1. INTRODUCTION TO CRIMINAL LITIGATION OUTCOMES

1. DISCUSS THE SCOPE OF THE CRIMINAL LITIGATION COURSE.

Criminal litigation deals with the law and procedure relating to criminal trials. Criminal litigation starts from the time complaint is laid to the relevant authority and such is investigated, arrest is made, the trial, conviction, sentence and appeal of the decision of the court.

2. IDENTIFY AND EXPLAIN THE SOURCES OF THE LAWS/RULES GUIDING CRIMINAL LITIGATION IN NIGERIA.

(A) Principal Enactments (Primary sources) (The four jurisdictions of criminal litigation)

1. Criminal Procedure Laws (applicable to Southern States other than Lagos)
2. Criminal Procedure Code Laws (applicable in the Northern States)
3. Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State 2011
4. Administration of Criminal Justice Act 2015

(B) Secondary Enactments (Secondary sources)

1. The 1999 Constitution as Amended
2. Evidence Act 2001
3. The Police Act
4. The Armed Forces Act
5. Coroners' Laws of the States
6. Children and Young Persons Law
7. Magistrate Court Laws
8. HC Laws
9. Court of Appeal Act
10. S.C Act
11. Various court rules
12. Practice Directions

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

- **SECTION 363 OF CPL** provides for its application when lacuna exists in the CPL. See your handwritten note.--**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.

Comment [C1]: 1.**(Ss. 2(1) and 493 ACJA** together with the preamble to ACJA repealed the Criminal Procedure Act and the Criminal Procedure Code and is currently only applicable to the Federal High Court (**S. 33 FHC ACT** which provides for the application of the CPA in the FHC no longer applies) the National Industrial Court and Courts in Abuja because the States must first adopt it before it will apply nationwide).

- **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.

NB: Judicial interpretation of statutes

3. EXPLAIN THE TYPES, SITTINGS AND SETTINGS OF COURT

(A) Types of Court

- Courts of general criminal jurisdiction (empowered to try and adjudicate on any criminal case—only limited by Acts or Laws creating them) Examples: S.C, CoA, HCs, MCs, CCs (South), Upper AC and ACs (both North)
- Courts of Special criminal jurisdiction (empowered to try and adjudicate specific offences) Examples: FHC, NIC, Juvenile Court, Court Martial and other tribunals established under the law—Code of Conduct Tribunal and the Robbery and Firearms Tribunal)

(B) Sittings of court

JD---MON-FRI---**S. 52 HCL LAGOS STATE**

NJD---SAT, SUN AND PUBLIC HOLIDAYS (VACATION PERIOD, WEEK BEFORE EASTER). Legal proceeding held on NJDs is a nullity---**BALOGUN V. ODUMOSU**, with the following exceptions:

- Parties agreement--- **OSOSANMI V. C.O.P**
- Statute authorizes it (M sits on Saturdays for bail and remand orders and non-custodial disposition) ---**S. 40 (2) MCL, FALAYE V. OBASANJO NO. 1**
- Can sit on Saturday to hear election petition matters. The court start sitting from 9 O'clock in the forenoon or so soon thereafter and until the court rises for the day.

(C) Settings of criminal 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 sit. It is beneath the bench

3. The Bar: this is where lawyers who are ready for litigation business sit. They must be robed. Robing is not compulsory in Magistrate court. Rule 45 RPC provides for robing in High Court, Court of Appeal and Supreme Court. There is the

- **Inner Bar** – for SAN, Attorney Generals and Life 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.

2. SEARCHES, ARREST AND CONSTITUTIONAL RIGHTS

1. DISCUSS AND EXPLAIN THE POWER OF ARREST AND SEARCHES IN CRIMINAL PROCEEDINGS

(A) ARREST

The major thing about arrest is that the person to be arrested must know that his movement has been curtailed and as such infringed on his **right to personal liberty** provided for by **S. 35 CFRN.** Often times, arrest precedes search and vice versa. Thus, it depends on the circumstances. All the law enforcement agencies are empowered to effect an arrest, including a private person.

The three processes of bringing a suspect to court are:

(i) Arrest with warrant

(ii) Arrest without warrant and

(iii) Summons.

- **ARREST WITH WARRANT**

a. Meaning of warrant of arrest.

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 and bring him before the court to answer to a complaint made against him.---**S.79 ACJL, S.80 CPL, S.154(1) CPCL, S.113 ACJA**

NB: It is within the discretion of the issuing authority to elect whether to issue a warrant of arrest at first instance or to issue a summons instead (depends on the circumstances of the case)--.**S.80 ACJL, S.80 CPL, S.154(1) CPCL, S.114 ACJA**

NB: There is a difference between a summons and a warrant of arrest. Summons is issued and directed or addressed to the offender while a warrant of arrest is issued to the police officer or any other person.

b. Issuance of warrant of arrest

- **Authority that may issue a WoA (Who can issue it?) BAR II EXAM FOCUS**
  (i) Judge, (North and South)
  (ii) Magistrate (North and South) or
  (iii) Justice of the peace (North only, ACJA is silent)

NB: From the foregoing, it is crystal clear that a Police officer, no matter the rank cannot issue a warrant of arrest.—**S. 22(1) ACJL, S.22(1) CPL, S.56(1) CPCL, S.36(1) ACJA**

NB: The National Assembly can issue a warrant of arrest in limited circumstances stipulated under **S. 88 CFRN**. Thus, its power of issuing a warrant of arrest is not all encompassing.—**EL RUFAI V. SENATE OF THE NATIONAL ASSEMBLY& 5 ORS.**

NB: An Area Court judge who is a Legal Practitioner can issue a warrant of arrest in FCT.—**S. 36(1)(c) ACJA and S. 494(1) ACJA**

- **To whom is the warrant directed to**

  (i) Named police officer---**S. 25(1) CPL, S. 58(1) CPCL, S. 39(1) ACJA**

  (ii) Members of the police—**S. 25(1) CPL, S. 58(1) CPCL, S. 39(1) ACJA** or

  (iii) Private persons---**S. 27(1) CPL, S. 40(1) ACJA**

  NB: Where a warrant of arrest is directed to a private person, he is for the purposes of that arrest seen as a law enforcement agent in the eyes of the law and shall have all the powers of a police officer for the purposes of the arrest.—**S. 27(2) CPL, S. 40(2) ACJA**, and where necessary, reasonable force may be used.

  NB: Circumstances where use of force is allowed (generally)---ROAS

  (i) Reasonable apprehension of violence

  (ii) Order of court to that effect

  (iii) Attempt to escape

  (iv) Safety of the suspect/person effecting the arrest.—**S. 2 ACJL, S.3 CPL, S. 37 CPCL, S.5 ACJA**

- **How do you make a complaint for warrant of arrest?**

  By **complaint** in writing and **on oath** **S. 23 ACJL, S. 23 CPL, 37 ACJA, IKONNE V. COP.** Under the **CPCL**, a magistrate may issue a warrant of arrest once a complaint discloses an offence even if the complaint is not on oath.

  NB: Where the law provides that a complaint needs to be in writing, it does not necessarily mean that oral complaint cannot be made. The police can act on it notwithstanding. **Example**: Mr. A called the police emergency line to lay a complaint of the where about of a wanted Kidnap Kingpin, it would be unreasonable for the police to neglect the statement because it was not in writing and made on oath before taking it to the magistrate for a warrant of arrest.

- **Day of issuing a warrant of arrest**

  It may be issued on any day including a Sunday or public holiday – **S.24 ACJL, S. 24 CPL and S. 38 ACJA.** CPCL is silent on this but generally, it can be issued on any day.

- **Which circumstances require a warrant of arrest?--LaDS**

  A warrant of arrest is issued in the following circumstances:

  - **Law stipulation**: the law creating the offence provides that the offender cannot be arrested without warrant; or

- **Disobedience of summons**: Where a summons is disobeyed – **S. 94 ACJL, S. 96 CPL, S. 70(1)(b) CPCL.**
- **Serious offence**: Where the offence alleged to have been committed is a very serious offence.

c. Contents of a warrant of arrest--NaCODS

By **S. 22(1) & (2) ACJL**, **S. 22(1) & (2) CPL, 36 ACJA**, the following are the contents of a valid warrant of arrest:

a. The name and particulars of the alleged offender
b. The concise statement of the alleged offence
c. An order directing the police officer(s) or other person, to whom is addressed, to arrest and bring the offender named in the warrant. 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) CPL; section 25(1) ACJL; and section 58(1) CPCL, 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) CPL and s. 58(1) CPCL.** In essence, a warrant of arrest addressed "TO WHOM IT MAY CONCERN" or other such addresses is wrong.
d. The date of issue of the warrant
e. Signature of the issuing authority. That is, whether judge or magistrate or justice of peace in the north

NB: A warrant of arrest must be in writing and in duplicate.

d. Life span of a warrant of arrest

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. **S. 25(2) ACJL; S. 25(2) CPL, S. 56(2) CPCL, S. 39(2) ACJA**

NB: Warrant of arrest is still in force even after the issuer is dead, vacates office or retires.--- **S. 100 ACJL, S. 303 CPCL, S. 139 ACJA**

e. Execution of warrant of arrest

- **When is a warrant of arrest executed?**

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.

- **Days of execution**

Warrant of arrest may be executed on any day including a Sunday and a public holiday.-------**S. 27(1) ACJL, S. 28(1) CPL, S. 43(1) ACJA**. CPCL is silent on the execution days but generally, it can also be executed on same days as in other jurisdictions.

- **Time of execution**
  At any time.---**S. 27(2) ACJL, S. 28(2) CPL, S. 43(2) ACJA**. CPCL is silent on this issue.
- **Where can a warrant of arrest be executed?**

Generally, it can be executed at any place. However, it is not to be executed
(i) In an actual court room in which a **court is sitting**, except with the permission of the court. **S. 27(2) ACJL, S. 28(2) CPL, S. 43(2) ACJA.** Thus, if the judge is still in chambers, an arrest can be made in the court room (anywhere the judge sits in his official capacity is the courtroom).— **NB**: Under the CPCL, it can be executed at any place in Northern Nigeria.---**S. 63 CPCL.** The implication is that it can be executed in a courtroom with a sitting judge.

(ii) The current position of the law is that no MEMBER (not staff) of the National Assembly or State House of Assembly shall be arrested within the precincts (the whole premises) of these legislative houses.---**Ss. 23(b) and 25 LEGISLATIVE HOUSES (POWERS AND PRIVILEGES) ACT, 2017.** This has repealed the provisions of **s. 31 of the Legislative Houses (Powers and Privileges) Act, 2004** and also appears to have taken over the case law decision in **TONY MOMOH v. SENATE OF THE NATIONAL ASSEMBLY,** however the current Act is silent on the issue of arresting with the consent of the presiding officer and to this extent, the case law may be of help.

Comment [C2]: NOTE THAT AN ARREST **WITHOUT** WARRANT MAY BE EFFECTED IN THE ABOVE PLACES AS THE EXCEPTIONS ONLY COVER THE EXECUTION OF WARRANT OF ARREST IN THESE PLACES

- **When the person to effect the arrest is not with warrant of arrest in his possession during the point of execution**
  He can go on to effect the arrest but the warrant of arrest shall be shown to the suspect as soon as practicable.---**S.28 ACJL, S. 29 CPL, S.61 CPCL, S.44 ACJA**. Under the ACJL, as soon as practicable means "within 24hrs from the time of the arrest" else the arrest becomes an unlawful arrest.
- **Procedure after arrest**

Under the CPL
Such a person arrested is to be brought before the court that issued the warrant of arrest as soon as practicable after he is so arrested.---**S. 28(4) CPL**
Under ACJA
(i) The suspect is to be taken immediately to a police station, or other place for the reception of suspect.
(ii) The suspect shall be promptly informed of the allegation against him in the language he understands

(iii) The suspect shall be given reasonable facilities for obtaining legal advice, access to communication for taking steps to furnish bail and otherwise making arrangement for his defence or release.
(iv) The legal advice shall be done in the presence of the officer who has custody of the arrested suspect.---**S. 14 ACJA**
NB: A novel provision exists to the effect that the authority having custody of the suspect shall have responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect (notification of arrest).---**S. 6(2) ACJA**
NB: Arrest in lieu is prohibited—**S. 4 ACJL, S.7 ACJA.** This does not however prohibit going against sureties of the suspect.
NB: You don't arrest based on a civil wrong---**S. 8(2) ACJA**, unless there is some element of criminality.

- **Execution outside jurisdiction (BAR II EXAM FOCUS)**

(i) Execution within the state but outside magisterial district or judicial division of the issuing authority.
(ii) Execution in another state
Procedure for execution within the state but outside magisterial district or judicial division of the issuing authority.
1. Effect the arrest without taking the warrant to any M or J in that location for endorsement
2. Take the suspect to the M or J in that location to do any of the following

- Endorse removal (after being satisfied that the issuance of the warrant was according to law and was made by a competent authority)
- Grant the suspect bail (if it is a bailable offence or the warrant was endorsed with bail by the issuing authority--with regard to the bail conditions contained therein)
  .—**S. 30(1) ACJL, S. 66(1) CPCL**, **S. 46(1) ACJA**

NB: As an exception, under the CPCL, where it is not convenient to follow the steps, the authority effecting the arrest is to take the suspect out of the locality immediately.---**S. 66(2) CPCL**
Procedure for execution in another state
1. Take the warrant to the M or J in that state for endorsement and M or J before the endorsement must establish and answer the following in the positive:

- Is the alleged act or omission an offence in the state where the warrant was issued?
- Was the warrant issued by a competent authority?

2. Effect the arrest and bring the suspect back to the endorsing M or J who will now

- Endorse removal (Permit the arresting authority to take the suspect to the issuing authority) or
- Grant the suspect bail if it is a bailable offence or the warrant was endorsed with bail

--**S. 482 CPL, MATTARADONA V. ALU**

NB: A warrant of arrest issued by a FHC sitting in anywhere in Nigeria may be executed in any part of Nigeria.---**SECTION 47(1) ACJA.** This is so because there is only one FHC in Nigeria with judicial divisions all over the country.**---ABIOLA V. FRN**

❖ **ARREST WITHOUT WARRANT**

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

- Police officers
- Judicial officers
- Private persons

(a) The police officers

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 CPCL. ---PIG DO CHROME**

a. **Presence rule**: when an offence is committed in his presence whether an indictable or non-indictable, even when the law says a warrant should be issued.
b. **Indictable offence rule**: 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
c. **Goods suspected to be stolen rule**: where goods with a person is reasonably suspected to be stolen or unlawfully obtained.
d. **Deserter rule:** when he suspects a person to be a deserter from any of the Armed Forces of Nigeria
e. **Obstruction rule**: when a person obstructs a police officer while carrying out his duty
f. **Concealment rule**: 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.
g. House-breaking instrument rule: when a person is having in his possession instrument of house-breaking without excuse.
h. **Reasonable belief of issuance of warrant rule**: when he reasonably believes that a warrant of arrest has been issued against such person by a competent court.
i. **Outside Nigeria rule**: when he reasonably suspects a person of having committed an offence outside Nigeria of which if committed in Nigeria would amount to an offence
j. **Means of subsistence rule**: a person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself.
k. **Escape rule**: when a person has escaped lawful custody—**S. 48 ACJA**

NB: A person arrested on the authority of a warrant cannot be re-arrested based on the same warrant but instead be re-arrested without warrant. In **R v. AKINYANJU where the accused was arrested on a previously executed arrest warrant, t**he 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.

NOTABLES FOR EXAM (THE CASE OF A POPULAR SENATOR OF THE FRN)
Where a person or police officer acting under a warrant of arrest or otherwise having authority to arrest, has reason to believe that the suspect to be arrested has entered into or is within any house or place, the person residing in or being in charge of the house or place shall, on demand by the police officer or person acting for the police officer, allow him free access to the house or place and afford all reasonable facilities to search the house or place for the suspect sought to be arrested---**S. 12(1) ACJA**

Comment [C3]: NO NEED FOR THE POLICE TO HAVE WAITED FOR 8 DAYS

Where access to a house or place cannot be obtained under subsection (1) of this section, the person or police officer may enter the house or place and search it for the suspect to be arrested, and in order to effect an entrance into the house or place, may break open any outer or inner door or window of any house or place, whether that of the suspect to be arrested or of any other person or otherwise effect entry into such house or place, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance---**S. 12(2) ACJA**

Where a suspect in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued or any other person, may pursue and re-arrest him in any place in Nigeria---**S. 48 ACJA**.

NB: 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. **Ss. 9(1) ACJL, 9(1) CPL, 14 ACJA.**

(b) Judicial officers

Judge, magistrate, Justice of the Peace

- **S. 15 ACJL**
- **S. 15,16 CPL**
- **S. 29(1),30(1)CPCL**
- **S. 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 offence in his presence **within the division or district to which he is assigned** (only under CPL). 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 ACJL S. 16 CPL S. 30 CPCL**

(c) Private persons

Under **S. 12 ACJL and S. 12 CPL** , a private person may arrest without warrant where there is a:--**FeMI**

- **Felony commission**: any person who he reasonably suspects of having committed an offence which is a felony or
- **Misdemeanour commission**: any person who he reasonably suspects of having committed **by night**, an offence which is a misdemeanour.
- **Indictable offence commission**: any person who commits an indictable offence (i.e. an offence triable on information) in his presence

Under **CPCL in S. 28**, there are categories of persons which a private person may arrest:--**EPPI**

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

NB: A private person effecting arrest without warrant must without unnecessary 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 **Ss. 12(2) & 14(1) ACJL, S. 14 CPL, and S. 39 CPCL, S. 23 ACJA. See also DALLISON v. CAFFERY; JOHN LEWIS & CO Ltd v. TIMS.**

NB: 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--**JOHN LEWIS & CO Ltd v. TIMS**.

NB: When the person arrested is taken to the police officer or police station, the police officer shall **re-arrest him.(MCQ)**

NB: 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. 98 ACJL S. 101 CPL, S. 384 CPCL; OKOTIE v. COP**. Thus, it is only the arrest that is unlawful. At best if the fundamental rights of the accused were breached, civil action can be maintained jointly and severally against the person who made the false

complaint and against the arresting officers for damages. Thus, sue the person and join the police as party to the suit.---**ELIAS V. PASMORE**

(B) SEARCHES

Search: search simply means the examination of a person's body, premises or thing. (it generally infringes on S. 37 CFRN—right to privacy)

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

The purpose of a search is to obtain evidence of the commission of a crime.

Search could be of:

1. A person
2. Premises
3. Things

(a) Search of Persons (BAR II EXAM FOCUS)

The following points should be noted:

1) No search warrant is needed here.
2) 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.--**S. 29 Police Act**
3) 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 (CPL & ACJL add that the police officer can use such reasonable force as is necessary to conduct the search). **See section 5(1) ACJL; section 6(1) CPL; and section 44(1) CPCL, 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 (CPCL 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) CPL and section 44(2) CPCL, 10 ACJA**
4) 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) CPL, section 11 ACJA, section 4(4) NDLEA Act.**
   Under CPCL, 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) CPCL**.

5) Where the person to be searched is a woman, the search shall only be conducted by another woman. **See section 6(2) CPL and section 44(3) CPCL**. Further, **section 82 CPCL** provides that whenever it is necessary to cause a woman to be searched, the search shall only be made by another woman, **with strict regard to decency.** It must be noted that under CPL and CPCL, 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 CPL and CPCL, 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) ACJL** 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. **Sections 9(3), 149(3) ACJA**, **unless the urgency of the situation or interest of justice makes it impracticable for the search to be carried out by the person of the same sex.**
However, by section 5(3) ACJL and section 6(3) CPL, 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) CPL, 9(4) ACJA.

(b) Search of premises:

Comment [C4]: NB-Section 25 Anti Terrorism Act allows the IGP in cases of verifiable urgency to seal up premises while a search warrant is produced.

As a general rule, 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**.

The exceptions to this rule are:---**APC DOG**

a) **Arrest purposes**: 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 CPL and section 34(1) CPCL, sections 12 and 152 ACJA. (confirm)**
b) **Presence of JP**: A justice of the peace may direct search in his presence (his presence means a search warrant)—**S. 85 CPCL**
c) **Custom officer**: A custom officer may enter or break into a place where he reasonably believes that illegally imported goods are kept.**---S. 147 CEMA**
d) **Drugs**: An officer of the NDLEA or police officer, in order to recover drugs kept in premises may enter and search such premises**---S. 32 NDLEA Act**
e) **Order of court**: Acting upon an order of court for the release of an unlawfully abducted person
f) **Government property is harboured:** The Nigerian Security and Civil Defence Corp do not need a search warrant to enter premises where there is a reasonable belief that government property is being unlawfully harboured.------**COMMANDANT GENERAL**

NSCD & ANOR V. EMASON UKPEYE, S. 3(1) – (3) Nigerian Security and Civil Defence(Amendment) Act 2001.

Who can issue a search warrant?
There are four categories of persons that can issue a search warrant. They are
(i) Magistrate,
(ii) Judge,
(iii) Justice of the Peace, and
(iv) Superior Police Officer **above the rank** of a Cadet ASP, subject to some restrictions.

Note the details as follows:

- Under ACJL and CPL, by **section 104 ACJL and section 107 CPL**, a Magistrate or a High Court Judge can issue a search warrant. **It is procured upon information on oath and in writing.**
- Under CPCL, by **section 74 and 76 of CPCL**, a court (which includes Magistrate and Judge) or Justice of the Peace can issue a search warrant. Thus, it is issued by Judge, Magistrate and Justice of the Peace.
- Under ACJA, **section 144 ACJA** provides that a judge, magistrate or justice of peace may issue a search warrant upon information on oath and in writing.
- 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 m**ay 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
- Harbouring 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 and Regulations respectively,** 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:

(i) Receiving stolen property
(ii) Harbouring thieves
(iii) 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.**

Contents of a search warrant are:---AIDS

a) Address of the premises to be searched;

b) Items to be searched for;

c) Directive that the items be seized and brought to court; and

d) Signature of the person issuing it.---**ELIAS v. PASMORE**

NOTE THE FOLLOWING:

1. 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) CPL, section 76 CPCL, section 146(1) ACJA**.

2. 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) CPL, section 146(2) ACJA** . Once it is executed, it can no longer be subsequently used.

3. 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 CPL, section 147 ACJA.**

4. 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) CPL, 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) CPL**

5. 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 109(3) ACJL; section 112(3) CPL, section 81(1) & (2) CPCL; section 149(3) ACJA.**

6. The following apply only to CPCL states:---**WiLiPO**

a) Witnesses: 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---**S. 78(1) CPCL; MUSA SADAU v. STATE.**

b) **List of things found**: 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) CPCL**

c) Purdah: 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. **However, where she is the person to be arrested, OR SHE IS NOT AROUND this provision will not apply---- S. 79 CPCL**,

d) Occupant presence: 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, signed or sealed by the witnesses--- **S. 80 CPCL**

Death, retirement etc of issuing authority—same as warrant of arrest

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) CPL**

By **section 108(2) ACJL and section 111(2) CPL**, 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.

NOTE: By virtue of **S. 148 of ACJA**, a search warrant may be issued and executed **at any time and day including Sunday or public holiday.**

NB: The person executing the search warrant should submit himself to a search before carrying out the search, in order to ensure transparency.

Generally, items not specified in the search warrant should not be seized. However, where the person executing the search warrant comes across incriminating items which he reasonably believes to have been stolen or are relevant in respect of other offences, he can lawfully seize them.---**REYNOLD V COP for the Metropolis.** Upon seizure, all the things seized should be taken to the person that issued the search warrant.

Comment [C5]:
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 neighbourhood unless the court otherwise directs owing to the nature of the offence.

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 issu**e UNLESS the desirability of admitting the evidence is outweighed by the undesirability of admitting the evidence.--**Ss. 14 & 15 Evidence Act. See Kuruma v. R; Musa Sadau & anor v. The State.** NB: Section 15 E.A provides the guide with which the court will use to determine the admissibility of the illegally obtained evidence such as the probative value of the evidence and its relevancy to the facts.

Liability for wrongful procuration of a search warrant.

There is NO LIABILITY if the complaint was made in **good faith**. Where the complaint was made recklessly or without reasonable cause, then the complainant may be liable in damages for malicious procurement of a search warrant---**FOWLER V. DOHERTY J.I.C.**

Where the complainant made a report, and a search warrant is issued and executed, he **may not** be liable in **damages for false imprisonment,** if the person whose premises is searched is arrested and detained by the Police:--**KUKU V. OLUSHOGA**; **ADEFUMILAYO V. ODUNTAN**

A complainant who maliciously set the law in motion against a person alleged to have committed an offence, may render himself **liable in damages for malicious prosecution.**- **BALOGUN V. AMUBIKAHU**

Execution of search warrant outside Jurisdiction

A person executing a search warrant beyond the jurisdiction of the court or justice of the peace issuing it shall, **before doing so, apply to the court within whose jurisdiction search is to be made and shall act under its directions**.----**S. 151 ACJA**

Every person executing a search warrant beyond the local limits of the jurisdiction of the court or justice of the peace issuing it shall **before doing so apply to some court within the local limits of whose jurisdiction search is to be made and shall act under its directions.**---**S. 83 CPCL**

(c) Search of Things

- A search of things may be conducted with or without a search warrant,
- A police officer can stop and search vehicles on the road without a warrant- **KARUMA V. R**
- Bag---**No search warrant**
- Aircraft---**search warrant is needed**
- **Vessel---search warrant is needed**
- Powers of search of things without warrant is also conferred on customs officers, the Federal and State Task Forces of NAFDAC etc.

2. EXPLAIN HOW CRIMINAL SUMMONS IS OBTAINED AND EXECUTED

(a) Meaning

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.

(b) Issuing authority

NB: Under CPL and ACJL, summons is issued by a Judge or Magistrate. **See; sections 79 & 80 ACJL, sections 79, 80 & 81 CPL, section 113 ACJA.** Under CPCL, a summons is issued by a Judge, a Magistrate or a Justice of the Peace. **See sections 47 & 154(1) CPCL**.

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 CPL; and section 139 CPCL, section 113 ACJA.**

(c) Contents of summons

By **section 82 ACJL; section 83 & 87 CPL and section 47 (2) CPCL, section120 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**

(d) Issuance and service of summons (BAR II AND MCQ EXAMS)

Under CPL, a summons may be issued or served on any day, including a Sunday or public holiday. **See section 82 CPL**.

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. 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. CPCL seems to be silent.**

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

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 86 ACJL, section 88 CPL, section 48 CPCL**

By **section 87 ACJL, section 89 CPL, section 49(1) CPCL, section 123 ACJA**, the summons is to be served personally on the person named on it. However, by **section 88 ACJL, section 90 CPL, section 52 CPCL,** where personal service is impossible, **then substituted service may be resorted to with leave of court.**

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 CPCL.**
- Affixing it in a conspicuous part of the premises in which the accused ordinarily resides. **Section 88 ACJL, section 90 CPL, section 124 ACJA.**

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

(e) Life span of summons

The life span of a summons is that it remains in force until it is either executed or cancelled.

(f) Death etc of the issuing authority

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 CPL; and section 383 CPCL.**

(g) Intra-state execution of summons/service outside jurisdiction

By **section 91 ACJL, section 92 CPL, section 54 CPCL section 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.

(h) Inter-state execution of summons

By **section 478 CPL,** 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 **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.

(i) Effect of failure to obey summons

Under CPL 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 CPL, section 70(1)(b) CPCL, 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).

NB: 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 CPCL** for public summons and it applies only in the North. **See section 41 and 42 ACJA.**

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

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

- A 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.

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

3. LIST AND EXPLAIN THE CONSTITUTIONAL/PROCEDURAL RIGHTS AND SAFEGUARDS OF AN ACCUSED PERSON IN THESE PROCEDURES

(a) Personal liberty: Right to personal liberty**----S. 35(1) CFRN**

However the exception under **S. 35(1)(c) CFRN** recognizes the right to arrest a person under a warrant or on reasonable suspicion of his having committed an offence or to prevent commission of offence.

(b) Silence: Right to remain silent or avoid answering any question until after consultation with a Lawyer or person of his choice**.---S. 35(2) CFRN**

(c) Information in writing within 24 hours and in the language he understands of the facts and grounds for his arrest and detention.---**S.35(3) CFRN**

(d) Charge the accused to court within a reasonable time.---**S. 35(4) CFRN**

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) CFRN**

(e) Apology: Public apology and compensation from the appropriate authority or person to a person who is unlawfully arrested or detained.—**S. 35(6) CFRN**

(f) Legal aid: Right to legal aid**-----S. 3(1) –(3) ACJL**

4. COMPLETE/DRAFT FORMS OF SUMMONS AND WARRANTS.

(A) CRIMINAL FORM 4 (Summons to defendant)

IN THE MAGISTRATES' COURT OF LAGOS STATE

IN THE IKEJA MAGISTERIAL DISTRICT

HOLDEN AT IKEJA

CHARGE NO:

BETWEEN

COMMISSIONER OF POLICE …….. COMPLAINANT

AND

ABC ……DEFENDANT

TO ABC of

No. 5 Airport Road, Ikeja

Lagos

Complaint has been made this day by Corporal XYZ of the Ikeja Police Station that you ABC on the 8th day of January 2019 at Ikeja, within the jurisdiction of this court, did commit an offence of……contrary to section…….of the Criminal Law of Lagos State.

You are hereby summoned to appear before the Magistrates' Court sitting at Ikeja on the 21st day of January 2019 at the hour of 9 O' Clock in the forenoon to answer the said complaint.

Dated this…….day of……2019

……..

Judge or Magistrate

(B) CRIMINAL FORM 5 (Warrant for the apprehension of defendant who has disobeyed summons)

IN THE MAGISTRATES' COURT OF LAGOS STATE

IN THE IKEJA MAGISTERIAL DISTRICT

HOLDEN AT IKEJA

CHARGE NO:

BETWEEN

COMMISSIONER OF POLICE ……. COMPLAINANT

AND

ABC……..……..DEFENDANT

To: Corporal Ado Musa or

to each and all Police officers.

Compliant has been made on the…….day of……2019 that ABC, hereinafter called the defendant was thereupon summoned to appear before the Magistrates' Court sitting at Ikeja Magisterial District on the…….day of…….,2019 at the hour of 9 O' Clock in the forenoon, but did not appear, and that such complaint is true.

You are hereby commanded to bring the defendant before the Magistrates' Court Ikeja, in the Ikeja Magisterial District, sitting at Ikeja, forthwith to answer the said complaint and to be further dealt with according to Law.

Dated this ……. day of……..2019.

……

Judge or Magistrate

(C) CRIMINAL FORM 6 (WARRANT OF ARREST)

IN THE MAGISTRATES' COURT OF LAGOS STATE

IN THE IKEJA MAGISTERIAL DISTRICT

HOLDEN AT IKEJA

CHARGE NO:

BETWEEN

COMMISSIONER OF POLICE ……. COMPLAINANT

AND

ABC…….. ……..DEFENDANT

To: Corporal Ado Musa

"D" Divisional Police Station, Ikeja

Lagos.

WARRANT FOR THE APPREHENSION OF DEFENDANT AT FIRST INSTANCE

Comment [C6]: WaFTA ODAFI

Compliant on oath has been made on the……..day of……2019 by one XYZ that ABC, hereinafter called the defendant, on the……day of……..2019 at No. 5 Airport Road, Ikeja was involved in……contrary to section…….of the Criminal Law of Lagos State.

You are hereby commanded to bring the defendant before the Magistrate Court Ikeja, forthwith to answer to the said complaint and to be dealt with according to Law.

Dated this…….day of……2019

……

Judge or Magistrate

(D) CRIMINAL FORM 7 (SEARCH WARRANT)

IN THE MAGISTRATES' COURT OF LAGOS STATE

IN THE MAGISTERIAL DISTRICT

HOLDEN AT IKEJA

CHARGE NO:

BETWEEN

COMMISSIONER OF POLICE……COMPLAINANT

AND

ABC……..DEFENDANT

TO CORPORAL ADO JOHN of Ikeja Police Station,

No. 20 Airport Road, Ikeja

Lagos

SEARCH WARRANT

WHEREAS information on oath and in writing has this day been made that there is reasonable ground for believing that there is in No. 5 Airport Road, Ikeja, Lagos, selling of……contrary to…….of the Criminal Law of Lagos State.

You are hereby commanded in the name of Lagos State, with proper assistance, to enter the above named premises and there diligently search for the things aforesaid and if same or any part thereof is found, to bring same before this court to be dealt with according to law.

This warrant shall be executed between the hours of 5 O' Clock in the forenoon and 8 O' Clock at night and may also be executed at any hour during the day or night.

Issued at……..this…….day of……2019

…….

Judge or Magistrate

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. All these are the processes of bringing a suspect to court except ___

A. Arrest with warrant

B. Arrest without warrant

C. Summons

D. None of the above

2. An authority in writing issued to the offender at first instance to appear before the issuing authority is ___

A. Summons

B. Warrant of arrest

C. Bench warrant

D. Warrant

3. An authority in writing directed to the police/police officer/any other person for the arrest of a named offender is ___

A. Summons

B. Warrant of arrest

C. Public summons

D. Bench warrant

4. All these can issue a warrant of arrest except ____

A. Judge

B. Magistrate

C. Justice of the Peace

D. Superior police officer

5. All these can issue a warrant of arrest except ___

A. Judge

B. Justice of the Peace

C. National Assembly

D. None of the above

6. All these can issue a warrant of arrest except ___

A. National Assembly

B. Area Court Judge who is a legal practitioner

C. Justice of the Peace

D. None of the above

7. Complaint for a warrant of arrest is made by way of ___

A. Complaint in writing

B. Motion on notice supported by an affidavit and a written address

C. Complaint in writing and on oath

D. Affirmation and oath taking

8. Under the ACJL, CPL and ACJA, a warrant of arrest may be issued on ___

A. Sunday

B. Public holiday

C. Any day

D. None of the above

9. All these are contents of a warrant of arrest except ____

A. Name of the alleged offender

B. Concise statement of the alleged offence

C. Date of the issue of the warrant

D. Time of the issue of the warrant

10. The following are true about a warrant of arrest except ___

A. A warrant of arrest must be in writing and in duplicate

B. A warrant of arrest may be delivered to whom it may concern

C. A warrant of arrest must be dated

D. None of the above

11. The time for the issuance and execution of warrant of arrest is ___

A. Not less than 48 hours of issuance

B. 8am-6pm

C. 5am-8pm

D. Any time

12. The time for issuance and execution of a search warrant under the ACJL and CPL is ___

A. Not less than 48 hours of issuance

B. 8am-6pm

C. 5am-8pm

D. Any time

13. The time for the issuance and execution of a search warrant under the ACJA is ____

A. Not less than 48 hours of issuance

B. 8am-6pm

C. 5am-8pm

D. Any time

14. The time for the issuance of a summons is ____

A. Not less than 48 hours after complaint

B. 8am-6pm

C. 5am-8pm

D. Any time

15. All these can issue a search warrant except ___

A. Magistrate

B. Judge

C. Superior Police Officer above the rank of a cadet ASP

D. Superior Police Officer of the rank of a cadet ASP

16. A list of things seized during search in a CPCL and information of the place where they were found shall be prepared by the ___ and shall be signed or sealed by the ____

A. Person carrying out the search/person against whom the search is carried out

B. Person carrying out the search/witnesses

C. Person against whom the search is carried out/person carrying out the search

D. Person against whom the search is carried out/witnesses

17. Under the ACJA and CPCL, a person executing a search warrant outside jurisdiction of the issuing authority is expected to first do ___

A. Take the search warrant to the Magistrate or Judge in the jurisdiction for endorsement

B. Apply to the court in that jurisdiction and act under its directions

C. Effect the search warrant and take the things recovered to the court in that jurisdiction for endorsement

D. None of the above

18. All these are true about the day and time of issuance of summons except ___

A. May be issued on any day including a Sunday or a public holiday in all jurisdictions

B. May be issued from 8am-6pm from Monday to Saturday in all jurisdictions

C. May be issued from 5am-8pm from Monday to Saturday in all jurisdictions

D. Under the ACJL, summons issued on a Sunday or a public holiday takes effect from the next working day

19. When personally served, acknowledgement/endorsement of receipt of summons by the person served is mandatory and failure to so endorse can lead to committal to prison for more than ___

A. 12 months

B. 14 days

C. 1 year

D. 2 weeks

20. Where a summons is required to be served on a criminal defendant who is outside the jurisdiction of the issuing authority but within the same state, ____ is to be done first

A. Send the summons in duplicate to the court in whose jurisdiction the criminal defendant is to be served

B. Send the summons to the criminal defendant in that jurisdiction

C. Send the summons to the police for them to effect the issuance of the summons

D. Send the summons to the court in whose jurisdiction the criminal defendant is to be served for endorsement

21. Under the CPCL, where a person against whom a warrant of arrest has been issued has absconded or is concealing himself ___ will be issued

A. Summons

B. Public summons

C. Bench warrant

D. Warrant of arrest

22. Where a summons is required to be served outside jurisdiction and outside the state of the issuing authority, ____is to be done first

A. Send the summons in duplicate to the court in whose jurisdiction the criminal defendant is to be served

B. Send the summons to the criminal defendant in that jurisdiction

C. Send the summons to the court in whose jurisdiction the criminal defendant is to be served for endorsement

D. None of the above

23. NO QUESTION

24. In all jurisdictions except the CPCL states, where a summons is issued and the person summoned fails to appear before the court, ___ is issued

A. Bench warrant

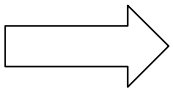
B. Warrant of arrest

C. Public summons

D. None of the above

ANSWERS

1. D
2. A
3. B
4. D
5. D
6. D
7. C
8. C
9. D
10. B
11. D
12. C
13. D
14. B
15. D
16. B
17. B
18. C
19. B
20. A
21. B
22. B
23. BONUS
24. B



3. PRE-TRIAL INVESTIGATION AND POLICE INTERVIEW

1. EXPLAIN HOW TO CONDUCT A PRE-TRIAL INVESTIGATION

a) Roles and Powers of the Police

1. Pre-trial investigation---**HASSAN v. EFCC, ONYEKWERE v. THE STATE**

2. Prevention and detection of crime---**S. 52(1) (2) ACJL, S. 4 POLICE ACT**

3. Arrest of offenders

4. Prosecution of offenders----**S. 23 POLICE ACT**

PTI 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.

However, this duty of the police to conduct PTI does not extend to debt collection and other civil wrongs like breach of contract---**MCLAREN V. JENNINGS, IGWE V. EZEANOCHIE, ABDULAHI V. BUHARI, EFCC V. DIAMOND BANK PLC, S.4 ACJL, S. 8(2) ACJA**

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.**

(b) Categories of persons that may be invited by the police in course of PTI

- Suspect
- Victim
- Complainant
- Witnesses
- Experts
- Any person who may aid proper investigation

At the stage of PTI any person arrested in relation to the offence is still referred to as "suspect" and "accused/defendant" upon arraignment. A suspect invited for PTI MUST answer the invitation otherwise, he will be arrested. On the other hand, a witness is not mandated to attend the PTI although the court can issue a "witness summons" (subpoena relates more to civil litigation). **The police have discretion as to investigation of a suspect – FAWEHINMI v. IGP.**

(c) 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

(d) 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.
- Weak institution

2. PARTICIPATE IN A POLICE INTERVIEW

(a) Stages of police interview (done by the Investigating Police Officer)---**RICC**

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

(b) 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.

3. DISCUSS HOW ALIBI, STATEMENTS AND CONFESSIONS ARE RECORDED AT THE POLICE STATION ("JUDGES RULE") HOW IDENTIFICATION PARADE IS CONDUCTED AND HOW EXHIBITS ARE HANDLED.

(a) Alibi – Elsewhere

This is one of the commonest defence usually raised by an accused person or suspect. By raising the defence 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 defence of alibi. This duty includes raising the defence at the earliest possible opportunity. It is **properly raised** when:

- Raised timeously upon arrest and
- The particulars of the alibi (place, time, purpose and names of persons with the suspect) are supplied--**EBEMEHI V STATE**

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.---**OGOALA V. THE STATE**

If the defence is raised during arraignment, the prosecution is not bound to disprove it. The court will only consider such defence with material evidence in order to determine whether the defence will avail him.

The evidential burden is on the accused pursuant to **Ss. 136 AND 137 EA** while the primary burden of proving the guilt of the accused beyond reasonable doubt is on the prosecution. **When the accused raise the defence 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

NB: If the prosecution is unable to disprove the defence of alibi raised, the court will **discharge** the accused.

