded guilty can only be proved by scientific proof or expert evidence they must be tendered in court as in **STEVENSON V POLICE , ESSIEN V KING**
- Thereafter the court will convict and Sentence the defendant accordingly.

A plea of guilty can be withdrawn at any time before conviction or before the court accepts the plea of guilty. Once the court has given verdict and conviction, such plea can no longer be withdrawn – **R v. Guest.**

PLEA OF GUILTY IN CAPITAL OFFENCES

- Plea of not guilty to be recorded notwithstanding the plea
- Section 213(2) ACJL, 187(2)CPC. 274(3) ACJA
- **Olabode v state.**

Plea of not guilty

- This is the most common plea in criminal trials. This is known as pleading the general issue – s. 217 Criminal Procedure Act states that every person by pleading generally the plea of not guilty shall without further form be deemed to have put himself upon his trial. 212 ACJL, 188 CPC, 273 ACJA.

PLEA OF GUILTY TO ANOTHER OFFENCE OR LESSER OFFENCE CHARGED

- The court may consider the plea to the lesser offence taking into consideration:
 - The jurisdiction over the offence
 - The prosecutors consent
- Where the defendant elects to plead to a lesser offence and the court accepts plea, the court will follow the steps:
 - ✓ Inquire of the prosecution as to whether he consents to the plea or not
 - ✓ If the prosecution consents, The court will Record plea as nearly as possible in the words used.
 - ✓ Invite prosecution to state facts of case
 - ✓ Defendant to confirm facts PLEADED TO..

NOTE BEFORE: . If the prosecutor agrees, the court will direct that the prosecution amend his charge to reflect the lesser offence. Section 275 ACJA.(PRIOR TO SECTION 274 ACJA)

- Thereafter, the defendant is asked to take the plea again.
- If the defendant pleads again, the procedure will be followed as to a plea of guilty.SECTION 274 ACJA.
- The facts laid down and the evidence tendered must co relate.

However, where the prosecutor does not consent, the court will proceed to trial for the graver offence stipulated in the charge.

If at the end of the trial, the defendant is not guilty of the graver offence but guilty of the lesser offence pled to, the prosecution will be held to his election and consequently the defendant will be acquitted and discharged accordingly.

See Section 219 CPL, 214 ACJL, R V KELLY

BAR PART TWO

The mere fact of pleading guilty does not dispense with the responsibility of the prosecution to state the facts of the case and the court will enquire from the defendant whether his plea of guilty is as to the facts by the prosecution. STEVENSON V POLICE, ESSIEN V KING.

How to bring trial witnesses to court

Some witnesses either for the prosecution or accused person may willingly come to court while others may refuse to come to court. Thus there are two ways of bringing such witnesses.

By WITNESS Summons: this is usually at the instance of the court – s. 186 CPA, s. 163 CPC, s. 177(1) ACJL. Where a summons has been issued against a witness and the witness refused to come to court, then a warrant of arrest will be issued by the court to bring him before the court – Form 7 CPA. The summons is usually signed by the magistrate or judge.

Subpoena: this is upon application of either of the parties – s. 358 CPA, s. 188 ACJL. Failure to appear, warrant of arrest can be issued against the witness – s. 356 CPA, s. 186 ACJL and s. 163(1) CPC

Roles and duties of parties, judge and registrar

Prosecuting Counsel

- Duty to be present in court
- Duty to avoid forum shopping
- Duty to call material witness
- Duty to prosecute the case and ensure justice is done. This is the primary duty of prosecuting counsel that is, not to convict but to ensure that justice is done – Rule 37(4)

Rule 37(5)-(7) RPC

- Prosecuting counsel shall not institute or cause to be instituted a criminal charge if he knows or ought reasonably to know that the charge is not supported by the probable evidence
- Prosecuting counsel shall not suppress facts or secret witnesses capable of establishing the innocence of the accused person.
- It is the duty of the prosecuting counsel to disclose to the accused person or his counsel the existence of evidence known to the prosecution that tends to negate the guilt of the accused or mitigate the degree of the offence or reduce the punishment.

See State v. Odofin Bello, Enahoro v. State and R v. Sagarman.

Defence Counsel

- A defence counsel must ensure that an accused is defended with reasonable skill and attention especially those charged for capital offence. He is to exert himself by all fair and honourable means to put before the court all matters that are necessary in the interest of justice – Rule 37(1) RPC, Udo v. State, Udofia v. State.
- A defence counsel who adopts brief of an accused is expected to personally conduct the defence except under any sufficient unforeseen circumstances – Rule 37(2) RPC
- A defence counsel must not return brief of an accused charged with capital offence. see R v. Ozorukwu
- A defence counsel must not refuse a brief solely on the ground that he does not know who will pay him.
- For an indigent accused person, if the court calls on him to defend such person, he is to do it diligently – Rule 38 RPC.

- Where an accused person confesses his guilt to a defence counsel, the counsel is not to offer evidence to cover the guilt of the accused – Rule 37(3) RPC. What he is expected to do is to step up the defence before the court and allow the court to decide. He is not to produce contrary evidence in court.
- A defence counsel has a duty to preserve the confidentiality of the accused person – Rule 19 RPC. This duty extends to other counsel and staff in his law firm. Even after the case, the defence counsel cannot disclose – s. 193 Evidence Act
- A defence counsel has a duty to appear for the accused person throughout the trial. If he wants to disengage, he is to give the accused person time to get another counsel – Rule 21 RPC. See *Okonofua v. State*.

Court Registrars

Registrars are officers of the court and they have certain duties in criminal trial namely:

- Accept all processes for filing
- Ensure that exhibits are properly kept and marked
- They are responsible for keeping of case files
- They are responsible for preparing weekly case list/bar list
- They are in charge of the diary of the court; helps the judge to know the next adjourn date.
- Responsible for reading of charges
- Attend to the need of the judges
- They act as an interpreter to an accused person who needs one or facilitate an interpreter for the accused or witness.
- They are responsible for affirming or swearing in witnesses in trial
- Ensures hearing notices and other court processes are served.
- Where an accused is sentenced to death, certificate issued by judge is usually sent by the registrar to the prison officer and sheriff.

The duties are not exhaustive

Duties of the presiding judge

Because of the adversary system practiced in Nigeria, a presiding judge has the following duties:

- He must be an unbiased or impartial umpire who is fair and he is seen to be fair to all parties.
- He must maintain the aura of impartiality all through the trial and never descend to the arena of conflict – see *Akinfe v. State*, *Okoduwa v. State*.

This could be when he takes over examination of a witness. However, judges are allowed to put questions to witnesses in order to clarify certain points before him – s. 246 Evidence Act.

When a judge descends into the arena of conflict, he will be regarded as “hippy harlet” that is talks too much.

Plea bargaining, section 494 ACJA, 270 ACJA, 75&76 ACJL,

Statutory Recognition before now?

- **Section 14(2) EFCC**
- **FRN V IGBINEDION, ROMRIG(NIG)LTD V FRN**

Plea bargaining is an agreement in criminal trials between prosecutor and the accused person to settle the case in exchange for concessions. Plea bargaining is a recent development in the Nigerian Criminal Law and Lagos state blaze the trail by providing it in s. 75 & 76 ACJL. Section 75 is to the effect that the AG of the state have the power to consider and accept plea bargaining from a person charged with offence where he is of the view that the acceptance of such plea bargaining is in the public interest, the interest of the justice and the need to prevent abuse of legal process. Also the prosecutor and a defendant or his legal practitioner may before the plea to the charge enter into an agreement with regard to the defendant pleading guilty to the offence charged or a lesser offence of which he may be convicted in the charge and an appropriate sentence impose by the court – s. 76(a) & (b) ACJL.

There are two types of bargain

- a. Charge bargain
- b. Sentence bargain.

Procedure before entering the agreement

The prosecutor may only enter into plea bargaining agreement:

1. After consultation with the police officer responsible for the investigation of the case and the victim if reasonably feasible; and
2. With due regard to the nature of and circumstances relating to the offence, the defendant and the interest of the community – s. 76(2)(a) & (b).

Essential ingredients that must be present

The plea bargaining agreement must contain the following:

- a. The agreement must be in writing and contain the following specifics or state – s. 76(4)
 - i. That the defendant has been informed that he has a right to remain silent;
 - ii. Also he has been informed of the consequences of not remaining silent
 - iii. That he is not obliged to make any confession or admission that could be used in evidence against him
- b. The full terms of the agreement and any admission made must be stated; and
- c. The agreement must be signed by the prosecutor, the defendant, the legal practitioner and the interpreter (if used).

The presiding judge or magistrate before whom criminal proceedings are pending shall not participate in the plea bargaining agreement. However he can give relevant advice to them regarding possible advantages of discussions, possible sentencing options or the acceptability of a proposed agreement – s. 76(5) ACJL.

Procedure of plea bargaining

1. When the agreement is in progress, the prosecutor if reasonably feasible shall afford the complainant or his representative the opportunity to make representations to the prosecutor regarding.
 - a. The contents of the agreement; and
 - b. The inclusion in the agreement of a computation or restitution order – s. 76(3)
2. Where a plea agreement is reached, the prosecutor shall inform the court of the agreement and the judge or magistrate shall inquire from the defendant to confirm the correctness of the agreement – s. 76(6)
3. If the answer is in the affirmative, the presiding judge or magistrate shall ascertain whether the defendant admits the allegations in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence – s. 76(7)
4. The court after satisfying itself on all of the foregoing will do one of the following:
 - a. Convict the defendant on his plea of guilty to the offence as stated in the charge and agreement
 - b. If not satisfied, the court will enter a plea of not guilty and order that the trial proceed – s. 76(7)(a) & (b)

Procedure after conviction

- In sentencing the defendant after the conviction, the judge or magistrate is to consider the sentences agreed upon in the plea agreement. If the sentence is considered appropriate, then the agreed sentence would be imposed on the defendant – s. 76(8)(a)
- However if the court decides that the defendant deserves a heavier sentence, the defendant shall be informed – s. 76(8)(c)
- Upon the defendant being informed, the defendant has two options – s. 76(9)(a) & (b)
- One, the defendant can abide by his plea of guilty as agreed upon and agree that subject to the defendant's right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with the sentencing
- The second one is that he withdraws from his plea agreement in which event the trial shall proceed de novo before another presiding judge or magistrate. Where the trial proceed de novo before another presiding judge or magistrate, the following must be observed
 - a. No reference shall be made to the agreement
 - b. No admissions contained therein or statements relating thereto shall be admissible against the defendant; and
 - c. The prosecutor and the defendant may not enter into similar plea and sentence agreement – s. 76(10)(a)-(c).

The prosecutor for the purpose of the foregoing provisions (s. 75 & 76) means a LAW OFFICER – s. 76(11). The plea bargaining agreement provided for under ACJL has no limitation to any offence – NOT LIMITED TO ANY PERSON.

Desirability of plea bargaining

- **The desirability of prompt and certain disposition of the case**
- **The likelihood of obtaining a conviction at trial and the probable effect on witnesses**
- **The need to avoid delay in the disposition of other pending cases**
- **The expense of trial and appeal**
- **The defendants willingness to make restitution or pay compensation to the victim where appropriate .**
- **SEE SECTION 270(5) ACJA**

NOTE THIS POINTS

Court martial is a court of competent jurisdiction and s. 36(9) is also applicable to it. Where a person under service law is convicted or prosecuted for civil offence under the Armed Forces Act by a court martial , such person can still be prosecuted in the general court (civil court), only that in sentencing such person, the sentence imposed by the court martial would be put into consideration. However, where a person subject to service law have been tried by regular (general) court for an offence (civil), such person cannot be tried again in a court martial – s. 170 Armed Forces Act.

At Governor's pleasure means that the date of release is not known. Ordinarily you must always charge under the punishment section but when one section provides for both the definition and punishment of an offence, then you charge as follows "contrary to and punishable under section....".

The chief judges release prisoners under the Prisoner Justice Act and they do not exercise the prerogative of mercy.

The rule against misjoinder of offences and offenders relate to charge sheet; while rules against ambiguity and duplicity relate to count or charge in the charge sheet.

On trial on information there is the proof of evidence and the charge sheet - High Court in south but on trial on charge, there is just the charge sheet – High Court in north. Plea bargaining is available for all types of offences.

CRIMINAL TRIAL PREPARATION...WEEK 14

The case theory is untested. A summary of the facts of the case. It is a line of argument which if accepted by the court, will lead to judgement being given in your favour. It is based on facts and relevant law. A story, case hypotheses, appreciation of the case.

Elements of successful theory

- **Logical**
- **Speaks to legal elements of case**
- **Simple**
- **Easy to believe**

A legal practitioner is expected to always prepare for trial and the beginning of trial preparation is the case theory. The case theory is the line of argument to be adopted by a counsel. The case theory in civil cases differs from the one in criminal cases because of the burden of proof required in criminal cases.

The case theory should focus on building a line of argument. A successful case theory must be logical and must stick to legal element of the case that is the elements to be proved. A case theory should have sufficient materials and it should be simple and easy to believe. A case theory can be developed before proffering a charge as this can inform a prosecutor of the charge to lay. Note that the theory is an idea that has not been tested.

An hypothetical case theory of Ene

- What is the charge against the accused?
- What are the ingredients having regard to the statute creating the offence?
- What are the facts available to prove this offence?
- What are the basic principles guiding the offence?
- Are there likely defences available to the accused in this case?

Trial plan: it is a graphic statement how to actuality the case theory.

It deals with how to actualise your case theory. After development of a line of argument, trial plan is concerned on how the line of argument will be accepted by the court. Thus trial plan is the systemic way you intend to accomplish your goal. The diagrammatic/graphical representation of the case theory. A ideal trial plan is to contain the offence charged, the position of the law (punishment section of the law), the ingredients of the offence (for instance stealing might be unauthorized taking (for actus reus) and intention (mens rea); evidence witnesses and documentary evidence; remark.

Preliminary objection can be contained or be part of a trial plan. When such is overruled, the next step should be there/provided for (for adequate counsel). Most lawyers will fail as a prosecutor or defence counsel because they do not have a trial plan.

A specimen of trial plan

Charge	Law	Ingredient of the offence	Evidence, documentary, witnesses	Penalty	Prayer	Remark	
Charge	Law	Ingredient	Defence/preliminary	Evidence	Penalty	Prayer	Remark

		of the offence	objection				

Preparing a witness for trial

Pre trial interview is never to be conducted in the court premises.

The purpose of pre trial interview are:

- ✓ **Acquainted with the method of presenting case**
- ✓ **Recollection of what to say**
- ✓ **Story concise and direct to the point**
- ✓ **Maintain consistency in exam in chief, cross examination and re examination.**

The prosecution is not bound to call the entire member of witnesses that is in the proof of evidence (used in the high court in south). What is entailed in preparing a witness for trial is different from client interview. **Preparing a witness for trial is regarded as the pre-trial interview.** The questions to be asked in pre-trial interview are different from that asked at the client's interview. At the pre-trial interview, the counsel is already well acquainted with the facts of the case. The following are thus important.

