COURTS AND PROCEDURE

A Teaching Version — Prof Samba Online University of Nigeria

Under the supervision of Prof Samba
Law Professor at Rev Fr Moses Orshio Adasu University, Makurdi

IMPRINT

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Prof Samba
samba.48hourrfprescue.com
info@samba.48hourrfprescue.com

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How to use this book: read a chapter, work the example, answer the discussion questions in writing, then read the summary again before you move on. Law is learned by working, not by looking.

Chapter 1 — Why Procedure Matters

Procedure is the road by which rights travel to remedies. This chapter teaches its purpose: not red tape, but the discipline that makes adjudication fair, and the price of ignoring it.

Substance and procedure

Substantive law states rights; procedural law states how they are enforced. The distinction is real but porous: limitation law is procedural in form and substantive in effect, and jurisdiction rules decide whether substance is ever reached. The modern courts declare that procedure is the handmaid of justice, not its mistress — rules are construed to decide cases on their merits — yet a handmaid ignored becomes a locked door, and parties still lose meritorious cases to procedural default.

The balance is the subject's permanent tension, and this book teaches it honestly: respect the rules, and know the courts' mercy doctrines for their breach.

The sources of procedure

Procedure lives in the constitution — fair hearing above all; in the courts' Acts and Laws; in the rules of court each court makes or receives — civil procedure rules, criminal procedure legislation, appellate rules; and in practice directions. The Administration of Criminal Justice legislation has recast criminal procedure in the federation and the adopting states toward speed, witness protection, and non-custodial sentencing.

The student learns procedure court by court: each court's rules are its own, though the family resemblance is strong.

Fair hearing — the master rule

Every procedure rule serves the constitutional guarantee: a fair hearing within a reasonable time by an independent and impartial court. Its components — notice, opportunity to be heard, the audi alteram partem rule, and nemo judex in causa sua, no one a judge in his own cause — are natural justice's twin pillars, and their breach voids proceedings however correct the outcome.

Reasonable time is the guarantee's neglected limb: justice delayed is the subject of the system chapter's reforms.

The actors

Parties, counsel, witnesses, the registry, the bailiff or sheriff, and the judge — each with a role the rules define. The registry is procedure's engine room: filing, service, listing, and records; a case is lost as often in the registry as in the courtroom, and the practitioner's diligence covers both.

Worked example

A defendant first learns of a suit from the judgment entered against him, the writ having been served at an address he left years before, though the plaintiff knew his new one. The judgment is set aside as of right: he was never heard, and fair hearing's breach is not cured by the claim's merits. Procedure's first rule protected him before any question of who was right.

Discussion questions

• Why is procedure called the handmaid, not the mistress, of justice?

• Name natural justice's two pillars.

• Where does procedure live? Name its sources.

Chapter summary

In this chapter you have studied the following ground. Procedure is the road by which rights travel to remedies. On substance and procedure: Substantive law states rights; procedural law states how they are enforced. On the sources of procedure: Procedure lives in the constitution — fair hearing above all; in the courts' Acts and Laws; in the rules of court each court makes or receives — civil procedure rules, criminal procedure legislation, appellate rules; and in practice directions. On fair hearing — the master rule: Every procedure rule serves the constitutional guarantee: a fair hearing within a reasonable time by an independent and impartial court. On the actors: Parties, counsel, witnesses, the registry, the bailiff or sheriff, and the judge — each with a role the rules define. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 2 — Civil Procedure — Beginning and Pleading

This chapter walks a civil case from instruction to pleadings: jurisdiction checks, originating processes, service, and the exchange that defines the issues.

Before filing

The practitioner's pre-action discipline: confirm the cause of action and its limitation period; confirm the proper court by subject matter, territory, and value; confirm the parties' capacity; write the pre-action letter where required or wise — many disputes settle at the letter, and some rules require the attempt. Filing in the wrong court wastes the limitation period's remainder; the checks are the case's foundation.

Cause of action — the facts giving a right to sue — and standing — the claimant's sufficient interest — are tested at the threshold and may be struck out if absent.

Originating processes

Most claims begin by writ of summons with statement of claim; claims turning on documents and construction begin by originating summons; petitions serve their special fields; motions serve interlocutory and some original matters. The originating process fixes the case's identity: parties, court, and the relief sought.

Front-loading is the modern pattern: the claimant files his witness statements and documents with his claim, so that the case arrives substantially whole and the era of trial by ambush closes.