When a defence of alibi raised by suspect is not investigated by the police, the court on trial can suo moto call witness(s) mentioned in the alibi, notwithstanding that the witness was not called by the prosecution or defence----**ABUDU V. THE STATE**

(b) Statements and Confessional statements

A statement is a narration of the facts relating to a case. A confessional statement is an admission of guilt---**IGBO V. STATE; S. 28 EA 2011**

1. Guiding principles in obtaining/tendering statements from a suspect---CEP TEA FVV

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. **Caution**: Statement must be made under caution. The suspect should be cautioned as to his rights
2. **English**: Statements should be obtained in English language if practicable except the suspect 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.---**ADEYEMI V. THE STATE, OLALEKAN V. THE STATE**
3. **Pronoun requirement**: Recording of statement should be in singular pronoun that is first person singular or plural narration – 'I' 'we'.**---AHMED V STATE.**
4. **Tendering interpreted statements:** 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. NB: Both the statement and the interpreted version must be tendered.---**NWALI V. THE STATE NB**: where an interpreter is used and also a recorder (different from the interpreter) 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.---**NWAEZE v. STATE; OLALEKAN v STATE NB**: Where it is not an interpreted statement, it is not mandatory for the police officer that recorded the statement to be in court before the statement can be tendered and admitted---**MICHAEL OLOYE V. THE STATE (2018)**

   NB: Assuming the interpreter is dead (or 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. It can do so through the IPO. Failure to do so, it will amount to inadmissible hearsay evidence and would not be admissible. **S. 39 EA.**
5. **Endorsement by suspect/Attestation by interpreter:** Under the ACJA, where an interpreter records and reads 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**---S. 17(3) ACJA**
6. **Availability of material evidence:** All material evidence must be made available to the suspect.
7. **Foundation:** 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---**IGBO V STATE.**
8. **Verbatim**: The statement must be a verbatim record. You don't choose what to write.
9. **Voluntary**: It is not mandatory for a suspect to make statements to the police and as such the suspect only makes a statement if he wishes to do so otherwise he may refuse to answer any question put to him or make or endorse any statement even after consultation with his lawyer.---**S. 35(2) CFRN, S. 3(2)(c) ACJL, S. 6(2)(a) ACJA.** Thus, statements

Comment [C7]:
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.---**R v. NWANGBO IGWE**

made under undue influence, duress, threat, may not be admissible. **S. 29(2) EA.** All these and more amount to torture under the Anti-Torture Act 2017.----**S. 2 ATA** There is no justification for torture---**S. 3(1) ATA**, and any police officer present in the torture scene or who commits an act of torture while acting pursuant to a superior order shall be liable to the penalty prescribed for this offence.---**S. 7 ATA**. The penalty is imprisonment for a term not exceeding 25 years----**S. 8 ATA**

2. Principles relating to confessional statements

In the process of interviewing a suspect, confessional statement can be obtained from the suspect. Confessional statement is regulated under **Ss. 28 & 29 EA**. **No confessional statement can be made during trial---ONUNGWA V. THE STATE, 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.

Confession could be oral or in writing---**IGBINOVIA V. THE STATE**

PLEASE NOTE that oral confession of arrested suspect shall not be admissible in Lagos, however, it is admissible UNDER ACJA pursuant to **S. 15(5) ACJA.**

A confessional statement cannot be made on behalf of another person**---MBAH V. THE STATE, OLUSEGUN V. THE 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 suspect in whose presence it was made adopts same by words or conduct – **S. 29(4) EA, OZAKI V STATE, MBANG V STATE.** Conduct depends on the circumstances of the case but such must be very clear as to leave no doubt as to the admission of the offence or confession.

NB: Where a confessional statement has been made during the course of investigation by a co-accused implicating the other accused, if during the course of the trial the maker adopts the confessional statement on oath, it becomes binding on the other accused whether or not he adopts by word or conduct. In other words, where a statement is made on Oath, during trial before the court which incriminates a co-accused, and there are other corroborative pieces of evidence, the court may rely on it and convict the co-accused.--**GBOHOR V THE STATE.**

Procedure for recording of confessional statements under ACJL and ACJA

Under the ACJL the statement must be taken in any of the following ways:

- Video recording **or**
- In writing (in the presence of the legal practitioner of suspect's choice)

Under the ACJL, if the foregoing is not done, then the confessional statement whether voluntary or otherwise **shall be rendered impotent**.---**S. 9(3) ACJL, AWELE V. PEOPLE OF LAGOS STATE, ZHIYA V. PEOPLE OF LAGOS STATE, OLUSEGUN AGBANIMU V. FRN**

Under the ACJA, 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 (LP's presence is not required) **and**
- **May be** recorded electronically on a retrievable video compact disc or such other Audio visual means.----**S. 15(4) ACJA**

The use of the word "may" under the ACJA has raised the issue whether or not the provision carries any force of law. However, in **NNAJIOFOR V. FRN,** the CoA held that the word "may" in S. 15(4) ACJA is mandatory because it denotes a duty imposed on a public officer on what he must do. Thus, the effect of the decision is that **such confessional statement must be in writing and video recorded.**

NB: Where a suspect is tortured behind the scene and this leads to his making of the statement in the manner prescribed above, though some elements of involuntariness exist, the ultimate is that the court will treat the statement as one voluntarily made so as to avoid trial within trial, and later the court will decide on the weight to attach to such statement. This is because the essence of the ACJA is speedy dispensation of criminal trials and TWT will delay the trial.

NB: Non-compliance with the procedures under the ACJL and ACJA will render the confessional statement inadmissible---**AKAEZE CHARLES V. FRN (2018)**

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

Grounds for objection to the admission of a confessional statement

- **Involuntariness**, and (TWT)—To ascertain the voluntariness of the confessional statement---**IBEME V. THE STATE**
- **Retraction** (Denial) (No TWT) but the court before acting on it must establish
  (i) That the statement was actually made and
  (ii) Ascribe probative value to the statement, attach necessary weight based on the evidence before the court, admit it and consider the weight to attach to it. This is because at this stage of the trial it is a matter of facts, and evidence cannot be gone into at that stage.---**EGBOGHONOME V THE STATE.** In **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.

Species 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.

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.

NB: Promise of secrecy, deception etc is not a ground for objecting to the admission of a confessional statement properly made as it would be admissible.— **S. 31 E.A, IGBINOVIA V. THE STATE**

NB: Objection to the admission of a confessional statement is to be raised when it is sought to be tendered.----**OLALEKAN V. THE STATE**. The burden is on the prosecution. The standard of proof is beyond reasonable doubt.---**S. 29(2) E.A** and it is the prosecution that opens the case by calling witness first.----**EFFIONG V. THE STATE.** Also, the trial does not end at TWT as it is a mini trial after which the parties revert back to the substantive case.---**GBADAMOSI V THE STATE.**

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.--**EGBOGHONOME v. STATE**. In determining the truth of the confession, however the Court must ask itself certain questions. 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?---**SULE v. THE STATE, GABRIEL v. THE STATE**

(c) 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 and codified to some extent.--- **S. 3 ACJL, S. 6 ACJA**

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.

PLEASE NOTE THE FOLLOWING

- 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.---**S. 31 EA**
- 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--**UGAMA v. R**
- A confessional statement alone is sufficient to ground a conviction once the court is satisfied with the truth of the confession.---**YUSUFU v. THE STATE, GABRIEL v. THE STATE**

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.---**R v. OMOREWERE SAPELE, NWIGBOKE v. R, ADAMU v. A.G. BENDEL**

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

(d) 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---**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:---**KTO**

- **KNOWLEDGE OF THE ACCUSED:** The victim or witness did not know the accused before and his first contact with the accused was during the commission of the offence
- **TIME:** The victim or witness was confronted by the offender for a very short time
- **OBSERVATION:** 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

Types of identification

- 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-----**EMENEGOR v. STATE, ARCHIBONG v. STATE**

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.---**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**.---**ISAH v. STATE**.

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 acting 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----

PreSS BaBe FEL CHI VERUC

- **Presence of a senior officer:** A senior officer must be present and he is not to take part in the identification parade, his presence is only required
- **Speaking with witness/complainant rule**: 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.
- **Suspect + 8 persons rule:** The identification parade must consist of **at least eight (8) persons** + the suspect, who as far as possible resemble the suspect in age, height, build, complexion, general appearance and position in life.
- **Badge number removal:** If a police officer forms part of the identification parade, his badge number must be removed
- **Before parade seeing of suspects and persons to be paraded:** The witness must not see the persons (or suspects) to be paraded before the parade
- **Form D48:** The suspect must be handed Form D48. The form consists of information in relation to his rights during the identification parade.
- **Exclusion of those not directly involved/the press**
- **Line-up photograph is taken** before the parade begins
- **Communication between witnesses BEFORE parade is prohibited**
- **Hand placing on shoulder rule:** 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.
- **Individual identification rule:** If there is more than one witness, they must be brought in one after the other – identification must then be done individually
- **Verification rule:** After identification, another identification parade is to be taken with the person identified with different persons for the purposes of verification.
- **Entry and Exist rule:** There should be separate entry and exit to the venue for the identification parade
- **Room illumination rule:** The room for the identification parade must well illuminated
- **Unusual physical feature:** 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.
- **Completion of Forms D49 and 50:** After the entire parade, FORMS D49 and D50 will be completed by the police officer in charge

Comment [C8]:
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.

Comment [C9]: NB: 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.---**R v. BUNDI, OMEGA v. STATE.** Identification parade may be judicial or extra-judicial. Dock identification is judicial.

(e) Exhibit handling

During 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 must be a secluded place and 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.**

Procedure for recording inventory of property of arrested suspect under ACJA—S. 10 ACJA--RECORD

- **Record:** A police officer making an arrest or to whom a private person hands over the suspect, shall immediately record information about the arrested suspect and an inventory of all items or properties recovered from the suspect.
- **Execution:** An inventory recorded shall be duly signed by the police officer and the arrested suspect, **provided that the failure of the arrested suspect to sign the inventory shall not invalidate it.**
- **Copy:** The arrested suspect, his legal practitioner, or such other person as the arrested suspect may direct, shall be given a copy of the inventory.
- **Owner/Third party interest:** Where any property has been taken from an arrested suspect, a police officer may upon request by either the owner of the property or parties having interest in the property release such property on bond pending the arraignment of the arrested suspect before a Court.
- **Report to court upon refusal:** Where a police officer refuses to release the property to the owner or any person having interest in the property, the police officer shall make a report to the court of the fact of the property taken from the arrested suspect and the particulars of the property.
- **Direction of the court:** The court to which a report is made, may if of the opinion that the property or any portion of it can be returned in the interest of justice to the safe custody of the owner or person having interest in the property, direct that the property or any portion of it be returned to the owner or to such person(s) having interest in the property.

  NB: Where any property has been taken from a suspect under this section, and the suspect is not charged before a court but is released on the ground that there is no sufficient reason to believe that he has committed an offence, any property so taken from the suspect shall be returned to him, provided the property is neither connected to nor a proceed of offence.

4. LIST AND EXPLAIN THE CONSTITUTIONAL RIGHTS OF A SUSPECT AT THE POLICE STATION

The suspect has the following rights during investigation by the police:

1. Right not to be subject to torture that is dignity of human person – **s.34 CFRN.** Right to decent cell, condition and facilities
2. Right to remain silent or avoid answering question until consultation with legal practitioner or any other person of his choice – **s. 35(2) CFRN** when he is arrested or detained. Right of access to counsel of one's choice – **s. 35(2) CFRN**
3. 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**
4. 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.
5. Right to bail, if is a bailable offence by the police – **s. 35(4) & (5) CFRN**. The police have no power to grant bail in capital offence.
6. Right to compensation and apology when unlawfully arrested by the appropriate authority – **s. 35(6) CFRN**
7. Right to presumption of innocence – **s. 36(5) CFRN**
8. Right to adequate time and facilities to prepare for defense.---**S. 36(6)(b) CFRN**
9. Right not to be subject to unnecessary and unreasonable restrain when being arrested except under certain circumstances – no handcuffs unless permitted
10. Right to receive the information for which he is being charged
11. Right to free legal aid upon fulfillment of certain conditions

5. EXPLAIN HOW TO APPLY FOR ASSISTANCE FOR A CITIZEN UNDER THE LEGAL AID SCHEME

(a) 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 **S. 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.---**MMMA**
2. In North – culpable homicide punishable with death and that not punishable with death, grievous tort, criminal force occasioning bodily hurt
3. Generally: Common assault, Affray, Rape and Stealing----**CARS**

Eligibility

S. 10(1) LAA provides that only persons whose annual salary does not exceed the national minimum wage are eligible for legal aid; and pursuant to **S. 10(2) LAA** by persons who are **entitled to receive legal aid on a contributory basis not minding that their salaries exceed the minimum wage**. Automatically, persons 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 (supply particulars being of indigent);
- Belief that the person is entitled and
- Justiciability of the matter.

The 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.

Draft: Application for legal aid
NB: The application for legal aid may be drafted in a lawyer's letter headed paper as an indigent may be able to get a lawyer to help him write the letter without cost OR may be drafted by the indigent himself. Therefore, the letter will not be in a lawyer's letter headed 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. The facts qualifying him for legal aid must be stated in the application.

NB: 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, 2019

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

ENCL:
Annual Payment Slip

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. At pre-trial investigation, any person arrested in relation to an offence in CPCL states is referred to as ____

A. Suspect

B. Accuses person

C. Defendant

D. All of the above

2. Where the prosecution is unable to disprove the defence of alibi, the court will ____

A. Discharge the defendant

B. Acquit the defendant

C. Discharge and acquit the defendant

D. Remand the defendant in prison custody

3. Where the defence of alibi is properly raised, the police is required to ___

A. Charge the defendant to court

B. Investigate the alibi

C. Release the defendant on bail

D. All of the above

4. During pre-trial investigation, an admission of guilt is referred to as a ___

A. Statement of admission

B. Confession

C. Confessional statement

D. Plea of guilt

5. When the defendant raises the defence of alibi and particulars are supplied, the ___ should lead evidence to disprove it

A. Police

B. Prosecution

C. Defence

D. B or C

6. During trial of a defendant, an admission of guilt is referred to as a ___

A. Statement of admission

B. Confession

C. Confessional statement

D. Plea of guilt

7. All these are correct except ___

A. Confession could be oral or in writing

B. Oral confession of a suspect is admissible under the ACJL

C. Oral confession is admissible under the ACJA

D. All of the above

8. Objection to an involuntary confessional statement should be made at the ___

A. Police station

B. Point of arraignment of the defendant

C. Point the confessional statement is sought to be tendered

D. Close off the case of the prosecution

9. The standard of proof in trial within trial is ___

A. Proof beyond reasonable doubt

B. Proof based on balance of probabilities

C. Proof to the satisfaction of the court

D. All of the above

10. The party that calls witnesses first in a trial within trial is ___

A. Prosecution witness

B. Defence witness

C. Defence

D. Prosecution

11. After a trial within trial ___ happens

A. Trial continues

B. Trial ends

C. Trial proceedings are transferred to the Chief Judge for re-assignment

D. Trial is put in abeyance

12. Identification parade is essential in all the following circumstances except ___

A. The witness did not know the suspect before the commission of the crime

B. The witness was confronted by the suspect for a very short time

C. The witness knew the suspect before the commission of the crime

D. The witness in the time and circumstance did not have full opportunity to observe the suspect

13. There would not be a recognition in all but one of the following circumstances

A. The witness did not know the suspect before the commission of the crime

B. The witness was confronted by the suspect for a very short time

C. The witness knew the suspect before the commission of the crime

D. The witness in the time and circumstance did not have full opportunity to observe the suspect

14. The minimum requirement for an identification parade is ___ persons

A. 8

B. 9

C. 10

D. 12

15. The form to be handed over to a suspect containing information in relation to his rights during the identification parade is ___

A. Form D47

B. Form D48

C. Form D49

D. Form D50

16. The forms that would be completed after the whole identification parade are Forms __

A. D47 & D48

B. D48 & D49

C. D49 & D50

D. D50 & D51

17. Failure to follow the laid down procedure for identification of a suspect has ___ effect

A. Renders the evidence inadmissible

B. Renders the evidence inchoate

C. Does not render the evidence inadmissible but goes to the weight to be attached

D. Nullifies the identification parade

18. The itemization of all materials collected from a suspect is as in the ___

A. Exhibit list

B. Exhibit register

C. Exhibit manual

D. Exhibit room

19. ___ is where exhibits collected by the police and in police custody are recorded

A. Exhibit list

B. Exhibit register

C. Exhibit manual

D. Exhibit room

20. The person who keeps custody of all the items in the custody of the police is the ___

A. Exhibit lister

B. Exhibit registrar

C. Exhibit recorder

D. Exhibit keeper

21. Items which are seized by the police requiring laboratory or forensic test is usually packed in the exhibit ____

A. Pouch

B. Packer

C. Bag

D. Container

22. The court may refer a matter to the legal aid council using Form LAC ___

A. 1

B. 2

C. 3

D. 4

23. Application for legal aid is made to the ___ of the legal aid council

A. Registrar-General

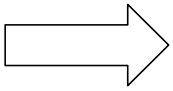
B. Director-General

C. Secretary-General

D. None of the above

ANSWERS

1. A
2. A
3. B
4. C
5. B
6. D
7. B
8. C
9. A
10. D
11. A
12. C
13. C
14. B
15. B
16. C
17. C
18. A
19. B
20. D
21. A
22. A
23. B



4. JURISDICTION AND VENUE OF CRIMINAL TRIALS

1. DISCUSS THE CRIMINAL JURISDICTION OF COURTS AND THE VENUE OF CRIMINAL TRIALS.

Three components of jurisdiction

- Composition/constitution
- Subject matter
- Initiation process (commencement)

NB: Any defect on any of the above means that the court lacks jurisdiction. Jurisdiction is statutory and its inherent jurisdiction is the power within the court that assists it to exercise its statutory jurisdiction.

How do we determine jurisdiction of a court

- The law setting out the jurisdiction of the court enables us determine which court has jurisdiction in a given case (CFRN or other statutes)
- Charge sheets/information (or both) before the courts---**ONWUDIWE v. FRN**

NB: A court may have statutory jurisdiction but the charge sheet/information discloses that it lacks any of the above components of jurisdiction, there will be no jurisdiction

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
- Procedural and substantive jurisdiction: Procedural jurisdiction is the process by which the complainant institutes or initiates the subject matter before the court while substantive jurisdiction is the power of the court to hear that particular subject matter. 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 out such matter. Parties cannot confer jurisdiction on a court
- Territorial: Jurisdiction over criminal cases arising within the geographical area or venue of the offence. 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.

- General and special.

TERRITORIAL JURISDICTION

Criminal trials are territorial. It is because courts are only seized with criminal matters that are 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.

NB: Where offences are committed across states, any of the courts with subject matter jurisdiction where the series of offence were committed may try the case, even where the state was only entered into without any offence actually committed in that particular state— **NJOVENS V. STATE, S. 4(2)(b) PENAL CODE, S. 11 CRIMINAL LAW OF LAGOS, S. 12A(1) CC, Ss. 58-63 ACJL, Ss. 93,96-98 ACJA**

NB: Where an offence is only constituted under the Penal Code, it cannot be instituted in the South---**AOKO V FAGBEMI, SECTION 36(12) CFRN.** The court in the south will not have substantive jurisdiction.

NB: The principle that offences are territorial also has its application to the Federal High Court although there is only one FHC— **S. 19 FHC ACT,** but with judicial divisions across the country---**S. 45 FHC ACT**. Thus, where all the elements of an offence were committed in a particular judicial division, that judicial division will be seized of such matter except the CJ FHC makes an order that the matter be heard in another judicial division, but where offences have initial and subsequent elements in different states, the matter is to be instituted in the judicial division of the FHC covering those states.

NB: Where the subject matter of the offence is within the jurisdiction of the FHC but the offence has a national spread (like treason and treasonable felony), the matter can be brought before any judicial division of the FHC but if the offence is of a localized nature, it is to be brought before the FHC judicial division covering that locality---**ABIOLA V. FRN & IBORI V. FRN**

GENERAL AND SPECIAL JURISDICTION

There are the Courts of General Criminal Jurisdiction (Original or Appellate), and the Courts of Special Criminal Jurisdiction.

A. THE COURTS OF GENERAL CRIMINAL JURISDICTION ARE:

- Customary/Area Courts
- Magistrate Court S/N
- High Court of States/FCT
- Court of Appeal (only appellate jurisdiction)

- Supreme Court (only appellate 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.

1. (a) 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.
  NB: Generally, appeals from customary court go to the High Court but in Lagos state, appeals from the customary courts go to the Magistrates Court—**S. 41 CUSTOMARY LAW OF LAGOS STATE**

MCQ: The customary court of appeal has no original or appellate jurisdiction over criminal matters.

(b) 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.**

- Upper area court: 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 offences.
- 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 CPCL. **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.**

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

- A person whose parents were members of any tribe indigenous to some parts of Africa and the descendants of such person.
- A person, one of whose parents was a member of a tribe indigenous to Africa; and

- A person who consents to be tried by the court- A Britain can be tried before the area court where he consents to it.
  Note: an African-American can be subject to the jurisdiction of an area court because his parent(s) is/are member(s) of an indigenous tribe to Africa.

Proceedings in area courts are conducted according to substantial justice without undue regard to technicalities—**S. 6 ACE (ACL)**

There is no need for the framing of a formal charge in an Area Court—**S. 387 CPCL, ALABI v. COP**

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

The Area Court inspector appointed under the Edict has power either on application of any person aggrieved or of his own to appeal to the High Court--**S. 50 ACL.** An aggrieved person can on his own appeal.

A legal practitioner has a right of audience in an Area court, thus the provisions of section 390 of CPCL and S. 28 of the Area Court Edict, to their extent of inconsistency, are void---**S. 36(6)(c) CFRN, UZODINMA v. COP**

2. (a) Magistrate Court South – Lagos, governed by Magistrate Court Law 2009

- There are 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.
- Magistrate courts have jurisdiction in respect of summary trial---**S. 29(2) MCL.**
- Magistrate courts in Lagos, must not impose a fine or sentence exceeding that provided for the law creating the offence. In Lagos, there is a limitation on the sentences they can impose, which is 14 years--**S. 29(5) MCL.** 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 that as 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 possesses the jurisdiction to try offences imposes a sentence more than the 14 years, 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.**

Comment [C10]: A Court cannot rely on these provisions on consecutive sentencing to enlarge its jurisdiction as only establishing laws can increase the jurisdiction of a court. Thus, it is wrong for a court to impose a consecutive sentence that exceeds its limit on the basis of a procedural laws saying that they can do so.

Lagos law (MCL being an establishing law) is in line with the above position.

- They can try other offences in other statute aside from those stipulated in the schedule of the Magistrate Court Law--**S. 29(6) MCL**
- The power to increase the jurisdiction of the magistrate court of Lagos state to impose punishment exceeding that prescribed **shall be exercised by the AG LAGOS STATE on recommendation of the LSJSC---S. 27 MCL**, in other states, it is increased **by A LAW PASSED BY THE SHOA (duly signed by the Governor) on the recommendation of the CHIEF JUDGE.**
- In Lagos, when a magistrate is to impose consecutive sentences (run one after the other), the sentences **SHALL 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.**

(b) Magistrate Courts North

In the North generally, there are four grades of magistrate courts and their jurisdiction generally under CPCL are:----**S. 8(1) CPCL**

- Chief Magistrate (5 years maximum term of imprisonment)
- Magistrate grade 1 (3 years)
- Magistrate grade 2 (18 months)
- Magistrate grade 3 (9 months)

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)

Its jurisdiction over offences is as provided in **Column 6 to Appendix A of CPCL**.

IN THE NORTH ONLY, where the magistrate 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 before such referral---**S.257 CPCL**

Comment [C11]: A Magistrate cannot rely on this provision to try a matter in which he has no jurisdiction to try in the first place

NB: 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.**

NB: As regards two or more consecutive sentencing, the aggregate term of imprisonment SHALL NOT EXCEED TWICE THE LIMIT OF JURISDICTION of the magistrate. Hence in a Chief Magistrate Grade I in FCT where 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--**S. 24 CPCL,** in contrast with ACJA which provides that a magistrate court may pass two or more sentences on a defendant to run consecutively and where this is the case, **the aggregate term of imprisonment SHALL NOT EXCEED FOUR YEARS OF THE LIMIT OF JURISDICTION of the magistrate---S. 418(2) ACJA.** Where a sentence of imprisonment is imposed, the sentence takes effect **FROM THE DATE THE SENTENCE IS IMPOSED---S. 419 ACJA.**

NB: MC can only convict

- After the accused's plea of guilty
- After the trial

3. High Court (SHC/HC FCT)

- Section 272(1) CFRN confers criminal jurisdiction on the SHC. 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 confers jurisdiction on it
- **All non-indictable offences brought by complaint or any other mode provided/prescribed by law--DPP V. ALUKO, R V. ONUBAKA**
- Criminal appeal from magistrate court.
- Federal offences within its jurisdiction---**S. 286(1)(b) CFRN**
- The magistrate may also state a case to the HC under section 295 CFRN.
- In the north, S. 257 CPCL, 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 SHC share concurrent criminal jurisdiction with the FHC in the offences created under s. 251(3) CFRN. Also, with the National Industrial Court in S. 254C(1) CFRN.

4. Court of Appeal

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

5. Supreme Court

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

B. COURTS OF SPECIAL CRIMINAL JURISDICTION

- Federal High Court
- National Industrial Court
- Court Martial
- Juvenile Court
- Coroner's Court
- International Criminal Court (to be discussed in the second outcome)

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

1. Federal High Court

- Exclusive jurisdiction in respect of treason, treasonable felony and allied matters—**S. 251(2) CFRN, S. 7(2) FHC ACT.** 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 its jurisdiction to the FHC exclusively. Please note: any allied matters to treason should be tried exclusively by the FHC---**MANDARA V. AGF**
- Concurrent jurisdiction in respect of criminal causes and matters over which it has civil jurisdiction.—**S. 251(3) CFRN**. Any matter or cause listed in Section 251(1) that is an offence, the Federal High Court shall have concurrent jurisdiction with SHC—**FRN V. NWOSU, 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 SHC 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 SHC will not have concurrent jurisdiction over drugs and poisons matters.
  OTHER EXAMPLES:
  - 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

Comment [v12]: Exclusive

Comment [v13]: Exclusive

Comment [v14]: Exclusive

NB: **S. 19 EFCC Act** vests concurrent jurisdiction on both the FHC and SHC.

- Advanced Fee Fraud-concurrent jurisdiction.

- Robbery and Firearms Act- SHC has Jurisdiction.
- It is not all federal offences that will be tried in the Federal High Court**.**

2. National Industrial Court:

- Section 254C(5) CFRN 1999 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 NIC in criminal matters shall lie as of right to the Court of Appeal--**S. 254C(6) CFRN**

3. Court martial

The court martial entertains only matters against persons subject to SERVICE LAW—**S. 130 AFA.** Service Law here entails Nigerian Army, Navy, or Air Force (ANA). Such person must be subject to service law. NB: T**he Police and Custom officers are not subject to service law--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.

- What constitutes military offence?--**Ss. 45-103 AFA**
- What constitutes civil offences?--**Ss. 104-114 AFA**.
- Can a person subject to service law be tried in the civil court? Yes, for civil offences. But the person cannot be tried for military offences in a regular court.

CoRe= NO DJ-- S. 170(2) AFA
ReCo=CM HAS NO JURISDICTION---S. 171 AFA
Where a person subject to service law commits a civil offence, example assault, such person can be tried first 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. Also, he can be tried by the regular courts thereafter for the same civil offence and 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 autre fois convict or acquit/double jeopardy based on section 36(9) of the 1999 Constitution will not be taken)—**S. 170(2) AFA.**
NB: Where the trial was first by a competent civil court- it will oust the jurisdiction of the court martial--**S. 171 AFA.**

A**fter 3 months of retirement,** such persons cannot be tried in the court martial unless it is within 3 months upon retirement **OR** involves the offence of **1. Mutiny, 2. Failure to suppress**

mutiny, 3. Desertion and 4. Civil offences committed outside Nigeria (MFDC), as there is no time limit within which to try the person in relation to these offences in the court martial---**NAF V OBIOSA**.

(a) Convening a court martial

To convene means to set up a court martial. 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 proceeding is a nullity.

Who can convene a court martial?

By virtue of **S. 131 of Armed Forces Act,** the following persons can convene a court martial

- President of the FRN
- Chief of Defence staff
- Service Chiefs
- 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
- Officer acting in place of the above officers.

Can the power to convene be delegated?
Yes, it is delegable--**NAF V OBIOSA**. The constituting authority can delegate to superior officers. However, by **S. 131(4) AFA,** 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.
S. 133(7) AFA 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.

General LMB Cole MCLS

ARMY	NAVY	AIR FORCE
1. General	Admiral of Fleet	Marshal of the fleet
2. Lieutenant. General	Vice Admiral	Air Marshal
3. Major General	Rear Admiral	Air Vice Marshal
4. Brigadier General	Navy Commodore	Air Commodore
5. Colonel	Navy Captain	Group Captain
6. Lieutenant Colonel	Commander	Wing Commander
7. Major	Lieutenant Commander	Squadron Leader
8. Captain	Lieutenant	Flight Lieutenant
9. Lieutenant	Sub-Lieutenant	Flying Officer

10. Second Lieutenant	Acting Sub-Lieutenant	Pilot Officer

(b) Composition/constitution of a court martial

- **General court martial** consisting of a president and not less than four members, a waiting member, a liaison officer and a judge advocate (WLJ)
- **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 (like a spare tyre), and liaison officer are not to be counted as they are regarded as adjuncts to the court--**OBISI v. CHIEF OF NAVAL STAFF**

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, a liaison officer or a judge advocate does not nullify the proceedings--OBISI v. CHIEF OF NAVAL STAFF**

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. Judge advocate has no voting rights. A sergeant is not a commissioned officer and **under no circumstances can a civilian be a judge advocate. Pl**ease Note that the members **must be of 5 years in servi**ce--**S. 133(2) AFA**

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--**S. 133(3)(b)AFA, OKORO V NIGERIA ARMY COUNCIL**. Seniority in this case is that the officer must have been appointed before the accused. **NB:** Officer convening shall not be the President or member----**S. 134(1) AFA**

NB: Even if it is one of them that is below the rank of the person to be tried, the CM will not be properly constituted. 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--**S. 140 AFA**. The decision can be appealed to the Court of Appeal and then the Supreme Court. Notice of appeal must be filed **within 40 days from the date the decision was promulgated.** In the case of death sentence

Comment [v15]: Concurrence of all the members to secure conviction of death.

within 10 days. The latter is as of right while the former is with leave of court---**S. 184(1)(2) AFA**. **NB: BAR PART II- Look at the scenario to know the court that is seized of the criminal matter first.**

(c) Practice and Procedure

Rules of evidence and fair trial apply. A person who convenes cannot constitute the court martial. ACJA not applicable--**Section 2(2) ACJA**. AGF/S cannot discontinue/enter a nolle in a CM---**S. 174(1)(a)(c) CFRN, S. 211(1)(a)(c) CFRN**

4. 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- SECTIONS 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**. An inquest must be conducted before 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--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's court **IS NOT BOUND** by the provisions of the Evidence Act but may take evidence on oath.
- Inquest is subject to review by the HC
- A criminal charge need not necessarily follow an inquest
- Where the verdict of the coroner necessitates 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**

Comment [C16]: QUERY

What the Coroner must determine?

(a) Identity of deceased

(b) Time and Place of death

(c) Cause of death**---ITPC**

Post verdict

- The AG may institute an action based on the verdict of the coroner's court and upon application.
- Aggrieved party may ask for review of findings of coroner

--Synagogue case trial of the trustees and construction engineers.

5. Juvenile Court

- Most states have family courts in place 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
  (a) Children – a child under the age of 14 years
  (b) 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 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**
- Where the charge is one of capital offence – **S. 8(2) CYPL**. The juvenile can be charged in the regular courts. However, the Juvenile courts can make preliminary enquiry.

Comment [v17]: The general rule is that a minor can only be tried at a juvenile/family court. However, where the Childs Right Act or law of the various states, provides that the minor can only be charged at the family court, that minor cannot be tried with the adult or for homicide cases in a regular court. Section 452 ACJA

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--**GUOBADIA v. STATE; MODUPE v. COP; R v. OLADIMEJI**
4. Physical appearance--**Section 264 ACJA**

NB: Proof of age can be determined by either of the above. In the event of conflict between a sworn affidavit of a child and the medical evidence of a registered doctor, the latter will prevail--**STATE V OLATUNJI.**

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) CYPL**
2. The identity of the offender not to be published without the leave of court – **S. 6(6) CYPL**

3. The words 'Sentence' and 'conviction' are not to be used, rather a FINDING OF GUILT IS MADE – See **MODUPE V. STATE**.
4. No child shall be imprisoned – **S. 12(1) CYPL**
5. No young person shall be ordered to be imprisoned unless he cannot otherwise adequately be dealt with--**STATE V. GUOBADIA**
6. No young person imprisoned shall be allowed to associate with adult prisoners.
7. **The relevant age is the age of commission of the offence--GUOBADIA V. STATE**

2. EXPLAIN THE JURISDICTION AND VENUE OF CRIMINAL TRIALS OF THE INTERNATIONAL CRIMINAL COURT.

(a) Establishment of the ICC

The ICC was established by the Rome Statute (RS) of the International Criminal Court. The Rome Statute/International Criminal Court Statute was adopted in a UN diplomatic conference **on 17th July 1998**, Nigeria ratified the statute on **20th April 2002** and the court began sittings on **1st July, 2002** (when the statute entered into force). The ICC has legal capacity/personality comparable to that of the UN. It is a diplomatic person. The ICC sits in Hague in Netherlands (host state)-**ARTICLE 3(3) RS** however, it can still sit elsewhere.

The ICC has jurisdiction only with respect to events which occurred after the entry into force of its Statute. 123 member states of ICC (USA, China, India, Iraq, Libya, Yemen, Qatar and Isreal ARE NOT MEMBERS OF THE ICC).

(b) Objectives of the ICC

- To achieve justice for all
- To end impunity
- To uphold and end conflict
- To remedy deficiencies of adhoc tribunals
- To compliment the national justice system

(c) Structure and Composition of the organs of the ICC

The ICC is composed of four (4) organs:

- Presidency
- Chambers
- Office of the Prosecutor (OOTP) and
- Registry.

Presidency---ARTICLE 38 RS

The current President of the ICC is **Judge Chile Eboe-Osuji** (a Nigerian). It is made up of the President, the First Vice President and the Second Vice President. **The president is elected by the absolute majority of all the 18 judges of the ICC.** The members of the presidency serve on

a full time basis. The Presidency is responsible for the administration of the Court, with the exception of the OOTP. It represents the Court in the outside world and helps with the organization of the work of the judges. The Presidency is also responsible for carrying out other tasks, such as ensuring the enforcement of sentences imposed by the Court.

Chambers----ARTICLE 39 RS

A hierarchy of courts exists within the chambers of the ICC. They are:

- **Pre-Trial Division** (headed by the FVP and is made up of the FVP and six judges. The quorum is **3 judges.** It can assume original jurisdiction leading to conviction)
- **Trial Division** (headed by the SVP and made up of the SVP and 3 judges. The quorum is **any of the 3 judges.** It can assume original jurisdiction leading to conviction)
- **Appeal Division** (headed by the P and is made up of the P and 4 judges. The quorum is **all 5 judges of this division. It only exercises appellate jurisdiction over appeals from the OOTP and the convict)**

Office of the Prosecutor
Like the AGF, it receives complaints, conducts investigation and initiates trial in any of the chambers exercising original jurisdiction.

Registry
This is the administrative organ of the court. It performs the administrative non-judicial functions of the ICC.

(d) Jurisdiction of the ICC

- Subject matter jurisdiction

SMJ could be against any of the following:
(a) Crimes
(b) Persons
(c) Territory

Crimes
Most serious crimes of international concern---**ARTICLES 1 & 5 RS**
They are:

- **Genocide** (violence against members of a national, ethic, racial or religious group, with intent to destroy the group)---**ARTICLE 6 RS**
- **Crimes against humanity** (deliberate acts, on a large scale basis, as part of a systematic campaign/attack, directed at any civilian population, with intent to kill and it includes inhumane or degrading treatments)
- **War Crimes** (violations of rules of armed conflict, and includes killing, murder (K and M are they not of the same effect?), torture or inhumane treatment.
- **Crimes of aggression,** yet to be defined, but the SC of the UN can for a particular purpose define what a crime of aggression is and it could mean the planning, preparation,

initiation or execution of an act of using armed force by a State against the sovereignty, territorial integrity or political independence of another State)

Persons

The ICC is an international court with criminal jurisdiction over individuals (natural persons only and not corporations), as against the international court of justice with jurisdiction over states and other entities (excluding individuals).

Applies to persons committing serious crimes of international concern-**ARTICLE 1 RS**

Can only try persons not states-**ARTICLE 25 RS.**

Does not exercise jurisdiction over minors. The ICC exercises jurisdiction over persons **OVER** 18 years-**ARTICLE 26 RS**

NB- the doctrine of state immunity (granted to head of states and other individuals) **does not** apply-**ARTICLE 27 RS**

NB: Military commander may bear personal criminal liability of crimes of their subordinates where the commander knows or ought to have known the subordinates were committing the crimes earlier mentioned and the commander failed to stop same.