- Ask the witness to come to the chambers to get acquainted with the sequence of questions to be asked in examination-in-chief. If an accused is to testify and if not on bail, the counsel can go to where the accused is being detained.
- Acquaint the witness with the basic formalities in the court room.
- Importantly, tell the witness to dress appropriately that is a complete native attire or suit.

EVIDENTIAL ISSUES

Burden of proof

When discussing the burden of proof in criminal litigation, s. 36(5) CFRN must be made reference to. The section states that

‘Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty; provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts’. IBEH V STATE.

Section 36(5) is the foundation of the burden of proof in criminal litigation/trial. The burden of proof of guilt is static and it always rest with the prosecution.. Section 131 and 135 Evidence Act.

Failure of accused to testify does not imply guilt. *MBELE V STATE*. The prosecution is to prove all the ingredients of the offence. Accused is not bound to prove his innocence pursuant to Section 36(11), *Abidoye v FRN*, section 180 Evidence Act.

CIRCUMSTANCES OF EVIDENTIAL BURDEN.(foundation is from the proviso in section 36(5) 1999 Constitution

- o Plea of intoxication and insanity. Section 139(3) EA
- o Defence of alibi
- o Plea of autre fois acquit and autre fois convict
- o Facts within the knowledge of the accused. Section 140 EA.
- o Exceptions, exemptions or qualifications contained in statutes. Section 141 EA.
- o Burden imposed by statute.

Standard of proof

Under s. 135(1) Evidence Act, the legal burden of proof on the prosecution is to be proved beyond reasonable doubt. *WOOLMINGTON V DPP*. **Sub-section 3 states that if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the defendant.** It is pertinent to note that the sub-section did not say that the legal burden shifts to the accused person only that once the prosecution has proved beyond reasonable doubt the guilt of the accused, then it is left for the defence counsel to call evidence in rebuttal that would cast doubt on the guilt of the accused.

Evidential burden which can be on the accused is to be discharged on the balance of probabilities. Section 137 Evidence Act provides that where in any criminal proceeding the burden of proving the existence of any fact or matter has been placed upon a defendant by virtue of the provisions of any law, the burden shall be discharged on the balance of probabilities.

Competence and Compellability

All persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by reason of tender years, extreme old age, disease whether of the body or mind, any other cause of the same kind – s. 175(1) Evidence Act.

A person of unsound mind is competent to testify unless he is prevented by his mental infirmity from understanding the questions put to him and giving rational answers to them – s. 175(2) Evidence Act. A dumb witness can give his evidence by signs or in writing made in the open court. Such evidence shall be deemed to be oral evidence – s. 176(1) & (2) Evidence Act

EXCEPTIONS TO GENERAL RULE OF COMPETENCE AND COMPELLABILITY

There is a difference between competency and compellability. All compellable witnesses are competent witnesses while not all competent witnesses are compellable. Some category of persons cannot be compellable though competent.

- 1) Accused persons are only competent witness for his own offence and they CANNOT Be compelled.. **Section 180(A) Evidence Act provides that every person charged with an offence shall be a competent witness for the defence at every stage of the proceeding whether the person so charged is charged solely or jointly with any other person.** Make reference to section 175(1) EA
 - However, a defendant is not a compellable witness as an accused person can only testify as a witness only upon his own application. Section 180(a), 36(11) 1999 CFRN .
 - Where a defendant keeps silent the court, prosecution or any other party to the proceeding may comment on the failure of the accused to give evidence but the comment shall not suggest that the defendant/accused failed to do so because he was or that he is guilty of the offence charged – s. 181 Evidence Act.
 - The accused person can only be called as a witness upon his own application – s. 180(a) Evidence Act and when he is a witness, he may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged – 180(b)
 - Where an accused is called as a witness, he shall unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidences – s 180(d).

An accused upon being arraigned is usually placed in the dock but when he wants to testify, he is to proceed to the witness box. There is a difference between the witness box and the dock. In the witness box, an accused can either give a sworn or unsworn evidence pursuant to section 180(d)EA. In the dock the accused is only making a statement which is not subject to cross-examination. Sub-section 180(e) provides that nothing in the section shall affect the right of the accused to make a statement without being sworn.

- 2) The president, Vice President, Governor and Deputy Governor is competent but not compellable by virtue of Section 308 CFRN 1999.
- 3) Section 1(1) DIPA covers all diplomats, their official or domestic staff who are not Nigerians, and members of the families of official staff.
- 4) A spouse is a competent and compellable witness for the accused. However, a spouse is generally not a compellable witness for the prosecution except under section 182 EA:
 - Sexual offences
 - Offences against property of the spouse
 - Offences involving violence against the spouse.

Character evidence

Evidence of bad character of the accused person is generally inadmissible. One way of proving bad character is evidence of previous conviction – s. 180(g) Evidence Act which provides that “a person charged and called as a witness in pursuance of this section shall not be asked and if asked, shall not be required to answer any question tending to show that he has committed or been convicted of or been charged with any offence other than that with which he is then charged or is bad character unless.....”. There are exceptions to the general rule, they are:

- Where the proof of previous conviction is admissible to show that he is guilty of the offence with which he is then charged
- Where he tries to establish his own good character
- Where he gives evidence against a co-accused

Evidence of children

A child is any person who has not attained the age of 14 years. Section 209(1) Evidence Act, 2 CPL, 371 ACJL, Solala v State.

The procedure is that a child should not be sworn or affirmed. A child can only testify if the court is satisfied that:

- Understands the questions put to them; or can give rational answers to those questions – s. 175 Evidence Act.
- Possessed of sufficient intelligence to justify the reception of his evidence – s. 209(1)
- Understands the duty of speaking the truth – s. 209(1)

These requirements are conjunctive. In order to satisfy this requirement, the court puts preliminary questions unrelated to the matter. If the child demonstrates ability to understand the questions, then the court proceeds to consider if the child understands the duty of speaking the truth. If the child passes the test, the evidence will be admissible. The records of proceedings shows that the test was conducted it would be prima facie evidence of conduct of inquiry.

Where such unsworn evidence of a person under 14 years is given, an accused person shall not be convicted of the offence charged with unless the testimony of such child is corroborated by some other material evidence in support of such testimony implicating the defendant/accused person – s. 209(3).

ATTAINED 14 YEARS

By virtue of section 209(2) EA, a child who has attained the age of 14 years, shall subject to section 208&175 of the Act, give sworn evidence at all times.

Evidence of an accomplice and tainted witness

The general rule is that no particular number of witnesses shall in any case be required for the proof of any fact – s. 200 Evidence Act except under s. 201 – 204

Accomplice: is any person who pursuant to s. 7 of the Criminal Code may be deemed to have taken part in committing the offence as the defendant or as an accessory after the fact to the offence or a receiver of stolen goods – s. 198(2) Evidence Act. Thus an accomplice is a *participes criminis*. It is not compulsory for an accomplice to be a co-accused as the AG have the discretion to bring charges against only A and B, where A, B, C and D were involved in the offence. Where an accomplice gives evidence against the accused, his evidence do not require corroboration – s. 198(1) provides that an accomplice shall be a competent witness against a defendant and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

However, in cases when the only proof against a person charged with a criminal offence is the evidence of an accomplice, uncorroborated in any material, particular implicating the defendant, the court shall direct itself that it is unsafe to convict any person upon such evidence. See *Idahosa v. State*, *Moses v. State*, *State v. Azeez*, *Yohanno v. State*. Failure to warn itself may not nullify the conviction depending on the quality of testimony by of the single witness.

CO- DEFENDANTS

Where defendants are tried jointly and any of them gives evidence on his own behalf which incriminates a co-defendant, the defendant who gives such evidence shall not be considered to be an accomplice – s. 199 Evidence Act. Where co-accused gives evidence against each other, since they are not accomplice for the purpose of giving such evidence, the court need not warn itself but the offence given by the co-accused needs to be corroborated. HOWEVER, WHERE THE CO ACCUSED AFFIRMS THE INCRIMINATING EVIDENCE AGAINST HIM, THE COURT CAN CONVICT HIM BASED ON THE EVIDENCE OF THE CO ACCUSED. GBOHOR V. STATE.

Tainted witness: an accomplice is different from a tainted witness. A tainted witness is a witness who is not an accomplice but who by the evidence he gives may and could be regarded as having some purpose of his own to serve. **Mbenu v state.**

In Yohanna v. FRN, the Court of Appeal had stated that even if a witness was held to be tainted witness, his evidence cannot by that fact alone become unreliable. **All that the law requires is that the evidence of such a witness should be treated with caution and that the court should be wary in reaching a verdict of guilt on the uncorroborated evidence of such a witness.**

HOW TO DISCHARGE BURDEN OF PROOF

- ✓ Direct evidence
- ✓ Circumstantial evidence
- ✓ Confessional statement.

Corroboration

Corroboration is confirmation of a witness testimony by independent evidence. Generally no particular number of witnesses shall in any case be required for the proof of any fact – s. **200 Evidence Act, Mohammed v State.**

Thus, the prosecution has no duty to call a particular number of witnesses except in certain offences but must call material witness as held in ADAJE V STATE.

However under s. 201-204 corroboration of a witness testimony is required.

Treason and Treasonable offences

In the course of committing the offence of treason, various acts are usually done. Section 201(1) Evidence Act then provides that a person charged with treason or with any other felonies mentioned in s. 40, 41 and 42 Criminal Code Act cannot be convicted **except on his own plea of guilty or on the evidence in open court of two witnesses at least to one overt act of the kind of treason or felony alleged or the evidence of one witness to one overt act** and one other witness to another overt act of the same kind of treason or felony. **However, there would be no need of the above requirement in cases in which the overt act of treason alleged is the killing of the President or a direct attempt to endanger the life or injure the person of the President – 201(2).**

Charge of perjury – s. 202 Evidence Act

An accused can only be convicted of perjury or counselling or procuring its commission where the testimony of the witness contradicting the accused testimony on oath is corroborated.

Charge on exceeding speed limit

A person charged under any road traffic legislation with driving at a speed higher than the allowed maximum shall not be convicted solely on the evidence of one witness that in the opinion of that witness he was driving at such speed – s. 203(1). **However where it is an officer of the relevant authority on duty authorised to record the speed of moving vehicles that is the witness, such oral evidence of the officer together with tendering of the device used for recording the speed is sufficient evidence.** The authority is the Nigerian Police Force and the Federal Road Safety Commission or any other body charged with responsibility for offences of speeding under the road traffic legislation – (2)

Charge of sedition

A person shall not be convicted of the offences of uttering seditious words under s. 51(1)(b) Criminal Code Act upon the uncorroborated testimony of one witness – s. 204 Evidence Act

COUNSEL AS WITNESS FOR CLIENT

Counsel is a competent witness by virtue of section 175 EA, however he ought to withdraw as counsel if he is likely to be a witness as to matters other than formal matters. Rule 20 RPC, ELABANJO V TIJANI..

Means of compelling witnesses

A witness can be summoned and an application can be made by the party demanding the witness which can either be:

- Subpoena decus tecum: to tender only document. If such person causes such document to be produced, the court may dispense with his personal attendance. SECTION 218 EA.
- Subpoena ad testificandum: this subpoena is both to testify, tender document if any and such witness can be cross-examined. Section 219 Evidence Act.
- Habeas Corpus ad testificandum: issued to command controller of prisons in charge of a person detained, to produce the person in court to give evidence. BUHARI V OBASANJO.

Subpoena is issued by a judge upon Application of parties. **A magistrate can issue witness summons but not subpoena upon satisfaction that the evidence the witness is to give is material.** HOWEVER, under ACJA and ACJL, any court can issue witness summons. Failure to adjourn to enable an accused secure the attendance of a witness may be denial of fair hearing.

Section 188 of ACJL provides that attendance of a witness for either of the party may be summoned by a writ of subpoena. When the person is in court either by obeying the summons or by a warrant of arrest, refuses to give evidence, **the court would adjourn trial not exceeding 8 days. If on the adjourned date, he still refuses to give evidence or produce the document required, the court may adjourn the hearing and commit him to prison or other place of safe custody for the same period and such will continue until he consent to do what is so required** of him – s. 190(1) - (2) ACJL.

ETHICAL ISSUES

- ✓ Pre trial interview not for coaching a witness to tell lies or suppress the truth.
- ✓ Build up confidence but not invent a defence for accused
- ✓ Prosecuting counsel not to secure conviction at all cost as held in ODOFIN BELLO V STATE.
- ✓ RULE 37 RPC

EXAMINATION OF WITNESS

Week 15

The prosecution has power to determine how many witnesses and order in which to call them. He is not bound to call all the witnesses listed. Other witnesses ought to be out of court and out of hearing pursuant to section 212 EA and 238(1)ACJ. This may not include professional witnesses. This is because the testimony is based on what he knows and not necessarily based on what he hears. It is a distinct testimony.

What is the effect of a witness that remains in court? The trial will not be a nullity and The testimony will not be expunged but less weight will be attached to the testimony of the witness who remained in court. FALAJU V AMOSU.

Examination of a witness could be examination-in-chief, cross-examination, and re-examination – s.214 Evidence Act.

Examination-in-chief

This is done by the party that calls the witness and questions are put to the witness by the party that calls him pursuant to Section 214(1) EA..

The purpose is to put before the court a clear story of that party that called him. It is to elicit from the witness admissible, material and favourable evidence as held in SADUA V STATE. Both prosecution and defence can examine in chief.

The general rule, is that leading questions are not allowed in examination in chief of a witness pursuant to Section 221(2) EA. Leading questions are questions that suggest the answers which an examiner wishes to receive as provided for in Section 221(1) However, there are exceptions to this principle;

- **When it relates to introductory matters**
 - **Questions relating to undisputed facts.**
 - **Facts which have already been sufficiently proved**
- SECTION 221(3) EA.**

However, leading questions may be asked in cross examination pursuant to section 221(4)EA.

EFFECTIVE QUESTIONING TECHNIQUE

Open Question

- **It is better used in examination in chief because it allows the witness tell the story without undue interruption.**
- **Can you please tell this Honourable Court your name?**
- **Starts with describe what you saw on the 10th day of March, 2016?**
- **How did it happen?**
- **Where did it happen?**
- **What happened?**
- **When did it happen?**

CLOSED QUESTIONS

After getting the necessary information, closed questions can then be asked, so that a witness does not go beyond what is required. Closed questions restrict the answer a witness will give to the question asked. **It is used in Examination in chief to keep the witness in check.**

Questions are Are,do,did, were you? It is best used in cross examination.