Service

Service brings the process to the defendant: personal service is the rule; substituted service — by posting, by publication, at the court's leave — serves where personal service is impracticable; service out of the jurisdiction requires leave and its conditions. Proof of service by the server's affidavit is the court's assurance that the hearing will be fair.

A judgment founded on service never effected is a nullity in waiting.

Pleadings

Statement of claim, defence, and reply exchange the material facts — not evidence, not law — each party stating the case the other must meet. Admissions in pleadings bind; departures are barred; amendments are allowed on terms that protect the other side from surprise and delay. The pleadings close, and the issues stand defined: the trial will be fought on the ground the pleadings have staked.

Worked example

A claimant's statement of claim pleads, at length, the evidence of his witnesses and the law of his case, but omits the one material fact — the date of the agreement sued upon. The defence moves on the omission; the court allows amendment on costs, remarking that pleadings plead facts, and the missing fact was the case. The lesson is the chapter: plead material facts, all of them, and nothing else.

Discussion questions

• What checks precede filing?

• Distinguish writ of summons from originating summons by their proper cases.

• What do pleadings plead — and what do they not?

Chapter summary

In this chapter you have studied the following ground. This chapter walks a civil case from instruction to pleadings: jurisdiction checks, originating processes, service, and the exchange that defines the issues. On before filing: The practitioner's pre-action discipline: confirm the cause of action and its limitation period; confirm the proper court by subject matter, territory, and value; confirm the parties' capacity; write the pre-action letter where required or wise — many disputes settle at the letter, and some rules require the attempt. On originating processes: Most claims begin by writ of summons with statement of claim; claims turning on documents and construction begin by originating summons; petitions serve their special fields; motions serve interlocutory and some original matters. On service: Service brings the process to the defendant: personal service is the rule; substituted service — by posting, by publication, at the court's leave — serves where personal service is impracticable; service out of the jurisdiction requires leave and its conditions. On pleadings: Statement of claim, defence, and reply exchange the material facts — not evidence, not law — each party stating the case the other must meet. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 3 — Civil Procedure — Interlocutory Matters and Trial

Between pleading and judgment live the interlocutory battles and the trial itself. This chapter teaches injunctions, summary judgment, trial conduct, and judgment.

Interlocutory applications

Motions seek the court's orders along the road: injunctions to preserve the position — the claimant must show a serious question, that damages would not adequately compensate, and that the balance of convenience favours the order; interim orders hold days, interlocutory orders hold until trial. Mareva-type orders freeze assets against dissipation; Anton Piller-type orders preserve evidence — each an exceptional remedy with strict conditions, granted because ordinary process would arrive too late.

Discovery and inspection exchange the parties' documents; interrogatories extract admissions; security for costs protects defendants against impecunious claimants in defined cases.

Summary judgment and disposal without trial

Where a defence discloses no real answer, the court may give judgment summarily under the undefended-list and summary procedures, sparing the trial's cost for the case that has no trial in it. Striking out disposes of pleadings disclosing no reasonable cause, scandalous, or abusive. Default judgment follows a defendant's failure to appear or plead, set aside on the terms the rules provide where a defence on the merits and an explanation appear.

These disposals are procedure's mercy and discipline at once: the meritorious are spared delay; the defaulting are recalled to diligence.

The trial

The claimant opens, calls witnesses — examined, cross-examined, re-examined under the Evidence volume's rules — and closes; the defence may submit no case, or open its own evidence; addresses of counsel marshal law and fact; judgment applies the burden — the claimant proving his case on the balance of probabilities, fact by fact as pleaded. Evidence not pleaded is not admitted to found a judgment: parties are bound by their pleadings at trial as at the start.

Judgment is delivered with reasons, and its orders — declarations, damages, injunctions, specific performance, costs — are drawn up as the court's formal act.

Costs and enforcement

Costs ordinarily follow the event, in the court's discretion, measured by the taxing master's assessment where not agreed. Enforcement executes the judgment: writs of execution against goods, garnishee proceedings against debts owed to the judgment debtor, judgment summonses, and committal for contempt of orders — the sheriff's machinery turning paper victory into possession and payment.

Worked example

Mid-trial, a claimant's counsel seeks to prove a second agreement never pleaded, surprised in his own witness's mouth. The court refuses it: the defence came to meet one case and cannot be ambushed with another. The claimant's remedy was amendment before trial, not surprise during it — the pleadings' discipline enforced at the moment it matters most.