Territory

Member states territory—YES

Extension of MS (Citizen/Cargo of MS on NMS territory/waters, consular offices, embassies)-YES

NMS lodging a declaration at the registry of ICC--YES

(e) Modes of commencement of proceedings before the ICC

The ICC's jurisdiction can be triggered by three mechanisms:

- Referral by state party---**ARTICLE 14(1) RS**
- Referral by the Security Council of United Nations under chapter VII of the United Nations Charter.
- Investigation by the Prosecutor of the ICC suo moto

(f) Power to impose sanctions

- Imprisonment **not exceeding 30 years**.
- Life imprisonment (not affected by the above restriction on term of years)
- Fine
- Order of forfeiture of proceeds or assets derived from the crime

Comment [C18]: NB: Death sentence is not recognized by the ICC – **ARTICLE 77 RS**.
NB: It had its first conviction in **2012 – Dylo Lubanga**

NOTABLES

- Objections could be raised as to the subject matter of the proceedings (jurisdictional challenges could be raised)
- ICC cannot execute a warrant of arrest against a NON STATE PARTY
- Applicable laws include RS, Treaties, Rules and Principles of International/National laws
- ICC has **8** criminal procedural laws
- ICC crimes are not subject to statute of limitations-**ARTICLE 29 RS**
- ICC is complimentary to national criminal jurisdictions
- ICC is a court of **FIRST AND LAST RESORT**. It will only act where state parties are UNABLE or UNWILLING TO PROSECUTE- **ARTICLE 17 RS**

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. All these are components of jurisdiction except ___

A. Composition/Constitution

B. Subject matter

C. Initiation process

D. None of the above

2. Criminal trials/jurisdiction are all but one of the following

A. Territorial

B. Procedural

C. General

D. Unlimited

3. All these are courts of general criminal jurisdiction except ___

A. High court of states/FCT

B. Court of Appeal

C. Federal High Court

D. Supreme Court of Nigeria

4. Criminal appeals from customary court in other jurisdictions except Lagos State, go to ___

A. High Court of the state

B. Magistrate Court in the state

C. Customary Court of Appeal

D. Court of Appeal

5. Using the options in 4 above criminal appeals in Lagos State from customary court go to ___

6. Area Courts are constituted by the ___

A. Warrant under the hand of the Chief Judge of the state

B. Area Courts Edict

C. 1999 CFRN

D. Governor of a State

7. Using the options in 6 above, Area Courts are established by ____

8. All these are correct about an Area Court except ___

A. Area courts cannot try capital offences

B. Area courts can try capital offences

C. Area courts try offences as set out in column 7 of the CPCL

D. In FCT, it is only when an Area court judge is a lawyer that it can try criminal matters

9. The time frame for framing a formal charge in an Area Court is within ____ months of commission of the offence

A. 2

B. 3

C. 6

D. None of the above

10. Criminal appeal from the Area Court Grade I and II in the North likes to the ___

A. Magistrate Court

B. Upper Area Court

C. High Court of the State

D. Sharia Court of Appeal

11. Using the options in 10 above, criminal appeal from an Upper Area Court in the North lies to the ___

12. Criminal appeal from an Area Court may be brought by all these except ___

A. Area Court Inspector

B. Defence

C. Prosecution

D. None of the above

13. In Lagos, the maximum number of years of imprisonment that may be imposed by a Magistrate Court is ___ years

A. 12

B. 14

C. 21

D. 28

14. The power to increase the jurisdiction of the Magistrate Court of Lagos State shall be exercised by the ____ on recommendation of the ___

A. Lagos State House of Assembly Law/Chief Judge of Lagos State

B. Attorney General of Lagos State/Lagos State Judicial Service Commission

C. Lagos State Judicial Service Commission/Attorney General of Lagos State

D. Chief Judge of Lagos State/Lagos State Judicial Service Commission

15. The power to increase the jurisdiction of the Magistrate Court of other states shall be exercised by the ___ on the recommendation of ___

A. Attorney General of the State/Chief Judge of the State

B. Attorney General of the State/State Judicial Service Commission

C. State House of Assembly Law/Chief Judge of the State

D. Chief Judge of the State/State Judicial Service Commission

16. The jurisdiction of Magistrate Court in the North over offences is as provided in the Column ___ to the appendix of the CPCL

A. 5

B. 6

C. 7

D. 8

17. NO QUESTION

18. The default mode when a court in the North convicts an accused person is that the sentence runs ___

A. Consecutively

B. Concurrently

C. Co-ordinately

D. All of the above

19. Where a Magistrate Court in Lagos State imposes a term of imprisonment which are consecutive sentences, the sentences should not exceed ___

A. Twice of its limit

B. 4 years of its limit

C. Its limit

D. None of the above

20. Using the options in 19 above, under the CPCL it shall not exceed ____

21. Using the options in 19 above, under the ACJA and in the South, it shall not exceed ____

22. Where a sentence of imprisonment is imposed under the ACJA, the sentence takes effect from the ____

A. Date it was imposed

B. Date of arrest

C. Date of arraignment

D. Date of conviction

23. NO QUESTION

24. The offence of treason and treasonable felony can only be tried in ___

A. FHC

B. NIC

C. SHC

D. All of the above

25. All these are subject to service law except ___

A. Customs

B. Army

C. Navy

D. Air Force

26. The time limit to try the offence of mutiny, failure to suppress mutiny, desertion and civil offences committed outside Nigeria is within ____ from the date of commission of the offence

A. 3 months

B. 6 months

C. 6 years

D. None of the above

27. A retired officer subject to service law can only be tried in a court martial within ___

A. 3 months of retirement

B. 3 months from the date of commission of the offence

C. 6 months of retirement

D. 6 months from the date of commission of the offence

28(a) All these are true about a Judge Advocate except ____

A. He is a commissioned officer

B. He is a legal practitioner of not less than 3 years post call experience

C. He must be 5 years in service

D. He has no voting rights

28(b) A General Court Martial consists of a President and not less than___ members

A. 2

B. 4

C. 5

D. 6

29. A Special Court Martial consists of a President and not less than ___ members

A. 2

B. 4

C. 5

D. 3

30. The members of a Court Martial must be at least ___ years in service

A. 3

B. 4

C. 5

D. 6

31. The decision of a Court Martial can be appealed against provided that the notice of appeal is filed within ____ from the date the decision was promulgated

A. 90 days

B. 3 months

C. 40 days

D. 10 days

32. Using the options in 31 above, assuming the sentence is a death sentence, your answer would be ____

33. A finding of guilt by the Court Martial in any other case apart from a death sentence shall be supported by ___ of the members

A. Simple majority

B. Absolute majority

C. 2/3 majority

D. None of the above

34. Using the options in 33 above, should the sentence be a death sentence, your answer would be ____

35. A person convicted and sentenced summarily by a Court Martial may petition against the finding/award or both not later than ___ after the finding/award was made

A. 30 days

B. 1 month

C. 3 months

D. 14 days

36. Where a Court Martial finds an accused guilty of a charge, the record of the proceedings shall be transmitted to the confirming authority within ___ from the date of the finding, for confirmation of the sentence/finding

A. 30 days

B. 60 days

C. 1 month

D. 15 days

37. Where the records of proceedings as in 36 above are not transmitted within the prescribed time, the accused shall be ____

A. Remanded at the pleasure of the President

B. Released unconditionally

C. Discharged

D. Discharged and acquitted

38. Written matters that may affect the decision of the confirming authority may be submitted to the confirming authority by the accused within ___ period

A. 3 months after sentence but before sentence is confirmed

B. 3 months before sentence but after sentence is confirmed

C. 90 days after sentence but before sentence is confirmed

D. 90 days before sentence but after sentence is confirmed

39. Sentence of death by a Court Martial is not to be carried into effect unless it is approved by the ____

A. President of the FRN

B. Supreme Court of Nigeria

C. Supreme Military Council

D. Federal Executive Council

40. NO QUESTION

41. An inquest by a Coroner's Court may be conducted on ____

A. Mondays-Fridays

B. Saturdays

C. Sundays and Public holidays

D. All of the above

42. The ACJA may be considered in the following courts except ___

A. Federal High Court

B. National Industrial Court

C. Court Martial

D. High Court of the FCT

43. The Attorney General of the Federation/State may enter a nolle prosequi in all proceedings before these courts except ____

A. Court Martial

B. Coroner's Court

C. Court of Appeal

D. All of the above

44. Which of the following courts is not bound by the provisions of the Evidence Act 2011?

A. Federal High Court

B. Coroner's Court

C. Court of Appeal

D. Magistrate Court

45. Where a juvenile in a Juvenile Court has been found to have committed the offence for which he is charged, he is said to have been ___

A. Sentenced

B. Convicted

C. Found guilty

D. B or C

46. The ICC is made up of ____ Judges

A. 16

B. 18

C. 20

D. 22

47. The Pre-Trial Division of the ICC is headed by the ___

A. President

B. First Vice President

C. Second Vice President

D. Third Vice President

48. The Trial Division of the ICC is headed by the ___

A. President

B. First Vice President

C. Second Vice President

D. Third Vice President

49. The Appeal Division of the ICC is headed by the ___

A. President

B. First Vice President

C. Second Vice President

D. Third Vice President

50. The composition of the ICC's Pre Trial Division is ____ and the quorum is ____

A. 7/1

B. 7/3

C. 4/1

D. 5/5

51. The composition of the ICC's Trial Division is ____ and the quorum is ____

A. 4/1

B. 5/5

C. 7/3

D. 7/1

52. The composition of the ICC's Appeal Division is ___ and the quorum is ___

A. 4/1

B. 5/5

C. 7/3

D. 7/1

53. There are ___ organs of the ICC

A. 4

B. 3

C. 5

D. 2

54. The default mode when a court convicts a defendant in the South is that the sentence runs ___

A. Consecutively

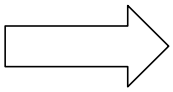
B. Concurrently

C. Co-ordinately

D. All of the above

ANSWERS

1. **D**
2. **D**
3. **C**
4. **A**
5. **B**
6. **B**
7. **A**
8. **B**
9. **D**
10. **B**
11. **C**
12. **D**
13. **B**
14. **B**
15. **C**
16. **B**
17. **BONUS**
18. **A**
19. **C**
20. **A**
21. **B**
22. **A**
23. **BONUS**
24. **A**
25. **A**
26. **D**
27. **A**
28. **(a) C (b) B**
29. **A**
30. **C**
31. **C**
32. **D**
33. **A**
34. **B**
35. **B**
36. **B**
37. **B**
38. **A**
39. **A**
40. **BONUS**
41. **D**
42. **C**
43. **D**
44. **B**
45. **C**
46. **B**
47. **B**
48. **C**
49. **A**
50. **B**
51. **A**
52. **B**
53. **A**
54. **B**



5. INSTITUTION OF CRIMINAL PROCEEDINGS

1. IDENTIFY AND EXPLAIN WHO CAN INSTITUTE (COMMENCE) CRIMINAL PROCEEDINGS

When an offence has been committed, such offence is said to have been committed against the state. However, certain persons are authorized by statute to institute a criminal proceeding on behalf of the state.

Generally, there are four categories 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

1. Attorney-General

The office of the AG is created by the constitution of the CFRN. The AGF is provided for in **S. 150(1) CFRN.** The AGS is provided for in **S. 195(1) CFRN.** The AGF 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 – **Ss. 150 & 195 CFRN.**

The qualification for an AG is a legal practitioner who has practiced in Nigeria for at least ten years - **Ss. 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 juristic 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--- **Ss. 174(1)(a)-(c), 211(1)(a)-(c) CFRN**. The Attorney general shall have

power to institute, undertake, take over, continue and discontinue (at any stage before judgment) 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/SHoA.

- The prosecutorial power lies in the Attorney General except he delegates such power to a law officer in his department or he authorizes a legal practitioner to conduct the proceedings.—**Ss. 104(2) and 106 ACJA, S. 227 CPCL.**

- The AGS can only institute criminal proceedings in relation to an offence created by a law of the state House of Assembly--**S. 211(1)(a) CFRN, ADALI V STATE.**

- AGF cannot prosecute state offences—**AG ONDO STATE V. AGF, BAGUDU V. FRN**. However, the AGF does not authority from the AGS to try federal offences in the state.

- Where the offence is in relation to an offence created by the NA, the AGS, generally, cannot institute a criminal action. However, the AGS can 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 AGF by way of fiat--**ANYEBE V STATE**. 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—**S. 268(4) ACJA**.

- Where the tenor Act of NA 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 AGS 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--**Ss. 174(2) and 211(2) of the CFRN, 104(2) ACJA, IBRAHIM V STATE, AGF v. ANPP, STATE V. CHUKWURAH.** 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.

- 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 all the functions of AG in a criminal action--**AG KADUNA STATE V. HASSAN, STATE V OBASI, SARAKI V FRN.**
- 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.

- This power of take-over/continuing criminal proceeding is exercised in criminal proceedings that may have been instituted by any other 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. It can be delegated to a private prosecutor. The rationale is that there must not be two proceedings going on simultaneously to prevent abuse of court process----**STATE V EDET, AMAEFULE V. STATE, Ss. 174(3), 211(3) CFRN**

- 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:
  (a) 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.
  (b) 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.
  (c) For public interest.

NB: 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 have discretion to issue legal advice to the police or any other authority- **Ss. 105 ACJA, 74 ACJL**

- 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—**SS. 73 CPL, 71 ACJL, 107 ACJA, 253(2) CPCL, STATE V ILORI.** Nolle prosequi literally means one no longer prosecutes - **Ss. 174(1)(c) & 211(1)(c) CFRN.**

- The power can be exercised orally or in writing---**STATE V CHUKWURAH.**
- He needs not give reasons for entry of Nolle Prosequi-----**STATE V ILORI**
- 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 ILORI.** This officer must be a law officer as in **S. 2 LAW OFFICER'S ACT**. Thus, a clerk/P.A of the AG who is a LP cannot bring such instrument to court as he is not a law officer pursuant to section 2 of the Law officers Act—**AWOBOTU V THE STATE**. Upon entering a nolle prosequi, the court makes an order. It results in fait accompli which is that the thing accomplished is presumably irreversible.
- The power of Nolle Prosecui can it be delegated? It is not delegable. The AG can either orally in court enter a nolle or issue an instrument under his hand 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**
- 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 ILORI**
- The power of nolle prosequi can be exercised at any stage of the proceedings before judgment. Thus, even the day the judgment is to be read, he can exercise this power.
- 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---**S. 36(9) CFRN**. Nolle prosequi is just to suspend the criminal proceeding and the criminal proceeding can be re-instituted almost immediately – **Ss. 73(3) CPL, 71(3) ACJL, 107(4) and 108(5) ACJA.** 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.

Comment [C19]: Note that ACJL only makes provision for oral entry of nolle prosequi by the AGS and not by written authority

Check of the discretionary powers of the AG vis-a-vis Ss. 174(3), 211(3) CFRN (AG having regard to public interest)

- Removal by his Appointer --- 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----Ss. 75(1) CPL, 73 ACJL, 108 ACJA

- The effect of withdrawal of a charge depends on the stage entry is made. Generally, where withdrawal is made before the defendant/accused's defence, the effect is a mere discharge, unless the court decides otherwise and grants an acquittal. Where made after the D/A's defence, it has the effect of an acquittal.

Differences between Nolle Prosequi and Withdrawal—RED CAR

1. **Relating to entire charge sheet/count:** A nolle prosequi relates to the entire charge sheet and not to counts, and as such once a nolle is entered, the trial will not continue, whereas a withdrawal may relate to a count or the entire charge sheet.
2. **Effect:** 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. **Discretion of the court to grant same/Consent of the court:** 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**.** For a withdrawal, the consent of the court must be sought whereas the consent of the court is not sought before the AG can enter a nolle.
4. **Constitutional power vs. Statutory power:** A nolle prosequi is a constitutional power of the AG whereas a withdrawal is a statutory power of all prosecutors
5. **Authority to enter same:** A nolle prosequi can only be entered by the AG while a withdrawal is made by a prosecutor.
6. **Reasons:** 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.

2. Police

- The police have power to prosecute criminal cases in **ANY COURT IN NIGERIA- Ss. 4 AND 23 POLICE ACT, 381(b), 268(2) ACJA, OLUSEMO V COP, OSAHON V FRN**

Comment [C20]:
The Police can prosecute in all Courts with criminal jurisdiction except Court Martial(subject powers)

- The power to prosecute is subject to that of the AG Fed and State power to take over and discontinue---**Ss. 23 POLICE ACT, SECTION 174(1)(b)(c) AND 211(1)(b)(c) CFRN.**
- Must the police officer be a legal practitioner before he can appear in superior courts? 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---**OSAHON V. FRN**

3. Private person

- A private person has power to commence criminal proceedings—**Ss. 59, 342 CPL, 254 ACJL, 143(e) CPCL**

- 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:

  (a) Consent from the AG

  (b) 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, 56 FHC ACT, 98 FCT HIGH COURT ACT.**

  (c) Enter into a recognizance for the sum of N100 for CPL and N10, 000 (N50,000 ACJL 2015) for ACJL together with one surety undertaken to prosecute the said information diligently.—**S. 254 ACJL**

- Where the AG refuses to endorse a private information or charge, he may be compelled by an order of mandamus---**FAWEHINMI V. AKILU**

- 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 must be made. The private person commences the action where the AG has declined to prosecute while the private legal practitioner (usually an expert) is briefed by the AG, after the AG must have commenced the action and the PLP does acts in the proceedings like the AG---**S. 381 ACJA, S.56 FHC ACT, NAFIU RABIU V. STATE, FRN V. ADEWUNMI,** but all the charge sheet must be signed on behalf of the AG.

4. Special prosecutors

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:

- The Economic and Financial Crimes Commission Act empowers the EFCC to prosecute offences under the Act – **Ss. 12(a) EFCC ACT.** There is a legal unit in that regard.
- National Drug Law Enforcement Agency Act: **Ss. 7(1), 8(2) NDLEA ACT** empowers the prosecution unit to be established to institute and prosecute criminal proceedings.
- The Factories Act: **S. 66(1) FA** empowers any inspector of the factory to institute criminal proceeding even though he is not a lawyer.
- The Corrupt Practices and other Related Offences Act: **S. 6(1) CPRO ACT** empowers the ICPC to prosecute offenders in appropriate cases.
- The Custom and Excise management Act: **S. 180(1) CEMA** empowers any officer of the department of customs and excise to institute criminal proceedings.
- Sexual Offences under **S. 387, 388 AND 389 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 CPCL**.

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 CPL & 73 ACJL**.

2. EXPLAIN AND DISCUSS HOW TO COMMENCE CRIMINAL PROCEEDINGS IN THE VARIOUS COURTS IN NIGERIA.

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

(a) Magistrate Court

1. First Information Report (North and FCT)

- Commonest way of commencing proceedings in Magistrate courts in the North including FCT---**Ss. 117-119 and 143(b) CPCL**

Steps to follow--- S. 158-160 CPCL, S. 112(6)(f) (7)-(11) ACJA

- A direct complaint from the victim to the police in writing endorsed in the prescribed form by the police and 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 suspect as framed by the police.
- The suspect will be asked if he has any cause to show why he should not be tried by the Magistrate.
- Where the suspect 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, the magistrate will convict him accordingly. **This is called a Summary trial based on the First information Report** and it is not necessary to frame a formal charge.
- 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. It is important to note that the magistrate MUST take prosecution witnesses before attempting to draft a formal charge---**IBEZIAKO V COP**. 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, where such prima facie case exists, the magistrate will frame his own charge directing the suspect to be tried by the MC or another MC
- The charge is read over again to the accused, plea is taken and the defendant will enter his defence. Thereafter the court will give judgment. However, where no prima facie case is made against the defendant upon taking evidence of the police, the magistrate will discharge the defendant---**HARUNAMI V BORNO N.A**
- Where the court is of the opinion that that the case is one which ought to be tried by the HC, the M shall, at any time before judgment, transfer the case along with the suspect to the HC for trial upon a charge or information.

2. By Laying a Complaint (written or on oath)

- In southern states (except Lagos) you can lay a complaint or file a charge sheet----**Ss. 77 and 78(a) and (b) CPL**. It is also recognized in the North—**S. 143(d) CPCL**.

3. Upon a charge (South)

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 – **Ss. 78(b) CPL, 78(1)(2)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.**

(b) State High Court

Essentially there are **two main modes u**sed in SHC which are:

- By information
- By charge

Other modes are:

- By complaint (North and South)—**Ss. 77(b), 143(d) CPCL, DPP V. ALUKO** (for Non-Indictable offences, no consent of the HC is required, can be in writing or on oath)
- By exhibition of the information by the AG at the premises of the HC---**S. 69 ACJL** (South) not very common.

1. Information (HC South, FCT and Lagos State)

Conditions Precedent

- Leave/consent to file information **IS NEEDED AND MANDATORY** and granting it is subject to the discretion of the judge---**Ss. 77(b), 340(2) CPL**. Where there is no prima facie case, the court will not grant leave. Leave of court to file the information **MUST BE SOUGHT AND OBTAINED** and **UPON A FAILURE TO DO SO**:
  (a) Such 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---**AGF V CLEMENT ISONG, STATE V. AKILU, OKAFOR V STATE**
- NB: In FCT HC, commencement is either by information or charge—**S.109 ACJA**
  CONSENT TO FILE AN INFORMATION IS NOT NEEDED IN LAGOS AND FCT OR ANYWHERE AN OFFENCE IS CREATED BY AN ACT OF THE NA IS TRIED.

- Under the CPL, the provisions are silent on the procedure, but recourse is had to English practice—**S.363 CPL**.

Procedure for obtaining consent (BAR II EXAM)

1. The application shall be in writing (stating whether a previous application has been made and the result thereof) or by motion ex parte, signed by counsel and shall be accompanied by the following:---**CAPSULL**
    a. Copy of the information in respect of which leave or consent is sought,
    b. Affidavit accompanying same, **where the application is not made by or on behalf of the ATTORNEY GENERAL.**
    c. Proof of evidence---**IKOMI V. STATE, ABACHA V. STATE, EGBE V. STATE**
    d. Summary of evidence of the witnesses
    e. Unedited statement of the defendant
    f. List of witnesses
    g. List of exhibits to be relied upon---**WABARA V FRN**.

Comment [v21]: Affidavit to state that the statements contained in the application are to the best of the deponents knowledge true.

Comment [C22]: 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.

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.

2. By a charge (HC North)

- 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----S. 185(b) CPCL, BATURE V. STATE
  NB: 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). Options available where an application is refused by a judge are still the same as seen above.

(c) Federal High Court

- ACJA now replaces CPA in FHC proceedings----**Ss. 2(1), 493 ACJA**
- Offences are still triable summarily (by complaint)-----**S. 33(2) FHC ACT, S. 86 ACJA, UWAZURUIKE V AGF**.
- It **DOES NOT TRY MATTER ON INFORMATION BUT A MERE CHARGE---S. 494 ACJA.** It is similar to a charge filed at a magistrate court in the south.

- Proceedings at the FHC is by charge only and leave of a judge is not needed before filing the charge. This is because the criminal jurisdiction of the FHC is summary. **S. 33(2) OF FHC ACT** provides that all criminal causes and matter shall be tried summarily.
- Purpose of FHC and FCT High court Practice direction rules 2013? Specific offences are more in the nature of proof of evidence. However, a practice direction cannot amend a statute
- Who are those authorized to prosecute in FHC? AGF is the prosecutorial authority--**S. 56 FHC ACT**
- Designation of the prosecutor is Federal Republic of Nigeria.
- The charge at the magistrate court in the south is the same as the Federal High Court..

Comment [v23]: A complainant shall not file a charge unless it is accompanied with an affidavit deposing to the fact that proper investigations into the matter has been completed and a prima facie case is made out against the defendants

Comment [v24]: Applies to the following offences:
- Rape
- Terrorism
- Kidnapping
- Trafficking in person
- Corruption
- Money laundering

3. DISCUSS THE LIMITATION TIME TO COMMENCE CRIMINAL PROCEEDINGS

In criminal proceedings unlike civil proceedings, the general rule is that there is no limitation of time for instituting criminal proceedings save for certain statutory exceptions. These exceptions to the general rule are:

- Treason and treasonable felonies: the time limit is **2 years**--**S. 43 CRIMINAL CODE**
- Offence of sedition is **6 months**---**S. 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**---**Ss. 218 AND 221 CRIMINAL CODE**
- Proceedings under the Customs and Excise Management Act, must be commenced within **7 years** of commission of the offence--**S. 176(3) CEMA.**
- 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 desertion—**S. 169(1) AFA.**
- For a retired Service officer for Military offences other than mutiny, failure to suppress mutiny and desertion--**3 months---OLATUNJI V STATE, S. 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----**AGF V AG BAYELSA, YABUGBE V COP**.
- For the protection to afford public officers, the officer must have discharged his duties in good faith.

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. To qualify as an Attorney General one must be a legal practitioner with at least ___ years post call experience

A. 10

B. 12

C. 15

D. 8

2. In the absence of an incumbent Attorney General, the officers at the office of the Attorney General may do any of the following except ____

A. Enter a nolle prosequi

B. Withdraw a charge

C. Prosecute an offence

D. Apply for leave to bring a charge before the High Court

3. Where the Attorney General is not satisfied with the prosecutorial authority from his department and wishes that another continues, the Attorney General is advised to ___

A. Re-assign to another officer

B. Take-over the proceedings

C. Withdraw the proceedings

D. Institute another criminal proceedings before another court

4. The following statements are true except ____

A. The power of nolle prosequi is not delegable

B. The Attorney General may orally enter a nolle prosequi in court

C. There can be a nolle prosequi in a case where there is no incumbent Attorney General

D. The Attorney General is not mandated to give reasons for the entering of a nolle prosequi

5. When a nolle prosequi is entered, the accused is ____

A. Discharged

B. Acquitted

C. Discharged and Acquitted

D. Remanded in prison

6. A withdrawal made after the defence of defendant has the effect of a/an ___

A. Acquittal

B. Discharge

C. Reduction in count

D. None of the above

7. The police can prosecute criminal cases in the following courts except ____

A. Magistrate Courts

B. High Courts

C. Court Martial

D. Court of Appeal

8. The following are true about the powers of an Attorney General except ____

A. Where the Attorney General refuses to endorse a private information or charge, he may be compelled by an order of mandamus

B. The Attorney General may require a private prosecutor to enter into a recognizance for a sum

C. The power of the Attorney General may be curtailed by means of an injunctive relief restraining the Attorney General from prosecuting an offender

D. None of the above

9. First Information Report may be used to commence criminal proceedings in the following courts except ___

A. Magistrate Court North

B. Magistrate Court FCT

C. Magistrate Court South

D. None of the above

10. Acting upon a First Information Report(FIR), a Magistrate, where the suspect denies the allegations in the FIR and states that he intends to show cause why he should not be convicted, is expected to do ____first

A. Require evidence from the prosecution

B. Draft a formal charge

C. Put the accused to his election

D. None of the above

11. Criminal proceedings may be commenced by way of laying a complaint on oath and in writing at the Magistrate Court of the following states except ___

A. Kaduna State

B. Lagos State

C. Enugu State

D. Kwara State

12. In the state identified in 11 above, criminal proceedings cannot be commenced in a Magistrate Court in the following ways except ____

A. First Information Report

B. Information

C. Charge

D. Complaint in writing/on oath

13. Consent to file an information is not required in the following cases except ___

A. High Court of Lagos State

B. High Court of the FCT

C. Where an offence created by an Act of the National Assembly is tried

D. All of the Above

14. NO QUESTION

15. Criminal proceedings at the FHC can be instituted by way of _____

A. First Information Report

B. Charge

C. Information

D. Complaint

16. The limitation time for treason and treasonable felony is ____

A. 2 years

B. 3 years

C. 6 months

D. 12 months

17. Offence of sedition is to be tried within ___ after the commission of the offence

A. 2 years

B. 3 years

C. 6 months

D. 2 months

18. NO QUESTION

19. Proceedings under the CEMA must be commenced within ___ years of commission of the offence

A. 3

B. 5

C. 7

D. 9

20. Using the options in 19 above, it is ____ years after the commission of the offence, for military offences other than Mutiny, failure to suppress mutiny, desertion and civil offences committed outside Nigeria

21. Conspiracy to commit any offence must be brought within ___ after the commission of the offence

A. 2 years

B. 5 years

C. 6 months

D. None of the above

ANSWERS

1. **A**
2. **A**
3. **A**
4. **C**
5. **A**
6. **A**
7. **C**
8. **C**
9. **C**
10. **A**
11. **B**
12. **C**
13. **D**
14. **BONUS**
15. **B**
16. **A**
17. **C**
18. **BONUS**
19. **C**
20. **A**
21. **D**

6. CHARGES

A charge is a document containing the statement and particulars of offence which a person is accused and tried in a court of law---**S. 2 CPL, 1 CPCL, 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.**

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 CPCL**
- In the HC, it is a police officer by virtue of Osahon v. FRN, Olusemo v. COP and law officer that can draft a charge.

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.

Rules of drafting

1. Rule against Ambiguity
2. Rule Against Duplicity
3. Rule against Misjoinder of Offences
4. Rule Against Misjoinder of offenders

1. Rule against Ambiguity

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 ADPOVS or ADPV for an information.

2. 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.

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---**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--GASIO

a. **General deficiency of money over a period of time:** This is used for only money belonging to one person and not property or goods stolen over a period of time---**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.**
b. **Alternatively defined offences:** One offence in one section but can be committed in different ways—same count (Example: In section 1 of ABC Act, the doing of A or B acts= one C offence.) Two different offences in one section—different counts (Example: In section 1 of ABC Act, the doing of A or B acts= one C offence for A act and one C offence for B act---two different offences)
c. **Statutory forms:** 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.

d. **Identical offences in the course of the same transaction:** This is where the offences are not just similar or identical but also committed in one transaction--**POLICE V. OYEWUSI**
e. **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

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) 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

a. **Twelve months rule: 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**.
b. **Same transaction rule: 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 in 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 be 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
c. **Offences comprising acts or omissions which by themselves or in conjunction with others constitute a different offence** –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. An offence which may be

Comment [C25]: Proximity as to time, place, continuity of action).

committed in any of several occasions may be charged in the alternative in same charge sheet.

d. **Offences of the same or similar character**: 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**, 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 misjoinder of offences was disregarded by the court.
e. **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.

4. 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

Note sections 7, 8 and 9 of Criminal Code.

a. **Persons accused of jointly committing the same offence:** 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.

b. **Persons accused of committing different offences in the course of the same transaction:** 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)---**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

c. **Persons accused of committing an offence and persons accused of aiding, abetting or attempting to commit the said offence**: In **NJOVENS V. STATE**, 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 expert 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.

d. Persons accused of committing the same offence in the course of the same transaction

e. **Persons accused of committing offences that are related one to the other**

f. **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 maybe charged and tried together**: Note that even where accused persons committed offences falling under the foregoing and can be charged together, the court can order separate trials. In **MADAYI 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.

Amendment of charges

Prosecution can amend a charge at any time before judgment. **S. 163 CPL** provides for the alteration or addition to any charge at any time before judgment is given or verdict returned and every such alteration or addition shall be read and explained to the accused---**UKET v. FRN.** Amendment is to be made by the drafting authority----- **STATE V. CHIEF MAGISTRATE, ABOH MBAISE EX P ONUKWU**. Amendment of charges can be made before arraignment and after arraignment.

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

- File the amended charge
- On the day fixed for hearing, present both before the court and seek by way of an oral application to withdraw the old one.
- Oral application should read thus: "My Lord, there are two charges before this Honourable Court, one is dated.....and the other is dated.....My Lord, we seek leave of this Honourable Court to withdraw the charge dated.....and for the defendant/accused to take his plea on the charge dated....."
  (NB: No post amendment requirements)

Procedure for amendment after arraignment (Post-amendment requirements)--LERA RAW

- **Leave of court:** 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.
- **Endorsement:** 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, AMAKO V THE STATE**
- **Read and Explaining of the charge:** After the grant of application for amendment and the charges have been amended, the amended charges are to be read and explained to the defendant(s)/accused person(s)---**AYODELE V STATE.**
- **Afresh plea/consent:** After reading the new charge to the accused person, he takes his plea afresh---**ATTAH 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.
- **Readiness to be tried on the amended charge:** 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.
- **Adjournment entitlement:** 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---**S. 36(6)(b) CFRN.**
- **Witness recall:** Either the prosecutor or accused person may call or recall any witnesses (who may have given evidence to testify) again

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

Effect of failure to comply with post-amendment procedure will depend on whether there was a miscarriage of justice, and where there was, it renders the trial null, void and of no effect. The appeal court on appeal against conviction will set the conviction aside and a retrial may be ordered---**PRINCENT V. STATE**

Objection to defective charges

A defective charge is when a charge is not in compliance with the rules of drafting (ambiguity, duplicity, misjoinder of offences and misjoinder 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. 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

- Non-existent law-**S. 36(12) CFRN, AOKO V FAGBEMI**.
- Where leave or consent of court to be obtained is not obtained before preferring charge
- 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

Comment [C26]:
PLEASE NOTE FOR EXAM IF THE PUNISHMENT SECTION IS NOT GIVEN DO NOT DRAFT ESPECIALLY FOR CONSPIRACY WHERE THE PUNISHMENT IS NOT GIVEN.

Time for raising objection

Objection is to be raised timeously – before taking plea by the accused person (For the defect that does not go to the jurisdiction of the court, it must be raised before the accused takes his plea)---**ABACHA V. THE STATE, IKOMI V. THE STATE, 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 go to the jurisdiction of the court; objection in that regard can be raised at any time, the accused persons had objected to the information before their plea was taken.

NOTABLES

In Lagos, under the ACJL, the position is different. **S. 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 closed its 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 it relates to Lagos alone. In Lagos, prima facie case is raised only once and not twice unlike other jurisdictions.

Under the ACJA, objections shall not be entertained during proceedings or trial on the ground of an imperfect or erroneous charge---**-S. 221 ACJA**

An application for stay of proceedings in respect of a criminal matter before the Court shall not be entertained—**S. 306 ACJA, OLISA METUH V. FRN**

After the plea of the defendant to the information or a charge has been read, it shall no longer be open to that defendant to raise any objection to the validity of the charge or information---**S. 396(2) ACJA**

DRAFT A CHARGE IN THE VARIOUS COURTS IN NIGERIA (FORM AND STRUCTURE)

1. MC SOUTH: CHACO

2. HC SOUTH: CHACO AND PREAMBLE

3. MC FCT: CHACO OF SOUTH AND A 3 PARAGRAPH PATTERN OF NORTH

4. HC FCT: CHARCO AND PREAMBLE (LIKE HC SOUTH WITH FRN AS PA)

5. FHC: CHACO (LIKE MC SOUTH)

6. MC NORTH: CACHA AND A 3 PARAGRAPH PATTERN

7. HC NORTH: CACHA

1. MAGISTRATE COURT SOUTH

IN THE MAGISTRATE COURT OF ENUGU STATE
IN THE ENUGU MAGISTERIAL DISTRICT
HOLDEN AT ENUGU

CHARGE NO: MC/23/25

BETWEEN

COMMISIONER OF POLICE.....COMPLAINANT

AND

ABC.....DEFENDANT

COUNT
That you

Dated this.....day of.....2019

_____

Cundy Smith

Investigating Police Officer

Comment [C27]: CHARGE NO AND COUNT

Comment [C28]: CASE NO AND CHARGE

Comment [C29]: ADPOVS

2. MAGISTRATE COURT NORTH

IN THE MAGISTRATE COURT OF KATSINA STATE
IN THE KATSINA MAGISTERIAL DISTRICT
HOLDEN AT KATSINA

CASE NO: MC/24/26

BETWEEN

COMMISSIONER OF POLICE....…… COMPLAINANT

AND

1. YALA IBRAHIM
2. DODO SULE}.....…….....ACCUSED PERSONS

I, Mallam Bitrus Anka, Chief Magistrate, hereby charge
1. YALA IBRAHIM
2. DODO SULE

with the following offences:

CHARGE
That you

I hereby direct that you be tried for the said offences by this court (by the High Court of Katsina State in the Katsina Judicial Division, Katsina.)

Dated this.....day of.....2019

_____

Mallam Bitrus Anka

Chief Magistrate

3. HIGH COURT SOUTH

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

CHARGE NO: HC/LS/1234

BETWEEN

THE STATE OF LAGOS.....COMPLAINANT

AND

1. ABC

2. EFG

3. XYZ.....DEFENDANTS

At the session of the High Court of Lagos State holden at Lagos on the.....day of.....2019, the court is informed by the Attorney-General of the State on behalf of the state that the following persons:

1. ABC

2. EFG

3. XYZ

are charged with the following offence:

COUNT

STATEMENT OF OFFENCE

Robbery contrary to

PARTICULARS OF OFFENCE

Dated this.....day of.....2019

_____

Cundy Smith

Director of Public Prosecutions

For: Attorney-General of Lagos State

Comment [C30]: THE STATE (FOR OTHER SOUTHERN STATES)

Comment [C31]: ADPV

4. HIGH COURT NORTH

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

CASE NO: HC/KDN/4567

BETWEEN

THE STATE.....…… COMPLAINANT

AND

ABC.....ACCUSED PERSON

CHARGE

Dated this.....day of.....2019

_____

Cundy Smith

Principal State Counsel

For: The Attorney-General of the State

5. MC COURT FCT

IN THE MAGISTRATE COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA MAGISTERIAL DISTRICT
HOLDEN AT ABUJA

CHARGE NO: MC/ABJ/890

BETWEEN

COMMISSIONER OF POLICE....…… COMPLAINANT

AND

1. YALA IBRAHIM
2. DODO SULE...…….....DEFENDANTS

I, Mallam Bitrus Anka, Chief Magistrate, hereby charge

1. YALA IBRAHIM
2. DODO SULE

with the following offences:

COUNT ONE:
That you

COUNT TWO:
That you

I hereby direct that you be tried for the said offences by this court (by the High Court of the Federal Capital Territory in the Abuja Judicial Division, Abuja)

Dated this.....day of.....2019

_____

Mallam Bitrus Anka

Chief Magistrate

6. HC FCT

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

CHARGE NO: HC/ABJ/1234

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

1. ABC

2. EFG

3. XYZ.....DEFENDANTS

At the session of the High Court of the Federal Capital Territory holden at Abuja on the.....day of.....2019, the court is informed by the Attorney-General of the Federation on behalf of the Federal Republic that the following persons:

1. ABC

2. EFG

3. XYZ

are charged with the following offence:

COUNT

STATEMENT OF OFFENCE

Robbery contrary to

PARTICULARS OF OFFENCE

Comment [C32]: ADPV

Dated this.....day of.....2019

_____

Cundy Smith

Director of Public Prosecutions

For: Attorney-General of the Federation

7. FEDERAL HIGH COURT

IN THE FEDERAL HIGH COURT
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

CHARGE NO: FHC/ABJ/1234

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

1. ABC

2. EFG

3. XYZ.....DEFENDANTS

COUNT

Dated this.....day of.....2019

_____

Cundy Smith

Director of Public Prosecutions

For: Attorney-General of the Federation

7. BAIL

1. IDENTIFY THE NATURE AND TYPES OF BAIL

(a) Nature of bail

Bail is a temporary release of an accused/defendant/suspect from custody to sureties on condition given to ensure the accused/defendant/suspect's attendance in court or some other places pending the determination of the case or investigation---**SULEIMAN V. C.O.P**

(b) Types of bail

1. Police Bail (Bail Pending Investigation or Administrative Bail)
2. Bail Pending Trial
3. Bail Pending Appeal

1. Police bail

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. Bail is a constitutional right.--**S. 35(4) and (5) CFRN** and a suspect ought 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.

In recognition of this constitutional provision, the Police is empowered to grant bail to arrested persons where it is impossible or impracticable to bring them before a Court within a reasonable time as required by the constitution---**EDA V. C.O.P**

The police have powers to grant bail other than for an offence of a capital nature

Procedure for police 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 or by another person.

It can be in writing or orally---**S. 18(3) ACJL and S. 32(3) ACJA.** In practice, it is usually in writing. Bail pending investigation is revocable. 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.

Once a suspect has been arraigned in the court, the police bail elapses. The legal practitioner should then apply for bail from the court. NB: 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.—**RULE 37 RPC**

Terms of Police bail (conditions to fulfill)---**S. 17(2) ACJL.**

1. Self recognizance - this is based on social status and integrity of the suspect

2. Entering into a bond for a fixed sum

3. Provisions for surety/sureties

Options available to the suspect upon refusal of police bail

When a suspect is refused bail, there are 3 options open to the suspect:

- **FREP**: 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 **S. 46(1) CFRN and the Fundamental Rights (Enforcement Procedure) Rules 2009.**
- **Habeas Corpus**: He may apply to the HC of the state where he is being detained for release from unlawful detention under Habeas Corpus procedure. Regulated by civil procedure rules.--**ORDER 42 LAGOS 2012.** Application is by way of motion ex parte, supported by affidavit deposed to by suspect and a written address (MEP + A +WA). Response is to be filed within 2 days.
- **Magistrate**: ONLY IN LAGOS. 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**

Sample draft of application for bail

K. C. ANEKE & Co
Legal Practitioners and Solicitors
Website: www.anekekenechukwu.com
Email: kundycmith@gmail.com
Tel No: 07053531239
Address: No 2 Law School drive, Victoria Island, Lagos

Our Ref: AAAAA/201/2019 **Your Ref…….** **Date: 14 January 2019**

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 day of January, 2019 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. C. Aneke Esq
Associate
K. C. Aneke & Co.

2. Bail Pending Trial

This is the process by which an accused/defendant is released temporarily from custody to sureties on conditions given to ensure his attendance in court whenever he is required, until the determination of the case against him—**ONYEBUCHI V. FRN**

It is granted only by the court after proceedings have commenced and can only be made after suspects have been arraigned in court. Thus, 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.

Once the accused has been taken to Court, application for his bail is usually made to a Magistrate or the judge. Granting of bail by the Court depends on whether the offence is a simple offence, misdemeanor or a felony. Bail is usually refused in respect of a capital offence except in special circumstances like in cases of ill health, extra-ordinary delay in arraignment, no reasonable grounds for believing that the accused/defendant committed the offence but that there are sufficient grounds for further enquiry---**OLUGBUSI V. C.O.P**

A Magistrate cannot grant bail in respect of a capital offence----**STATE V. OZUZU** but if the offence is felony other than capital offence, the Magistrate has discretion and may grant or refuse bail---- **ULAUKU V. C.O.P, TARKA V. DPP,** however, the discretion must be exercised judicially and judiciously considering the necessary factors--**UKATU V. COP**. NB: Where the offence is not a felony, the Court is expected to grant bail.

Comment [C33]:
A. SIMPLE OFFENCES (LESS THAN SIX MONTHS) AND MISDEMEANOURS(6 MTHS-less than 3YRS)-the Court **shall** grant bail EXCEPT it sees good reason not to. –
- **S. 118(3) CPL;**
- **S.115(3) ACJL**
- **S. 341(3)** CPCL

NB-**S.340(1) CPCL has TWO EXCEPTIONS-If the bail will prejudice further investigation or occasion risk of escape.(NORTH ONLY)**

B.FELONY (THREE YRS OR MORE) it is at the **discretion** of the Court.
S. 115 (2) ACJL,
S. 341(2)CPCL and
S. 118(2) CPL.

C. **CAPITAL OFFENCES**-Only a High Court Judge that can grant bail.
S. 115 (1) ACJL,
S. 341(1) of the CPCL,
S. 118(1) of CPL,
S. 35(7) (a) CFRN
OLADELE VS. THE STATE.

An applicant for bail on capital offences must show SPECIAL CIRCUMSTANCES-
ABACHA V. STATE.

SPECIAL CIRCUMSTANCES FOR GRANT OF BAIL IN CAPITAL OFFENCES
1. On grounds of severe ill health-**SULEIMAN V.STATE**
2. When the proof of evidence does not link the accused person with the crime-**ABACHA V.STATE**
3. Where a defence of ALIBI has been satisfactorily investigated.

