



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 : LS5303
Course Name : Law of Evidence in the Shariah Court
Course Level : Bachelor's Degree
Time : 3 hours

Reference(s) allowed:
SYARIAH COURTS EVIDENCE ORDER, 2001

Instructions:

1. Answer **ALL** questions.
2. All answers, wherever relevant, must be supported by statutory provisions and case law.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Based on the facts of the case below, you as the Syar'ie prosecutor of the case are conducting a case trial on the accused named Awang Sukasuka (a Muslim) under section 104 (1) and (4) of the Syariah Criminal Penal Code Order. During the trial of the case, Awang Sukasuka was represented by his Syar'ie Lawyer, Tuan Kasim Pantanlop from Messrs. Abdul Wahub and Associates.

The facts of the trial case below are as follows:

1. On 12 December 2019, at about 6.30 am, a complaint was recorded at the Central Police Station regarding the detaining of a local Muslim man named Awang Sukasuka who was allegedly smuggling prohibited items amounting to 50 cans of alcoholic beverages inside a vehicle belonging to Awang Sukasuka bearing registration number ABC 123.
2. In the details of the complaint stated that on 12 December 2019, approximately around 4 am, two (2) Police officers from Kompeni F conducted a routine patrol at the mousetrail area in the Kampong Tikusan and found Awang Sukasuka was driving the said car.
3. When they inspected Awang Sukasuka, they suspected Awang Sukasuka was under the influence of alcohol which prompt them to run breathalyzer test upon Awang Sukasuka at the scene. The test results have shown Awang Sukasuka positive under the influence of alcohol. The officers also inspected the car driven by Awang Sukasuka and found a total of 50 cans of liquor placed inside the back seat of the car.
4. Awang Sukasuka was handed over to the Religious Enforcement Division for further investigation where he was taken to General Hospital to undergo a blood sample of Awang Sukasuka for the purpose of blood alcohol testing. After the blood sample was taken, Awang Sukasuka was taken to the Religious Enforcement office for further investigation.
5. Awang Sukasuka has made an *ikrar* consuming a intoxicating liquor and has possessed a total of 50 intoxicating beverages at the place and time of the incident. His confession was recorded in the presence of a statement recorder and before two Religious Enforcement officers as witnesses.
6. During the first mentioned of the case, Awang Sukasuka was charged with two charges under section 104 (1) and (4) of the Syariah Criminal Penal Code Order. Awang Sukasuka has pleaded not guilty and asked to be tried on the advice of his lawyer Tuan Kasim Patanlop.
7. Section 104 (1) to (4) of the Syariah Criminal Penal Code Order are as follows:

Drinking etc. liquor or intoxicating drinks.^[SEP]

104. (1) Any Muslim who drinks liquor or any intoxicating drinks is guilty of an offence and shall be liable on conviction to *hadd*

punishment to whipping with 40 strokes, whipping with 80 strokes for a second offence and whipping with 80 strokes and imprisonment for a term not exceeding 2 years for a third or subsequent offence.

(2) Any Muslim who drinks liquor or any intoxicating drinks liable to *hadd* punishment is proved either by *ikrar* of the accused, or by *syahadah* of at least two *syahid* according to *Hukum Syara'* other than the evidence of the accused after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*.

(3) Any Muslim who ~~—[SEP]—~~(a) drinks liquor or any intoxicating drink and it is proved by evidence

other than that provided under subsection (2); or ~~—[SEP]—~~(b) consumes liquor or any intoxicating drink,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both, and for the second or subsequent offence, to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Explanation – A person who drinks or eats, drinks or food, into which liquor or any intoxicating drink has been mixed or added is said to consume liquor or any intoxicating drink.

(4) Any Muslim who makes, sells, advertises, serves, offers, gives as present, exhibits, owns, keeps, buys or possesses any liquor or intoxicating drink is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Based on the statements stated above, you are required to answer all questions by stating the supporting arguments as well as the chapters from the Syariah Court Evidence Order, 2001.

QUESTION 1 (15 Marks)

In a cross-examination of Syar'ie lawyer Tuan Kassim Patanlop on prosecution witness who is a police officer (identified as PW 1) to this case:

Syar'ie Lawyer: Did you witness the Accused consuming the intoxicating drink during the incident?

PW 1: No. I only saw the accused in a drunken state at the time of the incident.

Syar'ie Lawyer: Do you agree if I say you did not witness the accused drinking the liquor?

PW 1: Agreed.

Syar'ie Do you agree if I say the accused was in the state of drunk at
Lawyer: that time is not due to consuming intoxicating liquor because
 you did not witness him consuming it?

PW 1: Not Agreed

Syar'ie Why not? You admitted yourself did not witness the accused
Lawyer: drinking the liquor during the said time.

PW 1: I did not see him consuming the liquor, but I have a reasonable
 cause to suspect the accused was under influence of alcohol
 during the said time.

Syar'ie How did you know? You are not an expert. I believe that you
Lawyer: are also a drinker because you are not a Muslim, right?

 You do not punish my client too much without solid evidence.

(a) What is your action as a Syarie prosecutor on the cross-examination question raised by the Syar'ie lawyer according to SCEO 2001?

(7 ½ Marks)

(b) You have been given the opportunity to re-examine your witness again, please draft a question for re-examination of your first witness?

(7 ½ Marks)

QUESTION 2 (15 Marks)

In a written submission at the end of the prima facie case, the Syar'ie Lawyer argued that the testimony of PW1 should not be admissible for an *adil Syahid*, non-Muslim and can also be an intoxicating drinker.

Please file in your counter submission upon the testimony of Witness 1 in this case according to section 103, SCEO 2001.

QUESTION 3 (15 Marks)

There is a closed circuit television (CCTV) placed on the border fence post which shows that at the time of the incident the accused was found inserting a black package (which was later confirmed as an intoxicating beverages package) into a car bearing a registration number of ABC 123. The footage also showed the accused was open the beverage can and consumed it. The lawyer argued in his written submission at the prima facie case has plead to the court that the content of the video as an inadmissible evidence in the *hadd* punishment case.

Please file in your counter submission about the admission of the video content as evidence of this case.

QUESTION 4 (15 Marks)

Awang Sukasuka made an *Ikrar* (confession) during the investigation conducted at the Religious Enforcement Division on drinking intoxicating liquor at the time of the incident. The *ikrar* was recorded before two 'adil witnesses religious enforcement officers. However, Awang Sukasuka withdrew his *ikrar* in the trial conducted because he claimed that the *ikrar* during the investigation was made by coercion and intimidation from the officers.

Please issue an argument in your counter submission upon Awang Sukasuka's *ikrar* position outside the court according to SCEO 2001.

بالتوفيق والنجاح