NATIONAL OPEN UNIVERSITY OF NGERIA

SCHOOL OF LAW

COURSE CODE:LAW 100

COURSE TITLE:INTRODUCTION TO LAW

State or police prosecutor does not appear on behalf of the victim in the same way as the defence lawyers appear on behalf of the defendant. The prosecutor appears on behalf of the community and assumes the responsibility of proving the charges beyond reasonable doubt but essentially this is where his or her duty stops.

When the victim is called to give evidence, it is generally to establish the guilt or innocence of the accused. It is not usually a time when the impact of the defendant's conduct on the victim is dealt with. To the extent that this happens, it is left until the defendant is sentenced, assuming that person is found guilt. An action for criminal compensation can be brought by the victim but again that is a separate process from the criminal trial.

2.0 OBJECTIVE

On successful completion of this unit, you should be able to identify the main steps in a criminal trial.

3.0 MAIN CONTENT

3.1 Definition of Terms

To understand our criminal procedure, it is necessary to know some of the common terms that are used.

3.1.1 Summary and Indictable Offences

Summary offences are of a less serious nature and are ordinarily dealt with by a magistrate. The principal characteristic of these offences is that summary offences are strictly called 'simple' or non-indictable offences that are tried mostly in the magistrate courts. They are offences other than felonies and misdemeanours and may be punishable with imprisonment for less than six months.

However, the term 'summary' is often used within the legal system to indicate that the matter can be dealt with summarily and that expression is used here. Examples of summary offences are traffic matters, contraventions and the like.

3.1.2 Indictable Offences

As you would expect, are of a more serious nature. These are offences which on conviction may be punished by a term of imprisonment exceeding two years or by imposition of a fine exceeding four hundred naira, not being an offence declared by the law creating it to be punishable on summary conviction.

The distinction between summary and indictable offences, however, can become blurred because some indictable offences can be dealt with summarily. To complicate the matter, the option to have the matter dealt with summarily varies between the defence and the prosecution according to the offence. However, in **all** cases the exercise of the choice may be overridden by the presiding magistrate. The types of indictable offences that can be dealt with summarily are stealing, damage to property, minor assault, and unlawful use of a motor vehicle.

3.1.3 Felonies and Misdemeanours

A felony is any offence which is declared by law to be a felony or is punishable without proof of previous conviction, with an imprisonment for three years or more or by death.

A misdemeanour is any offence which is declared by law to be a misdemeanour, or is punishable by imprisonment for not less than six months but less than three years.

There is a distinction between felonies and misdemeanours. The difference is more historical than real.

Generally speaking, a misdemeanour is less serious than a felony but again, as so often is the case, there are exceptions. Historically, the difference between a misdemeanour and a felony was that a person convicted of a felony forfeited his/her property to the State upon conviction. Also at one point in time, a person who was convicted of a felony was liable to be sentenced to death. These consequences no longer apply.

In Nigeria, the difference mainly surrounds whether it is possible to arrest with or without warrant. Where a misdemeanour is involved, a warrant is required. However, there are exceptions to this rule. (A warrant is a document issued by a Justice of the Peace authorizing certain conduct, such as arrest of a person suspected of having committed an offence or the searching of premises).

Another relevant point of distinction flows from the fact that, in some cases, a public official convicted of an offence may have to vacate office

depending on whether he or she has committed a felony or misdemeanour.

3.1.4 Defendant and Accused

A person who is brought to court to face criminal proceeding may either be described as the 'accused' or the 'defendant'. Generally speaking the term 'accused' is used for serious charges while 'defendant' is a broader term and can be applied to all criminal matters. It is the only term used where proceedings are begun by summons (to be discussed later).

3.2 Means by which Defendant is brought to Court

A person facing criminal charges may be brought to court in a number of ways.