3. Bail Pending Appeal

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. 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:---**HM FACT**

Comment [C34]: You must prove special circumstances. See **AROYEWUN v COP.** Burden is on the applicant.
Also referred to as FACTORS TO BE CONSIDERED

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. Convict is a **FIRST TIME OFFENDER**---**BUWAI V STATE**
4. **APPLICANT/CONVICT'S CONDUCT** during trial for instance where the applicant was granted bail during trial and he did not jump bail---**MUNIR V. FRN**
5. **COMPLEX CASE:** Where the case is complex and there is need for regular contact with the convict---**R V. STARKIE**
6. Where the convict/applicant is likely to spend full **TIME IN PRISON** before appeal is heard, especially with regard to the delay in Nigerian criminal justice system---**JENNIFER MADIKE V. STATE, OLAMOLU V. FRN** – had already spent 11 months out of 2 years sentence in prison.

Conditions precedent to bail pending appeal

- A valid Notice of Appeal must have been filed at the lower court----**Ss. 28(1) CA Act; 31(1) SC Act.** There must be a pending substantive appeal. Notice of appeal must be annexed.

Comment [d35]: That there is a pending appeal before the appellate court with appeal number 2345. Annexed to this affidavit is the notice of appeal marked as exhibit b2.

- File an application for bail at HC/CoA pending his trial (depending on whether an appeal has been brought or entered)---**UKATU V COP**

Procedure

- MON +A+WA---**KUNNIA V AG ANAMBRA**
- Documents to be attached in affidavit
  i. Charge sheet
  ii. Certified true copy of the court judgment.
  iii. Proposed notice of appeal

Comment [C36]:
Application is by motion of notice and NOT summons as it is the convict that is praying the court to grant him bail

Application should be 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

NB: The prosecution can oppose motion by deposing to counter-affidavit setting out his grounds of objection.

NB: Where application is for two convicts, then there must be two different applications.

NB: Where to file application for bail depends on whether appeal has been brought or entered. Appeal is **deemed to have been brought** as soon as Notice of appeal is filed at the registry of the court below (FILE APPLICATION FOR BAIL AT 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 (FILE APPLICATION FOR BAIL AT THE HIGHER COURT). See **BARIGHA V PDP.** Better to make the application to the court below, then if refused proceed to the higher court.

NB: Police bail elapses upon arraignment in court. Bail pending trial, as soon as judgment is delivered and sentenced passed, bail is revoked. Bail pending appeal, until end of appeal.

What is the difference between bail pending appeal simpliciter (before conviction) and bail pending appeal after conviction. Bail pending appeal after conviction is only granted in special circumstances as there is no presumption of innocence on the part of the convict. On the other hand, bail pending appeal before conviction is one that is granted on appeal against an interlocutory decision of the trial court refusing bail and at this point, there is still the presumption of innocence---**NWOKE V FRN**

2. EXPLAIN THE METHODS OF APPLYING FOR BAIL

In a magistrate court, bail application can be made orally. This is the common practice. Application may be made orally for simple offences or misdemeanor. Thus, application for bail at the High Court can be **made orally** and subject to discretion of the court, however it is

desirable that it is made by **Motion on Notice (North)** supported with an affidavit and a written address. -**ABIOLA VS. FRN**

No provision in statutes as to mode of application for bail in both North and South—**Ss. 363 CPL, 262 ACJL, 35 High court Law of Northern Nigeria, 492(3) ACJA** are resorted to.

In the South (Lagos included), application is by summons, supported with affidavit and written address.

In the North (Abuja included), application is by motion, supported with affidavit and written address.

Differences between motion on notice & summons for bail

- The application for bail pending trial is by summons which is directed to the state to show cause why the accused should not be granted bail (presumption of innocence) while application for bail by motion instead, prays the court to allow the accused to be released on bail.
- Application for bail through summons is usually made to the **Judge in chambers** while application for bail by motion is made to the **court**--**STATE V. UWAH**
- The only difference between the contents of summons and the content of a motion is in the commencement phrase: Summons ==➔ "LET ALL PARTIES …" Motion==➔ "TAKE NOTICE …"

Effect of non-compliance with the procedure for bail application

- The Court will not strike out the application if commenced by a Motion on Notice instead of it to be by Summons. This is to do substantial justice rather than allowing technicalities of the Law to delay justice---**OLUGBUSI V. COP**
- If a person has a right, it does not matter how he enforces it--**FALOBI VS. FALOBI, BELLO VS. A.G OYO STATE.**

3. IDENTIFY FACTORS THAT GOVERN GRANT OF BAIL----APC SMILED Na

1. **Availability of the accused/defendant to stand trial:** Whether the accused will appear to stand for his trial (whether or not he will jump bail)--**DOKUBO-ASARI V. FEDERAL REPUBLIC OF NIGERIA**
2. **Prevalence of the offence---FELIX V. THE STATE** i.e. where a particular offence is prevalent in an area or at a given time, the court is usually slow to grant bail. In **BAMAIYI V STATE,** the spate of assassinations in the country especially in Lagos was a factor the court considered to deny the applicant bail.
3. **Criminal Records of the accused**: If he is a first offender or not- **EYU V. STATE**(Good character) and **AJUDUA V. FRN** (several pending cases) –record of previous convictions
4. **Safety/protection of the accused/defendant---NNOGU V STATE**
5. **Medical or health grounds---FAWEHINMI V. THE STATE; NWUDE V.FRN** e.g. renal failure. The affidavit in support of the bail application must show the following:

(a) That the ill-health is likely to affect other inmates where the applicant is detained.
(b) That there is a positive and cogent medical report issued by an expert pointing irresistibly to the existence of the illness (preferably a Government hospital)
(c) That the applicant while in detention has sought for treatment from prisons authorities and the prisons lack adequate medical facilities to treat the applicant's ailment----- **OFOLUE V. THE STATE**

6. **Interference with police investigation or prosecution.** The possibility of the accused interfering with further investigation and the prosecution of the case--**DANTATA V. IGP** (bribe) **BAMAIYI V. STATE** (Influential person); **DAMBABA V.STATE.**
7. **Likelihood of commission of another offence while on bail.** If there is likelihood that the accused/defendant will commit any offence while on bail-**R. V. JAMMAL**
8. **Evidence:** The character of the evidence against the accused---**ABACHA V. THE STATE, BAMAIYI V. STATE**
9. **Destruction/concealment of evidence attempt:** Whether the defendant/accused attempted to conceal or destroy evidence---**S. 162 (d) ACJA.**
10. **Nature of the offence:** The nature of the offence and the severity of the punishment prescribed--**ABACHA V STATE; ANAEKWE V. COP**

4. EXPLAIN THE PROCEDURE FOR APPLYING FOR BAIL AFTER IT HAS BEEN REFUSED BY THE MAGISTRATE

No express provision in the statutes on procedure to adopt.

- The magistrate shall inform the accused of that right to apply to the High Court after refusal.
- An application is made to the High Court by way of S/M
- The Summons/motion for bail will be supported with:---**ACROW**

1. **AFFIDAVIT:** An affidavit
2. **CHARGE SHEET:** Certified true copy of the Charge Sheet
3. **RECORD OF PROCEEDINGS:** Certified true copy of the record of proceedings
4. **ORDER:** Certified true copy of the Order of the Magistrate refusing bail
5. **WRITTEN ADDRESS---SIMIDELE V. C.O.P**

Comment [C37]: NB: it appears that HIV/AIDS no longer counts as a health factor.

Comment [C38]: **Note: For court bail, where a lawyer is acting for two or more defendants/accused persons, he may bring 1 summons/motion for all, but must file different affidavits and written addresses**

SAMPLE DRAFT

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

CHARGE NO: CR/130/2015

BETWEEN:
COMMISSIONER OF POLICE … ……COMPLAINANT/RESPONDENT

AND

1. **BOLANKE MANITOBA**
2. **KAMANGA ZAKI**
3. **FAKINAMA ABUNGA**
4. **ZAMPARI BUNGU**
5. **BRUTUS SAFOROVA**
6. **YANSIBE CANTONA**

DEFENDANTS/APPLICANTS

Comment [C39]: USE "THE STATE OF LAGOS" ("THE STATE FOR OTHER STATES) IF THIS WERE TO BE A BAIL APPLICATION BEFORE THE HIGH COURT OF LAGOS STATE UPON THE DEFENDANTS BEING ARRAIGNED BEFORE THE HIGH COURT

SUMMONS FOR BAIL

Comment [C40]: FOR THE NORTH AND ABUJA, IT SHOULD BE A MOTION ON NOTICE

BROUGHT PURSUANT TO SECTION 35 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AS AMENDED, SECTION 115 OF THE ADMINISTARTION OF CRIMINAL JUSTICE (REPEAL AND RE-ENACMENT) LAW OF LAGOS STATE, 2011 AND UNDER THE INHERENT JURISDCTION OF THIS HONOURABLE COURT.

LET ALL PARTIES attend at session of this Honourable Court on the ___ day of ___ 2019 at the hour of 9 O'clock in the forenoon or so soon thereafter on the hearing of an application for:

1. **AN ORDER admitting the defendants/applicants to bail pending the determination of the trial at the magistrate court.**
2. **AND FOR SUCH FURTHER ORDER OR ORDERS** as the Honourable Court may deem fit to make in the circumstances.

Dated this _____ day of _____ 2019.

_____
K. C Aneke
Defendants/Applicants' counsel
K. C Aneke & Co.
23, Victoria Island,
Lagos.

FOR SERVICE ON:
The Complainant/Respondent
Attorney General of Lagos State
Ministry of Justice,
Lagos.

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

CHARGE NO: CR/130/2015

BETWEEN:
COMMISSIONER OF POLICE … ……COMPLAINANT/RESPONDENT

AND

1. **BOLANKE MANITOBA…….. 1ST DEFENDANT/APPLICANT**
2. **KAMANGA ZAKI**
3. **FAKINAMA ABUNGA**
4. **ZAMPARI BUNGU** — **DEFENDANTS**
5. **BRUTUS SAFOROVA**
6. **YANSIBE CANTONA**

AFFIDAVIT IN SUPPORT OF APPLICATION FOR BAIL FOR THE 1ST DEFENDANT/APPLICANT

I, Bolanke Maseida, male, businessman, residing at No. 54 Ajah, Victoria Island, Lagos, Nigerian citizen, do hereby make oath and state as follows:

1. That I am the deponent to this affidavit and the first defendant thereof.
2. That I was arrested on the _____ day of _____ for the alleged offence of stealing.
4. That since the ____ day of 2015 I have been in police custody and in prison custody. I have been detained at the police custody for a period of ____ .
5. That I am standing trial at the magistrate court for the offense of stealing. Attached herewith is the Certified true copy of the charge sheet marked as EXHIBIT A
6. That my bail application at the magistrate court was refused. Attached herewith is the Certified true copy of the ruling of the Magistrate court refusing the bail application marked as EXHIBIT B
7. That I am an out-patient at the Lagos State Teaching Hospital as I am suffering from tuberculosis and cardiopathy. Attached herewith is the medical report marked as EXHIBIT C
8. That I have sought treatment from the prisons authority and the medical facilities in the prisons are inadequate to take care of my health.
9. That if this application is not granted it may lead to my death and thereby frustrate the trial of the present case.
10. That the grant of this application will not prejudice the case of the prosecution.
11. That I will not in any way interfere with the investigation of this case if granted bail.
12. That I make this solemn declaration in good faith and in accordance with the **Oath Law of Lagos State**.

_____
DEPONENT

SWORN TO AT ……. Court Registry, this ……. Day of ……. 20……...

BEFORE ME

……..
COMMISSIONER FOR OATHS

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

CHARGE NO:.....

BETWEEN

COMMISSIONER OF POLICE…….....COMPLAINANT/RESPONDENT

AND

1. **BOLANKE MANITOBA.....1st DEFENDANT/APPLICANT**
2. **KAMANGA ZAKI**
3. **FAKINAMA ABUNG** **…… DEFENDANTS**
4. **ZAMPARI BUNGU**
5. **BRUTUS SAFOROVA**
6. **YANSINBE CANTONA**

WRITTEN ADDRESS IN SUPPORT OF THE 1st DEFENDANT/APPLICANT'S APPLICATION FOR BAIL

INTRODUCTION

BRIEF FACTS

ISSUES FOR DETERMINATION

LEGAL ARGUMENT

CONCLUSION

Dated this _____day of_____ 2019

.....

K. C Aneke & Co.
1st Defendant/Applicant's counsel
23, Victoria Island,
Lagos.

FOR SERVICE ON:
The Complainant/Respondent
Attorney General of Lagos State,
Ministry of Justice,
Lagos.

LIST OF AUTHORITIES

5. DRAFT APPLICATION FOR BAIL BEFORE THE COURT

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

CHARGE NO……..

BETWEEN
FEDERAL REPUBLIC OF NIGERIA….....COMPLAINANT/RESPONDENT
AND

1. **BOLANKE MANITOBA**
2. **KAMANGA ZAKI**
3. **FAKINAMA ABUNG**
4. **ZAMPARI BUNGU**
5. **BRUTUS SAFOROVA**
6. **YANSINBE CANTONA**

…… DEFENDANTS /APPLICANTS

MOTION ON NOTICE
BROUGHT PURSUANT TO SECTION I64 AND 165 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015, SECTION 35 & 36 (5) OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)

TAKE NOTICE that this Honourable Court will be moved on the ……. Day of ….. 2017 at the hour of 9' o clock in the forenoon or so soon thereafter as the Applicant's counsel will be held on behalf of the Applicant praying for the following orders:

1. **AN ORDER** admitting the defendants/applicants to bail pending their trial
2. **AND FOR SUCH FURTHER ORDER OR ORDERS** as the Honourable Court may deem fit to make in the circumstances.

Dated this …… day of …….. 2019

_____
K. C Aneke
Defendants/Applicants' counsel
K. C Aneke & Co.
23 Maitama Lane,
Abuja.

ON NOTICE TO:
The Claimant/Respondent
Attorney General of the Federation
Federal Ministry of Justice
Abuja.

2. AFFIDAVIT (USE FORMAT ABOVE WITH NECESSARY MODIFICATIONS)
3. WRITTEN ADDRESS (USE FORMAT ABOVE)

Comment [C41]: ON APPEAL...USE THIS: AN ORDER admitting the applicant to bail pending the determination of the appeal against the judgment of Hon. Justice Akindele George dated _____

Comment [C42]: Write the traditional first two paragraphs, Third- details of arrest and detention and the reasons in the 4th paragraph (here state reasons like ill health and conclude with the last traditional paragraph.

HOW TO MOVE AN APPLICATION FOR BAIL-------ABARA EWAPP

1. **Announce appearance:** My Lord, K. C Aneke, appearing for the accused persons/defendants.
2. **Before this HC clause:** My Lord, before this Honourable Court is an application for bail on behalf of the accused persons/defendants dated and filed the__day of__2019.
3. **Authority for the application clause:** My Lord, the motion is brought pursuant to section 35(4) and section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), section 341(2) & (3) of the Criminal Procedure Code Law and under the inherent jurisdiction of this court
4. **Relief clause:** My lord, we seek the following reliefs: An order of the court admitting the 2nd accused person/defendant/applicant to bail pending the determination of his trial
5. **Affidavit clause:** My lord, in compliance with the rules of this Honourable Court, our motion is supported by an 11 paragraph affidavit sworn to by the 1st accused/defendant. We rely on all the paragraphs of the affidavit particularly paragraphs 4-10.
6. **Exhibit introduction clause:** My lord, accompanying the affidavit is an exhibit marked EXHIBIT A.
7. **Written address:** My lord, we have also filed a written address in support of our application. We wish to adopt same as our oral argument before this Honourable Court.
8. **Aligning the factors for grant of bail**: My lord, it is trite law that for an applicant to be granted bail, certain factors are put into consideration. My Lord, these factors exist in favour of the applicant.
9. **Prayer for grant of bail clause:** We humbly pray this Honourable Court to grant bail to the accused on liberal terms.
10. **Please the court clause:** May it please this Honourable Court.

6. EXPLAIN THE TERMS AND CONDITIONS UPON WHICH BAIL MAY BE GRANTED

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. 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.

Comment [C43]: 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 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. Bails are hardly granted on this term, only when the accused is a reputable member of the society and undertakes not to jump bail--- **FRN V. BABALAKIN**

Comment [d44]: Note that on the terms of self recognizance, the court readily considers integrity rather than popularity.

The accused is only required to enter into recognizance in the sum fixed by the Court. It is not a requirement of the law that he should deposit money before bail is granted. See Onuigbo v. C.O.P

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---**ONUGHI V. POLICE.** The amount paid on bond is to be paid into an interest yielding account by the Chief Registrar of the court

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 persons **within the jurisdiction of the court in which they are registered** – **S. 138 ACJL**. The bond person which can be an individual or corporate body, takes the defendant 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.**

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---**S. 138(1) ACJL, S. 187 ACJA.** There are requirements for registration. Such persons must be of integrity among other things--**S. 138(6) ACJL, 187(6) ACJA.**

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 is a consequence for acting as surety 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?--Ss. 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 CPCL and CPL are silent on whether a woman can stand surety, section 42 of CFRN will be instructive.

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 and this is p**aid 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---**Ss.120 CPL, 349 CPCL, 116 ACJL, 165 ACJA.**

NB: When an accused jumps bail by failing to appear as specified, the Magistrate or Judge may issue a bench warrant for his arrest and to be brought before him. Note also that the surety may forfeit his bond upon the accused absconding or of failing to show up in Court. However, a surety can always, if he sees good reason to do so, apply to Court to be discharged. In this case, the accused will be arrested upon a warrant until he procures another surety.

Review of bail---S. 168 ACJA

When an accused is not satisfied with the terms upon which the bail was granted, he can either

- Apply for review before the same judge or magistrate and by an affidavit evidence state the steps taken to meet the bail terms and the impracticability of meeting those terms OR
- Appeal to the higher court for the terms to be reviewed---**EYU V STATE**

NB: 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**

7. IDENTIFY THE CIRCUMSTANCES WHEN BAIL MAY BE REVOKED----BAD FIRE

- **Bail pending trial** is revoked upon conviction
- **Application for discharge by the surety:** Where a surety applies to be discharged---**Ss. 129 ACJL, 134 CPL, 351 CPCL, 177(1) ACJA, ONYEBUCHI V FRN.**
- **Death of surety:** If a surety dies, his estate is discharged and the accused will be re-arrested until he provides another surety.
- **Failure of accused to appear in court** without good reasons---**Ss. 184 ACJA, 139 ACJL**
- **Indicted of an offence:** If an accused on bail by magistrate is indicted for an offence on information at the High Court---**Ss. 132 CPL, 127 ACJL**
- **Re-arrest of the defendant/accused:** When the circumstances are brought to the knowledge of the Court that a person already granted bail ought not to have been granted bail, the Court may cause him to be arrested and may commit him to prison until the trial, or if thought fit, reconsider and increase the sum in which he had earlier bond himself---**S. 131 CPL; S. 350 CPCL**
- **Expiration of police bail upon arraignment**

8. DISTINGUISH BETWEEEN REMAND ORDER AND HOLDING CHARGE---- RACES

- **Returnable dates:** Remand order has returnable dates whereas the practice of holding charge does not have such
- **Application process:** Remand order must be applied for in the prescribed form (FORM 8—ACJA, and FORM K---ACJL) whereas there is no prescribed form for applying under the practice of holding charge
- **Charge:** Remand order does not require a charge to be filed before the court whereas the practice of holding charge requires charge to be filed before the court
- **Extension of time limits:** Remand order has time limits for extension of the order whereas there is no such time limit in holding charge
- **Statutory:** Remand order is made pursuant to statutory provisions whereas holding charge is merely a matter of practice developed by the police in order to circumvent the provision of s. 35(4) CFRN. Thus, Remand order is known to law whereas the practice of holding charge is not known to the Nigerian law and the court has condemned the practice---**ENWEREM V. COP, LUFADEJU V JOHNSON**

9. EXPLAIN THE PROCEDURE FOR APPLYING FOR REMAND ORDER/OBTAINING BAIL IN REMAND ORDER PROCEEDINGS UNDER THE ACJA AND ACJL

Procedure under the ACJA----SADOBM

- **Suspect is brought to court:** A suspect arrested for an offence which a magistrate court has no jurisdiction to try, shall within a reasonable time of arrest be brought before a magistrate court for remand---**S. 293(1) ACJA**
- **Application in the prescribed form 8,** verified on oath and containing the reasons for the remand request---**S. 293(2) ACJA**
- **Determination of existence of probable cause**
- **Order of remand** is made against the suspect **pending the receipt of a copy of the legal advice from the Attorney-General of the Federation and arraignment of the suspect before the appropriate court, as the case may be---S. 294(1) ACJA**
- **Bail:** The court may, in considering an application for remand, grant bail to the suspect brought before it, taking into consideration the provisions of sections 158 to 188 of this Act relating to bail---**S. 295 ACJA**
- **Maximum life span** of a remand order: **56 days**—**S. 296 ACJA**

Procedure under the ACJL---SADOBM-----S. 264(1)-(4) ACJL

- **Suspect is brought to court**: Any person arrested for any offence triable on information shall within a reasonable time of arrest be brought before a Magistrate for remand

Comment [C45]:
In considering whether "probable cause" has been established for the remand of a suspect pursuant to subsection (1) of this section, the court may take into consideration the following:

a.the nature and seriousness of the alleged offence;

b.reasonable grounds to suspect that the suspect has been involved in the commission of the alleged offence

c. reasonable grounds for believing that the suspect may abscond or commit further offence where he is not committed to custody; and

d.any other circumstances of the case that justifies the request for remand-----**S. 294(2) ACJA**

- **Application in the prescribed form K:** The request form filed by the Police shall contain reasons for the request for remand.
- **Determination of probable cause:** The Magistrate shall have powers to remand such a person after examining the reasons for the arrest exhibited in the request form and is satisfied that there is probable cause to remand such person
- **Order of remand pending legal advice of the Director of Public Prosecutions or the arraignment of such person before the appropriate Court or Tribunal**
- **Bail:** Where applicable, a Magistrate shall grant bail to any person brought before him pending the arraignment of such person before the appropriate Court or Tribunal (principles of bail would apply)---**S. 264(5) ACJL**
- **Maximum life span of a remand order** is 60 days and possible 30 days depending on the discretion of the court---**S. 264(6)(7)(8) ACJL**

Comment [C46]:
In this Section "probable cause" includes:
a.circumstance of the individual case,
b.nature and seriousness of the alleged offence,
c.reasonable grounds that the person has been involved in the commission of the alleged offence and
d. reasonable grounds that the person may abscond or commit further serious offence.

Comment [C47]:
Following an examination of the remand form filed by the Police, the Magistrate shall consider the
a.conduct,
b.personality and
c.social circumstances of the person concerned before making an order of remand.

10. DRAFT APPLICATION FOR REMAND ORDER

1. FORM 8---ACJA

IN THE MAGISTRATE COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA MAGISTERIAL DISTRICT

HOLDEN AT ABUJA

Comment [C48]: Nothing like charge no. here because the suspect is not charged

BETWEEN

COMMISSIONER OF POLICE----------APPLICANT

AND

XYZ ----------RESPONDENT

To: The Registrar of the Court

The Court is hereby informed that there is a probable cause to order the remand of XYZ, male, 38 years old, businessman of No. 2 Maitama Lane, Abuja, in remand custody at Maitama Federal Prisions.

The respondent is reasonably suspected to have committed the offence of Murder contrary to section ___of the Penal Code Act, on the 14th day of February, 2019 at Boston Hotels, Abuja, within the Abuja Magisterial District, on grounds stated below:

GROUNDS FOR THE REQUEST FOR REMAND

1. Place, time and circumstance of arrest: _____

2. Arrested with Exhibit(s) _____ Yes _____ No (Tick appropriately)

(disregard (3) and (4) below if the Respondent was not arrested with Exhibit(s)

3. If arrested with Exhibit(s), state clearly the particulars of the Exhibit(s) _____

4. If arrested with Exhibit(s), state clearly how the items are related to or linked with the committal of the alleged offence: _____

5. State particulars of other evidence or report linking the Respondent to the committing of the offence such as forensic evidence, marks or finger prints, etc.

6. Confessional statement _____ Yes _____ No

7. Any previous conviction for the same or similar offence _____ Yes _____ No

8. If (7) above is Yes, state the particulars of previous conviction(s)

Found in custody or possession of offensive weapon, object or substance: _____ Yes _____ No

9. Identification by victim(s) or witness(es) _____ Yes _____ No (State the particulars of such victim(s) or witness(es)

(i) Name:

Age

Sex

Address:

Occupation:

10. Need for further investigation _____ Yes _____ No

11. Period/duration required for further investigation _____

(state approximate days/weeks/months required to complete investigation)

12. Any further relevant information _____

Dated this _____ day of _____20_

……..

Signed

A. B Smart

Commissioner of Police

2. FORM K---ACJL

IN THE MAGISTRATE COURT OF LAGOS STATE

IN THE LAGOS MAGISTERIAL DISTRICT

HOLDEN AT LAGOS

BETWEEN

COMMISSIONER OF POLICE----------APPLICANT

AND

ZAMPARI BUNGU----------RESPONDENT

The Court is informed that there is probable cause to order the remand of Zampari Bungu of No. 7 apian way Lagos in custody who is reasonably suspected to have committed the offence of Armed Robbery in the Lagos Magisterial District on the 10th day of September 2015

GROUNDS FOR THE REQUEST:

1. Place and Time of Arrest- Balogun market at 10pm

2. Arrested with exhibit(s)- fire arms

3. Fingerprint evidence-Nil

4. Confessional statement-YES

5. Found in custody or possession of offensive weapon(s)- Yes

6. Identification by victim or witness. Yes

7. Need for further investigation- yes

.....

AB Smart

Superintendent of Police.

11. EXPLAIN THE POWER OF THE CHIEF JUDGE TO RELEASE PRISONERS UNDER THE CRIMINAL JUSTICE (RELEASE FROM CUSTODY) SPECIAL PROVISIONS ACT

It is important to note that the CJN and CJ are prison visitors ex-officio—**S. 11(1) PRISON ACT**

Where, in respect of any person detained **in any prison in Nigeria**, **NOT BEING A PERSON DETAINED IN EXECUTION OF A SENTENCE OF A COURT OR TRIBUNAL DULY CONSTITUTED BY LAW,** the Chief Justice of Nigeria or the Chief Judge of a State is satisfied that the-

(a) detention of that person is manifestly unlawful; or

(b) person detained has been in custody, whether on remand or otherwise, for a period longer than the maximum period of imprisonment which the person detained could have served had he been convicted of the offence in respect of which he was detained, the Chief Justice or the Chief Judge **may issue an order of release** to the officer in charge of the prison and such officer shall on receipt of the order release the person named therein---**S. 1(1) CJRFCSPA, EDWIN ILOEGBUNAM V. RICHARD ILOEGBUNAM**

12. EXPLAIN THE POWER OF THE CHIEF MAGISTRATE TO CONDUCT INSPECTION OF POLICE STATIONS OR OTHER PLACES OF DETENTION (NOT PRISON) WITHIN HIS TERRITORIAL JURISDICTION AND GRANT BAIL UNDER SECTION 34 ACJA

34. (1) The Chief Magistrate, or where there is no Chief Magistrate within the police division, any Magistrate designated by the Chief Judge for that purpose, shall, **at least every month,** conduct an inspection of police stations or other places of detention within his territorial jurisdiction **other than the prison.**

(2) During a visit, Magistrate may:

(a) call for, and inspect the record of arrests;

(b) direct the arraignment of the suspect;

(c) where bail has been refused, grant bail to any suspect where appropriate **IF THE OFFENCE FOR WHICH THE SUSPECT IS HELD IS WITHIN THE JURISDICTION OF THE MAGISTRATE.**

(3) An officer in charge of a police station or official in charge of an agency authorized to make arrest shall make available to the visiting Chief Magistrate or designated Magistrate exercising his powers under subsection (1) of this section:

(a) the full record of arrest and record of bail;

(b) applications and decisions on bail made within the period; and

(c) any other facilities the Magistrate requires to exercise his powers under that subsection.

(4) With respect to other Federal Government agencies authorized to make arrests, the High Court having jurisdiction shall visit such detention facilities for the purpose provided in this section.

(5) Where there is default by an officer in charge of a police station or official in-charge of an agency authorized to make arrest to comply with the provisions of subsection (3) of this section, the default shall be treated as a misconduct and shall be dealt with in accordance with the relevant Police Regulation under the Police Act, or pursuant to any other disciplinary procedure prescribed by any provision regulating the conduct of the officer or official of the agency.

13. DISTINGUISH BETWEEN THE POWER OF THE CHIEF JUDGE TO RELEASE PRISONERS AND POWER OF THE CHIEF MAGISTARATE TO GRANT BAIL TO SUSPECTS

The power of the Chief Judge is limited to the release (FROM PRISON) of prisoners whose detention are manifestly unlawful or persons detained in custody, whether on remand or otherwise, for a period longer than the maximum period of imprisonment which the person detained could have served had he been convicted of the offence in respect of which he was detained. On the other hand, the power of the Chief Magistrate is restricted only where bail has been refused, grant bail to any suspect at the police station or other detention places within his territorial jurisdiction EXCEPT PRISONS.

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. An offence that attracts an imprisonment of less than 6 months is a ___

A. Simple offence

B. Misdemeanour

C. Felony

D. Capital offence

2. An offence that attracts an imprisonment of 3 years or more is a ___

A. Simple offence

B. Misdemeanour

C. Felony

D. Capital offence

3. An offence that attracts an imprisonment of more than 6 months but less than 3 years is a ___

A. Simple offence

B. Misdemeanour

C. Felony

D. Capital offence

4. A suspect/accused/defendant is presumed innocent in the following applications for bail except ___

A. Administrative bail

B. Bail pending trial

C. Bail pending appeal simpliciter

D. None of the above

5. Police bail elapses upon ____

A. Arraignment of the defendant in court

B. The reading of the charges to the defendant in court

C. Taking of plea by the defendant in court

D. None of the above

6. When an accused jumps bail by failing to appear as specified, the Magistrate/Judge may issue ___

A. Warrant of arrest at first instance

B. Bench warrant

C. Pubic summons

D. Summons

7. Under the ACJA and ACJL, the remand form is as in ___ respectively

A. Form K/Form 8

B. Form 8/Form K

C. Form 3/Form 5

D. Form 5/Form 3

8. Under the ACJA, the maximum life span of a remand order is ____days

A. 56

B. 52

C. 60 + possible 30

D. 90

9. Under the ACJL, the maximum life span of a remand order is ____ days

A. 56

B. 52

C. 60 + possible 30

D. 90

10. Under the ACJA, a remand order is made against a suspect pending the receipt of a copy of legal advice from _____

A. AGF

B. AGF and arraignment of the suspect

C. AGF or arraignment of the suspect

D. DPP or arraignment of the suspect

11. Under the ACJL, a remand order is made against a suspect pending the receipt of a copy of legal advice from _____

A. AG

B. AGS and arraignment of the suspect

C. AGS or arraignment of the suspect

D. DPP or arraignment of the suspect

12. All these are prison ex-officio visitors except ___

A. Chief Justice of Nigeria

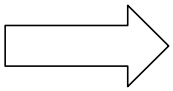
B. Chief Judge of a State

C. Magistrate

D. None of the above

ANSWERS

1. **A**
2. **C**
3. **B**
4. **D**
5. **A**
6. **B**
7. **B**
8. **A**
9. **C**
10. **B**
11. **D**
12. **C**



8. CONSTITUTIONAL SAFEGUARDS TO ENSURE FAIR TRIAL OF AN ACCUSED PERSON/DEFENDANT

1. DISCUSS THE CONSTITUTIONAL AND STATUTORY PROVISIONS SAFEGUARDING THE RIGHTS OF AN ACCUSED PERSON/DEFENDANT IN A CRIMINAL TRIAL AND THE LIMITS OF THOSE RIGHTS

The constitutional safeguards are as follows----**FP PACEI ReDPaSK**

- Fair hearing – s. 36(4) CFRN
- Presumption of innocence – s. 36(5) CFRN

- Prompt information as to the nature of the offence– s. 36(6)(a) CFRN
- Adequate time to prepare for his defence – s. 36(6)(b) CFRN
- Counsel – s. 36(6)(c) CFRN
- Examination of prosecution witnesses – s. 36(6)(d) CFRN
- Interpreter – s. 36(6)(e) CFRN

- Retroactive legislation – s. 36(8) CFRN
- Double jeopardy - s. 36(9) CFRN
- Pardoned offence – s. 36(10) CFRN
- Silence – s. 36(11) CFRN
- Known to law offence – s. 36(12) CFRN

1. Fair hearing

Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal---**S. 36(4) CFRN**

Fair hearing is a trial or hearing conducted according to all legal rules formulated to ensure that justice is done to all parties--- **AUDU V FRN, EZECHUKWU V. ONWUKA, SULE V. STATE**

Fair hearing may be likened to the issue of jurisdiction. It can be raised at any time of the proceedings even on appeal and once an accused person has raised the issue of fair hearing, the court must urgently entertain same before proceeding further with the trial---**BABALOLA V OSHOGBO LOCAL GOVERNMENT.**

Comment [C49]:
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.

Comment [C50]:
Provided that -
(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;
(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

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---**JANG V. INEC, NWOKORO V. ONUMA.** Thus, 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--**ORUGBO V UNA.** This is because justice must not only be done, but must be manifestly and undoubtedly seen to be done---**SUSSEX JUSTICES, EX PARTE MCCARTHY, AGHA V IGP.** The test is a reasonable man who observed the proceedings.

Fair hearing is encapsulated in two principles of law, namely:

- Audi alterem partem (hear the other side)
- Nemo judex in causa sua (a person shall not be a judge in his own case)

(a) Audi alterem partem

The first pillar which states that the accused must be heard---**UNIBIZ V CREDIT LYONNAISE** i.e an opportunity to be heard. It does not state that the defendant must be heard at all cost. An accused person who failed to use the opportunity cannot complain on appeal--**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, the accused person must be given the opportunity to get a counsel of his choice and this must not be denied the defendant---**AKABUEZE V FRN, PADAWA V JATAU**

The accused should also be given the opportunity to react to issues raised suo moto by the judge and as such where the court raises an issue, it must hear both parties especially where the issues so raised by the court are fundamental that they affect the mind of the court. Failure to hear both parties, the court is said to have denied the parties the right to fair hearing---**ODESSA V FRN.** However, where the issues are from the records before the court as submitted by the parties, failure to hear a party, does not amount to absence of fair hearing---**AKEREDOLU V. ABRAHAM**

There must be absence of bias and there must not be any likelihood of bias---**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, the test for fair hearing is an objective test (reasonable man). Hence, a judge:

- is not expected to be interested in the matter before him;
- 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.** It entails all the provisions of S. 36(6) CFRN and that the proceedings of the court should be concluded within a reasonable time--**OKEKE V STATE**, and where it was held that reasonable time is dependent on the circumstances of the case---**EFFIOM V STATE, ASAKITIPI V. STATE**

Comment [v51]: In okeke v state, the case took the trial judge six years to conclude. At the end of the trial, the judge was able to recall vividly the evidence adduced and the confessional statement in arriving at his decision. Appeal against conviction on grounds that trial was not conducted within a reasonable time was dismissed.

Query: **Does Accelerated hearing negate the principles of fair hearing?** 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 of fair hearing will be said to have been violated---**OYAKHERE V STATE.**

Does shielding of witnesses amount to denial of fair hearing? Depends on the circumstances of each case as the judge must accord equal treatment to all parties---**GITTO V ETUK.** The test for fair hearing is objective---**YABUGBE V COP, ALOBATERE &ORS V FASENU &ORS.**

Fair hearing applies to all court and tribunal, it is not court sensitive--**FALODUN V OGUNSE**

(b) 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.

Can a husband who is a judge try the wife for any offence whatsoever? The judge must not be interested in the case---**AZOKWU V. NWOKANMA.**

It has been held that a husband can appear as counsel before the wife who is a judge but the test is whether or not likelihood of bias can be inferred from the circumstances of the case.

Essential elements of fair hearing

It has been established that the following must be observed to ensure fair hearing--- **EFFIOM V STATE, EKWUREKWU V STATE, OZOEMENE V OZOEMENE**

- 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

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 nullity.
- Importantly, it is immaterial if that same decision would have still been reached in the absence of the violation.

Limits/Exceptions to above rule are

- Where an accused person chooses to remain silent during the trial and his defence--**S.287 CPL**
- Where a person refuses/ignores initiation of proceedings by a tribunal--**NBA V.AKINTOKUN –** where a party was availed the opportunity of presenting his case or defending same and he wilfully refused he cannot be heard to complain later that he was not given fair hearing
- Ex parte applications in criminal proceedings.

2. Presumption of innocence

Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty---**S. 36(5) CFRN, 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 **S. 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—**Ss. 139(3)(c), 140 EA 2011.** Pursuant to section 139(3)(c) EA, the defendant has the burden of proving the defence of insanity and intoxication. Section 140 EA provides that when a fact is within the knowledge of a person, the person shall have the burden of proving same.

Comment [C52]:

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

Comment [C53]: 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.

Note this burden is not affected by the provisions of the law as to strict liability offences as the prosecution must still prove the actus reus otherwise the accused/defendant will be presumed innocent.

Again, the recent decision of the Supreme Court to the effect that the burden is on the accused to prove how he amassed wealth, that is, proof of his lawful means of livelihood, is still in line with the provisions of the CFRN above as there is a statutory provision providing for this evidential burden on the accused---**DAUDU V. FRN (2018)**

Limits/Exceptions to the above are

- The accused is to prove facts within his special knowledge e.g. the defence of insanity, intoxication etc - **Proviso to S. 36(5) CFRN; S. 139 (3) (c) EA 2011**
- A convict appealing against his conviction is no longer presumed innocent

3. Prompt information as to the nature of the offence

It provides that the accused shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence.----**S. 36(6)(a) CFRN, IBRAHIM V STATE, OKEKE V STATE.** The accused has the right to have the charge/information explained to him before his plea (hallmark of arraignment)

There is a difference between s. 35(3) and s. 36(6)(a) as s. 35(3) relates 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---**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. **There are exceptions:**

- The accused can be convicted of a lesser offence than the one which he is charged –In **ADAVA V. STATE**, the accused persons who were charged and convicted for homicide punishable with death 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 and the ingredients for proving the graver offence is included in proving the lesser offence---**MAJA V STATE** E.g Murder to manslaughter, Rape to attempted rape

- Also an accused can be convicted of another offence by which he was not charged based on the evidence disclosed at trial---**ODEH V FRN, NWACHUKWU V STATE**

However, it has been held that failure to frame a formal charge renders the decision perverse and unconstitutional---**UGOBOJI V. STATE**

Effect of breach of Section 36(6)(a) 1999 Constitution.

The breach renders the trial a nullity no matter how well conducted---**YAHAYA V STATE, TIMOTHY v. FRN**

4. Adequate time to prepare for his defence

Reasonable freedom to access every facility that will help him establish his case. This applies to both trial on information and summary trial---**S. 36(6)(b) CFRN, OKOYE 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.

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:---MAN**

- **Material witness:** The witness is a material witness.
- **Available:** That the material witness will be available to attend the hearing on the next adjourned date (certain date)
- **Negligence:** The accused was not guilty of neglect in procuring the attendance of the witness.

In the trial of capital offence, the court must adjourn once accused counsel is not in court---**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--**SHEMFE V COP**

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 refuses, 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---**FRN V. WABARA, UKET V FRN, UWAZURIKE V FRN**

5. Counsel

The accused has the right to be defended by a legal practitioner of his choice---**S. 36(6)(c) CFRN.** 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---**AKABUEZE V FRN**. The court is duty bound to inform accused of this right pursuant to **S. 349(1)-(3) ACJA.**

Where an accused person due to his impecuniosity is unable to pay counsel, this 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 mean breach of this right. **S. 2 LPA, AWOLOWO V MIN. INTERNAL 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)---**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--**Ss. 349(6)(a) and 267(1) ACJA.**

Right to counsel in capital offence.

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 ----**S. 349(6)(b) and 267(1) ACJA, OKOTOBO V STATE.**

However, pursuant to **S. 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

Where a person is charged with a capital offence, the State shall be represented by a Law Officer, or legal practitioner and if the defendant is not defended by a legal practitioner, the Court shall assign a legal practitioner for his defence---**S. 259 ACJL**

NB: The CPL and CPCL 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--**JOSIAH V. STATE**

Limits/Exceptions to the above right are

The Counsel is under a legal disability or the right is in abeyance e.g. the Counsel is disqualified from practicing or has not paid his practicing fees or that the Counsel is from abroad and has not fulfilled the immigration requirements/conditions to be allowed to appear in Nigerian Courts--**AWOLOWO V. MIN .INTERNAL AFFAIRS& ORS**

6. Examination of witnesses

The right to call and examine his own witnesses and to cross-examine prosecution witness---– **S. 36(6)(d) CFRN.** 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

The court cannot take over the examination on behalf of the accused person where he is unrepresented by counsel as this will amount to descending into the arena. Thus, the only duty of the court is to inform the accused person of the right to examine each witness of the prosecution after each testimony---**OKODUWA V. STATE.** However, **S. 189(2) CPCL**, provides that the court shall examine the witnesses of the prosecution where there is no prosecutor in court (not obtainable in adversarial system like that of Nigeria)

There are three categories of examination of witnesses in criminal trials to wit; Examination-in-chief, Cross- examination and re-examination--**Ss. 214 and 215 EA 2011.**

The order of examination of witnesses—**Ss. 216 and 217 EA 2011. Assuming 3 accused persons charged for an offence are represented by 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 by the prosecution---S. 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 1stdefendant and 1st defendant counsel can re-examine DW1---S. 217 EA.**

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 of the court to declare such witness a hostile witness.

