



جامعة السلطان الشريف علي الإسلامية
UNIVERSITI ISLAM SULTAN SHARIF ALI
SULTAN SHARIF ALI ISLAMIC UNIVERSITY

Faculty of Shariah and Law
Semester I, 2016/2017 Academic Session

Final Examination Question Paper

Course Code : Civil Procedure I
Course Name : LB 5301
Course Level : Bachelor of Laws (LL.B) & Bachelor of
Shariah Law (BSL)
Time : 3 hours

Reference allowed:

Rules of Supreme Court

Notes:

1. Answer any **four** of the following questions.
2. All answers, wherever relevant, must be supported by statutory provisions and case law.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

QUESTION 1 (15 Marks)

(a) Explain the meaning of “cause of action”?

(3 marks)

(b) Atan seeks your advice as to whether an action can be commenced in the following situations. If yes, then in which Court (the High Court, the Intermediate Court or the Magistrates' Court), and by what mode of commencement:

(i) On 13th August 2014, Atan was injured in a motor vehicle accident in Kuala Belait. The accident was caused by the alleged negligent driving of Botak, a lorry driver. Atan intends to sue Botak and Botak's employer for personal injuries totalling B\$500,000. Botak has denied the allegation of negligence by his written reply to Atan's notice of demand.

(ii) On 4th August 2011, Atan entered into a contract with Dollah to renovate Dollah's house for B\$60,000. On the 4th October 2011, Atan completed the renovation project. Dollah told Atan that he is unable to pay the whole amount (B\$60,000). He promised to pay back Atan by monthly instalments of B\$1,000 starting 1st January 2012. Atan agreed.

However, after 1st June 2013, Dollah began to default in payment of the monthly instalments. Until now, Dollah has not paid the remaining debt owed. Atan wants to claim back the remaining debt owed by Dollah.

(iii) Atan, the only son in his family, is a beneficiary of his father's assets pursuant to a Trust Deed made by his father. The father appointed Daud, a close friend of the family, to be the trustee under the Trust Deed. On 5th March 2000, Daud sold part of the trust assets and used part of the sale proceeds to buy himself a car (BMW) costing B\$80,000. Atan only discovered about the purchase of the car last week. Atan now intends to sue Daud for the enforcement of the Trust Deed and to recover the sales

proceeds on the ground that Daud's had committed a breach of trust. Daud has denied the allegations of breach of trust.

(12 marks)

QUESTION 2 (15 Marks)

(a) What are the modes of originating process in the High Court?

(2 marks)

(b) When is it appropriate to commence an action in the High Court by originating summons or by writ?

(7 marks)

(c) Mr. Lee had filed an originating summons in the High Court and served it to Mr. Chock. Mr. Chock's lawyers applied to strike out the originating summons because there is a dispute of facts and the matter should be resolved at trial and not by the hearing of the summon; and that the service of the originating summon was defective.

Mr. Lee seeks your advice regarding the grounds on which Mr. Chock's application to strike out the originating summon can be dismissed.

(6 marks)

QUESTION 3 (15 Marks)

(a) To commence a writ action, the plaintiff will have to file the writ in the Supreme Court Registry. When a writ is deemed to have been issued?

(5 marks)

(b) Johan is a process server with Messrs Robin & Co, Advocates & Solicitors. He seeks your advice on how to effect service of a writ on the following:

- (i) Mr. Peter White, an expatriate currently working in Brunei Darussalam; (4 marks)
 - (ii) Syarikat Dyg Bimur dan Anak-anak, a partnership; (3 marks)
 - (iii) Serbakayo Construction Sdn Bhd. (3 marks)
- (10 marks)

QUESTION 4 (15 Marks)

Danish sued Aishah in the High Court for sum of \$500,000. Aishah took no steps to enter appearance to Danish's Writ. As a result, Danish entered a judgement in default of appearance. Aishah wishes to set aside the default judgment

Three separate and independent situation are stated in (i) to (iii) below. Discuss whether the aforesaid judgment may be set aside in each situation

- (i) Aishah's name was wrongly spelt in the writ
- (ii) Danish's writ was not served personally on Aishah but was handed over to Aishah's gardener.
- (iii) A sealed copy of the judgement in default was served to Aishah 2 years ago.

(15 marks)

QUESTION 5 (15 Marks)

- (a) Explain briefly what is Summary Judgment?

(4 marks)

(b) Hassan is suing Badul in the High Court. Hassan has issued and served a writ and statement of claim on Badul. Badul has entered appearance. Hassan then issued and served a summon for summary judgment against Badul.

State what order the courts is likely to make in each of the following separate and independent situations at the hearing of Hassan's application:

- (i) Hassan's claim is based on libel.
- (ii) Badul and his lawyer are absent during the hearing.
- (iii) Hassan's affidavit in support of the summons did not state that Badul has no defence.
- (iv) Hassan summons in chambers was issued ten months after Badul had filed his statement of defence.

(11 marks)

QUESTION 6 (15 Marks)

(a) Briefly explain the difference between entering a conditional appearance and unconditional appearance after the service of a writ?

(5 marks)

(b) In August 2015, Alliance Bank Bhd sued Adam as guarantor in respect of a loan of B\$80,000.00 granted to Stacy. Adam filed a statement of defence to Alliance Bank Bhd's statement of claim. The case is fixed for hearing on 12 December 2016. Adam seeks your advice on the following:

- (i) Adam intends to add Stacy as a third party to seek indemnity in respect of Alliance Bank Bhd's claim, how will you initiate the action?
- (ii) What is the effect if Stacy fails to enter an appearance?

(10 marks)

QUESTION 7 (15 Marks)

(a) Johan sued Nabil in the High Court for damages for breach of contract. On 6 June 2016, Johan served a writ and statement of claim on Nabil. On 10 June 2016, Nabil entered an appearance. On 17 July 2016, Nabil paid B\$200,000.00 into court.

Johan seeks your advice on the significance of Nabil's payment into court and the steps Johan may take if he wants to accept the payment.

Advice Johan.

(7 marks)

(b) In September 2016, Shukri sued Nazmi in the High Court. In Shukri's statement of claim, Shukri claimed that he had given a friendly loan of B\$300,000 to Nazmi in 2008 repayable in March 2009. Further in his statement of claim, Shukri claimed that in April 2009, Shukri had demanded for payment but Nazmi refused to repay the loan.

Nazmi now comes to see you with a copy of the writ and statement of claim served on him 3 days ago. Nazmi seeks your advice on whether there is a summary procedure for disposing an action as the statement of claim did not disclose a cause of action.

Advise Nazmi on the application that may be made and the principles governing such application.

(8 marks)

بالتوفيق والنجاح