3.2.1 Arrest and Charge

The laying of a charge usually follows an arrest so it is useful to start our discussion with arrest. Broadly speaking, a police officer may arrest a citizen where she or he has reasonable grounds for suspecting that an arrestable offence has been committed. If the offence is a 'felony' under the Criminal Code then no warrant is required (contrast misdemeanours). However, the police can arrest in **all** cases where the person is found in the act of committing the offence. This rule applies to all types of offences.

In carrying out an arrest, the police may use such force as is necessary to effect the arrest but this does not extend to the use of **deadly force** unless the police officer is attempting to prevent the person's escape from custody for a serious offence. If a police officer uses excessive force, then he may be open to a civil claim for assault.

When making an arrest, the police must advise that an arrest is being made and the reason for making the arrest. However, these requirements may be satisfied if the person making the arrest acts reasonably in the circumstances. It may, for example, be obvious that a person is being arrested and the reasons for the arrest in which case, strict adherence to the procedure may be dispensed with. If, a police officer takes a person into custody after being fired upon by the arrestee then it would be clear why an arrest has been effected and presumably the reasons for it.

3.2.2 Private Citizen Arrest

A private citizen can effect an arrest, but unlike the police who can arrest where they have reasonable grounds for **suspecting** that an offence has been committed, the private citizen can only arrest if an offence **has** been committed. Any person (including police) who makes an unlawful arrest and detains another may be sued for wrongful or false imprisonment and possible assault. Wrongful imprisonment is a civil action based on a trespass to the person, and, if established, allows the recovery of compensation. Having said that the police may be liable to a claim for false imprisonment, there are some statutory provisions, which relieve police from civil liability.
Nevertheless any person, but especially a member of the public, should be certain of his/her ground before making an arrest. In Nigeria, freedom from arbitrary arrest is regarded as a cornerstone of her criminal system.

3.2.3 Charging the Defendant

Once the arrest has been made and the person taken to the police station, the precise terms of the charge will be formulated and read to the defendant. The charge will indicate the offence and briefly what it is that the defendant is accused of. Additional charges may be added at a later date, either while the defendant is in custody or in court. You will be familiar with the practice of the police charging a person with a 'holding charge' (such as firearms offence) while they investigate more serious charges. This practice no longer obtains in some states of the federation.

The impression should not be given that an arrest is a precursor to a charge being laid in all cases. It may be that the defendant voluntarily goes to the police and confesses to a crime, as where a man came to the Police Station, with a cutlass soaked with blood and said he has killed his wife; and took the police to the scene.

(a) First Court Appearance

Where a person has been arrested, the arrestee must be brought before the court promptly and this obligation lies on the person making the arrest. The law differently provides that the arrestee must be brought before the court 'forthwith'; 'soon as practicable' or 'reasonably practicable'. The contribution stipulates 24-48 hours within which an accused must be brought to court. These provisions reflect the common law requirement that a person cannot be imprisoned except on the authority of a court. In Nigeria, as in most common law countries, much emphasis is placed on this fundamental principle, unlike in some other countries where a person may be detained in prison without being brought before a court for months and sometimes years.
Should the police, for example, fail to bring the arrestee to court within the required time then the person may be regarded as unlawfully

detained. This may mean that any confession given during the unlawful detention will be inadmissible in court. In the Australian case *of Williams (1986) 161 CLR 278* the police arrested a defendant at 6am, questioned him from 11am until 8.30pm and did not take him to the Magistrate Court until the following morning. The person was held to have been unlawfully detained and the confessional material obtained during that period was inadmissible. In these types of cases the police also have themselves open to a claim for false imprisonment. Of course, what is reasonable will vary with the circumstances such as whether the arrest is effected on the weekend, or whether in the urban or remote parts of the federation.

The position as stated above is varied to a limited extent for in certain situations, the police have power to detain to carry out further investigations prior to a court appearance.

When a defendant has been brought before the court, it is rare for the case to be dealt with immediately. The police usually require more time to prepare their case and the defendant may wish to obtain legal assistance. When the matter is adjourned the defendant may be remanded to appear on the next occasion. Whether they are remanded in custody will depend on any application for bail, which is dealt with now.