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.

NB: Where a witness after examination in chief fails to turn up for cross-examination, **the counsel at the other side is expected to make an application to the court to discountenance the testimony and strike it out**

Limits/Exceptions to the above are

- If the accused or his Counsel asks irrelevant questions
- Questions are asked to harass a witness---**Ss. 224-226 EA 2011**

7. Interpreter

Where an accused does not understand the language of the court, he has a right to an interpreter---**S. 36(6)(e) CFRN, OGUNYE v. STATE.**

Who is an interpreter? An interpreter means a person who translates especially orally from a language to another.

Who may be an interpreter? Any adult person knowledgeable in the accused language and that of the court.

Qualification of an interpreter: No special qualification is required.

What is the language of the court? English language---**FRN V. MOHAMMED, MADU V. STATE**

Comment [C54]: Note the case of OLANIPEKUN v. STATE to the effect that a person who understands pidgin English, understands English. This DOES NOT mean that the language of the court is also Pidgin. Also, it was merely an aside by the court and as such FOR THE PURPOSES OF BAR PART II, THE LANGUAGE OF THE COURT IS ENGLISH AND NOTHING ELSE.

What is to be recorded? The court can only record what is interpreted to it and not the exact words of the accused. 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.**

Interpretation should be adequate and as such, the interpreter must be accurate and comprehensive in his interpretation of the proceedings of the court to the accused. He must interpret everything said by the witnesses, complainant and the court---**AJAYI V. ZARIA NA**

PLEASE NOTE that the judge can only use his proficiency in the language to ensure that the interpretation is accurate and correct but he cannot interpret for the accused as it cannot descend into the arena

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--**UWAKWEGHINYA V STATE, NWACHUKWU V. STATE.** Where the accused understands the language in which evidence was given against him, an interpreter is not necessary---**ONYIA V STATE**. However, it has also been held that we still need an interpreter here---**OKORO V. STATE**. The interpreter before interpreting must be sworn on oath/affirmed.

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----**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/co-accused cannot interpret to the accused.

The right to an interpreter cannot be raised for the first time on appeal except it was raised and denied at the lower court----**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--**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**

Limits

It is available only on request of the accused**---THE STATE V. GWONTO**

8. Retroactive legislation

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---**S. 36(8) CFRN, EGUNJOBI V FRN, FRN V IFEGWU.** Under this right, there are two limbs:

- At the time of the act or omission, there was 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.
- 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.

9. Double Jeopardy

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 **save upon the order of a superior court**---**S. 36(9) CFRN**

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:----**CELS**

1. **Competent jurisdiction:** The first trial was before a court of competent jurisdiction---**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---**UMEZE V. STATE,**
2. **Ended in C or A:** 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. **Legal code:** That the first trial was a criminal charge under a known legal code. 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---**R V. JINADU**
4. **Same ingredients:** That the offence for which the accused is now charged is the same with 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.

Limit/Exception
Where the accused will not be considered to be tried twice is where there is an Order of re-trial by a superior Court or Appeal Court.

10. Pardon

It provides that no person who shows that he has been pardoned for a criminal offence shall again be tried for that offence---**S. 36(10) CFRN.** Thus, where a person who was convicted of an offence (criminal) has been pardoned, he can no longer be tried for that offence. The right to pardon is the express right of the President and Governor –**Ss. 175 and 212 CFRN.**

Comment [C55]:
a.To an accused who is not yet standing trial – Amnesty
b.To an accused standing trial – Nolle prosequi (BY AG NOT P OR G)
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---OKONGWU V STATE**. Onus is on the person relying on it---**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.

Limit/Exception

A pardoned person cannot be called to bar---**OKONKWO V. COUNCIL OF LEGAL EDUCATION**

11. Silence

No person who is tried for a criminal offence shall be compelled to give evidence at the trial---**S. 36(11) CFRN**, **S. 180(a) EA 2011**. 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) An accused person, even though a competent witness is not a compellable witness---**Ss. 179 & 180 EA, ABIDOYE V FRN**

NB: 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---S. 181 EA 2011.** However, the comment should not suggest that the accused failed to give evidence because he is guilty of the offence charged---**IGBALE V STATE**.

Draft of an oral application not offending S. 181 EA 2011

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 accused stab the victim to death. My Lord, it is also on record that the accused did not make any statement as to his defence. My Lord, we humbly urge the court to hold that the prosecution proved its case beyond reasonable doubt.

Query: How do we reconcile section 181 EA 2011 and 236(1)(c) CPCL? (The court may draw an inference from the silence of the accused person. It however bars the prosecution from making any comment**) 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.**

12. Known to law offence

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---S. 36(12) CFRN, AOKO V FAGBEMI, OLIEH V FRN.** Thus, where one element is absent, the court cannot try such person as there is no infraction.

Comment [C56]:
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

POSSIBLE MULITIPLE CHOICE QUESTIONS ON THIS TOPIC

1. The test for fair hearing is a/an ___ test

A. Reasonable man

B. Objective

C. Subjective

D. A and B above

2. Fair hearing applies to all courts and tribunal except ___

A. Federal High Court

B. Coroner's Court

C. Court Martial

D. B and C above

3. All the following statements are true except ___

A. A party who establishes denial of his right to fair hearing is required to prove miscarriage of justice

B. Miscarriage of justice is inherent in denial of fair hearing

C. Parties to a criminal trial are to be given the right to be heard

D. None of the above

4. Under the ACJA, before a defendant in a capital offence can be allowed to defend himself, the court must do.___ first

A. Inform the defendant of the mandatory requirement of being represented

B. Inform the defendant of the risk of defending himself in person

C. Require that a counsel be made available for the defendant

D. Write to the legal aid council using Form LAC 1

5. Under the ACJL, CPL and CPCL, the court in 4 above must do __ first

A. Inform the defendant of the mandatory requirement of being represented

B. Inform the defendant of the risk of defending himself in person

C. Write to the legal aid council using Form LAC 1

D. Assign/provide a legal practitioner for the defendant

6. In a criminal trial of A , B and C as defendant/accused persons represented by different counsel, where A examines DW1 in chief ____ is to cross examine next

A. B and C

B. Prosecution

C. C and B

D. All of the above

7. Where a witness after examination in chief fails to turn up for cross-examination, as counsel on the other side, you are expected to do ___

A. Apply to the court to discountenance the testimony and strike it out

B. Apply to the court to dismiss the evidence of the witness

C. Apply to the court to mark the testimony as "rejected"

D. All of the above

8. The following statements are true about examination of a witness except ___

A. The right to cross- examine PW arises at the end of the testimony of each PW

B. The right to cross-examine PW arises at the end of the testimony of all the PW

C. The court cannot take over the duty of cross-examination from counsel

D. None of the above

9. A High Court sitting in Minna Judicial Division can do all of the following except ____ under the CPCL and Evidence Act 2011

A. Examine the witnesses of the prosecution where there is no prosecutor in court

B. Inform the accused person of the right to examine each witness of the prosecution after each testimony

C. Ask witnesses questions for the purpose of clearing any ambiguity

D. None of the above

10. Where an interpreter is used to record a witness/accused testimony in court, the court is to record ___

A. Exact words of the witness/accused

B. What is interpreted to it

C. Exact words of the witness/accused and what is interpreted to it

D. All of the above

11. The right to an interpreter can be waived only with the consent of ___

A. The court

B. The accused

C. Both parties

D. The prosecution

12. Proof of pardon is by producing ____

A. Instrument of pardon

B. Certificate of pardon

C. Evidence of pardon

D. Deed of pardon

ANSWERS

1. **D**
2. **B**
3. **A**
4. **A**
5. **D**
6. **A**
7. **A**
8. **B**
9. **D**
10. **B**
11. **A**
12. **B**

9. TRIAL

TRIAL 1

ATTENDANCE OF PARTIES AND ARRAIGNMENT

1. EXPLAIN THE LEGAL EFFECT OF THE ACCUSED PERSON, COMPLAINANT BOTH ACCUSED AND COMPLAINANT, MATERIAL WITNESS AND COUNSEL TO THE ACCUSED BEING ABSENT AT THE TRIAL

(a) Absence of the accused person

The general position of the law is that an accused person must always be in court during the whole of his trial---**ADEOYE V. STATE, LAWRENCE V. KING**.

Exceptions

- **Under the CPL**
  1. In the magistrate court, where the offence is one that attracts a fine of N100 or imprisonment not exceeding 6 months or both, the court **shall** where the offence is punishable by fine only and where the accused pleads guilty in writing or in person or through his legal practitioner, on application of the accused, dispense with the presence of the accused (the court **may** dispense with the presence where the offence is punishable by a fine or imprisonment or both)—**S. 100 CPL. However the accused cannot be sentenced in absentia.**
  2. The court is investigating into the unsound mind of the defendant--**S. 230(2) CPL**
- **Under the ACJA**
  1. In the magistrate court, where the offence is one that attracts a fine of N10, 000 or imprisonment not exceeding 6 months or both, the court **shall** where the offence is punishable **by fine only** and where the defendant pleads guilty in writing or in person or through his legal practitioner, on application of the defendant, dispense with the presence of the defendant (the court **may** dispense with the presence where the offence is punishable by a fine or imprisonment or both)—**S. 135 ACJA. However the accused cannot be sentenced in absentia.**
  2. Misconduct at trial--**S. 266(a) ACJA**
  3. At the hearing of an interlocutory application--**S. 266(b) ACJA**
  4. Continue with trial, in the absence of the defendant, where the defendant who was granted bail **fails to attend the court without reasonable explanation and the court has made an adjournment two times---S. 352(4) ACJA.** Trial may be continued in absentia but sentence must be delivered only in the presence of the defendant**---S. 352(5) ACJA**

Comment [C57]: 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 has an interest in the matter. The parties must be present in a trial.

Comment [C58]: 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.

Comment [C59]: The record of court must state that the court cannot have the presence of the defendant as it is impracticable to have proceedings undisrupted.

Comment [C60]: Thus, under 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.

- **Under the ACJL**
    1. The court is investigating into the unsound mind of the defendant--**S. 217(2) ACJL**.
    2. Misconduct at trial--**S. 208 ACJL**
- **Under the CPCL**
    1. Misconduct at trial--**S. 153 CPCL**

Consequences and steps after failing to attend court

- Warrant of arrest where the summons have been duly issued and served---**S. 352(1)(a) ACJA**
- Adjourn hearing of the case (where there is proof that the summons was not duly served)---**S. 352(1)(b) ACJA**
- Continue with trial, in the absence of the defendant, where the defendant who was granted bail fails to attend the court without reasonable explanation and **the court has made an adjournment two times**---**S. 352(4) ACJA.** Trial may be continued in absentia but sentence must be delivered only in the presence of the defendant---**S. 352(5) ACJA**
- Where a defendant who has been granted bail, or having due notice of his trial date, fails without reasonable explanation to attend or refuses to attend court for his trial, and a summons and/or warrant as the case may be, has been issued to compel his attendance without success, the trial shall continue in his absence----**ORDER 9 RULE1 FCT PD 2017**. Neither the seriousness of the offence charged nor the severity of the punishment if convicted shall be a bar to proceeding with the trial in the defendant's absence---**ORDER 9 RULE 2 FCT PD 2017**
- The court can issue a bench warrant where the person is on a bail- 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.
- After arrest, commit to prison
- The court can issue a reproduction warrant: this is directed to the prison where the defendant is kept if the defendant is not on bail

(b) Absence 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;

- Where the complainant has due notice of the time and place of hearing and does not appear in court, the court may dismiss the complaint. **Consequently, the court will discharge the defendant/accused person. The discharge however does not amount to acquittal----Ss. 165 CPCL, 280 CPL, 351 ACJA, 232 ACJL**

Comment [C61]: In Lagos, the trial is already commenced. THE ORDER THE COURT WILL MAKE IS BASED ON THE REPORT OF THE MEDICAL OFFICER.

Comment [C62]: The defendant misconducts himself in such a manner as to render his continuing presence impracticable or undesirable

Comment [C63]: 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 issued at first instance as in SECTION 95 ACJL, 97 CPL.

- 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---**Ss. 280 CPL, 351 ACJA, 232 ACJL, 165 CPCL**

Comment [C64]:
NB: Where prosecution counsel is in court and the matter is adjourned and counsel, due to some reasons, cannot be in court at the next adjourned date, counsel is to write to the court, stating the reasons for his inability to be in court at the next adjourn date and seeking a further adjournment of the matter.

GOVERNMENT OF LAGOS STATE

OFFICE OF THE ATTORNEY-GENERAL

MINISTRY OF JUSTICE

NO. 2 GOVERNMENT ROAD, IKEJA, LAGOS

EMAIL: officeoftheaglagosstate@gmail.com

Website: aglagosstate.com

Tel No: 11111111122222222, 444444444444777777, 66555555588888999

OUR REF: **YOUR REF:** **DATE: 18 February 2019**

The Registrar,

High Court 21,

The High Court of Lagos State,

Ikeja Judicial Division.

Dear Sir,

APPLICATION FOR ADJOURNMENT IN THE CHARGE NO LS/10044C/2019 BETWEEN THE STATE OF LAGOS V. BARIGA

I write as counsel for the prosecution in the above stated matter coming up for trial before your lordship today the 18th day of February 2019.

I humbly apply for adjournment on the ground of ill health as counsel is scheduled for medical examination today at the Lagos State University Teaching Hospital.

Subject to the convenience of the court, may I suggest the 1st day of March 2019 as the next adjourned date. All inconveniences are highly regretted.

Thank you.

Yours faithfully,

…….

K. C Aneke

Principal State Counsel

CC

Cundy Smith

Defence Counsel

(c) Absence of both accused and complainant

Court to make order as the justice of the case requires---**Ss. 236 ACJL, 353 ACJA, 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.

NB: Where both parties are present, the court will proceed to trial pursuant to **Ss. 237 ACJL, 283 CPL, 354 ACJA**

(d) Absence of material witnesses

Both parties are entitled to determine the number of witnesses to call. **No particular number of witnesses is required to establish a case nor must the Prosecution call all the witnesses listed in his information.** It can call only one witness if it is sufficient--**ADAJE V. THE STATE, JAMMAL V. STATE**

The Court **may** compel the attendance of witnesses by issuance of any of the following:

- Witness Summons on any witness
- Warrant of Arrest if a witness had earlier disregarded a Witness Summons
- Subpoena which may be subpoena *duces tecum* which is to order a witness to produce document(s) only or *subpoena ad testificandum* which is to order a witness to come to Court to testify only.

NB: In practice, the above processes are issued upon an application (may be a **written letter** addressed to the **Court Registrar or by a Motion Ex Parte)** by the party needing a witness.

(e) Absence of counsel to the accused

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

2. EXPLAIN THE DUTIES AND ROLES OF REGISTRAR, JUDGE AND COUNSEL IN CRIMINAL TRIALS

(a) Court Registrars

- 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 adjourned 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 of 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

(b) Presiding judge

- 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---**AKINFE V. STATE, OKODUWA V. STATE**

Comment [C65]:
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.

(c) Counsel

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 at all cost, but to ensure that justice is done – **Rule 37(4) 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-- **Rule 37(5) RPC**
- Prosecuting counsel shall not suppress facts or secret witnesses capable of establishing the innocence of the accused person--- **Rule 37(6) RPC**
- 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-- **Rule 37(6) RPC**

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**
- 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, generally, must not return brief of an accused charged with capital offence---**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.**
- 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, OKONOFUA V. STATE.**

3. CONDUCT A VALID ARRAIGNMENT---ERAP

1. Entry of the dock unfettered: 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--**S. 269 ACJA**. The defendant must be brought to the court unfettered---**S. 271(2)(a) ACJA**. 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.

2. Read and explain the charge: The registrar or other officers of the court then reads the charge to the accused person and explains to the accused person (to the satisfaction of the court) in the language he understands.

Comment [C66]: Arraignment is the process of taking the plea of an accused to the charge before the court. It is the beginning or commencement of a criminal trial--**GRANGE V FRN, FAWEHINMI V IGP**

Comment [C67]: The dock is at the left hand side of the judge, while the witness box is at the right hand side of the judge.

Comment [C68]: 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.

3. Ask if the accused is guilty or not: 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--- **S. 356(1) ACJA**

4. Plea taking: The defendant shall take his plea in the dock, except the judge otherwise directs--**S. 356(8) ACJA.** The defendant is to be called upon to plead instantly to the charge.

Principles

- Plea must be taken by the accused person himself---**R V PEPPLE.**
- Where there are several defendants, each should be taken individually. Thus, there is nothing like block plea. There can be a block reading of the charge---**ADAMU V. STATE, AYINDE V. STATE**
- There is nothing like proxy plea. Counsel cannot take the plea on behalf of his client as held in **R v PEPPLE.**
- The court records the individual plea of the defendants--**S. 271(3) ACJA.** When the court records a block plea, the arraignment is a nullity.
- Failure to plead, trial is a nullity---**EDE V STATE**
- If more than one count, there is a block reading and the plea on each count is to be recorded---**DUVAL V STATE.**
  - The registrar must read over and explain to defendants the count read.

4. EXPLAIN THE VARIOUS OPTIONS OPEN TO AN ACCUSED PERSON ON ARRAIGNMENT

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

a. He may raise a preliminary objection
b. He may refuse to plead to the charge
c. He may stand mute when called upon to enter his plea
d. He may plead guilty
e. He may plead not guilty
f. He may plead not guilty by reason of insanity

(a) Preliminary objection

Preliminary objection is to be raised before plea. Upon taking 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:

Comment [C69]: There shall be a Case Management Hearing immediately after arraignment where all the preliminary issues shall be dealt with---ORDER 3 RULE 1 FCT PD, 2017

Comment [C70]:
Where the defendant enters a plea of 'not guilty';

a. The parties shall complete the prescribed case management forms and identify the relevant disputed issues based on evidence for or against the defendant, and

b. Only the witnesses listed on the case management form and proof of evidence shall be called in evidence, but where during the course of the trial, it becomes evident that the testimony of an identified and available witness is required in the interests of justice or the evidence such a witness could give may materially affect the outcome of the case in relation to genuinely disputed relevant issues, the court may grant a period not exceeding Five (5) working days or as may be convenient to the court within which to hear the testimony of such witness---ORDER 4 RULE 3 FCT PD, 2017

- **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.
- The objection could be as to defect in charges. The charge offends the rules against ambiguity, duplicity, joinder of offences or offenders----**OBAKPOLOR V STATE**.
- 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, STATE V BATURE**.
- He could raise bar plea: this is plea of autre fois convict or acquit. Thus, the accused had been earlier charged 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.
- 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.
- 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)

(b) Refuse to plead

There must be an outward manifestation of a deliberate act of refusal to plead. He understood the charge read to him. Where the defendant has refused to plea, the court will do the following----**GAJI V STATE.**

- **The court will ask the defendant why he refused to plead (inquiry)**
- 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.

(c) Stand mute

No deliberate act evincing refusal to plead. 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 as a result of natural causes (visitation of God) and would use medical or other evidence to determine such.

If malice the court will enter a plea of not guilty---**YESUFU V STATE** and proceed with the trial, if it is as a result of natural causes, the defendant will be detained at Governors pleasure---**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, or until the Governor's pleasure is known.

(c) Plea of guilty---RISK EC

An accused person can plead guilty to the charge read to him. **For every other offence except capital offences,** when an accused pleads guilty, the court is to observe the following:

- **RECORDING:** 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---**AREMU V COP**.
- **INVITATION:** Invite the prosecution to state the facts of the case again (summary of evidence)**--OSUJI V. IGP**
- **SATISFACTION:** The court must be satisfied that the accused understands the charge read to him. The basic ingredients constituting the offence must be explained to the accused---**KAYODE V. STATE**
- **KNOW IF PLEA IS IN LINE WITH FACTS RESTATED:** The court will enquire from the defendant whether his plea of guilty is in relation to the facts stated by the prosecution. The Court will not **take** or record **the plea of guilty** if the accused rescinds on the facts stated by the Prosecution
- **EXPERT:** 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---**STEVENSON V POLICE , ESSIEN V KING**
- **CONVICTION AND SENTENCE:** 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**---OLABODE 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 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 prosecutor's consent

Where the defendant elects to plead to a lesser offence and the court accepts plea, the court will follow these steps:

- Inquire of the prosecution as to whether it consents to the plea or not
- If the prosecutor consents, the court will direct that the prosecution amend his charge to reflect the lesser offence.
- Thereafter, the defendant is asked to take the plea again.
- **T**he court will record plea as nearly as possible in the words used.
- The procedure will be followed as to a plea of guilty.
- However, where the prosecutor does not consent, the court will proceed to trial for the graver offence stipulated in the charge.

NB: 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 its election and consequently the defendant will be acquitted and discharged accordingly---**R V KELLY**

NB: **The mere fact of pleading guilty does not dispense with the responsibility of the prosecution to state the facts of the case.**

(e) Plea of not guilty

This is the most common plea in criminal trials. This is known as pleading the general issue. Every person by pleading generally the plea of not guilty shall without further form be deemed to have put himself upon his trial---**Ss. 212 ACJL, 188 CPCL, 273 ACJA.**

(f) 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 raises the defence, the court is to consider the following:

- Whether an offence was committed
- Whether the accused did commit the offence ; and
- Whether he was insane at the time of committing the offence.
    a. 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.
    b. 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---**Section 139(3)(c)**

Comment [d71]: Thus the relevant stage where insanity can be pleaded is at the time of committing the offence (time of commission) and not at the time of arraignment. If accused was not insane at the time of commission, then the court would convict him accordingly. However, if he was insane at the time of commission, the court would order such accused to be kept in a safe custody, then send a report to the Governor – s. 230(1) CPA, R v. Ogor. The Governor may order that such person be confined in lunatic prison or other suitable place of safe custody during the pleasure of the Governor – s. 230(2) CPA, Adams v. DPP.

Comment [C72]: 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.

Evidence Act 2011. 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.**

Comment [v73]: ON THIS GROUND THERE CANNOT BE A CONVICTION.

5. EXPLAIN THE MEANING AND PROCEDURE FOR PLEA BARGAINING

(a) Meaning of plea bargain

Plea bargain is the process whereby the defendant himself or through his counsel and the prosecutor in a criminal case enter negotiations to agree a mutually acceptable way of disposing the case – **PLEA BARGAINING MANUAL 2016**. This manual guides prosecutorial discretion when it comes to plea bargaining.

"Plea bargain" means the process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case; including the plea of the defendant to a lesser offence than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than that for the higher charge subject to the Court's approval---**S. 494 ACJA.**

From here there are two types of bargain:

1) a charge bargain – this relates to the charge that the defendant is charged with, and would lessen the number of counts a defendant will face; and

2) a sentence bargain - this is agreeing on the sentence to be imposed on the defendant.

Invariably under the ACJA the court is not involved in the bargaining process. The court must approve such bargain before it becomes a judgment. Sometimes it's a tripod between the victim, the state and the defendant.

(b) Procedure for plea bargaining

Comment [C74]: ACJA has a more comprehensive provision than the ACJL, so we shall be using the ACJA

1. Receive offer/Offer of plea bargain: Notwithstanding anything in this Act or in any other law, the Prosecutor may:

a. receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf;
b. offer a plea bargain to a defendant charged with an offence---**S. 270(1) ACJA**

2. Stage when the prosecution may offer plea bargain: The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative **during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence,** provided that all of **the following conditions are present:**

a. the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;
b. where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or
c. where the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders---**S. 270(2) ACJA**

3. Interest of justice etc to be considered: Where the Prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process, he may offer or accept the plea bargain—**S. 270(3) ACJA**

4. Agreement is entered: The prosecutor and the defendant or his legal practitioner **may before the plea to the charge, enter into an agreement in respect of**

a. the term of the plea bargain which may include the sentence recommended within the appropriate range of punishment stipulated for the offence or a plea of guilty by the defendant to the offence(s) charged or a lesser offence of which he may be convicted on the charge; **and**
b. an appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty---**S. 270(4) ACJA**

5. Public interest etc to be considered before agreement: The prosecutor may only enter into an agreement as in above

a. after consultation with the police responsible for the investigation of the case and the victim or his representative, and
b. with due regard to the nature of and circumstances relating to the offence, the defendant and public interest---**S. 270(5) ACJA**

Provided that in determining whether it is in the public interest to enter into a plea bargain, **the prosecution shall weigh all relevant factors, including:**

a. the defendant's willingness to cooperate in the investigation or prosecution of others;
b. the defendant's history with respect to criminal activity;
c. the defendant's remorse or contrition and his willingness to assume responsibility for his conduct;
d. the desirability of prompt and certain disposition of the case;
e. the likelihood of obtaining a conviction at trial, the probable effect on witnesses;
f. the probable sentence or other consequences if the defendant is convicted;
g. the need to avoid delay in the disposition of other pending cases; and
h. the expense of trial and appeal.

i. **defendant's willingness to make restitution or pay compensation to the victim where appropriate**

6. Opportunity to victim/representative: The prosecution shall afford the victim or his representative the opportunity to make representations to the prosecutor regarding

a. the content of the agreement; and
b. the inclusion in the agreement of a compensation or restitution order—**S. 270(6) ACJA**

7. Requirements of the agreement: An agreement between the parties contemplated in subsection (3) of this section shall be reduced to writing and shall:

a. state that, before conclusion of the agreement, the defendant has been informed:
   i. that he has a right to remain silent,
   ii. of the consequences of not remaining silent, and
   iii. that he is not obliged to make any confession or admission that could be used in evidence against him;
b. state fully, the terms of the agreement and any admission made;
c. be signed by the prosecutor, the defendant, the legal practitioner and the interpreter, as the case may be; and
d. a copy of the agreement forwarded to the Attorney-General of the Federation---**S. 270(7) ACJA**

8. Judge not to participate: The presiding judge or magistrate before whom the criminal proceedings are pending shall not participate in the discussion contemplated in subsection (3) of this section---**S. 270(8) ACJA**

9. Inform the court of the agreement: Where a plea agreement is reached by the prosecution and the defence, the prosecutor shall inform the court that the parties have reached an agreement and the presiding judge or magistrate shall then inquire from the defendant to confirm the terms of the agreement---**S. 270(9) ACJA**

10. Ascertainment from the defendant: The presiding judge or magistrate shall ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may where:

a. he is satisfied that the defendant is guilty of the offence to which he has pleaded guilty, convict the defendant on his plea of guilty to that offence, and shall award the compensation to the victim in accordance with the term of the agreement which shall be delivered by the court in accordance with section 308 of this Act; or
b. he is for any reason of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant's right referred to in

subsection (6) of this section, he shall record a plea of not guilty in respect of such charge and order that the trial proceeds---**S. 270(10) ACJA**

11. Sentence consideration: Where a defendant has been convicted under subsection (9) (a), the presiding judge or magistrate shall consider the sentence as agreed upon and where he is:

a. satisfied that such sentence is an appropriate sentence, impose the sentence;
b. of the view that he would have imposed a lesser sentence than the sentence agreed, impose the lesser sentence; or
c. of the view that the offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to be appropriate---**S. 270(11) ACJA**

12. Order of forfeiture: The presiding Judge or Magistrate shall make an order that any money, asset or property agreed to be forfeited under the plea bargain shall be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible---**S. 270(12) ACJA**

13. Ensure transfer of forfeited properties: Notwithstanding the provisions of the Sheriff and Civil Process Act, the prosecutor shall take reasonable steps to ensure that any money, asset or property agreed to be forfeited or returned by the offender under a plea bargain are transferred to or vested in the victim, his representative or other person lawfully entitled to it---**S. 270(13) ACJA**

14. Obstruction of transfer of property under the Act: Any person who, wilfully and without just cause, obstructs or impedes the vesting or transfer of any money, asset or property under this Act, commits an offence and is liable on conviction to imprisonment for 7 years without an option of fine----**S. 270(14) ACJA**

15. Options open to the defendant upon information of heavier sentence: Where the defendant has been informed of the heavier sentence as contemplated in subsection (11) (c) of this section, the defendant may:

a. 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; or
b. withdraw from his plea agreement, in which event the trial shall proceed de novo before another presiding judge or magistrate, as the case may be---**S. 270(15) ACJA**

16. References to the agreement: Where a trial proceeds as contemplated under subsection (15) (a) or de novo before another presiding judge or magistrate as contemplated in subsection (15) (b):

a. no references shall be made to the agreement;

b. no admission contained therein or statements relating thereto shall be admissible against the defendant; and
c. the prosecutor and the defendant may not enter into a similar plea and sentence agreement---**S. 270(16) ACJA**

17. Bar plea: Where a person is convicted and sentenced under the provisions of subsection (1) of this section, he shall not be charged or tried again on the same facts for the greater offence earlier charged to which he had pleaded to a lesser offence---**S. 270(17) ACJA**

18. Finality of judgment: The judgment of the court contemplated in subsection 10 (a) of this section shall be final and no appeal shall lie in any court against such judgment, except where fraud is alleged---**S. 270(18) ACJA**

TRIAL 2

TRIAL PREPARATION AND EVIDENCE

1. DEVELOP A CASE THEORY/TRIAL PLAN

(a) Case Theory

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 judgment 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.**

Ask yourself the following questions, it will aid in your summary

- Who is the person accused?
- 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?

(b) Trial plan

It is a graphic statement on how to actualize the case theory. It deals with how to actualise your case theory. After development of a line of argument, trial plan is concerned with 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. An 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 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	Ingredients of the offence	Evidence, documentary, witnesses	Penalty	Prayer	Remark

Charge	Law	Ingredients of the offence	Defence/preliminary objection	Evidence	Penalty	Prayer	Remark

Comment [d75]: The reason for putting the name of a witness is that
- The witness name will be in the proof of evidence
- Since he is a government official, a subpoena ad TESTIFICANDUM will be issued.

2. PREPARE AND DELIVER AN OPENING ADDRESS (STATEMENT)

Opening address/statement is provided for in the law but in practice it is hardly done. It is a means of getting the judge to understand the case you are about to present. Usually short summary of the case of the prosecution or the defence will present based on the trial plan.

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---S. 268 ACJL**

Comment [v76]: MCQ

Comment [C77]: After a plea of not guilty has been taken or been entered for the defendant and at the conclusion of the Case Management Hearing, the prosecutor may open the case against the defendant stating in brief, by what evidence he expects to prove the guilt of the defendant---- ORDER 8 RULE 1 FCT PD 2017

The opening statement is usually by the prosecution counsel and the defendant counsel after the close of prosecution's case--**Ss. 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 (reference to the charge)
- The evidence available to prove this,
- The witness intended to be called and whether and when they would be available,
- Preparedness to go on with the case; and
- Where possible, the approximate time it would take to complete the case for the prosecution.

Opening address for the Prosecution

My Lord, the accused is charged with the offences of theft, robbery and criminal conspiracy contrary to Section 296 Penal Code, Section 286 Penal Code and Section 97(1) Penal Code respectively.

The Prosecution will show that on the 13th day of December 2018, the accused conspired to dispossess the victim, Mrs Ene Agbo of N20, 000 by forcefully taking the money from her, when she boarded a bike belonging to Burago from the bank to Law School.

The Prosecution will present Mrs Ene Agbo as a witness and tender the bike used in the robbery as evidence. In addition, the bank teller and account balance of Mrs Agbo showing the withdrawal of N20, 000 will be tendered as evidence for the Prosecution as well as the testimony of the bank clerk, Mr James Ado who served Mrs Agbo on the day she withdrew the money.

3. PREPARE A WITNESS FOR TRIAL

Preparing a witness for trial is regarded as the pre-trial interview. Pre trial interview is never to be conducted in the court premises.

Purposes of pre trial interview are:----ARMS

- Acquainted with the method of presenting case
- Recollection of what to say
- Maintain consistency in exam in chief, cross examination and re examination.
- Story concise and direct to the point

What is entailed in preparing a witness for trial is different from client 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.

4. EXPLAIN AND DISCUSS THE BURDEN AND STANDARD OF PROOF; BASIS FOR ADMISSIBILITY OF EVIDENCE IN CRIMINAL TRIALS

(a) Burden of proof

When discussing the burden of proof in criminal litigation, S. 36(5) CFRN, on presumption of innocence, must be made reference to---**IBEH V STATE**

S. 36(5) CFRN is the foundation of the burden of proof in criminal litigation/trial. The legal burden of proof of guilt is static and it always rests on the prosecution---**Ss. 131 and 135 EA 2011**

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---**S. 36(11) CFRN, ABIDOYE V FRN, S. 180 EA 2011**

How to discharge burden of proof

- Oral evidence – **Ss.125, 126 EA 2011**
- Real evidence – **S. 127 EA 2011**
- Direct evidence
- Documentary evidence – **Ss. 86, 88 & 125, 258 EA 2011**
- Circumstantial evidence– cogent, unequivocal, overwhelming and must lead to one conclusion
- Confessional statement

In discharging the burden of proof on the prosecution, the prosecution has power to determine how many witnesses to call, as it is the duty of the prosecution to determine the number of witnesses to prove a case---**OSUAGWU V. THE STATE**. No particular number is generally required---**S. 200 EA 2011, ODULAMI V. NIGERIAN NAVY**, as only credible witnesses are needed to prove the ingredients of the offence and credibility of evidence does not depend on the number of witnesses called---**EHIMIYEIN V. THE STATE**

Comment [C78]: and order in which to call them--**S. 210 EA 2011**

He is not bound to call all the witnesses listed on the proof of evidence---**EYO V. THE STATE, ADAJE V. STATE.** However, the defence may through the court summon the witness listed on the proof of evidence not called by the prosecution (they become the witness of the defence)---**ADAJE V. THE STATE, IDIOK V. THE STATE**

Thus, the prosecution has no duty to call a host of witnesses---**S. 200 EA 2011, ADAJE V STATE; STATE V AJIE** except in specific cases under Ss. 201,202, 203,204 EA 2011

1. Treason and treasonable offences (at least two witnesses required, but does not apply to the overt act of killing the President)---**S. 201 EA 2011**

2. Perjury (evidence of witness is to be corroborated)---**S. 202 EA 2011**

3. Speed limit offence (at least two witnesses required, but not when it involves the evidence of a duly authorised officer of the relevant authority, who was at the time of the commission of the offence, operating any mechanical, electronic or any other device for recording of speed of a moving vehicle, the record of such device being additionally tendered in evidence against the defendant)---**S. 203 EA 2011**

4. Sedition (evidence of witness is required to be corroborated)---**S. 204 EA 2011**

(b) Standard of proof

Under S. 135(1) Evidence Act 2011, 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.

Evidential burden which can be on the accused is to be discharged on the balance of probabilities. Section 137 Evidence Act 2011 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.

(c) Basis for admissibility of evidence in criminal trials

1. Admissibility of computer generated evidence

In any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that certain conditions are satisfied in relation to the statement and computer in question---**S. 84(1) EA 2011**

Comment [C79]: Thus, the number of witnesses is immaterial as long as there is proof---**ALONGE V IGP**

Comment [C80]: . e.g. treason, perjury, road traffic offences, seditious words

Comment [C81]:
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).**

Comment [C82]:
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.

Comment [C83]: 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.

Comment [C84]:
Circumstances of evidential burden
- Plea of intoxication and insanity--**S. 139(3)(c) EA**
- Defence of alibi
- Plea of autre fois acquit and autre fois convict
- Facts within the knowledge of the accused---**S. 140 EA**
- Exceptions, exemptions or qualifications contained in statutes---**S. 141 EA**
- Burden imposed by statute.

Conditions to be satisfied

Four conditions must be satisfied. It must be proved that:

a. the statement sought to be tendered was produced by the computer during a period when it was in regular use, to store or process information for the purpose of any activity regularly carried on over that period;
b. during that period of regular use, information of the kind contained in the document or statement was supplied to the computer;
c. the computer was operating properly during that period of regular use or if not, the improper working of the computer at any time did not affect the production of the document or the accuracy of its contents; and
d. the information contained in the statement was supplied to the computer in the ordinary course of its normal use. See **S. 84 (2) EA 2011**

Furthermore, where such a statement is sought to be tendered in evidence, **a certificate**

a. identifying the document containing the statement and describing the manner in which it was produced; **or**
b. giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; **or**
c. dealing with any of the matters to which the conditions mentioned above relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be, **shall be evidence of the matter stated in the certificate, and it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it**---**S. 84 (4) EA 2011**

The mandatory conditions stipulated in S. 84 (2)(4) EA 2011 simply seeks to ensure that what is presented before the court is prima facie reliable and worthy to be accepted as evidence. In other words, that the statement claimed to have been produced from the computer reflects 'completely and totally', what was fed into and contained in the computer. It is to safeguard the source and authenticity of the electronically generated evidence sought to be used in evidence---**KUBOR V. DICKSON**; **AKEREDOLU & ANOR V. MIMIKO & ORS**

NB: Documents generated at internet is not a public document

Tape Recording

Necessary foundation

- Maker to testify except dead, not found etc.
- Tape recording authentic and original;

- Voice in tape is that of the accused
- Tape always in custody of maker/witness and no possibility/ opportunity of tampering
  See **FED POLY EDE V OYEBANJI**

2. 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) EA 2011** 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:

Comment [v85]: By production of a certificate of conviction. Read Sections 248-250 Evidence Act 2011 for ways of proving previous conviction

- 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

3. Evidence of children

A child is any person who has not attained the age of 14 years---**S. 209(1) EA 2011, 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:

- He understands the questions put to him; or can give rational answers to those questions – **S. 175(1) EA 2011**
- He possesses sufficient intelligence to justify the reception of his evidence – **S. 209(1) EA 2011**
- He understands the duty of speaking the truth – **S. 209(1) EA 2011**

Comment [C86]: 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) EA 2011**

However, a young person (who has attained the age of 14 years) shall subject to sections 208 &175 of the Evidence Act 2011, give sworn evidence at all times---**S. 209(2) EA 2011**

4. Evidence of an accomplice and tainted witness

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

Comment [d87]: An accomplice includes an accessory after the fact.

offence or a receiver of stolen goods – **S. 198(2) EA 2011.** It is not compulsory for an accomplice to be a co-accused as the AG has 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 does not require corroboration. **S. 198(1) EA 2011** 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 (warn) itself that it is unsafe to convict any person upon such evidence--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 of the single witness.

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.**

5. Evidence of 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 EA 2011**. 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 evidence 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.**

5. EXPLAIN AND DISCUSS COMPETENCE AND COMPELLABILITY OF WITNESSES, THE TYPES, ISSUE AND USE OF SUBPOENA AND WITNESS SUMMONS

(a) 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

Comment [d88]: An accomplice is a person that participated in the crime but is not charged with the accused person, however, a co-accused person is one charged with the defendant in the same charge sheet.

Comment [d89]: Warning required and not corroboration.

reason of tender years, extreme old age, disease whether of the body or mind, any other cause of the same kind – **S. 175(1) EA 2011**

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) EA 2011.** 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) EA 2011**

Exceptions to general rule of competence and compellability

There is a difference between competency and compellability. All compellable witnesses are competent witnesses but not all competent witnesses are compellable. Some category of persons cannot be compellable though competent.

- Accused person is only competent witness for his own defence and cannot be compelled as an accused person can only testify as a witness only upon his own application---**S. 180(a) EA 2011, 36(11) CFRN** 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 – **S. 180(b) EA 2011**
- The President, Vice President, Governor and Deputy Governor are competent but not compellable---**S. 308 CFRN**
- Section 1(1) DIPA covers all diplomats, their official or domestic staff who are not Nigerians, and members of the families of official staff. Diplomats. Note that they can waive this right ---**ZABUSKY V ISRAELI AIRCARFT IND; ISHOLA – NOAH V BRITISH HIGH COMMISSIONER.** Does this affect aliens? The Act does not cover aliens – they are both competent and compellable. If they cannot speak the language of the court, the court will provide an interpreter. NB: The judge cannot turn himself to an interpreter – **ELEBANJO V TIJANI**
- 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 2011:
    - Sexual offences
    - Offences against property of the spouse
    - Offences involving violence against the spouse.

NB: Counsel is a competent witness by virtue of section 175 EA 2011, 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.**

NB: Other witnesses ought to be out of court and out of hearing---**Ss. 212 EA 2011 and 238(1) ACJL.** 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.