CROSS EXAMINATION

- Cross-examination involves questions put to the witness by the other party after examination-in-chief – s. 214(2) EA.
- While examination-in-chief is compulsory, cross-examination is not only if the other party desires to – s. 215(1) EA.
- Questions need not be confined to facts raised in exam-in-chief pursuant to section 215(2)EA provided they are relevant to the facts, Leading questions are allowed in cross examination pursuant to section 221(4) EA. However, questions that will not serve the purpose of cross examination will not be allowed.
- There must be a purpose for cross-examination. The purpose of cross-examination could be:section 233 EA.
 - To discredit the witness, to let the court see that the witness is not a witness of truth.
 - To establish your own case.
 - To test the accuracy, credibility or veracity of his testimony which must be done within the bounds of law and rules of evidence; or
 - To demolish or weaken witness testimony which must also be done within the bounds of law and rules of evidence; or
 - To strengthen the case of the party cross-examining
 - Discover who the witness is and his position in life
 - Shake his credit by injuring his character.
- The right of the accused person to cross examine if provided for under section 36(6)(d) CFRN. They can choose to waive such constitutional right, but the right cannot be denied.
- Closed questions are usually used in cross-examination. Leading questions may also be asked – s. 221(4).
- Where more than one defendant/accused person is charged at the same time and are represented by different lawyers, each defendant/accused person shall be allowed to cross-examine a witness called by the prosecution before the witness is re-examined – s. 216.
- Where more than one defendant/accused person is charged at the same time and represented by different counsel, a witness called by one defendant may be cross-examined by the other defendant and such cross-examination shall take place before cross- examination by the prosecution – s. 217.
- In cross-examination, even though it is alleged that the sky is your limit, there are objectionable questions.
 - o Indecent and scandalous questions – s. 227 EA.
 - o Questions intended to insult or annoy – s.228 EA.
 - o Questions that are needlessly offensive-section 228 EA.
 - o Questions are not to be asked without reasonable grounds-Section 225 EA.

- o Questions relating to the credit of the witness which are not relevant to the proceedings, the court shall decide whether or not the witness shall be compelled to answer it.(character)- Section 224(1)EA.
- However, failure to cross examine, the court may take whatever is said before as the truth. It will be taken that the defendant has acquiesced to what has been said. On the other hand, it may be unnecessary to cross examine the witness if the witness has not established any case to be watered down.

RE-EXAMINATION

- ✓ Re-examination comes up after cross examination by a party that calls the witness. Section 214(3)EA.
- ✓ [The PURPOSE of re-examination is to clear ambiguities or inconsistencies that arise from cross-exam.
- ✓ It is not an opportunity to examine-in-chief again.
- ✓ Leading questions are not allowed pursuant to Section 221(2)EA.
- ✓ The other party may further cross examine with the permission of the court, where new matters are introduced in re-examination. Section 215(3) EA.

Refreshing Memory

- Actions or matters most times do not commence as soon as the incident leading to the action happened. Thus witness may not remember clearly the event that happened.
- Thus a witness may while under examination refresh his memory when testifying by referring to any writing made by him at the time of the transaction concerning which he is questioned – s. 239(1) EA. However such statement must be made by himself at the time of the transaction concerning which he is questioned , or so soon afterwards that the court considers it likely the transaction was at the time fresh in his memory. Jimo Amoo v R(5 weeks was considered too long).
- The witness can also refer to writing made by any other person and read by the witness within the time of the transaction, if when he read it he knew it to be correct – s. 239(2)..
- An expert may refresh his memory by reference to professional treatise – s. 239(3).
- The other party must be shown such documents as he may cross examine on it. Section 241 EA 2011. However, the witness cannot read from it.
- The procedure for refreshing the memory of the witness is:
 - The party who brought him to seek the leave of the court to produce the document/writing by him or otherwise. This is done by oral application and it is done during the examination of the witness.
 - Upon grant of leave, the document is shown to the witness for him to peruse through it
 - The document is not left with the witness.
 - The other party will be shown the document as he may cross-examine on it – s. 241

Hostile witness – s. 230 Evidence Act

- A hostile witness is a witness who turns adverse to the party that called him and is unwilling to tell the truth.
- The court upon application of the party who called him declares him hostile. Thus, the party shows that the testimony of the witness is different in material particular than what was said earlier by asking the witness whether he made a statement earlier which contradicts his present testimony. The court after considering the application and circumstances declares the witness hostile.. See **Esan v. State. Section 230 EA, Shofolahan v state**
- The party is then permitted to cross-examine his own witness and ask him leading question to discredit him so that he can be shown to court that he has been compromised.

Powers of the court to put questions to witness

The general rule is that the judge is an unbiased umpire. Therefore it is not allowed to cross examine or examine any witness called by the parties.

However,

- The court which is a judge or a magistrate or any person authorised by law to take evidence has the power to put questions to a witness in order to clear up ambiguities or clarify points which have been left obscure in the evidence given by the witness – s. 246(1) EA. The court may order production of documents or things through the witness.
- Secondly, The court also has the power to call or recall any witness at any time during trial. Section 200 CPL, 237CPC, 197 ACJL, 256 ACJA.
- These powers are however, subject to the provision of Section 246 EA. **The purpose is to clear ambiguities or clarifying points raised in evidence. It is for just determination of the case. Section 197 ACJL, 200 CPA, 237 CPC**
- Neither parties nor their agent is entitled to make any objection to the questions within the purview of the law or without the leave of the court to cross examine the witness upon the answer given in reply to the question. **SECTION 246(1) EA.** This is because the party so recalled by the court is a witness of the court. HOWEVER, WHERE THE COURT EXCEED ITS BOUND OR ASSUMES POSITION OF THE PROSECUTING COUNSEL, THE DEFENCE COUNSEL CAN IN A SUBTLE MANNER DRAW THE ATTENTION OF THE COURT TO THE POSITION OF THE LAW THAT THE JUDGE OUGHT ONLY TO ASK QUESTIONS THAT ARE IN TANDEM WITH THE PROVISIONS OF THE LAW. IF THE COURT INSISTS, THAT COULD BE A GROUND OF APPEAL.
- It is not an opportunity to take over the case of the parties or strengthen the case of either party. **ONUOHA V STATE, AKINFE V STATE.**

There are limitations to this power of the court

- The question is to be based upon facts declared by the Evidence Act to be relevant and duly proved – s. 246(2).
- A judge shall not compel any witness to answer any question which such witness would be entitled to refuse to answer if the question was asked by the adverse party. Section 246(3) EA.
- A judge shall not ask question that is intended to injure the character of the witness or considered irrelevant under s. 224-225, 246(3) Evidence Act. Thus he must adhere to the rules of Evidence.

Admissibility of documentary evidence

- There are two types of documentary evidence – primary and secondary evidence.
- Documents must be relevant before it can be admissible – s. 14 & 15 of Evidence Act.
- Documentary evidence of importance here are confessional statement, expert evidence and police report. There are rules or conditions which they must fulfil before they can be admitted.
- Confessional statement is an admission by the accused that he committed the alleged offence pursuant to Section 28 EA.
- The confessional statement of the accused is only admissible if it is voluntary – s. 29. The section provides that in any proceeding, a confessional statement made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court on involuntariness.
- The confessional statement is usually tendered by the investigating police officer (IPO). The IPO is asked questions leading to tendering of the confessional statement. This is laying foundation for tendering the confessional statement. The statement must be tendered in whole and not after removing any part favourable to the accused person as held in R V ITULE.
- The confessional statement must be direct, unequivocal and pointing to the accused person as perpetrator of the crime. *Gabriel v state, YESUFU V STATE*.
- Where the confessional statement is voluntarily made and relevant, it is the best evidence. Where it is however obtained by oppression, torture or inhumane and degrading treatment including threatening the accused, it would be inadmissible unless a trial within trial is conducted as held in *IKE V STATE* – s. 29(2), section 9(3) ACJL. .

EXPERT EVIDENCE

As a general rule, opinion evidence is inadmissible pursuant to section 67 EA 2011. However, expert opinion is an exception and is therefore admissible in evidence once relevant pursuant to section 68 EA. Example, ballistic evidence, medical evidence, handwriting evidence.

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 as in Section 83(2)(a) EA.

Upon application by other party, he may be summoned by court . Section 250(1)(2)CPC.

POLICE REPORT

- A Police report in the case diary of a police officer is inadmissible in evidence for one case. This is because it has other cases in the report which is not related to the case at hand. The case diary is a day to day diary which keeps record of police daily activities.
- **The court can only call for it for inspection of the content.** The police may also be allowed to use it to refresh his memory. SECTION 122(1),144 CPC.
- **What is tendered is the IPO's investigation report, exhibits recovered, etc.**

INTERNET GENERATED DOCUMENTS

- ✓ Documents generated at internet is not a public document
- ✓ In proof, reliance on section 84 EA and necessary foundation under section 84(2) &(4) EA
- ✓ KUBOR V DICKSON.
- ✓ Section 258 EA defines documents.

TAPE RECORDING

Necessary Foundation

- ✓ Maker to testify except dead, not found etc.
- ✓ He is the one that recorded it.
- ✓ Whether the tape is in good shape.
- ✓ That the voice is that of the defendant/accused person.
- ✓ There is no possibility of tampering the tape
SEE FED POLY EDE V OYEBANJI. If it is computer generated there must be an accompanying statement/certificate pursuant to section 84(4)EA.

PHOTOGRAPHS

- ✓ Primary evidence of the photographs.
- ✓ Secondary evidence.
- ✓ Definition of document
- ✓ Primary evidence of document. Section 86
- ✓ TYPES OF PRIMARY EVIDENCE. S.86(4) EA
- ✓ Proof of contents of documents. SECTION 85.
- ✓ Secondary evidence. Section 87

Hearsay evidence

Hearsay evidence refers to statement of facts oral or written by a person other than the maker - s. 37 EA. *IJIOFOR V STATE*, *OKORONKWO V STATE*. Hearsay evidence is generally inadmissible - s. 38.

There are exceptions to the general rule.

- Statement by persons who cannot be called as witness: This could be due to the fact that such person is dead, cannot be found, becomes incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense - s. 39.
- A statement made by a person as to the cause of his death or as to any of the circumstance of the event which resulted in his death in cases in which the cause of that person's death comes into question is admissible where the person who made it believed himself to be in danger of approaching death although he may have entertained at that time of making it, hope of recovery - s. 40(1).
- Section 46 EA, evidence of a witness in former proceedings. There are however provisos
- **Confessions-Section 28-32 EA**
- **Opinion of experts expresses in a treatise. Section 68-71 EA**
- **Admissibility of documents under section 83 EA**

However, each of the exceptions must meet certain conditions before it can be admissible,

ETHICAL ISSUES

DUTY OF PROSECUTING COUNSEL

- **To be fair candid and impartial. RULE 32 RPC**
- **Not to secure conviction at all cost. *ENAHORO V STATE*, *ODOFIN BELLO V STATE***
- **Not to withhold any material evidence favorable to the accused person. RULE 32,37(4)(5)(6) RPC.**
- **He must not ask scandalous questions just to annoy the witness. 227,228 EA.**

Opening statement/address

Opening statement is provided for in the law but in practice it is hardly done – s. 268 ACJL provides that after the defendant has pleaded not guilty to the charge or information, the person appearing for the prosecution may open the case against the defendant with an **OPENING STATEMENT and then adduce evidence in support of the charge**. The opening statement is usually by the prosecution counsel and the defendant counsel after the close of prosecution can also make an opening statement – s. 269(1) ACJL.

240&241 CPL, 189&192 CPC, 300 ACJA.

Contents of the opening statement/address

The prosecution's opening address which is usually a very short one normally contains the following:

- The allegations against the accused and probably the law(s) contravened.
- The evidence available to prove this
- The witness intended to be called and whether and when they would be available; and
- Where possible, the approximate time it would take to complete the case for the prosecution.

PRESENTATION OF THE CASE FOR THE DEFENCE

Week 16

The order of trial proceeding in criminal litigation starts with the arraignment of the accused person. Then the prosecution opens his case by calling witnesses listed in the proof of evidence and tendering documents and exhibit in proof of the guilt of the accused. Thereafter the prosecution closes his case. At the close of the prosecution case, the accused person has different options namely:

- Make a no case submission for the accused.
 - May rest his case on that of the prosecution
 - May go ahead to enter his defence by calling his witnesses
- Section 239 ACJL, 302 ACJA., 191 CPCL

These options are independent and the exercise of one is not dependent on having exercised the other.

NO CASE SUBMISSION

What is a no case submission?

- Submission made on behalf of the accused person where no prima facie case is made out against him.
- Submission is made at the end of prosecution's case either by defence counsel or the court suo motu especially where he is not represented at the end of the prosecutions case as in *Ibeziako v COP*, *Maiduguri v R*, *Okoro v The State*.

When will a No case submission be made?(any of these grounds).

- 1 A no case submission will only succeed where the court is of the opinion that the prosecution has not established the ingredients of the offence and/or linked the accused to the crime. At this point, the court is only called upon to see if the prosecution has maintained a prima facie case against the accused person and not necessarily the guilt of the defence, enough to make the court call on the accused

person to enter a defence. Section 286 CPL, 191(3)(5) CPC, 239 ACJL, 302,303 ACJA. *Akinyemi v state*.

- 2 Where prosecution's case has been manifestly discredited on cross examination. ***Ibeziako v COP, UBANATU V COP, OSSAI EMEDO V STATE..***
- 3 Where prosecution's evidence is so manifestly unreliable that no reasonable court or tribunal can convict on it. ***Ugwu v State, Emedo v state, Daboh v State, Tongo v COP, SECTION 303 ACJA.***

Note BEFORE: the court is not called upon to look at the guilt or innocence of the accused person as it is the prosecution that has a duty to prove or discharge the case.

FURTHER TAKE NOTICE that where any of the above is present a no case submission may be made on behalf of the accused person.

Where the court is to make a ruling on the no case submission it will make a ruling on the evidence of the prosecution to determine whether there is a case for the defendant to answer and such ruling should not be lengthy. *ODOFIN BELLO V STATE.*

PURPOSE OF NO CASE SUBMISSION

- To save defendant from entering needless defence where prosecution has failed.
- To save the time of the court where prosecution has failed.
- To save cost of needless defence.

EFFECT OF NO CASE SUBMISSION

The effect depends on whether it is rightly upheld or wrongly overruled;

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

THE EFFECT OF SUCH A DISCHARGE IS AN ACQUITTAL.

- *Nwali v IGP*
- *IGP v Marke*
- *Mohammed v State*

Thus, the accused person can successfully plead *autrofois acquit*.

Where no case submission is wrongly overruled(supposed to uphold it), the defence has the choice to enter his defence or he can withdraw from further proceedings by resting his case on the prosecution.

Whatever choice made at this stage has its own implications:

- ❖ If he continues with the proceedings and he enters his defence and supplies the evidence incriminating him it has been held that a conviction founded on such evidence could not stand. To hold otherwise will amount to requiring the accused to prove his innocence.

This is the position of the law in Mumuni v State. The court held that the defendant will have withdrawn.