(b) Bail

Bail is the release of an accused person from the custody to appear in court at a later date. Strictly, it is the contract whereby a person is released from the custody of the police to the custody of persons known as sureties. In that sense, the sureties take on the responsibility to ensure the defendant's reappearance in court and to this end the sureties pledge a certain sum of money or assets which are forfeited if the defendant fails to appear. Depending on the severity of the offence, the defendant may be released on their own recognizance (undertaking) which may or may not require a cash security. This will be a matter for the court to determine.

(c) Criteria for Granting Bail

Is there a presumption in favour of granting bail? Based on the principle that a person is innocent until proven guilty, there seems to be such a presumption. The presumption can be rebutted and bail refused. But literal interpretation of the provisions by the Criminal Procedent Code and the Criminal Procedure Act seem not to support such presumption. However, the matters which will occupy the court in this inquiry are:

- Prior convictions for the same offence;
- Risk of failure to appear;

- Protection of the public and possibly protection of the accused;
- Seriousness of the offence;
- Character of the accused; and
- Stability of home life.

The seriousness of the offence is very relevant for grave crimes; it is for example difficult to get bail for a defendant charged with murder, or armed robbery.

(d) Police Bail

The description of bail as given above refers to the situation where the court grants bail. However, the police also have power to grant bail. Where a person has been arrested and has not yet been brought before the court, bail may be granted by a police officer. The police do not have the power to grant bail for certain serious offences (such as murder). The granting of bail by a police officer involves the signing of an undertaking by the defendant to appear in court on a certain date, the failure to do so constituting an offence.

In some jurisdictions, but not in Nigeria, the arrested person may for some relatively minor cases be required to lodge cash bail, rather than signing an undertaking to appear. In this case, the failure by the arrestee to appear means forfeiture of the bail. Commonly, the amount of *cash bail* set is relatively low and the arrestee/defendant may decide not to appear in court, forfeiting the bail but as no conviction is recorded for the offence this may be satisfactory result all round.

3.2.4 Summons

The other method of bringing a person before the court is to **summons** the defendant. Here, a Justice of the Peace may issue a summons on the written complaint that a person is suspected of having committed an offence. The complaint will most commonly be made by a police but can be laid by others who have the responsibility to administer various statutes such as taxation, social security and local government laws etc.

The summons is served on the defendant and requires her/or him to appear in court on the date referred to in the summons. A summons will be used for less serious offences or where the relevant authority believes that it is likely that the defendant will voluntarily appear in court on the date in question.

3.3 Summary Hearings

As mentioned above simple offences and some indictable offences are dealt with by a Magistrate sitting alone. The hearing proceeds in a similar way to a trial as in the higher courts. The Magistrate deals with both questions of law and fact and must be satisfied beyond reasonable doubt of the guilt of the defendant. A Magistrate has the ability to impose a sentence of up to two years imprisonment and fines to an amount set by the statute under which the offence is constituted, depending on the grade of the presiding Magistrate.

One feature of summary hearing in certain jurisdictions is that in many cases the matter can be dealt with in the **absence of the defendant.** This is in contrast to the practical in Nigeria where the defendant must be present and if he or she does not appear then a warrant is issued for his/her arrest.

A summary hearing is not the same as a hearing commenced by summons. As noted above, a summary hearing is held for all simple offences and for some indictable ones, while a summons is simply the means by which the defendant is brought to court.

3.4Committal Hearing/Preliminary Inquiry

This is the practice whereby every criminal proceeding (except in a few situations) commences in the Magistrate Court. If the case is triable summarily, it goes no further them that court. But if it is an indictable offence, which is not dealt with summarily, such as murder or rape, then it goes through the committal stage/Preliminary Inquiry.

The role of the Magistrate is to decide if there is a *prima facie* ('on the face of it') a case for the defendant to answer. The decision by a magistrate to commit an accused for trial does not mean there is a finding of guilt – just that there is sufficient evidence to warrant sending the case to the superior court. Apart from serving as a filter on cases going to the superior courts, the purpose of the committal is to give the defendant a chance to find out what the case is against them. Commonly, the defendant's counsel cross examines the prosecution witnesses but rarely do they call witnesses of their own.