Comment [C90]: 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) EA 2011.**

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.

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. Does a competent witness lose his competence because he listened to the testimony or part of other witnesses?** No, he doesn't, but the weight to be attached is reduced---**FALAJU V. AMOSU; EKERETE V UDO**

(b) Types, issue and use of subpoena and witness summons

Comment [C91]: Means of compelling witnesses

Types and use of subpoena

- Subpoena decus tecum: to tender only document. If such person causes such document to be produced, the court may dispense with his personal attendance--**S. 218 EA 2011**
- Subpoena ad testificandum: This is for the purpose of compelling a witness to attend court and give evidence.
- Subpoena decus tecum et ad testificandum: this subpoena is both for testifying and tendering document if any and such witness can be cross-examined

Procedure

Comment [v92]: 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

Compare with production warrant.

- Application is made by the party who requires it to the Registrar upon payment of the requisite fees.
- It is also served on the witness personally.
- Failure to obey a subpoena would make the court to issue warrant for the arrest of the person whose attendance is so required unless the person has applied to have same set aside.
- 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.**

Issue of subpoena and witness summons

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.

Comment [C93]: SECTION 177 ACJL, witness summons can be used by any court of criminal jurisdiction. In practice used more by magistrate courts. Witness summons is served on the party aware of the case and is obliged to give evidence.

Section 188 of ACJL provides that attendance of a witness for either of the party may be summoned by a writ of subpoena.

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---**ODOFIN BELLO V STATE; RULE 37 RPC**

TRIAL 3

EXAMINATION OF WITNESS: CASE FOR THE PROSECUTION

1. EXPLAIN WHAT EXAMINATION IN CHIEF, CROSS-EXAMINATION AND RE-EXAMINATION MEAN AND THE PURPOSE THEY SERVE IN CRIMINAL PROCEEDINGS

(a) 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---**S. 214(1) EA 2011**

Purpose of EIC

This 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. Questions are to be limited to relevant facts in issue---**SADUA V STATE**

Objectionable Questions

- Leading questions shall not be asked in examination in chief
- Questions tending to give hearsay evidence
- Questions eliciting evidence of opinion.
- Questions eliciting oral evidence from the contents of a document.
- Also irrelevant questions should not be asked.

The general rule is that leading questions are not allowed in examination in chief of a witness---**S. 221(2) EA 2011**. However, there are exceptions to this principle:--**CUPIS**

- **Cross-examination: S. 221(4) EA 2011**
- **Undisputed facts:** Questions relating to undisputed facts
- **Permitted by the court**
- **Introductory matters:** When it relates to introductory matters
- **Sufficiently proved facts:** Facts which have already been sufficiently proved---**S. 221(3) EA 2011**

Effective questioning technique

Open Question: It is better used in examination in chief because it allows the witness tell the story without undue interruption.

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

Comment [C94]: Examination of a witness could be examination-in-chief, cross-examination, and re-examination – Ss. 214 and 215 Evidence Act.

Comment [C95]: Both prosecution and defence can examine in chief.

Comment [C96]: Leading questions are questions that suggest the answers which an examiner wishes to receive as provided for in Section 221(1) EA 2011.
Inherent in leading questions is hearsay evidence, as counsel is not the one that witnessed the event and as such not the one to be cross-examined. Thus, counsel should not tell the story to the court but should allow the witness to do so.

Comment [C97]: Note that where an objection is not raised to a leading question and same is answered by the witness, the CT can act on it: Garba v R

Comment [C98]:
- Can you please tell this Honourable Court your name?
- 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?

witness will give to the question asked. It is used in Examination in chief to keep the witness in check and for direct, succinct, specific information.

Comment [C99]: Are,do,did, were you? It is best used in cross examination.

(b) Cross Examination

Cross-examination involves questions put to the witness by the other party after examination-in-chief – **S. 214(2) EA 2011.** While examination-in-chief is compulsory, cross-examination is not as it is used only if the other party desires to – **S. 215(1) EA 2011.** The right of the accused person to cross examine is provided for under **section 36(6)(d) CFRN.** They can choose to waive such constitutional right, but the right cannot be denied.

If the counsel on the opposing side has no real issues to prove by the questions, then he should refrain from asking them---**KPOKPO V UKO**. Where a witness in examination – in – chief is silent on a material point and did not say anything against the interest of the opponent, cross examination would not be necessary- **KPOKPO V UKO**

Closed questions are usually used in cross-examination. Leading questions may also be asked – **S. 221(4) EA 2011** Questions need not be confined to facts raised in exam-in-chief---**S. 215(2) EA 2011** provided they are relevant to the facts. However, questions that will not serve the purpose of cross examination will not be allowed.

Objectionable questions: In cross-examination, even though it is alleged that the sky is your limit, there are objectionable questions:

Comment [C100]: The sky is not the limit of the cross examiner as he needs to put relevant questions to the witness.

- 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)- **S. 224(1)EA 2011**
- Questions are not to be asked without reasonable grounds—**S. 225 EA 2011.**
- Indecent and scandalous questions--**S. 227 EA 2011**
- Questions intended to insult or annoy--**S.228 EA 2011.**
- Questions that are needlessly offensive---**S. 228 EA 2011.**

Comment [d101]: Read with section 223(c) EA. "when a witness is cross-examined, he may in addition to the question referred to in preceding sections of this part be asked any question which tend to...shake his credit by injuring his character"

Comment [C102]: ***Section 224(2) (b)*** such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies; and
Section 224(2) (c) *provides that* such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

Comment [v103]: **Section 226 EA 2011:** the judge is empowered to report a counsel who asks baseless or questions adjudged to be without reasonable cause to the Attorney General of the Federation or any other authority to which the legal practitioner is subject.

Comment [C104]:
Where a question is **indecent** or **scandalous** the court may **disallow** it--- **S. 227 EA 2011**

Order of cross-examination

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 EA 2011**

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 EA 2011**

Purpose of CE

There must be a purpose for cross-examination. The purpose of cross-examination could be:--- **Ss. 223 and 233 EA 2011, ONUOHA V STATE; OKORO V STATE; AKINFE V STATE**

- To discredit the witness, to let the court see that the witness is not a witness of truth.
- To establish your own case. Thus, documents can be tendered through the witness if the document is relevant- **AWOPEJU V. STATE**
- 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

Effect of Failure to Cross Examine

Failure to cross examine a witness on a vital point he raised during examination – in – chief, may be regarded by the court as an admission of such issue before it as the truth---**OFORLETE V. STATE.** It will be taken that the defendant has acquiesced to what has been said.

Techniques for Cross Examination

- Probing technique: pin down the witness to get a direct answer
- Insinuation
- Confrontation

Ten Commandments for Cross Examination

1. Be brief, short; do not ask more than one question at a time.
2. Avoid open questions, rather use closed questions.
3. Review the questions.
4. Do not ask question to which you do not know the answer.
5. Listen to the answer given by the witness.
6. When you elicit the required answer, stop probing.
7. Do not be stereotyped, change your style.
8. Do not give him opportunity to repair his testimony.
9. Do not give him opportunity to explain himself.
10. Do not ask too many questions.

Other Tips for Cross Examination

- Maintain eye contact with the witness always.
- Put previous inconsistent statement made by him to him if you think there are material contradictions.
- Make use of leading questions mostly
- Avoid the use of open questions, rather make use of closed questions as well as direct questions (questions producing Yes or No answers should be used)
- Aim at establishing facts
- Know when to stop and don't overemphasise a point that has been scored already
- Avoid getting into arguments with the witness
- Insist on an answer to a question asked
- Do not interrupt the witness
- Structure your question in a way that the witness cannot pretend not to understand
- Maintain eye contact with the witness (make sure the witness cannot make eye contact with the lawyer who called him)
- Do not hesitate to expose inconsistencies in his testimony
- Be gentle, polite, modest and kind to the witness
- Avoid asking questions you do not know the answer
- Be adroit, dynamic and flexible
- Ask as few questions as possible. Too many questions may help repair damage already done
- Locate a witness weak point and exploit it

Facts to know about cross-examination

- Have a goal in mind before deciding to cross examine, listen to the examination in chief of the witness
- It is not compulsory to cross-examine
- Do not base your decision to cross-examine on going on a fishing expedition i.e. with a view to finding something you can hold unto
- Failure to cross-examine on adverse and material evidence could be fatal to your case.

Inconsistency rule and statement made by an accused person

- Where a witness made a statement before trial and the statement is found to be inconsistent with his testimony, his testimony should be seen as unreliable and the previous statement should not be acted upon by the court. However, this does not apply where the accused gives evidence

(c) Re-Examination

This is the last stage of examination of a witness. It takes place where necessary after cross examination. It is conducted by the **party who called** the witness---**S. 214(3) EA 2011**

Purpose of RE

- The aim of re-examination is **to clear ambiguities, inconsistencies, doubts or haziness** that arises out of cross-examination

NB: Where there is **no cross-examination**, there cannot be **re-examination**. It is not an opportunity for the re-examiner to elicit evidence, which he failed to elicit in his examination in chief. **Thus, no new matter** is entertained in re-examination unless **with leave of court and** where **a new matter in re-examination is introduced**, the adverse party is entitled to cross – examine on that fresh issue.-**S. 215 (3) EA 2011**

Denial of a right to re-examine a witness is a denial of a right to fair hearing - **POLICE V. NWABUEZE**. Leading questions shall not be asked in re-examination---**S. 221 (2) EA 2011**

2. EXPLAIN THE PROCEDURE FOR REFRESHING THE MEMORY OF A WITNESS AND DEALING WITH A HOSTLE WITNESS

(a) Refreshing Memory

Actions or matters most times do not commence as soon as the incident leading to the action happened and a witness may not remember clearly the event that happened.

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 2011. Note however that the witness cannot be reading from it.**

Thus, process of refreshing memory may take place **at any stage of examination** according to the opening of section 239(1). However, it is only relevant during examination-in-chief and not relevant in cross-examination so also not allowed in re-examination.

Any such writing **shall be produced and shown to the adverse party (**if he requires it--and such party may, if he pleases, cross-examine the witness upon the writing) -**S. 241 EA 2011**

Comment [C105]: Contradiction of a witness statement by previous evidence: **s232 EA 2011**. The statement made earlier by the witness in writing may be brought to his attention for the purpose of contradicting him

Comment [C106]: 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)..

Comment [C107]: 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).

Procedure for refreshing the memory of the witness--LAS

- **Leave of court:** Seek the leave of the court by way of oral application to produce the document/writing required.
- **Ask the witness the following questions**: "Who made this statement?" "When did you make this statement?"
- **Show the document to the adverse party**: The document is not left with the witness. The other party will be shown the document as he may cross-examine on it.

(b) Hostile witness

A hostile witness is one who in the opinion of the court, is biased against the party who calls him and is unwilling to say the truth or who supports the other party—**S. 230 EA 2011; ESAN V STATE, SHOFOLAHAN V STATE.** This is a witness who bears hostile animus to the party calling him and is unwilling to testify or tell the truth.

The general rule is that a person calling a witness is not allowed to discredit him--**S. 230 EA 2011; BABATUNDE V STATE.** However, when the witness **testifies against** the party who called him and is **unwilling to tell the truth** or he is **evasive** in the answers he gives, then he may be declared hostile witness and then discredited.

Comment [C108]: **NB** -the mere fact that witness gives evidence not FAVOURABLE to the party calling him does not **prima facie** make him a hostile witness. See **Babatunde v State.** A party calling the witness is deemed to be holding out the witness as a witness of truth. Therefore, a party calling a witness cannot discredit him by general evidence of bad character except where the court declares him hostile: **s230 EA 2011.**

Procedure for declaring a witness hostile---ASC

- **Apply to court:** The party calling the witness will have to **apply to the Court** to declare the witness a **hostile witness.**
- **Satisfaction of the court** and the court satisfying itself, can declare a witness hostile. The court will look at the surrounding circumstances before declaring the witness as hostile
- **Cross-examination:** He may then be cross examined---**GAJI V STATE, ILUONU V CHIEKWU**

The effect of the court declaring a witness hostile is as follows

a. He can be cross-examined
b. The counsel that called him can ask him leading questions
c. He can be discredited using previous inconsistent statements made by him. (leave of court)- **S. 231 EA 2011**

3. IDENTIFY THE LIMITS OF THE JUDGE'S POWER TO PUT QUESTIONS TO A WITNESS

The general rule is that the judge is an unbiased umpire and therefore not allowed to cross examine or examine any witness called by the parties. However:

- The Court has the power to put questions to any witness before it. **The purpose is to clear ambiguities or clarifying points raised in evidence** –**S. 246(1) EA 2011**
- The **Judge** or **magistrate** is allowed under the law to put questions to witnesses in order to reach a just delivery of the case--**Ss. 197 ACJL, 200 CPL, 237 CPCL**

The aim is to **clear up ambiguities** or a **point left obscure in his testimony** for the determination of the case justly. The questions asked must be relevant under the Act and must be duly proved- **S. 246 (2) EA 2011**

A counsel **cannot raise objection** to the court's power to call/recall witnesses and to put questions to them-**ONUORAH V THE STATE.** However, the Court is not to descend into the arena or ask damaging questions to the witnesses or an accused person- **OKODUWA V STATE**

Note that the Court cannot **compel** a witness who is **not compellable** to answer its questions--**AKINFE V THE STATE, TINUBU V IMB SECURITIES**

Limitations to the power to put questions to witnesses by the court

- The question is to be based upon facts declared by the Evidence Act to be relevant and duly proved--**S. 246(2) EA 2011**
- 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—**S. 246(3) EA 2011**
- A judge shall not ask question that is intended to injure the character of the witness or considered irrelevant. Thus he must adhere to the rules of Evidence.

Power of court to call or recall a witness- S. 200 CPL; S. 237 (1) CPCL; S. 197 ACJL; S. 256 ACJA

- The court has powers to call any witness whether or not such a witness has been called by either party. **Note that** this power is **only available in criminal matters- BELLGAM V BELLGAM**
- This power extends to **recalling a witness after the close of the defence** on matters unforeseen which arose during the case for the defence-**ONUOHA V STATE**

Comment [C109]: 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.

- This power by no means allows a judge to descend to the arena of the conflict. 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**
- This power to **call or recall** witnesses may be exercised **at any stage** of the proceedings **before verdict/conviction/judgment**-**USO V. POLICE**
- The court may even call a witness not earlier called by either party for the just determination of the case.

NB: A party to proceedings may have a crucial need to recall a witness for further examination. He shall apply to the court and support his application with facts as to why and what he intends to put to the witness- **ALLY V STATE**

4. EXPLAIN THE ADMISSIBILITY OF DOCUMENTARY EVIDENCE IN CRIMINAL TRIALS—CONFESSIONAL STATEMENTS, EXPERT EVIDENCE AND POLICE REPORT

There are two types of documentary evidence – primary and secondary evidence. Documents must be relevant before it can be admissible. 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.

A document **not before the Court** or **admitted in evidence** cannot be used to contradict a witness during **cross-examination.** The documents here are **Confessional Statement; Expert Evidence and Police Report**. The admissibility of the documents usually tendered in criminal trials is explained below.

(a) Confessional Statement

- Confessional statement is an admission by the accused that he committed the alleged offence---**S. 28 EA 2011.** The confessional statement of the accused is only admissible if it is voluntary – **S. 29 EA 2011. NB:**
- 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. **Proper foundation** must be laid for its admissibility **through the Investigating Police Officer (IPO) – normally by stating that the accused was cautioned before he wrote the confessional statement,**

Comment [C110]: The basis for the admissibility **of any document** tendered is if it is **relevant** to the facts in issue or facts relevant to facts in issue and **admissible**: **Section 1& 2 of the Evidence Act 2011.**

Comment [C111]: Section 29(1) provides: In any proceeding, a confession 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 in pursuance of this section.

•Section 29(2): If, in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained —
(a) by oppression of the person who made it; or
(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.

Comment [C112]: •Section 29(3): In any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in either subsection (2) (a) or *(b)* of this section.

Comment [C113]: •Where confessional statement is made by co-accused in the presence of others, it shall not be admissible against them unless they adopt the said statement by word or conduct: **s29(4) EA 2011**
•**Section 29(5) EA 2011:** In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture.

Comment [d114]: As the IPO in this case, what did you do in respect of the investigation of this matter?

Comment [d115]: How the IPO obtained the EVIDENCE, how will the IPO be able to recognize the video recording of the confessional statement.

that the accused wrote the statement voluntarily and signed it; the IPO signed the statement and the statement was countersigned by a superior police officer.

- The statement must be tendered in whole and not after removing any part favourable to the accused person---**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---**IKE V STATE**

(b) Expert Evidence

The general rule is that the opinion of a person is not admissible in Court except as provided in the Evidence Act---**S. 67 EA 2011. Therefore**, evidence of opinion may be admissible if it falls within the exceptions created under **Ss. 68 –75 EA 2011.** One of the exceptions is in respect of **expert evidence- S. 68 EA 2011.** For his opinion to be admissible, he must possess skill and qualification to be so referred--**ESSIEN V R.** The court may however reject expert evidence in some instances---**ARISE V STATE, ALADU V STATE**.

Note:

- For it to be admissible, **proper foundation** must be laid to show the **expert's qualification, skill and experience---AZU V THE STATE**
- Also the expert can put in his **Expert Report** without being called in Court.

Cross examination of an expert witness

- Two aims must be borne in mind: to discredit him and expose him as unreliable witness to his supposed field of expertise
- You need to present alternative conclusion or inference that can be drawn from the set of facts upon which his opinion is based
- He can also be tackled on the ground that he lacks full understanding of the facts which he worked on
- To be able to do this, you need to achieve a working knowledge of that practice field by consulting other experts

Comment [C116]: Expert evidence is mandatory to prove some offences. See Ishola v State, Stevenson v Police: unlawful possession of hard drugs. However, in **Chukwu v FRN**: CT held that where an accused confesses guilt, there may be no need to obtain expert evidence.

Comment [C117]: 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.

(c) Police Report (case diary)

The general rule is that the Police Report is not admissible in evidence against an accused and the court can call for it for inspection of the content--**S. 122(1) CPCL; GAJI V STATE** However, it is admissible if the IPO's attendance cannot be procured without delay and:

1. the defence did **not object** to its admissibility
2. the Court consents - **S. 49 EA 2011**

Note that the IPO may be allowed to use the Report to refresh his memory.

Comment [C118]: This is because it has other cases in the report which are not related to the case at hand. The case diary is a day to day diary which keeps record of police daily activities.

5. EXPLAIN THE ADMISSIBILITY OF HEARSAY EVIDENCE

Hearsay means a statement of facts **oral or written** made otherwise than by **a witness in** a proceeding or which is tendered in evidence- **S. 37 EA 2011; IJIOFOR V THE STATE; OKORO V STATE.**

Comment [C119]: **S. 37 EA**:
hearsay evidence means a statement-
(a) oral or written made otherwise than by a witness in a proceeding; or
(b) contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it.

Generally, hearsay evidence is not admissible--**S. 38 EA 2011**. However, there are exceptions to the rule against hearsay evidence. They include:

1. **Statements by persons who cannot be called as witnesses: S. 39 2011**
   a. a person who is dead;
   b. who cannot be found;
   c. who has become incapable of giving evidence, or
   d. whose attendance cannot be procured without unreasonable delay or expense.
2. **Statements by Deceased Persons**
   1. Dying declaration S. 40
   2. Statement made in the course of business S. 41
   3. Statement against interest of maker with special knowledge S. 42
   4. Statements of opinion as to public right or custom & matter of general interest S. 43
   5. Statement relating to existence of relationship S. 44
   6. Declarations by testator S. 45
3. **Evidence of a witness in former proceedings- S. 46 (Note the proviso)**
4. **Admission of written statements** by **investigation Police Officers** in certain cases S. 49
5. **Statements made in Special circumstances**:
   a. Entries in books of accounts **S. 51**
   b. Entry in public records made in performance of duty **S. 52**
   c. Statements in maps, charts and plans **S. 53**

d. Statements as to fact of public nature contained in certain Acts or Notifications S. 54
e. Certificates of specified Government Officers S. 55
f. Certificates of Central Bank Officers S. 56
g. Evidence of family or communal tradition in Land cases S. 66
h. Statements in public documents
i. Statements in res gestae**.**

6. **Also affidavit evidence is an exception to hearsay evidence.**
7. **Admissibility of documents under section 83 EA**

6. IDENTIFY AND EXPLAIN THE ETHICAL ISSUES IN EXAMINATION OF WITNESSES

- To be fair, candid and impartial- **RULE 32 RPC**
- Not to seek for conviction at all cost- **ENAHORO V STATE**
- Not to withhold any material evidence favourable to the accused person--**RULE 32, 37 (4)-(6) RPC**
- He must not ask scandalous questions just to annoy the witness-**Ss. 227 and 228 EA 2011.**

NB: Witnesses entitlement to payment for reasonable expenses---**Ss. 191, 192, 193 ACJL, 251, 252, 253 254 ACJA**

TRIAL 4

PRESENTATION OF THE CASE FOR THE DEFENCE

1. EXPLAIN THE OPTIONS AVAILABLE TO THE ACCUSED AT THE CLOSE OF THE CASE FOR THE PROSECUTION

At the end of the prosecution's case, the defence would be called upon to either:

1. Make a no case submission
2. Rest his case on that of the prosecution
3. Go ahead to enter his defence by calling his witnesses

NB: These options are independent and the exercise of one is not dependent on having exercised the other.

Comment [C120]:
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's case, Court will consider whether a prima facie case has been made by the prosecution to necessitate the accused person to open his case. **Prima facie case is when the prosecution has been able to prove all the elements of the alleged offence against the accused and such alleged offence has been properly linked to the accused and no other person, then the evidence adduced will mean that a prima facie case has been established.**

(a) No case submission/ruling

This can be made by **the defence** or the **Court** on its own volition at the close of the prosecution's case where a **prima facie case** has not been established against the accused---**DABOH V. THE STATE; IBEZIAKO V. COP; MAIDUGURI V. R; OKORO V. THE STATE.**

It may be made in respect of **one count of offence** or the **entire charge sheet**. The court must make a ruling on each count of offence separately--**AJANI V. R**

Purpose of No Case Submission

- To save the accused from entering needless defence and prove his innocence where prosecution has failed.
- To save the time of the court where prosecution has failed.
- To save cost of needless defence--**EMEDO V THE STATE**

When will a no case submission be made?

- **Where no prima facie case has been made against the accused**: 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 enough to make the court call on the accused person to enter a defence---**AKINYEMI V STATE; OR**
- Where prosecution's case has been so grossly discredited on cross-examination--**IBEZIAKO V COP, UBANATU V COP, EMEDO V STATE; OR**
- 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.**

Effect of no case submission

The effect depends on whether it is rightly upheld or wrongly overruled:

- **Where it is rightly upheld**: the accused will be discharged and need not enter his defence. The **effect of such a discharge is an acquittal**. Thus, the accused person can successfully plead autre fois acquit---**NWALI V IGP; IGP V MARKE; MOHAMMED V STATE**

Comment [C121]: When it is made by the court, it is called **a no case ruling.**

Comment [C122]: **GROUNDS (CONDITIONS) FOR NO CASE SUBMISSION (ANY OF THESE GROUNDS SUFFICES)**

Take notice that 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. Therefore, the conditions **are not cumulative**- Existence of ANY of the conditions is sufficient.

Comment [C123]: **Note that** the prosecution has the right to reply to the no case submission made by the defendant or his counsel. See **section 303 ACJA.**

Comment [C124]: **Note** however that in **CPCL states,** it depends on the Court.
- **High Court**- it is discharge on the merit and therefore an acquittal. **S. 191 (3) & (5) CPCL.**
- **Magistrate Court- a discharge but not on the merits**. See **S159 (3) & 169 (3) CPCL.** A discharge in the magistrates court **shall not be a bar to further proceedings against the accused on the same charge**. A plea of **autrefois acquit** based on it will necessarily fail.

- **Where it is rightly overruled:** Where no case is rightly overruled, the accused is called upon to enter his defence.
- **Where it is wrongly overruled:** Where no case submission is wrongly overruled (supposed to uphold it), the defence has the choice to either **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---**MUMUNI V STATE; OKORO V STATE; DABOH V THE STATE**

Comment [C125]: a.Any subsequent evidence adduced before the court is proper and material to the case- **Chuka v The State.**
b.Where such evidence implicates an accused person, he can be safely convicted on it.
c.The **CONVICTION** above will be valid irrespective of the accused taking further part in the proceedings - **Chuka v The State; Okoro v The state.**
d.Under the **CPCL:** in magistrate court, if no case to answer is overruled, the accused person can apply to recall prosecution witnesses to cross-examine them before opening his defence.

Ruling on no case submission

- Ruling of court must be brief **where submission is 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's not had the opportunity of hearing the defence---**ODOFIN BELLO V STATE, EKWUNUGO V FRN**. Thus, the court must not go to the merits of the case.
- Court must confine its ruling to the submission of the no case.
- 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 decision of the court** 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 judgment and is appealable--**ONAGORUWA V THE STATE**

Comment [C126]: **Note that** where a no case submission is overruled or upheld, it can be appealed against to the superior court. **However**, note that such appeal does not pend the substantive suit before the trial court. **See section 273 ACJL & s. 306 ACJA. Section 306 ACJA p**rovides: An application for stay of proceedings in respect of a criminal matter before the Court shall not be entertained. **Section 273 ACJL** provides: Subject to the provisions of the Constitution of the Federal Republic of Nigeria, an application for stay of proceedings in respect of any criminal matter brought before the High Court and Magistrates' Court shall not be entertained until judgment is delivered.

Comment [C127]: **HOWEVER,** a party cannot rely on the length of the ruling alone for the trial to be vitiated---**ATANO & ANOR V AG BENDEL**.

(b) Resting his case on that of the prosecution

This implies that he is calling on the Court to **convict or acquit him based on the evidence led by the Prosecution**---**SULEIMAN V STATE.** Where accused does not call any witnesses or adduce any evidence, then, he is said to have rested his case on the prosecution. Court can come to a valid decision solely on that basis.

Accused is assumed to have accepted the evidence as truly and exactly stated by the prosecution---**AKPAN V STATE.** Note that this is reckless for a defence counsel where there are compelling evidence against the accused---**BABALOLA V STATE**

Comment [C128]: Defence may choose to rest his case on that of the prosecution pursuant to **section 36(11) CFRN 1999** where:
1.Prosecution has failed to prove their case
2.His no case submission has been wrongly overruled. See also **s.287(1)(a)(iii) CPL**

The counsel to the accused person would inform the court and then proceed to **address** the court. This address is wider and is expected to address all issues concerning the case as a whole. After such address by the Defence Counsel, the Prosecution if represented by a Law officer is entitled to reply.

Where the case of the Prosecution calls for some explanation from the accused and the accused chooses to rest his case on that of the Prosecution, the trial judge is entitled to draw necessary inference from the tale told by the Prosecution---**NWEDE V. STATE; BABALOLA V. STATE**

When is it advisable for an accused to rest case on the prosecution's case? 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 THE STATE.** Thus he can rest his case where:

1. A no case submission was wrongly overruled
2. The prosecution's case is manifestly weak that no Court/Tribunal can possibly convict on it---**EMEDO V THE STATE**

When is it not advisable for an accused to rest case on the prosecution's case? 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, NASIRU V THE STATE, AKPAN V STATE, NAFIU RABIU V THE 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 defence 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.

Duty of the Court before consideration of an accused's request to rest case

The court should consider the whole case of the prosecution **including credibility of witnesses** and weight to attach to evidence **before delivering judgment** after the accused has rested his case on that of the Prosecution---**AKPAN V STATE**

Note that an accused person can tender documents through the prosecution witness in course of cross-examination and in such a case, cannot rest case on that of the prosecution because he would have entered a defence**.**

Difference between no case submission and resting case on prosecution's case

- Where a **no case** submission is **overruled,** the **accused is given leave to enter his defence**. BUT where the accused rests his case on that of the Prosecution; **the accused has no further opportunity of calling witnesses or to enter upon his defence.** The only option available is to APPEAL against the decision of the court in the event it is a CONVICTION---**ONAGORUWA V. STATE.**
- **Resting case** is used where defence alleges that there is INSUFFICIENT EVIDENCE to warrant a conviction but **no case submission** is used where there is NO PRIMA FACIE EVIDENCE linking the accused person to the crime.

NB: even if a no case submission is overruled (only requires a prima facie case), the accused can still rest case on the case of the prosecution because of the requirement of proof beyond reasonable doubt to convict.

(c) Enter his defence

This arises at the end of the case for the Prosecution i.e. after the re-examination of all the Prosecution witnesses; the Prosecution **may close its case** in this manner thus: My Lord, the Prosecution wishes to close its case OR My Lord; that is the case of the Prosecution."

The accused person may then commence with an **opening address** by giving a **summation** of the case for the defence, **his witnesses** and **evidence** to be adduced **OR** proceed to call witnesses like the prosecution.

What options are open to the accused person in his defence?

There are **three (3) options** open to the accused in his defence.

- **He may make a Statement from the dock, where he would not be sworn and would not be liable to cross-examination:** The accused will not be **sworn on oath** to testify, he is not liable to be cross-examined and he is not seen or treated as a witness. **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:** The accused will give sworn evidence in the witness box, he is liable to cross-examination but not compellable and much weight will be attached to his evidence.
- **He may elect not to say anything at all** in line with **Section 36(11) CFRN 1999.** This is because he is a competent witness but not a compellable witness to testify on his behalf.

Comment [C129]: If accused chooses to say nothing in his defence, the prosecution and court may comment on his silence, but prosecution must not argue that it amounts to an admission of guilt: **s236(1)(c) CPCL; s36(11) CFRN.** The court may make any necessary inferences it thinks just. Note **s181 EA 2011**, the court, prosecution and any other party can comment but not suggest admission of guilt due to failure to give evidence. The court can however draw inferences- **Garba v State; s236 (1) CPCL.**

Comment [C130]: That is Summary of the case for the defence, facts and nature of evidence to be adduced including number of witnesses, and whether the witnesses are ready to proceed.

The accused is deemed to have **RESTED HIS CASE** on the Prosecution's case and the court can give a valid conviction on that basis.

Comment [C131]: In addition to any of the above, he may call other witnesses to testify on his behalf or adduce other evidence in his favour. See **Section 287(1) (a) CPL, 36(6) (d) 1999 CFRN, 240 (1) (a) ACJL, 358(a) (iii) ACJA.**

NB: Take notice that where the **accused is unrepresented by counsel**, it is the **duty of the court** to inform him of the options mentioned above----**ADIO V STATE, EDET AKPAN V STATE.**

Thus:

- The Court **must read out** and **explain** the implications of each of the 3 options available to him
- The Court must record that it has complied with this requirement---**JOSIAH V STATE**

Where however 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.

What is the effect of failure of the court to comply with the procedure?

Non-compliance with this laid down procedure does not vitiate the trial provided the court informs him of the other 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). However, before it can affect the trial, the accused must show that **he has suffered miscarriage of justice---EME V STATE, SAKA V STATE**

2. MAKE SUBMISSION OF NO CASE TO ANSWER

Comment [C132]: QUERY

3. MAKE AN OPENING ADDRESS FOR THE DEFENCE

Opening address for the Defence

My Lord, the defence will show that the accused could not have committed the offence as stated by the Prosecution.

Firstly, the accused persons were nowhere near the scene of the alleged crime. There is no witness to corroborate the testimony of Mrs Ene Agbo and given the flawed nature of the identification parade producing only the accused persons to be identified, we cannot be sure that Mrs Agbo correctly identified the accused persons as the perpetrators of the crime.

Moreover, the accused persons will raise the defence of alibi stating that they were with friends at the Jollywell Hotel in Wuse at the time of the alleged crime. The friends, Mr Clement Oni and Miss Chioma Ego will be called as witnesses to this fact as well as the bar man, Mr Monday Ewe. These people will state that the accused persons spent the entire afternoon from 12pm – 8pm at the hotel on the day of the alleged crime.

4. EXPLAIN THE EX-IMPROVISO RULE—WHEN MAY PROSECUTION BE ALLOWED TO CALL EVIDENCE IN REBUTTAL OF EVIDENCE OF THE DEFENCE

The general rule is that once prosecution closes its 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—**S. 241 ACJL, S. 361 ACJA**

Ex improviso rule is therefore a situation where the prosecution at the close of defence **may with the leave of court re-open its case** and then adduce evidence to rebut the new matter **which the prosecution could not foresee**. The prosecution can seek the leave of the court to call or recall witnesses in rebuttal of new matter raised by the accused.

Conditions for Reliance on the Ex improviso rule by the Prosecution

- It must come **AT THE END** of the case for the defence
- **LEAVE OF COURT** MUST be sought by prosecution
- The defence must have raised a **NEW MATTER** which human ingenuity could not have foreseen (could not have reasonably foreseen)---**ONUOHA V THE STATE; BALA V COP**

Note that leave of the court **must be granted with caution so as to prevent the prosecution opening his case against that which is not allowed in criminal litigation.** Court must be convinced that new issues have in fact been raised before granting such leave to prosecution. Therefore, it cannot be granted in issue of Alibi.

Differences between EIR and the power of the court to re-call witnesses

- The power of the court to call or recall witnesses is exercisable any time before judgment is given in a criminal proceeding whereas, the power of the prosecution under the law is exercisable only when new matter arises in evidence of defence.
- It is only the court that can grant the power for any of the parties to cross examine a witness called by the court while the leave of the court will also be required before the party can re-open his case for the new matter and cross examine to that effect--**BALA V COP, ALLY V STATE; ONUOHA V STATE**

Limitations of the ex improviso rule

- The rule will not apply to the defence of alibi---**ONUOHA V STATE**
- The evidence of the prosecution witness must only be used to REBUT the NEW evidence adduced by the defence---**BALA V COP**

Options open to the prosecution when the rule arises

1. The Prosecution in that case may with the leave of Court be allowed to call witnesses in rebuttal of such new evidence led by the defence.
2. The Prosecution may be allowed to respond on point of Law by way of a Reply. **S. 194 of the CPCL** (NORTH ONLY)

5. EXPLAIN THE PURPOSE AND PROCEDURE FOR A VISIT TO THE LOCUS IN QUO

Comment [C133]: VISIT TO THE *LOCUS IN QUO* (THE SCENE OF AN OFFENCE)

It refers to inspection of moveable/immoveable evidence by court for proper determination of the case. The essence is for the court to have a clearer view of evidence for the just determination of the case. Visit to locus **may be by application of either parties or by the court suo moto--UNIPETROL V ADIREJE; EHIKIOYA V COP.** If court is satisfied that there is need to inspect **immovable real evidence** by the Court for the proper determination of the case**,** then the court will adjourn and continue proceedings there or adjourn and proceed to view and return to court--**S. 127 EA 2011**

When can a visit to the locus be conducted?

Visit to locus in quo can be made at any time but preferably during the course of evidence of prosecution as advised by the SC in **AREMU V. AG WESTERN NIGERIA**

Procedure for visit to locus in quo

- The Court may adjourn to the locus to inspect and continue trial there by taking witnesses in evidence and later the Court will reconvene in the regular Court to continue the trial, without recalling the witnesses---**S. 127(2)(a) EA 2011; COP V OLAOPA.** Therefore, 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 just like a court setting. **WHEN THEY RETURN BACK TO COURT, proceedings will commence from where it stopped at the locus.**
- The Court will adjourn to visit the locus, take notes of the things observed and reconvene in Court to continue proceedings where it will take the testimony of witnesses in Court--**S. 127(2) (b) EA 2011; R V DOGBE. This is mere inspection.**

Comment [C134]: In this case, at the locus in quo, the counsel to the defence was asked to cross-examine a witness that testified there but he refused. At the resumed hearing in court, the trial continued and the accused was convicted. The defence counsel contended on appeal that the procedure adopted was not proper as prosecution witnesses were not cross-examined. The court held that the lower court adopted a proper procedure.

NB: the accused or defendant must be present at the locus in quo. 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.** Also, the presence of the accused is an

Comment [C135]: Directions for the purpose of preventing communication between the witness and the accused shall be given by the court - **S. 207(3) CPL and S. 205(3) ACJL.**

opportunity to clarify uncertainties and contradictions; it is not to present fresh evidence different from that already adduced at court.

Note: no matter the number of accused persons or difficulties, this must be complied with. However, non-compliance will not vitiate the trial **unless it occasioned a miscarriage of justice.** Thus, where 125 accused persons were before the court but not all were taken to the locus. The appeal was dismissed as no miscarriage of justice was occassioned) particularly if their counsel was present at the locus--**ADUNFE V IGP; ABOYEJI V MOMOH; AREMU V AG WESTERN NIGERIA**

Limitations arising during visit to Locus in quo

It is not an opportunity for **either of the parties** to present a fresh evidence different from the one already adduced before the court--**ODICHE V CHIBOGWU**

6. MAKE CONCLUDING/FINAL ADDRESSES FOR THE PARTIES

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 judgment in ones favour---**R V COBOLAH**

Effect of denial of a party's right to address by a judge

Generally, the right to address is a constitutional right of the accused and the court cannot deny the parties--**ISHERU V AYOADE**. The purpose is to assist the court in the just determination of the case, failure to address will not vitiate trial as it is at the discretion of the parties---**NDU V STATE**. However, where the right to address is denied and it occasioned a miscarriage of justice, the proceedings may be SET ASIDE---**OBODO V OLANWU**

Both CPL and CPCL do not provide for the form a final address should take but **S. 269 (2) ACJL** states that they are expected to be in writing and in open court.

The final address usually comes in after the defendant has closed his case.

The **order of making final address** is as follows:

- In criminal trials, it is the defence that addresses the court first at the close of the proceedings.
- Then the Prosecution **may reply;** and
- Accused has a right to further reply on **points of law.**

Comment [C136]: Will prosecutor have right of reply? It depends on **how the accused conducts his case/status of the prosecutor.** See **Section 271 ACJL**:
Where in relation to status, then:
A LAW OFFICER WILL ALWAYS HAVE A RIGHT OF REPLY or POLICE who is a LEGAL PRACTITIONER. (Please note that the option of POLICE OFFICER IS ONLY APPLICABLE TO ACJL by virtue of 271 ACJL. OTHERWISE Prosecutor shall NOT have right of reply)

Where in relation to how the accused conduct his case:

a.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 SHALL NOT HAVE ANY RIGHT OF REPLY**. **HOWEVER**, this does **not affect a prosecutor who is a Law Officer** (Law officer for this purpose includes the Attorney-General, a Solicitor-General, a Director of Public Prosecution and all grades of State Counsel). See **Section 241 and 243 CPL; 269 and 271 ACJL, 304(1) and (3) ACJA, Alhaji v COP.**

b.Where defence introduced new matter in his opening address which was not supported by evidence, the court in its discretion **MAY ALLOW** the prosecution to reply to such new matter. See **Section 241 CPL, 194(3) CPCL, 269 ACJL, 304 ACJA.**

c.Where other witnesses minus the accused or witnesses solely as to character were called and documents were tendered, the prosecution **SHALL HAVE THE RIGHT OF REPLY**. See **Section 242 CPL, 270 ACJL, 304(2) ACJA, State v Sanusi.**

Note the following therefore:

- Where prosecutor **is a Law officer or a Police Officer who is a Legal Practitioner, the prosecution will always have right of reply**---**AWOBOTU V STATE; OSAHON V FRN**. The right of reply of a Law Officer is at his discretion. He cannot be compelled by the court to reply to a final address. He cannot also be refused the exercise of this right of reply---**ADAMU v. AG BENDEL STATE**

Comment [C137]: •Law Officer includes Attorney General of the Federation/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.

7. IDENTIFY AND EXPLAIN ETHICAL ISSUES SAFEQUARDING TRIAL FOR THE DEFENCE

Duty of defence counsel

- **Specifically, he must defend the accused to the best of his ability.** See **Rule 37(1) (2) (3) RPC, Rule 38 RPC.**
- **Generally, he must be fair and candid in dealing with the accused's case.** See Rule 32 (1) (2); **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. S. 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.

Check the definition of Part-Head Criminal Matter in section 494 ACJA where it means that the prosecution has closed its case.