Discussion questions

• What must an applicant for an interlocutory injunction show?

• When may judgment be given without a full trial?

• Why are parties bound by their pleadings at trial?

Chapter summary

In this chapter you have studied the following ground. Between pleading and judgment live the interlocutory battles and the trial itself. On interlocutory applications: Motions seek the court's orders along the road: injunctions to preserve the position — the claimant must show a serious question, that damages would not adequately compensate, and that the balance of convenience favours the order; interim orders hold days, interlocutory orders hold until trial. On summary judgment and disposal without trial: Where a defence discloses no real answer, the court may give judgment summarily under the undefended-list and summary procedures, sparing the trial's cost for the case that has no trial in it. On the trial: The claimant opens, calls witnesses — examined, cross-examined, re-examined under the Evidence volume's rules — and closes; the defence may submit no case, or open its own evidence; addresses of counsel marshal law and fact; judgment applies the burden — the claimant proving his case on the balance of probabilities, fact by fact as pleaded. On costs and enforcement: Costs ordinarily follow the event, in the court's discretion, measured by the taxing master's assessment where not agreed. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 4 — Criminal Procedure

The criminal road runs from complaint and arrest to charge, arraignment, trial, sentence, and appeal. This chapter teaches it in the shape the Administration of Criminal Justice reforms have given it.

Starting a prosecution

A prosecution begins by complaint, by police charge, or by information filed by the prosecution authority. Arrest — with or without warrant on the grounds the law states — brings the suspect into the process; the constitutional duties follow: inform him of the grounds, treat him humanely, record his statement under caution and the modern safeguards, and bring him before a court within the prescribed periods. Remand beyond them requires the court's order on the conditions the reforms impose.

Investigation precedes charge where evidence must be gathered; the police file and the legal advice of the prosecution department, in serious cases, stand between arrest and court.

Charge and arraignment

The charge states the offence, the law creating it, and particulars of time, place, person, and property sufficient to give the accused notice of the matter charged. Defects are amendable where no injustice results; a charge disclosing no offence is a nullity. At arraignment the charge is read and explained in a language the accused understands, and he pleads: guilty — whereupon the court, satisfied the plea is unequivocal and, in capital cases, follows the special course — or not guilty, and the trial proceeds.

Bail's principles, taught in the Criminal Law volume, are applied at every remand appearance.

The trial

The prosecution opens and calls its witnesses; at its close, the no-case submission tests whether a prima facie case stands; the defence then elects — to testify, to call witnesses, or to rest — the accused's silence carrying the protections and the regulated comment the law provides. Addresses follow; the court delivers judgment with reasons, convicting only on proof beyond reasonable doubt, and proceeds, on conviction, to allocutus and sentence within the law's limits and the sentencing principles.

Summary trials in the magistrates' courts compress the same elements; trials on information in the High Courts observe them in full form.

Appeals and reviews in crime

The convicted person appeals as of right on law, and by leave or on a certificate on fact and sentence in the pattern the statutes set; the prosecution's appeals are confined to the grounds the law allows, the double-jeopardy principle guarding the acquitted. The appellate court may affirm, reverse, order a retrial where the interests of justice require it, or substitute the verdict the evidence required. Time limits bind appellants, extendable for good cause.

Worked example

At arraignment, an accused pleads guilty to a charge whose particulars, read carefully, describe an act the cited law does not criminalise. The court declines the plea's easy path: a guilty plea cannot create an offence the law does not know. The charge is struck out, and the accused leaves free — legality guarding the process at its very door.

Discussion questions

• What must a charge contain?

• What does the no-case submission test?

• Why are the prosecution's appeals narrower than the convicted person's?

Chapter summary

In this chapter you have studied the following ground. The criminal road runs from complaint and arrest to charge, arraignment, trial, sentence, and appeal. On starting a prosecution: A prosecution begins by complaint, by police charge, or by information filed by the prosecution authority. On charge and arraignment: The charge states the offence, the law creating it, and particulars of time, place, person, and property sufficient to give the accused notice of the matter charged. On the trial: The prosecution opens and calls its witnesses; at its close, the no-case submission tests whether a prima facie case stands; the defence then elects — to testify, to call witnesses, or to rest — the accused's silence carrying the protections and the regulated comment the law provides. On appeals and reviews in crime: The convicted person appeals as of right on law, and by leave or on a certificate on fact and sentence in the pattern the statutes set; the prosecution's appeals are confined to the grounds the law allows, the double-jeopardy principle guarding the acquitted. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 5 — Enforcement and the Judgment's Life

A judgment unenforced is a promise unkept. This chapter teaches enforcement's machinery in full: execution against goods and land, garnishee, charging orders, and committal.