- ❖ **Thus, it is immaterial whether the accused participates in the trial or not if in any event the submission is wrongly overruled or the court does not discharge when there is no case against the accused after the close of the prosecution's case. OKORO V STATE.**

- b. **Where no case is rightly overruled, the accused is called upon to enter his defence.**

RULING ON NO CASE SUBMISSION

- **Ruling of court must be brief where submission is to be overruled. EKANEM V R, UBANATU V COP.**
- **It must not be so lengthy so as to fetter the discretion of the court. This is because he had not had the opportunity of hearing the defence. ODOFIN BELLO V STATE, ATANO& anor v AG BENDEL. Thus, the court must not go to the merits of the case.**
- **Court must confine its ruling to the submission of the no case.**
- **HOWEVER, a party cannot rely on the length of the ruling alone for the trial to be vitiated. ODOFIN BELLO v State, EKWUNIGO V FRN.**
- **Where no case submission is overruled the accused or his counsel is called upon to enter his defence.**
- **Where the no case submission was upheld it is a full judgment and should be lengthy and comply with the requirement of full judgment of courts. The ruling will contain the reasons for the decision. Such ruling is tantamount to a judgement. MOHAMMED V STATE**

RESTING HIS CASE

Defence may choose to rest his case on that of the prosecution pursuant to section, 36(11)CFRN 1999 where;

- **Prosecution has failed to prove their case**
- **His no case submission has been wrongly overruled. **Rather than enter a defence and supply the missing link.****

EFFECT: Resting his case on that of the prosecution means that the accused person agrees that the evidence of the prosecution should be used either to convict or acquit the accused person. SULEIMAN V STATE.

An accused person is not advised to rest his case on that of the prosecution except where the prosecution's case is so bad that even if the court will consider the totality of such evidence, the facts available before the court are not sufficient to convict the accused person. ALI V STATE, NASIRU V STATE..

HOWEVER, where there is overwhelming evidence against accused or a prima facie case is made against the accused, it is not advisable to rest his case as it is better to enter a defence. BABALOLA V STATE. Thus as defence counsel, one has to be cautious in electing whether to rest his case on that of the prosecution. For instance, where an accused is relying on any special defences like alibi or insanity, by resting his case on that of the prosecution, such special defence will no longer avail him because there would be no opportunity of proving his defence..

DISTINCTION BETWEEN A NO CASE SUBMISSION AND ACCUSED PERSON RESTING HIS CASE ON THAT OF THE PROSECUTION

- The two situations are different and distinguishable. Where a no case submission is overruled, an accused person will be called upon to present his defence whereas, an accused person who rests his case on the prosecution cannot adduce or call witnesses to testify for him. The only option available is to APPEAL against the decision of the court in the event it is a CONVICTION. **Onagoruwa v. State.**

OPENING HIS DEFENCE

Opening ADDRESS

- **Defence may go straight to his defence by an opening address or proceed to call witnesses like the prosecution. SECTION 241 CPL, 192 CPC, 269 ACJL, 301 ACJA.**
- Summary of the case for the defence, facts and nature of evidence to be adduced including number of witnesses

WHAT OPTIONS OPEN TO THE ACCUSED PERSON IN HIS DEFENCE?

There are three options open to the accused in his defence: Section 287(1)(A) CPL, 191(1) CPC, 240(1)(A)(1)(II)(III) ACJL, 358 ACJA.

- He may make a Statement from the dock, where he would not be sworn and would not be liable to cross-examination.**
EFFECT: the Court will admit the statement made, but little weight will be attached to the statement made as the defendant is not liable to be cross examined.
- Give evidence in the witness box after he has been sworn in and liable to be cross examined.
- He may elect not to give evidence in his own behalf. Section 36(11)CFRN 1999. This is because he is a competent witness but not a compellable witness to testify on his behalf. Section 180(a) evidence act.
 - In all He may however call other witnesses to testify on his behalf or adduce other evidence in his favour,. SECTION 287(1)(A) CPL, 36(6)(d)1999 CFRN, 240(1)(A) ACJL, 358(1)(C) ACJA.

- ❖ TAKE NOTICE that where the accused is unrepresented by counsel, it is the duty of the court to inform him of the options. ADIO V STATE, AKPAN V STATE.
- ❖ What if the court fails to comply with the procedure? **It Does Not Vitiates The Trial Provided The Court Informs Him Of The Three Options Available To him(called upon him to enter his defence), Asks The Defendant If He Has Any Witness to call, Hear The Witnesses And Any Other Evidence He Has To Adduce.. Section 288 CPL, 360 ACJA.**

However, before it can affect the trial, the accused must show that he has suffered miscarriage of justice as held in EME V STATE, SAKA V STATE.

- ❖ Where the accused is represented by counsel, the court is not obliged to tell the accused, as it is deemed that the legal practitioner knows the law.

THE EX IMPROVISO RULE

The general rule is that once a prosecution closes his case, the prosecution cannot open it again to adduce evidence, unless the defendant or accused person introduces a new matter that is not reasonable within the contemplation of the prosecution - which the prosecution could not foresee. Section 241 ACJL, 361 ACJA.

The prosecutor with the leave of court can re-open his case and then adduce evidence to rebut the new matter ALONE. SECTION 289 CPL, 241 ACJL, 361 ACJA.

The conditions for re-opening of prosecution's case are:

- New matter raised by defendant/accused person
- Not within the contemplation of the prosecution
- With the leave of the court

Leave of the court must be granted with caution so as to prevent the prosecution opening his case against which is not allowed in criminal litigation.. Court must be convinced that new issues has in fact been raised before granting such leave to prosecution.

This Ex-Improviso Rule must be distinguishable from the power of the power of the court to re-call witnesses under Section 200 CPL, 237(1) CPC, 246 EA. Ally v State.

- **The power of the court to call or recall witnesses is exercisable anytime before judgement is given in a criminal proceeding. Section 200 CPL, 237 CPC.**
- **Whereas, the power of the prosecution under section 289 CPL, its exercisable only when new matter arises in evidence of defence**
- **SECONDLY, it is only the court that can grant the power for any of the parties to cross examine a witness called by the court. BALA V COP, ONUOHA V STATE.**

ALIBI

The defence of alibi means that the accused was somewhere else at the time when the commission of the offence took place and by such, the accused could not have committed the offence. The accused has evidential burden to show that he was somewhere else. Sometimes an accused may have mentioned different places. This is contradictory alibi. The police are not obliged to investigate such contradictory alibi and it is difficult for an accused person to sustain such contradictory alibi.

VISIT TO LOCUS IN QUO

- It refers to inspection of moveable/IMMOVEABLE evidence by court for proper determination of the case. **SECTION 127(1))(B) EA, 205 ACJL, 207 CPL, 243 CPC, 263(1) ACJA.**
- Visit to locus may be by application of either parties or by court suo motu.
- Visit can be Carried out at any time during the course of the proceedings either of prosecution or defence.
- **The essence is for the court to have a clearer view of evidence for the just determination of the case.**

PROCEDURE FOR VISIT TO LOCUS IN QUO

- **Two procedures are laid down in conducting visit Section 127(2)(a)(b) EA 2011.**
- 1) **The court adjourns to the locus and continues proceedings there by taking evidence from witnesses. Section 127(2)(a)EA, COP V OLAOPA. All the principles governing principles of evidence will apply. The witnesses will be put in the witness box and if the witness is to be cross-examined based on the real evidence, the witness will be cross-examined. It is like a court setting. WHEN THEY RETURN BACK TO COURT, proceedings will commence from where it stopped at the locus.**
- 2) **Court with parties visit locus for inspection, take note of things and reconvene back in court to continue proceedings. Section 127(2)(b)EA., R V DOGBE. This is mere inspection.**

Importantly, the accused or defendant must be present at the locus in quo - s. 127(2) EA, s. 207(2) CPA and s. 205(2) ACJL. Directions for the purpose of preventing communication between the witness and the accused shall be given by the court - s. 207(3) CPA and s. 205(3) ACJL.
- 3) **In criminal proceedings, the accused persons must be present at the locus criminis as the general rule is that an accused person cannot be tried in absentia. ADUNFE V IGP, ADEOYE V STATE, LAWRENCE V KING.**
- **HOWEVER, non compliance with laid down procedure will not vitiate a trial unless the accused can show that he suffered miscarriage of justice. AREMU V AG WESTERN NIG., OGUNTOLA V STATE.**

FINAL ADDRESS

- A. Final address is the summing up of 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. It is not part of the evidence adduced by the parties. It is just persuasive to lure the court to deliver judgement in its favour.
- B. **The purpose is to assist the court in the just determination of the case.** Section 269(2)ACJL, 241 CPL, 192 CPC, 304(1)ACJA. **Failure to address will not vitiate trial. NDU V STATE.**
- C. The final address usually comes in after the defendant has closed his case. Ordinarily it is oral but under the ACJL, it is to be reduced into writing - s. 269(2) ACJL. The order of making final address is as follows:
- D. In criminal trials, it is the defence that addresses the court first at the close of the proceedings. 241 CPL, 269(1)ACJL, 304 ACJA.
- E. Will prosecutor have right of reply? It depends on how the accused conducts his case/status of the prosecutor. Section 271 ACJL.
- i. If no witness is called, other than the defendant himself OR if the witness called solely gave evidence as to his character and NO document was put in his evidence, the PROSECUTOR WILL NOT HAVE ANY REPLY. HOWEVER, this does not affect a prosecutor who is a law officer. A LAW officer will always have a right of reply or POLICE who is a LEGAL PRACTITIONER. 243 CPL, 271 ACJL. OTHER WISE Prosecutor shall NOT have right of reply. Section 241 CPL, 269 ACJL, 304(1)ACJA, ALHAJI V COP
 - ii. Where defence introduced new matter in his closing address which was not supported by evidence, the court in its discretion MAY ALLOW the prosecution to reply to such new matter. SECTION 241 CPL, 194(1) CPC, 269 ACJL, 304 ACJA.
 - iii. Where the accused person testified in his defence and called witnesses who gave evidence other than evidence as to character and the accused tendered document in support of his case, the prosecution SHALL HAVE the right of reply. SECTION 242 CPL, 270 ACJL, 304(2) ACJA, State v sisi.

NOTE: where prosecutor is a Law officer or a police Officer who is a legal practitioner will always have right of reply. Section 1 CC, 202 and 243 CPL, 304(3) ACJA, 271 ACJL, AWOBOTU V STATE. Law officer includes attorney general of the state, solicitor general of the state and DPP and such other qualified officer by whatever means designated to whom any of the powers of a law officer are delegated by law or necessary instrument.

ETHICAL ISSUES

Duty of defence Counsel

- **He must defend the accused to the best of his ability. Rule 37(1)(2)(3) RPC, RULE 38 RPC.**

- **He must be fair and candid in the dealing of the accused case. UDOFIA V STATE, UDO V STATE.**

Note that the magistrate or judge presiding on the case shall hear the case from arraignment to sentence. The composition must be constant and if altered (i.e by transfer, retirement or death of the officer presiding) **the trial must commence de novo - afresh.** , Umukoro v. State, **Iyela v. COP** (transferred to another state and came to deliver judgement ; on appeal, it was held that no judgment was delivered as that office was vacated.

396(7) ACJA however provides that a judge of the High court who has been elevated to the court of appeal shall have the dispensation to continue to sit as a high court judge only for the purpose of concluding part heard criminal cases pending before his elevation, and he shall conclude same within reasonable time.

JUDGMENT AND SENTENCING

WEEK 17

- Judgment also known as verdict in criminal proceedings is the final determination of the rights and obligations of the parties in a case submitted for adjudication by the courts. SECTION 6(6)(B) 1999 CONSTITUTION(as amended).
- Judgement marks the end of a trial before a competent court.
- Judgement in criminal matters in Nigeria is regulated by **Section 245 CPL, 268(1),269 CPC, 275 ACJL, 308 ACJA and section 294 1999 Constitution.**
- At the close of evidence by the parties and final address, the court proceeds to judgement.
- The writing and delivery of judgment/sentencing by a competent court on all issues raised by the parties signifies the end of criminal trial.

ORAL JUDGEMENT AND THE LAW

MAGISTRATE COURTS

Quare: Can a court deliver an oral judgement?NO COURT IN NIGERIA CAN DELIVER AN ORAL JUDGEMENT. Rather, the magistrate court IN THE SOUTH AND UNDER ACJA can have a partly written judgement and proceed an give his oral judgement.

However, a magistrate in the South is permitted to deliver oral judgement but he shall;

- A. Record briefly in the book his decision thereon and where necessary, he records his reasons for such decision; or
 - B. Record such information in a prescribed form.
- SECTION 245 CPL.

Pursuant to section 308(2) ACJA, the magistrate instead of writing the judgement, may record briefly in the book his decision or finding and the reason for the decision or finding and then deliver an oral judgment. SEE **UNAKALAMBA V COP.**

In Lagos, the ACJL pursuant to section 275 prohibits oral judgement. Thus, the MAGISTRATE must comply with the 5 essentials of a valid judgement.

In the North, magistrate must comply with the 5 essentials of a valid judgement. 268(1)CPCL. NO ORAL JUDGEMENT.

It must be noted that the proviso to section 245 CPA and Section 308(2) does not conflict with the Constitution because the constitutional requirement that every judgment be in writing under section 294(1) CFRN applies only to “**every court established under the constitution...**”). The Magistrate court is not established under the constitution as it is not listed under section 6(5) of the CFRN. Magistrate courts are established by the Laws enacted by the Houses of Assembly of each State. **OKODUWA V STATE.**

- Judgement is to be delivered in open court. Pursuant to Section 36(4) 1999 Constitution, 203 CPL, 200 ACJL.
- **Explanation of substance of judgment to the accused/defendant:** section 268(1) CPC requires that the substance of the judgment of every court must be explained to the accused in a language he understands. There is no such requirement in the south under section 245 CPL and in Lagos under section 275 ACJL and under SECTION 308 OF ACJA. However, since by section 36(6)(e) CFRN, one of the constitutional requirements for fair hearing is that the accused must be provided with an interpreter, it follows that the substance of the judgment would be interpreted to him by the interpreter in a language he understands. See AJAYI v. ZARIA NA.
- **The judgement must be signed, or sealed(in the north) by the court.**
- Judgement is to be delivered when the accused person is present in court. If accused is not in court when judgement is delivered , the entire proceedings will be a nullity. Audu v STATE, MOHAMMED V STATE.

TAKE NOTE that where an accused jumps bail and the court adjourns two times to secure his attendance, the court can continue with the proceedings where the accused does not appear in court. However, where the court is to pronounce its judgement, the accused person/defendant MUST be in court otherwise the entire proceedings will be a nullity. SECTION 352(4)(5)ACJA.

CONTENTS OF A VALID JUDGEMENT

- A. JUDGEMENT MUST BE IN WRITING
- B. JUDGEMENT MUST CONTAIN THE POINTS FOR DETERMINATION
- C. JUDGEMENT MUST CONTAIN THE DECISION OF THE COURT ON THE POINT(S) FOR DETERMINATION.
- D. JUDGEMENT MUST CONTAIN THE REASON(S) FOR THE COURT DECISION.