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. _____ is the beginning/commencement of a criminal trial

A. Entry of the dock by the defendant/accused

B. Reading of the charge

C. Plea taking

D. Arraignment

2. The following are not officers of the court for the purpose of court proceedings and taking of plea except ____

A. Counsel

B. Orderly of the Judge

C. Registrar of the court

D. None of the above

3. Mr. A has been charged before the High Court of Lagos State with armed robbery under the Army Robbery and Fire Act, the charge has just been read to him and he pleads guilty to the offence, the court is to do ___

A. Record a plea of not guilty

B. Record a plea of guilty and follow the laid down steps for safeguarding such plea

C. Record a plea of not guilty by reason of insanity

D. A or B above

4. NO QUESTION

5. Under the ACJA, the following are involved in a plea bargain except the ____

A. Prosecution

B. Defence

C. Victim

D. Court

6. Under the ACJA, the prosecution may enter a plea bargain in all the following except ___

A. During the presentation of the evidence of the prosecution

B. After the presentation of the evidence of the prosecution

C. Before the presentation of the evidence of the defence

D. During the presentation of the evidence of the defence

7. A plea bargain agreement is to be entered into in all except ___

A. Upon arraignment

B. Before plea

C. After plea

D. None of the above

8. In a plea bargain, where an agreement is reached, it is the duty of the ___ to inform the court of the agreement

A. Prosecution

B. Defence

C. Both parties

D. None of the above

9. After the signing of a plea bargain agreement by the necessary parties under the ACJA, a copy of the agreement shall be forwarded to the ___

A. Attorney-General of the Federation

B. Registry of the court

C. National Assembly

D. Nigeria Police Force

10. Under the ACJA, where a trial proceeds de novo after the defendant withdraws from his plea bargain agreement, the following statements are true except ____

A. No reference shall be made to the plea agreement

B. No admission contained in the plea agreement shall be admissible against the defendant

C. The prosecution and the defendant may not enter into a similar plea and sentence agreement

D. The prosecution and the defendant may enter into a similar plea and sentence agreement

11. The beginning of trial preparation is ___

A. Case theory

B. Trial plan

C. Preparation of witnesses

D. All of the above

12. Where the prosecution fails to call all the witnesses listed on the proof of evidence and the defence, through the court, summons the witness listed on the proof of evidence but not called, the witness is regarded as ___

A. Prosecution witness

B. Defence witness

C. Witness of the court

D. None of the above

13. NO QUESTION

14. In a criminal trial where the defence pleads not guilty by reason of insanity, he is to prove same ____

A. Based on balance of probabilities

B. Proof beyond reasonable doubt

C. Proof to the satisfaction of the court

D. B or C

15. Generally, all these are competent witnesses except a ____

A. Child

B. Person of tender age

C. Person of unsound mind

D. None of the above

16. Evidence of a dumb witness by signs or in writing made in open court shall be deemed to be ____

A. Oral evidence

B. Written evidence

C. Circumstantial evidence

D. None of the above

17. Generally, the spouse of an accused person is a competent and compellable witness for only the ____

A. Accused

B. Prosecution

C. A and B

D. None of the above

18. Where a person in court either by obeying a summons or by a warrant of arrest, refuses to give evidence, the court would adjourn trial for a period not exceeding ___ days

A. 2

B. 6

C. 8

D. 10

19. The examination of a witness at first instance by the party who called the witness is ____

A. Examination-in-Chef

B. Cross-examination

C. Re-examination

D. None of the above

20. Under cross-examination, the judge is empowered to report a counsel who asks baseless questions to the ____

A. Attorney-General of the Federation

B. General Council of the bar

C. LPDC

D. Nigerian Bar Association

21. NO QUESTION

22. A witness who in the opinion of the court is biased against the party who called him and is unwilling to say the truth or supports the adverse party is ____

A. Tainted witness

B. Hostile witness

C. Not a witness of truth

D. Aggressive witness

23. A witness who, by the evidence he gives, could be regarded as having some purpose of his own to serve is ____

A. Tainted witness

B. Hostile witness

C. Not a witness of truth

D. Accomplice

24. NO QUESTION

25. All these are correct about the police report/case diary except ___

A. It may be admitted if the IPO's attendance cannot be procured without delay

B. The defence must not object to its admissibility otherwise it is inadmissible

C. Court must consent before it can be admitted

D. None of the above

26. All these are the options open to an accused upon the close of the case for the prosecution except ____

A. Make a no case submission

B. Rest his case on that of the prosecution

C. Enter his defence

D. None of the above

27. Where the court on its own volition after the close of the prosecution's case is of the view that a prima facie case has not been established against the accused, it is known as ____

A. No case ruling

B. No case submission

C. No case judgment

D. No case averment

28. Under the CPCL, the effect of a Magistrate Court rightly upholding a no case submission is that it amounts to _____

A. Mere discharge

B. Discharge and acquittal

C. Acquittal

D. All of the above

29. Where the defence alleges that there is insufficient evidence to warrant a conviction, the defence may as well do ___

A. Rest on the case of the prosecution

B. Make a no case submission

C. A and B

D. None of the above

30. Where an accused is unrepresented by counsel, it is the duty of the ____ to inform him of the options open to him where he chooses to enter his defence

A. Court

B. Prosecution

C. Defence

D. Registrar

31. All these require their evidence not to be corroborated except ____

A. Co-accused

B. Accomplice

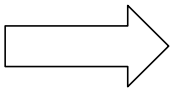
C. Tainted witness

D. Hostile witness

ANSWERS

1. **D**
2. **C**
3. **A**
4. **BONUS**
5. **D**
6. **D**
7. **C**
8. **A**
9. **A**
10. **D**
11. **A**
12. **B**

13. BONUS
14. A
15. D
16. A
17. A
18. C
19. A
20. A
21. BONUS
22. B
23. A
24. BONUS
25. D
26. D
27. A
28. A
29. A
30. A
31. A



10. JUDGMENT AND SENTENCING

1. IDENTIFY THE CONTENTS AND FORM OF A VALID JUDGMENT AND THE EFFECTS OF FAILURE TO COMPLY WITH SECTIONS 245 CPL; 269 CPCL; 275 ACJL AND 308 ACJA

(a) Contents and form of a valid judgment

There are (5) contents of a valid judgment:

1. Judgment must be in writing
2. Judgment must contain the points for determination
3. Judgment must contain the decision of the court on the point(s) for determination.
4. Judgment must contain the reason(s) for the court decision.
5. Judgment must be dated, signed or sealed by the judge or magistrate (sealed in the north)

1. Judgment must be in writing

- No Court is allowed by law in Nigeria to deliver an oral judgment--- **Ss. 245 CPL, 268; 269(1) CPCL; 308(1)ACJA; 275 ACJL; 294 CFRN; OKORUWA V STATE; UNAKALAMBA V COP**
- Oral judgment delivered in open court by the court, **and later reduced into writing in judge's chambers** remains an oral judgment---**STATE V LOPEZ**. The rationale being that the court becomes functus officio after delivering the judgment and it cannot purport to do anything to the judgment as it will amount to an irregularity.
- Judgment read from the note made by the judge during the course of the trial is an oral judgment---**QUEEN V FADINA**
- Judgment read from notes made by judge's son/daughter/legal assistant is an oral judgment---**AJAYI V STATE**
- Judgment also dictated in court by a judge to a stenographer/typist remains an oral judgment---**OKODUWA V STATE**

Propriety of writing judgment before final address

- The Judge may write his judgment **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 judgment before final addresses---**R V COBOLAH**

Comment [C138]: MEANING OF JUDGMENT- A judgment is the final determination of a court of competent jurisdiction upon matters submitted to it. It is the conclusion of law upon facts found or admitted by the parties or upon their default in the course of the case.

- ➢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. See Black's Law Dictionary 7th Edition @ Page 846; see **Section 6(6)(b) 1999 Constitution (as amended).**
- ➢Judgment marks the end of a trial before a competent court.
- ➢Judgment in criminal matters in Nigeria is regulated by **Section 245 CPL, 268(1), 269 CPCL, 275 ACJL, 308 ACJA and section 294 1999 Constitution.**
- ➢At the close of evidence by the parties and final address, the court proceeds to judgment.
- ➢The writing and delivery of judgment/sentencing by a competent court on all issues raised by the parties signifies the end of criminal trial.

Comment [C139]: Can a magistrate court deliver an oral judgment? Generally, no court in Nigeria can deliver an oral judgment. However, the magistrate court in the **SOUTH** and under **ACJA may** have a partly written judgment and proceed to give his oral judgment---**S. 245 CPL; 308(2) ACJA.** It must be noted that the proviso to section 245 CPL and section 308(2) ACJA do 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---**OKORUWA V STATE**
Therefore, a magistrate in the South and under ACJA is permitted to deliver oral judgment upon satisfaction of certain condition precedents. The magistrate shall:

- •Record briefly, in the book, his decision thereon and where necessary, he records his reasons for such decision; or
- •Record such information in a prescribed form—**Ss. 245 CPL; 308(2) ACJA; UNAKALAMBA V COP.**

In **LAGOS** however, oral judgment is not allowed---**S. 275 ACJL**. Thus, the magistrate must comply with the 5 essentials of a valid judgment. Same in **NORTH-S. 268(1) CPCL**

- This is because a final address is not regarded as part of evidence before the Court.
- Also, it is a Constitutional provision that judgment is to be delivered **within 90 days** after the Final address---**S. 294(1) CFRN**

2. Judgment must contain the points for determination

- These are the basis for the determination of the guilt or innocence of the accused---**TANKO V STATE**
- **In resolving the issues,** regard must be had to the substantive criminal law to identify the ingredients of the offence.

3. Judgment must contain 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---**ONAFOWOKAN V STATE; WILLIE JOHN V STATE**

4. Judgment must contain the 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 are not court sensitive----**NIGERIAN ARMY V AMINU KANO; BAKOSHI V CHIEF OF NAVAL STAFF**
- Failure to give reasons for the decision will lead to quashing the decision on appeal--**NWAEFULE V STATE; ADAMU V THE STATE**

5. Judgment must be dated, signed or sealed by the judge

- An undated and unsigned judgment is worthless--**SUNDAY V STATE**
- Sealing is an alternative to signature in the North—**S. 269(1) CPCL**
- **Note that the relevant date is the date of delivery of the judgment or date of pronouncement---AGF V ANPP. Note that the time to file appeal starts to count from the date the judgment was delivered.**
- Generally, the judge who heard a case from **arraignment till delivery of final address** should **deliver the judgment of the court.** However, a **written and signed judgment** by a judge may be delivered **BY ANOTHER JUDGE OF THAT SAME COURT, if the**

Comment [C140]: The effective date of a judgment is the date it was **delivered** in court as sentencing starts running from such date and not necessarily the day the judge made the judgment. Authenticated copies of the judgment are also to be given to the parties **within 7 days** of its delivery-**S. 294(1) CFRN**

trial judge is ill or unavoidably absent---**AGF v ANPP; IYELA v COP**. Also, that other judge who delivers the judgment must date and sign---**AGF v ANPP**

- If **BEFORE** the judge delivers his judgment, he is **transferred**, **elevated**, **retired** or otherwise **ceases** to have jurisdiction, he **can no longer deliver a valid judgment** in the case**---IYELA v. C.O.P.** The case, thus, is to start de novo (afresh). If case starts de novo, evidence in the previous trial is abandoned---**UGURU V STATE.** This is because the new judge did not have the opportunity of watching the demeanor of the witnesses. **Note however the Elevation of Judge under ACJA.** See **Ss. 396 (7) and 494 ACJA** which are only applicable in the FCT and FHC and to the effect that a judge that has been elevated can still go back to that former lower court and finish **"a Part-heard" case** in the case which he started and which he must conclude within a reasonable time.

(b) Effect of failure to comply with the requirements of a valid judgment

A failure by the trial court to comply with the requirements of a valid judgment **WILL RESULT IN THE JUDGMENT BEING NULLIFIED**---**OKORUWA v. STATE; SHINFIDA v. COP**

NB: Upon nullifying such judgment, the appellate court may

- Order a retrial---**YAHAYA V STATE** where the evidence before the court shows that it will not be right to allow the accused to go free, where it will not occasion miscarriage of justice); or
- Discharge and acquit the convict **depending on the facts**---**AJAYI v. ZARIA NATIVE AUTHORITY** (e.g. that sentence to be imposed would lapse by the time the accused is retried).

NOTABLES

- Judgment is to be delivered in open court--**Section 36(4) CFRN**
- A court cannot deliver judgment upon a visit to the locus in quo, considering the purpose of such visit---**S. 127(2) EA**
- Explanation of substance of judgment to the accused/defendant: **S. 268(1) CPCL** 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---**AJAYI v. ZARIA NA**

Comment [C141]:
NOTABLES
Where a Magistrate or a Judge has concluded the hearing of a case and **written and signed** his judgment, if he is **unavoidably prevented** from delivering the judgment, it might be **delivered and pronounced** by another magistrate or judge in his stead in open court and in the presence of the accused-
SECTIONS 251 CPL;
262 CPCL;
S.281 ACJL
AG FED v. ANPP
DELIVERY OF THE JUDGMENT BY SC/CA JUSTICES
Every Justice of the **Court of Appeal or Supreme Court** who sits on a case **must express and deliver his opinion in writing** or in the alternative state that **he adopts the opinion of any other justice who delivers a written opinion.**
SECTION 294 (2) CFRN 1999
•It is not mandatory that **all the justices must be present** when the judgment of the court is **delivered.**
•Therefore, **while the decision of the majority of Justices who sit on appeal** forms the judgment of the court, the judgment of the court shall be **validly delivered by ONE** of the Justices who sits for the purpose of delivering judgment.-
S 294 (3)(4) CFRN
•Where a Justice of CA or SC is unavoidably absent, his judgment or opinion may be read or delivered by another Justice of the Court.
•The judgment or opinion of a Justice of CA/SC who heard an appeal but had ceased to be a Justice of the Court when the judgment was delivered may be **PRONOUNCED** by **any of the other Justices of Appeal and it would be valid.**
SHITTA BEY V.AGF
•If the judgment or opinion of CA/SC judge is **DELIVERED or READ** on his behalf **AFTER** he has been **elevated, died, retired, dismissed or ceased to be a member** of that court, it would be without jurisdiction; **hence null and void.-SHITTA BEY V. AGF**

Comment [C142]: note that s.494 ACJA defines a part-heard criminal matter as a matter in which the prosecution has closed his case.

- Judgment is to be delivered when the accused person is present in court. If accused is not in court when judgment 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 judgment, the accused person/defendant **MUST be in court otherwise** the entire proceedings will be a nullity---**S. 352(4)(5)ACJA**
- In the magistrate court, after he delivers judgment, tells counsel that they can appeal **within 30 days**. Sometimes, magistrate signs after this statement but this statement do not form part of the judgment. Court held this does not invalidate the judgment.
- Generally, t**he Judgment of the court cannot be arrested**---**NEWS WATCH COMMUNICATIONS LTD V ATTAH. ONCE** the court has concluded hearing or preliminary matter, it adjourns to deliver judgment or ruling on a particular date. On that date, counsel may come and file a motion for the court to do a particular thing first. Although counsel may not tag his application as one for arresting a judgment, since such procedure is alien to the Rule of Court, a proper application before the court objecting to procedure or to a defect in procedure, albeit brought at the point of delivering judgment, must be considered by the court as the court has a duty to consider all motions filed before its judgment is delivered in order to do real justice in the case. If such a motion is considered, it would have the same effect of arresting the judgment of the court by staying the delivery of the judgment until the determination of the motion. Although a judge has a duty to consider every application properly filed before it, no matter how worthless; **where the application is a cynical attempt to taunt the court or to hamstring the court in the face of losing a bad case, it will be rejected by the courts. However (as an exception)**, the judgment of the court may be suspended depending on the grounds of the application **such as fraud,** although the court may frown at the application. Therefore, if you have to make such application, it must be extremely cogent and supported by an Affidavit.
- Generally, after **the delivery** of a judgment, the Judge or Magistrate **cannot amend** his judgment because the judge becomes functus officio after delivery of his judgment---**UNAKALAMBA v. STATE; BAKARE V. STATE.** The exceptions are:

Comment [C143]: **NB- Under the CPCL**, the substance of the judgment **shall be explained to the accused** in the language, he understands and **the accused is entitled to be present** to hear the judgment unless his presence is dispensed with: **S. 268 (1) (2) CPCL.** However **absence** of the accused on the day of the judgment does not **invalidate** the judgment: **S. 268(3) CPCL**

a. A judge may amend his judgment where before the execution of a **sentence of caning**, **medical opinion** reveals that the offender is not in a fit state of health. An amendment may substitute any other sentence which the court could have passed at the trial---**S. 309 CPCL(north)**
b. Upon a conviction for **contempt in the face of the court**, court may in its discretion discharge the offender, the punishment where the offender complies **with the request of the court or tenders an apology---S. 317 CPCL.** There is no equivalent provision on this in the CPL but it is applicable in the CPL states.
c. There is need to correct a clerical error---**S. 275 CPCL (MAY APPLY TO CPL/ACJL).**
d. To correct errors from accidental slip.
e. To make the intention of the court clear.
f. Where a Judge **passes a death sentence** without directing in what manner the sentence will be carried out, it is a mere irregularity which may be amended by the Judge after delivery of judgment---**GANO v. STATE**

2. IDENTIFY THE TIME LIMIT WITHIN WHICH JUDGMENT SHALL BE DELIVERED AND THE CONSTITUTIONAL IMPLICATION OF FAILURE TO DO SO WITHIN TIME

- A judgment must be delivered **not later than 90 days AFTER THE ADOPTION OF FINAL ADDRESSES, INCLUSIVE OF THE DATE OF ITS ADOPTION---S. 294(1) CFRN**
- **Compliance with Section 294(1) CFRN is MANDATORY---SHEHU V STATE.** Constitution prescribes this because reasons for the judgment will include the judge's perception of the witnesses. If a long time passes before writing judgment, he would have forgotten his impression of witnesses.
- Time is calculated **from the date of the final address.** Where there is no final address; time starts counting **from the day at the conclusion of the case for the Defence, the court adjourns for judgment.**
- Previously, under the 1979 Constitution, failure to comply with the time limit renders the judgment void. However, under the 1999 Constitution, pursuant to **S. 294(5) CFRN** failure does not render the judgment void **but voidable**. If the court has lost the impression and testimony of the witnesses and delivers a judgment after 90 days, the judgment may be set aside **on grounds of miscarriage of justice---OGBU V STATE, APOSI V STATE.** However, if a judgment is delivered **later than the 90 days period**, it

will not vitiate the trial unless the delay has **occasioned a miscarriage of justice.** The **onus is therefore on the appellant**.

- Does re-adoption of final written address elongate or re-open the 90 days under S. 294(1) of the Constitution? The position of the law is that where a court **BEFORE expiration of the 90 days** invites counsel to make a further address **time starts counting from date of the further address**---**SODIPO V LEMMINKAINEN.** However**,** the new decision is that it is not proper to use it as a technique of elongating the time limit although it can be called if the court needs clarification on some issues in the case--**IDOWU V SEGUN KOYA INVESTMENT LTD (2017)**

3. EXPLAIN THE TIME AND PROCEDURE FOR MAKING AN ALLOCUTUS

(a) Time to make an allocutus

It is made **after conviction or a plea of guilty**, but **before sentencing**.

(b) Procedure for making an allocutus

- **After conviction** or **a plea of guilty,** but **before sentencing**, **the Judge/magistrate/registrar** will ask the accused or his Counsel to show reasons why sentence should not be passed on him according to Law.
- The accused is to respond by **pleading convincingly** to the Court why his sentence should be reduced or that the Court should temper justice with mercy (adducing good reasons)
- Under the CPL **after a convicted person** has pleaded an allocutus, the Court proceeds to sentence. Under the **CPCL** after an allocutus, the Prosecutor **may produce evidence** of any previous convictions of the convicted person. Thereafter, the court shall proceed to sentence**---S. 197 (2) CPCL**. At the **magistrate Court in the North**, the Magistrate at this stage may refer the convicted person to a magistrate's court of a higher grade or to the High Court for stiffer sentence**---S. 257(1) CPCL**

4. IDENTIFY THE POWER OF THE COURT TO TAKE OTHER OFFENCES INTO CONSIDERATION BEFORE PASSING SENTENCE AND THE POWER TO CONVICT FOR AN OFFENCE NOT EXPRESSLY CHARGED

(a) Power of the court to take other offences into consideration before passing sentence

On the application of the accused person or his counsel, the court may take cognizance of other offences pending against the convicted person before passing sentence---**Ss. 249(1) CPL, 258 CPCL, 279(1) ACJL; 313 ACJA**

The conditions to be satisfied are:

1. The Defendant must have been found guilty of the present offence.

Comment [C144]: Allocutus is a plea of mitigation, urging the court to be merciful in sentencing, apologise for the crime or say anything else in effect to lessen the impending sentence. It is unsworn statement made by the convicted person or his counsel.
The Registrar or the Judge (Calling for an allocutus by the judge instead of registrar does not vitiate the sentence) will inform the convicted person of his right to make an allocutus; i.e. the court will ask the accused or his Counsel to show reasons why sentence should not be passed on him according to Law. This will require the accused to respond by **pleading convincingly** to the Court why his sentence should be reduced or that the Court should temper justice with mercy adducing good reasons. **That procedure is known as the plea of allocutus.**

The **EFFECT** of the plea is to **mitigate the punishment to be passed on the accused** but cannot result in cancellation of all punishment---**OGBEIDE V.COP.** Also, for **CAPITAL OFFENCES** and offences for which the Law has provided **MINIMUM/MANDATORY Penalties,** allocutus has **NO EFFECT** because they attract mandatory sentences of death and firing squad for capital offence. Therefore, no amount of allocutus will mitigate a capital punishment---**STATE V JOHN.**

After the convicted person makes his allocutus, the court proceeds to sentence. Under the CPCL and ACJA, the convicted person may elect to call a witness to establish his character. **S.197 (1) CPCL; 310 ACJA.** Statements made by a convicted person in allocutus are not subject to cross-examination. However, if the convicted person does this, the prosecution can produce evidence of his previous conviction before sentence. S. 197(2) CPCL; **310 (2) ACJA.**

In drafting Allocutus, refer to the convict as your client or call him by his name. You should mention the punishment section and urge the court to give minimum or non-custodial sentence or fine (if applicable), apologise for the crime, remind the court of the dangers of allowing him mix with hardened criminals in the prison.

Failure of the Court to observe this procedure will not vitiate the trial and conviction. See **S. 247 of the CPL, S. 197 of the CPCL, 310 ACJA; S. 277 of the ACJL**.

2. The Defendant must have admitted guilt of those other offences.
3. The Defendant has agreed that the other charges be taken into consideration in passing sentence on him.
4. The prosecutor of the other charge/**AG (if the north) must also consent.**
5. The offence must have been charged before the court.
6. The court where the accused person is standing trial presently must have jurisdiction to try the other offences so charged for.

Caveats on taking other offences into consideration

1. The court must not pass a greater sentence which exceeds its jurisdiction.
2. The sentence to be imposed on the offence convicted upon and the one considered **must not be greater** than the maximum prescribed for the offence convicted for---**Ss. 182-184 CPL**

(b) Power to convict for an offence not expressly charged

Generally, no person **can be pronounced guilty** for an offence with which he was **not expressly charged**---**S. 36(6)(a) CFRN.** The exceptions to this rule are:

1. Where an accused person charged with a grave offence is convicted for a lesser offence where the evidence before the Court could not sustain the offence he is charged with and there is sufficient and overwhelming evidence in support of the lesser charge. The particulars constituting the lesser offence are carved out/subsumed in the particulars of the offence charged---**UGURU v. STATE; NWACHUKWU v. STATE**
2. When an accused person is convicted for conspiracy to commit the offence although he was not found guilty of the substantive offence---**BALOGUN v AG OGUN STATE**
3. Every attempt to commit an offence is punishable by trial court even where the defendant is not expressly charged for attempting to commit the said offence---**HONG v. THE STATE**
4. A person charged for any of the offences of stealing, obtaining property by false pretences, obtaining money by fraud or receiving stolen property may be convicted for any of them in the alternative.
5. A person charged with rape or defilement of a girl **under 13 years** may be convicted for indecent assault---**S. 175 CPL**
6. A person charged with armed robbery may be convicted of robbery--**NWACHUKWU VS STATE**

Comment [C145]: SENTENCING
•Sentence is defined as the punishment imposed according to law on a criminal wrongdoer after his conviction. See **YALEKHUE V OMOREGBE**.
•The term **"sentencing** refers to the post-conviction stage of the criminal justice process in which the Defendant is brought before the court for the imposition of a penalty or punishment for the crime committed. The penalty is usually in the form of a fine, imprisonment, caning, binding over, execution.
•Sentencing is probably the most important aspect of a criminal trial. The reason is that criminal justice cannot be truly be said to have been served where the eventual sentence of punishment imposed after a rigorous trial and conviction of a defendant is considered as not appropriate. Without this, citizens lose confidence in the criminal justice system.

Comment [C146]: •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; 313(3) ACJA. **AIM-** The aim of this procedure is to save cost and time of prosecution and to decongest the court. **EFFECT-** The effect of considering other Charges against the accused before another Court in his sentence before the Court are that the **accused will not be liable to be charged again on those offences** considered **UNLESS** his conviction **is set aside** on appeal.

Comment [C147]: **NOTE-** the lesser offence must be of a kindred offence with the one the accused is charged with. An accused can therefore be convicted of a lesser offence---**BABALOLA V STATE; KADA V STATE**
Note however that an accused person charged with a lesser offence cannot be convicted with a greater offence. See **s.228 (1) ACJA**

NOTABLES

- **Conviction:** A conviction is an act of a **court of competent jurisdiction** adjudging a person to be **guilty** of a punishable offence whether the **penalty is imprisonment, fine or binding over to be of good behaviour. Therefore, it does not matter whether the accused was not given a custodian sentence (imprisonment)---YALEKHUE v. OMOREGBE**
- The judgment of a court must **convict** the accused **before he is sentenced---R v. EKPO**. Failure to enter a **conviction before sentence** may invalidate the judgment---**ADAMU & ORS v. THE STATE**
- Once it is clear from the evidence and findings of the trial court that the accused person committed the offence charged, failure to record the conviction or sentence is a mere irregularity which **may** be remedied by the appellate court---**ONYEJEKWE v. THE STATE**. However, **it is important** that the conviction must be expressly stated on the records or discernible from the records.
- Where an accused person is **charged and tried for more than one count of offences**, or **several accused persons** are charged for one or more counts of offences, the court must **deliver a verdict in respect OF EACH COUNT OR EACH ACCUSED PERSON** as the case may be---**OYEDIRAN & ORS v. THE REPUBLIC**
- A trial court must pronounce its sentences **SEPARATELY** on **ALL** the counts of offence in a case---**BANKOLE v. STATE**

5. IDENTIFY THE VARIOUS TYPES OF PUNISHMENTS INCLUDING THE MANDATORY SENTENCE FOR CAPITAL OFFENCES (DEATH PENALTY); THE EXCEPTIONS AND THE FORM OF PRONOUNCING SUCH SENTENCES AND THE EFFECT OF FAILURE TO COMPLY WITH THE FORM OF PRONOUNCING THE DEATH SENTENCE

(a) Types of punishment

1. Death Sentence: Capital offence attracts death penalty. The death penalty is the prescribed punishment for persons convicted of capital offences and it is **mandatory** to impose same---**KALU v STATE; OKORO v STATE.** The Supreme Court has held that death sentence is legal in Nigeria---**KALU V STATE.** Offences such as murder/culpable homicide punishable with death, treason and armed robbery are punishable with the death sentence.

Comment [C148]: EFFECT OF FAILURE OF THE COURT TO RECORD CONVICTION BEFORE SENTENCE
- It depends on the circumstances of the case (**It may or may not nullify the proceedings**).
- 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 discernible or clear from the records of proceedings, it will affect the judgment and lead to an order of retrial. ADAMU v STATE.**
- The appellate court may also discharge and acquit the accused.

Comment [C149]: MODE OF EXECUTION OF DEATH SENTENCE
- Armed robbery is via firing squad. **Section 1(2) (a) and (b) Robbery and Firearms (Special Provision) Act 1984**.
- Execution of sentence of death is by hanging. **Section 367(2) CPL, 273 CPCL, 301(2) ACJL, 402 ACJA—hanging or lethal injection.**

DRESSING OF A JUDGE WHEN DELIVERING A DEATH SENTENCE
- When pronouncing a sentence of death, the Judge is robed in red gown and black cap (barrette).

EXECUTION/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.

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.** In some jurisdictions, if she is found guilty of a capital offence, she shall be sentenced to life imprisonment---**Ss. 368 (2) CPL, 302(2) ACJL, 270, 271 and 300 CPCL.** But under the ACJA, by virtue of **Ss. 404 & 415(4) ACJA.**
    a. She shall be sentenced to death.
    b. **However, execution to be stayed until baby is delivered and weaned.**
- **Young Person:** This is a person who has attained the age of **14 years** and **below the age of 17 years (under S. 368 (3) CPL) or 18 years (under the S. 270, 272, 302(3) CPCL)---S.2 CYPL/CPL/CPCL. They are** not to be sentenced to death but detained at the Governor's pleasure---**GUABADIA V STATE; MUSA V. STATE (2018).** NOTE-**ACJL** also has a similar provision in **section 302 (3)** but it applies to persons below 18years.

2. 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 the court imposes imprisonment but is **silent on** whether it is with or without hard labour, it is **deemed to be with hard labour---Ss. 382(5) CPL, 316(5) ACJL, 23(5) CPCL**.
- The trial court may still sentence a convicted person who is already serving a term of imprisonment to another term of imprisonment. The court may order that the sentence shall commence at the expiration of the previous term.
- The High Courts have unlimited jurisdiction to punish. They are only limited by the term of imprisonment prescribed by the law, which creates an offence---**S.272 CFRN**
- Magistrates' courts are limited to the punishment they can impose by the magistrates courts Law of the various states. A Magistrate Court in the **SOUTH and ACJA cannot exceed the limit of 4 years of its jurisdiction** to impose punishment when it passes consecutive sentences---**S. 380 CPL.** As for **LAGOS**, it **must not exceed 14 years---Ss. 314 ACJL; 29(5) MCL.** In the **NORTH**, a Magistrate's court can exceed its jurisdiction to impose punishment **but not by more than twice the limit** when it passes consecutive sentences----**Ss. 257; 24(2) CPCL; EMONE V POLICE; FANUSI V IGP; QUARTEY V IGP**

Comment [C150]:
- The woman may inform the court of the pregnancy before sentencing. See 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 proof is by a doctor of government hospital.
- The finding that a woman is not pregnant by the trial court is **subject to appeal**; the appellate court may set aside the finding, quash the sentence of death and substitute a sentence of life imprisonment. The rationale behind **this rule is for the protection of the unborn child**.
- **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 specifies Court of Appeal.** However **consider the constitutionality** of Section 376(4) CPL, 271(4) CPCL with Section 233(1) Constitution.

Comment [C151]: •Compare **404 & 415 (4) ACJA, with 221(2) Child's Right Act. Under Child's Right Act:**
a. Pregnant woman or nursing mother shall not be sentenced to death. **Section 221(2) Child's Right Act.**
b. Court to consider non-institutional sentence. **Section 221(3) CRA.**
c. To be kept at a Special Mothers Centre. **Section 221(4) CRA.**
d. **Pregnant woman and child not to stay more than 6 years at Special Mothers Centre**. See **Section 221(5) CRA.**
e. The Court that passed sentenced can review such. **See 221(6) CRA.**
IT APPEARS THERE IS A CONFLICT BETWEEN THE TWO ACTS, AND THE ACT THAT IS SPECIFICALLY FOR CRIMINAL TRIALS (ACJA) WILL PREVAIL

Comment [C152]: 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.

Comment [C153]: 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.

- A term of imprisonment comes into effect immediately it is pronounced **or not later than 3 months thereafter**---**Ss. 393(3) & 381 CPL**. In Lagos, period of detention must be included---**Ss. 315 ACJL, 419 & 431 ACJA**
- In practice, life imprisonment **means no more than 20 years jail term except the court orders otherwise**---**S. 70 PENAL CODE**
- Where a law provides term of imprisonment and is silent on fine, the court can impose fine in lieu and this is at the discretion of the court----**Ss. 316 ACJL, 382(1) CPL, 23(1) CPCL.** A convict who defaults in the payment of fine in lieu **SHALL SERVE 2 YEARS TERM MAXIMUM**---**Ss. 390(3) CPL, 316(3) & 319(3) ACJL, 422 ACJA, 23(3) &74 CPCL**

3. Sentence of fine: 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----**Ss. 390(3) CPL, 428 ACJA, 319(3) ACJL, 23 CPCL**. The court must have regard to the means of the convict---**Ss. 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---**Ss. 391 CPL, 320 ACJL**

4. Canning: There is no sentence of canning in Lagos state and under ACJA. Sentence of canning in certain cases may be in addition to other punishment----**Ss. 387 CPL; 308 CPCL; 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---**Ss 387 CPL; 77 PENAL CODE.** The number of the strokes must not **exceed 12 and it must be specified in the sentence---S. 386(1)(2) CPL.** It must be administered **with a light rod or light rattan cane or birch**---**Ss. 386(1) CPL 308(5) CPCL**

5. Haddi-lashing: Applies only to **Muslim faith practitioners i**n 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.

Procedure for execution of penalty for 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.

Comment [C154]: THE DIFFERENCE BETWEEN THE PUNISHMENT OF CANNING AND HADDI LASHING
A.Caning is provided for both in the **North and South**, that is, it is contained in the **CPL** and **CPCL** except as abolished in Lagos while Haddi Lashing is contained only in the **CPCL** and applicable only in the North.
B.Canning is enforceable **against all classes of persons irrespective of their religion** while Haddi Lashing is enforceable only **against Muslims in the North**. **Section 307 (2) CPCL**.
C.Canning is not prescribed for any specific offence but the court may consider the prevalence of the crime within its jurisdiction or the antecedents of the offender (**Section 387 CPL**) while Haddi Lashing is prescribed for **specific offences** in the Penal Code, for example, adultery, defamation or injurious falsehood and drinking alcohol. **Section 307 CPCL**.
D.Canning is enforceable only against persons who are liable to imprisonment for a period of 6 months or more. On the other hand, there is no such provision for Haddi Lashing.
E.Haddi Lashing –unlike canning – is meant to inflict disgrace, not physical pain nor injury.

Comment [C155]: SENTENCE OF CANNING NOT TO BE PASSED ON THESE PERSONS
a.A female offender. 385 CPL, 308(4)(a) CPCL.
b.A convict sentenced to death. 308(4)(b) CPCL.
c.Male offender of 45 years and above. 385 CPL, 308(4)(c) CPCL.
Note that the convict must be medically fit and this should be ascertained. Section 309(1) (2) CPCL.
•**NOTE THAT** 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. See 308(3) CPCL.
•**Appeal against sentence of canning is 15 days. Section 281(1) CPCL.**

Comment [C156]: HADDI LASHING AVAILABLE IN THE FF CASES---MAAD
1.Morality
2.Adultery by a man
3.Adultery by a woman
4.Drunkenness

Note that the **health of the convict and season of the year must be** considered.

6. Probation: This is a pre-conviction order whereby a defendant is discharged or released from confinement on conditions and under court supervision---**Ss. 341 ACJL, 453-458 ACJA**

Note that the person here is not a convict. However, if the probationer violates a condition, the court may revoke the order and proceed to convict and sentence him to imprisonment. Usually, the conditions are at the discretion of the court.

7. Parole: Parole is a conditional release from incarceration during which the prisoner promises to heed to certain conditions and submits to the supervision of a parole officer or a supervisor—**S. 468 ACJA.** Any violation of those conditions however, would result in return to prison.

It can only be ordered **on the basis of the report by the Comptroller General of the prison** to the court recommending the prisoner on the grounds of good behavior. He must have **served at least one-third of prison term or at least 15 years of life imprisonment—S. 468(1) (b) ACJA.** The court may release the prisoner with or without conditions.

8. Suspended sentence: A suspended sentence involves the judge imposing a prison sentence but suspending it on certain condition---**Ss. 460 (1) ACJA; 457(1) ACJL.** It means the offender is not sent to prison if he does not break the conditions. Unlike probation, the offender is an ex-convict.

9. Community service---Ss. 347-348 ACJL, 461 ACJA

10. Deportation: legal expulsion or removal from Nigeria of a person not being a citizen of Nigeria. It is one of the alternative to imprisonment---**Ss. 439 ACJA; 331 ACJL**

11. Forfeiture order

12. Payment of damage for injury or compensation

13. Confinement at a rehabilitation and correctional centre—Ss. 467 (1-3) ACJA; 348 ACJL, 68(1) (d) PC

14. Restitution of stolen property---**Ss. 297&341(3) ACJL, 270 CPL**.

15. Binding over---Ss. 300&309 CPL, 25 CPCL

(b) Form of pronouncing the death sentence

"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"---**Ss. 367(2) CPL, 301(2) ACJL**

Comment [C157]: Advantages of Probation
1.Probation saves the offender from societal stigmatization of being labeled a convict
2.It helps in re-integration of the offender into the society
3.The success of the probation as an alternative sentence is dependent on the content and aim of the probation programme.
When to make Probation Order? s. 454 ACJA
Where the offence against the defendant has been proved but it considers that it is expedient to release the defendant on probation having regards to the following:
1.The character of the offender;
2.The age of the offender;
3.The antecedent of the offence;
4.The health or mental condition of the offender;
5.The trivial nature of the offence; and
6.The extenuating circumstances under which the offence was committed.

Note that by **s.454 (2) (b) ACJA; 341 (1) (b) ACJL, Probation period SHALL NOT EXCEED 3 YEARS.**
The **CONDITIONS for probation** is provided for under **s.455 ACJA**
Probation Officer
Appointment- section 457(2) ACJA
The officer acts as a supervisor to the defendant making sure the defendant abides by the probation order and the conditions thereto.
Duties of Probation Officer- s.457(1)
Variation of terms and Conditions of Probation- s.458
Revocation of Probation- s.459

Comment [C158]: ELEMENTS OF SUSPENDED SENTENCE
1.The term of the imprisonment will be stated;
2.Conditions on which such sentence is suspended will be stated;
3.If the offender breaks a condition during the period of suspension, he will serve the term of imprisonment originally imposed.
NON-APPLICABILITY OF SUSPENDED SENTENCE
S. 460(3) ACJA; 457 (3) ACJL prohibits order for suspended sentence for:
1.An offence involving the use of arms or offensive weapon;
2.Sexual offence;
3.An offence which the **punishment exceeds 3 years imprisonment**

"The sentence of the court upon you is that you be hanged by the neck until you be dead or by lethal injection"---**S. 402 (2) ACJA**

(c) 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; OLOWOFOYEKU V THE STATE**

6. EXPLAIN THE PROCEDURE FOR PREROGATIVE OF MERCY

Procedure---C CAC

- **Court recommendation/convict application:** The court may suo moto make recommendations to the president or the governor through the Attorney General for prerogative of mercy, and as such after the pronouncement of the sentence of death on the convict, the judge would as soon as practicable, forward to the AG, the following:
  a. The CTC of the records of proceedings of the case
  b. A certificate showing that death sentence has been passed on the convict named therein
  c. A written report containing the recommendations of the court concerning the defendant sentenced to death
- **Consideration of report:** The AG shall consider the report made by the trial court in respect of the convicted person and the report may be referred to the committee responsible for exercising prerogative of mercy.
- **AG recommendation:** The Attorney-General may recommend to the Governor or President after considering the report of the Advisory Council that: –
  a. The sentence should be commuted to imprisonment for life; or
  b. The sentence should be commuted to any specific period; or
  c. The convicted person should be otherwise pardoned or reprieved.
- **Consultation and decision:** 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:
  a. Grant the offender pardon
  b. Grant the offender a respite. That is to cancel or postpone the punishment.

Comment [C159]: A person sentenced to death may appeal to the President/Governor for prerogative of mercy where it is a Federal offence or a State offence respectively

Comment [C160]: **NOTE---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.

ADVISORY COUNCILS ON PREROGATIVE OF MERCY
There are Advisory Councils/Committees on the Prerogative of Mercy in each of the States of the Federation. They are part of the Ministry of justice. In respect of federal offences, the **National Council of States** is the body responsible for exercising the Prerogative of Mercy.

ROLE
The powers of the President are to be exercised by him after consultation with the Council of State, whilst the Governor's power shall be exercised by him after consultation with the Advisory Council of the State on Prerogative of Mercy.

c. Commute the death sentence to life imprisonment or lesser punishment---**Ss. 175(2); 212(2) CFRN**

NB: Where the convicted person is not pardoned or reprieved, the death sentence pronounced upon the convict must be carried into effect, subject to confirmation by the President or Governor.

Comment [C161]: **Note that** appeal against death sentence acts as a stay of execution. See the notorious case of **BELLO V AG OYO STATE**

7. IDENTIFY THE ATTRACTIONS OF RESTORATIVE JUSTICE

The **Traditional Approach** to sentencing in criminal justice administration support the idea of retribution or punishment of offender through imprisonment and ensuring that there is a price to pay for crime committed. This is a form of deterrence to potential offenders. This approach for a while was quite effective by ensuring public protection through the removal of criminals from civil society.

