



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

**Faculty of Shariah and Law**  
**Semester I, 2014/2015 Academic Session**

**Examination Question Paper**

**Course Code : Civil Procedure I**

**Course Name : LB 5301**

**Course Level : Bachelor of Laws (LL.B) & Bachelor of  
Shariah Law (LBS)**

**Time : 3 hours**

**Reference allowed:**

Rules of Supreme Courts

**Note(s):**

1. Answer any **FOUR (4)** questions.
2. All answers, wherever relevant, must be supported by statutory provisions and case law.

### **QUESTION 1**

- (a) Explain briefly what is judgment in default?  
(3 marks)
- (b) Discuss the circumstances where a judgment in default can be set aside?  
(4 marks)
- (c) Explain the requirements to enter Judgment in Default of Appearance against the Defendant.  
(3 marks)

### **QUESTION 2**

Discuss the rules in relation to service of documents in the following circumstances:

- a) Haji Matali commences a suit against Hamdani at the High Court in Bandar Seri Begawan for breach of contract. Haji Matali claims for damages in the sum of BND 750,000. In serving the writ, Haji Matali's process server left a copy of the original writ in the Hamdani's letter box. At that material time, Hamdani was in Jakarta attending a business meeting. Haji Matali enters Judgment in Default of Appearance since Hamdani has not entered an appearance.  
(5 marks)
- b) Mat Laju sues Mat Lambat at the Magistrate Court in Bangar, Temburong for BND 4,500 for default of payment to a loan agreement. A copy of the original writ is posted to Mat Lambat's address at Labu by A.R. Registered Post whereby Mat Lambat acknowledges receipt of it. In ignorance of the procedure, Mat Lambat does not enter an appearance. Mat Laju enters Judgment in Default of Appearance against Mat Lambat after the expiry 14 days period. Mat Lambat has a good defence to the case.  
(5 marks)

### **QUESTION 3**

On 15<sup>th</sup> February, 2014, Haji Samari executed a personal loan of BND 100,000 from Baik Bank to finance a piece of land in Kampung Kiarong, Gadong with a monthly instalments of BND 300 for the period of three (3) years. In March 2015, Haji Samari was involved in a serious accident which resulted in him being paralysed and subsequently was terminated from his employment as an executive of a construction company, Bina Cepat Sdn Bhd. In August, 2015, Baik Bank instituted an action to cover the outstanding loan which he had defaulted since April, 2015. Haji Samari now comes to you with a copy of the writ and statement of claim served on him seeking your advice on the following:

a) The steps in the proceeding that he should take after being served with the said writ and statement of claim.

(5 marks)

b) Whether Baik Bank can proceed with any summary procedure to dispose of the action and the principles governing such application.

(5 marks)

### **QUESTION 4**

Haji Yusri, a 70 years old businessman has two daughters, Alina and Alini from his marriage to Halimah (deceased). He had two other children from his ex-wife Zauwiyah (deceased). They are Harun and Hilmi. In May 2011, Harun, his first son from Zauwiyah, had approached him to borrow some money for his business dealings. Harun was involved in a real estate business and has tried to sell his father's plot of land located at Seria for a business venture with Haji Subli from Malaysia.

In the agreement between Harun and Haji Subli, he would receive one percent of the total investment of BND 3 million. He should also receive another BND 30,000 in fees from a developer who will develop the said land. However, Haji Subli and the developer withdrew after they found that the land belonged to Alini, a lawyer at Messr Alini & Co. and also Harun's step sister. Harun suspected that the title of the land was wrongly obtained from his father, Haji Yusri who is the real registered proprietor of the land.

Advise Harun and Haji Yusri on the following matters:

- a) The cause of action and the parties to be named in the case.  
(2 marks)
- b) The most suitable court to file the case and the reason for your answer.  
(4 marks)
- c) The mode of beginning the case and the relevant documents to be filed in court.  
(4 marks)

### **QUESTION 5**

Your firm is acting on behalf of the plaintiff and had filed in a writ and statement of claim and had served them on the defendant. The defendant had entered an appearance and immediately after that, filed in an interlocutory application under “Order 18 Rule 19” on the ground that the Statement of Claim does not disclose any cause of action. The defendant then served it on your firm.

Abu, the lawyer who handled the case had resigned and you are assigned to take over conduct of the case. Upon perusing the statement of claim, you found that the statement of claim is badly drafted and it has not disclosed any cause of action. Being a well-trained litigation lawyer, you then compared your client’s facts with the facts in the statement of claim. You noticed that there is a reasonable cause of action as stated in your client’s facts. You have identified that the problem lies mainly due to lack of facts and inaccurate details in the statement of claim, drafted by Abu.

- a) Can you rectify the mistakes done by Abu and how would you do it?  
(5 marks)
- b) What must you do in relation to the defendant’s application?  
(5 marks)