- E. MUST BE DATED, SIGNED OR SEALED BY THE JUDGE OR MAGISTRATE.
(Sealed in the NORTH)

JUDGEMENT MUST BE IN WRITING

- No High court is allowed by law in Nigeria to deliver an oral judgement. 245 CPL, 268 AND 269(1) CPC, 308(1)ACJA, 275 ACJL, 294 1999 CONSTITUTION, OKORUWA V STATE, UNAKALAMBA V COP.
- Oral judgement delivered in open court BY THE HIGH COURT, and later reduced into writing in judges chambers remains an oral judgement. QUEEN V FADINA. The rationale being that the court becomes functus officio after delivering the judgement and it cannot purport to do anything to the judgement as it will amount to an irregularity.
- Judgement read from the note made by the judge during the course of the trial is an oral judgement. QUEEN V FADINA.
- Judgement read from notes made by judges son/daughter/legal assistant is an oral judgement. AJAYI V STATE.
- Judgement also dictated in court by a judge to a typist remains an oral judgement. OKODUWA V STATE.
- The judge may write his judgement at the close of all evidence, subject to any amendments he may wish to make during or after final addresses. However, judge must not deliver such judgement before final addresses. R V COBOLAH.

DELIVERY OF JUDGEMENT BY ANOTHER JUDGE

- ✓ A **written and signed judgement** by a judge may be delivered by another, if the trial judge is ill or unavoidably absent. **SECTION 251 CPL, 262 CPC, 281 ACJL, 315 ACJA, IYELA V COP**. The rationale behind it is, the effective date of a judgement is the date it was **delivered** in court as sentencing starts running from such date and not necessarily the day the judge made the judgement.

2 JUDGMENT MUST CONTAIN THE POINTS FOR DETERMINATION

- The judgement must indicate whether or not the accused person committed the offence charged or a lesser offence which he was not charged but in appropriate cases may be convicted.
- In resolving the issues, regard must be had to the substantive criminal law to identify the ingredients of the offence.
- Regard must be had to the evidence adduced.
- These are the basis for the determination of the guilt or innocence of the accused, TANKO V STATE.

3. DECISION OF THE COURT ON THE POINT(S) FOR DETERMINATION

- The court must make specific findings on each point identified.

- Decision of the court on each point will lead to the finding of guilt or innocence.
- The judge must analyze or review the evidence before him to establish if there is proof beyond reasonable doubt. WILLIE JOHN V STATE.

4. REASONS FOR THE COURT DECISION

- The trial court must carefully evaluate the evidence of the prosecution and defence.
- Where the trial court prefers a version of evidence to the other, the reason must be stated. STATE V AJIE.
- Reasons for the decision is not court sensitive. BAKOSHI V CHIEF OF NAVAL STAFF.
- Failure to give reasons for the decision will lead to quashing the decision on appeal, NWAEFULE V STATE, WILLIE JOHN V STATE.

5. JUDGEMENT MUST BE DATED, SIGNED OR SEALED BY THE JUDGE

- An undated and unsigned judgement is worthless. SUNDAY V STATE.
- Sealing is an alternative to signature in the North. SECTION 269(1) CPCL.
- The relevant date is the date of delivery of the judgement or date of pronouncement. SECTION 245 CPL, 275 ACJL, 269 CPCL, 308(1)ACJA, AGF V ANPP.
- Another judge who delivers a judgement must date and sign. AGF V ANPP.

EFFECT OF FAILURE TO COMPLY WITH THE SECTIONS.

- Generally, non compliance with the sections renders the judgement a nullity, but it depends. WILLIE JOHN V STATE, UNAKALAMBA V COP.
- If the error is such that can be corrected by the appellate court, it will not vitiate the judgement.

TIME LIMIT TO DELIVER JUDGEMENT

- Pursuant to section 294(1) 1999 Constitution, judgement is to be delivered within 90 DAYS after conclusion of final addresses by counsel.
- Where there are no final address, in a case where parties waive their right as to final address, time start to run at the conclusion of the case of the defence and then court adjourns for judgement.
- Compliance with Section 294(1) is MANDATORY. SHEHU V STATE.
- An authenticated copy of the judgement shall be made available to parties in the case **within SEVEN DAYS of delivery of the judgement.**

ARREST OF COURT JUDGMENT

- ❖ ONCE the court has concluded hearing or preliminary matter, it adjourns to deliver judgement or ruling on a particular date. On that date, counsel will come and file a motion for the court to do a particular thing first. The judgment of the court cannot be

arrested. HOWEVER, the judgement of the court may be suspended depending on the grounds of the application such as fraud. NEWS WATCH COMMUNICATIONS LTD V ATTAH.

EFFECT OF FAILURE TO DELIVER JUDGEMENT WITHIN 90 DAYS

- Previously, under the 1979 Constitution, failure to deliver judgement within 90 days judgement is void.
- However, under the 1999 Constitution, pursuant to section 294(5) failure does not render the judgement void but voidable. If the court has lost the impression and testimony of the witnesses and delivers a judgement after 90 days, the judgement may be set aside on grounds of miscarriage of justice. OGBU V STATE, APOSI V STATE.
- The onus is therefore on the appellant.

CONVICTION

Conviction is the act or process of judicially finding someone guilty. AGBI V STATE.

- It does not matter that the accused was not given a custodial sentence. YALEKHUE V OMOREGBE. And it is not less a judgement
- The courts judgement must convict the accused before he is sentenced. R V EKPO

EFFECT OF FAILURE OF THE COURT TO RECORD CONVICTION BEFORE SENTENCE

- ✓ It depends on the circumstances 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
- ✓ **However, where it is not clear from the records of proceedings, it will affect the judgement and lead to an order of retrial.** ADAMU V STATE.
- ✓ The appellate court may also discharge and acquit the accused.

FURTHER TAKE NOTE

- ✓ The court must deliver on each count where accused is charged for more than one count.
- ✓ Court must deliver a verdict in respect of each count for each of the accused where more than one accused is charged. OYEDIRAN & ors v THE REPUBLIC.
- ✓ THE court must also pronounce its sentence on each of the count or on each accused. BANKOLE V STATE.

Note: the court can convict the accused for a lesser offence although not charged with same, as it is deemed that the defendant has notice of the lesser offence and such will not amount to denial of fair hearing. NWACHUKWU V STATE.

ALLOCUTUS : SECTION 247 CPL, 277 ACJL, 197(1)CPCL, 310, 311 ACJA

- An unsworn statement from a convicted person to the judge in which he pleads for mercy, explains his conduct, apologize for the crime or says anything else in effort to lessen his impending sentence
- Basically, it is a plea for mitigation of sentence. Therefore it does not absolve the convicted person of all punishment. OGBEIDE V COP.
- It is made after conviction or plea of guilty before sentence. **The registrar or the judge will inform the convicted person of his right to make an allocutus.**
- **It is the convict or his counsel that makes an allocutus.**
- Allocutus, is ineffective when the law relating to an offence provides a mandatory punishment or minimum punishment. Example armed robbery, murder, treason and treasonable offences. SANMABOW V STATE.
- No amount of allocutus will mitigate a capital punishment. STATE V JOHN.
- After the convicted person makes his allocutus, the court proceeds to sentence.
- Calling for allocutus by the judge instead of the registrar does not vitiate the allocutus.
- **Under the CPCL, if the accused is convicted, he may elect to call a witness to character. Section 197(1) CPCL.**
- **Consequently, the prosecution can rebut it by producing evidence of his previous conviction before sentence. Section 197(2) CPCL.**
- **Statements made by a convicted person in allocutus is not subject to cross examination.**

EFFECT OF FAILURE TO CALL FOR ALLOCUTUS

- Does not affect the validity of the sentence. Section 247 CPL, 277 ACJL.

THE POWER OF THE TRIAL COURT TO TAKE OTHER OFFENCES INTO CONSIDERATION: section 249(1) CPL, 258 CPCL, 279(1) ACJL.

The court may take cognizance of other offences pending against the convicted person before passing sentence. The conditions to be satisfied are

- Must have been found guilty of the present offence.
- Admission of guilt of those other offences.
- Agreed that the other charges be taken into consideration in passing sentence on him.
- The prosecutor of the charge/ **AG If the north must also consent.**
- The offence must have been charged.
- The court must have jurisdiction to try the other offences so charged for.

CAVEATS ON TAKING OTHER OFFENCES INTO CONSIDERATION

- The court must not pass a greater sentence which exceeds its 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 offence unless the conviction is set aside. SECTION 279(2) ACJL, 249(2) CPL.**

CONVICTION FOR AN OFFENCE NOT EXPRESSLY CHARGED.

- Accused can only be tried and convicted for an offence which he has pleaded and expressly charged. 215 CPL, SECTION 36(6)(a) 1999 Const.
- Statutes have provided exceptions.
- The court can convict for a lesser offence as he is deemed to have notice of the lesser offence. NWACHUKWU V STATE
- An accused charged for manslaughter cannot be convicted for murder. Section 228(1) ACJA.
- The offence convicted must carry a lesser punishment. Section 169 ACJL, 217 & 218 CPL, 175
- Accused charged with an offence may be convicted of attempt to commit the offence.
- **An accused convicted of attempt to commit a substantive offence cannot be charged again for the substantive offence.**

AMENDMENT OF JUDGEMENT

- Once a judge pronounces judgement he becomes functus officio. UNAKALAMBA V COP, 275 CPCL
- However, judgement may be amended in certain circumstances. 318 ACJA,
Thus , where there is need to correct clerical error,
To correct errors from accidental slip.
To make the intention of the court clear.
In the case of execution of sentence of canning based on medical examination.
Section 309 CPCL.
ON conviction for contempt in facie curie. Section 317 CPCL. Upon appeal to the court, the court may amend judgement and forgive the contemnor.

MODE OF DELIVERY OF JUDGEMENT

- Composition of trial court to remain constant from commencement to judgement
- If composition is altered, case to start de novo. IYELA V COP
- If case starts de novo, evidence in the previous trial is abandoned. UGURU V STATE. This is because he did not have the opportunity of watching the demeanor of the witnesses.

EXCEPTION

- A. Section 315 ACJA, 251 CPL, 262 CPCL, 281 ACJL, **396(7) AND 494ACJA.**

MODE OF JUDGMENT AT THE COURT OFAPPEAL AND SUPREME COURT

- 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.
- Section 294(2) 1999 Constitution.
- All justices who sat on the case need not be present to deliver judgement.
- One justice of the court suffices whether or not he was among the panel.
- HOWEVER, where the Justice ceases to be a justice of the court before the date fixed for judgement, his opinion cannot be read/ delivered but PRONOUNCED. **SHITTA-Bey v AGF , AJIBOYE V ISHOLA.**

SENTENCING

- This is defined as the punishment imposed according to law on a criminal wrongdoer after his conviction. YALEKHUE V OMOREGBE.
- The courts sentence must be pronounced in the Presence of the accused. AUDU V STATE. MOHAMMED V STATE.
- The sentence of the court must be the one prescribed for the offence in the law and no other. EKPO V STATE.
- Where the court omits to pronounce sentence, the error may be corrected at appeal by the prosecutor.
- The court is not bound to impose the maximum sentence on the accused except it is a **mandatory punishment. OLANIPEKUN V STATE, ISSAC SLAP V AGF.**
- **Any appeal against such sentence must fail. EGUNJOBI V FRN.**
- No discretion to go below the minimum penalty no matter the beauty of the allocutus .DADA V BOARD OF CUSTOM AND EXCISE.
- Where the penalty **is a term of imprisonment without an option for fine,** upon conviction the court lacks the power to impose option of fine. DADA's case.
- Where the statute is however silent on the imposition of option of fine, the court can impose the option of fine in lieu of penalty.

LIMIT OF DISCRETION TO IMPOSE A LESSER PUNISHMENT.

- Mandatory sentence. EGUNJOBI v FRN
- Minimum penalty. DADA V BOARD OF CUSTOMS AND EXCISE, 416(2)(I) ACJA.
- Sentence may also take effect retrospectively.
- The court after conviction may retire to consider sentence or adjourn for sentence. Section 278(1) ACJL, 198 CPCL, 248 CPL.
- The general rule is that if a person is convicted of an offence, he will be sentenced and the sentence will commence immediately as held in EKPO V STATE. However, section 460 ACJA, makes provisions for suspended sentence, whereby after convicted citing a person where it sees reason order that the sentence of imprisonment be suspended.

- A court may postpone the sentence to be imposed on an accused person and release him on bail or remand him in prison custody pending its determination on the punishment to be imposed. 254 CPL, 280 ACJL.
- Sentence should be pronounced on every count that the accused has been convicted for. *Oyediran v the republic*.
- A court that pronounces more than one sentence in a trial may direct whether or not the sentence will run CONCURRENTLY OR CONSECUTIVELY. SECTION 314 ACJL.
- **Where the Court is silent, the sentence will run CONCURRENTLY, but in the NORTH the sentence will run CONSECUTIVELY.** Section 24 and 312 CPCL.

ACJA and SENTENCING OBJECTIVES

- Prevention
- Restraint
- Rehabilitation
- Deterrence
- Education of the public
- Restitution
- Retributive

SECTION 401(2) ACJA.

It is pertinent to note that the court will consider in section 416(2) ACJA and introduction of sentence hearing.

TYPES OF SENTENCE

DEATH SENTENCE

- ❖ Capital offence attracts death penalty.
- ❖ The Supreme Court has held that death sentence is legal in Nigeria. *KALU V STATE*
- ❖ Armed robbery is via firing squad. Section 1(3) robbery and firearms act.
- ❖ Execution of sentence of death is by hanging. Section 367(2) CPL, 273 CPCL, 301(2) ACJL, 492 ACJA.

PERSONS EXEMPTED FROM BEING SENTENCED TO DEATH

PREGNANT WOMAN: The relevant status of the woman is her status at the time of **conviction and not Commission of the offence.** If she is found guilty of a capital offence, she shall be sentenced to life imprisonment. SECTION 368(2). PL, 302(2) ACJL, 270, 271, 300 CPCL.

SENTENCE OF DEATH AND PREGNANT WOMAN UNDER ACJA

SECTION 404 & 415(4) ACJA.

- She shall be sentenced to death.
- **However, execution to be stayed until baby is delivered and weaned.**

Compare 404& 415(4) ACJA, with 221(2) Child's right Act.

SENTENCE OF DEATH AND PREGNANT WOMAN UNDER CHILDS RIGHT ACT

- Pregnant woman or nursing mother shall not be sentenced to death. Section 221(2) child's right act.
- Court to consider non institutional sentence.To be kept at a special mothers centre. Section 221(4) CRA.
- **Pregnant woman and child not to stay more than 6 years at SMC.** SECTION 221(5) CRA.
- See 221(6) CRA.

INFORMATION OF PREGNANCY

The woman may inform the court of the pregnancy before sentencing. 376 CPL, 311(1) ACJL, 415(1) ACJA, 271(1) CPCL.

A convicted and sentenced woman convict who becomes pregnant before execution shall have her sentence changed to life imprisonment. Section 376(5) CPL.

Proof must be convincing and overwhelming. Section 415(2) ACJA. The prof is by a doctor of the government hospital.