Challenges associated with the approach

1) Unwitting creation of career criminals
2) The deterrent effect of this approach has become questionable
3) High cost incurred by the government in the maintenance of prisons
4) Overcrowding of prisons and inadequate facilities for the rehabilitation of criminals

The attempt to address these challenges of custodial system of court has given rise to this **Restorative Approach**. Here, the offender is made to compensate the victims and make repairs for the damages caused thereby giving the victim a greater sense of justice.

By this approach, there is an opportunity for the offenders to apologize, appreciate the damage caused or repair it with their own labour (through community service).

The advantages are that:

Comment [C162]: **ACJA and SENTENCING OBJECTIVES- s.401 (2)**
a.Prevention
b.Restraint
c.Rehabilitation
d.Deterrence
e.Education of the public
f.Restitution
g.Retributive- SECTION 401(2) ACJA.

ACJA 2015 AND ACJL 2011 APPROACH TO SENTENCING
The ACJA appears to recognize both concepts of retributive and restorative justice
Consequently, **s. 401(2) ACJA and Part 20-25 ACJL; s. 297(2) ACJL**

- It seeks to remedy the adverse effects of crime;
- It enhances rehabilitation of the offender;
- It infuses a sense of responsibility on the offender.

NOTABLES

- 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 on appeal by the prosecutor.
- The court **must pronounce** a sentence for **every count of offence** for which the accused is convicted---**YESUFU v. I.G.P**
- The sentence of the court takes effect immediately.
- **Under the CPCL,** a court after conviction may retire to consider the sentence, but the court is enjoined to pronounce the sentence in open court at a later date---**S. 198 CPCL**
- **Under the CPL,** a convicted person may be discharged upon self-recognisance with or without sureties on the condition that he shall appear and receive the sentence of the court at a future date--**S. 250 CPL**
- 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**
- A**ny 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 V BOARD OF CUSTOM AND EXCISE**
- 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

The discretion of the court to impose a sentence which is less than or different from the prescribed penalty is limited **in three instances:**

a. **Mandatory Sentences**: The court cannot impose **less than a** penalty prescribed for an offence. All capital offences are punishable with **the death penalty**. Death penalty is the mandatory penalty for **murder, culpable homicide punishable with death, treason, armed robbery.** The death penalty is **not permissive but mandatory for capital offences**. Therefore a court does not have the **discretion** to impose any other penalty upon conviction for a capital offence---**EGUNJOBI V FRN.** Similarly, the mandatory penalty for attempted armed robbery is life imprisonment by virtue o**f S. 2(1) ROBBERY AND FIREARMS (SPECIAL PROVISIONS) ACT, BALOGUN V. AG OGUN STATE**.

Comment [C163]: NB: The penalty for armed robbery under **S.402 CC** is **21 years imprisonment (for other arms) but for firearms-DEATH PENALTY.** See **S.402 (2). PENAL CODE is life imprisonment-s.298 Penal Code.**

b. **Minimum Penalties**: Where the law, which creates an offence, prescribes a minimum penalty for offenders upon conviction, the Court can **impose a higher penalty but cannot impose a penalty less than the minimum.** Also, where the **minimum penalty is a term of imprisonment**, the court cannot impose **a fine in lieu** of imprisonment--**AFOLABI v STATE.**

c. **Penalties without Option of a Fine**: Where the law which creates an offence prescribes **a penalty without option of a fine,** upon conviction, the court does not have the discretion to **impose a fine in lieu of the penalty**--**DADA V. BOARD OF CUSTOMS EXCISE**. However, where **a law prescribes a penalty and is silent on the option of fine**, the court has the discretion to impose a fine in lieu of the penalty.

ALSO NOTE

- **Sentencing hearing:** This has to do with the court, after conviction, taking all necessary aggravating and mitigating evidence or information that may guide it in deciding the nature and extent of sentence to pass on the convict.---**Ss. 311(3); 416(2)(g) ACJA**
- Suspended sentence is alien to our criminal justice system---**STATE V AUDU; EKPO V STATE.** However, **S. 460 ACJA,** makes provisions for suspended sentence, whereby after convicting a person, the court sees reason to order that the sentence be suspended with or without conditions and may sentence the convict to community service. Under ACJA, suspended sentence does not apply to:
  - **a.** offences involving the use of arms, offensive weapons;
  - **b.** sexual offences; or
  - **c.** an offence which the punishment exceeds imprisonment for a term of three years
- The court after conviction may retire to consider sentence or adjourn for sentence---**Ss. 278(1) ACJL, 198 CPCL, 248 CPL**
- 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----**Ss. 254 CPL, 280 ACJL**
- A court that pronounces more than one sentence in a trial may direct whether or not the sentence will run CONCURRENTLY OR CONSECUTIVELY. **Where the Court is silent, the sentence will run CONCURRENTLY, but in the NORTH the sentence will run CONSECUTIVELY**---**Ss. 24 and 312 CPCL**

Comment [C164]: **SENTENCE AND SENTENCING HEARING**
Note **section 311(2) ACJA** which enjoins the court in pronouncing a sentence to consider the interest of the victim, the convict and the community. Also enjoins the court to consider the appropriateness of non-custodial sentence or treatment in lieu of the offence as well as the previous conviction of the convict.
Note s.416 (2) ACJA on factors and introduction of sentencing hearing; these factors are:
a.Each case shall be treated on its own merit.
b.The objectives of sentencing including the principles of reformation shall be borne in mind in sentencing a convict.
c.An appeal court may reduce the sentence imposed by the trial court where it is excessive or based on wrong principles or may increase the sentence where inadequate.
d.A trial court shall not pass the maximum sentence on a first offender.
e.The period spent in prison custody awaiting or undergoing trial shall be considered and computed in sentencing a convict.
f.The trial court shall conduct an inquiry into the convict antecedent before sentencing.
g.It may be desirable to adjourn the sentencing in order to have time to consider any evidence adduced at the sentencing hearing in accordance with **s.311 ACJA.**
h.A defendant may not be given consecutive sentences for two or more offences committed in the same transaction.
i.Where there is doubt as to whether the Defendant or convict has attained the age of 18 years, the court shall resolve the doubt in his favour. Note **Section 416 (2) (d) ACJA**

•Sentence may take effect retrospectively.

Comment [C165]: A **CONCURRENT** sentence is sentence imposed **which is to be served at the same time** as another sentence imposed in the proceedings. **The sentences start running at the same time (i.e. serving 2 sentences at the same time)**
A **CONSECUTIVE** sentence is sentence imposed which is to be served **one after the other. Each sentence begins at the expiration of another. That is serving a sentence at the end of another.**

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. There are ___ contents of a valid judgment in criminal litigation

A. 4

B. 5

C. 6

D. 7

2. Judgment is to be delivered within ____ after the final address

A. 30 days

B. 60 days

C. 90 days

D. 3 months

3. The time to file appeal starts to count from ____

A. Date of delivery of the judgment

B. Date of final written address

C. Date of obtaining the CTC of the court judgment

D. Date of making the judgment

4. Authenticated copies of the judgment are to be given to the parties within ___ days of the delivery of the judgment

A. 7

B. 14

C. 21

D. 30

5. The decision of the Supreme Court/Court of Appeal may be validly read/delivered by ____'

A. At least 1 justice of the court that heard the matter

B. At least 3 justices of the court that heard the matter

C. All the justices of the court that heard the matter

D. None of the above

6. Where a Supreme Court/Court of Appeal justice is unavoidably absent, his judgment or opinion may be ___ by another justice of the court

A. Read

B. Pronounced

C. Delivered

D. A or C

7. Where the justice as in 6 above is no longer a member of the court, using the options in 6 above, his judgment or opinion may be ___ by another justice of the court

8. Under the ACJA, a part-heard case is ____

A. A matter in which the prosecution has closed its case

B. A matter in which the defence has closed his case

C. A matter in which the prosecution has opened its case

D. A matter in which the defence has opened his case

9. The following statements are true except _____

A. Judgment is to be delivered in open court

B. Judgment can be delivered upon a visit to the locus in quo

C. Judgment cannot be delivered upon a visit to the locus in quo

D. Judgment not satisfying the requirements of a valid judgment will be nullified

10. A judge becomes functus officio after ___

A. Delivery of judgment

B. Making of judgment

C. Final addresses of the parties

D. 90 days from the date of final address of parties

11. Where a court delivers judgment outside the constitutional time frame, the judgment is ___

A. Void

B. Voidable

C. A nullity

D. Worthless

12. Where there is no final address, the time for calculating the 90 days for delivery of judgment begins to count from ____

A. Date of conclusion of case for the prosecution

B. Date of conclusion of the case for the defence

C. A or B

D. None of the above

13. Allocutus may be made at any of the following instances except ___

A. After conviction

B. After a plea of guilty

C. Before sentencing

D. None of the above

14. NO QUESTION

15. The death sentence for armed robbery under the Robbery and Firearms Act is by ____

A. Firing squad

B. Hanging

C. Lethal injection

D. All of the above

16. When pronouncing a death sentence, the judge is robed in ___ gown and ___ barrette/cap

A. Red/Black

B. Black/Red

C. Black/Black

D. Black/Yellow

17. Under the CPL and CPCL, appeal as to whether or not a woman convict is pregnant goes to the __

A. Supreme Court of Nigeria

B. Court of Appeal

C. Federal High Court

D. Family Court

18. NO QUESTION

19. Using the options in 17 above, under the ACJL, appeal as to whether or not a woman convict is pregnant goes to the __

20. A term of imprisonment comes into effect immediately it is pronounced or not later than ___ months thereafter

A. 2

B. 3

C. 4

D. 5

21. Generally, life imprisonment means not more than ___ years jail term

A. 20

B. 15

C. 28

D. 18

22. Under the ACJL and ACJA, the following are sentences the court may pass except ____

A. Death sentence

B. Sentence of fine

C. Canning

D. Imprisonment

23. For there to be a sentence of canning, the offence must carry an imprisonment term not below ___

A. 6 months

B. 3 years

C. 6 years

D. 8 years

24. Which of these applies only to those of the Muslim faith in the North?

A. Canning

B. Haddi Lashing

C. Sentence of fine

D. A and B

25. Appeal against sentence of canning is within ____ of such sentence

A. 90 days

B. 3 months

C. 15 days

D. 14 days

26. Under the ACJA and ACJL, probation shall not exceed ___ years

A. 2

B. 3

C. 4

D. 5

27. ____ is a conditional release from incarceration during which the prisoner promises to heed to certain conditions and submit to a superior

A. Parole

B. Probation

C. Pardon

D. Amnesty

28. In the option chosen in 27 above, _____ must be shown

A. He must have served at least 1/3 of the prison term

B. He must have served at least 15 years of a term of life imprisonment

C. A or B

D. A and B

29. NO QUESTION

30. Where the President seeks to grant a prerogative of mercy, he is to consult the ____

A. Council of States

B. Advisory Council on prerogative of mercy

C. Ministry of Justice

D. General Council of the bar

31. The penalty for armed robbery under the Criminal Code is ____

A. 21 years imprisonment

B. Life imprisonment

C. Death penalty

D. None of the above

ANSWERS

1. **B**
2. **C**
3. **A**
4. **A**
5. **A**
6. **D**
7. **B**
8. **A**
9. **B**
10. **A**
11. **B**
12. **B**
13. **D**
14. **BONUS**
15. **A**
16. **A**
17. **A**
18. **BONUS**
19. **B**
20. **B**
21. **A**
22. **C**
23. **A**
24. **B**
25. **C**
26. **B**
27. **A**
28. **C**
29. **BONUS**
30. **A**
31. **A**

11. APPEALS

1. EXPLAIN THE BASIS OF APPEAL AND APPEALLABLE DECISIONS

(a) Basis of 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. It seeks to rectify an alleged erroneous decision on facts, law, mixed law and fact and to reverse the decision of the lower---**OREDOYIN V AROWOLO.**

(b) Appealable decisions

- Final decision
- Interlocutory decision.

NOTABLES

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.**

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---**BARIGA V. PDP**

Compilation of records of appeal---ORDER 8 CAR 2016

- The registrar of the court below shall **within 60 days after the filing of the notice of appeal**, compile and transmit to the COA the record of appeal.
- The registrar shall **within 14 days of filing of the notice of appeal**, summon parties to the appeal before him to settle the documents to be included in the record of appeal.

Comment [C166]: TERMINOLOGIES
❖APPELLANT: both the counsel and the person making the appeal are referred to as appellant---**OKARIKA V SAMUELA.**
❖RESPONDENT:
❖QUERRY: 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.
❖**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, its 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.
DUTIES OF APPELLATE COURT
•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

Comment [C167]: 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.

Comment [C168]: Appeals may be against **sentence** or **conviction and sentence**

- Where the registrar has failed and/or neglected to compile and transmit the records of appeal to the COA within the time stipulated by the rules, the appellant shall compile the records, including the documents and exhibits, and transmit same to the COA **within 30 days of the registrar's failure or neglect to forward the records to the COA.**

- The appellant shall serve on the respondent, the records compiled, **within 30 days of transmission to the COA** i.e. the records compiled by the appellant shall be served within 30 days of filing same.

- Where the respondent considers that there are additional records which may be necessary in disposing the appeal, he shall **within 15 days after service of the records on him**, be at liberty to compile the additional records and transmit same to the registrar of the COA.

- Where the registrar of the COA fails to compile and transmit the records as required and the appellant equally fails to do same, **the respondent may file a MON to dismiss the appeal.**

NB: Only **10 copies of the records and 2 copies of the electronic device used for the production of the records**, duly and carefully preserved, shall be forwarded to the registrar of the COA

Appellate court is bound by the record of appeal---**TANKO V. ABUBAKAR (2019); PML (SECURITIES) CO. LTD V. FRN (2018)**

An appeal can be heard notwithstanding the incompetent records of appeal---ATTOSHI V. AGBU (2018);

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**

Comment [d169]: NOTE THE DUTY OF THE PROSECUTION ANDTHE COURT WHEN A DEFENDANT PLEADS GUILTY

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.

Abandonment of appeal: It may be express, or implied. Where the appellant is abandoning his appeal expressly, the appellant has given a notice of abandonment that he does not intend to continue with the appeal any longer. Where the appellant has abandoned his appeal impliedly, no notice of abandonment is filed by hm. The appellant decided to withdraw from his appeal unannounced.

Procedure for express abandonment

- File a notice of abandonment as in **Criminal Form 11** of 2nd schedule to the rules.
- **U**pon service to the court registrar, the appeal is deemed dismissed---**ORDER 17 RULE 18 (1) CAR 2016.**
- Registrar will notify respondent of the abandonment in **Form 12**

NB: Abandonment of appeal does not include abandonment of record of appeal---**DADA V.THE STATE.** Appellant may withdraw his notice of abandonment of appeal with leave of CA or SC. Accused/appellant will file criminal **Form 13** while prosecutor/appellant files criminal **Form 13A**

Abatement of appeal: Upon the death of the appellant or convict the appeal abates---**AJILORE V. STATE.** Thus, it occurs outside the will of the parties. 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**

NB: Can a deceased appellant be substituted in an appeal? No. However, where there is a pending appeal and the appellant dies; the estate of the deceased can be substituted for the deceased for the purposes of arguing a ground(s) that relates to monetary claim that affects the estate only----**RE ABDULLAHI (2018)**

2. EXPLAIN THE APPEAL PROCEDURE FROM THE MAGISTRATE COURT UP TO THE SUPREME COURT

(a) Magistrate Court to High Court

Procedure

- Notice and grounds of appeal to be signed by appellant or his legal practitioner.
- Notice to be filed at the registry of the MC. The appeal is to be filed within **30 days from the date of the decision of the MC---Ss. 485(4) ACJA, 282(2) CPC, 69(1) MCL**. For sentence of canning, it is to be filed within **15 days from the date the sentence is pronounced---S. 281 CPCL**
- The HC shall be properly constituted if at least one judge sits.

Comment [C170]:
The High court has both original and appellate jurisdiction---**Ss. 257(2) and 272(2) CFRN; S. 28 HCL OF LAGOS STATE.**

Comment [C171]:
- **Verbal notice of appeal may be given either in open court or to registrar who will reduce same to writing. S. 280(3) CPCL.**
- No verbal notice in Lagos from decision of the magistrate court to the High court. **S. 69(1) MCL Lagos.**
- No verbal notice in FCT. **S. 485(3) ACJA.**

Comment [C172]:
The High Court in the Northern Nigeria shall be duly constituted to hear appeals from magistrate court to the High court with two Judges. Where they are two and have divergent decision, the effect is that there is no decision---**S. 63 HCL**
In Lagos, it is one, except where the chief judge of Lagos state may direct that 3 judges sit---**S. 29 HCL**
These provisions do not conflict with the constitution---**ISHOLA V. THE STATE**

(b) High Court to Court of Appeal

Procedure

- Notice and grounds of appeal to be signed by appellant or his legal practitioner---**NIGERIAN ARMY V SAMUEL; ORDER 17 RULE CAR 2016.**
- Notice to be filed at the registry of the HC. The appeal (including interlocutory appeals) is to be filed within **90 days from the date of the decision of the HC**---**S. 24(2)(b) CAA 2004**
- When the COA sits to hear appeal, it is duly constituted with **at least 3 JCAs**. –**S. 239(2) CFRN**. If the appeal is from SCA or CCA the 3 JCAs shall be learned in IPL and CL respectively.—**S. 247(1) CFRN**

(c) Court of Appeal to Supreme Court

Procedure

- Notice and grounds of appeal to be signed by the **APPELLANT HIMSELF**---**ORDER 9 RULE 3 SCR**
- Notice to be filed at the registry of the HC. The appeal (including interlocutory appeals) is to be filed within **30 days from the date of the decision/judgment of the COA**---**S. 27(2)(b) SCA**
- **7 JSCs** (Full court) for a) **Interpretation of the CFRN** b) **Constitutional matters** and c) **Fundamental Rights matters**. **5 JSCs** for any other case----**S. 234 CFRN**

NB: No appeal straight to the SC, go to the COA then come to the SC----**BELLO V. FRN (2019)**

NB: In cases involving capital offences, manslaughter/culpable homicide not punishable with death, Notice of Appeal is to be filed **within 7 days from the date of the decision/judgment** and no extension of time shall be granted---**STATE V. OLALEKAN OMOYELE; S. 4(3) JUDICIAL OFFICERS AND APPEAL BY PROSECUTORS ACT**

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---**S. 295(2) CFRN.** The opinion of the higher court on the issue will be used to decide the case. **It is not an appeal** as the opinion of the higher court on the issue will be used to decide the case. However, **an appeal can arise from a decision of the lower Court based on case stated** and if refused by the HC, then it is appealable to the Court of Appeal and even up to the Supreme Court.

Comment [C173]: Fees are payable except in capital OFFENCE cases or where appellant is on legal aid. **Or 17R 8(3) CAR 2016.**

Comment [C174]: Starts from the date of the judgment or decision appealed against. May also start from the date appellant had notice of the judgment---**OHUKA V STATE.**

Comment [C175]: Except an insane person.

Comment [C176]: In practice, the SC also sits with a full court when asked to overrule itself

Conditions for case stated---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.

Case stated from Magistrate Court to High Court

Only the Attorney General can state a case for reference after judgment. This must be done within six months after judgment---**S. 76 MCL.** Contents of case stated are as in **S. 77 MCL.** It can be stated to the High court. Either party, the magistrate suo moto, the AG at any stage before judgment may request reference on point of law before judgment.

Case stated from High Court to Court of Appeals---ORDER 5 CAR 2016

- Question of interpretation of constitution
- Any question of law

Appeals and other prerogative writs

Available in the supervisory powers of the High Court over inferior courts. 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)
- 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)---**FAWEHINMI v AKILU**
- Certiorari (The writ is made to the High Court to quash the order or proceedings of a lower court)---**STATE V FALADE**
- Prohibition (This Writ is available to stop lower or inferior courts from conducting proceedings that is not within its jurisdiction or in excess of its jurisdiction---**STATE V CHIEF MAG ABOH MBAISE, EX PARTE ONUKWE.**

Comment [C177]: Where, in any criminal case in which no public officer is a party and the Attorney-General is of opinion that any decision of a Magistrate is erroneous in law, he may, at any time within six (6) months **FROM THE DATE OF THE DECISION**, require the Magistrate to state a case on it for the opinion of the High Court.

Comment [C178]:
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.

Comment [C179]: Forms 1 or 2 in the 1st schedule

3. IDENTIFY THE POWER OF A COURT TO HEAR APPEALS AND THE RIGHT OF A PERSON TO APPEAL IN A CRIMINAL MATTER

(a) Power of a court to hear appeals in criminal matters

A Court cannot suo moto confer power on itself to hear an appeal---**RABIU V STATE** as the right of appeal is conferred by statute or constitution---**STATE V ADILI**.

(b) The right of a person to appeal in criminal matters

Appeal may be:

- Appeal as of right---**S. 241(1) CFRN**
- Appeal with leave---**S. 242(1) CFRN**

Who may appeal?

- The Prosecutor. Prosecutor will include agencies with prosecutorial powers
- The accused/convict. SEE **S. 243(a) CFRN**

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---**AGU V. AYELOGU**

Comment [C180]:
- Final decisions before the Federal High Court or a High Court sitting at first instance
- Where the ground of appeal involves questions of law alone
- Decisions as to the interpretation or application of the CFRN 1999
- Decision 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 in which the Federal High Court or High Court has imposed a sentence of death.

Comment [C181]: Appeal filed without leave where leave is needed is incompetent---**TIMOTHY v FABUSUYI**

4. EXPLAIN THE EFFECTS OF THE PRACTICE DIRECTIONS OF THE COURT OF APPEAL AND SUPREME COURT ON CRIMINAL APPLEALS

(a) Court of Appeal PD

CAFTPD does not apply generally rather it is limited to certain subject matters including terrorism, corruption , human trafficking, money laundering, rape, kidnapping and appeals by or against such national human rights, intelligence agencies, law enforcement, prosecutorial or security agencies such as EFCC, ICPC, NHRC, SSS.

Comment [C182]: **Court of Appeal Fast Track Practice Direction 2014**

Time to file briefs

- Appellant brief **within 45 days**---**ORDER 19 RULE 2 CAR 2016.** It is now subject to **S. 8(3) CAFTPD** which **provides for 14 days**.
- Respondent brief **within 30 days---ORDER 19 RULE 4 (1) CAR 2016** but see **S. 8(5) CAFTPD** which **provides for 10 days**
- Reply brief is **within 14 days**---**ORDER 19 R 5(1) CAR 2016** but see **S. 8(7) CAFTPD** which **provide for 5 days.**

Effect of non compliance

Where appellant is in default, appeal is to be dismissed for want of diligent prosecution---**ORDER 19 RULE 10(1) CAR 2016; S. 8(4) CAFTPD; EVEMILI V STATE**

Where respondent is in default, the court will proceed to hear the appeal. He will not be allowed to make an oral argument. The court will proceed based on the brief of the appellant---**ORDER 19 R 10(1); S. 8(6) CAFTPD**

Failure to file reply brief, it will be deemed that the appellant has conceded to the new material facts raised by the respondent's brief---**ORDER 19 RULE 10(1) CAR 2016**

(b) Supreme Court PD

Practice direction in Supreme Court is applicable to offences of Terrorism, rape, kidnapping, corruption, money laundering, and human trafficking.

Time to file briefs

- Appellant – **10 weeks**; Under SCPD its **10 days**
- Respondent – **8 weeks**; Under the SCPD its **7days**
- Reply – **4 weeks**; Under the SCPD its **3 days**

See generally **ORDER 6 RULE 5 SCR; S. 6 SCPD**

Comment [C183]:
Under the SCPD, record of appeal to be compiled: **15 days**

NB: The effect of non-compliance is similar to that of the COA

5. DRAFT NOTICE AND GROUNDS OF APPEAL

(a) Notice of Appeal

Notice of Appeal shall be in **Criminal Form 1** where an accused or convict is appealing---**ORDER 17 R 3 CAR 2016.** Where the prosecutor appeals, it shall be in **Criminal Form 5**. Failure to comply to the form 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.** Where there are several appellants, **each is to give separate notice of appeal.**

NB: An appeal is not incompetent because more than one notice of appeal is filed provided they were filed and in time---**SOCIO POLITICAL RESEARCH DEVELOPMENT V. MINISTER OF FCT (2019)**

Who may sign notice of appeal?

- Notice of appeal, application for leave to appeal or notice for extension of time, is to be signed by **Appellant or Legal representative**---**ORDER 17 RULE 4(1) CAR 2016; ISIAKA V STATE; NIGERIAN ARMY V SAMUEL; IWUNZE V FRN**
- Signing of joint notice of appeal is unknown--- **UWAZURIKE V AGF**
- An appellant signing on others behalf is not permitted---**IDEGWU V. THE STATE**
- Signing by law firm is an irreversible error---**SLB CONSORTIUM LTD V. NNPC**

Exceptions

- Where the contention at the court below is that the APPELLANT IS OF UNSOUND MIND----**ORDER 17(5) CAR 2016**
- Where the appellant is a body corporate, then Manager, clerk, secretary and legal representative can sign---**ORDER 17(6) CAR.**

(b) Grounds of appeal

This is the reason, the fulcrum for challenging the decision of the court. It is the reason why the decision of the court is challenged---**OKPONIPERE V STATE.** The grounds must therefore relate to the ratio/decision---**OGUNBIYI V ISHOLA, AKPAN V BOB.** Hence, ground of appeal must be derived from decision of court appealed against---**ASOGWA V PDP**

Comment [C184]: In the case of **SOUTH ATLANTIC PETROLEUM LTD V MINISTER OF PETROLEUM RESOURCES & ORS.**; the Court held that a ground of appeal is an attack on the judgment of the court on the issue decided

Grounds of Appeal is not an argument or a narrative, it must be short as much as possible and must accompany every notice of appeal. Where an oral notice of appeal is given in the north, there will not be grounds immediately.

The ground of appeal must be substantial in nature. i.e. GROUNDS + PARTICULARS = **SUBSTANCE.** This formula can be used to determine classification---**OSAHON V FRN.** Ground of appeal without particulars may be struck out except it is an omnibus ground of appeal---**ASOGWA V PDP; KOYA V UBA LTD**

Where the appellant is in custody, he can give notice of appeal to officer in charge of prison. The date he gave such notice is deemed to be the date of filing.

Formulation of issues

- Issues formulated for determination must be distilled from the grounds of appeal
- Failure to formulate issues out of any ground means abandonment of such appeal---**FRN v IWEKA.**
- An issue must be tied to a ground or grounds of appeal and must not be more than the ground of appeal---**ROE LIMITED V UNIVERSITY OF NIGERIA (2018)**
- Bad brief writing is to tie the issues to all the grounds of appeal.
- Appeals are determined on basis of formulated issues.
- Court **may adopt, reframe or re-couch issues;** this must be done with caution as to prevent a coloration of the appeal---**UGWU V STATE**

Classification of grounds of appeal

- Grounds of law
- Grounds of facts
- Grounds of mixed law and fact. SEE **ABDUL V CPC**

Particulars of error

- Each ground of appeal must be supported by Particulars of Error
- A ground of appeal without particulars of error may be struck out----**KOYA v UBA LTD**

Omnibus ground of appeal in criminal cases

Omnibus ground of appeal is an appeal that contains no particulars of error as it complains about the entire decision without any evaluation as of fact, law or mixed law and fact. This is used when there is no evaluation of facts.

Comment [C185]: What is the importance of the distinction? The importance of the distinction borders on whether leave of court will be sought or not. See **Abdul v CPC (supra).**
CRITERIA TO DISTINGUISH
The particular criteria are provided for in **ABDUL v CPC (supra)** thus:
1.Grounds complaining of misapplication of law to prove facts or misunderstanding of law is a **ground of law**.
2.A ground questioning evaluation of evidence by the court before the application of law is a **ground of mixed law and facts.**
3.A ground questioning only issue of facts alone is a **ground of fact.**
4.Court holding that an event occurred but no admissible evidence to support= **law**

The way it is couched in Criminal matter is: "**THE DECISION OF THE TRIAL COURT IS UNREASONABLE AND CANNOT BE SUPPORTED HAVING REGARD TO THE EVIDENCE"---S. 19(1) COURT OF APPEAL ACT. NOTE:** that a ground of appeal that alleges: **that the decision is unreasonable, unwarranted and cannot be supported having regard to the weight of evidence** is not proper ground of appeal in criminal cases---**ENITAN v STATE; OLAIYA V. THE STATE (2018)**

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. SEE **ALI v STATE**

Additional or amended ground of appeal---SEE **ORDER 17 RULE 3 (3) CAR 2016**

- Appellant may file and argue additional ground of appeal.
- He may also apply to amend the ground already filed.
- To do either, he needs leave
- Without leave, no argument on those grounds.

(c) Draft of Notice and grounds of appeal

IN THE COURT OF APPEAL
IN THE ABUJA JUDICAL DIVISION
HOLDEN AT ABUJA
APPEAL NO ……
CASE NO HCL/214/2007

BETWEEN
1. RAMPAM ALECHENU
2. MUSA UGOCHUKWU ……..…… APPELLANT
AND
FEDERAL REPUBLIC OF NIGERIA ……..…… RESPONDENT

NOTICE OF APPEAL

I **MUSA UGOCHUKWU** having been convicted of the offence of Murder and now prisoner in prison at Kuje Prison or whose address service is 17 Badejo Road Garki Abuja do hereby give notice of appeal against my conviction for the offence of Murder punishable under **Section 221 of the Penal Code Act** and sentenced to death hereby appeal to the Court on the following grounds*:*

GROUNDS OF APPEAL

GROUND 1

That the learned trial judge erred in law when delivering his ruling on a no-case submission made by the accused person at the trial.

PARTICULARS OF ERROR

1. The prosecution has not established a prima facie case against the defendant to warrant it entering its defence.
2. That the onus of proof rests on the prosecution throughout the trial.
3. The only evidence against the accused persons was the unexplained absence of Igho.
4. The prosecution failed to investigate the defence of Alibi raised by the Defendant.

GROUND 2

That the trial court misdirected itself when it held thus:

"For the 2nd accused person, the evidence against him is overwhelming. In fact his refusal to testify after his no case submission was overruled is, in law, itself a testimony against him. Let me also mention that his silence was not only rude but also contemptuous….."

PARTICULARS OF MISDIRECTION

1. The presumption of innocence of an accused person is sacrosanct and as such a defendant is not required to testify in court
2. The duty of proving this guilt is on the prosecution and the Judge is not to assist in discharging this duty in any way.
3. That the Trial judge hinged his decision in respect of the defendant on his refusal to testify and thereby violated his constitutional right to presumption of innocence as well as his right to a fair hearing.

GROUND 3

The decision of the trial court is unreasonable and cannot be supported having regard to the evidence.

……

Signature or Mark of Appellant

DATED at ..... this ..... day of ..... 20 ..... .

_____

K. C Aneke, Esq
Appellant's Counsel
K.C Aneke & Co
No.3 GRA Road,
Abuja

FOR SERVICE ON:

The Attorney-General of the Federation,
Federal Ministry of Justice,
Maitama
Abuja, FCT

PARTICULARS OF TRIAL AND CONVICTION

I. Date of Trial: 10th August 2007

2. In what court tried: High Court of the Federal Capital Territory

3. Sentence: Death

4. Whether questions of law now raised were raised at the trial: No

You are required to answer the following question-

Do you desire to be present on the hearing of the appeal by the Court? No. If you do desire, state the reasons upon which you submit the said Court should give you leave to be present.

N.B.: The Court will, if you desire, consider your case and argument if put into by you or on your behalf, instead of your case and argument being presented orally. If you desire to present your case and argument in writing, submit as fully as you think right your case and argument in support of your appeal.

6. PREPARE BRIEFS OF ARGUMENT

Brief of argument is a succinct statement of the parties before the appellate court as it relates to their case. Hearing of appeal in court of appeal is by briefs of argument---**ORDER 18 CAR 2016**

Types of brief

- Appellant brief
- Respondent brief
- Reply brief.

Contents of the brief of argument

- Heading of the Court of Appeal
- Appeal number
- Parties to the appeal
- Title of the brief of argument
- Table of content
- Introduction

Comment [C186]: POWER OF COURT TO DISPENSE WITH BRIEF OF ARGUMENT
✓See order 19 rule 10 and 11 CAR 2016
✓Joint briefs. Order 19 rule 6 CAR
✓Note the application for consolidation, if there must be joint brief. CONDITIONS: interest must be the same.

- Statements of facts.
- Grounds of Appeal
- Issues for determination
- Arguments on each issue
- Prayers/reliefs
- Conclusions
- List of authorities
- Date and signature---**ORDER 17 RULE 4(1) CAR 2016**
- Address for service (also address of the party filing)----**ORDER 19 RULE 3(1) CAR 2016**

Comment [C187]: Whether the HONORABLE COURT WAS NOT IN ERROR WHEN IT HELD THAT?

NB: It must not exceed **35 pages---ORDER 19 RULE 3 (6) (a) CAR 2016**. This does not relate to all briefs of arguments as it is only limited to the Appellant's Brief and Respondent's Brief. For **Reply Brief,** it must not exceed **15 pages----ORDER 19 R 3(6)(a) CAR 2016**. **Failure to comply with the requirements of pages, the brief will not be accepted for filing at the registry.**

NB: Notice of preliminary objection **TO BE FILED BY RESPONDENT THREE (3) CLEAR DAYS BEFORE THE DATE OF HEARING---ORDER 10 RULE 1 CAR 2016.** Failure to give notice of preliminary objection, court may refuse to hear objection or adjourn based on some terms---**ORDER 10 RULE 3 CAR**. In Supreme Court, see **ORDER 2 R 9 SCR.** Arguments may be included in respondent brief.

7. IDENTIFY THE ORDERS THE COURT MAY MAKE AFTER HEARING AN APPEAL

The order to be made depends on what the appeal was on. If appeal was on sentence, then only sentence will be decided upon. The possible orders are:

- Affirm conviction and sentence

- Affirm conviction but vary the sentence
- Quash conviction
- Order a re-trial

Instances where there will be an order of retrial (SET GO)—S. 36(9) CFRN

- **SUBSTANTIAL CASE:** Where the evidence as a whole discloses a substantial case against appellant.
- **ERROR OF LAW:** Where there is an error in law or an irregularity in procedure which has occasioned a miscarriage of justice.
- **TRIVIAL:** Where the offences for which appellant was convicted or consequences are not trivial.
- **GREATER MISCARRIAGE OF JUSTICE:** Where to refuse an order of retrial would occasion a greater miscarriage of justice.---SEE **AIGBE V STATE, ABODUNDE V R.**
- **OPPRESSION:** Where there are no special circumstances as to make it oppressive for appellant to be tried for a second time

NB: No retrial, if it would enable the prosecution to remedy its inadequacy. 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**

Additional evidence on appeal

Generally, new evidence is not admissible as records of proceedings are followed---**ESOH V COP.** The rationale is because:

- There must be an end to litigation
- Successful party is entitled to enjoy the fruit of the judgment.
- Successful party must not be confronted with new case on appeal.

However, additional evidence may be allowed in the interest of justice, but before additional evidence can be adduced on appeal, leave of court must be sought---**ESANGBEDO V STATE**

Comment [C188]:
Conditions for additional evidence on appeal
- Appellant must show that the evidence sought to be adduced was not available at the trial or could not have been adduced at the trial---**OLADIPUPO V STATE, ARIRAN V ADEPOJU.**
- The evidence must be apparently credible though not incontrovertible.
- In exceptional circumstances, where to do so would not mean a fresh rehearing---**ABIOLA V COP, R V ROWLAND.**

Comment [C189]:
- 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.

POSSIBLE MULTIPLE CHOICE QUESTIONS ON THIS TOPIC

1. The registrar of the trial court is to compile and transmit to the Court of Appeal the record of appeal within ____ days after the filing of the notice of appeal

A. 60

B. 30

C. 15

D. 14

2. Using the options in 1 above, the registrar above is to summon parties to the appeal before him to settle the documents to be included in the record of appeal within ___ days after the filing of the notice of appeal

3. Using the options in 1 above, where the registrar above fails to compile and transmit the records of appeal, the appellant shall do same within ___ days of the registrar's failure

4. Using the options in 1 above, the appellant shall serve on the respondent the records compiled within ___ days of transmission to the Court of Appeal

5. Using the options in 1 above, where the respondent has additional records necessary to the appeal, he shall within ___ days after the service of the records on him, compile and transmit such additional records to the Court of Appeal

6. Where the registrar and the appellant fail to do as required as in 1 and 3 above, the respondent may ____

A. File a motion on notice for the dismissal of the appeal

B. File a motion ex-parte for the dismissal of the appeal

C. File a motion on notice for the appeal to be struck out

D. File a motion ex-parte for the appeal to be struck out

7. Only ___ copies of records and ___ copies of electronic device used for the production of the records shall be forwarded to the registrar of the Court of Appeal

A. 2/10

B. 10/2

C. 12/10

D. 10/12

8. Notice of abandonment is as in Form ___

A. 11

B. 12

C. 13

D. 14

9. The registrar notifies the respondent of the abandonment as in Form ___

A. 11

B. 12

C. 13

D. 14

10. Withdrawal of notice of abandonment of appeal by accused/appellant is as in Form ___

A. 11

B. 12

C. 13

D. 13A

11.-14 NO QUESTION

15. For an appeal from the Court of Appeal to the Supreme Court, the notice and grounds of appeal are to be signed by the ___ generally

A. Appellant

B. Appellant's legal practitioner

C. A or B

D. A and B

16. In cases involving capital offences, manslaughter/culpable homicide not punishable with death, notice of appeal is to be filed within ___ days from the date of judgment

A. 7

B. 14

C. 30

D. 60

17. ____ is a reference to a higher court, by a lower court, to give its opinion on points of law or interpretation of the constitution which will be used by the lower court to decide the case before it

A. Case stated

B. Appeal

C. Judicial review

D. Referral

18. ____ is the only authority that can state a case for reference after judgment

A. Attorney General

B. President of the FRN

C. Governor of a State

D. All of the above

19. The authority as in 18 above is to do so within ___ after judgment

A. 3 months

B. 90 days

C. 6 months

D. 15 days

20. Appellant brief is to be filed within ___, respondent brief is to be filed within ___ and reply brief is to be filed within ___ at the Court of Appeal

A. 45/14/30 days

B. 45/30/14 days

C. 10/8/4 weeks

D. 8/10/4 weeks

21.Using the options in 20 above, if 20 above were before the Supreme Court, it would be ___

22. In 20 above, under the Court of Appeal Practice Direction, it would be ___

A. 14/10/5 days

B. 10/8/4 days

C. 10/14/5 days

D. 8/10/4 days

23. In 21 above, under the Supreme Court Practice Direction, it would be ___

A. 10/8/4 weeks

B. 10/7/3 days

C. 10/8/4 days

D. 10/7/3 weeks

24. Where an accused appeals, the notice of appeal shall be as in Form ___

A. 1

B. 3

C. 5

D. 7

25. In 24 above, where the prosecutor appeals, it is as in Form ___

A. 1

B. 3

C. 5

D. 7

26. Under the Supreme Court Practice Direction, record of appeal is to be compiled in ____ days

A. 14

B. 15

C. 30

D. 60

27. NO QUESTION

28. Where an accused is in custody and wishes to appeal, the time he is deemed to have filed his notice of appeal is _____

A. When he hands the notice of appeal to the detaining authority

B. When the detaining authority files it at the appropriate court registry

C. When he is given notice that the detaining authority has filed the notice of appeal in the appropriate court registry

D. All of the above

29. In a notice of appeal within 5 grounds, the appellant is expected to have ___ issues

A. 2

B. 3

C. 5

D. 6

30. Failure to formulate issues out of any ground of appeal means ___

A. Abandonment of such appeal

B. Abatement of such appeal

C. Discontinuation of such appeal

D. All of the above

31. A ground of appeal questioning the evaluation of evidence by the court before the application of law is a ground of ____

A. Law

B. Facts

C. Mixed law and facts

D. None of the above

32.-33 NO QUESTION

34. An appellant and respondent's brief must not exceed ___ pages

A. 15

B. 30

C. 35

D. 40

35. A reply brief must not exceed ___ pages

A. 15

B. 30

C. 35

D. 40

36. A notice of preliminary objection is to be filed by the respondent ___ before the date of hearing

A. 3 days

B. 4 days

C. 3 clear days

D. 4 clear days

ANSWERS

1. **A**
2. **D**
3. **B**
4. **B**
5. **C**
6. **A**
7. **B**
8. **A**
9. **B**
10. **C**
11. **BONUS**
12. **BONUS**
13. **BONUS**
14. **BONUS**
15. **A**
16. **A**
17. **A**
18. **A**
19. **C**
20. **B**
21. **C**
22. **A**
23. **B**
24. **A**
25. **C**
26. **B**
27. **BONUS**
28. **A**
29. **C**
30. **A**
31. **C**
32. **BONUS**
33. **BONUS**
34. **C**
35. **A**
36. **C**