



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

Faculty of Shariah and Law
Semester I, 2020/2021 Academic Session

Final Examination
Question Paper

Course Code : LS4304
Course Name : Islamic Family Law
Course Level : Bachelor's Degree
Time : 3 hours

Reference(s) allowed:
ISLAMIC FAMILY LAW ACT (CAP.217)

Instructions:

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)

Betrothal is a promise of a man with the intention that he will marry a certain woman. It is a sort of agreement that serves as a preliminary to the contract of marriage. Unfortunately, not all these engagements end up with marriages:

- (a) Discuss in the terms of Islamic perspectives and certain provision from Islamic Family Law Act, Cap. 217 regarding the claim of betrothal gift.

(7 Marks)

- (b) The breach of engagement: *Salbiah Othman v Haji Abdul Ghani*:

An engagement agreement was held between the plaintiff and the defendant on July 28, 2001. The date of *nikah* was agreed, that is, on August 31, 2001. However, the defendant called off the engagement on August 17, 2001. The plaintiff claim for damages due to humiliation at RM200,000 and compensation for the expenses amounting to RM9,677.

The Syariah Court decided that the defendant without lawful reason had breached the promise to marry. The court dismissed the claim for damages due to humiliation. The court granted the claim for expenses in preparation for the marriage in the sum of RM6,277.10.

- i. Discuss the above case regarding the compensation of breaching the engagement in Islamic perspectives.

(6 Marks)

- ii. Why the Syariah Court dismissed the claim for damages due to humiliation?

(2 Marks)

QUESTION 2 (15 Marks)

- (a) Explain about '*ta'liq khul*' supported with ONE decided case.

(5 Marks)

(b) In the case of Syariah High Court BM/MTS/JEN - B1J009B on 5 November 2019, two of the accused party got married on 31 March 2018 at the Jamia Musulmane Mosque, Ho Chi Minh City, Vietnam. Prior to the marriage, the two accused did not apply for permission to marry abroad from the registrar of the Syariah Court, Negara Brunei Darussalam.

At the time of the marriage, the accused man still had a legal wife, He also did not apply for permission to have polygamy from the *Syariah* Judge of the *Syariah* Court. The results of the investigation also found, that the two of the accused had failed to appear without reasonable reasons before the Registrar within six months after arriving in Negara Brunei Darussalam on 01/04/2018 (the accused woman) and 02/04/2018 (the accused man) until 02/10/2018, to register the marriage.

Explain the possible provisions from Islamic Family Law Act, Cap 217, that can be charged for both accused under this case.

(10 Marks)

QUESTION 3 (15 Marks)

(a) State the differences between *bermukim* and *bermastautin* in terms of Islamic Family Law Act, Cap 217 and Islamic perspectives.

(4 Marks)

(b) The following questions are regarding the maintenance (*nafqah*):

i. Explain on the standard of assessing the maintenance from the provision of Islamic family Law Act, Chapter 217 and the different opinions of fuqaha.

(6 Marks)

ii. Discuss ONE decided case regarding *nafqah*.

(5 Marks)

QUESTION 4 (15 Marks)

(a) Explain the grounds for dissolution of marriage by *ta'liq* according to *ta'liq* statements after the *aqd an-nikah* in Brunei Darussalam.

(6 Marks)

(b) In the Kelantan case of *Nora v Ahmad Zamri*, it appeared that after a quarrel between both parties the defendant had said to the wife that if she returned to her father's house she would be divorced by one *talaq*. The wife didn't in fact return to her father's house then. Subsequently after they had returned home, the defendant said to the wife that if she really wanted what she asked for, the best thing for her to do is to leave the house without his permission. Later the defendant took his wife back to her father's house where she fell ill. The wife applied to confirm the *ta'liq* and to declare whether the divorce had become effected or not.

What are the judgements of the *qadhi* regarding this case?

(4 Marks)

(c) With reference to decided cases and statutory provisions, discuss the effect of pronouncement of *talaq* outside the court.

(5 Marks)

QUESTION 5 (15 Marks)

(a) Explain the provision that deals with the dissolution of marriage due to the change of religion in terms of Islamic Family Law Act, Cap 217 and fuqaha opinions.

(7 Marks)

(b) Discuss this case of Dissolution of Marriage because of the change of Religion:

Pedley v Majlis Ugama Islam Pulau Pinang.

(8 Marks)

بالتوفيق والنجاح