Appeal as to whether or not a woman convict is pregnant lies direct to the Supreme Court. Section 376(4) CPL, 271(4) CPCL. **However, see 311(4) ACJL.**

However consider the constitutionality of Section 376(4) CPL, 271(4) CPCL with Section 233(1) Constitution.

YOUNG PERSON

This is a person who has attained the age of 14 years but not 18 years.

Options available are

- ❖ Young person to be detained at the pleasure of the gov or president. Section 363(3) CPL, 272 CPCL, 302(3) ACJL, GUABADIA V STATE.
- ❖ He may be discharged during such pleasure by the president or governor on license. Section 401(1)(2) CPL, 330(1)(2) ACJL, 303(1)(2) CPCL.

ACJA AND DEATH SENTENCE ON YOUNG PERSON

- No sentence of death pronounced.
- Shall be sentenced to life imprisonment or such other terms.
- See section 405&401 ACJA.

FORM OF PRONOUNCING THE DEATH SENTENCE

SECTION 367(2) CPL, 301(2) ACJL.

“ 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.

The sentence of the court upon you is that you be hanged by the neck until you be dead or by lethal injection. SECTION 402(2) ACJA.

Section 273 CPCL, the sentence of this court upon you is that you be hanged by the neck till you be dead.

EFFECT OF FAILURE TO COMPLY WITH THE FORMAT

- Failure to comply with the format of pronouncing a death sentence is not fatal to the trial
- It is regarded as a clerical error rectifiable by the trial judge or the appeal court. GANO V STATE.

CONFIRMATION OF DEATH SENTENCE

Where a person is convicted of a capital offence and sentenced to death, the sentence must be confirmed by the President (federal offences) or Governor(state offences) before execution. After the pronouncement of the sentence of death on the convict, the judge would as soon as practicable, forward to the AG , the following;

- The CTC of the records of proceedings of the case
- A certificate showing that death sentence has been passed on the convict named therein
- A written report containing the recommendations of the court concerning the defendant sentenced to court.

DEATH SENTENCE AND PREROGATIVE OF MERCY

A person sentenced to death may appeal to president/ Governor for prerogative of mercy where it is a federal offence or a state offence respectively..

The court may also suo motu make recommendations to the president or the governor through the ATTORNEY GENERAL for prerogative of mercy.

The president after consultation with the **COUNCIL OF STATE** or the governor after consultation with the **ADVISORY COUNCIL ON PREROGATIVE OF MERCY OF THE STATE** may:

- Grant the offender pardon
- Grant the offender a reprieve. ThT is cancel or postpone the punishment.
- Commute the death sentence to life imprisonment or lesser punishment.

SECTION 175(2), 212(2) CONSTITUTION.

In Okeke v state, it was held that application for prerogative mercy made to the Supreme Court was wrong. It should be addressed to the council of state.

EXECUTION OF SENTENCE

- Sentence of death shall not be carried out unless confirmed by the president or governor.
- Appeal against death sentence acts as a stay of execution.
- See the notorious case of BELLO v AG Oyo state.

IMPRISONMENT

By Imprisonment, we refer to custodial sentence. The convict is to be remanded in prison until the expiration of the term of imprisonment. Court may order that the imprisonment be with or without hard labor.

Where no specific order is made it will be deemed to be with hard labor.

Section 382(5) CPL, 316(5) ACJL, 23(5) CPCL.

Note the power of the magistrate court in the north pursuant to section 257 CPC. For Lagos, it must not exceed 14 years. Section 314 ACJL, section 29(5) MCL 2009. The magistrate court can refer to the High court in the north, section 24(2)CPCL.

TERMS OF IMPRISONMENT

- Where a law provides term of imprisonment and is silent on fine., court can impose fine in lieu and this is at the discretion of the court, section 316 ACJL, 382(1) CPL, 23(1) CPCL.

A term of imprisonment comes into effect immediately it is pronounced or not later than 3 months thereafter. Section 393(3) & 381 CPL.

In Lagos, period of detention must be included. Section 315 ACJL, 419& 431 ACJA.

In practice, life imprisonment means no more than 20 years jail term except the court orders otherwise. Section 70 penal code.

A convict who defaults in the payment of fine in lieu shall serve 2 years term maximum. Section 390(3) CPL, 316(3)& 319(3) ACJL, 422 ACJA, 23(3)&74 CPCL.

SENTENCE OF FINE

SECTION 389 CPL, 318 ACJL, 427 ACJA, 74 CPCL

- It is a pecuniary punishment
- Entails the payment of money as punishment

- May stand on its own or be in addition to imprisonment.
- Default of payment of the fine, he will be liable for imprisonment for a certain term. Section 390(3) CPL, 428 ACJA, 319(3) ACJL, 23 CPCL.
- The court must have regard to the means of the convict. Section 391 CPL, 320 ACJL, 427(1) ACJA.
- Convict may appeal on grounds of excessive fine imposed on him. *GOKE V COP*.
- The proceeds of the fine is payable to the victim/ informant(whistle blowers) to offset expenses, payment of any court fees and remainder goes to the general revenue of the state. Section 391 CPL, 320 ACJL.

CANNING

- There is no sentence of canning in Lagos state and under ACJA.
- Under the CPL Sentence of canning in certain cases may be in addition to other punishment. Section 387 CPL, 77 Penal code
- **The offence must carry an imprisonment term not below 6 months.**
- Regards must be had to the prevalence of the offence. Antecedents of the convict must also be considered. Section 387 CPL, 77 penal code.
- The number of the strokes must not **exceed 12 and it must be specified in the sentence.** Section 386(1)(2) CPL,
- It must be administered with a light rod or light rattan cane or birch. Section 386(1) CPL 308(5) CPC.

SENTENCE OF CANNING NOT TO BE PASSED ON THESE PERSONS

- A. A female convict. 385 CPL, 308(4)(a) CPCL.
- B. A convict sentenced to death. 308(4)(b) CPCL.
- C. Male convict of 45 years and above. 385 CPL, 308(4)(c) CPCL.
- D. **Note that the convict must be medically fit and this should be ascertained. Section 309(1)(2) CPCL.**

In the south east, sentence of canning is only retained as punishment for juvenile offenders. CRIMINAL PROCEDURE LAW OF EASTERN NIGERIA 1963

Execution of sentence of canning shall not be by instalment. 308(3) CPCL.

Appeal against sentence of canning is 15 days. Section 281(1) CPCL.

HADDI-LASHING. SECTION 307 CPC.

- Applies only to **Muslim faith practitioners** in the north. Section 307(2) CPCL.
- Essence is to inflict disgrace on the offender rather than pain. Section 4 Cp(haddi lashing) Order in council 1960.
- It is an additional penalty to one already imposed.

HADDI LASHING AVAILABLE IN THE FF CASES.

- Morality
- Adultery by a man
- Adultery by a woman
- Drunkenness

Taking alcoholic beverages for medical purposes not an offence under the PC.

PROCEDURE FOR EXECUTION PF HADDI LASHING

- To be carried out in an enclosed place accessible to public.
- To be put in the middle finger
- The person to carry out the execution should not be muscular.
- Striking arm not to be raised above shoulder level.
- Physical injury must be avoided.
- Note that the **health of the convict and season of the year must be** considered.
- See the relevant law cited above

OTHER FORMS OF SENTENCING

- Probation. Section 341 ACJL, 453-458 ACJA.
- Restitution of stolen property. Section 297&341(3) ACJL, 270 CPL.
- Binding over. Section 300&309 CPL, 25 CPCL.
- Forfeiture order
- Payment of damage for injury or compensation
- Community service.. 347 ACJL, 460 (2) ACJA.
- Suspended sentence.
- Confinement at a rehabilitation and correctional centre, section 348 ACJL, 68(1)(d) PC.
- Deportation.

NOTE THE CONDITIONS FOR PAROLE TO BE APPROVED. 468 ACJA.

RESTORATIVE JUSTICE AND RETRIBUTIVE JUSTICE

- Restorative justice is reformatory and rehabilitative in nature? It emphasizes the remedy available to the victim and community as it restoratory..
- It encourages the reintegration of the accused into the society.

KENNETHS NOTE

Types of sentence

- Death sentence
- Imprisonment
- Fine
- Caning

- Haddi lashing
- Deportation – s. 402 – 412 CPA, s. 331 – 339 ACJL
- Probation
- Restitution of stolen property – S. 270 CPA
- Binding over
- Forfeiture – s. 290 ACJL
- Payment of damages for injury or compensation
- Community service – s. 347 ACJL
- Confinement at rehabilitation and correctional centres

Pregnant woman: where a woman who is convicted for a capital offence and she thinks that she is pregnant, the woman or her counsel is to inform the court of the fact. The court before sentencing her would first determine whether or not she is pregnant. The evidence upon which the court is to reach the conclusion is to be brought by the woman or the prosecution. If the court finds that the woman is not pregnant, a death sentence would be passed on her. The woman upon such sentence can appeal to the court of appeal, although the CPA mentioned Supreme Court. The CPA was enacted when the court of appeal was not in existence then. Section 233 CFRN restated the position. See 376 CPA, s. 311 ACJL and 270 & 271 CPC. Upon appeal, the court of appeal if satisfied that the woman is pregnant, the court of appeal shall quash the sentence and substitute it with life imprisonment.

Young person: section 270 & 272 CPC, s. 312(1) ACJL a child as defined is a person under the age of 14 years while a young person is under the age of 17 years. However the ACJL provides for a person under the age of 18 years. The relevant age is the age of commission of the offence and not the age of conviction of the offence. In accordance with the above provision, a person under the age of 17 or 18 years shall not be sentenced to death but the court shall order that such person be detained at the pleasure of the Governor. The person can be detained in place directed by the Governor and under any conditions. Also, he may be discharged on a licence on conditions. This licence can still be revoked at any time by the Governor – s. 330 ACJL. Once revoked, he will be re-arrested by warrant and taken to the place designated.

Options available to a person sentenced to death

A person under death sentence can either:

- Appeal to the appellate court – Court of Appeal to Supreme Court. The appeal acts as a stay of execution. *Bello v. AG Oyo*.
- Appeal to the President of the Federal Republic of Nigeria or Governor of a state for prerogative of mercy – s. 175 & 212 CFRN.

The power of the President is to be exercised in accordance with the advice of the council of state – s. 175(3) CFRN. The power of the Governor shall be exercised by him after consultation with Prerogative of Mercy Committee – s. 212(3) CFRN. Under the foregoing provisions, the Governor or President can do any of the following:

- Grant pardon to the convict with or without conditions
- Grant an imprisonment instead of death penalty
- Extend period for execution of the sentence
- Execution of the sentence

Sentence of death are not carried out unless confirmed by the President or Governor as the case may be. Upon the sentence of death penalty, the court is to do the following – s. 371 CPA:

- The judge is to issue a certificate under his hand and seal
- The certificate – a copy each is to be given to the police officer responsible for the custody of the sentenced person and the superintendent of prisons
- The certificate – a copy together with record of proceeding is to be transmitted to the Minister designated to advise the President on prerogative of mercy, Attorney-General of Federation or State.
- Also, a report in writing containing observations or recommendation is to be sent along with the above.

Imprisonment

Imprisonment is a custodial sentence. In custodial sentence, the court must take into consideration the jurisdiction to impose punishment. This is relevant for magistrate court whose jurisdiction to impose punishment is limited. In Lagos, it is a maximum of 14 years and a magistrate cannot exceed this maximum – s. 29(5) MCL. In the north, a magistrate can impose twice its jurisdiction to impose sentence (imprisonment) where the convict is convicted on different counts and such is to run consecutively – s. 24 CPC. The high court has unlimited jurisdiction to impose custodial sentence and it is only bound by the sentence – terms of sentence provided by the law creating the offence. Terms of imprisonment can be with or without hard labour and if this is not stated, it will be with hard labour – s. 377 CPA, s. 312 ACJL. Where a convict is convicted of different counts, such sentence can run consecutively or concurrently. Consecutive means one after the other while concurrently means at the same time.

Where the law creating the offence did not provide for an option of fine in lieu of punishment or terms of imprisonment, the court can sentence convict to fine. The fine payable will be determined by the court. Where the convict defaults in payment of the fine, he will then be liable to 2 years imprisonment. Life imprisonment means a term not more than 20 years. After sentence, the court has a duty to issue a warrant of commitment of the convict to the prison.

Fine – s. 389 CPA, s. 318 ACJL

Fine is a pecuniary punishment. This can be in addition to imprisonment or independent of imprisonment. If the amount to be paid by the convict is not stated by the law creating the offence, the amount to be paid would be at the discretion of the court. However, the fine to be awarded must be with regard to means of accused person. In *Goke & ors v. The police*, the

appellants had successfully appealed on the fine imposed on them by the trial court which did not take into account their ability to pay such fine. The proceeds of fine is payable to the victim, offset any expenses and payment of court fees and not to the state. Every other type of sentences usually abate on the death of the convict, however the sentence of fine does not abate. Where the convict dies, the fine will be taken out of the estate of the deceased. See *Rowe v. R.*

Caning

Caning is a type of sentence which is applicable in south and northern states except Lagos state. Caning can be in addition to terms of imprisonment or in lieu of it where the convict is liable to 6 months imprisonment – s. 387 CPA. The strokes of cane must not exceed 12 strokes and light cane is to be used – s. 386 CPA. Certain persons are excluded from being caned. They are: s. 385 CPA, s. 308(4)

- Female offenders
- A male sentence to death
- Males whom the court considers to be more than 45 years of age

Importantly, before the convict is caned, it must be established that the person is medically fit. Also, there is no room for instalmental caning. An appeal can be made against the sentence of caning. In **south-east, caning is only for juvenile offenders**. This is provided by the Criminal Procedure Law of Eastern state.

Haddi-Lashing – s. 307 CPC

Haddi-lashing is form of caning that applies to only persons who are moslem. The difference between it and caning is that Haddi-lashing is not for the purpose of inflicting pain but to inflict disgrace on the convict, while caning is for the purpose of inflicting pain. Haddi-lashing is usually imposed in addition to other punishments and it is prescribed when a moslem is guilty of any of the following:

- Adultery – man or woman
- Defamation
- Injurious falsehood
- Drunkenness in a public place
- Drunkenness in private place
- Drinking alcoholic drinks

Haddi-lashing is imposed where a convict is convicted for an offence dealing with morality.

Procedure for carrying out haddi-lashing

- The punishment must be administered in an enclosed place which is accessible to the public.
- It must be administered with a soft single thonged leather whip
- The person administering it must be of moderate physique

- The person administering it must hold the whip with the 3rd, 4th and 5th fingers of the right hand
- The person must not raise the striking arm above his shoulder
- The punishment must not be heavy and physical injury must be avoided.
- The health of the accused must be put into consideration and haddi-lashing must be avoided during the period of harmattan.