Committal/Preliminary Inquiry also gives the defence a chance to argue that as a matter of law, the evidence adduced by the state would not, or is unlikely to, secure conviction.

3.4.1 Criticisms of the Committal Hearing/Preliminary Inquiry

Witnesses are required to give evidence twice, i.e in the preliminary inquiry and in the trial itself, and this is particularly distressing for a victim of the crime such as in a rape case.

After the committal, the defence knows precisely what the persecutor's case is, but the prosecutor may have no idea of the defence case.

There is no general requirement in the Criminal Justice System for the defendant to advise the prosecutor of their defence. This is in contrast to civil proceedings where each party has to plead its or his/her case.

Note one exception to this privilege of a defence of non-disclosure. There is the rule that the defence must advise the prosecution if it proposes to use an alibi at the trial. The substance of the alibi has to be disclosed so that the Prosecutor can make their enquiries about the strength of the alibi.

3.5 Coroner's Inquest

A person may be committed for trial by a coroner following an inquest into a suspicious death or a death involving a fist. The coroner is a Magistrate exercising coronial functions. He has the power to commit a person to the Magistrate Court if he or she is satisfied that there is sufficient evidence to do so.

3.6 Trial Process

The trial process is as follows:

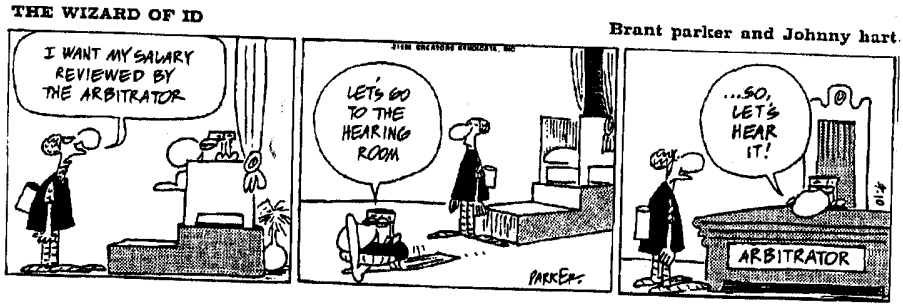
The court is constituted; the case is called; the accused is called. His charge is read; he elects trial where appropriate and pleads.

The prosecutor presents the evidence. Witnesses are called one after the other, led in evidence in chief, cross-examined and re-examined. The defence may call its own witnesses who are similarly led in examination and re-examined. At the conclusion of both the prosecution and defence, the counsel for each side addresses the court. The Magistrate is the Judge of the facts. He applies the law to the facts as found by him, decides whether the defendant is innocent or guilty.

If the defendant is convicted, the courts hands down the sentence, after first hearing submissions from the Prosecutor and the defence. At this stage, and for the first time, any prior convictions of the defendant are made known to the court. Note the four aims of the Criminal Law: retribution, deterrence, incapacitation and reformation and rehabilitation.

If the courts find him/her not guilty, she/he is discharged and acquitted.

3.7 Civil Processes



(Source: Creators Syndicate Inc. Reproduced with permission.)

3.7.1 Outline of Civil Procedure

The following is a guide to the steps which form part of civil procedure. It is not complete and is intended to provide you with a general insight only for the purposes of this unit into the manner in which a civil claim may proceed.

To begin with, you need to be aware of the meaning of the terms **plaintiff, claimant, defendant, appellant, respondent.**

Plaintiff:} A person who institutes a civil legal action.
Claimant}

Defendant: A person against whom is brought an action, information or other civil proceedings (other than a petition, summons etc see Respondent); also a person charged with a minor offence.

Appellant: A person who brings an appeal.

Respondent: A person against whom a petition is presented, a summons issued or an appeal brought.