Execution against goods and land

The writ of fieri facias directs the sheriff to seize and sell the judgment debtor's goods to satisfy the judgment; land is reached by the writ against immovables and the court's sale machinery. Exemptions protect the debtor's tools, bedding, and necessary clothing — execution takes the surplus, not the livelihood's seed.

Third parties claiming seized goods interplead, and the court decides the claim summarily — enforcement's own small trial inside the large one.

Garnishee and charging orders

Where a third party owes the debtor money — a bank holding his account is the standing case — the garnishee order nisi freezes the debt and, made absolute, diverts it to the judgment creditor. The procedure is swift and paper-based, and banks' duties within it are strict.

Charging orders fasten the judgment on the debtor's land or securities, ripening into an order for sale where the court thinks fit — the creditor's patience converted into security.

Judgment summons and committal

The judgment summons examines the debtor's means; committal to prison follows only where means to pay are proved and payment is

wilfully refused — imprisonment for debt's ghost, confined by the means inquiry to the contumacious, never the merely poor.

Enforcement against the government and public bodies follows special roads — the consent and fiscal rules that protect public funds' order — which the practitioner must check before levying anything.

Stay and satisfaction

A stay of execution pauses enforcement pending appeal or instalment arrangements; the appellate court grants it where the appeal's substance would be destroyed by immediate execution and the respondent is protected by terms. Satisfaction, once entered, ends the judgment's life: the record is marked, the debtor discharged, and the file becomes history with a seal.

Worked example

A creditor, judgment in hand, finds the debtor's shop stocked with goods bought on credit from suppliers who claim them. The sheriff seizes; the suppliers interplead; the court sorts ownership before sale. Enforcement's lesson stands in the queue: execution reaches only what is truly the debtor's, and the interpleader is how the law finds out.

Discussion questions

• What does a writ of fieri facias direct, and what is exempt?

• How does a garnishee order work?

• When may a debtor be committed — and when never?

Chapter summary

In this chapter you have studied the following ground. A judgment unenforced is a promise unkept. On execution against goods and land:

The writ of fieri facias directs the sheriff to seize and sell the judgment debtor's goods to satisfy the judgment; land is reached by the writ against immovables and the court's sale machinery. On garnishee and charging orders: Where a third party owes the debtor money — a bank holding his account is the standing case — the garnishee order nisi freezes the debt and, made absolute, diverts it to the judgment creditor. On judgment summons and committal: The judgment summons examines the debtor's means; committal to prison follows only where means to pay are proved and payment is wilfully refused — imprisonment for debt's ghost, confined by the means inquiry to the contumacious, never the merely poor. On stay and satisfaction: A stay of execution pauses enforcement pending appeal or instalment arrangements; the appellate court grants it where the appeal's substance would be destroyed by immediate execution and the respondent is protected by terms. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 6 — Appeals and Judicial Review of Procedure

The final chapter teaches the appellate road in civil matters and the supervisory jurisdiction by which superior courts control inferior ones.

The appellate structure

Appeals ascend the hierarchy the System volume maps: from magistrates to the High Court, from the High Court to the Court of Appeal, from there to the Supreme Court — as of right in the cases the constitution and statutes name, by leave in the rest. Leave filters the hopeless and the interlocutory: appeals against interlocutory decisions require leave in most cases, a rule whose purpose is to stop trials being strangled by appeals on every ruling.

The notice of appeal and the grounds — complaints of law, of fact, of mixed law and fact — define the appeal; new evidence is admitted only on the strict conditions of freshness, unavailability, and likely influence.

How appeals are decided

An appeal is a rehearing on the record: the appellate court reads the transcript, hears argument, and interferes with findings of fact only where they are perverse, unsupported, or built on inadmissible material — because the trial court saw the witnesses and the appellate court did not. On law, the appellate court decides afresh. Its orders: affirm, reverse, vary, remit, or order a new trial.