Restorative justice

The criminal justice system being in practice in Nigeria is retributive in that the whole process is towards bringing the accused to face the full wrath of the law. The offender and the victim are not considered, the ultimate goal is for the offender to be punished if found guilty. Restorative justice is the direct opposite of retributive system. It is more concerned about the offender understanding the consequences of his act and making him a better person for the community. Thus it has the following components

Reconciliation: restorative justice is reconciliatory in nature in that the offender, victim and the community are reconciled together. In this like, the victim is given attention.

Restitution: this is a vital component as the victim is compensated for the loss suffered by him. To an extent, the aim is to restore the victim back to his position before the crime as much as it is practicable.

Reintegration: restorative justice involves the offender being reintegrated and accepted back to the society. For instance, community service under the ACJL being a type of sentence. The offender in this like is sentenced to work in certain areas of the community.

Restoration: this is achieved when the foregoing had successfully been done. Thus the community is assured that the offence would not be repeated again.

Unlike retributive justice, a lot of parties are involved. They are:

- Offender
- Victim
- Community
- State

CRIMINAL APPEALS

WEEK 19&20

WHAT IS AN APPEAL

An appeal seeks to review the decision of the lower court by the higher court. It is a judicial examination by a higher court of the decision of a lower court. OKPONIPERE V STATE. Appeal is not a retrial as the witnesses are not called again to testify rather the records of

proceedings will be examined, except in exceptional circumstances where additional evidence will be adduced.

An appeal is a continuation of the original action and not an inception of a new action. ODEDO V OGUEBEGO.

It is pertinent to note that without an original action, there can be no appeal. The appeal court focuses on the correctness of the decision.

PURPOSE OF AN APPEAL

- ❖ To rectify an alleged erroneous decision on facts, law, mixed law and fact and to reverse the decision of the lower. OREDOYIN V AROWOLO.

TERMINOLOGIES

- ❖ APPELLANT: both the counsel and the person making the appeal are referred to as appellant. OKARIKA V SAMUELA.
- ❖ RESPONDENT:
- ❖ QUERY: Can the respondent in an appeal challenge the decision appealed against? Yes, he can through a cross appeal and he will be referred to as CROSS-APPELLANT.

POINTS ON APPEAL

- An appellate court does not try cases because it is not a trial court, it only considers records of proceedings of lower courts.
- Appeal is not a retrial but a rehearing.
- Evidence is rarely adduced before the court.
- The right of appeal is conferred by statute or constitution. STATE V ADILI. Implicit, courts cannot suo motu confer power on itself to hear an appeal. RABIU V STATE.

APPEALABLE DECISION

- Final decision
- Interlocutory decision.

Section 318(1) 1999 Constitution.

Can an appealable decision include a no case submission? The ruling of the court on a no case submission is appealable. ONOGORUWA V STATE.

Note that the procedure for filing interlocutory appeal is same as that of final decision. Interlocutory appeals may be incorporated into the main appeal. OMBUGADU V CPC, KEJAWA V STATE.

DUTIES OF APPELLATE COURT

OKWOR KENNETH ONONEZE DOMINIC – CRIMINAL LITIGATION

- The court must determine whether an error was made in the lower court.
- Whether the error was substantial
- If it was, did it occasion a miscarriage of justice.

WHO MAY APPEAL

- The prosecutor
- Prosecutor will include agencies with prosecutorial powers
- The accused/convict

Section 243(1)(a) 1999 constitution, 67&68 MCL 2009.

Thus, the victim cannot appeal against the decision of the court. AKINBIYIV ADELABU. Also, an interested person including civil societies cannot appeal against the decision of the court.

APPEAL AND CASE STATED

CASE STATED is a reference to a higher court to give its opinion on points of law or interpretation of the constitution. Section 295(2) 1999 Constitution, order 5 r 1 CAR 2016.

The opinion of the higher court on the issue will be used to decide the case.

THE CONDITIONS FOR CASE STATED

LAID DOWN IN FRN V IFEGWU

- ❖ Questions must relate to interpretation of or application the constitution
- ❖ The question must arise from proceedings in relation to an issue before the court.
- ❖ Substantial question of law: substantiality to be decided by the court making reference.

The Court making reference not to give opinion of law on the questions referred to. It is pertinent to note that an appeal can arise from a decision of a lower court based on a case stated.

CASE STATED FROM MAGISTRATE COURT

- Only the attorney general can state a case for reference after judgement.
- This must be done within six months after judgement. Section 76 MCL LAGOS.
- Contents of case stated. Section 77 MCL.
 - ✓ The charge, summons, information or complaints
 - ✓ The facts found by the magistrate to be admitted or proved
 - ✓ Any submission of law made by or on behalf of the complainant during the trial or inquiry
 - ✓ The finding of and in case of conviction, the sentence imposed by the magistrate

- ✓ Any question of law which the magistrate desires to be submitted for the opinion of the High Court
- ✓ Any question of law which the Attorney-General requires to be submitted for the opinion of the High Court
- ✓ Any submission of law made by or on behalf of the accused during trial or inquiry.
- It can be stated to the High court.
- Either party, the magistrate suo motu, the AG at any stage before judgement may request reference on point of law before judgement.

CASE STATED FROM HIGH COURT TO COURT OF APPEALS. ORDER 5 CAR.

APPEALS AND OTHER PREROGATIVE WRITS

- ❖ Available in the supervisory powers of the high court over inferior courts.
 - ✓ Ha Beas corpus
 - ✓ Mandamus, FAWEHINMI v AKILU
 - ✓ Certiorari. State v falade
 - ✓ Prohibition.....state v chief mag aboh mbaise, ex PARTE onukwe.

FORMS OF APPEAL

- ✓ Appeal As of right: section 241(1) 1999 Constitution
- ✓ Appeal with leave. Section 242 1999 Constitution

Appeal from Magistrate to High Court

The High court have both original and appellate jurisdiction. Section 257(2) and 272(2) 1999 Constitution. Section 28 HCL OF LAGOS STATE.

TIME TO 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 for sentence of canning from the date the sentence is pronounced. Section 281 CPC.**

HOW TO COMMENCE

- Notice and grounds of appeal to be signed by appellant or his legal practitioner. Or 2 r 2(2) HCL (appeal) rule.
- Notice to be filed at the registry of the magistrate court.
- **Verbal notice of appeal 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 from decision of the magistrate court to the High court. Section 69(1) MCL Lagos.
- No verbal notice in FCT. SECTION 485(3) ACJA.

GROUND OF APPEAL, SECTION 279(2), 282(2) CPC, 67&68 MCL.

- ❖ Appellant in custody can give notice of appeal to officer in charge of prison.
- ❖ This is deemed to be the date of filing.
- ❖ Effect? Where the provisions for ground of appeal is outside this scope, leave of court must be sought to bring such ground.
- ❖ Where there are several appellants, **each to give separate notice of appeal**
- ❖ What is the effect of failure to appeal within time? The appeal is incompetent unless leave of court for extension of time by motion on notice, supported by affidavit and written address is sought from the High Court,

OMNIBUS GROUND OF APPEAL IN CRIMINAL CASES.

THE DECISION OF THE TRIAL COURT IS UNREASONABLE AND CANNOT BE SUPPORTED HAVING REGARD TO THE EVIDENCE. SECTION 282(2)(f) CPC, section 19(1) court of appeal act.

NOTE

WHEN OMNIBUS GROUND OF APPEAL MAY BE ALLOWED

- Where the error is obvious
- Where no evidence was adduced which if believed will lead to conviction.
- The evidence though it was believed by the trial court, cannot be believed by a reasonable and fair minded judge. *Ali v state*.

PLEA OF GUILTY/CONVICTION AND APPEAL

- **Can a person who pleads guilty Appeal against conviction and or sentence?**
Yes, he can appeal. When a plea of guilty is made, there are certain things the judge and prosecution should do. STEPHENSON v POLICE, LAWRENCE V KING

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.
- *Essie v r*, where the supreme court established the conditions.
- Appeals may be against sentence or conviction and sentence.
- Grounds OF APPEAL must be set out the particulars of error. Section 282(1) CPC.
- Ground 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*.

CONSTITUTION OF THE HIGH COURT TO HEAR APPEAL

- Section 273 1999 Constitution, shall be properly constituted if at least one judge sits.
- However see, section 63 HCL. The High court in the northern Nigeria shall be duly constituted to hear appeals from magistrate court to the High court is two.
- See Ishola v state. The provisions do not conflict with the constitution
- See section 29 HCL of Lagos state. In Lagos, it is one, except where the chief judge of Lagos state may direct that 3 judges sit.

Appeal from High Court to Court of Appeal

- o **There is no oral notice of appeal and it is commenced by Notice of Appeal: Nigerian army v Samuel.**
- o Appeal shall be as of right in section 241(a)-(e)
- o Appeal with leave section 242.

WHO CAN BRING AN APPEAL

- ❖ The accused
- ❖ The attorney general of the state or federation
- ❖ Other persons or authorities with prosecutorial powers. Example: the police, private prosecutor with fiat.

APPEALS FROM HIGH COURT TO COURT OF APPEAL

- TIME TO APPEAL: 90 days. Section 24(2)(b) CAA 2004.
- Interlocutory appeals. 90 days
- **Filing of notice at the lower court registry. Order 17 R 3(1) CAR 2016.**
- **Fees: payable except in capital OFFENCE cases or where appellant on legal aid. Or 17R 8(3) CAR 2016.**

COMPUTATION OF TIME

- **Starts from the date of the judgement or decision appealed against.**
- **May also start from the date appellant had notice of the judgement.**
See OHUKA V STATE.

WHO MAY SIGN NOTICE OF APOEAL

- **Notice of appeal, application for leave to appeal or notice for extension of time to be signed by appellant or Legal representative. ORDER 17 R 4(1) CAR 2016.**
- **ORDER 18 R 2.**
- **Signing of joint notice of appeal is unknown**
- **An appellant signing on others behalf is not permitted.**
- **Signing by law firm is an irreversible error.**

EXCEPTIONS

- **Where the APPELLANT IS OF UNSOUND MIND Order 17(5) CAR**

- **Where the appellant is a body corporate. Manager, clerk, secretary and legal representative. Order 17(6) CAR.**

HEARING OF APPEAL IN COURT OF APPEAL

- **Hearing of appeal in court of appeal is by briefs of argument.**
- **Order 18 CAR 2016**

TYPES OF BRIEF

- o **Appellant brief**
- o **Respondent brief**
- o **Reply brief.**

TIME TO FILE BRIEFS

- Appellant brief 45 days. Order 19 r 2 CAR. It is now subject to section 8(3) CAFTPD 2014 which provides for 14 days. NOTE: the rules apply to certain financial appeals.
- Respondent brief 30 days. Order 19 r 4(1) CAR 2016 but see 8(5) CAFTPD which provides for 10 days.
- Reply brief is 14 days. ORDER 19 R 5(1) CAR 2016 but see 8(7) CAFTPD which provides for 5 days.

EFFECT OF NON COMPLIANCE

- Appellant in default appeal is to be dismissed for want of diligent prosecution. Order 19 r 10(1) CAR, EVEMILI V STATE, 8(4) CAFTPD.
- Respondent in default, the court will proceed to hear the appeal. Order 19 r 10(1), Section 8(6) CAFTPD 2014. He will not be allowed to make an oral argument. The court will proceed based on the brief of the appellant.
- Failure to file reply brief, it will be deemed that the appellant has conceded to the new material facts raised by the respondent brief. Order 19 r 10(1) CAR.

APPLICABILITY OF CAFTPD

- o Corruption
- o Money laundering
- o Kid napping
- o Rape
- o Terrorism.
- o Appeals by or against such national human rights, intelligence agencies, law enforcement, prosecutorial or security agencies such as EFCC, ICPC, NHRC, SSS.

CONSTITUTION OF COURT OF APPEAL

Section 247(1) 1999 Constitution

Subject to section 247(a)(b) constitution.

PRELIMINARY OBJECTION

- Order 10 R 1 CAR 2016 notice of preliminary objection to be filed by **respondent three clear days before the date of hearing.**
- Failure to give notice of preliminary objection, court may refuse to hear objection or adjourn based on some terms. Order 10 r 8.
- In Supreme. Court, order 2 r 9 SCR.
- Arguments may be included in respondent brief.

COURT OF APPEAL TO SUPREME COURT

- Time to appeal: 30 days from date of judgement. Section 27(2)(b) Supreme Court Act.
- Here, notice of appeal to be signed by **APPELLANT. ORDER 9 R 3 SCR.**
- ❖ RIGHT OF APPEAL. SECTION 233(2) 1999 Constitution
- ❖ APPEAL WITH LEAVE OF COURT. SECTION 233(3) 1999 Constitution
- ❖ Note that it is not mandatory for appellant to be present in court during the hearing of the appeal.
- ❖ Wrongly headed notice of appeal is seen as an irregularity. OROK V STATE.

FILING OF BRIEFS AT THE SUPREME COURT

- Appellant: 10 weeks
- Respondent: 8 weeks
- Reply: 4 weeks
- Order 6 r 5 SCR.

PRACTICE DIRECTIONS IN SUPREME COURT

- Applicable to offences of Terrorism, rape, kidnapping, corruption, money laundering, and human trafficking.
- **Record of appeal to be compiled: 15 days.**
- Briefs appellants.: 10 days.
- Respondent: 7 days
- Reply. : 3 days

ADDITIONAL EVIDENCE ON APPEAL

- Generally, new evidence is not admissible as records of proceedings are followed. ESOH V COP.
- The rationale is because
 - i. There must be an end to litigation
 - ii. Successful party is entitled to enjoy the fruit of the judgement.
 - iii. Successful party must not be confronted with new case on appeal.

Before additional evidence can be adduced on appeal, leave of court must be sought. OR 17 r 3(3) CAR 2016. ESANGBEDO V STATE.

CONDITIONS FOR ADDITIONAL EVIDENCE ON APPEAL

- i. May be allowed in the interest of justice
 - ii. Appellant must show that the evidence sought to be adduced was not available at the trial or could not have adduced at the trial.
OLADIPUPO V STATE, ARIRAN V ADEPOJU.
 - iii. The evidence must be apparently credible though not incontrovertible.
 - iv. in exceptional circumstances where to do so would not mean a fresh rehearing.
ABIOLA V COP, R V ROWLAND.
- ❖ Appellate court may admit the evidence or refer the case to the lower court to take the evidence and adjudicate afresh in the light of the evidence.
 - ❖ CA may direct lower court to report its findings on such evidence to the court of appeal.
 - ❖ Section 45 HCL OF LAGOS STATE, 55 HCL OF NN.

ORDER OF RETRIAL! Section 36(9) 1999 Constitution

- Where there is an error in law or an irregularity in procedure such that although the trial was not rendered a nullity, it cannot be said to be a miscarriage of justice.
- The evidence as a whole discloses a substantial case against appellant.
- No special circumstances as to make it oppressive for appellant to be tried for a second time
- The offences for which appellant was convicted or consequences is not trivial.
- To refuse an order of retrial would occasion a greater miscarriage of justice. AIGBE V STATE, ABODUNDE V R.