3.8 Commencing Proceedings

To commence a civil claim the plaintiff or a claimant usually through his or her legal representatives, must file a document in the court having the appropriate jurisdiction to hear and determine the claim. This is called commencing proceedings. The traditional name for such a document in the High Court is a writ. The document may also be called a 'claim' in the District or Magistrate Courts.

(a) Service of Process

A copy of the document commencing proceedings, bearing the seal of the court, must be served on the defendant. Where the defendant is a natural person, the initiating document is generally required to be given to the defendant personally. The reason is obvious that a defendant must be given every opportunity to know what the claim against him or her is and be able to defend the claim.

3.9 Defence

If the defendant wishes to defend the claim then he, she or it must file with the court and serve on the plaintiff or claimant, a document which is called a 'notice of intention to defend'. This sets out the basis on which the defendant will argue that he, she or it is not liable to the plaintiff on the claim. A time period is specified in the initiating document within which the defence must be filed. The statement of facts set out in the plaintiff's documents on which the claim is based and the responses to those allegations and further allegations made by the defendant in their defence are called the **pleadings.**

Pleadings are important for a number of reasons. They clarify the issues in contention between the parties and so allow each party to prepare their case knowing that new issues cannot be brought up at the hearing. Pleadings restrict or limit the issues and accordingly limit the evidence which can, or has to be brought, before the Court. For example if one party admits a certain fact in the pleadings (e.g. that they signed a contract) then the other party is not required to prove that fact at the hearing.

If the notice of intention to defend is not filed within the time limit required, then a judgment in default may be entered against the defendant who loses the opportunity to defend the claim.

3.10 Interlocutory Proceedings

Provided a defence has been filed then the litigation may follow a number of intermediate steps between the close of pleadings and the trial. The purpose of these is to ensure that each party is acquainted with the strength of the case against them. It includes requiring answers to questions about facts in contention, called **interrogatories;** and also inspecting the documentary evidence of the other side, **discovery.** It now frequently includes compulsory conferences and meditations designed to resolve the matter without the need for a trial.

Sometimes interlocutory proceedings may be used by one party to delay or frustrate the course of litigation.

3.11 Trial

The basic procedure for a trial is dealt with under the heading **Evidence** later in this study guide.

3.11.1 Execution

After judgment has been delivered or signed and assuming the defendant does not pay up, the plaintiff can execute on the judgment. This may be done by commencing bankruptcy proceedings, by an enforcement warrant redirecting earnings (garnishee order) or by having the Sheriff levy execution against the defendant's goods or land.

3.11.2 Miscellaneous

The above steps are only a broad outline of what is involved. A myriad of steps might intervene e.g. arguments about jurisdiction of the court, about whether the pleadings are proper, about costs and so on. It is not uncommon for a defendant to pay some money into court which gives the plaintiff the choice of taking the money out and resolving the action or proceeding to trial. In the latter case if the plaintiff is awarded less than the amount paid into court he/she is not entitled to costs incurred after the date of the payment in.

4.0 CONCLUSION

Criminal and Civil Procedure prescribed the steps for having a right or duty judicially enforced whereas substantive law defines the specific rights or duties *per se*. but for the majority of civil action are commenced by a writ of summons. Others are commenced either by originating summons, application or petition. The Criminal Procedure is mainly regulated by the criminal Procedure Act, the Criminal Procedure Code and the Magistrate Acts. Other series of rules of Criminal Procedure are the Supreme Court Rules and High court Rules.

A Court may promote reconciliation and encourage and facilitate a settlement of disputes

If we lived in the Garden of Eden, at any rate in its early stages, the law would work in the way visualized by King Ludwig of Bavaria, the patron of Wagner, when he opened a new court house in Munich. He said, as he cut the tape: 'We sincerely trust and expect that all litigants who enter through these portals will emerge successful.'
Alas, soon afterwards – and perhaps not surprisingly – he went mad. The reality is unfortunately epitomized by the wise old judge – by then