Cross-appeals and respondents' notices let the respondent defend the judgment on grounds the trial court rejected, without himself appealing.

Judicial review and prerogative orders

The High Court supervises inferior courts and public bodies by the prerogative orders: certiorari quashes decisions made without jurisdiction, in breach of natural justice, or with error of law on the face; prohibition prevents the threatened excess; mandamus compels a public duty. The applicant needs standing and promptness; the review corrects legality, not merits — the distinction taught in the Constitutional Law volume, here at its working post.

Habeas corpus — the ancient order to produce the detained and justify the detention — stands apart in liberty's first rank, available at speed, at any hour, against any detainer.

Revision: the procedure map

The subject in one view: every case is jurisdiction, process, pleading or charge, interlocutory care, trial by the burdens, judgment, enforcement, and appeal — in that order, under fair hearing's canopy. The practitioner who can walk any file through the map without a gap owns the subject, and the student revises by walking files: take the worked examples of this book and re-walk them aloud.

Worked example

A tribunal, impatient with a party's counsel, decides a land matter without hearing the party's second witness, announcing that 'the position is clear'. Certiorari quashes the decision entire: natural justice was breached, and the clarity the tribunal perceived was the clarity of a half-heard case. The matter returns to be heard fully — procedure's oldest lesson, taught again.

Discussion questions

• Why do interlocutory appeals require leave?

• When will an appellate court disturb findings of fact?

• Name the three prerogative orders and what each does.

Chapter summary

In this chapter you have studied the following ground. The final chapter teaches the appellate road in civil matters and the supervisory jurisdiction by which superior courts control inferior ones. On the appellate structure: Appeals ascend the hierarchy the System volume maps: from magistrates to the High Court, from the High Court to the Court of Appeal, from there to the Supreme Court — as of right in the cases the constitution and statutes name, by leave in the rest. On how appeals are decided: An appeal is a rehearing on the record: the appellate court reads the transcript, hears argument, and interferes with findings of fact only where they are perverse, unsupported, or built on inadmissible material — because the trial court saw the witnesses and the appellate court did not. On judicial review and prerogative orders: The High Court supervises inferior courts and public bodies by the prerogative orders: certiorari quashes decisions made without jurisdiction, in breach of natural justice, or with error of law on the face; prohibition prevents the threatened excess; mandamus compels a public duty. On revision: the procedure map: The subject in one view: every case is jurisdiction, process, pleading or charge, interlocutory care, trial by the burdens, judgment, enforcement, and appeal — in that order, under fair hearing's canopy. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

PRACTICE PROBLEMS WITH GUIDED OUTLINES

Four problems follow, one for each of the first four chapters' ground. Attempt each in writing, under time, before reading its outline. The outline names the points a full answer must reach; it does not write the answer — that labour is yours, and it is where the learning is.

Problem 1 — Why Procedure Matters

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Substance and procedure; The sources of procedure; Fair hearing — the master rule; The actors. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A defendant first learns of a suit from the judgment entered against him, the writ having been served at an address he left years before, though the plaintiff knew his new one. The..."

Problem 2 — Civil Procedure — Beginning and Pleading

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Before filing; Originating processes; Service; Pleadings. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A claimant's statement of claim pleads, at length, the evidence of his witnesses and the law of his case, but omits the one material fact — the date of the agreement sued upon. The..."

Problem 3 — Civil Procedure — Interlocutory Matters and Trial

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Interlocutory applications; Summary judgment and disposal without trial; The trial; Costs and enforcement. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "Mid-trial, a claimant's counsel seeks to prove a second agreement never pleaded, surprised in his own witness's mouth. The court refuses it: the defence came to meet one case and c..."

Problem 4 — Criminal Procedure

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Starting a prosecution; Charge and arraignment; The trial; Appeals and reviews in crime. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "At arraignment, an accused pleads guilty to a charge whose particulars, read carefully, describe an act the cited law does not criminalise. The court declines the plea's easy path:..."

A LAST WORD TO THE STUDENT

You have finished this teaching book. Finish is the wrong word: a law book is a tool, and it earns its place only when you return to it with a problem in your hand. Keep it beside the other books of this library, work the questions again after a month, and let each return teach you what the first reading could not. That is how lawyers are made — by return, by work, and by patience.

Prof Samba Online University of Nigeria — samba.48hourrfprescue.com — info@samba.48hourrfprescue.com