POINTS TO NOTE FOR ORDER OF RETRIAL

- NO retrial, if it would enable the prosecution to remedy his inadequacy, 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.

ABANDONMENT OF APPEAL

- It may be express, or
- Implied
- Registrar will notify respondent of the abandonment in form 12
- File a notice of abandonment as in criminal form 11 of 2nd schedule to the rules.
- Upon service to the court registrar, the appeal is deemed dismissed. Order 17 r 18(1) CAR 2016.
- Abandonment of appeal does not include abandonment of record of appeal
- Appellant may withdraw his notice of abandonment OF APPEAL with leave of CA OR SC.

OKWOR KENNETH ONONEZE DOMINIC – CRIMINAL LITIGATION

- Accused/appellant will file criminal form 13 while prosecutor/appellant files criminal form 13A.

BRINGING APPEAL AND ENTERING APPEAL.... BARIGA V PDP

- Appeal is deemed to have been brought as soon as Notice of appeal is filed at the registry of the court below
- It is deemed to have been entered if the records have been transmitted to the superior court and entered on the cause list.

ABATEMENT OF APPEAL

- Occurs outside the will of parties
- As held in **Ajilore v State**, upon the death of the appellant or convict the appeal abates.
- Note that the 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**.

WEEK 20

DRAFTS

NOTICE OF APPEAL

- Notice of Appeal shall be in criminal form 1 where an accused or convict is appealing.
- Where the prosecutor appeals, it shall be in criminal form v.
- Failure to comply to the form it will be deemed to be an irregularity. **UDO V STATE**.
- Where there is no notice of appeal, there is no appeal.
- Any purported appeal without notice of appeal is a nullity. **UROK V STATE**.
- Defective notice of appeal is ineffective. **NIGERIAN ARMY V SAMUEL**.

GROUND OF APPEAL

- What is a ground of appeal
- It is the reason why the decision of the court is challenged. **OKPONIPERE V STATE**
- The grounds must relate to the ratio/decision. **OGUNBIYI V ISHOLA, AKPAN V BOB**.
- Grounds of appeal is not an argument or a narrative.
- The ground of appeal must be substantial **GROUND + PARTICULARS = SUBSTANCE**
- Above formula can be used to determine classification. **OSAHON V FRN**
- Grounds of appeal must accompany every notice of appeal.
- However, where an oral notice of appeal is given in the north, there will not be grounds immediately.
- Issues for determination must be distilled from the grounds of appeal

- Failure to formulate issues out of any ground equals abandonment. FRN IWEKA.
- An issue must be tied to a ground or grounds of appeal
- Bad brief writing is to tie the issues to all the grounds of appeal.
- Appeals are determined on basis of formulated issues.
- Court may reframe or re-couch issues, this must be done with caution as to prevent a coloration of the appeal. UGWU V STATE.

GROUND OF APPEAL

- ✓ Grounds of law
- ✓ Grounds of facts
- ✓ Grounds of mixed law and fact
- ✓ The importance of the distinction borders on whether leave of court will be sought. ABDUL V CPC.

CRITERIA TO DISTINGUISH

- Grounds complaining of misapplication of law to proved facts or misunderstanding of law is a ground of law,
- **A ground questioning evaluation of evidence by the court before the application of law, is a ground of mixed law and facts.**
- A ground questioning only facts is a ground of fact.
- Court holding that an event occurred but no admissible evidence to support= law
- Abdul v CPC.

POWER OF COURT TO DISPENSE WITH BRIEF OF ARGUMENT

- See order 18 rule 10 and 11 CAR 2016
- Joint briefs. Order 18 rule 6 CAR
- Note the application for consolidation, if there must be joint brief. CONDITIONS: interest must be the same.

CONTENTS OF THE BRIEF OF ARGUMENT

- Introduction
- Statement of facts
- Grounds of appeal
- Issues for determination
- Arguments on the issues.
- Conclusions.
- LIST of authorities
- Signature. Name of Counsel and the firm. Order 17 rule 4(1) CAR 2016
- Address for service. Order 19 r3(1) CAR
- **It must not exceed 35 pages. ORDER 19 r 3(6)(a) CAR 2016**
- **Failure to comply with the requirements, the brief will not be accepted for filing by the registry.**

BAIL PENDING APPEAL

See section 29(1) CAA

Condition precedent to bail pending appeal is that a valid Notice of Appeal must have been filed at the lower court.

- o Application for bail at CA pending his trial at trial court. UKATU V COP
- o Where applicant/Appellant has been tried and convicted but has not appealed. FAWEHINMI V STATE.
- o Failure to quash a charge. ABACHA V STATE.
- o Bail is predicated on presumption of innocence and liberty. Section 36(5), 35 Constitution . These two sections however cannot be relied on here as the appellant has already been convicted.
- o Note that section 135 EA 2011 on burden of proof cannot also be relied on as prosecution has proved his case beyond reasonable doubt.
- o What is the difference between bail pending appeal simpliciter and bail pending appeal after conviction. NWOKE V FRN.
- o May be granted only on special circumstance. BAMAIYI V STATE, JAMMAL V STATE.
- o Where to file application for bail depends on whether appeal has been brought or entered. ORDER 17 R 13 CAR 2016. Better to make the application to the court below, then if refused proceed to the higher court.

FACTORS GUIDING THE COURT

- Nature of the appeal. R V STARKIE, 24 CAR
- Ill health. FAWEHINMI V STATE, CHUKWUNYERE V POLICE
- Trial and conviction are manifestly contested. FAWEHINMI V STATE.
- Duration of sentence. OLAMOLU V FRN
- Convict first time offender. BUWAI V STATE
- Convict on bail during trial and did not breach the terms. OLAMOLU V FRN.

CONDITIONS PRECEDENT

- There must be a pending substantive appeal. Notice of appeal must be annexed.
- Compliance with conditions imposed for the due prosecution of the appeal

MODE OF APPLYING

- Motion supported by affidavit and written Address.
- See AROYEUN V COP.
- JOINT TRIAL= separate application

TERMS OF BAIL

- Self recognizance
- Execution of bond by the accused.
- Production of sureties or surety who will execute a bond in a specified sum.
- Deposit in lieu of bond
- Other conditions. Example level 14 officer, international passport, landed documents.

REVOCATION OF BAIL

- Police bail elapses upon arraignment in court.
- Bail pending trial, as soon as judgement is delivered and sentenced passed, bail is revoked.
- Bail pending appeal, until end of appeal.

Bail Revocation

- Indicted by a Law officer for non bailable offence
- Where he jumps bail
- Surety applied to be discharged. ONYEBUCHI V FRN.

Double appeals

Distinguishing double appeal is important. Double appeal is where the appellant had first appealed from Magistrate Court to High Court and from High Court to Court of Appeal. Where the appeal is from High Court, exercising original jurisdiction is different from double appeal. The difference between double appeal and initial appeal is as it relate to the prescribed form provided for notice of appeal.

IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

CHARGE NO:

APPEAL NO:

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

AND

1.

2.

Appeal from Court of Appeal to Supreme Court

Appeal from Court of Appeal to Supreme Court can be as of right or with leave of the court. Appeal lies from decisions of Court of Appeal in criminal cases in the following instances – s. 233(2) CFRN

- Where the ground of appeal involves question of law alone
- Decisions on questions as to whether any of the provisions of Chapter IV of the constitution has been, is being or is likely to be contravened in relation to any person
- Decisions on questions as to the interpretation or application of the constitution
- Decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of appeal has affirmed the sentence imposed by any other court.

Orders that can be made by an appellate court:

Appellate courts here are the High Court, Court of Appeal and Supreme Court. The possible orders are

- Affirm conviction and sentence
- Affirm conviction but vary the sentence
- Quash conviction
- Order a re-trial

The order to be made depends on what the appeal was on. If appeal was on sentence, then only sentence will be decided upon.

BAIL PENDING APPEAL

There are three types of bail, bail pending investigation by the police, bail pending trial by the trial court and bail pending appeal by the appellate court on hearing on appeal. The three types of bail differ extensively. Importantly, in bail pending appeal, unlike the others, there is a movement from presumption of innocence as the accused would have been convicted and thus appealing against his conviction.

First condition precedent for bail pending appeal is the existence of a valid appeal. See section 28(1) CA Act, section 31(1) SC Act. Application is made first to lower court

Once an accused has been convicted, the right to liberty and presumption of innocence has gone. This is significant as in bail pending trial; it is the prosecution that prove to the court why the bail should not be granted. While in bail pending appeal, it is the convicted person that is begging the court to grant him bail pending his appeal. Note that because the conviction of the accused has been secured, bail is rarely granted, that is, the discretion of the court in granting the bail is rarely exercised in bail pending appeal. This is so as the possibility of the accused jumping bail is higher. *Olabode George & 5 ors v. FRN*. However, bail can be granted where the convict is able to show exceptional circumstances. The following are some of the exceptional circumstances:

1. The health conditions of the convict: this is where to refuse to grant bail may put the life of the convict in jeopardy. In *Chukwunyere v. Police*, the appellant who was suffering from chronic bronchitis and cardiopathy was granted bail pending his appeal. See also *Fawehinmi v. State*
2. Where the trial, conviction or sentence or all of them are manifestly contestable. For instance where the sentence prescribed by law is 6 months imprisonment and convict is sentenced to 6 years; thus where there is high possibility of success on appeal. This should however be patent on the face of it. Note the limited jurisdiction of the Magistrate court. See *Jammel v. State*.
3. Where the convict/applicant is likely to spent full time in prison before appeal is heard, especially with regard to the delay in Nigerian criminal justice system. See *Jammel's case*, *Jennifer v. State*, *Olamolu v. FRN* – had already spent 11 months out of 2 years sentence in prison.
4. Where the case is complex and there is need for regular contact with the convict. *R v. Starkie*
5. Conduct of the applicant/convict during trial for instance where the applicant was granted bail during trial and he did not jump bail. *Munir v. FRN*

Procedure

Application for bail is to be made first at the trial court before an appellate court

- Application is by motion of notice and NOT summons as it is the convict that is praying the court to grant him bail
- Supported by affidavit stating the grounds for application for bail. It is better where more grounds or special circumstances are relied on
- Written address where needed
- Documents to be attached in affidavit
 - i. Charge sheet
 - ii. Certified true copy of the court judgement.
 - iii. Proposed notice of appeal

The prosecution can oppose motion by deposing to counter-affidavit setting out his grounds of objection. Where application is for two convicts, then there must be two different applications.

Brought by motion on notice supported by affidavit. See *Kunnia V AG Anambra*.

Where there are more than one convict, each must bring a separate bail application.

No more presumption of innocence. Section 36(5) CFRN can no longer avail him

You must prove special circumstances. See *AROYEWUN v COP*. Burden is on the applicant. Such special circumstances include:

- a) Where the sentence is manifestly contestable as there are substantial grounds of law in the grounds of appeal. See *fawehinmi v. state*

- b) Where the applicant is likely to spend the full terms of sentence before appeal is heard. See *Jenifer Madike v. State*; *R v. Tunwase*
- c) Ill health and no sufficient medical facilities. See *Chukwunyere v COP*; *Fawehinmi v State*
- d) Where the facts are complex as to warrant having close and regular contact with counsel. See *R v STARKIE*
- e) The conduct of the applicant during the trial in relation to bail earlier granted. See *Munir v FRN*; *R v STARKIE*

IN THE COURT OF APPEAL OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

CHARGE NO:

BETWEEN

THE STATE OF LAGOS

COMPLAINANT/RESPONDENT

AND

1. IKPO UDO

DEFENDANT/APPLICANT

2.

DEFENDANT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER___RULE___AND UNDER THE INHERENT JURISDICTION OF THIS COURT

TAKE NOTICE that this honourable court will be moved on the ____ day of ____2013 at the hour of 9'O clock in the forenoon or so soon thereafter as the applicant counsel will be heard on behalf of the applicant praying for the following orders

- 1. AN ORDER admitting the applicant to bail pending the determination of the appeal against the judgment of Hon. Justice Akindele George dated _____
- 2. AND such further or other orders as the court may deem fit in the circumstances

Dated this____ day of ____2013.

Kenneth Okwor
Applicant Counsel
7, Ikoyi Road, Ikoyi, Lagos
08031234567

IN THE COURT OF APPEAL OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

CHARGE NO:

BETWEEN

THE STATE OF LAGOS

COMPLAINANT/RESPONDENT

AND

1. IKPO UDO

DEFENDANT/APPLICANT

2.

DEFENDANT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR BAIL

I, Ikpo Udo, male, adult, Nigerian citizen and resident at 7, Ikoyi Road, Ikoyi, Lagos, do hereby make oath and state as follows:

1. That I am the applicant in this application and thus conversant with the facts to be deposed to.

2.

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

CHARGE NO:

BETWEEN

THE STATE OF LAGOS

COMPLAINANT/RESPONDENT

AND

1. RAMPAM ALECHENU

DEFENDANT

2. MUSA OGOCHUKWU

DEFENDANT/APPLICANT

SUMMONS FOR BAIL

BROUGHT PURSUANT TO SECTION 115 OF THE ADMINISTRATION OF CRIMINAL JUSTICE LAW OF LAGOS STATE AND SECTION 35 AND 36(5) OF THE CONSTITUTION AND UNDER THE INHERENT JURISDICTION OF THIS COURT.

Let all parties concerned attend this honourable court on the _____ day of ____ 2013 at the hour of 9'O clock in the forenoon or so soon thereafter **in the hearing of an application by counsel on behalf of the applicant for an order admitting the applicant to bail pending his trial.**

Dated this _____day of ____ 2013

Kenneth Okwor

.....

FOR SERVICE ON

.....

Content of case stated

- a. The charge, summons, information or complaints
- b. The facts found by the magistrate to be admitted or proved
- c. Any submission of law made by or on behalf of the complainant during the trial or inquiry
- d. The finding of and in case of conviction, the sentence imposed by the magistrate
- e. Any question of law which the magistrate desires to be submitted for the opinion of the High Court
- f. Any question of law which the Attorney-General requires to be submitted for the opinion of the High Court
- g. Any submission of law made by or on behalf of the accused during trial or inquiry.

PREROGATIVE WRITS

Writs issued by the court in the course of proceedings when there is a direct interference with the rights or property of an accused person. This is however not issued as of right. It may be applied for during the course of proceedings or after the judgment of the court. Examples of prerogative writs are:

Habeas Corpus: to order the release from custody or to procure the attendance to court of a person who is unlawfully detained

Prohibition: issued by the court in its supervisory role over magistrate courts and other inferior tribunals. By this writ, a superior court prohibits a lower court from conducting proceedings which are either not within its jurisdiction or in excess of its jurisdiction.

Certiorari: may be used by the High Court in the exercise of its supervisory function over the Magistrate Courts or inferior tribunals. By this writ, a High Court may quash the proceedings or order of a lower court where the lower court has acted without jurisdiction or there is irregularity in the proceedings.

Mandamus: may be used to compel a court, a judicial or administrative officer to perform an act, which is its or their public, official or ministerial duty.